

**立法會**  
**Legislative Council**

LC Paper No. CB(2)261/17-18  
(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 Tuesday, 17 October 2017, at 10:45 am**  
**in Conference Room 1 of the Legislative Council Complex**

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

**Public Officers attending** : Item I  
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

**Attendance**  
**by invitation** : Item I

Community March

Mr 黃朗懷

The Civic Party

Mr Warren TAM Ka-chun  
District Developer of the New Territories West

Liberal Party

Mr HO Wang  
Member

Hong Kong Chef Union

Mr NG Chi-fai  
Chairman

街工勞工組

Miss WONG Hiu-kwan  
Representative

Individual

Mr NGAN Lit-fung

民生議政

Miss 游美寶  
Representative

政府前線僱員總會

Mr 黃家輝

Individual

Miss NG Man-kwan

Hong Kong Food & Environmental Hygiene Department  
Staff Rights Union

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Mr AU Pong-tim  
Chairperson

Labour Party

Mr MAK Tak-ching  
Member

政府前線僱員總會第一標準員工分會

Ms 李文秀

Left 21

Mr 鄧嘉亨  
Member

The Hong Kong Federation of Trade Unions Rights and  
Benefits Committee

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Mr KWAN Shing-kit  
Secretary

Task Force on Foreign Helper's Problem of Liberal Party

Mr LEE Chun-keung  
Convener

Individual

Mr Why

Individual

Mr TSE Tsun-yin

Hong Kong Employers of Domestic Helpers Association

Mrs Betty YUNG MA Shan-yee  
Chairperson

Hong Kong Confederation of Trade Unions

Mr MUNG Siu-tat  
Chief Executive

Support Group for Hong Kong Employers with Foreign  
Domestic Helpers

Ms Joan TSUI  
Convener

**Clerk in  
attendance** : Miss Betty MA  
Chief Council Secretary (2) 1

**Staff in  
attendance** : Mr Alvin CHUI  
Assistant Legal Adviser 3

Mr Raymond LAM  
Senior Council Secretary (2) 7

Ms Gloria TSANG  
Council Secretary (2) 1

Ms Kiwi NG  
Legislative Assistant (2) 1

Miss Lulu YEUNG  
Clerical Assistant (2) 1

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Action

**I. Meeting with deputations and the Administration**

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

2. The Bills Committee received oral representations from 20 deputations/individuals attending the meeting. The major views and concerns expressed by the deputations/individuals are summarized as follows:

- (a) the majority of deputations/individuals supported in principle the proposal of making an order for reinstatement ("RI") and re-engagement ("RE") without the requirement of an employer's agreement in an unreasonable and unlawful dismissal ("UUD") case;
- (b) to enhance greater protection for employees, some deputations/individuals considered that the order for RI and RE should be made compulsory and non-compliance with the order by an employer should be made a criminal offence. In other words, an employer should not be given an option to pay a further sum to an employee in the event that the employer failed to reinstate or re-engage the employee as ordered by the court or the Labour Tribunal ("LT");
- (c) some deputations/individuals were of the view that the Administration should increase the amount of the further sum (ranging from \$350,000 to \$700,000 and from six times the average monthly wages of the employee to without upper limit) to enhance the deterrent effect to employers and provide sufficient protection for employees, especially higher-paid employees;
- (d) some deputations/individuals considered that the scope of the Employment (Amendment) Bill 2017 ("the Bill") should be extended to cover unreasonable dismissal cases and dismissal for reasons of sexual orientation, political and religion affiliation;
- (e) some deputations/individuals were of the view that remedies under the Bill should also be granted to employees who were not employed under a continuous contract under the Employment Ordinance (Cap. 57) ("EO");
- (f) some deputations/individuals considered that employers hiring foreign domestic helpers should be exempted from the Bill; and

- (g) a deputation opposed the proposal of making RI and RE order without the requirement of an employer's agreement and considered that the proposed further sum would in effect offer double compensation to an employee.

3. In response to the views and concerns of the deputations/individuals attending the meeting, the Administration made the following points:

- (a) the main object of the Bill sought to enhance employees' protection against UUD. It had no intention to extend the scope of the Bill;
- (b) the employer and the employee concerned would be given an opportunity to present each of their cases before the court or LT made an order for RI or RE. The court or LT would also take into account the circumstances of the case having regard to a number of factors, including any difficulty that the employer might face in RI or RE of the employee as well as the relationship between the employer and the employee. The court or LT would only make an order for RI or RE if it was satisfied that an order for RI or RE was appropriate and RI or RE of the employee by the employer was reasonably practicable; and
- (c) employees who were not employed under a continuous contract under EO were covered by the Bill under certain circumstances, for example, such employees being dismissed after work-related injury and before determination/settlement and/or payment of compensation under the Employees' Compensation Ordinance (Cap. 282) or by reason of the employee exercising trade union rights, etc., were regarded as unlawful dismissal under EO.

