

**立法會**  
**Legislative Council**

LC Paper No. CB(2)2003/16-17  
(These minutes have been seen  
by the Administration)

Ref : CB2/BC/4/16

**Bills Committee on Employment (Amendment) Bill 2017**

**Minutes of meeting**  
**held on Friday, 16 June 2017, at 8:30 am**  
**in Conference Room 3 of the Legislative Council Complex**

**Members present** : Hon WONG Ting-kwong, SBS, JP (Chairman)  
Hon LEUNG Yiu-chung  
Hon Frankie YICK Chi-ming, JP  
Hon WU Chi-wai, MH  
Hon YIU Si-wing, BBS  
Dr Hon Fernando CHEUNG Chiu-hung  
Hon POON Siu-ping, BBS, MH  
Hon Andrew WAN Siu-kin  
Hon HO Kai-ming  
Hon SHIU Ka-fai  
Hon Wilson OR Chong-shing, MH  
Hon CHEUNG Kwok-kwan, JP  
Hon LUK Chung-hung  
Hon Jeremy TAM Man-ho  
Dr Hon LAU Siu-lai

**Members absent** : Hon Abraham SHEK Lai-him, GBS, JP  
Dr Hon CHIANG Lai-wan, JP

[According to the Judgment of the Court of First Instance of the High Court on 14 July 2017, LEUNG Kwok-hung, Nathan LAW Kwun-chung, YIU Chung-yim and LAU Siu-lai have been disqualified from assuming the office of a member of the Legislative Council, and have vacated the same since 12 October 2016, and are not entitled to act as a member of the Legislative Council.]

**Public Officers : Item II  
attending**

Ms Melody LUK  
Assistant Commissioner for Labour  
(Labour Relations)

Mr Raymond LIANG  
Chief Labour Officer (Labour Relations)  
Labour Department

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

**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

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Action

**I. Election of Chairman**

Mr WONG Ting-kwong was elected Chairman of the Bills Committee.

2. Members agreed that there was no need for the Bills Committee to elect a Deputy Chairman.

Application for late membership

3. Members agreed to accept the application from Mr Andrew WAN for late membership of the Bills Committee pursuant to Rule 23(c) of the House Rules.

Action

## **II. Meeting with the Administration**

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

Admin

5. The Bills Committee requested the Administration to provide the following information:

- (a) of the 25 claims made by employees for reinstatement or re-engagement with the Labour Department under the existing provisions of the Employment Ordinance (Cap. 57) in the past five years, the nature of and grounds for making the claims, and the outcomes, together with the number of claims in which the employee received monthly wages over \$24,000 and those participated in trade union activities; and
- (b) whether any award or order made by the Labour Tribunal was registered in the District Court before, and if no, why such a procedure was not used by employees.

## **III. Any other business**

6. Members agreed to receive public views on the Employment (Amendment) Bill 2017 at the next meeting which would be held in the next session of the Legislative Council. The Chairman said that members would be informed of the meeting date in due course.

7. There being no other business, the meeting ended at 10:32 am.

Council Business Division 2  
Legislative Council Secretariat  
7 August 2017

**Proceedings of meeting of the  
Bills Committee on Employment (Amendment) Bill 2017  
held on Friday, 16 June 2017, at 8:30 am  
in Conference Room 3 of the Legislative Council Complex**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s) / Discussion</b>	<b>Action Required</b>
000000 - 000800	Mr LEUNG Yiu-chung Mr SHIU Ka-fai Mr YIU Si-wing Mr CHEUNG Kwok-kwan Mr WONG Ting-kwong	Election of Chairman	
000801 - 000934	Chairman	Mr Andrew WAN's application for late membership	
000935 - 001120	Chairman	Opening remarks	
001121 - 001659	Chairman Admin	Briefing by the Administration on the background and contents of the Employment (Amendment) Bill 2017 ("the Bill")  The Administration drew members' attention to the fact that the Bill was essentially the same as the Employment (Amendment) Bill 2016 ("the 2016 Bill"), which lapsed at the end of the Fifth Legislative Council ("LegCo"), except for increasing the ceiling for further sum from \$50,000 to \$72,500.	
001700 - 001940	Chairman ALA3	Assistant Legal Adviser 3 ("ALA3") advised that during the scrutiny of the 2016 Bill by the relevant Bills Committee, the Legal Service Division ("LSD") had sought clarification with the Administration on certain legal and drafting aspects of the 2016 Bill. As the Bill was by and large the same as the 2016 Bill except for the maximum amount of the further sum, members might wish to refer to the correspondence between LSD and the Administration on the 2016 Bill (LC Paper Nos. CB(2)1185/15-16(01), CB(2)1185/15-16(02), CB(2)1234/15-16(01) and CB(2)1357/15-16(01)), which were tabled at the meeting for ease of reference.	

