

Bills Committee on the Race Discrimination Bill

Clauses on Employment: Specified exceptions under Clause 10

Introduction

At previous meetings of the Bills Committee, Members asked the Administration to provide further information on the justification for the following exceptions concerning the clauses on employment –

- (a) exemption of small businesses employing not more than five employees during the first three years of the enactment of the Bill;
- (b) exception relating to the choice of an employer at the point of recruitment of a domestic helper; and
- (c) exception for existing differential treatment on local and overseas terms of employment as well as overseas terms of employment.

This paper provides the Administration's response to (a) and (b) above. The detailed information about (c) and related provisions on employment on overseas terms are set out in a separate paper which is submitted in response to the questions raised by Members at the Bills Committee meeting held on 21 January 2008.

Three year exemption for small businesses employing not more than five employees

2. Clause 10(3) of the Bill provides that except in relation to discrimination by way of victimisation, Clause 10(1) and (2) does not apply to employment by small businesses employing not more than five employees. Clause 10(8) limits the duration of this exception to the first three years of the enactment of the Bill.

3. The purpose of this limited exception, or grace period, is to smoothen transition and to minimize disruption and hardship for small employers with not more than five employees. We recognise that such small employers will need more time to adjust to the new law because they are likely to have less support and resources than larger corporations and employers. Similar provisions were made in all the existing anti-discrimination legislation in Hong Kong. Moreover, since race is a much more complex concept than, for example, gender, the three-year duration of the grace period, counting from the enactment of the Bill, is particularly important for such small employers. In the meantime, the Equal Opportunities Commission will also draw up codes of conduct and guidelines to facilitate compliance with the provisions relating to employment.

Choice of an employer at the point of recruitment of a domestic helper

4. Clause 10(7) permits an employer to choose, by reference to the race of the employee, a domestic helper who is employed to work on the premises on which the employer or his or her near relative resides.

5. Unlike ordinary employment, the employment of a domestic helper entails a much closer relationship. Domestic helpers have direct access into the privacy of the employers' homes and have close interactions with the employer and his or her near relatives in daily life. The proposed provision is therefore made having regard to the individual freedom of choice and to protect the right of individuals to determine whom they may admit into their homes and to live with them.

6. It should be highlighted that, once employed, the domestic helper is protected against racial discrimination in employment in the same way as other persons (as the exception in Clause 10(7) is limited to Clause 10(1)(a) and (c) and does not extend to Clause 10(1)(b)). This overall arrangement in regard to employment of domestic helpers strikes a balance between legitimate rights and interests between employers and domestic helpers.