

Bills Committee on the Employment (Amendment) Bill 2016

The Government's response to issues as requested by the Bills Committee at its meeting on 11 April 2016

This paper provides information on handling of non-compliance of reinstatement or re-engagement order as provided by labour legislation in other places as requested by the Bills Committee at its meeting of 11 April 2016.

2. The Employment (Amendment) Bill 2016 ("Bill") proposes that for an unreasonable and unlawful dismissal case, in the event that the employer fails to reinstate or re-engage the employee as ordered by the court or the Labour Tribunal ("LT") in an reinstatement or re-engagement order, the employer is required to pay to the employee a further sum. The further sum is in addition to the terminal payments and compensation that would have been awarded to the employee if neither a reinstatement nor re-engagement order had been made. The Bill proposes that an employer who wilfully and without reasonable excuse fails to pay the further sum will be, as in failures to pay the compensation awarded by LT for unreasonable and unlawful dismissal cases, a criminal offence, the maximum penalty of which will be a fine of \$350,000 and 3 years of imprisonment.

3. According to information available on the Internet, Australia, the United Kingdom, New Zealand, Canada and Singapore have different ways to handle the employer's non-compliance with a reinstatement or re-engagement order in unfair dismissal cases without the agreement of the employer. These are listed below:

Australia

4. The Fair Work Commission may order the employer to reinstate the employee or to pay compensation to the employee in case of unfair dismissal. The relevant labour legislation expressly provides that a reinstatement order is a civil remedy and contravention of it is not an offence. Where the employer fails to comply with the order, the concerned employee may apply to the court for an order of the payment of an additional pecuniary penalty. Unpaid pecuniary penalty may be

recovered as a debt. The law expressly provides that that a court may not order a person to serve a sentence of imprisonment if the person fails to pay a pecuniary penalty.

United Kingdom

5. In an unfair dismissal case, the Employment Tribunal may make an order for reinstatement or re-engagement, or an award of compensation. Where the employer fails to comply with a reinstatement or re-engagement order, the Employment Tribunal may make an additional award of compensation. The labour law does not provide for the handling of an employer's failure to pay the additional award of compensation.

New Zealand

6. The Employment Relations Authority may order the employer to reinstate the employee and/or to pay compensation in case of unfair dismissal. Where the employer fails to comply with a reinstatement order, the Employment Relations Authority may make a "compliance order" against the employer. If the employer fails to comply with the "compliance order", the employee may make application to the court which may order that the employer be fined and/or sentenced to imprisonment, and/or his property be sequestered.

Singapore

7. The Minister of Manpower, on satisfying that an employee has been dismissed without just cause or excuse, may order an employer to reinstate the employee or to pay compensation. Where an employer fails to follow an order for compensation or reinstatement made by the Minister of Manpower, the employee may make a complaint. Where the complaint is established, the employer commits an offence and is liable to a fine or imprisonment upon conviction.

Canada

8. The adjudicator appointed by the Minister of Labour may order the employer to reinstate the employee or pay compensation to an employee who has been unfairly dismissed. Where the employer fails to comply with the reinstatement order, the employee may register the order with the Federal Court and enforce the order as it is a Federal Court

judgment. A judgment of the Federal Court requiring a person to perform an act may be enforced by way of an order for committal against the person and a writ of sequestration against the property of the person.

9. From the above examples, it can be seen that different places have different practices to handle an employer's non-compliance with a compulsory reinstatement or re-engagement order. Having regard to the circumstances of Hong Kong and the views of employers and employees through the Labour Advisory Board, the current legislative proposal is considered a pragmatic arrangement suited to Hong Kong's situation, having balanced the interests of parties concerned.

Labour and Welfare Bureau
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