Time marker	Speaker	Subject(s) / Discussion	Action Required
001941 - 002622	Chairman Mr SHIU Ka-fai Admin	In response to Mr SHIU Ka-fai's enquiry about the number and nature of unreasonable and unlawful dismissal ("UUD") cases in the past three years, the Administration advised that the number of UUD claim cases on average represented less than 2% of the total number of claims handled by the Labour Relations Division of the Labour Department ("LD") in a year.	
002623 - 002769	Chairman Dr LAU Siu-lai	Meeting arrangement	
002700 - 003010	Chairman Mr Frankie YICK Mr SHIU Ka-fai	The Chairman, Mr Frankie YICK and Mr SHIU Ka-fai expressed concern that employers were sometimes placed on a less favourable position in respect of dispute cases involving work injury.	
003011 - 003515	Chairman Dr LAU Siu-lai Admin	<p>Dr LAU Siu-lai considered that to enhance protection for employees who had been unreasonably and unlawfully dismissed, the maximum amount of the further sum should be set at six months' wages of the employee or in the region of \$100,000 to \$200,000, whichever was the higher.</p> <p>The Administration drew members' attention to the fact that the employee concerned might be awarded terminal payments as well as compensation of up to \$150,000 by the court or Labour Tribunal ("LT") for being unreasonably and unlawfully dismissed under the existing provisions of the Employment Ordinance (Cap. 57) ("EO"). The further sum was in addition to the terminal payments and compensation to be paid to the employee by the employer in the event that the employer failed to reinstate or re-engage the employee as ordered by the court or LT.</p> <p>In response to Dr LAU's enquiry, the Administration advised that it had no plan to extend compulsory reinstatement ("RI") or re-engagement ("RE") to cases of unreasonable dismissal.</p>	
003516 - 004135	Chairman Mr SHIU Ka-fai Admin Dr Fernando CHEUNG	Mr SHIU Ka-fai's enquiry and the Administration's response regarding the handling of doubtful work injury cases.	

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004136 - 004649	Chairman Mr WU Chi-wai Admin	<p>Mr WU Chi-wai asked about the avenues for the unreasonably and unlawfully dismissed employees to further pursue their cases if they were not satisfied with the monetary remedies awarded by the court or LT. The Administration advised that the employee concerned could make a civil claim for all losses or damages arising from the dismissal against the employer.</p> <p>In response to Mr WU's enquiry about the consideration factors taken by the court or LT in determining the amount of compensation awarded to the unreasonably and unlawfully dismissed employee, the Administration explained that in determining an award of compensation and the amount of compensation, the court or LT should, according to EO, take into account the circumstances of the claim which included the circumstances of the employer and the employee, the employee's length of service, the manner in which the dismissal took place, any loss sustained by the employee which was attributable to the dismissal, possibility of the employee obtaining new employment, any contributory fault borne by the employee, and any payments that the employee was entitled to receive in respect of the dismissal.</p>	
004650 - 005337	Chairman Dr Fernando CHEUNG Admin	<p>Dr Fernando CHEUNG was strongly of the view that non-compliance with an RI/RE order by the employer should be made a criminal offence in order to enhance the deterrent effect against UUD of employees, particularly those participated in trade union activities.</p> <p>The Administration explained that it was the consensus of the Labour Advisory Board ("LAB") that the employee concerned should be paid the terminal payments, compensation and further sum ("the three sums") in an expeditious manner, and added that it was a criminal offence under EO if employers prevented or deterred employees from exercising their rights to take part in trade union activities, or dismissed, penalized or discriminated against an employee for exercising such rights.</p> <p>Dr CHEUNG did not subscribe to the Administration's explanation and reiterated his views.</p>	

