

For discussion on
17 November 2005

LegCo Panel on Manpower

Proposal to increase the maximum penalty for wage offences under the Employment Ordinance

Purpose

This paper briefs Members on the Administration's proposal to increase the maximum penalty for wage offences under section 63C of the Employment Ordinance (Cap. 57) (EO).

Background

2. Wages shall become due on the expiry of the last day of the wage period. An employer should pay wages to an employee as soon as practicable but in any case not later than seven days after the end of the wage period. Sections 23, 24 and 25 of the EO regulate the payment of wages. Under section 63C, any employer who wilfully and without reasonable excuse contravenes section 23, 24 or 25 commits an offence and is liable to a fine of \$200,000 and imprisonment for one year.

3. In recent years, wage defaults have increasingly become a significant cause for labour disputes and claims handled by the Labour Department (LD). Whereas non-payment and under-payment of wages accounted for 27% of all labour cases handled by the LD in 2000, the proportion climbed to 34% in 2004. The spate of catering establishments closing business and defaulting in payment of wages earlier this year has heightened public concern over the need for more effective sanctions under the EO against unscrupulous employers evading wage payment.

4. The LD takes a serious view on wage offences and makes every effort to prosecute employers who have contravened wage provisions under the EO, where there is sufficient evidence and the employees concerned are willing to testify in court. As a result of the LD's rigorous enforcement efforts, the number of convicted summonses on wage offences rose from 139 in 2002 to 445 in 2003 – registering a hefty increase of 220%. The figure increased to 504 in 2004, up 13% on 2003. In the first nine months of this year, 439 summonses ended up in convictions.

5. At the same time, the LD has stepped up publicity and promotional efforts to remind employers of their statutory wage payment obligations and to urge employees to pursue wage claims promptly and come forward as prosecution witnesses. Among other things, we will produce two newly-designed leaflets on tackling wage offences for distribution to employers and employees respectively.

6. In parallel with the LD's all-out efforts to combat wage defaults, it is necessary to raise the maximum penalty in order to ensure that the EO has effective sanctions against wage offences. In particular, there is a strong body of public opinion that employers who wilfully evade their wage obligations should be more severely punished.

Proposal

7. To increase the deterrent effect against wage offences and to reinforce our efforts in tackling them, we propose that the maximum penalty under section 63C of the EO be raised from the existing fine of \$200,000 and imprisonment for one year to a fine of \$350,000 and imprisonment for three years.

8. The proposed fine of \$350,000 and imprisonment for three years is considered an appropriate maximum penalty for wage offences under section 63C. It would send a clear message to employers that they must pay wages on time. It is also on a par with the maximum penalty for the offence of employing not lawfully employable persons under section 17I of the Immigration Ordinance (Cap. 115).

View of the Labour Advisory Board

9. The Labour Advisory Board discussed and endorsed the proposal set out in paragraph 7 above at its meeting on 6 October 2005.

Way Forward

10. We plan to introduce an amendment bill into the Legislative Council shortly to give effect to the proposal.

Economic Development and Labour Bureau
Labour Department
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