

Legislative Council Panel on Home Affairs
Proposed Amendment to the
Family Status Discrimination Ordinance

Purpose

The purpose of this paper is to brief members on a proposal to amend the Family Status Discrimination Ordinance (FSDO) (Cap. 527).

Background

2. It is unlawful under the FSDO to discriminate against a person on the ground of family status in various fields of activity, including employment. Family status is defined as the status of having the responsibility for the care of an immediate family member. An immediate family member is anyone who is related to the person by blood, marriage, adoption or affinity. For example, a person who takes care of his father, spouse, adopted son or mother-in-law has family status; a person who has no immediate family members or no responsibility to care for them has no family status.

3. Apart from their employees, it is common practice for some Hong Kong employers to extend certain employment fringe benefits, such as medical and dental benefits, to the spouse and children of their employees, even though this is not required by law. It has not been our intention that the FSDO will require employers to afford benefits to **all** immediate family members of their employees if such benefits are

granted. In fact, Schedule 2 of the Ordinance already provides for some exceptions in relation to housing, education, air-conditioning, passage or baggage benefits or allowances. However, there is a body of legal opinion which considers that according to the wording of the existing provisions of the FSDO, there is an alternative way of interpreting the Ordinance, namely, it is unlawful for an employer to restrict benefits, if granted, to only some categories of his employees' immediate family members. According to this interpretation, the list of exceptions in Schedule 2 is not sufficient to cover all situations in relation to the provision of benefits and allowances. In order to comply with the FSDO, the employer has two options. The first is that he can provide the benefits to **all** the immediate family members of their employees, which will be very costly. The second is that he may withdraw all the benefits currently offered in order to avoid infringing the FSDO, in which case the employees' family members will lose the existing benefits.

Proposal

4. We propose to amend the FSDO to clarify that it is not unlawful for a person to afford benefits only to one or more categories of immediate family members of his employees without affording the same to all immediate family members. The proposal will **not** take away any legislative protection or benefits that are currently enjoyed by the employees themselves but will remove uncertainty over the interpretation of this provision in the FSDO.

5. We estimate that the proposal is technical in nature and should be

cost-neutral to both the Government and the private sector.

6. The Equal Opportunities Commission has been consulted and has indicated in principle support to the proposed amendments to the FSDO.

7. We have also consulted the Labour Advisory Board. The Board has agreed to our proposal to amend the FSDO.

Way Forward

8. It is our intention to introduce an amendment bill to the Legislative Council in the current session to put matters beyond doubt.

Home Affairs Bureau
January 2000