

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1075 /07-08  
(These minutes have been seen  
by the Administration)

Ref : CB2/PL/MP/1

**Panel on Manpower**

**Minutes of meeting**  
**held on Thursday, 17 January 2008, at 4:30 pm**  
**in Conference Room A of the Legislative Council Building**

- Members present** : Hon LAU Chin-shek, JP (Chairman)  
Hon KWONG Chi-kin (Deputy Chairman)  
Hon LEE Cheuk-yan  
Hon CHAN Yuen-han, SBS, JP  
Hon LEUNG Yiu-chung  
Hon Jasper TSANG Yok-sing, GBS, JP  
Hon Andrew CHENG Kar-foo  
Hon LI Fung-ying, BBS, JP  
Hon Tommy CHEUNG Yu-yan, SBS, JP  
Hon WONG Kwok-hing, MH  
Hon Alan LEONG Kah-kit, SC  
Hon LEUNG Kwok-hung
- Members absent** : Hon Frederick FUNG Kin-kee, SBS, JP  
Hon Andrew LEUNG Kwan-yuen, SBS, JP
- Public Officers attending** : Item II  
  
Mr CHEUNG Kin-chung, Matthew, GBS, JP  
Secretary for Labour and Welfare  
  
Mrs TSE LING Kit-ching, Cherry, JP  
Commissioner for Labour  
  
Mr NG Kwok-keung, Byron  
Assistant Commissioner (Employment Services)  
Labour Department

Mrs POON MEI Yen, Louisa  
Senior Labour Officer (Careers and Employment  
Agencies)  
Labour Department

Item III

Mr CHEUNG Kin-chung, Matthew, GBS, JP  
Secretary for Labour and Welfare

Mrs TSE LING Kit-ching, Cherry, JP  
Commissioner for Labour

Mr WONG Kwok-lun, Alan, JP  
Assistant Commissioner (Labour Relations)  
Labour Department

Miss LI Po-yi, Mabel  
Senior Labour Officer (Wage Security)  
Labour Department

Item IV

Mr CHEUNG Kin-chung, Matthew, GBS, JP  
Secretary for Labour and Welfare

Mrs TSE LING Kit-ching, Cherry, JP  
Commissioner for Labour

Mr WONG Kwok-lun, Alan, JP  
Assistant Commissioner (Labour Relations)  
Labour Department

Miss CHENG Lai-fun, Candice  
Senior Labour Officer (Labour Relations) (Special  
Duties)  
Labour Department

Ms SIU Wai-fun, Rebecca  
Senior Statistician (Social)  
Census and Statistics Department

Mr HUI Ka-wai, Gary  
Research Manager (Social) 2  
Census and Statistics Department

**Clerk in attendance** : Mrs Sharon TONG  
Chief Council Secretary (2)1

**Staff in attendance** : Ms Janet SHUM  
Senior Council Secretary (2) 8

Miss Helen DIN  
Legislative Assistant (2) 1

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**I. Date of the next meeting and items for discussion**  
(LC Paper Nos. CB(2)809/07-08(01) and CB(2)809/07-08(02))

Members agreed that the following items would be discussed at the next meeting -

- (a) future directions of the Employees Retraining Board; and
- (b) preparatory work for introducing a statutory minimum wage for cleaning workers and security guards if the Wage Protection Movement fails to yield satisfactory results

Items for discussion at future meetings

2. Mr WONG Kwok-hing said that the Administration should report to the Panel on its follow-up on the issue of overnight shift-work which was regarded as probably carcinogenic to humans by the International Agency for Research on Cancer of the World Health Organization. He suggested that the issue should be added onto the list of outstanding items for discussion.

3. Mr LEE Cheuk-yan said that issues in connection with the implementation of family-friendly employment practices such as the proposed reduction of working hours, provision of rest breaks for employees, and discrepancy in the number of public holidays and statutory holidays should be discussed at future meetings.

4. Mr LEUNG Yiu-chung suggested that the provision of assistance to employees of insolvent employers not meeting the means test for legal aid should be discussed at a future meeting.

Regular meeting in July 2008

5. The Chairman said that the last Legislative Council (LegCo) meeting of the 2007-2008 legislative session was scheduled for 9 July 2008 and the Panel

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would have already submitted a report of its work to the Council by then. As such, he suggested that the Panel meeting scheduled for 17 July 2008 be cancelled. He added that arrangement might be made for holding a meeting should the need arise. Members agreed.

