

立法會
Legislative Council

LC Paper No. CB(2) 1131/99-00

(These minutes have been seen
by the Administration)

Ref : CB2/PL/MP/1

LegCo Panel on Manpower

Minutes of meeting
held on Tuesday, 21 December 1999 at 10:45 am
in the Chamber of the Legislative Council Building

- Members present** : Hon LAU Chin-shek, JP (Chairman)
Hon LEE Kai-ming, SBS, JP (Deputy Chairman)
Hon Kenneth TING Woo-shou, JP
Hon James TIEN Pei-chun, JP
Hon David CHU Yu-lin
Hon HO Sai-chu, SBS, JP
Hon LEE Cheuk-yan
Hon CHAN Kwok-keung
Hon CHAN Yuen-han
Hon CHAN Wing-chan
Hon CHAN Kam-lam
Hon LEUNG Yiu-chung
Hon SIN Chung-kai
Hon YEUNG Yiu-chung
Hon Andrew CHENG Kar-foo
Hon SZETO Wah
- Members attending** : Hon Mrs Selina CHOW LIANG Shuk-ye, JP
Hon Christine LOH
- Members absent** : Hon Cyd HO Sau-lan
Hon Michael HO Mun-ka
Dr Hon LUI Ming-wah, JP
Hon Ronald ARCULLI, JP
Dr Hon LEONG Che-hung, JP

Public Officers : Items III to VI
attending

Mr Philip K F CHOK, JP
Deputy Secretary for Education and Manpower

Miss Erica NG
Principal Assistant Secretary for Education
and Manpower

Mr Matthew K C CHEUNG, JP
Commissioner for Labour

Mr TSANG Kin-woo, JP
Assistant Commissioner for Labour
(Labour Relations)

Mrs Clare SIU
Chief Labour Officer (Labour Relations)

Clerk in : Mrs Sharon TONG
attendance Chief Assistant Secretary (2)1

Staff in : Mr Raymond LAM
attendance Senior Assistant Secretary (2) 5

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I. Confirmation of minutes of meetings held on 9 and 28 October 1999 and matters arising
(LC Paper Nos. CB(2) 632/99-00(01), CB(2) 633/99-00 and CB(2) 635/99-00)

The minutes of the meetings held on 9 and 28 October 1999 were confirmed.

2. Members noted the list of follow-up actions required of the Administration.

II. Date of next meeting and items for discussion
(LC Paper No. CB(2) 632/99-00(02))

3. Members agreed to discuss the following items at the next meeting to be held on 27 January 2000 at 2:30 pm -

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- (a) Review of the applicability of the Employment Ordinance to Government contract employees, employees who work less than 18 hours per week and service contract employees;
- (b) Review of wage provisions under the Employment Ordinance;
- (c) Occupational Safety and Health (Personal Protective Equipment) Regulation; and
- (d) Occupational Safety and Health Management Information System.

Members agreed to invite members of the Panel on Public Service to join the discussion of item (a). Mr LEE Cheuk-yan, who proposed item (a), said that he would provide a paper on the issue for the Administration's response.

(Post-meeting note : Discussion of item (d) was subsequently deferred at the request of the Administration.)

4. Miss CHAN Yuen-han expressed concern about the implications of the recent economic restructuring and China's accession to World Trade Organization on the local employment situation of various trades. She said that the Administration should inform members of its strategy and plans to equip the workforce, especially low-skilled and low education workers, with the necessary skills to meet the changing needs. In view that there might be insufficient time for discussion of the item at the next meeting, the Chairman said that he would determine the time for discussion of the item with the Secretariat.

5. In response to Mr LEE Cheuk-yan, Commissioner for Labour (C for L) said that the results of the review on re-instatement were being discussed by the Labour Advisory Board (LAB). He hoped to report the results to the Panel on Manpower (the Panel) in early 2000.

III. Review on the applicability of the Employment Ordinance to live-in domestic helpers

(LC Paper Nos. CB(2) 605/99-00(01) and CB(2) 632/99-00(03))

6. At the invitation of the Chairman, Deputy Secretary for Education and Manpower (DSEM) and Chief Labour Officer (Labour Relations) (CLO) briefed members on the review on the applicability of the Employment Ordinance (Cap. 57) (EO) to live in domestic helpers (DHs) as set out in the paper provided by the Administration.

