

For information on
28 May 2013

Legislative Council Panel on Manpower

Enforcement of labour legislation by the Labour Administration Branch of the Labour Department

Introduction

This paper briefs the Panel on measures and enforcement action undertaken by the Labour Department (LD) to protect the statutory rights and benefits of employees under various relevant labour legislation currently administered by the Labour Administration Branch of LD.

Enforcement of the Employment Ordinance

2. The Employment Ordinance (EO) provides for various employment-related benefits and entitlements to employees. LD has been adopting a multi-pronged strategy to protect employees' statutory entitlements.

3. The Labour Relations Division (LRD) of LD provides voluntary conciliation service to assist employers and employees in non-government sectors to resolve labour disputes and claims arising from EO, the Minimum Wage Ordinance and contracts of employment. If, in the course of conciliation, the employer is suspected to have contravened EO and the employee is willing to act as a prosecution witness, LRD will refer the case to the enforcement divisions of LD for investigation.

4. The enforcement divisions of LD have been taking out stringent enforcement action to enforce the statutory rights and benefits of employees, including receiving wages on time and enjoying their statutory entitlement of rest days, statutory holidays and annual leaves as stipulated in EO. To clamp down on breaches of EO, particularly offences relating to employers evading their wage liabilities, LD has hired former police officers as contract investigation officers to reinforce its capacity in intelligence gathering and evidence collection. Labour inspectors of LD conduct inspections to workplaces of various industries to uncover suspected offences under EO. To encourage prompt reporting of breaches of EO so that speedy action can be taken, LD has also widely publicised its complaint hotline (2815 2200). To

strengthen the effectiveness of the combat against wage offences, if a company has committed wage offence with the consent, connivance or neglect of its director or responsible person, the culpable director or responsible person may also be prosecuted.

5. In 2012, LD took out prosecutions on wage offences and secured 525 convictions. Of these, 115 summonses were against company directors and responsible persons. In the first quarter of 2013, the convictions on wage offences and against company directors and responsible persons were 100 and 28 respectively. The highest fine imposed on a single wage offence case in 2012 was \$320,000. Moreover, one employer convicted of wage offences was sentenced to imprisonment, while two other employers were sentenced to community service orders. In the first quarter of 2013, one more employer convicted of wage offences was sentenced to imprisonment and two company directors were sentenced to community service orders.

6. Successful convictions in these cases have delivered a strong message to employers on the severe consequences of wage defaults. Moreover, employers cannot evade their wage liabilities under the veil of limited companies. As to prosecutions taken out on holiday offences under EO in 2012, 905 convictions were recorded while the corresponding figure in the first quarter of 2013 was 46. With the stringent enforcement action and proactive measures of LD to clamp down on breaches of EO, the state of law compliance in the labour market has kept on improving.

Protecting rights and benefits of non-skilled workers of government service contractors

7. We are deeply concerned about the entitlements of non-skilled workers employed by government service contractors. Apart from protection under EO, the Government has mandatorily required service contractors to sign the Standard Employment Contract (SEC) with their non-skilled workers, which sets out clearly the monthly wages, working hours, mode of wage payment, etc. LD proactively conducts inspections to workplaces to interview the non-skilled workers and verify their relevant wage and employment records. If suspected breaches of EO are detected with sufficient evidence, we will prosecute the offenders. We will also inform the relevant procuring departments details of the convictions for departments' imposition of administrative sanction, including termination of relevant service contracts and strengthening of monitoring measures as appropriate.

8. In 2012, labour inspectors conducted 698 inspections to workplaces of 97 government service contractors and interviewed 2 401 workers. In the first quarter of 2013, 186 inspections were conducted with 33 contractors checked and 516 workers interviewed. With vigorous enforcement action of LD and stringent monitoring measures of the procuring departments, breaches of EO by government service contractors have dropped significantly.

Enforcement against defaulting awards made by the Labour Tribunal or Minor Employment Claims Adjudication Board

9. LD deals with defaults of awards made by the Labour Tribunal (LT) or Minor Employment Claims Adjudication Board (MECAB) in a serious manner and has all along spared no efforts in taking action against those employers and company responsible persons who wilfully and without reasonable excuse defaulted such awards. Where suspected LT or MECAB default cases are detected, LD will follow up and investigate the cases. We will take out prosecution where sufficient evidence is obtained. Among the default cases handled by LD from October 2010, when the relevant provisions of EO came into effect to the first quarter of 2013, after discounting cases where the employers were unable to pay owing to bankruptcy or company winding up or the claimants refused to be prosecution witnesses, we took out prosecution in 99 cases and convictions were secured in 87 cases involving 141 summonses. The highest fine imposed on one convicted case was \$300,000. Two employers and three company directors were sentenced to community service orders. The imposition of heavy fines and community service orders reflects the seriousness that the courts attach to such offences.

