

**LegCo Panel on Administration of Justice and Legal Services  
and Panel on Manpower  
(Meeting on 19 June 2003)**

**Conciliation service provided by the Labour Department  
and the system of referring unsettled cases to the Labour Tribunal**

**Introduction**

This paper sets out the conciliation service of the Labour Department (LD) and the system that LD adopts in referring unsettled cases to the Labour Tribunal (LT).

**Conciliation service provided by the LD**

2. The Labour Relations Division (LRD) of the LD, which operates from 10 branch offices throughout the territory, provides conciliation service to help employers and employees in the non-government sector settle their labour disputes and claims. For classification purpose, “labour disputes” refer to those cases which involve more than 20 employees and “claims” refer to cases which involve not more than 20 employees.

3. LD’s conciliation service is provided free of charge. It offers an informal, time-saving and simple way of resolving disputes and claims, and is accessible to both employers and employees. In case of dispute, either party may approach the LRD for consultation on their rights and obligations under the Employment Ordinance or the contract of employment. If the party concerned requires conciliation service, the LRD will arrange a conciliation meeting for the purpose and request the other party to attend.

4. At the conciliation meeting, the conciliation officer will explain the relevant provisions of the Employment Ordinance and assist both parties in exploring and identifying the crux of the problem, analysing the situation and seeking a mutually acceptable settlement. If the case can be

settled by conciliation and the settlement involves compensation, the conciliation officer will make arrangements for effecting payment. Where necessary, he will assist the parties to draw up and sign a settlement memorandum.

5. The conciliation officer is a neutral and impartial intermediary. He does not have adjudication power to impose settlement in disputes or claims. In the event that a suspected breach of the Employment Ordinance is detected, he will refer the case to the relevant division in LD for investigation with a view to taking prosecution against the suspected offenders.

### **Referring unsettled cases to the LT**

6. If one party declines to make use of the conciliation service or both parties fail to reach a settlement after conciliation, the conciliation officer will, at the request of the party concerned, refer him to seek adjudication at the Minor Employment Claims Adjudication Board (MECAB) (for cases involving not more than 10 claimants and with claims not exceeding \$8,000 per claimant) or the LT (for cases involving more than 10 claimants or with claims exceeding \$8,000 per claimant). In cases of insolvencies, the employees concerned will be referred to the Legal Aid Department for legal assistance in filing a winding-up petition against the employer and also to the Protection of Wages on Insolvency Fund to apply for ex-gratia payment.

7. In referring unsettled cases to the LT, LRD will provide the claimant with the LT's information leaflet on "Advice to claimant for filing a claim in the Labour Tribunal". The claimant will make an appointment to file claim at the LT through the Tribunal's Telephone Appointment Booking System. He will then inform LRD of the appointment time. The LT will also send to LRD by facsimile a list of its scheduled appointments.

8. In no less than two working days prior to the claimant's scheduled appointment to file claim at the LT, the LRD will facsimile to the LT the referral papers of the case which include:

- (a) referral memo, Labour Tribunal Form 1 “Title to Claim: General Form” and Labour Tribunal Form 7 “Certificate of Conciliation”, all of which are prepared by the conciliation officer.

The referral memo gives a list of all the documents relating to the case to be provided by the LRD to the LT. Labour Tribunal Form 1 specifies the full name and address of the claimant and the defendant. Labour Tribunal Form 7 is required under section 15(1) of the Labour Tribunal Ordinance which provides that the Tribunal shall not hear a claim until a certificate in the prescribed form signed by a tribunal officer or an authorized officer (who is the LRD’s conciliation officer) is filed or produced.<sup>1</sup>

- (b) the claim form completed by the claimant when filing his claim at the LRD

The claimant has already completed this form when lodging his claim at the LRD for conciliation purpose. The form contains particulars of the employer and the employee, claim items in the case and other information relating to the employment contract and the termination of employment. The LRD provides a copy of the claim form to the LT as background information on the case.

- (c) documents provided by the parties during the process of conciliation

Examples are employment contract, dismissal/resignation letter, wage records, receipt of termination payment, and notice of severance payment/ employment protection/ vicarious liability

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<sup>1</sup> “Certificate of Conciliation” shall specify one of the following:

- (a) one or more of the parties has refused to take part in conciliation;
- (b) conciliation has been attempted but no settlement has been reached;
- (c) conciliation is unlikely to result in a settlement being reached;
- (d) conciliation may prejudice the interests of a party.

claim served by the employee under the Employment Ordinance.

9. These referral procedures apply equally to cases going to the MECAB.

Labour Department  
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