

**LegCo Panel on Manpower
(For Meeting on 21 December 1999)**

**Result of the review of the provisions
on lay-off under the Employment Ordinance**

Introduction

This paper informs Members of the result of a review of the provisions on lay-off under the Employment Ordinance (EO) conducted by the Labour Department. The conclusion of the review is that the status quo should be preserved.

Existing provisions on lay-off

2. Lay-off provisions under section 31E of the EO were first enacted in 1974 to enable employees to claim severance payment (SP) in the event of under-provision of work.

3. Under the existing definition of lay-off which was adopted in 1990, where an employee's remuneration depends on work being provided by his employer, the employee is taken to be laid off if his employer fails to provide him work or pay on either :

- (i) **more than half** of the total number of normal working days in any period of **4 consecutive weeks**; or
- (ii) **more than one-third** of the total number of normal working days in any period of **26 consecutive weeks**.

Surveys on lay-offs

4. During discussion on the Employment (Amendment) (No. 4) Bill 1996 (which was sponsored by the Hon. LEUNG Yiu-chung and sought to reduce the qualifying time period of under-provision of work for lay-off from 26 consecutive weeks to 10 consecutive weeks) by the Labour Advisory Board (LAB) on 21 April 1997, it was agreed that the Labour Department should collect statistical information on potential lay-off cases after which the issue of lay-off should be further considered by the LAB.

5. The Labour Department conducted a survey from May to July 1997 to collect statistical information on potential lay-offs from consultations handled by the Labour Relations Service (LRS). A second survey was conducted from July to September 1998 to assess the situation after the Asian financial turmoil. The second survey also gauged information on cases of under-provision of work which did not come within the definition of lay-off.

6. In the two surveys, the LRS recorded a total of 491 employees making consultations and alleging that they had been under-provided with work. This represents 0.5% of the total number of 95 038 persons who made consultations during these two periods.

7. Out of these 491 employees :

(a) 102 employees claimed that they were not provided with work on less than half of the total number of normal working days in the 4-week period. These employees did not meet the qualifying condition for claiming SP under the lay-off provisions.

(b) Another 67 employees complained about under-provision of work for a period ranging from 1 to 3 weeks. These employees were also not qualified to claim SP under the lay-

off provisions.

- (c) The remaining 322 employees met the qualifying condition for claiming SP under the lay-off provisions.

A summary of the survey findings is given at Appendix.

8. During the two survey periods, the LRS handled a total of 44 claims on lay-off, representing 0.3% of the total 13 696 employment claims handled. The LRS did not record any labour dispute (a case involving more than 20 claimants) arising from lay-off in the same periods.

Result of the review

9. The Labour Department has reviewed the provisions on lay-off in the light of the survey findings and has reached the view that no change should be made. The reasons are :

- (a) The small number of complaints about lay-off relative to the total number of consultations, disputes and claims handled by the LRS shows that prolonged under-provision of work has not posed a serious problem.
- (b) The qualifying number of days of non-provision of work or pay in the existing definition of lay-off (i.e. more than half of the total number of normal working days in 4 consecutive weeks *or* more than one-third of the total number of normal working days in 26 consecutive weeks) already accords sufficient protection to employees who suffer from prolonged under-provision of work. This is evident in the survey findings. More than 70% of the employees who complained about under-provision of work for 4 weeks or more and all those who complained of under-provision of

work for 26 weeks or more were already covered by the lay-off provisions and eligible for SP.

- (c) The qualifying time period of under-provision of work or pay in the existing definition of lay-off (i.e. a consecutive period of 4 weeks *or* 26 weeks) is appropriate and strikes a reasonable balance between the interests of employers and employees.
- (d) Any shortening of the qualifying period will enable more employees to benefit from the lay-off provisions. However, it will also reduce the flexibility of employers in making temporary work arrangements to tide over difficulties in times of seasonal fluctuation of business, late delivery of materials, operational mishaps or other unforeseen circumstances. This may aggravate the employers' financial difficulties and force them to scale down or even close down their operations.
- (e) Any increase in rigidity in the business operations will add difficulties to the present business environment and jeopardise the overall employment opportunities of the workforce. The ultimate effect will be counter-productive.

Views of the Labour Advisory Board (LAB)

10. We have submitted the result of the review to the LAB. At its meeting held on 30 November 1999 Members accepted the recommendation made by the review.

Summary of the Results of the Surveys
Conducted by the Labour Relations Service

| Under-provision of work | Number of employees | | |
|--|--|--|--------------|
| | Survey 1 May- July 1997 | Survey 2 July - Sept 1998 | |
| <ul style="list-style-type: none"> ● Under-provision of work in the past 4 consecutive weeks or more <ul style="list-style-type: none"> ✧ <i>exceeding half of normal working days</i> ✧ <i>NOT exceeding half of normal working days</i> | 143 | 128 | 271* |
| | 59 | 43 | 102 |
| (Sub-total) | (202) | (171) | (373) |
| <ul style="list-style-type: none"> ● Under-provision of work in the past 26 consecutive weeks or more <ul style="list-style-type: none"> ✧ <i>exceeding one-third of normal working days</i> ✧ <i>NOT exceeding one-third of normal working days</i> | 1 | 50 | 51* |
| | 0 | 0 | 0 |
| (Sub-total) | (1) | (50) | (51) |
| ● Under-provision of work for less than 4 consecutive weeks | Information not available | 67 | 67 |
| (Total) | (203) | (288) | (491) |

* These employees are eligible for severance payment under the existing lay-off provisions.