

立法會
Legislative Council

LC Paper No. CB(2)1316/12-13
(These minutes have been seen
by the Administration)

Ref : CB2/PL/MP

Panel on Manpower

Minutes of meeting
held on Tuesday, 19 March 2013, at 4:00 pm
in Conference Room 1 of the Legislative Council Complex

Members present : Hon LEE Cheuk-yan (Chairman)
Hon WONG Kwok-kin, BBS (Deputy Chairman)
Hon LEUNG Yiu-chung
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon Frederick FUNG Kin-kee, SBS, JP
Hon CHAN Kin-por, BBS, JP
Hon CHEUNG Kwok-che
Hon IP Kwok-him, GBS, JP
Hon LEUNG Kwok-hung
Hon Michael TIEN Puk-sun, BBS, JP
Hon CHAN Chi-chuen
Hon Kenneth LEUNG
Dr Hon KWOK Ka-ki
Hon KWOK Wai-keung
Hon POON Siu-ping, BBS, MH
Hon TANG Ka-piu
Dr Hon CHIANG Lai-wan, JP

Member attending : Hon WONG Kwok-hing, MH

Members absent : Hon Albert HO Chun-yan
Dr Hon LEUNG Ka-lau
Hon LEUNG Che-cheung, BBS, MH, JP
Hon SIN Chung-kai, SBS, JP

Public Officers attending : Items IV and V

Mr Charles HUI Pak-kwan
Assistant Commissioner for Labour
(Labour Relations)

Ms Melody LUK Wai-ling
Chief Labour Officer (Labour Relations)
Labour Department

Miss Candice CHENG Lai-fan
Senior Labour Officer
(Labour Relations) (Policy Support)
Labour Department

Attendance by invitation : Item IV

Individual

Mr WONG Yun-tat
Kwai Tsing District Council member

Neighbourhood and Worker's Service Centre

Mr SO Yiu-cheong
Representative

Kwai Fong Temporate Job Rights Concern Group

Mr WAI Wei-kang
Representative

Kwai Chung Estate Labour Right Concern Group

Mr LEUNG Kum-wai
Representative

Kwai Chung Community Union

Miss Vincci WONG
Representative

Kwai Shing Rights of Temporate Job Concern Group

Mr LAI Chi-po
Representative

NWSC New Arrivals' Women Rights Concern Group

Ms CHAN Sheung-man
Representative

Kwai Chung Estate Grassroots' Right Concern Group

Mr LAU Wing-fai
Representative

Democratic Alliance for the Betterment and Progress of
Hong Kong

Mr NGAN Man-yu
Deputy Spokesperson (Manpower)

The Hong Kong Federation of Trade Unions Rights &
Benefits Committee

Mr LO Chun-yeung
Secretary

Catering and Hotels Industries Employees General Union

Mr POON Man-hon
Organizing Secretary

Hong Kong Catholic Commission for Labour Affairs

Miss LAW Pui-shan
Policy Research Officer

Hong Kong Women Workers' Association

Miss NG Cheuk-ling
Organizer

Manpower Concern Group

Mr WONG Kwai-sang
Member

Hong Kong Domestic Workers General Union

Ms TSE Yin-fei
Chairperson

Labour Party

Ms NG Wai-ling
Executive Committee Member

The Federation of Hong Kong and Kowloon Labour Unions

Mr KO Chun-kit
Officer of The Labour Rights Committee

The Democratic Party

Mr Edmund LEE Kin-man
Community Officer

Civic Party

Miss Fanny LEUNG
District Developer

Item V

Hong Kong Human Rights Monitor

Mr LAW Yuk-kai
Director

The Hong Kong Federation of Trade Unions Rights &
Benefits Committee

Mr Kingsly TAM
Member

Civic Party

Mr Jeremy TAM
Executive Committee Member

Manpower Concern Group

Mr WONG Kwai-sang
Member

Labour Party

Mr LAM Cho-ming
Representative

Hong Kong School of Motoring Driving Instructors Union

Mr LIN Kwok
Committee Member

Hong Kong Confederation of Trade Unions

Mr POON Man-hon
Policy Researcher

The Federation of Hong Kong and Kowloon Labour Unions

Mr KO Chun-kit
Officer of The Labour Rights Committee

The Democratic Party

Mr Edmund LEE Kin-man
Community Officer

Hong Kong Jockey Club Employees Solidarity Union

Mr CHAN Ying-kit
Chairman

Education Employee General Union

Ms WONG Heung-lin
Executive

Government Educational Staff Union

Mr CHEUNG Kam-fai
President

Union of Hong Kong Dockers

Mr CHAN Ka-kui
Secretary (Labour Right)

The K. M. B. Staff Union

Mr CHAN Yee-chuen
External Vice-Chairperson

Clerk in attendance : Miss Betty MA
Chief Council Secretary (2) 1

Staff in attendance : Ms Rita LAI
Senior Council Secretary (2) 1

Ms Mina CHAN
Council Secretary (2) 1

Ms Kiwi NG
Legislative Assistant (2) 1

Miss Lulu YEUNG
Clerical Assistant (2) 1

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I. Confirmation of minutes of previous meeting
(LC Paper No. CB(2)772/12-13)

The minutes of the meeting held on 19 February 2013 were confirmed.

