

立法會
Legislative Council

LC Paper No. CB(2)918/17-18
(These minutes have been seen
by the Administration)

Ref : CB2/PL/MP

Panel on Manpower

Minutes of meeting
held on Tuesday, 19 December 2017, at 4:30 pm
in Conference Room 3 of the Legislative Council Complex

- Members present** : Hon KWOK Wai-keung, JP (Chairman)
Hon LEUNG Yiu-chung
Hon Frankie YICK Chi-ming, SBS, JP
Hon YIU Si-wing, BBS
Hon POON Siu-ping, BBS, MH
Dr Hon CHIANG Lai-wan, JP
Hon CHU Hoi-dick
Hon Jimmy NG Wing-ka, JP
Hon HO Kai-ming
Hon SHIU Ka-fai
Dr Hon Pierre CHAN
Hon LUK Chung-hung
Hon Jeremy TAM Man-ho
- Member attending** : Dr Hon Helena WONG Pik-wan
- Members absent** : Dr Hon Fernando CHEUNG Chiu-hung (Deputy Chairman)
Hon WONG Kwok-kin, SBS, JP
Hon Michael TIEN Puk-sun, BBS, JP
Dr Hon KWOK Ka-ki
Hon Andrew WAN Siu-kin
Hon SHIU Ka-chun

Public Officers attending : Item IV

Dr LAW Chi-kwong, GBS, JP
Secretary for Labour & Welfare

Mr Carlson CHAN Ka-shun, JP
Commissioner for Labour

Ms Melody LUK Wai-ling, JP
Assistant Commissioner for Labour
(Labour Relations)

Mr Raymond LIANG Lok-man
Chief Labour Officer (Labour Relations)
Labour Department

Item V

Mr Jeff LEUNG Wing-yan, JP
Deputy Commissioner for Labour
(Occupational Safety and Health)

Mr WU Wai-hung
Assistant Commissioner for Labour
(Occupational Safety)

Mr MAK Ping-sang
Chief Occupational Safety Officer
(System and Support)
Labour Department

Dr Mandy HO Mang-ye, JP
Occupational Health Consultant (1)
Labour Department

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

Staff in attendance : Ms Rita LAI
Senior Council Secretary (2) 1

Miss Lulu YEUNG
Clerical Assistant (2) 1

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I. Confirmation of minutes of previous meeting
(LC Paper No. CB(2)520/17-18)

The minutes of the meeting held on 21 November 2017 were confirmed.

II. Information papers issued since the last meeting
(LC Paper Nos. CB(2)457/17-18(01) and CB(2)509/17-18(01))

2. Members noted that the following papers had been issued since the last meeting:

- (a) joint letter dated 1 December 2017 from Mr LEUNG Yiu-chung, Dr KWOK Ka-ki, Dr Fernando CHEUNG and Mr Jeremy TAM suggesting the Panel to discuss the arrangement and support for rehabilitation services for employees who sustained work injuries; and
- (b) Administration's response to issues raised in the joint letter dated 1 November 2017 from Dr KWOK Ka-ki and Mr Jeremy TAM concerning the employment entitlements of workers engaged by government service contractors.

Members further noted that both subjects had already been included in the Panel's list of outstanding items for discussion.

III. Date of next meeting and items for discussion
(LC Paper Nos. CB(2)522/17-18(01) and (02))

Regular meeting in January 2018

3. Members agreed that the following items proposed by the Administration be discussed at the next regular meeting at 4:30 pm on 16 January 2018:

- (a) Establishment of a Human Resources Planning and Poverty Co-ordination Unit under the Chief Secretary for Administration's Private Office; and

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- (b) Latest development in the employment services of the Labour Department.

Abolishing the "offsetting" arrangement under the Mandatory Provident Fund system

4. Mr POON Siu Ping, Dr CHIANG Lai-wan, Mr LUK Chung-hung and the Chairman were concerned about the timeline for the Administration to put forth a finalized option for the abolition of the "offsetting" arrangement under the Mandatory Provident Fund system. Mr YIU Si-wing, on the other hand, expressed concern about the impact of abolishing the "offsetting" arrangement on the operation of the small- and medium-sized enterprises ("SMEs"). Mr LUK and Mr YIU called on the Administration to consult both the labour and business sectors prior to putting forth a finalized option for abolishing the "offsetting" arrangement.

