

LEGISLATIVE COUNCIL BRIEF

Employment Ordinance (Chapter 57)

EMPLOYMENT (AMENDMENT) BILL 2000

INTRODUCTION

At the meeting of the Executive Council on 1 February 2000, the Council ADVISED and the Chief Executive ORDERED that the Annex A Employment (Amendment) Bill 2000, at Annex A, should be introduced into the Legislative Council.

BACKGROUND AND ARGUMENT

2. The Employment Ordinance (EO) (Chapter 57) does not make it clear that the taking part by an employee in a strike is not a lawful ground for an employer to terminate the employee's contract of employment without notice or payment in lieu. As undertaken by the Administration at the meeting of the Panel on Manpower of the Legislative Council in July 1999, we proposed to amend the relevant sections of the EO to clarify the wording so as to avoid unnecessary misunderstanding between employers and employees.

THE BILL

- Annex B 3. **Clause 2** adds a new subsection to Section 9 (Annex B) to clarify that the taking part by an employee in a strike does not entitle an employer to terminate the employee's contract of employment without notice or payment in lieu under that section. **Clause 4** repeals Sections Annex C 31H, 31X and 32H (Annex C), which deal with employees' rights to severance payments, long service payments and the remedies for employment protection in circumstances involving summary dismissal because an employee takes part in a strike. These provisions have become redundant consequential to the amendment to Section 9. **Clauses 3 and 5** Annex C amend Sections 31C and 31S (Annex C) in consequence of the repeal of sections 31H and 31X.

PUBLIC CONSULTATION

4. The Labour Advisory Board has endorsed the amendments proposed in the Bill.

BASIC LAW IMPLICATIONS

5. The Department of Justice advises that the Bill does not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

6. The Department of Justice advises that the Bill is consistent with the human rights provisions of the Basic Law.

FINANCIAL AND STAFFING IMPLICATIONS

7. There are no financial or staffing implications for the Government.

ECONOMIC IMPLICATIONS

8. The proposal is unlikely to have any appreciable economic implications.

LEGISLATIVE TIMETABLE

9. The legislative timetable is as follows-

Publication in the Gazette	11 February 2000
First Reading and commencement of Second Reading debate	23 February 2000
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

PUBLICITY

10. A press release explaining the proposed amendments will be issued on 10 February 2000, the day before the Bill is due to be published in the Gazette.

ENQUIRIES

11. For enquiries, please contact Ms Mabel LI, Senior Labour Officer. Her telephone number is 2852 3517.

Education and Manpower Bureau

10 February 2000

The Provisions of Section 9 of the Employment Ordinance

9. Termination of contract without notice by employer

An employer may terminate a contract of employment without notice or payment in lieu—

- (a) if an employee, in relation to his employment—
 - (i) wilfully disobeys a lawful and reasonable order;
 - (ii) misconducts himself such conduct being inconsistent with the due and faithful discharge of his duties;
 - (iii) is guilty of fraud or dishonesty; or
 - (iv) is habitually neglectful in his duties; or

- (b) on any other ground on which he would be entitled to terminate the contract without notice at common law.

**The Provisions of Sections 31H, 31X and 32H of
the Employment Ordinance**

31H. Special provision as to termination of contract in case of strike

Where an employee, who has been given notice by his employer to terminate his contract of employment, takes part in a strike before the expiry of that notice in such circumstances that the employer is entitled by reason of his taking part in the strike to treat the contract as terminable without notice, and the employer for that reason terminates the contract as mentioned in section 31C(1), that subsection shall not apply to that termination of the contract.

[31C(1) Except as provided by section 31H, an employee shall not be entitled to a severance payment by reason of dismissal where his employer, being so entitled by reason of the employee's conduct, terminates his contract of employment without notice or payment in lieu in accordance with section 9.]

31X. Special provision as to termination of contract in case of strike

Where an employee, who has been given notice by his employer to terminate his contract of employment, takes part in a strike before the expiry of that notice in such circumstances that the employer is entitled by reason of his taking part in the strike to treat the contract as terminable without notice, and the employer for that reason terminates the contract without notice or payment in lieu in accordance with section 9, section 31S shall not apply to that termination of the contract.

[31S(1) Except as provided by section 31X, an employee shall not be entitled to a long service payment by reason of dismissal where his employer, being so entitled by reason of the employee's conduct, terminates his contract of employment without notice or payment in lieu in accordance with section 9.]

32H. Special provision as to dismissal in case of strike

Where an employee, who has been given notice by his employer to terminate his contract of employment, takes part in a strike before the expiration of that notice in such circumstances that the employer is entitled by reason of his taking part in the strike to treat the contract as terminable without notice, and the employer, for that reason only, terminates the contract without notice or payment in lieu in accordance with section 9, then for the purpose of this Part, the employee is taken to be dismissed by the employer arising from the notice of termination as so given and his right to remedies under this Part shall not be affected by his taking part in the strike.