

For information on
21 February 2017

Legislative Council Panel on Manpower

Enforcement of labour legislation by the Labour Administration Branch of the Labour Department

Purpose

This paper briefs Members on the enforcement actions taken by the Labour Administration Branch of the Labour Department (LD) to protect the statutory rights and benefits of employees under relevant labour legislation and the latest position up to 2016.

Enforcement of the Employment Ordinance

2. The Employment Ordinance (EO) (Cap. 57) provides for various employment-related benefits and entitlements to employees. LD has been adopting a multi-pronged strategy to protect employees' statutory entitlements.

3. The enforcement divisions of LD endeavour to protect the statutory rights and benefits of employees, including the right to timely payment of wages and the statutory benefits of rest days, statutory holidays and annual leave with pay, etc. LD widely publicises its complaint hotline (2815 2200) and encourages prompt reporting of breaches of EO so that speedy follow-up actions can be taken. Labour inspectors conduct inspections to workplaces of various sectors to detect wage offences and breaches of other relevant legislation. To clamp down on breaches of EO, particularly wage offences, LD has hired former police officers as contract investigation officers to strengthen its capacity in collecting evidence and intelligence. If a company has committed wage offence with the consent, connivance or neglect of its director or responsible officer, the culpable director or responsible officer may also be prosecuted.

4. In 2016, LD secured 503 convictions for wilful defaults of wage payment in breach of EO, including 163 summonses convicted against company directors or responsible officers. The highest fine imposed on a single wage offence case was \$764,000. Moreover, an employer convicted of wage offences was sentenced to imprisonment, while community service orders

were made against two company directors. These convictions have delivered a strong message to employers that defaults in payment of wages can lead to serious consequences and no employer can evade liabilities to pay wages by hiding behind the veil of a limited company.

5. Other than wage offences, convicted summonses on holiday offences under EO outnumber those involving other statutory rights and benefits. In 2016, a total of 97 convictions on holiday offences were recorded. LD will continue to spare no efforts in taking stringent enforcement actions to safeguard the statutory rights and benefits of employees.

6. LD also endeavours to bring to justice employers, company directors and responsible officers who wilfully default the awards of the Labour Tribunal (LT) or Minor Employment Claims Adjudication Board (MECAB). Where default cases suspected to have been committed wilfully and without reasonable excuse are detected, LD will follow up, investigate and collect sufficient evidence to facilitate prosecution action. The provisions of EO on the offences of defaulting the awards of LT or MECAB came into effect in October 2010. As at the end of 2016, LD secured 502 convicted summonses. The highest fine imposed on a single convicted case was \$300,000. Three employers and two company directors were sentenced to imprisonment, with the heaviest penalty being imprisonment for six months, suspended for 18 months. Moreover, community service orders ranging from 100 to 240 hours were made against three employers and seven company directors. The penalty and sentence reflect the importance that the court attaches to these offences.

7. Same as other employees, non-skilled workers employed by government service contractors are protected by EO and other labour laws. All government service contractors are further mandated to sign with their non-skilled workers the Standard Employment Contract (SEC) as prescribed by the Government. Through proactive inspections of workplaces, labour inspectors interview workers and verify employment records to monitor government service contractors' compliance with relevant labour legislation and provisions of SEC. LD will take out prosecution if suspected breaches of labour laws are substantiated with sufficient evidence. LD will also inform relevant procuring departments of the details of the breaches and convictions to facilitate their imposition of appropriate administrative sanction, including the strengthening of monitoring measures against the service contractors concerned, termination of the service contracts with breaches involved, etc.

8. For the protection of non-skilled workers of government service contractors, labour inspectors conducted 687 inspections and interviewed 2 035

workers of 87 government service contractors in 2016. LD will continue to collaborate with the procuring departments in adopting multi-pronged measures to safeguard the employment rights of non-skilled workers engaged in government service contracts.

Enforcement of the Minimum Wage Ordinance

9. Since the implementation of Statutory Minimum Wage (SMW) in May 2011, the general state of law compliance has been satisfactory. As at the end of 2016, labour inspectors conducted 232 212 workplace inspections to enforce the Minimum Wage Ordinance (MWO) (Cap. 608). 186 cases (including reported case) of suspected violation of MWO were detected. LD has taken follow-up actions on all these cases and confirmed that employees in most of the cases had received SMW or recovered the shortfall of wages. A total of 44 convicted summonses for failure to pay SMW were recorded, two of which were on defaults of MECAB awards concerning failure to pay SMW.

