

For information on
21 October 2010

Legislative Council Panel on Manpower

Policy Initiatives of the Labour and Welfare Bureau for 2010-11

Purpose

The Chief Executive delivered his 2010-11 Policy Address on 13 October 2010. This paper sets out the new initiatives and on-going initiatives pertaining to the labour and manpower portfolio under the Labour and Welfare Bureau in the 2010-11 Policy Address and Policy Agenda.

New Initiatives

(A) To launch a territory-wide Work Incentive Transport Subsidy Scheme to subsidise employed members of low-income families in meeting their travelling expenses commuting to and from work

2. To relieve the burden of transport costs for home-work commuting for employed persons from low-income families and encourage them to stay in employment, we will launch a territory-wide Work Incentive Transport Subsidy Scheme. Each employed member of eligible low-income families can each receive a monthly transport subsidy of \$600. The new scheme will replace the current Transport Support Scheme which has a 12-month time limit for subsidy payment and is applicable to four designated remote districts (i.e. North, Yuen Long, Tuen Mun and Islands). We are drawing up the details of the new scheme and will revert to the Panel on the details as soon as possible before year-end.

(B) To introduce a bill into the Legislative Council to expand the scope of the Protection of Wages on Insolvency Fund to cover pay for untaken annual leave and statutory holidays under the Employment Ordinance (Cap. 57)

3. The Protection of Wages on Insolvency Fund (the Fund) provides timely relief in the form of ex-gratia payment to employees of insolvent employers. It is mainly financed by an annual levy of \$450 on each business registration certificate. The Fund has all along adopted a progressive approach

in improving its coverage with a view to enhancing employees' protection while ensuring the sustainability of the Fund. With gradual improvements made over the years, the maximum amount of ex-gratia payment that an employee can now receive from the Fund has risen from \$8,000 in 1985 to the current level of \$278,500, comprising four months' wages up to \$36,000, one month's wage in lieu of notice up to \$22,500 and severance payment up to \$50,000 plus 50% of the remainder of the entitlement under the Employment Ordinance (EO).

4. Having consulted the Protection of Wages on Insolvency Fund Board, we propose to expand the scope of the Fund to cover pay for two types of holidays, subject to a payment ceiling of \$10,500, viz –

- (a) pay for annual leave accumulated under the EO and not yet taken by an employee, subject to the limit of the employee's statutory entitlement in the last year of employment; and
- (b) pay for statutory holidays under the EO not yet taken by an employee within four months prior to the last day of service.

5. Following consultation with the Labour Advisory Board (LAB) and this Panel, we are now undertaking preparatory work for the legislative amendment to the Protection of Wages on Insolvency Ordinance (Cap. 380) and will submit the bill to the Legislative Council (LegCo) as soon as possible.

(C) Preparation for commencement of the Employment (Amendment) Ordinance 2010 and the Minimum Wage Ordinance (Cap. 608)

6. We have all along attached great importance to protecting employees' rights and benefits. The Employment (Amendment) Ordinance (E(A)O) 2010 and the Minimum Wage Ordinance (MWO) were passed by LegCo in April and July 2010 respectively. The E(A)O 2010 introduces a new criminal offence against employers who wilfully fail to pay any sum under a Labour Tribunal (LT) or Minor Employment Claims Adjudication Board (MECAB) award comprising wages and entitlements under the EO. The new offence will come into operation on 29 October 2010. The MWO aims to establish an optimal statutory minimum wage (SMW) regime which forestalls excessively low wages, but without unduly jeopardising Hong Kong's labour market flexibility, economic growth and competitiveness, and without causing significant adverse impact on the employment opportunities of vulnerable employees. If everything proceeds well and allowing time for the community to gear up for implementation, it is hoped that SMW would be fully implemented in the first half of 2011.

7. To tie in with the implementation of the E(A)O 2010 and SMW, the Labour Department (LD) will launch extensive educational and promotional activities to enhance public awareness of the new offence and the MWO, such as tailor-made publications, press releases, LD's website, roving exhibitions, seminars and briefings. For SMW, LD's publicity materials will include illustrative examples drawn from different trades and industries to elucidate the application of the MWO, with a view to facilitating employers' and employees' understanding of their respective obligations and entitlements under the SMW regime. We will draw up practical guidelines on the minimum wage legislation for reference by employers and employees. We will also continue to liaise with the relevant stakeholder groups to work out industry-specific guidelines addressing the unique characteristics of the individual sectors.

8. LD accords high priority to the implementation and enforcement of the above legislation, and will take strict enforcement actions to combat non-compliance upon their implementation in order to safeguard employees' rights. We will spare no efforts in investigating and collecting evidence on suspected or reported cases, and will take out prosecution if there is sufficient evidence.