**II. Latest progress of the Labour Department's Youth Employment Resource Centres**

(LC Paper No. CB(2)809/07-08(03))

6. Secretary for Labour and Welfare (SLW) briefed members on the latest progress on the setting up of the Youth Employment Resource Centres, which were renamed "Youth Employment Start" (Y.E.S.), by the Labour Department (LD) as detailed in the Administration's paper.

7. Mr LEE Cheuk-yan considered it most important that young people would be provided with comprehensive training for entering a trade and subsequent advancement in the trade. Training services provided for youths under various programmes and schemes should be streamlined to enable young people to develop their career interest via a training-cum-placement plan.

8. SLW said that the Youth Pre-employment Training Programme (YPTP) and the Youth Work Experience and Training Scheme (YWETS) provided "through-train" pre-employment/on-the job training and placement assistance to youths aged 15 to 24. The Employees Retraining Board (ERB) would soon complete its strategic review on its future role and responsibilities. Under the review, plans on how ERB would expand its scope and enhance the quality of its training and retraining services would be drawn up. The training provided would also tie in with the upgrading of trainees and implementation of the Qualifications Framework. SLW added that Y.E.S. would provide a wide range of services and support to young people to start their career and enhance their employability.

9. In response to Mr LEE's enquiry, Commissioner for Labour (C for L) said that over 25% of the vacancies of LD's free employment services were for job-seekers with an education attainment of Form Five or below and without working experience. She added that the two Y.E.S. were set up to provide one-stop advisory and support service on employment and self-employment to young people. Y.E.S. would assist young people to explore their career interest through career assessment and provide them with guidance to facilitate their job search in the open market.

10. Mr LEE Cheuk-yan considered it most essential to assist the youths to seek employment in the job market. He requested the Administration to provide information on the number of successful placement among the aforementioned 25% job vacancies available to young people.

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11. Ms LI Fung-ying said that other than assisting the young people to explore their career interest, the Administration should assist them in job-placement. Considering the wide variety of trades in the market, Ms LI enquired whether certain trades would be given priority for the services provided at Y.E.S so as to enable a more effective management of resources.

12. Assistant Commissioner (Employment Services), Labour Department AC(ES) responded that, while providing career assessment and guidance to young people, Y.E.S. would operate in tandem with YPTP and YWETS. The services offered by Y.E.S. aimed to provide one-stop service to facilitate sustainable development of young people aged 15 to 29, including current trainees and graduates of YPTP and YWETS. YPTP provided youths with a comprehensive range of employment-related training and workplace attachment where the trainees would be paid an attachment allowance of \$2,000. To complement the pre-employment training of YPTP, YWETS provided real job opportunities to young people in the form of six to 12 months' on-the-job training. AC(ES) added that Y.E.S. would invite volunteer entrepreneurs and professionals from a wide variety of trades to give guidance to young people in their career pursuit or self-employed business.

13. Mr WONG Kwok-hing expressed support for the services provided at Y.E.S. He enquired about the details on the operation of the two resource centres.

14. SLW said that subsequent to the opening of the first Y.E.S. in Mongkok on 20 December 2007, a second Y.E.S. located in Kwai Fong would be set up in the first quarter of 2008. The two centres, located at popular gathering places of young people, would operate in a way different from the provision of employment services at government offices. They aimed to provide services to an estimated 72 000 youths and build up a network of young people who would join the resource centres as members. At each Y.E.S., LD would partner with a non-government organization (NGO) experienced in youth services.

15. AC(ES) said that the NGOs would provide professional counselling service to young people in need of motivational assistance or emotional support, and also take over venue management of Y.E.S. The Y.E.S. in Mongkok was manned by four LD staff and six to seven staff from the Hong Kong Young Women's Christian Association (YWCA). Since its inauguration on 20 December 2007 and up to 31 December 2007, the centre had served 1 014 young people. Visits were also made to schools to publicize the operation of Y.E.S. He added that the Y.E.S. at Kwai Fong would partner with The Evangelical Lutheran Church Social Service of Hong Kong

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16. In response to Mr WONG Kwok-hing's enquiry, AC(ES) said YWCA was selected under a tender exercise. Wages of its staff would not be lower than the prevailing average market rate.

17. Mr LEUNG Yiu-chung asked about the measures to assist those young people who failed to secure a job due to lack of work experience and to motivate the "hidden" youths. He considered that on-the-job training or training-cum-employment programme for young people would be a more effective measure.

