

For information on
17 November 2011

Legislative Council Panel on Manpower

Continuous contract under the Employment Ordinance

Purpose

This paper informs Members of the results of a special topic enquiry on employees engaged under employment contracts with short duration or working hours as published by the Census and Statistics Department (C&SD) in July 2011, and the review on continuous contract under the Employment Ordinance (Cap. 57) (EO).

Background

2. Currently, employees are accorded different levels of protection and benefits under labour legislation depending on their length of employment or weekly working hours. Certain protection and entitlement are accorded to employees irrespective of their duration of employment or hours of work per week. These include : protection concerning payment of wages, restriction on deductions from wages, entitlement to statutory holidays and protection against anti-union discrimination etc under the EO; protection regarding compensation for employees who sustain work injuries or suffer from prescribed occupational diseases under the Employees' Compensation Ordinance (Cap. 282); protection of statutory minimum wage under the Minimum Wage Ordinance (Cap. 608). According to the Mandatory Provident Fund Schemes Ordinance (Cap. 485), for employees who have been employed for a period of 60 days or more, their employers must arrange for their enrolment into a mandatory provident fund scheme.

3. On the other hand, under the EO, employees engaged under a continuous contract¹, irrespective of whether they work full-time or part-time, are further entitled to other employment benefits, such as rest days, paid statutory holidays, annual leave, sickness allowance, severance payment and long service payment etc, subject to their meeting the relevant eligibility criteria.

¹ Under 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.

4. In recent years, there have been opinions calling for a review of the EO so as to enhance employment protection and benefits for employees who are not engaged under a continuous contract. To further understand the latest development of the labour market, the Labour Department (LD) commissioned C&SD to conduct a special topic enquiry via the General Household Survey to collect statistical data on employees engaged under employment contracts with short duration or working hours instead of a continuous contract (hereinafter referred to as “SDWH employees”) including, inter alia, their distribution and proportion in the labour market, as well as the industries and occupations to which they belonged. The survey report was published in July 2011.

Results of the survey on SDWH employees

5. This survey collected information on SDWH employees who worked for employers in the non-government sector at the time of enumeration, i.e. fourth quarter (Q4) of 2009. For the purpose of the survey, “employees” are persons aged 15 and over who worked for an employer in the non-government sector for wage, salary, commission, tips or payment in kind, excluding outworkers. The main results of the survey are summarised in paragraphs 6 to 16 below.

Major findings

6. It was estimated that some 2 873 200 employees were employed in the non-government sector at the time of enumeration. Among them, some 2 724 900 employees (94.8%) were working under a continuous contract at the time of enumeration (hereinafter referred to as “continuous contract employees”).

7. Excluding the above continuous contract employees, the remaining 148 300 were SDWH employees (5.2%) who were not working under a continuous contract at the time of enumeration. It is noteworthy that among the 148 300 SDWH employees, 50 200 usually worked 18 hours or more per week in their present jobs. Although they were employed in their present jobs for less than four weeks at the time of enumeration, they expected to work in their present jobs continuously for four weeks or more and hence might subsequently become continuous contract employees. This group of persons, who might subsequently become continuous contract employees, accounted for around 33.9% of the aforementioned 148 300 SDWH employees. Discounting this group of persons, there were 98 000 SDWH employees who were virtually not engaged under a continuous contract, accounting for 3.4% of the total number of employees in the non-government sector.

8. The abovementioned 148 300 employees who were classified as SDWH employees at the time of enumeration showed the following characteristics:

- 51.8% were male and 48.2% female;
- 25.5% were aged 40-49, 23.0% aged 50-59 and 21.8% aged 20-29;
- 56.5% attained secondary or matriculation education;
- 25.6% were engaged in the construction sector, 24.4% in the public administration, social and personal services sector and 22.4% in the retail, accommodation and food services sector;
- 32.8% worked in elementary occupations and 18.7% were craft and related workers; and
- 38.3% were daily-rated and 28.9% hourly-rated.

9. As compared to a survey of a similar nature conducted in Q1 of 2006, the proportion of such group of persons, who were classified as SDWH employees at the time of enumeration, out of the total number of employees in the non-government sector remained stable at 5.2%. A comparison of the key findings of the survey conducted in Q4 2009 with those of the survey in Q1 2006 is set out at Annex 1. The survey report is at Annex 2.

Breakdowns of the 148 300 employees who were classified as SDWH employees at the time of enumeration

10. The 148 300 employees who were classified as SDWH employees at the time of enumeration comprised : (a) 56 300 employees who usually worked less than 18 hours per week; (b) 75 800 employees who usually worked 18 hours or more per week but were employed in their present jobs for less than four weeks at the time of enumeration (including the 50 200 persons who expected to work in their present jobs continuously for four weeks or more and hence might subsequently become continuous contract employees); and (c) 16 200 employees who had worked continuously for their employers for four weeks or more and usually worked at least 18 hours per week (but not continuously) in their present jobs at the time of enumeration².

² For the 16 200 employees under category (c), it was the first time that C&SD captured data on such type of employees.