Enforcement of the Minimum Wage Ordinance

10. To forestall excessively low wages, the Statutory Minimum Wage (SMW) was implemented on 1 May 2011. So far, the state of law compliance has been satisfactory. From May 2011 to the first quarter of 2013, labour inspectors conducted 72 174 workplace inspections to enforce the Minimum Wage Ordinance (MWO). Including reported cases, 148 cases involving suspected violations of MWO were detected. Follow-up action on all such cases confirmed that employees in most cases had received SMW or recovered the shortfall of wages. As at end-December 2012, 34 convicted summonses in eight cases against employers for under-payment of SMW were recorded. In the first quarter of 2013, no employer was convicted for under-payment of SMW.

11. The new SMW rate of \$30 per hour has taken effect from 1 May 2013. Extensive publicity activities have been launched to familiarise the community with the new rate and help employers and employees understand their respective obligations and entitlements. LD is also undertaking targeted enforcement action to ensure employers' compliance with the new requirements. We will continue to launch targeted enforcement campaigns, and promptly and thoroughly investigate all complaints with a view to safeguarding the SMW entitlements of employees.

Compulsory Insurance under the Employees' Compensation Ordinance

12. Under the Employees' Compensation Ordinance (ECO), employers are required to take out insurance policies to cover their liabilities both under ECO and at common law for injuries or deaths at work in respect of their employees. Labour inspectors conduct inspections to establishments of various trades to check employers' compliance with the compulsory insurance requirement. Employees may report suspected cases of non-compliance to LD's complaint hotline (2815 2200). Upon receipt of complaints, we will conduct prompt investigation and take out prosecution if there is sufficient evidence. In 2012, we conducted 69 900 inspections and recorded 765 convicted summonses for employers' failure to take out insurance policies under ECO. In the first quarter of 2013, 24 668 inspections were conducted and 233 convicted summonses were recorded.

Proactive efforts in preventing abuse of the Protection of Wages on Insolvency Fund

13. The Protection of Wages on Insolvency Fund (PWIF) is set up to provide timely relief in the form of ex-gratia payment to employees in the event of their employers' insolvency. LD adopts proactive efforts in preventing abuse of PWIF with a view to ensuring that ex-gratia payment is only paid to employees where their employers are genuinely insolvent.

14. The Government has set up an inter-departmental Task Force comprising representatives from the Commercial Crime Bureau of the Hong Kong Police Force (the Police), Official Receiver's Office (ORO), Legal Aid Department and LD to strengthen co-operation among departments and to follow up proactively any act of employers, company directors or responsible persons who may have committed crimes such as fraud, theft and conspiracy to abuse PWIF by illegal transfer of company assets and/ or deception of creditors before closure of the company. When investigating wage offences or verifying

applications for PWIF, LD will be able to detect whether suspected crimes are involved in the running or management of the companies. Where necessary, cases with suspected crimes are referred to the Police or ORO for action.

15. From 2011 to the first quarter of 2013, the Police secured convictions against offenders including company responsible persons, directors, construction contractors and relevant employees from cases involving PWIF abuses referred by LD. The sentences upon convictions included the following: one person was sentenced to imprisonment, 11 persons were sentenced to community service orders and the remaining one was fined. Separately, for PWIF abuse cases referred by LD, ORO would recommend to the court to disqualify the concerned company responsible persons from being directors and to take part in the promotion, formation or management of a company. From 2011 to the first quarter of 2013, 28 persons involved in such cases were disqualified for periods ranging from one and a half years to five years. In parallel, LD has been taking stringent enforcement action to combat employers evading their wage liabilities at source and to prevent and alleviate cases of non-payment of wages from happening and proliferating into applications for PWIF. These enforcement action and measures serve as severe deterrent to minimise the chances of abuse by some unscrupulous employers shifting their liabilities to PWIF.

Way Forward

16. LD attaches great importance to protecting the statutory rights and benefits of employees and adopts all-out enforcement efforts. With our multi-pronged strategy, underpinned by measures of stringent enforcement action and proactive measures to clamp down on employers evading their liabilities under the labour legislation, together with extensive educational and publicity activities, the state of law compliance in the labour market has kept improving. We will continue to implement measures to ensure that employees' statutory rights and benefits are well protected, and take action against those employers and company responsible persons who wilfully defy the law.

Labour and Welfare Bureau
Labour Department
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