

立法會
Legislative Council

LC Paper No. CB(2)1940/15-16
(These minutes have been seen
by the Administration)

Ref : CB2/BC/3/15

Bills Committee on Employment (Amendment) Bill 2016

Minutes of meeting
held on Monday, 25 April 2016, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex

- Members present** : Hon WONG Ting-kwong, SBS, JP (Chairman)
Hon LEE Cheuk-yan
Hon LEUNG Yiu-chung
Hon Andrew LEUNG Kwan-yuen, GBS, JP
Hon Cyd HO Sau-lan, JP
Hon IP Kwok-him, GBS, JP
Hon Frankie YICK Chi-ming, JP
Hon YIU Si-wing, BBS
Hon Gary FAN Kwok-wai
Hon CHAN Yuen-han, SBS, JP
Hon KWOK Wai-keung
Hon SIN Chung-kai, SBS, JP
Hon IP Kin-yuen
Hon POON Siu-ping, BBS, MH
Dr Hon CHIANG Lai-wan, JP
Hon CHUNG Kwok-pan
Hon Alvin YEUNG Ngok-kiu
- Members absent** : Hon Alan LEONG Kah-kit, SC
Hon WONG Yuk-man
Hon TANG Ka-piu, JP

**Public Officers : Item I
attending**

Ms Melody LUK
Assistant Commissioner for Labour
(Labour Relations)

Mr Simon LI
Chief Labour Officer (Labour Relations)
Labour Department

Ms Cecilia CHAN
Senior Labour Officer (Labour Relations)
Labour Department

Ms Betty CHEUNG
Senior Assistant Law Draftsman
Department of Justice

Ms Selina LAU
Senior Assistant Law Draftsman
Department of Justice

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

**Staff in : Mr Alvin CHUI
attendance Assistant Legal Adviser 3**

Ms Mina CHAN
Council Secretary (2) 1

Ms Kiwi NG
Legislative Assistant (2) 1

Admin

I. Meeting with the Administration

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

Action

2. Members noted the Committee stage amendments ("CSAs") proposed by Mr SIN Chung-kai to the proposed new section 32NA(1)(b) in clause 5 of the Employment (Amendment) Bill 2016 ("the Bill") , which was tabled at the meeting. The Chairman advised that the Bills Committee would consider the proposed CSAs after completion of the clause-by-clause examination of the Bill.

(Post-meeting note: Mr SIN Chung-kai's letter dated 25 April 2016 enclosing his proposed CSAs to the Bill was circulated to members vide LC Paper No. CB(2)1368/15-16 on 26 April 2016.)

3. The Bills Committee had commenced clause-by-clause examination of the Bill, and completed scrutiny up to the proposed new section 32PA in clause 7 of the Bill.

II. Any other business

4. Members noted that the next meeting was scheduled for 9 May 2016 at 8:30 am to continue clause-by-clause examination of the Bill.

5. There being no other business, the meeting ended at 4:27 pm.

Council Business Division 2
Legislative Council Secretariat
27 July 2016

**Proceedings of meeting of the
Bills Committee on Employment (Amendment) Bill 2016
held on Monday, 25 April 2016, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker	Subject(s) / Discussion	Action Required
000000 - 000317	Chairman	Opening remarks	
000318 - 000707	Chairman Admin	The Administration's briefing on its response to the issues raised at the meeting on 1 April 2016 [LC Paper No. CB(2)1246/15-16(01)].	
000708 - 001017	Chairman Mr POON Siu-ping Admin	<p>Noting that the consensus on the proposed amount of the further sum was reached by the Labour Advisory Board ("LAB") in 2007, which was nearly a decade ago, Mr POON Siu-ping asked whether there was room for upward adjustment in the amount of the further sum. He expressed concern about the tight timeframe for the Administration to revert to LAB for further consultation on the amount of the further sum.</p> <p>The Administration responded that it had taken note of members' views on the proposed amount of the further sum and would report the views to LAB as early as possible.</p> <p>Mr POON sought clarification as to whether non-payment of terminal payments and compensation as well as the proposed further sum was a criminal offence.</p> <p>The Administration replied in the affirmative, and explained that according to the Employment Ordinance (Cap. 57) ("EO"), employer's failure to pay any specified sum payable under an award of the Labour Tribunal ("LT") or Minor Employment Claims Adjudication Board was a criminal offence. The sum covered by the offence included the compensation awarded in the circumstances of unreasonable and unlawful dismissal. It was proposed under the Employment (Amendment) Bill 2016 ("the Bill") that non-payment of the further sum would also be made a criminal offence, with the penalty pitched at the same level as non-payment of the compensation awarded for cases of unreasonable and unlawful dismissal.</p>	

