

立法會
Legislative Council

LC Paper No. CB(2)2134/13-14
(These minutes have been seen
by the Administration)

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Bills Committee on Employment (Amendment) Bill 2014

Minutes of meeting
held on Tuesday, 8 July 2014, at 10:45 am
in Conference Room 3 of the Legislative Council Complex

- Members present** : Hon Kenneth LEUNG (Chairman)
Hon LEE Cheuk-yan
Hon Emily LAU Wai-hing, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon WONG Kwok-hing, BBS, MH
Hon Cyd HO Sau-lan, JP
Hon Alan LEONG Kah-kit, SC
Hon CHAN Chi-chuen
Dr Hon Kenneth CHAN Ka-lok
Hon CHAN Yuen-han, SBS, JP
Hon KWOK Wai-keung
Dr Hon Helena WONG Pik-wan
Dr Hon Elizabeth QUAT, JP
Hon Martin LIAO Cheung-kong, SBS, JP
Hon POON Siu-ping, BBS, MH
Hon TANG Ka-piu, JP
Dr Hon CHIANG Lai-wan, JP
- Members absent** : Hon Jeffrey LAM Kin-fung, GBS, JP
Hon WONG Kwok-kin, SBS
Hon Paul TSE Wai-chun, JP
Hon SIN Chung-kai, SBS, JP
Hon CHUNG Kwok-pan

**Public Officers : Item I
attending**

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)
Labour Department

Mr Michael LAM Siu-chung
Senior Assistant Law Draftsman
Department of Justice

Mr Alan CHONG Ka-ning
Senior Government Counsel
Department of Justice

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

**Staff in : Ms Clara TAM
attendance Assistant Legal Adviser 9**

Mr Raymond LAM
Senior Council Secretary (2) 7

Ms Kiwi NG
Legislative Assistant (2) 1

I. Meeting with the Administration

The Bills Committee deliberated (index of proceedings attached at **Annex**).

2. Members requested the Administration -

- (a) to reconsider spelling out the use of "嬰兒" as a Chinese equivalent of "child" in the new Part IIIA in the definition of "child" in the Employment Ordinance (Cap. 57) ("EO");
- (b) to reconsider incorporating the Chinese equivalent of "inclusive of" in the Chinese text of the proposed new section 15D(3)(b) of EO by following the pattern of a similar provision in EO regarding maternity leave;
- (c) to reconsider amending the Chinese text of the proposed new section 15F(1) of EO by following the pattern of certain similar provisions in EO;
- (d) to confirm whether the terms "average daily wages" and "daily average of the wages" had the same meaning under EO and whether the term "average daily wages" would be used instead of "daily average of the wages" in future amendments to EO; and
- (e) to reconsider amending the description of the long title of the Employment (Amendment) Bill 2014 ("the Bill") to a more general one.

3. Members noted the draft Committee Stage amendments ("CSAs") to the Bill proposed respectively by Dr Helena WONG and Mr LEE Cheuk-yan. Dr Helena WONG proposed that her draft CSAs be adopted as the proposed draft CSAs of the Bills Committee. As there were divided views among members, a vote was taken on the proposal. Dr CHIANG Lai-wan requested a division.

4. The following members voted in favour of the proposal -

Mr LEE Cheuk-yan, Ms Emily LAU, Ms Cyd HO, Mr CHAN Chi-chuen, Dr Kenneth CHAN and Dr Helena WONG.

5. The following members voted against the proposal -

Mr Tommy CHEUNG, Mr Martin LIAO and Dr CHIANG Lai-wan.

6. Mr POON Siu-ping abstained from voting and the Chairman did not vote.

7. The Chairman declared that six members voted for and three members voted against the proposal, and one member abstained from voting. The Chairman declared that the proposal was carried. He would move the proposed CSAs on behalf of the Bills Committee.

8. The Administration advised that it would examine the proposed CSAs and other views expressed by individual members and the Bills Committee and revert to members on the proposed way forward.

II. Any other business

9. The Chairman concluded that, pending the Administration's provision of its response to outstanding issues, the Bills Committee had completed scrutiny of the Bill. He said that a further meeting with the Administration might be scheduled, if necessary, after the Administration's provision of its response to outstanding issues.