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005338 - 005733	Chairman Mr POON Siu-ping Admin	<p>Mr POON Siu-ping considered that the current legislative proposal, which was a broad consensus reached by LAB after rounds of discussion, should not be dragged on further. While respecting LAB's consensus on the revised ceiling of the further sum, Mr POON asked whether there was any review mechanism for making adjustments to the amount of the further sum.</p> <p>The Administration advised that while there was no established mechanism for regular review of the amount of the further sum, such review could be considered where appropriate after its implementation.</p> <p>Mr POON asked whether the Administration would withdraw the Bill having regard to the opposing views from some members on the revised ceiling of further sum. The Administration appealed to members' understanding that any significant changes to the current legislative proposal would have to be reverted to LAB for consideration in accordance with the standing practice, which would inevitably delay its implementation.</p>	
005734 - 010355	Chairman Mr HO Kai-ming Mr LEUNG Yiu-chung Admin	<p>In response to Mr HO Kai-ming's enquiry about the number of UUD cases in which orders for RI/RE were made by the court or LT in a year, the Administration advised that among the some 2 000 UUD claims handled by LD in the past five years, there were 25 cases in which the employee requested RI/RE in accordance with the existing provisions of EO ("hereafter referred to as "the 25 cases"), i.e. five cases on average in a year.</p> <p>Mr LEUNG Yiu-chung requested the Administration to provide in writing the details of the 25 cases, including the nature of and grounds for making the claims, and the outcomes.</p>	<b>Admin</b>
010356 - 011152	Chairman Mr LEUNG Yiu-chung Mr Andrew WAN Admin	<p>Mr LEUNG Yiu-chung considered that more protection should be awarded for unreasonably and unlawfully dismissed employees who requested RI/RE given that UUD cases were difficult to establish and RI/RE orders were seldom made in UUD cases in the past. Mr LEUNG considered that the revised ceiling of the further sum was too low, which should be increased to \$100,000.</p>	

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		<p>The Administration stressed that LAB was an important and effective platform for representatives of employers and employees to discuss and negotiate on labour policies. The views of members of the Bills Committee formed to study the 2016 Bill had been fully reported to LAB for its consideration. After thorough deliberations, LAB reached a new consensus on the maximum amount of the further sum as currently proposed in the Bill.</p> <p>Mr LEUNG suggested that a meeting should be held to receive views from deputations on the Bill.</p>	
011153 - 011731	Chairman Mr Andrew WAN Admin	<p>Mr Andrew WAN expressed the view that while respecting the views of LAB, non-compliance with an order for RI/RE should be made a criminal offence and the revised further sum was too low. He supported Mr LEUNG's suggestion of receiving views from deputations on the Bill.</p> <p>The Administration reiterated that instead of imposing criminal liability on the employer who failed to reinstate or re-engage the employee as ordered by the court or LT, LAB considered that the affected employee should be allowed to receive compensation in an expeditious manner. To this end, it was proposed under the Bill that the further sum would be specified at the time when the order for RI/RE was made, thereby sparing the employee the need to file another application to the court or LT and enabling the employee to obtain the further sum the soonest possible if he was not reinstated or re-engaged as required by the order. The Administration stressed that such arrangement could strike a reasonable balance between the interests of employers and employees.</p>	
011732 - 012449	Chairman Mr Jeremy TAM Admin	<p>Of the 25 cases mentioned above, Mr Jeremy TAM requested the Administration to provide the number of cases in which the monthly wage of the employee concerned were over \$24,000.</p> <p>Mr TAM pointed out that relevant work or training experience was prerequisite for acquiring certain professional qualifications. He was concerned about the impact of the RE arrangement on the calculation of relevant years of experience or training of an employee who was involved in a case of UUD and was later re-employed.</p>	<b>Admin</b>

