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Our Opinions on Employment (Amendment) Bill 2006

1. The proposed methods of calculation based on average wages purport to provide a solution to the problem of 'workable mode of calculation' raised in the case of *Lisbeth Enterprises Limited v Mandy Luk* (FACV17/2005) (which we cast doubt on the decision of the Court of Final Appeal). Any amendment of statutory provision no less advantageous to employees and giving more certainty is welcomed. However, the compulsory statutory requirement to employ the new methods of calculation is less advantageous to those employees whose wages are calculated on a fixed rate and have been increased within the past 12 months. Special provisions for those employees are expected.
2. As regards the proposed sections 7(1A), 11A(3), 14(3), 15(2A), 33(4BAAA), 35(2), 41(2) and 41C(2) of the Bill, if an employee was not paid his wages or full wages in a particular day by whatever reason referred to in those sections, but was *paid* his remuneration (such as commission and allowances) accrued and payable on that day in pursuance to any term in his contract of employment or the usual practice of his employer, those sections seem to disregard such remuneration in the calculation of average wages. More clarity in those sections is expected.
3. The term 'a female person' referred to in the proposed sections 14(3B) and 15(2B) is expected to be replaced by 'a person' so that reference is made in the calculation of the average wages only to trade, work and locality but not to gender, as well as to give consistency among similar provisions.

23 February 2007