



Labour Department (Headquarters)

勞工處（總處）

Your reference 來函編號 : CB2/BC/1/14
Our reference 本處檔案編號 : LD CR 38/706 Pt.27
Tel. number 電話號碼 : 2852 4099
Fax number 傳真機號碼 : 2544 3271

6 May 2016

Clerk to the Bills Committee
(Attn: Ms Betty MA)
Legislative Council
1 Legislative Council Road
Central
Hong Kong

(Fax: 2185 7845)

Dear Ms MA,

Bills Committee on Employment (Amendment) Bill 2016

Thank you for your letter of 26 April 2016. The Government's response to Hon SIN Chung Kai's proposed Committee Stage Amendments ("the CSAs") to the proposed section 32NA(1)(b) of the Employment (Amendment) Bill 2016 ("the Bill") are set out below.

The proposed section 32NA(1)(b)

2. The proposed section 32NA(1)(b) of the Bill specifies the amount of the further sum to be paid by the employer to the employee if the employer does not reinstate or re-engage the employee as required by a reinstatement or re-engagement order made by the court or Labour Tribunal (LT) in an unreasonable and unlawful dismissal case. Under the Bill, the further sum is set at three times the employee's average monthly wages or \$50,000, whichever is the lesser. This is a consensus reached by the Labour Advisory Board ("LAB").

3. It is important to point out that an employee may already have been awarded terminal payments and compensation for being unreasonably and unlawfully dismissed under the Employment Ordinance (Cap. 57). The further sum is in addition to the terminal payments and compensation which the employer has a liability to pay if he does not reinstate or re-engage the employee as ordered by the court or LT.

Proposed CSAs from Hon SIN Chung-kai

4. The CSAs propose that the word “lesser” in 32NA(1)(b) be deleted and substituted by the word “larger”. Such amendments will imply that when the circumstances to pay the further sum arises, the employer will be required to pay at least \$50,000, or if an employee’s three months’ wages exceed \$50,000, the higher amount. By virtue of the proposed CSAs, the proposed ceiling of \$50,000 for the further sum will be removed.

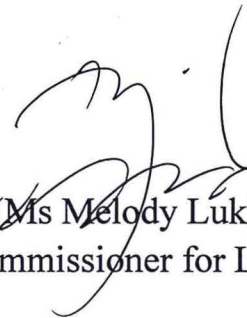
5. With the minimum amount of the further sum set at \$50,000 under the proposed CSAs, an employer may be required to pay more than three months’ wages to the employee for not reinstating or re-engaging the employee, depending on the employee’s wages (for example, while an employee with monthly wages of \$16,500 would get a further sum slightly higher than three months’ wages earned by him, a part-time employee with monthly wages of \$4,000 would get a further sum equivalent to 12.5 months’ wages). On the other hand, by removing the ceiling of the further sum, the amount of further sum for an employee with high monthly wages may be a substantial amount (for example, an employee who earns \$60,000 per month would get a further sum of \$180,000). As already pointed out above, the further sum is in addition to the terminal payments and compensation which an employer has a liability to pay if so ordered by the court or LT in a case of unreasonable and unlawful dismissal.

6. During the deliberation in the Bills Committee, there were also views that a ceiling should be set for the further sum. Bearing in mind the further sum is in addition to terminal payments and compensation and the latter may amount to \$150,000, some Members had expressed concerns about the affordability of employers, especially the small-and-medium sized enterprises.

7. As pointed out during the meeting of the Bills Committee meeting, the proposed amount of further sum in the Bill is a consensus reached in LAB after detailed discussions involving LAB Members as well as the major employers' associations and employee unions which they represent; and the Government would need to consult LAB again on any proposal that deviates significantly from the LAB consensus.

8. The Government will accordingly report to LAB and consult it on the proposed CSAs and other suggestions/views expressed by Hon Members during the deliberation of the Bill.

Yours sincerely,



(Ms Melody Luk)
for Commissioner for Labour