9. We shall keep the Panel posted of important development.

(D) To tackle occupational safety challenges arising from the commencement of major infrastructure projects and growth in building renovation and maintenance works, as well as intensify systematic preventive and enforcement measures so as to forestall high accident toll in the construction sector

10. The simultaneous commencement of a number of major infrastructure projects (MIPs) and the exponential growth in building repair, maintenance, alteration and addition (RMAA) works arising from the mandatory requirements for inspection of old buildings create new challenges to the safety performance of the construction sector. In view of this, LD will take proactive steps to intensify systematic preventive and enforcement measures as well as promote specific measures to enhance the safety performance of MIPs and RMAA works, and to deter non-compliance with work safety legislation.

11. In monitoring the safety performance of MIPs, LD will draw on the successful experience in the Airport Core Projects in the past. We will step up enforcement and enhance co-operation with various stakeholders (e.g. relevant government departments/project clients, contractors and project management teams), including participating in regular site safety management meetings and safety walks of MIPs, and taking rigorous enforcement actions to ensure that safe systems of work are in place.

12. As to RMAA works, we will step up inspection at workplaces to follow up referrals from our strategic partners, including the Housing Department, Hong Kong Housing Society and property management companies. We will also, in collaboration with the Occupational Safety and Health Council and industry stakeholders, such as trade associations, workers' unions and the Construction Workers' Registration Authority, step up promotion and publicity work to raise the safety awareness of contractors. Since RMAA works often take place at private residence, we will also work with stakeholders in the community, including building owners' corporations, District Councils, safe communities and the building management industry, to foster safety awareness in RMAA works at the community level and to encourage supply to LD of intelligence to facilitate targeted inspections.

(E) To review and enhance the regulatory system for mandatory safety training courses

13. Training plays an important role in inculcating safety awareness and imparting knowledge among those who need to work with risks. The Factories and Industrial Undertakings Ordinance (Cap. 59) (FIUO) and its subsidiary legislation require workers engaged in certain high risk trades and work processes, as well as in operating hazardous machineries, to attend mandatory safety training (MST). The Commissioner for Labour is empowered to recognise MST courses.

14. LD attaches great importance to ensuring the quality of MST and has put in place a stringent monitoring mechanism in this regard. We had in 2008 and 2010 withdrawn recognition of four courses run by two training course providers found in serious breach of the approval conditions. Experience in the past few years suggests a need to further enhance the quality assurance of the MST courses. In consultation with all key stakeholders in the industry, we are critically reviewing holistically the system of recognition and monitoring of MST courses with a view to identifying a phased programme of quality enhancement.

(F) To review the existing arrangement for replacement holiday in the event a Lunar New Year holiday falls on a Sunday.

15. Under the EO, if the Lunar New Year's Day falls on a Sunday, the preceding day (i.e. Saturday) shall be granted to employees as a replacement holiday. There are concerns that those employees who work five days a week from Monday to Friday with day-off on Saturday would then lose a day of Lunar New Year's holiday under this arrangement.

16. Given that employees of different industries may have diverse work patterns (e.g. not all employees work a five-day workweek; for those who do, their day-off may not necessarily fall on Saturdays), and the modes of operation of different establishments may differ widely, we will study carefully the possible effects of introducing any change to the existing arrangement on employees, employers and the economy as a whole. The situation where Lunar New Year's Day falls on a Sunday will next arise in 2013. The Administration will, in the meantime, conduct a detailed study on the matter and consider the way forward in the light of the study outcome and the views of relevant stakeholders.

(G) To study the imposition of standard working hours

17. Standard working hours is a complex issue. At present, employers, employees and various sectors of the community have divergent views on whether standard working hours should be introduced into Hong Kong. As the imposition of standard working hours would have far-reaching implications for Hong Kong's society, economy, competitiveness and employment, etc., we must be cautious in dealing with it. Affordability of the small and medium sized enterprises in the low paying sectors is a factor that we must bear in mind, particularly when we have as yet no concrete data on whether, and if so, how they might be affected by the newly enacted MWO. Nevertheless, we shall commence an in-depth study on the issue and consult relevant stakeholders.

On-going Initiatives

(H) Continuing with the preparatory work for setting up a pioneer one-stop employment and training centre in Tin Shui Wai

18. LD will set up a pioneer one-stop employment and training centre in Tin Shui Wai next year to provide employment and training support to needy job seekers, including unemployed Comprehensive Social Security Assistance recipients, in a holistic manner. The centre will streamline, integrate and enhance the existing employment and training/retraining services of LD, the Social Welfare Department (SWD) and the Employees Retraining Board (ERB). We will analyse the employment needs of job seekers with a view to providing them with targeted services. Such services include, for example, case management throughout their pathway to employment, personalised counselling, and post-employment services tailored to their needs. Where appropriate, we will enrol job seekers in special employment programmes and retraining courses to enhance their employability.