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II. Information paper(s) issued since the last meeting

2. Members noted that the following papers had been issued since the last meeting -

- (a) letter dated 22 February 2013 from The Elderly Services Association of Hong Kong requesting the Panel to hold a joint meeting with the Panel on Welfare Services to receive views from deputations on manpower situation in residential care homes for the elderly; and
- (b) letter dated 27 February 2013 from HK Evergreen Association of the Elderly requesting the Panel to hold a joint meeting with the Panel on Welfare Services to receive views from deputations on manpower situation in residential care homes for the elderly.

III. Date of next meeting and items for discussion

(LC Paper Nos. CB(2)774/12-13(01) and (02))

Regular meeting in April 2013

3. Members agreed that the following items proposed by the Administration be discussed at the next regular meeting at 4:30 pm on 16 April 2013 -

- (a) Major findings of the 2012 Annual Earnings and Hours Survey; and
- (b) Work safety in the construction industry.

IV. Continuous contract requirement under the Employment Ordinance

(LC Paper Nos. CB(2)285/11-12(01) and CB(2)774/12-13(03))

4. The Chairman advised that according to the Administration, it was reviewing the definition of continuous contract under the Employment Ordinance (Cap. 57) ("EO") (the so-called "4-18" requirement) and would revert to the Panel on Manpower on its review findings in mid 2013. The meeting was convened to receive views from deputations on the continuous contract requirement.

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5. Members noted the background brief entitled "Continuous contract under the Employment Ordinance" prepared by the Legislative Council ("LegCo") Secretariat.

Views of deputations

6. At the invitation of the Chairman, 19 deputations presented their views on the subject. A summary of the views of the deputations is in **Annex I**.

Discussion

7. Responding to the views of deputations, Assistant Commissioner for Labour (Labour Relations) ("AC for L (LR)") advised that -

- (a) according to the major findings of a survey conducted by the Census and Statistics Department ("C&SD") on employees engaged under employment contracts with short duration or working hours (hereinafter referred to as "SDWH employees") as published in its Special Topics Report No. 55 ("the Report"), there were 148 300 SDWH employees who did not meet the "4-18" requirement for a continuous contract (i.e. an employee had been employed for four weeks or more and had worked for 18 hours or more in each week) at the time of enumeration. These included 50 200 employees who usually worked 18 hours or more per week in their present jobs and expected to work in their present jobs continuously for four weeks or more and hence might subsequently become continuous contract employees. Among the remaining some 98 000 SDWH employees, 56 300 employees usually worked less than 18 hours per week; 25 600 employees usually worked more than 18 hours per week but because of the short duration of their employment contracts, they did not expect themselves to be in the same job for four weeks; and 16 200 employees usually worked more than 18 hours per week but not four weeks consecutively;
- (b) in respect of the concern about the impact of the implementation of statutory minimum wage ("SMW") on the proliferation of fragmentation of work and underemployment, the findings of the Annual Earnings and

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Hours Survey ("AEHS") conducted by C&SD in 2010 and 2011 showed that the proportion of part-time and casual workers to the total number of employees remained stable at 7% and 3% respectively; and

- (c) certain protection and entitlement under labour legislation were accorded to all employees, including SDWH employees, irrespective of their duration of employment or hours of work per week. These included protection concerning payment of wages and restriction on deductions from wages, etc.

AC for L (LR) added that the Administration was undertaking a review of the definition of "continuous contract" under EO ("the review") with reference to the findings of the Report. It would consult the Labour Advisory Board ("LAB") on the review findings. After LAB's deliberation on the subject and any relevant proposals, the Administration would consult the Panel in around mid 2013. In the course of the review, the Administration would continue to listen to the views of different parties.

Entitlement of employment benefits of SDWH employees

8. Mr WONG Kwok-hing was concerned about the rights and benefits of SDWH employees who, in his view, should be entitled, on a pro-rata basis, to the employment benefits of a full-time employee as stipulated in EO and other relevant labour legislation.

9. AC for L (LR) responded that employment benefits granted to SDWH employees would be covered in the review and reference would be made to overseas practice. To his knowledge, employees working less than 35 hours per week in Singapore were entitled to the employment benefits of a full-time employee on a pro-rata basis. He added that employees in Hong Kong working for 18 hours or more in each week for a continuous period of four weeks or more were already accorded full protection and entitlement under EO.

10. Mr LEUNG Kwok-hung took a strong view that employment benefits for full-time employees should be accorded on a pro-rata basis to casual workers who did not meet the 4-18 requirement.

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11. In response to Mr KWOK Wai-keung's enquiry about the number of SDWH employees not being accorded any entitlement under EO, AC for L (LR) said that the Administration did not have such information on hand.

12. Mr POON Siu-ping was concerned that there were cases in which some employees had worked for the same employer for years but were still unable to meet the 4-18 requirement due to various reasons. Mr POON asked whether assistance would be provided to these employees in the event that the cases were brought to the attention of the Labour Department ("LD").

13. Chief Labour Officer (Labour Relations) ("CLO (LR)) advised that the Administration would follow up each of the cases referred to LD for assistance. She cited that pursuant to the Panel meeting on 17 November 2011, several cases relating to the employment benefits granted to SDWH employees had been referred to and duly followed up by LD.

14. Referring to a survey conducted by the Catering and Hotels Industries Employees General Union in June 2012, the Chairman expressed grave concern that some employees in the hotel industry were required to take one week's leave after working continuously for three weeks to the effect that they were classified as SDWH employees. The Chairman considered that LD should give due attention to the phenomenon.