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		<p>The Administration advised that under an order for RE, the continuity of the employee's period of employment was not to be treated as broken by the employee's absence from work between the date of dismissal and the date of RE for reckoning his/her entitlements under EO and his/her employment contract. Besides, in determining whether making an RI/RE of the employee by the employer was reasonably practicable, the court or LT would need to take into account the circumstances of the case having regard to a number of factors as set out in the Bill. The employer and the employee would be given an opportunity to present their cases in respect of the making of the order.</p> <p>Mr TAM remained of the view that the revised further sum was still too low to safeguard those employees who wished to resume the original position in the event that the employer chose to relieve their obligation to reinstate or re-engage the employee by paying the three sums.</p>	
012450 - 012607	Chairman Mr Frankie YICK	Mr Frankie YICK advised that the Liberal Party expressed support for the decision of LAB and the implementation of the Bill with no further delay.	
012608 - 012852	Chairman Mr YIU Si-wing Admin	<p>Mr YIU Si-wing considered that the provision of further sum could facilitate settlement of labour disputes arising from UUD cases.</p> <p>Mr YIU's enquiry and the Administration's response regarding whether a review mechanism for the amount of the further sum would be established.</p>	
012853 - 013311	Chairman Mr LUK Chung-hung Admin	<p>While respecting the decision of LAB, Mr LUK Chung-hung was disappointed with the absence of timetable for reviewing the amount of the further sum.</p> <p>Mr LUK expressed concern about the protection for an employee against unreasonable dismissal shortly after the employee concerned had been reinstated or re-engaged by the employer. He suggested that the reinstated or re-engaged employees should be protected from dismissal within a specified period.</p> <p>The Administration reiterated that in determining whether to make an order for RI/RE, the court or LT had to take into account the circumstances of the</p>	

Time marker	Speaker	Subject(s) / Discussion	Action Required
		case having regard to a number of factors, including the relationship between the employer and the employee.	
013312 - 013851	Chairman Mr SHIU Ka-fai Admin	Mr SHIU Ka-fai reiterated his concern about the protection for employers who dismissed employees involved in doubtful work injury cases.	
013852 - 014537	Chairman Mr WU Chi-wai Admin ALA3	<p>Mr WU Chi-wai asked whether disobeying the orders made by the court or LT would, under the existing labour legislation, constitute an offence of contempt of court. The Administration pointed out that it was an offence under EO for employers failing to pay the employee the amount awarded in an LT order.</p> <p>ALA3 advised that an award or order made by LT could be registered in the District Court in accordance with rule 12 of the Labour Tribunal (General) Rules (Cap. 25A). ALA3 also cited that the Rules of the District Court (Cap. 336H) provided for an order of committal against a person who disobeyed a judgment or order made by the District Court.</p>	
014538 - 014632	Chairman Mr HO Kai-ming Admin	At the request of Mr HO Kai-ming, the Administration agreed to provide after the meeting the number of cases concerning the employees' exercise of trade union rights among the 25 cases mentioned above.	<b>Admin</b>
014633 - 015424	Chairman Mr LEUNG Yiu-chung Admin	<p>Mr LEUNG Yiu-chung shared the concern about protection for the employee who was trade union representative against UUD shortly after the employee concerned had been reinstated or re-engaged by the employer.</p> <p>The Administration reiterated that before making an order for RI/RE, the court or LT would need to take into account a number of factors, including the relationship between the employer and the employee. Besides, according to section 32A(5) of EO, an employee who was dismissed owing to his exercising trade union rights within 12 months immediately before the dismissal could claim for remedies against the employer for UUD.</p>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s) / Discussion</b>	<b>Action Required</b>
015425 - 015919	Chairman Mr Jeremy TAM Admin	<p>Mr Jeremy TAM reiterated his concern over the impact of an RE order on the calculation of length of service of the re-engaged employee.</p> <p>The Administration reiterated that in determining the amount of the award of compensation, the court or LT would take into account the circumstances of the claim, such as any loss sustained by the employee which was attributable to the dismissal and the possibility of the employee obtaining new employment. The affected employee could make another claim for remedies against the employer to recover any loss or damage arising from the dismissal.</p>	
015920 - 020051	Chairman Mr WU Chi-wai Admin	<p>Mr WU Chi-wai requested the Administration to provide information in writing on whether any award or order made by LT was registered in the District Court before, and if no, why such a procedure was not used by employees.</p> <p>Mr WU's clarification with the Administration on the scope of the Bill, which covered UUD cases only.</p>	<b>Admin</b>
020052 - 020624	Chairman Mr LEUNG Yiu-chung Mr WU Chi-wai	Members agreed to receive public views on the Bill at the next meeting to be held in the next session of LegCo.	