

立法會
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Panel on Manpower

Background brief prepared by the Legislative Council Secretariat for the meeting on 21 February 2017

Enforcement of labour legislation

Purpose

This paper gives an account of the past discussions by the Panel on Manpower ("the Panel") on the enforcement of labour legislation by the Labour Administration Branch of the Labour Department ("LD").

Background

2. According to the Administration, the Labour Administration Branch of LD is responsible for enforcing the following major labour legislation:

- (a) the Employment Ordinance (Cap. 57) ("EO") which covers a comprehensive range of employment protection and benefits for employees including wage protection, rest days, holidays with pay, paid annual leave, sickness allowance, maternity protection, severance payment, long service payment, employment protection, termination of employment contract and protection against anti-union discrimination. Employees who are owed wages, wages in lieu of notice and/or severance payments by insolvent employers may apply for ex-gratia payment from the Protection of Wages on Insolvency Fund ("PWIF");
- (b) Part IV of the Employees' Compensation Ordinance (Cap. 282) ("ECO") which provides for compulsory insurance in relation to compensation for work injuries; and

- (c) the Minimum Wage Ordinance (Cap. 608) ("MWO") which provides for a minimum wage at an hourly wage for certain employees.

Inspections to the workplace and accommodation of imported workers are also conducted by the Labour Administration Branch of LD to ensure that workers entering Hong Kong for employment under the Supplementary Labour Scheme receive their statutory and contractual benefits.

Deliberations of the Panel

Protection of employees' rights and benefits

3. Members were concerned about the protection for employees' entitlement under EO, particularly whether the offences for defaulted wages had adequate deterrent effect in the event that there was no written employment contract.

4. According to the Administration, as stipulated under EO, an employer must inform each employee clearly of his conditions of employment. A contract of employment could be made orally or in writing, and included both express and implied terms. Nonetheless, as the use of written employment contract might help employees better understand the terms of their employment, remind both employers and employees of their contractual obligations, minimize unnecessary labour disputes and protect the interests of both parties, employers were encouraged to enter into written employment contracts with their employees as far as possible. The Administration stressed that under EO, employers had the statutory obligations to pay wages on time. Any employer who failed to do so wilfully and without reasonable excuse was liable to prosecution.

5. Members were also concerned about the protection of rights and benefits of non-skilled workers of government service contractors. The Administration advised that apart from protection under EO, it had mandatorily required service contractors to sign the Standard Employment Contracts ("SECs") with their non-skilled workers, which set out clearly the monthly wages, working hours, mode of wage payment, etc. LD would conduct inspections to workplaces to interview the non-skilled workers and verify their relevant wage and employment records. If suspected breaches of EO were detected with sufficient evidence, it would prosecute the offenders. LD would also inform the relevant procuring departments details of the convictions for departments' imposition of administrative sanction, including termination of relevant service contracts and strengthening of monitoring measures as appropriate.

6. Some members expressed concern that employers might evade the responsibility of providing employees' with statutory benefits by forcing their employees to become self-employed persons. The Administration advised that the most effective way to tackle the problem of false self-employment was through publicity and promotion on the differences, merits and drawbacks as well as the legal rights and obligations of the two types of contractual relationship, viz. employment and self-employment. Employers were reminded to cautiously assess the risks involved before entering into a contract to engage someone as a contractor/self-employed person, including the consequences for committing offences under relevant labour legislation should they falsely label an employee as a self-employed person and fail to provide appropriate employment benefits to him.

Enforcement of MWO

7. Some members expressed concern that certain government service contractors were reportedly unable to meet the additional wage bill arising from the implementation of the revised statutory minimum wage ("SMW") rate in May 2013 as the relevant contracts had not made provisions for salary adjustment. As a result, the contractors had asked their employees to take no pay rest days in order to cut the wage costs. These members expressed concern as to whether the Administration would provide top-up payments to government service contractors to tackle the problem.

8. According to the Administration, it had provided, on an exceptional and one-off basis, top-up payments to government service contractors to meet the increase in wage costs of their non-skilled workers arising solely and directly from meeting the SMW requirement with effect from 1 May 2011 until the expiry of the contracts concerned. The Administration explained that it had decided to do so because it recognized that the implementation of the initial SMW rate was unique in that many government service contractors were unable to capture the impact of SMW on their contract prices when offering bids at the tendering state. It, however, had made it clear that it would not provide such top-up payments in subsequent reviews of the SMW rate in the light of the employers' obligation to pay their workers additional remuneration to meet the shortfall if the wages of their workers were below the SMW requirement.

9. Members were advised that the state of law compliance of SMW had been satisfactory. Nonetheless, when reports about cases of non-compliance with the SMW requirement under MWO were received, LD would investigate each of the cases and take out prosecution if there was sufficient evidence to establish an offence.

Abuse of PWIF

10. Some members were concerned about the disparity in the level of penalty for convicted cases involving PWIF abuses against employers/company directors and employees. It was pointed out that the former would not only be sentenced to imprisonment or imposed a fine, but also would be disqualified from acting as company directors and taking part in the promotion, formation or management of companies for a period ranging from one and a half years to five years. These members considered that the level of penalty for employers was disproportionate to the gravity of the offence.

11. According to the Administration, the sentence for convicted cases involving PWIF abuses was a question for the court. Separately, the Official Receiver's Office would, having regard to the seriousness and circumstances of individual cases, recommend to the court to disqualify the concerned company directors from taking part in the promotion, formation or management of a company.

Compulsory insurance under ECO

12. Members noted with concern that there was an increasing number of cases concerning employers not taking out insurance policies under ECO in recent years. Members considered that the crux of the problem was due to the difficulties encountered by small enterprises, in particular those in the catering sector, in taking out employees' compensation insurance (commonly known as labour insurance) as well as the high premiums. Members urged the Administration to consider setting up a central employees' compensation fund to replace the current arrangement of having employers to take out labour insurance policies with insurance companies.

13. The Administration advised that in recognition of the difficulties in procuring insurance on the part of individual employers, with the Administration's encouragement, the Hong Kong Federation of Insurers had set up the Employees' Compensation Insurance Residual Scheme to address the concerns and problems faced by individual industries in taking out employees' compensation insurance from the open insurance market. The Administration would continue to maintain close contact with the relevant stakeholders and institutions to keep in view if and how the current system could be improved. Some members, however, pointed out that the premium rates under the Scheme was even higher than that in the open insurance market, which was beyond the affordability of employers.

Relevant papers

14. A list of the relevant papers on the Legislative Council website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
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Relevant papers on the enforcement of labour legislation

Committee	Date of meeting	Paper
Panel on Manpower	20.1.2011 (Item III)	<u>Agenda</u> <u>Minutes</u>
	12.7.2011 (Item II)	<u>Agenda</u> <u>Minutes</u>
	15.12.2011 (Item V)	<u>Agenda</u> <u>Minutes</u>
	28.5.2013 (Item III)	<u>Agenda</u> <u>Minutes</u>
	21.4.2015 (Item V)	<u>Agenda</u> <u>Minutes</u>
Council meeting	19.12.2012	[Question 5] Asked by: Hon LEUNG Yiu-chung <u>Taking out employees' compensation insurance policies</u>
	5.6.2013	<u>Motion on "Enacting legislation on the right to collective bargaining"</u>