18. SLW responded that YWETS provided real job opportunities to young people in the form of six to 12 months' on-the-job training. The trainees, with the assistance of their case managers, would be able to find job in the open-market or seek placement through the referral of LD. For those trainees undertaking vocational training courses on an off-the-job basis, they would be paid a training allowance of \$4,000 under YWETS if they passed the examinations and fulfilled the attendance requirement.

19. In response to Mr LEUNG, SLW said that YWETS offered diversified tailor-made projects in collaboration with training bodies. The Administration welcomed members' concrete proposals concerning the expansion on the quota of the projects and the extension of the on-the-job training period. SLW added that locating the Y.E.S. at popular gathering places of young people was an initiative of LD to attract the "hidden" youths who might be reluctant to visit the government offices where employment services were provided.

**III. Provision of a further sum for non-compliance with compulsory order of reinstatement or re-engagement**  
(LC Paper No. CB(2)809/07-08(04))

20. SLW briefed members on the provision of a further sum for non-compliance with compulsory order of reinstatement or re-engagement as detailed in the Administration's paper.

21. Mr WONG Kwok-hing considered that the proposed further sum to ensure protection for employees against unreasonable and unlawful dismissal which was capped at \$50,000 or three times of the monthly wages of the employee concerned was too low. He expressed regret regarding the delay in the introduction of the legislative amendments concerning reinstatement or re-engagement and asked whether the Administration would introduce an amendment bill within this legislative session. Mr LEE Check-yan echoed the view of introduction of an amendment bill within the current session.

22. SLW said that if the meeting could reach a consensus and endorse the proposal, the Administration would request the Department of Justice to

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expedite drafting an amendment bill. He hoped that an amendment bill could be introduced into LegCo to give effect to the proposal at the earliest possible time in the first half of the 2008-2009 session. He further said that the proposal to add a further sum should the employer fail to comply with the proposed compulsory order to reinstate or re-engage the employee involved complex issues. The Administration needed time to resolve the relevant issues with the parties concerned.

23. C for L said that the Administration had studied the issue and conducted a review of the reinstatement/re-engagement provisions without delay. She explained that the Administration had come up with a proposal for the compulsory order of reinstatement or re-engagement to be made by the Labour Tribunal (LT). In drafting the amendment bill, the Administration found it necessary to include a provision of a further sum for non-compliance of the compulsory reinstatement or re-engagement order and had consulted the Judiciary and the Department of Justice. It was also necessary to consult the Labour Advisory Board (LAB) on the new proposal.

24. Mr LEE Cheuk-yan considered that the amount of the further sum was too small. He asked about the basis of the calculation of the sum and whether the Administration would consider increasing the sum to a maximum of \$100,000 or six times of the monthly wages of the employee concerned.

25. SLW responded that the cap of \$50,000 was calculated based on the findings from past cases that the average monthly salary of employees was around \$10,000.

26. Pointing out that an award of compensation of up to \$150,000 may be made by LT, Mr LEE said that the cap should be removed so as to stay on par with other discrimination ordinances in Hong Kong. He also suggested that employees unlawfully dismissed and awaiting the reinstatement order to be made by LT should be compensated for their wages unpaid.

27. C for L said that under the existing provisions of the Employment Ordinance (EO) (Cap. 57), in cases of unreasonable and unlawful dismissal, the terms of the reinstatement or re-engagement order made by LT upon mutual consent should specify the amount of terminal payments and compensation of up to \$150,000 payable by the employer if he failed to comply with the order for reinstatement or re-engagement. LT might also make an award of terminal payments and compensation of up to \$150,000 if no order of reinstatement or re-engagement was made. As for the proposed further sum to be payable to the employee for non-compliance with compulsory order of reinstatement or re-engagement, it would be over and above the terminal payments and award of compensation stipulated under the existing provisions of EO. C for L added that LD's successful rate of conciliation was around 70% in general.

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28. Ms LI Fung-ying sought clarification on the remedies to which the claimant would be entitled under the proposal in case the employer failed to comply with the compulsory order of reinstatement. She expressed doubt whether the further sum would have conversely given employers an alternative to evade from carrying out the compulsory reinstatement order.

29. Assistant Commissioner (Labour Relations), Labour Department (AC(LR)) explained that under the proposal, if the employer failed to comply with the proposed compulsory order to reinstate or re-engage the employee, the latter should be entitled to a further sum of three times of the monthly wages of the employee concerned, subject to a maximum of \$50,000. This sum would be over and above the terminal payments and award of compensation.

