

立法會
Legislative Council

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(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, 24 November 2017, at 8:30 am
in Conference Room 3 of the Legislative Council Complex

Members present : Hon WONG Ting-kwong, GBS, JP (Chairman)
Hon LEUNG Yiu-chung
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 LUK Chung-hung
Hon Jeremy TAM Man-ho

Members absent : Hon Abraham SHEK Lai-him, GBS, JP
Hon CHEUNG Kwok-kwan, JP

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

Miss Betty CHEUNG Yuet-wah
Senior Assistant Law Draftsman
Department of Justice

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

Staff in attendance : Mr Alvin CHUI
Assistant Legal Adviser 3

Ms Gloria TSANG
Council Secretary (2) 1

Miss Lulu YEUNG
Clerical Assistant (2) 1

Action

I. Meeting with the Administration

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

2. The Administration was requested to provide the following information:

- (a) reporting of information obtained in connection with conciliation or mediation to the court in other legal proceedings, and
- (b) entitlement of an employee to wage payment and employment benefits or compensation during the intervening period between the date of dismissal and the date of reinstatement or re-engagement.

II. Any other business

3. The Chairman said that pending the Administration's provision of written response to the issues in paragraph 2 above, the Bills Committee had completed scrutiny of the Bill. Members agreed that the Administration's response would be circulated for consideration. A further meeting with the Administration might be scheduled, if necessary, after the Administration's provision of its response to outstanding issues.

4. There being no other business, the meeting ended at 10:30 am.

Council Business Division 2
Legislative Council Secretariat
20 December 2017

**Proceedings of meeting of the
Bills Committee on Employment (Amendment) Bill 2017
held on Friday, 24 November 2017, at 8:30 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s) / Discussion	Action Required
000000 - 001445	Chairman	Opening remarks	
001446 - 001831	Chairman Admin	Commencement of clause-by-clause examination <u>Clauses 1 to 3</u> Members raised no question.	
001832 - 003101	Admin Chairman Mr LEUNG Yiu-chung ALA3	<u>Clause 4</u> <i>Proposed sections 32N(3D) and 32N(3E)</i> Mr LEUNG Yiu-chung's concern about the considerations for stipulating "with the agreement of the employer and the employee" in the proposed section 32N(3D). The Administration explained that the conciliation undertaken by the Labour Department ("LD") was conducted in confidence so that both parties were free to exchange views or offer concessions in the meeting. The proposed section 32N(3D) aimed to provide the court or the Labour Tribunal ("LT") a statutory channel, where it considered desirable to do so, to obtain the information revealed by the employer and employee in connection with the conciliation. In any case the Bill required that the court or LT must give an opportunity to the employer and the employee to present each of their cases in respect of the making of an order for reinstatement ("RI") or re-engagement ("RE"). ALA3's enquiry and the Administration's response regarding: (a) whether the confidentiality and non-prejudicial to the legal rights of the employer and the employee, including protection of all information obtained during the conciliation, would be affected; and	

Time marker	Speaker	Subject(s) / Discussion	Action Required
		(b) the rationale for empowering the employer or the employee to override the court's request for a report containing information in connection with the conciliation.	
003102 - 003129	Chairman Mr LUK Chung-hung	Mr LUK Chung-hung's enquiry on the discussion of further sum and the Chairman's advice.	
003130 - 011104	Chairman Mr POON Siu-ping Admin Dr Fernando CHEUNG Mr WU Chi-wai Mr LEUNG Yiu-chung	<p><u>Clause 4</u></p> <p>Considering that it would be difficult to obtain the mutual agreement of the employer and employee to the contents of the report containing information obtained in connection with the conciliation to the court or LT for unlawful and unreasonable dismissal cases, Mr POON Siu-ping, Dr Fernando CHEUNG, Mr WU Chi-wai and Mr LEUNG Yiu-chung cast doubt about the effectiveness of the proposed section 32N(3E). The Administration stressed that the request for a report from the Commissioner for Labour ("C for L") was optional for the court or LT in making a finding for the purpose of section 32N(3C) without jeopardizing the confidential and non-prejudicial nature of the conciliation.</p> <p>The Chairman's clarification and the Administration's advice on the purpose of the report from C for L.</p> <p>Dr CHEUNG's further enquiry on the circumstances under which the court or LT would request a report from C for L. The Administration advised that in the past the court or LT did not often ask conciliation officers for such information, having regard to the confidential nature of the conciliation and the fact that it could ask directly the employer and the employee to present each of their cases in respect of the making of an order for RI/RE. While agreeing that conciliation should be conducted in confidence, Dr CHEUNG took the view that C for L should prepare an independent report to the court or LT containing information that was obtained during the conciliation. In the circumstances, he did not see the need to obtain prior agreement of the employer and the employee to the contents of C for L's report.</p>	