7. Referring to paragraph 15 of the Administration's paper, Miss CHAN Yuen-han asked whether the Administration would change its position of deferring the proposal of introducing flexible arrangement under the maternity protection provisions of EO if there was pressure from employers. C for L responded that the flexible arrangement

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was only an initial proposal. As there were both views for and against the proposal, LAB decided that discussion of the issue be deferred so that the Administration could collect more views on the subject. He stressed that the flexible approach would require mutual consent of the DH concerned as well as the employer. It was thus fair to both employers and DHs.

Practices in Singapore and Taiwan

8. Mr Kenneth TING asked whether Singapore and Taiwan were signatories to the International Labour Conventions (ILCs) and whether employment-related legislation for other employees were also applicable to live-in DHs in the two countries. Assistant Commissioner for Labour (Labour Relations) (AC for L) responded that, to his knowledge, the employment-related legislation in Singapore was not applicable to DHs. He undertook to provide information on the issues raised by Mr TING. Mr LEE Cheuk-yan said that regardless of the practice in Singapore and Taiwan, workers in Hong Kong should not be deprived of their rights.

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Separate legislation for DHs

9. Mrs Selina CHOW said that some Members of the former Legislative Council (LegCo) had requested in 1997 for separate legislation for DHs. She questioned why the Administration had changed the request to that of exemption of DHs from the general application of EO. She asked whether the Administration had looked into overseas practices in respect of separate legislation for DHs. AC for L responded that the request of some former LegCo Members about enactment of separate legislation for DHs was stated in paragraph 3 of the Administration's paper. Referring to paragraph 7(a) of the Administration's paper, he said that under various international conventions and covenants to which Hong Kong had subscribed, Hong Kong was obliged to treat all employees, whether from local or from overseas, equal under EO unless there were overriding reasons for a different treatment. He added that the Administration had looked into the practices in other countries in respect of the issue. Mrs Selina CHOW requested the Administration to provide information on overseas practices in respect of separate employment-related legislation for DHs.

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Consultation with the Hong Kong Employers of Overseas Domestic Helpers Association

10. In response to Mr James TIEN, C for L said that the Hong Kong Employers of Overseas Domestic Helpers Association (HKEODHA) had been consulted on the Administration's proposals. Its major concerns were that under the flexible arrangement, the specified payment was too high and a pregnant FDH could refuse the request for dissolving the employment contract. HKEODHA considered that the proposed arrangement would not solve the problems faced by employers.

Consultation with the Equal Opportunities Commission (EOC)

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11. Mr LEE Cheuk-yan said that to his knowledge, EOC considered that the proposed flexible arrangement would contravene the Sex Discrimination Ordinance. He asked whether the Administration had consulted EOC on the proposed arrangement. C for L responded that EOC had not expressed such views to the Administration. He assured members that the legal aspects of the arrangement had already been examined in detail by the Department of Justice (D of J). The Chairman requested the Administration to seek EOC's views on the proposed arrangement.

Adm

Members' views on the issue

12. Mr CHAN Wing-chan expressed support for the continued application of EO to DHs. He expressed concern that as there was an imbalance of bargaining power between DHs and employers, some employers might force their DHs to enter into an agreement for flexible arrangement. C for L responded that the flexible arrangement was proposed in view of the fact that some foreign domestic helpers (FDHs) wished to return to their home countries during their pregnancy. Any DH forced by an employer to enter into such an agreement could lodge a complaint with LD.

13. Referring to paragraph 15 of the Administration's paper, Mr James TIEN said that to his knowledge, LAB members supported the continued application of EO to DHs on the ground that Hong Kong was obliged to treat all employees equal under EO. To his knowledge, LAB had not discussed issues related to pregnancy of DHs. He asked whether pregnancy of a DH would constitute an overriding reason under international conventions for different treatment under EO. C for L said that the Administration had looked into the issue in detail in the past two years. It was noted that most women could still perform general housework during their pregnancy. The arrangement would maintain the rights of DHs while meeting the needs of employers. According to legal advice, different treatment under EO could not be justified merely because a domestic helper lived at the home of the employer. Mr James TIEN requested the Administration to provide written response on whether pregnancy of a DH would constitute an overriding reason under international conventions for different treatment under EO.