Characteristics of the 56 300 SDWH employees who usually worked less than 18 hours a week

11. The 56 300 SDWH employees who usually worked less than 18 hours a week accounted for 2.0% of the total number of employees in the non-government sector. Among these 56 300 SDWH employees, some 42 600 (75.7%) did not choose to work longer hours for personal reasons, including 36.0% having to take care of housework or household members (including children, elders or sick members) at home, 26.2% in educational pursuit, 10.9% owing to health problem or old age and 2.7% having no financial need.

12. The 56 300 SDWH employees who usually worked less than 18 hours a week showed the following characteristics:

- 76.3% were female and 23.7% male;
- 28.4% were aged 50-59, 23.7% aged 40-49 and 21.3% aged 20-29;
- 45.7% attained secondary or matriculation education;
- 41.6% were engaged in the public administration, social and personal services sector, and 24.6% in the retail, accommodation and food services sector;
- 37.1% worked in elementary occupations, 21.1% were service workers and shop sales workers, 18.4% were managers and administrators, professionals and associate professionals, and another 18.4% were clerks; and
- 56.2% were hourly-rated.

Facets of the 75 800 SDWH employees who usually worked 18 hours or more per week but were employed in their present jobs for less than four weeks at the time of enumeration

13. Among the 75 800 SDWH employees who usually worked 18 hours or more per week but were employed in their present jobs for less than four weeks at the time of enumeration, aside from the aforementioned 50 200 employees who expected to work in their present jobs continuously for four weeks or more, the remaining 25 600 employees did not expect to work in their present jobs continuously for four weeks or more.

14. These 25 600 employees who accounted for 0.9% of the total number of employees in the non-government sector cited the following reasons as to why they did not expect to work in their present jobs continuously for four weeks or more:

- 49.7% mentioned custom of trade/ norm of company/ business arrangement of company;
- 26.0% mentioned insufficient work in company;
- 7.4% said that they could not find a permanent job;
- 7.1% said that their work was of casual/seasonal nature; and
- 9.8% cited other reasons, such as “old age/partially retired”, “health problem (ill/ health deteriorating)”, “need to take care of housework/ children/ elders/ sick members at home”, etc.

15. Among the 25 600 SDWH employees who did not expect to work in their present jobs continuously for four weeks or more, over three-quarters (76.7%) were engaged in the construction sector, 8.2% in the retail, accommodation and food services sector, and 6.2% in the transportation, storage, postal and courier services, information and communications sector.

Employment benefits granted to SDWH employees

16. Although employees not engaged under a continuous contract are not entitled to certain employment benefits under the EO, the survey revealed that some SDWH employees were granted such benefits by their employers. Among the 148 300 SDWH employees, 20.4% were granted statutory holiday pay, 24.6% enjoyed paid annual leave and 4.7% were granted end-of-year payment. As for those 56 300 employees who usually worked less than 18 hours a week, 10.3% were granted statutory holiday pay, 8.1% enjoyed paid annual leave and 2.5% were granted end-of-year payment.

17. Members of the Labour Advisory Board (LAB) were informed of the relevant survey findings on 19 July 2011.

Review on continuous contract under the EO

18. With the development of the labour market and calls for relaxing the continuous contract requirement (the so-called “4-18” requirement) under the EO, the Administration is undertaking a review of the subject with reference to the findings of the latest survey conducted by C&SD on SDWH employees. Since continuous contract is the cornerstone upon which various employment benefits are provided by employers to their employees under the EO, any change in this regard will have far-reaching implications on the labour market and the community as a whole. As such, the Administration must prudently and thoroughly explore, bearing in mind the overall interests of Hong Kong, how to

strike a reasonable balance between the interests of employees and the affordability of employers before deciding whether any changes would need to be made.

19. In the course of the review, we will continue to listen to the views of different parties. After LAB's deliberations on this subject and any relevant proposals, we will consult the Panel on Manpower.

Labour and Welfare Bureau
Labour Department
November 2011

**Comparison of the key findings of the surveys on SDWH employees
conducted by C&SD in Q1 2006 and Q4 2009**

Number of employees working in the non-government sector in the present job at the time of enumeration	Survey conducted in Q1 2006	Survey conducted in Q4 2009	Change in number [Change in %]
Total number of employees	2 732 700	2 873 200	+ 140 500 [+ 5.1%]
Number of continuous contract employees	2 591 500 (94.8%)*	2 724 900 (94.8%)*	+ 133 400 [+ 5.1%]
Number of SDWH employees	141 200 (5.2%)*	148 300 (5.2%)*	+ 7 100 [+ 5.0%]
Number of SDWH employees who usually worked less than 18 hours per week	52 400 (1.9%)*	56 300 (2.0%)*	+ 3 900 [+ 7.4%]
Number of SDWH employees with usual working hours of 18 hours or more per week but who were employed in the present job for less than four weeks at the time of enumeration	88 800 (3.3%)*	75 800 (2.6%)*	- 13 000 [- 14.7%]
Number of SDWH employees who were employed in the present job for four weeks or more at the time of enumeration and usually (but not continuously) worked at least 18 hours per week	No such data was captured in this survey.	16 200 (0.6%)*	Not applicable

* The figure in round brackets denotes the percentage of the respective number to the total number of employees working in the non-government sector at the time of enumeration.