10. There being no other business, the meeting ended at 12:55 pm.

**Proceedings of meeting of the
Bills Committee on Employment (Amendment) Bill 2014
held on Tuesday, 8 July 2014, at 10:45 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action Required
000000 - 001105	Chairman	Opening remarks	
001106 - 001428	Admin	Briefing by the Administration on its reply dated 4 July 2014 to the letter from the Assistant Legal Adviser on the drafting aspects of the Employment (Amendment) Bill 2014 ("the Bill") (LC Paper No. CB(2)1986/13-14(01)).	
001429 - 003550	Chairman Admin Dr Helena WONG ALA9 Mr TANG Ka-piu	<p>Concerns of the Chairman and the Administration's response regarding whether there was a need to add a reference to relevant provisions of the Employment Ordinance (Cap. 57) ("EO") in the definition of paternity leave ("PL") pay.</p> <p>Concerns of the Chairman and Dr Helena WONG, ALA9's advice and the Administration's response regarding whether there was a need to spell out the use of "嬰兒" as a Chinese equivalent of "child" in the new Part IIIA in the definition of "child" in EO.</p> <p>Concerns of the Chairman, advice of ALA9 and the Administration's response regarding whether there was a need to incorporate the Chinese equivalent of "inclusive of" in the Chinese text of the proposed new section 15D(3)(b) of EO by following the pattern of a similar provision in EO regarding maternity leave.</p> <p>Dr Helena WONG's concerns and the Administration's response regarding the time period within which an eligible employee could take PL.</p> <p>The Chairman's concerns and ALA9's advice regarding whether there was a need to amend the Chinese text of the proposed new section 15F(1) of EO by following the pattern of certain similar provisions in EO.</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>Mr TANG Ka-piu's concerns and the Administration's response regarding pay for untaken PL if the employee was dismissed before taking PL.</p> <p>The Administration was requested to reconsider -</p> <ul style="list-style-type: none"> (a) spelling out the use of "嬰兒" as a Chinese equivalent of "child" in the new Part IIIA in the definition of "child" in EO; (b) incorporating the Chinese equivalent of "inclusive of" in the Chinese text of the proposed new section 15D(3)(b) of EO by following the pattern of a similar provision in EO regarding maternity leave; and (c) amending the Chinese text of the proposed new section 15F(1) of EO by following the pattern of certain similar provisions in EO. 	<p>Admin</p>
003551 - 005040	<p>Chairman Admin Mr Alan LEONG Mr LEE Cheuk-yan</p>	<p>Continuation of clause-by-clause examination of the Bill.</p> <p>Examination of clause 6 (proposed new sections 15K and 15L of EO).</p> <p>Mr Alan LEONG's concerns and the Administration's response regarding the operation of the proposed new section 15K of EO.</p> <p>Concerns of Mr LEE Cheuk-yan and the Administration's response regarding whether there was any difference between the penalty levels for offences relating to PL and maternity leave.</p>	
005041 - 005207	<p>Chairman Admin</p>	<p>Examination of clause 7</p>	
005208 - 005314	<p>Chairman Admin</p>	<p>Examination of clause 8</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
005315 - 005832	Chairman Admin Ms Cyd HO	Examination of clause 9 Ms Cyd HO's concerns and the Administration's response regarding the numbering of sections in EO.	
005833 - 010122	Chairman Admin	Examination of clauses 10 to 15	
010123 - 010301	Chairman Admin ALA9	Examination of clause 16 ALA9's advice and the Administration's response regarding the scope of the revised section 49A of EO.	
010302 - 010508	Chairman Admin	Examination of clauses 17 and 18	
010509 - 010852	Chairman Admin Ms Cyd HO	Administration's response to issues raised at the meeting on 9 June 2014 (LC Paper No. CB(2)1986/13-14(02)).	
010853 - 013026	Chairman Admin Mr LEE Cheuk-yan Dr Helena WONG ALA9 Clerk Dr Kenneth CHAN Mr CHAN Chi-chuen Mr Martin LIAO	<p>Ms Cyd HO's concerns and the Administration's response regarding whether the terms "average daily wages" and "daily average of the wages" had the same meaning under EO.</p> <p>Concerns of the Chairman regarding whether the term "average daily wages" would be used instead of "daily average of the wages" in future legislative amendments to EO.</p> <p>Views of Mr LEE Cheuk-yan, Dr Helena WONG, Dr Kenneth CHAN, Mr CHAN Chi-chuen and Mr Martin LIAO, ALA9's advice and the Administration's response regarding whether the long title of the Bill as presently drafted would restrict Members' right to move amendments to the Bill.</p> <p>Dr Helena WONG's expression of her grave concern about the effect of the current drafting of the long title of the Bill on Members' right to move amendments to the Bill.</p> <p>The Administration was requested to reconsider amending the description of the long title of the Bill to a more general one.</p>	Admin