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14. Mrs Selina CHOW said that the Liberal Party was opposed to the proposed flexible arrangement. The proposal would not address the problems faced by employers because the dissolving of an employment contract would still be subject to mutual consent of the parties concerned. She said that the Administration should balance the interests of employers and employees and listen to the views of employers.

15. Mr LEE Cheuk-yan said that the Hong Kong Confederation of Trade Unions (HKCTU) supported the continued application of EO to DHs. As there would not be genuine voluntary agreement if there was an imbalance of bargaining power, HKCTU was opposed to the proposed flexible arrangement.

16. Mr Andrew CHENG said that the proposed flexible arrangement was undesirable both for employers and employees. Referring to the last paragraph of the Appendix to the Administration's paper, he said that if an employee could prove that he

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was under economic duress or undue influence when agreeing on the flexible arrangement, he was still entitled under civil law to claim for compensation. He requested the Administration to seek legal advice on the issue. C for L responded that the Administration had looked into the legal aspects of the proposal with D of J for a long period of time. Mr Andrew CHENG requested the Administration to provide the legal advice on the proposed flexible arrangement.

Adm

17. Miss Christine LOH said that the Citizens Party was opposed to the proposed flexible arrangement, as it could not guarantee a fair treatment of FDHs. She said that the Citizens Party had strong reservations about the enactment of separate legislation for FDHs.

IV. Review on the provisions of sickness allowance under the Employment Ordinance

(LC Paper No. CB(2) 632/99-00(04))

18. At the invitation of the Chairman, AC for L presented the paper provided by the Administration on the result of a review of the provisions on sickness allowance under EO conducted by LD. The review recommended that there was no need to make any change to the existing provisions.

19. Miss CHAN Yuen-han said that she had tried to introduce a Member's bill on sickness allowance unsuccessfully in 1996. At that time, the Administration agreed to consider increasing the rate of sickness allowance from 4/5 to 100% of normal wages. She regretted that the Administration would not propose any amendment to provisions on sickness allowance in EO. She said that the Hong Kong Federation of Trade Unions was opposed to the four-day qualifying period for sickness allowance. As many companies in Hong Kong had already been paying normal wages even for a sick leave of one day, she questioned why a qualifying period of four days was imposed and asked about the medical grounds for such a qualifying period. AC for L said that the qualifying period of four days was only a minimum requirement. The reasons for not amending the existing provisions on sickness allowance were explained in detail in paragraph 4 of the Administration's paper. A reduction in the qualifying period would increase employers' liability in paying sickness allowance. This would have a dampening effect on business under the present economic environment. The Administration had to balance the interests of employers and employees. It had looked into the practices in other countries and noted that apart from Singapore, the qualifying periods for most countries were either four or eight days.

20. Mr LEE Cheuk-yan said that the Administration should carry out a research on the respective numbers of employees subject to qualifying periods of one and four days. He said that to his knowledge, employees being subject to a qualifying period of four days were usually unskilled and low income workers who were most in need of protection. At the Chairman's request, AC for L undertook to examine the availability of resources for carrying out the requested research.

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21. Mr LEUNG Yiu-chung said that a worker who received no sickness allowance for three days' sick leave would lose one-tenth of his monthly income. This loss of income and the medication cost would constitute a heavy financial burden especially for low-income workers. C for L responded that the current provisions reflected that an employee's need for financial assistance during short-term sickness was smaller than that during prolonged illness. The present provisions had ensured that the livelihood of employees would not be adversely affected if they suffered from prolonged illness.

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22. Mr Andrew CHENG questioned the justification for setting the qualifying period as four days. He said that the Administration should provide information on the change in labour cost arising from a reduction in the qualifying period. C for L responded that there was full justification for setting the qualifying period at four days. He said that the issue should be handled cautiously especially at a time of economic difficulties. Mr Andrew CHENG requested the Administration to provide information on the quantified effect of reducing the qualifying period. Mr LEUNG Yiu-chung said that the Administration should provide information on the scenarios of reducing the qualifying period to two and three days respectively. Mr James TIEN added that the Administration should provide information on the criteria adopted by overseas countries in determining the qualifying period.