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		<p>Responding to Mr WU's enquiry, the Administration advised that under the Labour Relations Ordinance (Cap. 55), a conciliation officer was authorized by C for L to initiate or undertake conciliation in a trade dispute. The Administration stressed that the confidentiality of a conciliation should be upheld and that most of the labour disputes had been settled through conciliation over the years.</p> <p>The Chairman requested the Administration to provide information on the reporting of information obtained in connection with conciliation or mediation to the court in other legal proceedings.</p>	<p>Admin</p>
<p>011105 - 012042</p>	<p>Admin Chairman Mr LUK Chung-hung Mr LEUNG Yiu-chung Mr POON Siu-ping</p>	<p><u>Clause 5</u></p> <p><i>Proposed new section 32NA(1)(b)(i)</i></p> <p>Mr LUK Chung-hung asked whether the Administration would consider increasing the amount of the further sum.</p> <p>The Administration stressed that it was the consensus reached by the Labour Advisory Board to set the further sum at \$72,500 and the further sum was actually in addition to existing remedies of terminal payments and an award of compensation under the existing provisions of the Employment Ordinance (Cap. 57).</p> <p>The Administration noted the suggestion of the introduction of a review mechanism for making adjustments to the amount of further sum by Mr LEUNG Yiu-chung and Mr POON Siu-ping, and advised that the Labour Department would review the labour legislation from time to time and where appropriate.</p>	
<p>012043 - 012059</p>	<p>Admin</p>	<p><u>Clause 6</u></p> <p>Members raised no question.</p>	

Time marker	Speaker	Subject(s) / Discussion	Action Required
012100 - 012900	Admin Chairman ALA3	<p><u>Clause 7</u></p> <p><i>Proposed new section 32PA(4)</i></p> <p>ALA3's enquiry and the Administration's response regarding the rationale for an application for variation of an RE order to be made by the employee only.</p>	
012901 - 013337	Admin Chairman ALA3	<p><u>Clause 8</u></p> <p><i>Proposed new sections 32PC(3) & 32PC(5)</i></p> <p>In response to ALA3's enquiry on the proposed new sections 32PC(3) and 32PC(5), the Administration affirmed that the "change of circumstances occurred beyond the employer's control" referred to a change of circumstances that occurred after an order for RI/RE was made by the court or LT and before the specified date for RI/RE. Nevertheless, the court or LT could take into account any relevant considerations in determining whether relief from paying the further sum should be granted.</p>	
013338 - 013635	Admin	<p><u>Clauses 9 to 13</u></p> <p>Members raised no question.</p>	
013636 - 014033	Admin Chairman ALA3	<p><u>Clause 14</u></p> <p><i>Proposed new section 30A(6) in the Labour Tribunal Ordinance</i></p> <p>ALA3's enquiry and the Administration's response regarding:</p> <p>(a) whether, in an alternative compliance application, an application for a stay of execution of the original RE order could only be made by the employee; and</p> <p>(b) the District Court's and the High Court's jurisdiction to order a stay of execution of the original RI/RE order although similar amendments were not introduced to the District Court Rules and the High Court Rules.</p>	

Time marker	Speaker	Subject(s) / Discussion	Action Required
014034 - 014200	Admin	<u>Clauses 15 to 18</u> Members raised no question.	
014201 - 015136	Chairman Dr CHIANG Lai-wan Admin	Completion of clause-by-clause examination of the Bill. Responding to Dr CHIANG Lai-wan's enquiry, the Administration said that in case the employer failed to reinstate or re-engage the employee as required by the order for RI/RE, the employee was not entitled to any fringe benefits provided by the employer during the intervening period. On the other hand, in making an RI/RE order, the court or LT might include into an award of compensation any loss sustained by the employee which is attributable to the dismissal.	
015137 - 020320	Chairman Mr LEUNG Yiu-chung Admin	Mr LEUNG Yiu-chung's concern and the Administration's advice regarding the wage payment for an employee for the period between the date of dismissal and the date of RI/RE. The Administration was requested to provide information on the employee's entitlement to wage payment and employment benefits or compensation during the intervening period.	Admin
020321 - 020413	Chairman	Closing remarks.	