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001018 - 001638	Chairman Miss CHAN Yuen-han Admin	<p>Miss CHAN Yuen-han expressed support for the Committee stage amendments ("CSAs") proposed by Mr SIN Chung-kai, which was tabled at the meeting, to replace "lesser" with "larger" in the proposed new section 32NA(1)(b) of EO. Given the tight legislative timeframe, Miss CHAN considered that the Administration should in parallel further consult LAB on the amount of the further sum while the Bills Committee was scrutinizing the Bill, such that the Bill could be passed within the current legislative session.</p> <p>The Administration responded that the proposed amount of the further sum was a consensus reached by LAB after detailed discussion involving LAB members as well as the major employers' associations and employee unions which they represented. The Administration would need to consult LAB again on any proposal that deviated significantly from the LAB consensus. As regards the CSAs proposed by Mr SIN Chung-kai, the Administration's initial view was that the proposed CSAs would remove the Bill's proposed cap on the amount of the further sum, which represented a fundamental deviation from the consensus of LAB.</p>	
001639 - 002318	Chairman Mr LEUNG Yiu-chung Admin	<p>Mr LEUNG Yiu-chung reiterated his view that the proposed amount of the further sum was too low to provide sufficient deterrence for employers to comply with the order for reinstatement or re-engagement made by the court or LT in cases of unreasonable and unlawful dismissal.</p> <p>Mr LEUNG did not fully support Mr SIN Chung-kai's proposed CSAs, which, in his view, failed to protect low-paid employees whose three months' wages were usually lower than \$50,000. On the other hand, he considered Mr LEE Cheuk-yan's previous suggestion of raising the amount of the further sum to at least six times the employee's monthly wages up to a maximum of \$100,000 acceptable. He enquired about the Administration's concrete proposal on the amount of the further sum to be put forward for further consultation with LAB and the timeframe.</p> <p>The Administration responded that there was no concrete proposal yet but it would fully relay</p>	

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		<p>members' concerns about the amount of the further sum to LAB for consideration as early as practicable.</p> <p>In response to the Chairman's enquiry, the Administration advised that the next meeting of LAB was being arranged.</p>	
002319 - 002824	Chairman Mr YIU Si-wing Admin	<p>Mr YIU Si-wing considered it necessary to impose a cap on the amount of the further sum having regard to the affordability of employers, particularly those of small and medium-sized enterprises. Mr YIU took the view that it was not desirable for the Bills Committee to scrutinize the Bill while LAB was considering the revised legislative proposals.</p> <p>The Administration advised that subject to the further deliberation of LAB and any consensus reached on the amount of the further sum, it aimed to resume the Second Reading debate on the Bill within the current legislative session.</p> <p>The Chairman's advice that Mr SIN Chung-kai's proposed CSAs would be considered after the completion of the clause-by-clause examination of the Bill</p>	
002825 - 003122	Chairman Mr CHUNG Kwok-pan	<p>Pointing out that court orders for reinstatement or re-engagement were rarely made in overseas jurisdictions, Mr CHUNG Kwok-pan cast doubt about the practicability of making a compulsory order for reinstatement or re-engagement given the deterioration of working relations between the employer and employee concerned. In his view, the Bills Committee should focus its deliberations on the proposed amount of the further sum which was a consensus reached by LAB.</p>	
003123 - 003419	Chairman Mr IP Kin-yuen	<p>Mr IP Kin-yuen shared the view that the proposed amount of the further sum up to a maximum of \$50,000, which was put forth nearly a decade ago, should be increased with a view to reflecting the wage growth over the years and enhancing the deterrence effect against non-compliance with an order for reinstatement or re-engagement by employers in cases of unreasonable and unlawful dismissal.</p>	

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		Mr IP sought clarification as to whether the proposed further sum awarded by the court or LT was in addition to the terminal payments and compensation as currently provided in EO.	
003420 - 003936	Chairman Miss CHAN Yuen-han Admin	<p>Miss CHAN Yuen-han's concern and the Administration's response regarding the proposed penalties for an employer who failed to reinstate or re-engage the unreasonably and unlawfully dismissed employee.</p> <p>Miss CHAN asked whether LAB had any discussion on the amount of the further sum after 2007. The Administration advised that LAB reached a consensus on the proposed amount of the further sum in 2007 and was apprised of the latest developments of the legislative proposal in late 2015.</p>	
003937 - 004435	Chairman Mr LEUNG Yiu-chung Admin	<p>Mr LEUNG Yiu-chung's enquiry and the Administration's response regarding the circumstances to be taken into account by the court or LT in determining whether or not to make an order for reinstatement or re-engagement</p> <p>Given that the court or LT had already taken into account the relationship between the employer and employee and the practicability of compliance by the employer when making an order for reinstatement or re-engagement, Mr LEUNG considered that an employer who failed to comply with such an order made by the court or LT should be liable to higher penalties so as to enhance the deterrence effect and provide greater employment protection for employees, particularly those taking part in trade union activities.</p>	
004436 - 004539	Chairman Admin	Commencement of clause-by-clause examination of the Bill.	
004540 - 004839	Chairman Admin	<p><u>Long title and clause 1</u></p> <p>Members raised no question.</p>	
004840 - 005100	Admin Chairman	<p><u>Clauses 2 and 3</u></p> <p>Members raised no question.</p>	