Government outsourcing services

15. Mr WONG Kwok-hing noted with concern that the Government, being the largest employer in Hong Kong, hired labour services via intermediary agencies in recent years. The Government had therefore no employer-employee relationship with these workers and assumed no obligation to provide them with employment benefits under EO. Mr WONG was of the view that the Administration should take the lead and set a good example for other employers by conducting direct recruitment of civil servants for delivery of government services.

16. Dr KWOK Ka-ki held the view that a number of employers had made use of the loophole of the 4-18 requirement and offered employees, especially those grassroots employees aged over 40 with low educational attainment, with non-continuous contracts. He was gravely concerned whether such employers had included public organizations and

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government service contractors. Dr KWOK called on the Administration to look into the situation under its purview and take necessary actions as soon as possible. Mr LEUNG Kwok-hung raised a similar concern.

17. Responding to members' concerns, AC for L (LR) advised that the recruitment of civil servants was under the purview of the Civil Service Bureau and the outsourcing of government services was carried out by respective bureaux/departments. He would convey members' views to the relevant departments/bureaux for consideration.

18. Expressing similar concern about a lack of employment benefits granted to SDWH employees, Mr TANG Ka-piu asked whether the Administration would consider conducting a review of the number of SDWH employees engaged by the government service contractors to assess the magnitude of the situation.

19. AC for L (LR) responded that the review would cover all SDWH employees including those engaged by government service contractors. As mentioned earlier, the Administration would first consult LAB on the review findings before tabling them for discussion by the Panel.

Progress of the review

20. Dr KWOK Ka-ki and Mr TANG Ka-piu expressed dissatisfaction about the slow progress in conducting the review and consulting LAB on the findings of the Report, given that the special topic enquiry on SDWH employees had been conducted as early as in 2009.

21. Mr POON Siu-ping said that the Federation of Hong Kong and Kowloon Labour Unions had all along advocated for improvement of employment benefits for SDWH employees. He considered that the 4-18 requirement failed to protect adequately the rights and benefits of SDWH employees. Mr POON enquired about the timetable for discussion of the results of the review by LAB. In his view, the Administration should have its stance on whether amendments to EO should be made before LAB's deliberation on the subject.

22. Mr LEUNG Kwok-hung was of the view that the Administration was making use of consultation with LAB as an excuse to delay making amendments to the 4-18 requirement. He enquired whether the consensus of LAB was a prerequisite for proposing amendments to the definition of continuous contract under EO. He considered it imperative that the protection of the employment benefits of vulnerable employees should be enhanced.

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23. Mr LEUNG Yiu-chung was concerned about the employment benefits granted to SDWH employees and the proliferation of engaging SDWH employees to perform full-time jobs. In his view, the Administration should have a clear stance on the need for amending the definition of continuous contract under EO for better protection of employment rights of SDWH employees.

24. Responding to members' concerns, AC for L (LR) stressed that a comprehensive review on continuous contracts under EO was being conducted. The Administration would consult LAB on the results of the review. In the meantime, it would continue to listen to the views of the stakeholders. The Panel would be further consulted in mid 2013.

25. Mr KWOK Wai-keung said that the labour market had experienced drastic changes in response to the economic development in Hong Kong over the years. While there was shortfall of labour in the past years, the phenomenon of working overtime without due compensation had become increasingly serious. He expressed dissatisfaction that notwithstanding the awareness of the phenomenon of engaging SDWH employees by employers, LD had made no attempt to enhance the employment benefits of SDWH employees and no significant progress in respect of the review. Mr KWOK was of the view that the Administration should formulate concrete proposals on the subject for the deliberation of LAB.

26. AC for L (LR) responded that the Administration had reviewed from time to time the labour legislation to enhance the protection of employees' rights and benefits. For instance, the enactment of the General Holidays and Employment Legislation (Substitution of Holidays) (Amendment) Ordinance 2011 sought to alter the holiday in substitution under EO and the General Holidays Ordinance. In addition, the Administration was making preparation for legislating for the provision of statutory paternity leave and compulsory reinstatement under EO.

Dissemination of information

27. Mr TANG Ka-piu expressed concern about the lack of publicity to enhance the awareness and understanding of grassroots employees on employee's rights and benefits under EO. AC for L (LR) advised that LD had published a series of publications including posters and pamphlets in different languages on employment rights and benefits of part-time employees. Such information was also available on the website of LD.

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28. To facilitate easy identification of the nature of job vacancies posted in LD, Mr TANG Ka-piu enquired whether LD would consider including information on whether the vacancies were non-"4-18" employment. CLO(LR) drew members' attention to the fact that information relating to working hours and patterns of job vacancies was available on the job card posted in LD.

29. In conclusion, the Chairman called on the Administration to take note of the unanimous views of members and deputations that legislative amendments should be introduced to enhance protection of the employment rights of employees who did not meet the 4-18 requirement for a continuous contract. He appealed to the Administration to formulate a concrete proposal for the relevant legislative amendments when it reverted to the Panel on the subject in mid 2013.

The meeting was suspended for five minutes at this juncture.

V. Protection for participation in trade unions
(LC Paper Nos. CB(2)774/12-13(04) and (05))

30. Members noted the background brief entitled "Protection for participation in trade unions" prepared by the LegCo Secretariat.

Views of deputations

31. At the invitation of the Chairman, 14 deputations presented their views on the subject. A summary of the views of deputations is in **Annex II**.

Members agreed that the meeting be extended by 20 minutes.

