

LEGISLATIVE COUNCIL BRIEF

SPECIAL HOLIDAY (3 SEPTEMBER 2015) BILL

INTRODUCTION

A At the meeting of the Executive Council on 12 May 2015, the Council ADVISED and the Chief Executive ORDERED that the Special Holiday (3 September 2015) Bill (the Bill) at Annex A, which seeks to designate 3 September 2015 on a one-off basis as both a General Holiday (GH) under the General Holidays Ordinance (GHO) (Cap. 149) and a Statutory Holiday (SH) under the Employment Ordinance (EO) (Cap. 57), should be introduced into the Legislative Council (LegCo).

JUSTIFICATIONS

2. Under EO, an employee, irrespective of his/her length of service, is entitled to 12 days of SHs a year. An employee is further entitled to holiday pay if he/she has been employed under a continuous contract¹ for three months or more before an SH. For an employer who cannot arrange his/her employee to take leave on an SH day, the employer may grant the employee an alternative holiday within a specified period if he/she notifies the employee not less than 48 hours in advance. Failure to grant SH to an employee is a prosecutable offence under EO, with a maximum penalty of \$50,000.

3. Under GHO, GH is a day which shall be kept as a holiday by all banks, educational establishments, public offices and government departments. GHO specifies, in addition to Sundays, 17 days of GHs in each year. Currently, all 12 days of SHs provided by EO are also GHs. Unlike SHs, GHs are not holidays for employees (but are holidays for the establishments referred to above). It is up to the employers to decide whether their employees should be required to work or otherwise on these five days of GHs that are not SHs²; and whether the employees would be paid or not if they

¹ Under EO, an employee who has been employed continuously by the same employer for 4 weeks or more, with at least 18 hours worked in each week, is regarded as being employed under a continuous contract.

² The five days of GHs that are not SHs are, namely, Good Friday, the day following Good Friday, Easter Monday, the Birthday of the Buddha, and the first weekday after Christmas Day.

are not required to work on any of these five GHs.

4. The Standing Committee of the National People's Congress designated 3 September as the Victory Day of the Chinese people's war of resistance against Japanese aggression. The Hong Kong Special Administrative Region (HKSAR) Government announced in 2014 that official ceremony would be held in Hong Kong every year on 3 September to commemorate the victory of the Chinese people's war of resistance against Japanese aggression. An official event was held accordingly on the day in 2014.

5. The year of 2015 marks the 70th anniversary of the victory of the Chinese people's war of resistance against Japanese aggression. The Central People's Government will organise a range of large-scale commemorative activities throughout the country and has also designated 3 September 2015 as a National Holiday. The HKSAR Government will also host various commemorative activities. To facilitate community participation in these activities in remembrance of history, we propose to designate 3 September 2015 on a one-off basis as both a GH under GHO and an SH under EO by way of a Bill as per Annex A.

THE BILL

6. The Bill seeks to make 3 September 2015 as both a GH and an SH in 2015.

LEGISLATIVE TIMETABLE

7. The legislative timetable is as follows –

Publication in the Gazette	22 May 2015
First Reading and commencement of Second Reading debate	27 May 2015
Resumption of Second Reading debate, committee stage and Third Reading	To be notified, but not later than 8 July 2015, the last sitting of the LegCo in the current 2014/15 legislative session

IMPLICATIONS OF THE PROPOSAL

B 8. The economic, financial, civil service and family implications of the proposal are set out at Annex B. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It does not affect the current binding effect of EO and GHO, and has no productivity, environmental, sustainability or gender implications.

PUBLIC CONSULTATION

9. The relevant papers are issued to the Labour Advisory Board and the LegCo Panel on Manpower on 13 May 2015, for discussion at their respective meetings to be held on 15 and 19 May 2015. The relevant Bureaux/ Departments will also inform relevant organisations, so as to facilitate them to make preparations for the designation of the additional holiday on 3 September 2015.

PUBLICITY

10. A press release will be issued on 13 May 2015. A spokesperson from the Labour Department will be available for answering media enquiries.

ENQUIRIES

11. Enquiries on this brief can be addressed to Ms Melody Luk, Assistant Commissioner for Labour (Labour Relations), on 2852 4099; Mr Simon Li, Chief Labour Officer (Labour Relations), on 2852 3457 or Ms Cecilia Chan, Senior Labour Officer (Labour Relations)(Policy Support), on 2852 3696.

Labour and Welfare Bureau
13 May 2015

A BILL

To

Make 3 September 2015 an additional general holiday and an additional statutory holiday in 2015 for the purposes of the General Holidays Ordinance and the Employment Ordinance respectively.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Special Holiday (3 September 2015) Ordinance.

2. 3 September 2015 to be general holiday and statutory holiday

The 3rd day of September 2015 is to be—

- (a) a general holiday as defined in, and for the purposes of, the General Holidays Ordinance (Cap. 149); and
- (b) a statutory holiday as defined in, and for the purposes of, the Employment Ordinance (Cap. 57), as if it were so specified in section 39(1) of that Ordinance.

Explanatory Memorandum

3 September 2015 is the 70th anniversary day of the victory of the Chinese people's war of resistance against Japanese aggression.

2. The sole purpose of this Bill is to make 3 September 2015 (*proposed holiday*)—
 - (a) an additional general holiday in 2015 for the purposes of the General Holidays Ordinance (Cap. 149); and
 - (b) an additional statutory holiday in 2015 for the purposes of the Employment Ordinance (Cap. 57).
3. In view of the proximity of the proposed holiday, there is no deferred commencement provision in the Bill.

Implications of the Proposal

Economic Implications

The proposal would affect the operation of one business day for most private-sector employers and establishments. Depending on the operating needs of the affected establishments, additional labour and related administrative costs may be incurred in case they have to pay extra to retain and rearrange the duties of existing staff or to engage temporary workers to continue their business operations on 3 September 2015. As for those employees with no entitlement to holiday pay, their income may also be affected. However, granting that business establishments would have some time to plan ahead for adapting to the extra day of GH cum SH, the potential implications arising from this one-off proposal for the economy as a whole should be largely manageable.

Financial and Civil Service Implications

2. Given that the proposal will only provide for an additional holiday on a one-off basis, no long-term financial implication for the Government is anticipated. Implications arising from the loss of one working day for the Government should be manageable and individual bureaux/departments should be able to cope with the special one-off holiday within their existing resources.

Family Implications

3. Most employees would benefit from the proposal and could participate in various commemorative activities with their family. As the proposal is also applicable to foreign domestic helpers (FDHs) currently working in Hong Kong, the household support for some FDH employers (in particular women) could be affected by the additional holiday.