

立法會
Legislative Council

LC Paper No. LS 87/99-00

**Paper for the House Committee Meeting
of the Legislative Council
on 18 February 2000**

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

Object of the Bill

To amend the Family Status Discrimination Ordinance (Cap. 527) ("the FSDO") to add a new provision to clarify that it is not unlawful for a person to treat employees, contract workers or commission agents who have family status differently in the way he affords their immediate family members access to benefits, facilities or services.

LegCo Brief Reference

2. S/F (2) in HAB/CR/1/2/34 Pt. 5 issued by the Home Affairs Bureau on 2 February 2000.

Date of First Reading

3. 16 February 2000.

Comments

4. According to paragraph 3 of the LegCo Brief, the Administration says that there is a body of legal opinion which considers that pursuant to the wording of the existing provisions of the FSDO (further clarification with the Administration reveals that the relevant provisions are the interface between section 5 (the definition of discrimination against a person who has family status) and section 8 (discrimination in employment field)), there is an alternative way of interpreting the FSDO to the effect that it may be unlawful for an employer to restrict benefits to only some immediate family members in the care of his employees. According to this interpretation, Part 2 of Schedule 2 to the FSDO which provides for exceptions to discrimination against a person who has family status arising from a provision of a contract of service relating to housing, education, air-conditioning, passage or baggage benefits or allowances is not sufficient to cover all situations in relation to the provision of benefits and allowances.

5. In avoiding any uncertainty arising from the interpretation, the Bill proposes to amend the FSDO to clarify that it is not unlawful for a person to treat employees, contract workers or commission agents who have family status differently in the way he affords their immediate family members access to benefits, facilities or services.

6. The Bill, upon its enactment, except clause 3, shall be deemed to have come into operation on 21 November 1997, i.e. the date on which the FSDO came into operation. Paragraph 4 of the LegCo Brief explains that the deeming provision reflects that it has never been the Administration's intention to require an employer to provide benefits to every immediate family members of his employees. Clause 3 provides that the Bill, upon its enactment, will not affect any proceedings instituted before 1 February 2000. The Administration has clarified, upon our enquiry, that the date of 1 February 2000 is chosen because that is the date of ExCo's approval for the introduction of the Bill to the LegCo. However, the Administration is not aware of any proceedings instituted under the FSDO on or before 10 February 2000. A copy of the Administration's letter is annexed for members' reference.

Public Consultation

7. According to paragraph 8 of the LegCo Brief, the Equal Opportunities Commission and the Labour Advisory Board support the proposal in principle.

Consultation with the LegCo Panel

8. At the LegCo Home Affairs Panel's meeting held on 10 January 2000, the Administration briefed members about the proposal. Members did not raise objection to it.

Conclusion

9. Subject to members' view on policy, the legal and drafting aspect of the Bill are in order.

Encl

Prepared by

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Legislative Council Secretariat
16 February 2000

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

Mr Stephen Lam
Assistant Legal Adviser
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Jackson Road
Hong Kong

Dear Mr Lam,

Family Status Discrimination (Amendment) Bill 2000

Thank you for your letter of 11 February 2000.

The Bill is introduced to clarify the uncertainty arising from the interpretation of the Family Status Discrimination Ordinance (FSDO). To put beyond doubt that it has never been our intention to require an employer to provide the same benefits to every immediate family member in the care of his employees, we propose in the Bill that the amendments will be deemed to have come into operation when the FSDO came into effect, i.e. 21 November 1997. However, we are mindful that some proceedings in respect of a former act (as defined in the Bill) may have already been instituted before the Bill is approved for introduction into LegCo. To preserve the rights of these claimants, we propose that proceedings initiated before the date of ExCo's approval for the introduction of the Bill, i.e. 1 February 2000, will not be affected.

As far as we know, there has not been any proceeding instituted under the FSDO on or before 10 February 2000.

I hope the above is useful in clarifying the matter.

Yours sincerely,

(Miss Helen Tang)
for Secretary for Home Affairs