Discussion

Protection for anti-union discrimination

32. Mr LEUNG Yiu-chung was concerned about the protection for employees' participation in trade unions under relevant labour legislation. He pointed out that most employers did not commit acts of anti-union discrimination, but they simply ignored the representativeness of trade unions in discussing with employees about employment matters. He considered it imperative that trade unions should be duly recognized and

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accorded statutory status in negotiation with employers on wage levels and employment conditions. Mr TANG Ka-piu and Mr KWOK Wai-keung expressed similar concerns. Citing the recent experience of the Hong Kong Federation of Trade Unions in handling a few labour disputes, Mr TANG was disappointed to note that LD played an inactive role when the employers concerned refused to have any dialogue with representatives of trade unions. Mr KWOK considered that such a refusal should be regarded an act of anti-union discrimination.

33. Responding to members' concerns, AC for L (LR) acknowledged that trade unions played an important role in the communication between employers and employees. He said that there were three fronts of protection for trade union participation under existing labour legislation. First, the rights, immunities and privileges of a registered trade union were stipulated under the Trade Unions Ordinance (Cap. 332) ("TUO"). Members or officers of a registered trade union were immune from civil suits for certain acts as provided for under TUO. Second, employees might make a claim for remedies against the employer for unreasonable and unlawful dismissal owing to their exercising trade union rights. On such a claim for remedies, it was the responsibility of the employer concerned to show that the dismissal was for a valid reason and not an anti-union discriminatory act as specified in EO. Third, while stringent requirements in taking out criminal prosecution had to be satisfied in each case, criminal prosecution would be instituted wherever there was sufficient evidence following investigation of complaints on suspected acts of anti-union discrimination. AC for L (LR) added that there was no criminal sanction for anti-union discrimination in some overseas countries.

Prosecution against anti-union discrimination

34. The Chairman sought information on the number of prosecutions that had ever been instituted against suspected acts of anti-union discrimination.

35. AC for L (LR) responded that a total of 50 complaint/claim cases related to acts of anti-union discrimination had been received during the period from 2005 to 2012. While investigations had been conducted in respect of 41 cases, the remaining cases were not pursued mainly because of the unwillingness of the employees concerned to act as prosecution witnesses. Of these 41 cases, prosecutions had been instituted against the employers in five cases and two employers concerned were successfully convicted.

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Members agreed that the meeting be extended to 7:00 pm.

36. The Chairman and Mr KWOK Wai-keung noted with concern that a low successful prosecution rate of anti-union discriminatory acts had been recorded. Mr KWOK expressed concern that it was difficult for an employee to establish that the dismissal was an anti-union discriminatory act in making a claim for remedies. Mr KWOK considered that the protection of employees' rights to form and join trade unions activities was insufficient under the existing legislation. The Administration should step up its promotional and enforcement actions.

37. Mr POON Siu-ping asked whether the Administration would consider reviewing the effectiveness of existing legislation in instituting criminal prosecution against acts of anti-union discrimination, given that no amendment to the relevant provisions under TUO had been made since it was first introduced. Mr POON added that the Administration should give due consideration to the deputations' views in respect of safeguarding the rights to collective bargaining and strikes, and recognition of the status of trade unions.

38. AC for L (LR) advised that the Administration planned to introduce the Employment (Amendment) Bill 2013 ("the Amendment Bill") into LegCo later this year to empower the Labour Tribunal to make a compulsory order for reinstatement or re-engagement of an employee who had been dismissed unreasonably and unlawfully, including those being dismissed because of anti-union discrimination, and to order the employer to pay a further sum to the employee if the employer failed to comply with the order. Non-payment of the further sum would be liable to prosecution. The Administration would keep under review the effectiveness of the relevant provisions in safeguarding employees against anti-union discrimination after the implementation of the Amendment Bill.

39. Noting that only six to seven complaints about anti-union discrimination were received by LD on average in each year between 2005 and 2012, Mr CHAN Chi-chuen considered that this was largely due to limited protection for trade union participation under the existing legislation. In his view, the Administration should enhance the protection for participation in union activities by introducing amendments to the legislation. Mr CHAN also expressed concern about the deterrence effect of the proposed increase in penalty for non-compliance with the reinstatement provisions under the Amendment Bill.

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40. AC for L (LR) advised that the majority of the complaints about anti-union discriminatory acts were civil claims in nature. As explained earlier, it was the responsibility of the employer concerned to show that the dismissal of employee concerned was for a valid reason and not an anti-union discriminatory act when an employee made a claim for remedies against the employer for unreasonable and unlawful dismissal. The protection for employees taking part in union activities would be further enhanced following the passage of the Amendment Bill.

41. Responding to Mr TANG Ka-piu's enquiry about the staff establishment of LD responsible for handling complaints on suspected acts of anti-union discrimination, AC for L (LR) said that while the Labour Relations Division of LD would provide voluntary conciliation service to employers and employees to help settle their employment disputes and claims, the Employment Claims Investigation Division would, among others, investigate cases involving non-compliance with the legislation relating to protection of employees against anti-union discrimination. The Prosecutions Division of LD would be responsible for taking out criminal prosecution where there was sufficient evidence following investigation.

42. Mr TANG Ka-piu took the view that it was incumbent upon LD to provide support for trade unions and employees making claims for remedies against the employer for unreasonable and unlawful dismissal. To this end, the Administration should step up publicity to disseminate information on the support services provided by LD for labour unions and their representatives.

