

立法會
Legislative Council

LC Paper No. CB(2)2559/99-00
(These minutes have been seen
by the Administration and
cleared with the Chairman)

Ref : CB2/BC/13/99

**Bills Committee on
Family Status Discrimination (Amendment) Bill 2000**

**Minutes of Meeting
held on Thursday, 18 May 2000 at 4:30 pm
in the Chamber of the Legislative Council Building**

- Members:**
Present
- Hon Christine LOH (Chairman of the meeting)
Hon Cyd HO Sau-lan
Hon LEE Cheuk-yan
Hon LEE Kai-ming, SBS, JP
Hon Margaret NG
Hon CHAN Kwok-keung
Hon LAW Chi-kwong, JP
Hon CHOY so-yuk
- Members** :
Absent
- Dr Hon YEUNG Sum (Chairman)
Hon Albert HO Chun-yan
Hon Ronald ARCULLI, JP
Hon CHAN Yuen-han
Dr Hon LEONG Che-hung, JP
Hon YEUNG Yiu-chung
- Public Officers :**
Attending
- Miss Helen TANG
Principal Assistant Secretary for Home Affairs (3)
- Ms Roxana CHENG
Senior Assistant Solicitor General
- Miss Monica Law
Senior Assistant Law Draftsman
- Mr C M WONG
Assistant Secretary for Home Affairs

By Invitation : Equal Opportunities Commission

Ms Anna WU
Chairperson

Dr Priscilla CHUNG
Director (Gender)

The Federation of Hong Kong and
Kowloon Labour Unions

Mr CHAN Wai-lun
Ms NG Wai-yee

Employers' Federation of Hong Kong

Mrs Jackie MA
Executive Director

Ms Jodi KOON

Clerk in Attendance : Miss Flora TAI
Chief Assistant Secretary (2) 6

Staff in Attendance : Mr Stephen LAM
Assistant Legal Adviser 4

Mrs Shirley NG
Senior Assistant Secretary (2) 9

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I. Election of temporary chairman

Miss Christine LOH was elected to chair the meeting in the absence of the Chairman of the Bills Committee.

II. Meeting with deputations

2. Miss Christine LOH welcomed representatives of the deputations for making submissions on the Bill and attending the meeting. Members noted that the Federation of Hong Kong Industries had made a written submission on the Bill [LC Paper No. CB(2)2034/99-00(01)].

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Equal Opportunities Commission (EOC)

[LC Paper No. CB(2)1991/99-00(01)]

3. Members noted the written submission from the EOC. Members also noted that EOC was particularly concerned that the proposed amendments in the Bill went beyond medical benefits, and covered all "benefits, facilities or services". Chairperson of the EOC highlighted that the majority of the EOC members agreed with the draft Committee Stage amendments to be proposed by the Administration. A majority of the EOC members also agreed that the amendments should have retrospective effect from 21 November 1997.

4. Director (Gender) of the EOC informed members that EOC had received 45 complaints and a total of 452 enquiries relating to family status discrimination since the Family Status Discrimination Ordinance (Cap. 527) took effect on 21 November 1997. She said that there were 12 complaints relating to compassionate leave and the complaints were about unfair dismissal or differential treatment in taking leave.

5. Miss CHOY So-yuk asked and Chairperson of the EOC responded that the retrospective provisions of the Bill should not affect the rights of employers and employees if an agreement relating to their rights and obligations had been reached before the enactment of the Bill. Assistant Legal Adviser 4 (ALA4) agreed with the view. He said that while the rights and obligations would still be valid when the agreement was in force, a subsequent agreement could be reached in accordance with the Ordinance as amended.

6. Miss Margaret NG asked about the remedies available to parties concerned before the enactment of the Bill if an employer had afforded benefits to only some immediate family members of his employees. Chairperson of the EOC replied that parties concerned might lodge a complaint with the EOC alleging that the employer had done an act which was unlawful by virtue of the Family Status Discrimination Ordinance (Cap. 527) and EOC would endeavour to settle the complaint by conciliation. In case of failure to conciliate, parties concerned could commence legal proceedings in court within a period of one year. EOC was empowered to offer assistance i.e. giving legal advice to parties who had lodged complaints with the EOC but conciliation had failed.

7. Miss Margaret NG further pointed out that the retrospective provisions of the Bill might have the legal effect of incriminating an act which should be lawful before the enactment of the Bill. Chairperson of the EOC said that if an employee had already obtained remedies from the employer on the ground that the employer had infringed the Ordinance, the retrospective provisions of the Bill might affect the rights and obligations under the settlement entered into before the enactment of the Bill.