30. Mr Tommy CHEUNG said that he supported the proposal for the provision of a further sum as endorsed by LAB. However, should the Administration wish to revise its proposal pursuant to the discussion at this meeting, it should revert to LAB for consultation and endorsement. He understood that the Administration needed time to work on details of the proposed amendment to EO and suggested that, in the meantime, the Administration could seek the views of trade associations on the issue. Mr CHEUNG asked about the number of reinstatement claims in the past years related to unreasonable and unlawful dismissal.

31. SLW responded that there was an average of about two to three such cases each year. He said that LD had communicated regularly with trade associations through LAB and other channels to seek their views on relevant issues and would continue to do so.

32. In response to Mr LEUNG Yiu-chung's enquiry, SLW said an employee, upon a reinstatement order of LT, should be treated in all aspects as if he had not been dismissed or as if there had been no variation of the terms of the employment contract.

33. The Deputy Chairman welcomed the Administration's proposal for a compulsory order of reinstatement or re-engagement to be made by LT under EO and a further sum to be payable to the employee in cases of non-compliance with the compulsory order. To plug the loophole that the employer might opt to pay a further sum rather than complying with the compulsory order, he suggested that apart from specifying the terms of the order that a further sum would be accepted as compensation should the employer fail to comply with the compulsory order, a provision should also be made for LT to exercise discretion to make a compulsory order straightly for reinstatement or re-engagement.

34. Mr WONG Kwok-hing considered that, in order to protect the employees' statutory entitlements under EO such as employees' entitlements



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under unreasonable and unlawful dismissal, the Administration should improve the mechanism to ensure that awards of LT would be successfully enforced. He asked about the measures that the Administration would undertake to ensure that employees could receive payments awarded by LT. Ms LI Fung-ying shared the same view.

35. SLW responded that the Administration was concerned about the failure of some employees in obtaining the judgement sum awarded by LT. It would continue to work closely with the Judiciary to explore feasible improvement measures on execution of awards made by LT. In view of the complexity of the issue, more time was needed to study it. The Administration hoped to work out concrete proposals by the end of 2008. AC (LR) supplemented that past cases indicated that it was mostly employees of medium and small-sized companies who failed to obtain the judgement sum awarded by LT.

36. The Chairman urged the Administration to step up its efforts to assist employees who failed to recover the sum awarded by LT. He said that employment offence under EO adjudicated by LT was different from other civil litigations. Apart from working with the Judiciary, the Administration should explore other alternatives to solve the problem such as prohibiting the responsible persons to leave Hong Kong in case of defaulted payment of LT awards.

**IV. Report on the result of the Census and Statistics Department's survey on "Benefits of employees under the Employment Ordinance"**

(LC Paper No. CB(2)809/07-08(05))

37. With the aid of PowerPoint, Senior Statistician (Social), Census and Statistics Department briefed members on the major findings of the survey on "Benefits of employees under the Employment Ordinance" conducted by the Department in the first quarter of 2006.

38. Mr LEE Cheuk-yan expressed concern that the survey findings indicated a substantial increase in the total number of non-"4-18" employees (i.e. employees not employed under a continuous contract of employment by the same employer for four weeks or more or not having worked for 18 hours or more in each week) working less than 18 hours per week (52 400) in comparison with that of 2001 (28 900), in particular, among which around 74.9% were female. Citing the example of the United Kingdom where the threshold of minimum weekly working hours for continuous employment had been removed to avoid discrimination against women who took up most of the part-time jobs, Mr LEE asked whether the Administration would consider removing the "4-18" threshold and extending the right and benefits of "4-18" employees under EO to part-time employees on a pro-rata basis. He also asked

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the Administration to provide further breakdown by industry of the 42 900 non-"4-18" employees working at least 18 hours per week but expected not to work continuously for four weeks or more in the present job at the time of enumeration.

39. SLW pointed out that the survey was conducted in the first quarter of 2006 when the situation of the job market both in terms of the size of employees taking up temporary jobs and Hong Kong's total employment was quite different from the last one which was conducted in the third quarter of 2001. He said that the recent economic growth might be conducive to the increase of non-"4-18" employees. He noted that as the survey had revealed, it was mainly due to personal reasons that the majority of the non-"4-18" employees working less than 18 hours per week did not work longer hours. SLW further said that, pursuant to the findings, the Administration would conduct an in-depth study on the protection of workers not employed under a continuous contract. Any proposal arising from the study would be put to LAB for deliberation.