43. Dr KWOK Ka-ki considered that the protection against acts of anti-union discrimination was ineffective, given that there were only two successful prosecutions out of 50 investigations. He enquired whether the Administration had reviewed the reasons accounting for the low successful prosecution rate and introduced appropriate enhancement measures, such as lowering the stringent prosecution requirements.

44. AC for L (LR) said that as shown from an International Labour Organisation ("ILO")'s report on the implementation of the International Labour Convention No. 98 released in 2012, it was not unique of Hong Kong in having difficulties taking out criminal prosecution against acts of anti-union discrimination because of the higher standard of proof required for criminal sanctions. Recognising that criminal sanction was not even available in some places, ILO considered that anti-union discrimination

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could be dealt with by means of civil remedies and reinstatement. The Administration would further enhance the protection for employees by introducing the Amendment Bill and would keep under review its implementation upon enactment.

45. The Chairman also expressed grave concern about the enforcement of the provision on anti-union discrimination under existing legislation. He cited that although 49 ex-pilots of the Cathay Pacific Airways, who had actively participated in trade union activities, had successfully made claims for civil remedies against their employer for unreasonable and unlawful dismissal, LD failed to take out criminal prosecution against the substantiated anti-union discriminatory act. In the light of the recent alleged dismissal of two driving instructors of the Hong Kong School of Motoring for taking part in the formation of a trade union, he appealed to LD to thoroughly investigate the cases and take out criminal prosecution action accordingly, so as to demonstrate its commitment in protecting trade union rights. Dr KWOK Ka-ki shared a similar concern.

46. AC for L (LR) advised that he was not in a position to comment on the progress of investigation of individual complaint cases. Yet, he stressed that criminal prosecution would be initiated whenever there was sufficient evidence following investigation.

Civil remedies for non-dismissal trade union discrimination

47. Mr KWOK Wai-keung and the Chairman were concerned about the non-dismissal nature of anti-union discrimination as pointed out by some deputations, including assignment of unreasonable duties, change of workplace, and making mediocre performance appraisal of employees taking part in trade union activities, which would result in no salary adjustment. They asked whether there was any civil remedy in respect of non-dismissal anti-union discriminatory acts. The Chairman was of the view that the Administration should consider establishing a mechanism for civil remedies for non-dismissal anti-union discriminatory acts which did not invoke changes of the employment terms.

48. AC for L (LR) said that under EO, an employee who had been employed under a continuous contract might make a claim for remedies against his employer for unreasonable and unilateral variation of the terms of the employment contract. He stressed that the "no worse off" principle in the change of employment terms should be followed. AC for L (LR) added that the Administration would keep under review the protection for employees' rights in the light of the implementation of the Amendment Bill after its passage.

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The Amendment Bill

49. In the light of the impending introduction of the Amendment Bill, Mr TANG Ka-piu asked whether LD would have sufficient manpower to perform the additional enforcement work. AC for L (LR) advised that while the Administration did not see the need at the moment, it would seek funding for additional manpower under the established mechanism, if necessary.

50. Mr LEUNG Yiu-chung took the view that the Administration should expedite the introduction of the Amendment Bill, which had been unnecessarily delayed.

51. The Chairman expressed the view that it was proposed under the Amendment Bill that the employer would be liable to an extra fine of three months' salary of the employee's concerned with a ceiling of \$50,000 for failing to comply with the order for reinstatement or re-engagement. However, he considered that the employer concerned would choose to pay the extra fine in lieu of the requirement of reinstatement or re-engagement. To enhance the deterrence of the proposal, employers failed to comply with such an order should be liable to the offence for contempt of court.

52. AC for L (LR) advised that the proposed further sum payable by an employer for non-compliance with an order for reinstatement or re-engagement of an employee who had been dismissed unreasonably and unlawfully was a consensus of LAB after thorough discussion.

53. There being no other business, the meeting ended at 7:10 pm.

Panel on Manpower

Meeting on Tuesday, 19 March 2013, at 4:00 pm

**Summary of views and concerns expressed by deputations/individual
on the continuous contract requirement under the Employment Ordinance**

No.	Name of deputation/individual	Major views and concerns
1.	Mr WONG Yun-tat, Kwai Tsing District Council member [LC Paper No. CB(2)850/12-13(01)]	<ul style="list-style-type: none"> • In line with overseas practice, part-time employees, even though not meeting the "4-18" requirement for a continuous contract (i.e. under which an employee had been employed for four weeks or more and had worked for 18 hours or more in each week), should be entitled on a pro-rata basis to the rights and benefits of a full-time employee as specified in the Employment Ordinance (Cap. 57) ("EO"). These included paid annual leave, severance payment and long service payment. • The Government should introduce legislation to ensure that employees working for the same employers be classified as full-time employees should their duration of employment exceed a specified period of service, and to prohibit employers from offering different employment terms for contract staff, temporary staff and full-time staff.
2.	Neighbourhood and Worker's Service Centre [LC Paper No. CB(2)850/12-13(01)]	<ul style="list-style-type: none"> • The deputation requested the Administration to conduct a comprehensive study on the phenomenon of fragmentation of work and underemployment in Hong Kong. • The current term of Government should follow-up on the review on the definition of continuous employment under EO ("the Review") as stated in the 2009-2010 Policy Agenda and continue to consult relevant stakeholders, especially consultation with the Labour Advisory Board ("LAB") on the major findings of the Special Topics Report No. 55 ("the Report") on employees engaged under employment contracts with short duration or working hours (hereinafter referred to as "SDWH employees") which was released in July 2011.

