

Bills Committee on the Employment (Amendment) Bill 2016

The Government's response to issues as requested by the Bills Committee at its meeting on 1 April 2016

This paper responds to two issues as requested by the Bills Committee on the Employment (Amendment) Bill 2016 (“the Bill”) at its first meeting held on 1 April 2016.

Consensus on the amount of further sum

2. Under the Bill, if the court or Labour Tribunal (“LT”) in an unlawful and unreasonable dismissal case makes an order for reinstatement or re-engagement and the employee is not reinstated or re-engaged as ordered, the employer is required to pay to the employee a further sum, the amount of which is set at 3 times the employee’s average monthly wages, subject to a maximum of \$50,000. The amount of the further sum is a consensus reached by the Labour Advisory Board (“LAB”). A Member enquired when the consensus was reached.

3. The employer and employee members of LAB reached a consensus in 2007 on the abovementioned amount of the further sum. In December 2015, LAB was apprised of the latest development and the proposals of the Bill, including the proposed amount of the further sum, before the Bill was introduced into the Legislative Council.

Clarification on whether the further sum would replace the compensation

4. A Member requested the Administration to clarify whether, under the Bill, an employer of an unlawful and unreasonable dismissal case may, by paying the further sum, the maximum of which is only \$50,000, evade the liability to pay the compensation under section 32P, which may be up to \$150,000.

5. Under the proposed sections 32N(4)(d) and 32N(6)(g), on making an order for reinstatement or re-engagement, the court or LT must

specify in the order that if the employee is not reinstated or re-engaged as required by the order, the employer must pay to the employee the sums mentioned in the proposed section 32NA(1). For an unreasonable and unlawful dismissal case, the sums mentioned in the proposed section 32NA(1) include: (i) the amount of terminal payments that would have been awarded under section 32O if neither a reinstatement nor re-engagement order had been made; (ii) the amount of compensation that would have been awarded under section 32P if neither a reinstatement nor re-engagement order had been made; **and** (iii) a further sum which is \$50,000, or 3 times the employee's average monthly wages, whichever is less. Furthermore, the proposed section 32NA(2) spells out clearly that the court or LT must not take into account the further sum in determining the amounts of terminal payments and compensation. It is therefore apparent that the employer's legal liability to pay the further sum is in addition to his/her liability to pay the terminal payments and compensation. In other words, if the employee is not reinstated or re-engaged as required by a reinstatement or re-engagement order made in an unreasonable and unlawful dismissal case, depending on the adjudication of the court or LT, the employer may be liable to pay all the three sums specified in the order, viz, (i) terminal payments, (ii) compensation and (iii) further sum.

Labour and Welfare Bureau
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