19. The one-stop employment and training centre will be housed in the Amenity and Community Building in Tin Ching Estate in Tin Shui Wai, which is now under construction. We have already embarked on the preparatory work for the establishment of the centre, including development of a comprehensive assessment tool for analysing the employment needs of job seekers, design of an information system to facilitate data-sharing amongst LD, SWD, ERB and the relevant service providers, so as to support the aforementioned integrated service, and procurement of necessary equipment and facilities. We expect the centre to commence operation in mid-2011.

(I) Launching the Pilot Employment Navigator Programme

20. We will launch a two-year Pilot Employment Navigator Programme (ENP) by the end of this year. The programme aims at motivating and assisting unemployed job-seekers, including persons with disabilities, to secure and remain in employment. Under the ENP, placement officers will gauge the employment and training needs of job-seekers and advise them of any mismatch between their knowledge and skills sets and the requirements of the jobs that they are looking for, and the need to adjust their expectations or to bridge the identified gap through, for example, retraining. Placement officers will also develop job search action plans together with job-seekers. Review meetings will be conducted with job-seekers from time to time as necessary to fine-tune the action plans and provide additional support as may be required.

21. An incentive of up to \$5,000 will be offered to each eligible ENP participant so as to encourage the participant to land on and stay in a job for at least three months. The incentive will be paid in three stages, i.e. \$500 will be paid to an eligible ENP participant upon successful employment and reporting for duty; \$1,500 will be paid upon completion of the first month of employment; and the remaining \$3,000 will be paid after the participant has stayed in the job for three months. It is estimated that 22 000 job seekers will benefit from the ENP during the two-year pilot period.

(J) Preparing legislative proposal to introduce compulsory order for reinstatement or re-engagement and to require the employer to pay a further sum to the employee for failing to comply with such an order

22. According to the EO, where LT establishes that the dismissal of an

employee by the employer is both unreasonable¹ and unlawful², it may make an order for reinstatement or re-engagement subject to the mutual consent of the employer and the employee. If no order for reinstatement or re-engagement is made, LT may also make an award of terminal payments and/or compensation not exceeding \$150,000 to the employee. Under the existing provisions of the EO, LT has no power to make an order for reinstatement or re-engagement without the employer's consent, even if it considers such an order appropriate.

23. To enhance employees' protection against unreasonable and unlawful dismissal, we are, in consultation with the LAB and relevant stakeholders, working on a draft bill to amend the EO to remove an employer's consent as a prerequisite to an order for reinstatement or re-engagement for unreasonable and unlawful dismissal cases. The bill will require the employer to pay a further sum to the employee if the employer subsequently fails to comply with the compulsory reinstatement or re-engagement order made by LT. Given that the E(A)O 2010 has created a new offence against wilful default of sums awarded by LT or MECAB (including an award of compensation that arises from unreasonable and unlawful dismissal), we will take into account the possible effect of the E(A)O 2010 on the operation of the proposed compulsory reinstatement and re-engagement provisions in the drafting process.

(K) Undertaking a review of the definition of continuous employment under the Employment Ordinance based on the statistical data collected on employees not engaged under a continuous contract, and continuing to consult relevant stakeholders

24. At present, irrespective of their duration of employment and hours of work per week, all employees covered by the EO are entitled to certain employment rights and benefits such as payment of wages, restriction on deductions from wages, granting of statutory holidays, protection against anti-union discrimination, employment protection in respect of unreasonable and unlawful dismissal, etc. Employees engaged under a "continuous contract"³

¹ The valid reasons for a dismissal as specified in the EO include the conduct of the employee, the capability or qualifications of the employee for performing his work, redundancy or other genuine operational requirements of the business, compliance with legal requirements and any other reason of substance.

² Unlawful dismissal refers to dismissal during pregnancy and maternity leave, during paid sick leave or work-related injury, or by reason of the employee exercising trade union rights or giving evidence in any proceedings in connection with the enforcement of the EO, work accidents or breach of work safety legislation.

³ According to the EO, an employee engaged under a "continuous contract" is defined as one who has been employed under a contract of employment by the same employer for four weeks or more and has worked for 18 hours or more each week.

are further entitled to other employment benefits under the EO such as rest days, paid statutory holidays and annual leave, sickness allowance, severance payment and long service payment, subject to their fulfillment of the respective qualifying requirements as specified in the EO.

25. To facilitate the review on the definition of “continuous contract” under the EO, LD has commissioned the Census and Statistics Department to further collect statistical data of employees who are not engaged under a “continuous contract”. The survey is underway and LD will utilise the data collected in its review upon completion of the survey.