No.	Name of deputation/individual	Major views and concerns
3.	Kwai Fong Temporate Job Rights Concern Group [LC Paper No. CB(2)850/12-13(01)]	<ul style="list-style-type: none"> • The phenomenon of fragmentation of work and underemployment was the major cause of poverty for low-income families. • The Government should review the statutory minimum wage ("SMW") rate on an annual basis and adjust upwards the SMW rate; and conduct a review on EO with a view to safeguarding the entitlements of vulnerable employees to employment benefits, who do not meet the "4-18" requirement, on a pro rata basis.
4.	Kwai Chung Estate Labour Right Concern Group [LC Paper No. CB(2)850/12-13(01)]	<ul style="list-style-type: none"> • The Labour Department ("LD") should make reference to the practice in the European countries in conducting the Review so as to better protect the rights and entitlement of employees who were employed as part-time, casual and contract staff. • Given a great number of SDWH employees, which amounts to around 150 000 as revealed in the Report released by the Census and Statistics Department ("C&SD") in 2011, the Government should amend the definition of continuous contract under EO as soon as possible so as to ensure that SDWH employees could entitle employment benefits on a pro rata basis.
5.	Kwai Chung Community Union [LC Paper No. CB(2)850/12-13(01)]	<ul style="list-style-type: none"> • It was unreasonable that SDWH employees were not entitled to the rights and benefits specified in EO because of not meeting the "4-18" requirement for a continuous contract. The definition of "continuous contract" under EO should be amended so as to allow SDWH employees to entitle employment benefits on a pro rata basis. • SDWH employees could neither meet the "4-18" requirement for a continuous contract nor the working hours requirement of the Work Incentive Transport Subsidy ("WITS") Scheme. To better protect the SDWH employees, the Administration should review the definition of continuous contract under EO.
6.	Kwai Shing Rights of Temporate Job Concern Group [LC Paper No. CB(2)850/12-13(01)]	<ul style="list-style-type: none"> • Under the existing definition of continuous contract, SDWH employees are not provided with the protection and benefits of full-time employees under labour legislation. • Employers may reschedule the working hours of their employees so that the latter could not meet the "4-18" requirement for a continuous contract.

No.	Name of deputation/individual	Major views and concerns
		<ul style="list-style-type: none"> • Being the largest employer in Hong Kong, the Government should require the service contractors to offer continuous contracts to their workers.
7.	NWSC New Arrivals' Women Rights Concern Group [LC Paper No. CB(2)850/12-13(01)]	<ul style="list-style-type: none"> • The definition of "continuous contract" under EO should be reviewed and amended as soon as possible to the effect that employment benefits of SDWH employees were safeguarded. • The Government should regularise the community child care services so as to provide more full-time and part-time jobs for grassroots women.
8.	Kwai Chung Estate Grassroots' Right Concern Group [LC Paper No. CB(2)850/12-13(01)]	<ul style="list-style-type: none"> • According to the Report of the Policy Study on Standard Working Hours, there would be more fragmentation of work and underemployment if standard working hours were to be implemented. The Government should conduct a review of EO without delay so as to prevent the occurrence of such phenomenon and to better protect the rights and benefits of grassroots employees. • The current Government should actively follow up the review of the definition of continuous contract as stated in the 2009-2010 Policy Agenda.
9.	Democratic Alliance for the Betterment and Progress of Hong Kong	<ul style="list-style-type: none"> • Following the implementation of the initial SWM rate, there was a proliferation of fragmentation of work and underemployment in the low-skilled industries. Many vulnerable workers, who did not fully understand their rights and benefits under EO, had been asked to take up part-time jobs such that they were regarded as contract employees. • The entitlement of SDWH employees under EO should be discussed by LAB. • The deputation urged the Administration to conduct the Review as soon as possible so as to better protect the employment benefits of SDWH employees. Meantime, the Administration should step up inspection of workplaces and enforcement actions against non-compliance with the labour legislation.

No.	Name of deputation/individual	Major views and concerns
10.	The Hong Kong Federation of Trade Unions Rights & Benefits Committee [LC Paper No. CB(2)850/12-13(02)]	<ul style="list-style-type: none"> ● The Government should make reference to the practice in some overseas countries (e.g. Singapore) to enhance employment benefits to SDWH employees in recognition of their contribution. ● SDWH employees should be entitled to those employment benefits as stipulated in EO on a pro rata basis. ● The Government should make reference to the recommendation of the International Labour Organization and work out a legislative timetable for implementation of standard working hours as soon as possible. This would facilitate the computation of employment benefits of SDWH employees on a pro rata basis.
11.	Catering and Hotels Industries Employees General Union [LC Paper No. CB(2)850/12-13(03)]	<ul style="list-style-type: none"> ● According to a survey conducted by the deputation in June 2012, the problem of fragmentation of work and underemployment was serious in the hotel industry. Around 70.4% of the room attendants were casual workers as they were usually required to take one week off after working for three continuous weeks. Moreover, the average hourly wage of these employees was lower than that of full-time employees. ● The Government should amend the "4-18" requirement to enable SDWH employees to entitle employment benefits on a pro rata basis, and monitor the work shift pattern of the hotel industry.
12.	Hong Kong Catholic Commission for Labour Affairs	<ul style="list-style-type: none"> ● Concerns about fragmentation of work and underemployment had been raised by different labour organizations on various occasions, and had been discussed by the Panel on Manpower time and again. The deputation was disappointed about the lack of action taken by the Administration to amend the definition of continuous contract under EO. ● The Government attempted to play down the seriousness of the problem of fragmentation of work and underemployment in its analysis of the major findings of the Report by putting forward various excuses to explain the phenomenon, including personal choice, special characteristics of the construction industry, custom of trade, norm of company and business arrangement of company.

