

**Bills Committee on  
Employment (Amendment) Bill 2006**

**Administration's Response to Issues Raised  
at the Bills Committee Meeting Held on 8 March 2007**

**Introduction**

This paper sets out the Administration's response to issues raised on the Employment (Amendment) Bill 2006 (the Bill) at the Bills Committee meeting held on 8 March 2007.

**Providing a definition of "leave" in the Bill**

2. As regards the term "leave", our intention is to refer to any period of day-off taken as permitted by the Employment Ordinance (EO) (i.e. statutory leave including maternity leave, sick leave, statutory holiday, annual leave and rest day) or the Employees' Compensation Ordinance (i.e. work injury sick leave) or as agreed with the employer (i.e. contractual leave such as topped-up annual leave, no pay leave, study leave, extended maternity leave, etc). For the avoidance of doubt, we will provide a definition of "leave" in the Bill to expressly spell out our intention in this regard.

**Amending section 49A of the EO to require employers to keep wage and employment records for 12 months**

3. Section 49A of the EO provides that every employer shall at all times keep and maintain a record in which is set out the wage and employment history of each employee covering the period of his employment during the preceding 6 months. The wage record shall also be kept by the employer for a period of another 6 months after the employee ceases to be employed.

4. At the Bills Committee meeting on 8 March 2007, the Administration was asked by some Members to consider introducing an amendment to section 49A of the EO under the Bill to extend the period required for keeping wage and employment records by every employer from 6 to 12 months, in order to tie in with the proposal of calculating statutory entitlements on the basis of a 12-month moving average set out in the Bill.

5. We will take on board the proposal of introducing an amendment to section 49A of the EO under the Bill to extend the record-keeping period by the employer from 6 to 12 months.

**Simplifying the proposed mode of calculation of statutory entitlements for all employees without compromising the predictability and consistency of the mode of calculation**

6. We note the concerns of some Members and deputations from some organizations about the administrative work in calculating statutory entitlements under the proposed mode of a 12-month moving average. To address the concerns, we will refine the proposed “disregarding” provisions to simplify the calculation of the average wages.

7. As explained before, the proposed new mode would provide a more stable, predictable and equitable basis for the calculation of statutory entitlements for all categories of employees. Given the evolving and increasingly complex nature of the remuneration systems in Hong Kong, and in light of the Court of Final Appeal’s ruling in the Lisbeth case, we consider it imperative that the law should provide a workable, predictable and consistent mode of calculation for statutory entitlements. It is appropriate to adopt in the Bill the same mode of calculation of statutory entitlements on the basis of a 12-month moving average for different categories of employees.

8. We wish to point out again that with the keeping of proper wage and leave records which is a good human resources management practice, the adoption of a moving 12-month average should not create much additional administrative work as the relevant records for the first 11 months should already be available.