## **II. Any other business**

4. The Bills Committee agreed that the next meeting would be scheduled for 24 November 2017 at 8:30 am to continue discussion with the Administration.

5. There being no other business, the meeting ended at 12:42 pm.

Council Business Division 2  
Legislative Council Secretariat  
7 November 2017

**Proceedings of meeting of the  
Bills Committee on Employment (Amendment) Bill 2017  
held on Tuesday, 17 October 2017, at 10:45 am  
in Conference Room 1 of the Legislative Council Complex**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s) / Discussion</b>	<b>Action Required</b>
000000 - 001322	Chairman	Opening remarks	
001323 - 001629	Chairman Mr 黃朗懷, Community March	Presentation of views	
001630 - 001941	Chairman Mr Warren TAM Ka-chun, The Civic Party	Presentation of views [LC Paper No. CB(2)119/17-18(01)]	
001942 - 002248	Chairman Mr HO Wang, Liberal Party	Presentation of views	
002249 - 002547	Chairman Mr NG Chi-fai, Hong Kong Chef Union	Presentation of views	
002548- 002854	Chairman Miss WONG Hiu-kwan, 街工勞工組	Presentation of views	
002855 - 003213	Chairman Mr NGAN Lit-fung	Presentation of views	
003214 - 003536	Chairman Miss 游美寶, 民生議政	Presentation of views	
003537 - 003816	Chairman Mr 黃家輝, 政府前線僱員總會	Presentation of views	
003817 - 004123	Chairman Miss NG Man-kwan	Presentation of views	
004124 - 004424	Chairman Mr AU Pong-tim, Hong Kong Food & Environmental Hygiene Department Staff Rights Union	Presentation of views [LC Paper No. CB(2)119/17-18(02)]	



<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s) / Discussion</b>	<b>Action Required</b>
004425 - 004737	Chairman Mr MAK Tak-ching, Labour Party	Presentation of views	
004738 - 005102	Chairman Ms 李文秀, 政府前線僱員總會第一標準員工分會	Presentation of views	
005103 - 005406	Chairman Mr 鄧嘉亨, Left 21	Presentation of views	
005407 - 005736	Chairman Mr KWAN Shing-kit, The Hong Kong Federation of Trade Unions Rights and Benefits Committee	Presentation of views	
005737 - 010105	Chairman Mr LEE Chun-keung, Task Force on Foreign Helper's Problem of Liberal Party	Presentation of views	
010106 - 010425	Chairman Mr TSE Tsun-yin	Presentation of views	
010426 - 010759	Chairman Mrs Betty YUNG MA Shan-ye, Hong Kong Employers of Domestic Helpers Association	Presentation of views [LC Paper No. CB(2)19/17-18(03)]	
010800 - 011113	Chairman Mr MUNG Siu-tat, Hong Kong Confederation of Trade Unions	Presentation of views [LC Paper No. CB(2)119/17-18(03)]	
011114 - 011441	Chairman Ms Joan TSUI, Support Group for Hong Kong Employers with Foreign Domestic Helpers	Presentation of views [LC Paper No. CB(2)19/17-18(04)]	
011442 - 011716	Chairman Mr Why	Presentation of views	
011717 - 012134	Chairman Admin	Administration's response to issues raised by deputations and individuals attending the meeting.	