No.	Name of deputation/individual	Major views and concerns
		<ul style="list-style-type: none"> • In anticipation of the aggravation of the problem of fragmentation of work and underemployment following the implementation of SMW, the Government should conduct the Review without delay, including conducting public consultation and introducing the relevant legislative proposal.
13.	Hong Kong Women Workers' Association [LC Paper No. CB(2)850/12-13(04)]	<ul style="list-style-type: none"> • Most of casual employment and part-time employment were taken up by married women because of the need to take care of their families. • A large number of SDWH employees (e.g. promoters in supermarkets) had been working for the same employers for a long period of time without employment benefits under EO, including paid statutory holidays, paid annual leave, paid sickness days, severance payment and long service payment. • With reference to the analysis of the major findings of the Report, LD failed to identify the root of the problem of fragmentation of work and underemployment and formulate measures to address the problem. • The deputation strongly requested the Government to remove the provisions relating to continuous contract under EO and to provide SDWH employees with employment benefits on a pro rata basis.
14.	Manpower Concern Group	<ul style="list-style-type: none"> • A number of part-time employees in the telebet department of the Hong Kong Jockey Club were not accorded protection and benefits under EO, although they had been working in the same position for many years. The Administration should help look into the phenomenon.
15.	Hong Kong Domestic Workers General Union	<ul style="list-style-type: none"> • Most of the local domestic helpers were used to work for several employers and could hardly meet the "4-18" requirement. As a result of performing fragmented jobs, they were not entitled to the various employment benefits under EO and the protection of mandatory provident fund. • The deputation requested that the "4-18" requirement for a continuous contract be abolished and that the scope of protection under EO be expanded to cover SDWH employees.

No.	Name of deputation/individual	Major views and concerns
16.	Labour Party [LC Paper No. CB(2)850/12-13(05)]	<ul style="list-style-type: none"> ● Some unscrupulous employers evaded their statutory responsibilities to provide SDWH employees with employment benefits by adjusting the work shifts or ceasing the employment contracts periodically. ● The deputation requested the Administration to repeal the provision of "4-18" requirement for a continuous contract under EO so as to enable the SDWH employees to be accorded protection and benefits on par with those of full-time employees.
17.	The Federation of Hong Kong and Kowloon Labour Unions [LC Paper No. CB(2)827/12-13(01)]	<p>The deputation strongly requests the Administration to -</p> <ul style="list-style-type: none"> ● draw up the legislative timetable for amending the definition of continuous contract under EO, with a view to better protecting the rights and benefits of SDWH employees; and ● make provisions under EO for the purpose of according SDWH employees with protection and benefits, including annual leave, paid sickness days, and severance payment, in accordance with their length of employment.
18.	The Democratic Party	<ul style="list-style-type: none"> ● It was the responsibility of the Government to enhance the awareness of both employers and employees on the employment benefits under EO and other labour legislation. ● To address the problem of employers evading their responsibility from providing employment benefits to SDWH employees, the Government should adopt the concept of accumulated working hours of individual employees so as to safeguard entitlements of employment benefits of SDWH employees.
19.	Civic Party [LC Paper No. CB(2)868/12-13(01)]	<ul style="list-style-type: none"> ● The Civic Party urged the Government to study and introduce legislation to eliminate discrimination at workplaces (in particular against female employment). ● The Civic Party disagreed that part-time and casual employees were not entitled to the rights and benefits under EO simply because they did not meet the requirement for total working in a week. ● The Government should conduct review and remove the "4-18" requirement without delay.

Council Business Division 2
Legislative Council Secretariat
10 June 2013

Panel on Manpower

Meeting on Tuesday, 19 March 2013, at 4:00 pm

Summary of views and concerns expressed by deputations/individuals on the protection for participation in trade unions

No.	Name of deputation/individual	Major views and concerns
1.	Hong Kong Human Rights Monitor [LC Paper No. CB(2)850/12-13(06)]	<ul style="list-style-type: none"> • The deputation criticized the Administration for its inadequate enforcement efforts against cases involving the violation of international labour conventions. • The existing labour legislation was unclear as to which party should bear the burden of proof in anti-union discrimination cases. It was difficult for employees to prove employers' acts of anti-union discrimination, as the employment-related documentation was generally in the possession of employers.
2.	The Hong Kong Federation of Trade Unions Rights and Benefits Committee [LC Paper No. CB(2)850/12-13(07)]	<ul style="list-style-type: none"> • Employers should recognize the representativeness of trade union in negotiation with employers on matters relating to employees' rights and benefits. • It was difficult for employees to prove beyond doubt that they were discriminated against on ground of participation in trade union activities.
3.	The Civic Party [LC Paper No. CB(2)850/12-13(08)]	<ul style="list-style-type: none"> • The deputation urged the Administration to legislate for collective bargaining. • The deputation called for the review of the Employment Ordinance (Cap. 57) ("EO") to better protect the right of employees to join trade unions.
4.	Manpower Concern Group	<ul style="list-style-type: none"> • The deputation called for assistance in liaising with the management of the Hong Kong Jockey Club on the improvement in the working environment of its telebet centres.