26. As “continuous contract” is the basis for determining an employee’s eligibility for numerous employment rights and benefits under the EO, amendment to this statutory definition will have far-reaching implications on the labour market and the community as a whole. Therefore, in deliberating the way forward, the Administration must conduct an in-depth and thorough study. We will continue to consult relevant stakeholders in the process.

(L) Continuing to promote family-friendly employment practices

27. LD has been encouraging employers to adopt family-friendly employment practices (FFEP), taking into account the circumstances of the employees as well as the operational needs of the organisations, so as to help employees balance their work and family responsibilities. Promotion of FFEP measures has become an integral part of LD’s close and regular liaison with different stakeholder groups. Promotion channels include the network of Human Resources Managers Clubs formed in various trades and industries, industry-based Tripartite Committees and roving exhibitions. To deepen public understanding of FFEP, we produced a video on FFEP in early 2010 and widely distributed the relevant DVDs to various stakeholders. At present, LD is producing a new video suitable for mass media broadcasting to further promote the message to employers, employees and the public.

(M) To combat the problem of false self-employment

28. Some Members and trade unionists have shown concern about employees being labelled by their employers as “self-employed” even though an employment relationship exists between them. As we reported to this Panel at its meeting on 19 November 2009, the Administration has adopted a three-pronged approach to tackle the problem. First, we are stepping up our promotional and publicity efforts to enhance public awareness of “false self-employment”, including the differences between employment and

self-employment as well as the downsides to the employers and employees of concluding false self-employment arrangements. In addition, we also provide a more user-friendly consultation and conciliation service to employees involved in disputes of false self-employment. Last but not least, we are stepping up our enforcement action to safeguard employees' statutory rights and benefits.

29. In the past, we had no operational statistics on the extent of the problem of false self-employment as investigation and prosecution had been instigated on the basis of the specific provisions in the EO (e.g. failure to comply with the payment of wages or statutory holidays provisions). Since the fourth quarter of 2009, we have started compiling statistics of disputes and enforcement actions relating to false self-employment.

(N) Continuing enforcement action against wage offences

30. In 2010, LD has continued with its multi-pronged strategies of promotion, proactive workplace inspection and prosecution to combat wage offences. Extensive promotional efforts have been made to remind employers of their statutory obligations, urge employees to report breaches of labour laws and pursue wage claims promptly, and publicise its complaint hotline (2815 2200) widely. The rigorous enforcement efforts have resulted in 1 202 convicted summonses on wage offences in the first nine months of 2010, up 28% over the same period last year.

31. LD will spare no efforts in taking out prosecutions against wage offences once sufficient evidence is available. If the employer is a limited company, we will, apart from prosecuting the company, consider prosecuting the directors and other responsible persons of the company as well. In the first nine months of 2010, three company directors and one employer were given jail sentences for defaulting wage payments, and four company directors or responsible persons and six employers were sentenced to community service orders. The convicted summonses against company directors and responsible persons for defaulting wage payment totalled 383 in the first nine months of 2010, up 38% over the same period last year.

(O) Continuing with intelligence-based and proactive strategy in combating illegal employment

32. Safeguarding the employment opportunities of local workers is a priority task of the Government. In the first nine months of 2010, LD mounted 150 joint operations with other law enforcement departments to raid targeted establishments to combat illegal employment. This was on a par with the 155 joint operations in the same period last year.

33. Apart from enforcement action, LD has launched publicity programmes through various channels, including advertisements in newspapers and public transport carriers, press releases and publicity leaflets, to remind the public of the serious consequences of employing illegal workers. LD has also widely publicised its complaint hotline (2815 2200) to encourage the public to report illegal employment activities. The Administration will continue to strengthen publicity and enforcement efforts to combat illegal employment.

(P) Continuing to review the Code of Practice for Safe Use of Tower Cranes and consult stakeholders of the construction industry on the proposed amendments

34. The Commissioner for Labour issued in 2002 the Code of Practice for Safe Use of Tower Cranes (the Code) under section 7A of the FIUO. It provides practical guidance to duty holders in the construction industry on how to ensure the safe and proper use of tower cranes to prevent accidents.

35. The Construction Industry Council also issued the “Guidelines on Safety of Tower Cranes” (the Guidelines) in 2008, setting out the good practices for the safety of tower crane operations recommended by stakeholders, including tower crane owners, specialist contractors and professionals. Our assessment in August 2009 showed that the construction industry had fully adopted all the practices recommended in the Guidelines.

36. LD commenced a review in October 2009 of the Code with a view to incorporating, where appropriate, into the Code the measures recommended in the Guidelines. We will consult construction industry stakeholders on the proposed amendments of the Code. The target is to complete the review in the first half of 2011.

Conclusion

37. Members are invited to note the content of this paper.