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By Fax (2544 3271)

21 March 2016

Ms Melody LUK
Assistant Commissioner for Labour (Labour Relations)
Headquarters
Labour Department
16/F, Harbour Building
38 Pier Road
Central
Hong Kong

Dear Ms LUK,

Employment (Amendment) Bill 2016

I am scrutinizing the captioned Bill with a view to advising Members on its legal and drafting aspects. To facilitate Members' consideration of the Bill at the forthcoming Bills Committee meeting scheduled on 1 April 2016, I should be grateful if you would clarify the following matters.

Clause 4 – section 32N(3D)

Under the proposed section 32N(3D), the court or the Labour Tribunal, with "the agreement of the employer and the employee", may obtain information in connection with a conciliation held under the Labour Tribunal Ordinance (Cap. 25). As Cap. 25 contains no provision on the conciliation process, please clarify:

- (a) whether the conciliation was conducted on the basis of confidentiality and non-prejudicial to the legal rights of the employer and the employee;
- (b) if the answer to (a) is affirmative, whether the "the agreement of the employer and the employee" stated in the proposed section 32N(3D) constitutes a waiver by the employer and the employee

jointly to the confidentiality and the non-prejudicial protection of all the information (including all the relevant documents) obtained during the conciliation; and

- (c) the legislative intent and the justification of the proposed section 32N(3D).

Clause 4 – section 32N(3E)

Under the proposed section 32N(3E), despite the request of the court or the Labour Tribunal, a report of the Commissioner for Labour cannot be submitted if the employer or the employee fails to agree to the contents of the report. Please clarify:

- (a) the legislative intent and the justification for empowering the parties to the proceedings, i.e. the employer and the employee, to override a court's request in the event of disagreement to the contents of the report;
- (b) should the Commissioner or the Labour Tribunal be given discretionary powers to allow the report to be submitted in the event of disagreement on the non-substantial parts of the contents by the parties; and
- (c) what the court or the Labour Tribunal should do in the absence of the report. Should a trial then be conducted before making a finding for the purposes of the proposed section 32N(3B)?

Clause 7 – section 32PA

Under the proposed section 32PA(4), an application for variation of a re-engagement order may only be made by an employee but not either by the employer or his employer. Please clarify the legislative intent and the justification.

Clause 8 – section 32PC

The proposed section 32PC allows the employer to apply for relief from paying the further sum mentioned in the proposed section 32NA(1)(b) if the compliance of a re-engagement or a reinstatement order becomes no longer reasonably practicable because of a change of circumstances. Such application may only be made not later than 7 days after the date specified by which the employee must be reinstated or re-engaged under the principal order.

Please clarify whether "a change of circumstances" just includes any relevant events happened after the order was made and before the specified date for re-engagement or reinstatement; or it also includes all the relevant events occurred within the 7 days or the extended period as stated in the proposed subsections 5(a) and 5(b); and the justification.

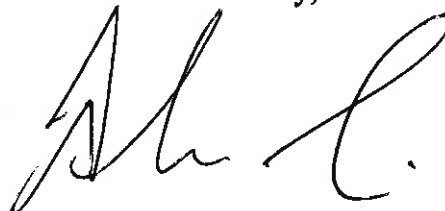
Consequential amendments

The proposed sections 30A(6) and (7) are added to the Labour Tribunal Ordinance (Cap. 25) to the effect that neither an alternative compliance application, nor a relief application operates as a stay of execution of the original reinstatement or re-engagement order and certain conditions may be imposed by the Labour Tribunal if a stay of execution is granted. For the alternative compliance application, it is stipulated in the proposed section 32PA(4) to the Employment Ordinance (Cap. 57) that only the employee may make such application. Please clarify:

- (a) whether, in the alternative compliance application, an application for a stay of execution of the original re-engagement order may also only be made by the employee; and
- (b) as similar amendments are not introduced to the District Court Rules and the High Court Rules, whether the District Court and the Court of First Instance should be empowered to order a stay of execution of the original reinstatement or re-engagement order similar to that of the Labour Tribunal.

I look forward for receiving your reply in both languages by
24 March 2016.

Yours sincerely,



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