10. Subject to the approval of the Legislative Council, the SMW rate will be increased to \$34.5 per hour with effect from 1 May 2017. LD will organise publicity activities through various channels and conduct targeted inspection campaigns to check compliance with the new SMW rate.

Follow-up on suspected offence cases found in the course of conciliation

11. The Labour Relations Division (LRD) of LD provides voluntary conciliation service to assist employers and employees in organisations outside the government sector to resolve labour disputes and claims arising from EO, MWO and the contracts of employment. If, in the course of conciliation, the employer is suspected to have contravened EO or MWO and the employee is willing to assist in investigation, LRD will refer the case to the enforcement divisions of LD for follow-up investigation.

Enforcement of compulsory insurance for employees' compensation

12. Under the Employees' Compensation Ordinance (Cap. 282), employers are required to take out employees' compensation insurance (ECI) to cover their liabilities to pay compensation under the laws (including the common law). Labour inspectors conduct inspections to establishments of various trades to check employers' compliance with the compulsory ECI

requirement. Employees may report suspected cases of non-compliance to LD (complaint hotline 2815 2200). Upon receipt of information on such reported cases, LD will conduct prompt investigation to collect sufficient evidence to facilitate prosecution against offenders. In 2016, labour inspectors conducted 86 063¹ inspections to enforce the relevant requirement and 567 convictions for failure to take out ECI were recorded.

13. To step up publicity and education, increase the transparency of taking out ECI and promote adequate ECI coverage by employers, LD and the Office of the Commissioner of Insurance have jointly produced a leaflet cum poster to illustrate to members of the public the salient points to note when taking out ECI and the general criteria of ECI premium rate setting adopted by insurance companies.

Proactive efforts to prevent abuse of the Protection of Wages on Insolvency Fund

14. The Protection of Wages on Insolvency Fund (PWIF) provides timely relief to employees in the event of cessation of business of their insolvent employers. Ex gratia payment granted from PWIF covers arrears of wages and other statutory entitlements as stipulated in the Protection of Wages on Insolvency Ordinance (Cap. 380). LD also proactively prevents PWIF from being abused to ensure that ex gratia payment is issued only to employees whose employers are genuinely insolvent.

15. The Government has set up an inter-departmental task force comprising representatives from the Commercial Crime Bureau of the Hong Kong Police Force (the Police), Official Receiver's Office (ORO), Legal Aid Department and LD to strengthen the co-operation among departments in actively pursuing the responsible individuals of companies including employers, company directors, etc. who may have illegally transferred company assets and/or deceived creditors through fraud, theft and conspiracy to abuse PWIF before business closure. When investigating suspected wage offences and verifying applications for PWIF, LD will look into whether the responsible individuals of companies have acted unlawfully when operating the businesses and managing the companies' financial resources. Suspected cases will be referred to relevant law enforcement departments for action. For example, for

¹ During the 86 063 inspections, 14 707 workplaces were found locked, 20 951 workplaces were found removed, and 137 workplaces were found not in operation.

cases referred by LD, ORO will consider applying to the court to disqualify the company responsible individuals from being directors and taking part in the promotion, formation or management of a company. In 2016, 10 persons involved in such cases were disqualified for periods from two and a half years to four years. The Police also actively follows up on cases referred by LD. In parallel, LD endeavours to clamp down on employers evading liabilities to pay wages and combat wage offences to prevent and reduce defaults of wage payment which may culminate in applications to PWIF for ex gratia payment. These measures deter employers who are intent on evading liabilities to pay wages and abusing PWIF.

Way forward

16. LD is fully committed to safeguarding the statutory rights and benefits of employees. Alongside with vigorous enforcement actions, extensive publicity and promotional activities on various labour laws are undertaken. LD will sustain its all-out efforts in implementing the enforcement measures outlined above to ensure that employees' statutory entitlements are well protected, and to pursue against those employers and company responsible individuals who wilfully defy the law.

Labour and Welfare Bureau
Labour Department
February 2017