Time marker	Speaker	Subject(s) / Discussion	Action Required
012135 - 012826	Chairman Mr LEUNG Yiu-chung Admin	<p>Mr LEUNG Yiu-chung considered that the revised ceiling of the further sum was still too low and his questions regarding:</p> <p>(a) whether the Administration would consider increasing the amount of the further sum and making the non-compliance for an order of reinstatement ("RI") or re-engagement ("RE") a criminal offence; and</p> <p>(b) whether the Administration would consider extending the scope of the Employment (Amendment) Bill 2017 ("the Bill") to cover all types of dismissal.</p> <p>The Administration responded that:</p> <p>(a) the main object of the Bill was to enhance employees' protection against unreasonable and unlawful dismissal ("UUD") cases as specified in the Employment Ordinance (Cap. 57), of which the dismissal was prohibited by law and was a criminal offence. It had no plan to extend compulsory RI or RE to other types of dismissal for the time being; and</p> <p>(b) there had been much discussion on non-compliance with an RI/RE order and it was pragmatic for the employee to be paid the further sum without further legal proceedings. The further sum was in addition to existing remedies for UUD, namely the terminal payments and an award of compensation up to \$150,000.</p>	
012827 - 013217	Chairman Mr POON Siu-ping Admin	<p>Responding to Mr POON Siu-ping's enquiries, the Administration advised that of the 25 UUD claims in which the employee requested RI/RE during the past five years, none was made by foreign domestic helper ("FDH").</p> <p>The Administration further advised that after the passage of the Bill, it was anticipated that more employees of UUD claims might try to pursue RI/RE at court or the Labour Tribunal ("LT") given consent from their employers to RI/RE was no longer required.</p>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s) / Discussion</b>	<b>Action Required</b>
013218 - 013818	Chairman Mr HO Kai-ming Admin	<p>Mr HO Kai-ming's question regarding the circumstances under which the employer could, in accordance with the proposed new section 32PC, apply for and obtain relief from the liability to pay the further sum.</p> <p>The Administration explained that an employer could apply for relief from paying the further sum if it became no longer reasonably practicable for the employer to reinstate or re-engage the employee as required by the order because of reasons attributable to the employee or because of change of circumstances had occurred beyond the employer's control after the making of the order.</p> <p>The court or LT would take into account any relevant considerations in determining such applications and it might wholly or partly relieve the employer from paying the further sum depending on the circumstances of the case.</p>	
013819 - 014434	Chairman Mr LUK Chung-hung Admin	<p>In response to Mr LUK Chung-hung's enquiries, the Administration reaffirmed that the Bill was an improvement which sought to better protect employees against UUD. The court or LT would take into account the circumstances of the case having regard to a number of factors, including the relationship between the employer and the employee, in making an RI or RE order.</p> <p>Mr LUK further expressed the view that the Administration could consider allowing employees to opt for compensation instead of RI or RE. He maintained his view that the protection to employees against UUD was insufficient.</p>	
014435 - 014915	Chairman Mr SHIU Ka-fai Admin	<p>Responding to Mr SHIU Ka-fai's enquiry, the Administration advised that the Bill was also applicable to employers of FDHs.</p> <p>Mr SHIU's further question and the Administration's explanation of unlawful dismissal, i.e. the dismissal was in contravention of certain provisions of labour legislation.</p>	

Time marker	Speaker	Subject(s) / Discussion	Action Required
		<p>The Administration reiterated that in making an order for RI or RE, the employer and the employee would be given an opportunity to present their cases in respect of the making of the order. The court or LT would also take into account the circumstances of the case having regard to a number of factors.</p>	
014916 - 015518	<p>Chairman Dr Fernando CHEUNG Admin</p>	<p>Dr Fernando CHEUNG's questions regarding:</p> <p>(a) why an order for RI or RE was not made compulsory if the court or LT considered that the order was appropriate and that RI or RE of the employee by the employer was reasonably practicable; and</p> <p>(b) the Administration's view of the proposal to increase the further sum to six times the employee's average monthly wages and without upper limit.</p> <p>The Administration responded that:</p> <p>(a) it was after much discussion and deliberations with employer and employee representatives of the Labour Advisory Board ("LAB") that a consensus was reached on paying a further sum to an employee if the employer concerned failed to reinstate or re-engage him being a more pragmatic approach; and</p> <p>(b) it was the consensus reached by LAB after deliberations to set the further sum at three times the average monthly wages of the employee, subject to a maximum of \$72,500.</p>	
015519 - 015751	<p>Chairman Mr Frankie YICK</p>	<p>As the Bill provided an employer with the option to pay an employee a further sum in the event that the employer failed to reinstate or re-engage the employee as required by the order, Mr Frankie YICK considered that the Bill was acceptable.</p>	

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s) / Discussion</b>	<b>Action Required</b>
015752 - 020101	Chairman Admin	The Administration's response to the issues raised at the meeting on 16 June 2017 [LC Paper No. CB(2)2182/16-17(02)]. Members noted the Administration's corrigendum to two typos in the paper.	
020102 - 020148	Chairman	Date of next meeting	

Council Business Division 2  
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7 November 2017