40. In response to Mr LEE Cheuk-yan's enquiry on the protection for non-"4-18" workers, C for L said that under the existing provisions of EO, in any dispute as to whether a contract of employment was a continuous contract, the onus of proving that it was not a continuous contract should be on the employer. She added that LD would not hesitate to refine EO, where necessary, to ensure adequate protection for workers' rights and benefits.

41. Miss CHAN Yuen-han said that it was necessary to protect the rights and benefits of non-"4-18" employees and plug the loopholes of EO to minimise unscrupulous employers' exploitation on part-time workers. She enquired whether the Administration had a timetable on the review and urged the Administration to revert to the Panel by the end of this legislative session.

42. SLW responded that the Administration needed time to conduct an in-depth study based on the statistics obtained and explore the feasibility to introduce amendment to EO to enhance the rights and benefits of non-"4-18" employees. He said that the tentative schedule for the completion of the review would be by the end of 2008 as the issue needed to be discussed by LAB. Nevertheless, the Administration would make all effort to expedite the review and endeavour to revert to the Panel by the end of this legislative session if possible.

43. Ms LI Fung-ying echoed the view that the Administration should speed up the review on the issue. As an interim measure, she suggested that the Administration should advocate organizations prone to employ non-"4-18" workers such as the Jockey Club, the Mass Transit Railway Corporation and large supermarket establishments to expand the benefits of their non-"4-18" employees on a voluntary basis.

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44. SLW said that, as revealed in the survey, some employers of non-"4-18" workers had voluntarily provided their non-"4-18" employees with benefits exceeding the statutory requirements of EO. He agreed that effort could be made to encourage the adoption of such good practices. He pointed out that while employees engaged under a continuous contract were entitled to additional benefits under EO compared to non-"4-18" employees, the latter, irrespective of their hours of work, were also entitled to basic rights and benefits under EO. He added that the Administration had published leaflets to help the public better understand the statutory protection and benefits afforded to non-"4-18" employees.

45. SLW further said that the Administration needed to give careful consideration and conduct in-depth study before making any legislative proposal which would have a significant social impact. If the threshold of working 18 hours per week for four weeks or more for a continuous contract was removed, it might have adverse effect on the labour market and the trades.

46. Mr LEUNG Yiu-chung enquired whether the Administration had assessed the reasons for the increase of non-"4-18" employees. He said that removing the threshold might have a positive effect to enable existing non-"4-18" workers to work for longer hours and help to simplify the task of human resource management.

47. SLW said that, from the perspective of human resource management, some trades such as the retail and catering industries, might prefer to employ part-time workers to cater for their operational needs. The employment of part-time workers could also provide opportunities for those who preferred to work on a flexible basis. Removal of the threshold might have a negative impact on employment.

48. Mr WONG Kwok-hing asked whether the result of the survey on benefits of employees under EO had been tabled at LAB for detailed discussion. C for L responded that, to ensure that the LAB was advised as soon as possible of the survey results, arrangements had been made for the Census and Statistics Department to brief LAB on the survey results in the morning of the very day the results were announced to the public.

49. Mr WONG Kwok-hing further asked whether the Administration would conduct studies on the protection of the rights and benefits of part-time employees in overseas countries. SLW responded that the Administration would make reference to the experience of other places in the course of the review.

50. Mr WONG Kwok-hing said that the result of the survey indicated that non-"4-18" workers working less than 18 hours per week were mostly female

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who needed also to take care of their households. He urged the Administration to step up protection of the rights and benefits of non-"4-18" employees as they were the most vulnerable strata of the labour force in need of protection. He suggested that deputations be invited to give views on the issue.

51. Mr WONG Kwok-hing moved the following motion -

"促請政府即展開修訂僱傭條例，以保障非「4-18」僱員都可享受法定僱傭權益。"

(Translation)

"That the Government is urged to proceed immediately to amend the Employment Ordinance for protection of non-4-18 employees so that they are entitled to the statutory employment rights and benefits."

52. The Chairman put the motion to vote. Five members voted in favour of the motion and no member voted against it. The Chairman declared that the motion was carried.

53. The meeting ended at 6:30 pm.

Council Business Division 2  
Legislative Council Secretariat  
19 February 2008