Federation of Hong Kong and Kowloon Labour Unions (the Federation of

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Labour Unions)

[LC Paper No. CB(2)2058/99-00(01)]

8. Representatives of the Federation of Labour Unions briefed members on the written submission which was tabled at the meeting and subsequently issued vide LC Paper No. CB(2)2058/99-00(01). They said that the Federation did not support that the proposed amendments should have retrospective effect because it could result in the reduction or alteration of existing benefits, facilities or services for immediate family members of employees.

Employers' Federation of Hong Kong (Employers' Federation)

[LC Paper No. CB(2)2034/99-00(02)]

9. Executive Director of the Employers' Federation briefed members on the written submission. Members noted that the Employers' Federation supported that the proposed amendments should have retrospective effect because parties concerned could still initiate proceedings in respect of former acts taken by an employer for affording benefits to only some immediate family members of his employees if the Bill sought to introduce amendments without retrospective effect. Executive Director of the Employers' Federation pointed out that amending the Ordinance without retrospective effect might lead to numerous lawsuits.

III. Meeting with the Administration

10. Members noted that at Miss Christine LOH's request at the last meeting, the Administration had provided examples of retrospective provisions in civil law [LC Paper No. CB(2)2015/99-00(01)].

11. Mr LEE Kai-ming and Miss CHAN Yuen-han reiterated the concern that the Bill might take away any legislative protection or benefits that were currently enjoyed by the employees themselves. Principal Assistant Secretary for Home Affairs (3) (PAS(HA)3) responded that according to an alternative way of interpreting the Ordinance, namely, it was unlawful for an employer to restrict benefits to only some immediate family members in the care of his employees, the employer had two options in order to comply with the Ordinance. The employer could either provide the benefits to all the immediate family members in the care of their employees or withdraw all the benefits currently offered in order to avoid infringing the Ordinance. PAS(HA)3 stressed that the purpose of the Bill was to clarify that it was not unlawful for a person to afford benefits only to one or more immediate family members of his employees without affording the same to all immediate family members.

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12. Notwithstanding the Administration's explanation, Mr LEE Kai-ming and Miss CHAN Yuen-han pointed out that an employee could institute legal proceedings under the Employment Ordinance (Cap. 57) against the employer if the employer did not fulfil his obligations under the employment agreement reached before the enactment of the Bill. However, the employee would be deprived of the opportunity to seek remedies under the Family Status Discrimination Ordinance if retrospective provisions of the Bill were enacted. PAS(HA)3 stressed that if the Ordinance was not amended, employers might still withdraw all the benefits currently offered and such act would not be considered an infringement of the Ordinance.

13. Miss Margaret NG said that while she understood that there were examples of retrospective provisions in civil law, she was concerned that the retrospective provisions of the Bill might have adverse implications on the rule of law in Hong Kong. Additionally, she was concerned that parties concerned would be deprived of the opportunity to seek remedies if the Ordinance was amended with retrospective effect. Miss NG added that even if remedies had already been granted, the retrospective provisions of the Bill would have the effect of nullifying the claim. Miss NG asked the Administration to consider whether the Bill would provide that no proceedings could be brought in respect of former acts before the enactment of the Bill, instead of having retrospective provisions. Senior Assistant Solicitor General responded that the Administration had considered such an alternative but concluded a prohibitive provision undesirable because it might be considered to be an interference with the right of access to court. However, the Administration would reconsider whether there was another alternative of drafting the Bill instead of having retrospective provisions.

Adm

14. Miss CHOY So-yuk expressed concern that if the amendments were enacted without retrospective effect, parties concerned could still initiate proceedings in respect of former acts taken by an employer for affording benefits to only some immediate family members of his employees. She said that she had reservation on any proposal of repealing the retrospective provisions from the Bill.

15. To address the member's concern about the effect of retrospective provisions on the rights of the employers, employees or their immediate family members, ALA4 suggested that the Administration could consider saving existing rights and obligations under an agreement or settlement entered into before the enactment of the Bill. PAS(HA)3 agreed that the Administration would consider feasibility of the proposal and would revert to the Bills Committee at the next meeting.

Adm

IV. Date of next meeting

Action

16. Members agreed that the Bills Committee would hold the next meeting on Thursday, 25 May 2000 at 4:30 pm to conclude scrutiny of the Bill.

17. The meeting ended at 5:50 pm.

Legislative Council Secretariat

4 August 2000