Time marker	Speaker(s)	Subject(s)	Action Required
013027 - 013502	Chairman Mr TANG Ka-piu Admin Miss CHAN Yuen-han	<p>Letter dated 7 July 2014 from Mr TANG Ka-pui (LC Paper No. CB(2)2002/13-14(01)).</p> <p>Concerns of Mr TANG Ka-piu and Miss CHAN Yuen-han and the Administration's response regarding -</p> <p>(a) whether the protection from dismissal afforded under EO to female employees taking maternity leave should also be afforded to male employees taking PL; and</p> <p>(b) whether an employee should be granted pay for untaken PL if he was dismissed before taking PL.</p>	
013503 - 013718	Chairman Ms Cyd HO Admin	<p>Ms Cyd HO's concerns and the Administration's response regarding whether the terms "average daily wages" and "daily average of the wages" had the same meaning under EO.</p> <p>The Administration was requested to confirm whether the terms "average daily wages" and "daily average of the wages" had the same meaning under EO and whether the term "average daily wages" would be used instead of "daily average of the wages" in future amendments to EO.</p>	Admin
013719 - 014130	Chairman Dr Helena WONG Admin	<p>Briefing by Dr Helena WONG on her draft Committee Stage amendments ("CSAs") to the Bill (LC Paper No. CB(2)2002/13-14(02)).</p> <p>The Administration's advice that -</p> <p>(i) the proposed three-day PL with pay set at four-fifths of the employee's average daily wages, which was the consensus of the Labour Advisory Board ("LAB"), represented the Administration's position and was an appropriate starting point;</p> <p>(ii) it would review the implementation of the law on PL one year after implementation; and</p> <p>(iii) it would examine the proposed draft CSAs and other views expressed by members and</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
		the Bills Committee and revert to members on the proposed way forward.	
014131 - 014438	Chairman Mr WONG Kwok-hing	Mr WONG Kwok-hing's remark that Members belonging to the Hong Kong Federation of Trade Unions - (a) were concerned about the time needed for the Administration's consultation with LAB on the amendments proposed by members to the Bill; and (b) would not participate in the voting on the adoption of Dr Helena WONG's draft CSAs as the proposed draft CSAs of the Bills Committee.	
014439 - 014612	Chairman Mr Tommy CHEUNG	Mr Tommy CHEUNG's remark that - (a) the Liberal Party respected LAB's consensus regarding PL and had no objection to the Bill; and (b) he was opposed to the Bill, given that the catering sector was opposed to the Bill.	
014613 - 014908	Chairman Dr CHIANG Lai-wan	Dr CHIANG Lai-wan's remark that the Democratic Alliance for the Betterment and Progress of Hong Kong respected LAB's consensus regarding PL and supported the early passage of the Bill as currently drafted as well as review of the law on PL one year after implementation.	
014909 - 015210	Chairman Mr LEE Cheuk-yan	Mr LEE Cheuk-yan's remark that the Hong Kong Confederation of Trade Unions supported increasing the duration of PL to five days and preferably seven days.	
015211 - 015321	Chairman Mr POON Siu-ping	Mr POON Siu-ping's remark that he would abstain from voting on the adoption of Dr Helena WONG's proposed draft CSAs as the proposed draft CSAs of the Bills Committee.	
015322 - 015415	Chairman Mr Martin LIAO	Mr Martin LIAO's remark that he was opposed to Dr Helena WONG's proposed draft CSAs, which deviated from the consensus of LAB on PL.	

Time marker	Speaker(s)	Subject(s)	Action Required
015416 - 015641	Chairman Ms Emily LAU	Ms Emily LAU's expression of support for the draft CSAs proposed respectively by Dr Helena WONG and Mr LEE Cheuk-yan.	
015642 - 015715	Chairman	Extension of meeting by 15 minutes.	
015716 - 015730	Chairman Dr Helena WONG	Proposal of Dr Helena WONG for adoption of her draft CSAs as the proposed draft CSAs of the Bills Committee.	
015731 - 015934	Chairman Mr Tommy CHEUNG	Mr Tommy CHEUNG's expression of his opposition to the adoption of Dr Helena WONG's proposed draft CSAs as the proposed draft CSAs of the Bills Committee.	
015935 - 020219	Chairman Dr CHIANG Lai-wan	Dr CHIANG Lai-wan's expression of her view that the Bill should be passed as soon as possible in its current form and the law on PL should be reviewed one year after implementation.	
020220 - 020334	Chairman	Voting on the proposal of Dr Helena WONG.	
020335 - 020614	Chairman Mr LEE Cheuk-yan Mr Tommy CHEUNG	Views of the Chairman, Mr LEE Cheuk-yan and Mr Tommy CHEUNG on whether there was a need to hold a further meeting to continue discussion with the Administration.	
020615 - 021011	Chairman Mr LEE Cheuk-yan Admin	Briefing by Mr LEE Cheuk-yan on his proposed draft CSAs to the Bill. Administration's response regarding Mr LEE Cheuk-yan's proposed draft CSAs to the Bill.	
021012 - 021118	Chairman	Way forward	