

立法會
Legislative Council

LC Paper No. LS82/99-00

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

**Legal Service Division Report on
Employment (Amendment) Bill 2000**

Object of the Bill

To clarify that taking part in a strike is not a lawful ground for the termination of an employee's contract of employment without notice or payment in lieu.

LegCo Brief Reference

2. EMBCR 1/3231/99 IV dated 10 February 2000, issued by the Education and Manpower Bureau.

Date of First Reading

3. 23 February 2000.

Comments

4. Section 9 of the Employment Ordinance (Cap. 57) (EO) provides that an employer may terminate a contract of employment without notice or payment in lieu under certain circumstances.

5. Although these circumstances do not expressly include the taking part in a strike, sections 31H, 31X and 32H of EO, in making special provisions as to entitlement to severance payment and long service payment etc., each

refers to an employee who "takes part in a strike 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". These provisions imply that there are circumstances in which an employee taking part in a strike could entitle his employer to terminate his employment without notice or payment in lieu.

6. When this was discussed by the LegCo Panel on Manpower in the light of Article 27 of the Basic Law, which provides for the right and freedom to strike, the Administration expressed the view that "a reasonable interpretation of section 9 of EO in the light of Article 27 is such that it could not be invoked as a ground for summary dismissal of an employee for taking part in a strike. The relevant wordings of sections 31H, 31X and 32H would be rendered meaningless/redundant if this interpretation of Article 27 is adopted" (paragraph 8 of LC Paper No. CB(2)2072/98-99(04)).

7. At a subsequent meeting of the Panel on 22 July 1999, the Administration agreed that legislative amendments were being proposed to amend the relevant sections of EO to clarify their effect in the light of Article 27.

8. The Bill now proposes to clarify section 9 of EO by adding a provision stating expressly that the taking part in a strike does not entitle an employer to terminate the employee's contract of employment without notice or payment in lieu.

9. Consequentially, sections 31H, 31X and 32H which are considered as redundant will be repealed. References to sections 31H and 31X in other provisions in EO will also be removed.

Public Consultation

10. According to the LegCo Brief, the Labour Advisory Board has endorsed the amendments proposed in the Bill.

Consultation with LegCo Panel

11. As mentioned above, the Panel on Manpower has discussed the matter and has been consulted on the legislative proposal.

Recommendation

12. The legal and drafting aspects of the Bill are in order. Subject to

Members' views, the Bill is ready for resumption of Second Reading debate.

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