

立法會
Legislative Council

LC Paper No. LS 102/99-00

**Paper for the House Committee Meeting
of the Legislative Council
on 3 March 2000**

**Legal Service Division Further Report on
Family Status Discrimination (Amendment) Bill 2000**

At the House Committee meeting held on 18 February 2000, Members agreed to defer decision on the Bill pending Hon Margaret Ng's clarification with the Administration about the retrospective operation of certain provisions of the Bill upon its enactment. Miss NG has subsequently written to the Legal Adviser and copied the letter to Chairman of the House Committee expressing therein her concerns about the Bill. A copy of the letter is at Annex I for Members' reference. We are also instructed to refer the letter to the Administration and circulate it to Members. The Administration's reply is at Annex II for Members' reference.

2. Members may wish to decide whether a Bills Committee is to be formed to study details of the Bill.

Encl

Prepared by

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1 March 2000

Annex I

No attachment.

本署檔號 OUR REF. : S/F(2) in HAB/CR/1/2/34 Pt. 6
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1 March 2000

The Hon Margaret Ng
Room 116, New Henry House
10 Ice House Street
Central
Hong Kong

Dear Ms Ng,

Re: Family Status Discrimination (Amendment) Bill 2000

I refer to your letter of 21 February 2000 to Mr Jimmy Ma, Legal Adviser of LegCo, which has been referred to us for reply.

You have raised certain concerns on the above Bill. We had intended to discuss these concerns with you. Since you would not be available for a meeting soon, I shall set out below our considerations and hope that they could fully address your concerns.

Confusion

The Bill aims to remove uncertainty over the interpretation of provisions in the Family Status Discrimination Ordinance (FSDO) in relation to the provision of benefits to immediate family members in the care of employees, contract workers and commission agents by clarifying that it is not unlawful for a person to afford benefits to one or more immediate family members of his employees but without affording the same to all immediate family members. The uncertainty arises from the emergence of the possibility of an alternative interpretation of the FSDO. The issue carries wide implications for both employers and employees in the public and private sectors. In fact, both employers and employees have expressed concerns to the Administration on whether it is lawful to afford benefits to only some family members of employees. We cannot ignore the alternative interpretation of the FSDO and the uncertainty, otherwise parties concerned may have to resort to court proceedings to settle the issue, causing greater confusion for all.

Retrospective effect

As the purpose of the Bill is to put beyond doubt that it has never been the Administration's intention to require an employer to provide benefits to every immediate family member of his employees, it is proposed that the amendments should be deemed to have come into effect retrospectively on 21 November 1997. I wish to stress that there is no reinterpretation of the FSDO by the Administration. We are merely trying to clarify the original interpretation of the FSDO in response to a body of legal opinion that gives rise to a possible alternative interpretation of the FSDO. Introducing amendments that do not have retrospective effect on this issue is unsatisfactory because the uncertainty in respect of former acts (as defined in the Bill) would linger on. On the other hand, when the amendments with retrospective effect are enacted, it would no longer be necessary for the parties concerned to initiate proceedings in respect of former acts in order to clarify the uncertainty.

Cut off date for proceedings

The proposed saving clause (clause 3) of the Bill aims at preserving the rights of claimants who might have already instituted proceedings while the Administration was considering the way forward to remove the uncertainty in the FSDO. I hope you will understand that a line must be drawn somewhere. We believe the date of ExCo's approval for the introduction of the Bill is a clear-cut one. According to the Judiciary, no proceedings had been instituted under the FSDO on or before 10 February 2000 (i.e. a week after the Bill's gazettal date of 3 February 2000).

Finally, I would like to add that it is in the interest of both the employers and the employees to have the Bill enacted as soon as practicable. If we allow the uncertainty to continue, employers wary of potential liabilities might withdraw benefits that they currently provide out of goodwill to family members of their employees.

I hope you find the above information useful and would be pleased to meet you to discuss the above Bill at your convenience.

Yours sincerely,

(Miss Helen Tang)
for Secretary for Home Affairs

c.c. Dr the Hon C H Leong
Mr Stephen Lam, Assistant Legal Adviser, LegCo Secretariat