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005101 - 012047	Chairman Admin ALA3 Miss CHAN Yuen-han Mr LEE Cheuk-yan	<p><u>Clause 4</u></p> <p>Mr LEE Cheuk-yan considered that the proposed section 32N(3B) was sufficient to ensure that the court or LT would make an order for reinstatement or re-engagement only if it found that reinstatement or re-engagement of the employee by the employer was reasonably practicable. Therefore, he did not see the need to state expressly in the proposed section 32N(3C)(b) the circumstances of the claim to be taken into account by the court or LT in determining whether to make an order for reinstatement or re-engagement, which would, in his view, cause legal impediments to the making of such an order.</p> <p>The Administration advised that the circumstances mentioned in the proposed section 32N(3C)(b) could facilitate the court or LT in considering whether the making of an order for reinstatement or re-engagement was appropriate and compliance with such an order by the employer was reasonably practicable. The Administration added that the Judiciary had been consulted on the proposed amendments.</p> <p><i>Proposed sections 32N(3D) and 32N(3E)</i> <i>[LC Paper Nos. CB(2)1185/15-16(01) and (02), CB(2)1234/15-16(01) and CB(2)1357/15-16(01)]</i></p> <p>ALA3's enquiry and the Administration's response regarding the agreement of the employer and employee to:</p> <p>(a) the request made by the court or LT for a report from the Commissioner for Labour providing information of the claim obtained in connection with the conciliation; and</p> <p>(b) the content of such a report.</p> <p>Miss CHAN Yuen-han's concern and the Administration's response regarding the effect of the proposed sections 32N(3B), 32N(3D) and 32N(3E) in obtaining the agreement of the employer and employee</p>	

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		<p>Miss CHAN's enquiry, ALA3's view and the Administration's response regarding the legislative intent of the proposed sections 32N(3D) and 32N(3E)</p> <p>Mr LEE Cheuk-yan cast doubt about the need for the court or LT to revisit the information obtained in connection with the conciliation, which was conducted before filing the claim. He therefore considered that the proposed sections 32N(3D) and 32N(3E) were unnecessary.</p>	
012048 - 012117	Chairman Mr CHUNG Kwok-pan	Mr CHUNG Kwok-pan's concern about the meaning of the proposed section 32N(4)(b)	
012118 - 012600	Chairman Mr IP Kin-yuen	Mr IP Kin-yuen's reiteration of his concern and the Administration's explanation about the reckoning of the length of service of a reinstated or re-engaged employee and the arrangement for the statutory entitlements that he/she would have accrued during the intervening period between his/her dismissal and reinstatement or re-engagement	
012601 - 012827	Chairman Mr Andrew LEUNG	<p>Mr Andrew LEUNG expressed the following views:</p> <p>(a) the drafting of the proposed section 32N(3C)(b) was considered acceptable, as it was not uncommon to stipulate in the legislation the consideration factors to be taken into account by the court in making a decision; and</p> <p>(b) to uphold the confidential and non-prejudicial nature of conciliation, prior agreement from both the employer and employee must be sought for the making of request by the court or LT for the report from the Commissioner of Labour and the information contained therein.</p>	
012828 - 013200	Chairman Mr CHUNG Kwok-pan	In response to Mr CHUNG Kwok-pan's enquiry, the Administration advised that under the existing EO, the reinstated or re-engaged employee might be ordered by the court or LT to restore to the employer any amount in respect of any statutory entitlements that the employee had been paid by the employer under EO and that the employee	

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		<p>should not have had upon the reinstatement or re-engagement.</p> <p>Mr CHUNG's concern and the Administration's response regarding the payment of wages to a reinstated or re-engaged employee for the intervening period between his/her dismissal and reinstatement or re-engagement</p>	
013201 - 014205	<p>Chairman Mr LEE Cheuk-yan Mr CHUNG Kwok-pan</p>	<p><u>Clause 4</u></p> <p>Mr CHUNG Kwok-pan sought explanation about the meaning of "in any other case" in the proposed section 32N(4)(b)(ii). The Administration explained that it referred to cases of terminating an employment contract other than by payment in lieu of notice.</p> <p>Mr LEE Cheuk yan's enquiry and the Administration's explanation regarding the meaning of "re-engagement" for the purpose of the Bill.</p>	
014206 - 014518	<p>Admin Chairman</p>	<p><u>Clauses 5 and 6</u></p> <p>Members raised no question.</p>	
014519 - 015515	<p>Admin Chairman ALA3</p>	<p><u>Clause 7</u></p> <p><i>Proposed new section 32PA</i></p> <p>ALA3's concern and the Administration's response regarding the protection for the interests of the employer if the employee failed to make an application for variation of the original order for re-engagement under the proposed new section 32PA [LC Paper Nos. CB(2)1185/15-16(01) and (02), CB(2)1234/15-16(01) and CB(2)1357/15-16(01)]</p> <p>The Chairman's question and the Administration's explanation about the relief from the employer's liability to pay the further sum</p>	
015516 - 015632	<p>Chairman</p>	<p>Date of next meeting</p>	

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27 July 2016