No.	Name of deputation/individual	Major views and concerns
5.	Labour Party	<ul style="list-style-type: none"> ● Concerns about the lack of civil remedy against trade union discrimination of a non-dismissal nature. ● The deputation called for the early introduction of compulsory order for reinstatement or re-engagement of an employee who had been dismissed unreasonably and unlawfully. ● The Administration should increase the level of penalty and compensation for unfair and unlawful dismissal to enhance the deterrent effect. ● The deputation expressed concern about the number of complaints against anti-union discrimination received by the Administration in the past five years, and whether the Administration had instituted prosecutions against such cases; if not, the reasons for that. ● The Administration should provide financial support to some organizations to promote the rights of trade unions.
6.	Hong Kong School of Motoring Driving Instructors Union [LC Paper No. CB(2)800/12-13(01)]	<ul style="list-style-type: none"> ● The deputation was of the view that under the existing labour legislation, it was difficult to prove acts of interference by employers in the establishment of trade unions. ● The deputation urged the Administration to review EO to enhance protection against acts of anti-union discrimination.
7.	Hong Kong Confederation of Trade Unions [LC Paper No. CB(2)850/12-13(09)]	<ul style="list-style-type: none"> ● It was difficult to prove that an employer discriminated against an employee for participating in trade union activities and there was no civil remedy in respect of trade union discrimination of a non-dismissal nature. ● The deputation appealed to the Administration to step up its enforcement effort against acts of interference by employers in the formation of trade unions. ● The deputation disagreed that joint consultative committees provided employers and employees with an effective communication mechanism. The deputation strongly called for legislating for collective bargaining.

No.	Name of deputation/individual	Major views and concerns
8.	The Federation of Hong Kong and Kowloon Labour Unions [LC Paper No. CB(2)827/12-13(02)]	<ul style="list-style-type: none"> • While EO had come into operation for decades, it failed to safeguard employees from anti-union discrimination. Discrimination against trade unions was getting serious in Hong Kong, but successful prosecutions were very few. As it was difficult for employees to prove employers' anti-union discriminatory acts, particularly those of non-dismissal nature, the deputation called for a review of EO. • Consideration should be given to aligning the penalty for anti-union discrimination with that for wage defaults. • The deputation also called on the Administration to legislate for collective bargaining to protect employees against union discrimination.
9.	The Democratic Party	<ul style="list-style-type: none"> • Public awareness of the role and function of trade unions was low. • The Labour Department should provide sufficient support and assistance to the victims of trade union discrimination.
10.	Hong Kong Jockey Club Employees Solidarity Union [LC Paper No. CB(2)850/12-13(10)]	<ul style="list-style-type: none"> • The deputation urged the Administration to legislate for collective bargaining to give due recognition of trade union as a communication channel between employers and employees. • The deputation strongly requested the Administration to conduct investigation into the allegation of unreasonable dismissal of two former driving instructors of the Hong Kong School of Motoring for involvement in trade union activities.
11.	Education Employee General Union [LC Paper No. CB(2)850/12-13(11)]	<ul style="list-style-type: none"> • While section 21(B) of EO protected employees against unreasonable dismissal for participation in trade union activities, it did not cover other forms of anti-union discrimination and the penalty lacked the deterrent effect. Under such circumstances, investigation and successful prosecution was difficult. • The deputation called on the Administration to remove the loopholes and deficiencies in EO to protect employees from anti-union discriminatory acts.

No.	Name of deputation/individual	Major views and concerns
12.	Government Educational Staff Union [LC Paper No. CB(2)850/12-13(12)]	<ul style="list-style-type: none"> ● Acts of anti-union discrimination should be clearly defined in EO. ● Reasonable penalty for trade union discrimination should be imposed. ● As it was difficult to prove beyond doubt acts of anti-union discrimination, civil remedies should be available for trade union discrimination of non-dismissal nature. ● As EO was not applicable to the civil service, there was little protection for civil servants participating in trade union activities. ● The proposal to empower the Labour Tribunal to make a compulsory order for reinstatement or re-engagement of an employee who had been dismissed unreasonably and unlawfully could not help prevent anti-union discrimination acts of employers.
13.	Union of Hong Kong Dockers [LC Paper No. CB(2)850/12-13(13)]	<ul style="list-style-type: none"> ● In the absence of compulsory collective bargaining, employers could simply refuse to negotiate with trade unions. ● As it was difficult to prove that an employee was discriminated against on the ground of participation in trade union activities, EO should be amended to protect the right of employees, particularly outsourced workers, to participate in trade union activities. ● The Administration should step up enforcement and promotional efforts in respect of acts of anti-union discrimination. ● The deputation urged the Administration to conduct public consultation on the legislation for collective bargaining within the current legislative session.

No.	Name of deputation/individual	Major views and concerns
14.	The K.M.B Staff Union [LC Paper No. CB(2)850/12-13(14)]	<ul style="list-style-type: none"> ● Employers should be required under the law to recognize trade unions. It was suggested that a trade union should be formally recognized by the employer if its membership represented 25% staff members of the establishment. ● The deputation urged the Administration to legislate for collective bargaining. ● Trade union representatives should be granted paid leave to engage trade union activities.

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