**V. Review on the provisions on lay-off under the Employment Ordinance
(LC Paper No. CB(2) 632/99-00(05))**

23. At the invitation of the Chairman, AC for L briefed members on the result of a review of the provisions on lay-off under EO conducted by LD. The review recommended that no change should be made.

24. Mr LEE Cheuk-yan said that the summary of surveys conducted by LD on lay-off revealed that the problem of long-term under-provision of work had remained unresolved. He said that LD had considered revising the definition of lay-off as failure on the part of the employer to provide work for not less than 40 days in 10 consecutive weeks many years ago. To his knowledge, about 100 000 workers in Hong Kong were suffering from under-provision of work. He considered that EO should be amended to protect these workers. He said that the surveys might not reflect the real situation. As it might only be two months since a worker suffered from under-provision of work, the worker would not be classified as suffering from under-provision of work in the past 26 weeks or more. He said that the Administration should carry out a research into long-term under-provision of work. Mr LEE Kai-ming added that many workers did not meet the continuous employment requirement under EO. The coverage of EO should be extended to protect these workers.

25. CLO said that the surveys were conducted among persons who sought consultation from the Labour Relations Service (LRS) of LD. As the surveys were very complicated, the Administration's paper only provided the key findings. She added that if the 26-week requirement was shortened to 10 weeks, only three additional

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workers covered in the survey would become covered by lay-off provisions and eligible for severance payment. The Chairman requested the Administration to provide members with the results of the surveys.

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26. Mr LEUNG Yiu-chung said that the surveys were not comprehensive since only persons who visited LRS were included in the surveys. Persons suffering from long-term under-provision of work might not visit LRS because they thought that such visit would be of no use. He expressed concern that the Administration was only concerned about the problems faced by employers. Problems faced by employees were neglected. He strongly requested the Administration to carry out a comprehensive review on under-provision of work. At members' request, CLO agreed to examine the availability of resources for carrying out a comprehensive survey.

Adm

27. The Chairman concluded that the issue might be further discussed when the issue of working time arrangements was discussed in the future.

VI. Any other business

Admission of Talents Scheme

28. Miss CHAN Yuen-han explained her joint submission (tabled at the meeting and issued to absent members vide LC Paper No. CB(2) 708/99-00) with Mr CHAN Wing-chan and Mr CHAN Kwok-keung. She was disappointed that the Administration had not appointed any trade union representative to the Selection Committee for the Admission of Talents Scheme (the Scheme) despite members' request at the joint meeting of the Panels on Manpower and Security on 4 November 1999. In view of this, she considered that all applications made under the Scheme should be provided to the Panel for examination before decisions were made by the Selection Committee. She pointed out that besides representatives of trade unions, there were also representatives of employers in the Panel. She considered that detailed information on the applications should at least be provided to the Panel for information, if not for examination. Mr CHAN Wing-chan shared the same view. He said that information on applications should be provided to the Panel before admission was granted. Mr LEUNG Yiu-chung supported the suggestion, especially in view that the Scheme might be open to abuse and become a loophole for importation of labour. Mr SZETO Wah suggested that the Panel might consider making the issue as a standing discussion item for each Panel meeting.

29. Mr Andrew CHENG said that as the talents to be admitted would become part of the workforce in Hong Kong, it would be unfair to have no representative of trade unions in the Selection Committee. He considered that the Administration should provide at each Panel meeting detailed information on applications received since the previous meeting. This would facilitate the Panel's monitoring of the situation and examination of how local education and training could be tailored to the needs of the

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economy. He stressed that the Panel was empowered to examine the issue at least from the manpower training perspective.

30. DSEM responded that as the Scheme was within the purview of the Security Bureau, he was not in a position to provide a response on behalf of the Secretary for Security (S for S). However, he considered that there might be difficulties with the proposed arrangement as there would be repetition of the selection and approval process. He recalled that S for S had undertaken at the joint meeting to provide overall statistics and information on the applications to the Panels and review the Scheme one year after implementation. He undertook to relay members' views and concerns to S for S for consideration.

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31. There being no other business, the meeting ended at 12:40 pm.

Legislative Council Secretariat

1 February 2000