5. At the invitation of the Chairman, Secretary for Labour & Welfare ("SLW") responded that the Government was making best efforts to draw up a proposal to abolish the "offsetting" arrangement that would take account of the interests of both the business and labour sectors. Given that there were some complicated technical issues involved in the proposal that needed to be resolved, the Administration would revert to the Panel on a finalised proposal as soon as practicable. The Chairman urged the Administration to expedite the relevant work.

IV. Review of statutory paternity leave

(LC Paper Nos. CB(2)522/17-18(03) and (04))

6. At the invitation of the Chairman, SLW briefed members on the outcome of the review of the implementation of statutory paternity leave ("PL") and sought members' views on the Administration's proposed improvement of statutory PL by increasing it from three to five days, details of which were set out in the Administration's paper. SLW appealed to members to support the proposal. With members' support, the Administration would then proceed with the drafting of the legislative amendments so that male employees could enjoy the enhanced PL benefits as soon as practicable.

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7. Members noted an updated background brief entitled "Statutory paternity leave" prepared by the Legislative Council ("LegCo") Secretariat.

Implementation of statutory paternity leave

8. Expressing concern about the implementation of statutory PL, Mr YIU Si-wing sought information on the number of complaints arising from the notification requirements for taking PL since the implementation of statutory PL and how such cases were handled.

9. Commissioner for Labour ("C for L") responded that since the implementation of statutory PL from February 2015 up till November 2017, the Labour Department ("LD") received 14 employment claims involving PL. Four cases were related to the notification requirements for taking PL, of which one case had been settled through conciliation in LD, two cases had been ruled in favour of the employees by the Labour Tribunal ("LT"), and the employee of the remaining case was still considering whether to pursue his claims at LT.

10. In response to Mr YIU Si-wing's follow-up enquiry, Assistant Commissioner for Labour (Labour Relations) elaborated on the notification requirements for taking PL. She added that the requirements were to let employers have advance knowledge of their employees' intention to take PL so as to facilitate manpower deployment. It was also noteworthy that despite the stipulations in the law, individual enterprises had made flexible arrangement in granting of PL in the case of employees not meeting the notification requirements.

Duration of paternity leave

11. Mr LUK Chung-hung said that the Hong Kong Federation of Trade Unions ("HKFTU") raised no objection to the Administration's proposal of increasing statutory PL from three to five days. That said, HKFTU had all along been advocating for seven days' PL for employees. Referring to the review of the implementation of statutory PL conducted by LD in the period between July and December 2016 (hereafter referred to as "the review"), Mr LUK noted that among those respondent employees who provided views on the duration of PL, 50% suggested at least seven days and 27.5% suggested longer duration of PL. To respond to the call from the labour sector, Mr LUK called on the Administration to undertake to conduct a review on the duration of

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statutory PL after the implementation of the proposed five-day PL, with a view to further increasing the duration to seven days. The Chairman shared a similar concern.

12. Mr POON Siu-ping said that although the Administration's proposal of increasing statutory PL from three to five days could not fully respond to the labour sector's call for extending the duration of PL to seven days, the Federation of Hong Kong and Kowloon Labour Unions welcomed the proposed improvement to the existing arrangements. Citing the results of questionnaire survey with employees during the review, Mr POON pointed out that of the 188 employee respondents, 125 (66.5%) took extra leave ranging from one to more than 15 days in addition to the statutory PL around the time of their child's birth, which revealed the inadequacy of the statutory PL days. Given that the employer and employee representatives on the Labour Advisory Board agreed that PL could be further reviewed at an appropriate time, Mr POON asked whether consideration would be given to specifying the timeframe for further extending the duration of statutory PL. He also called on the Administration to consider working out a legislative timetable for progressively increasing the number of PL days to 15, having regard to the fact that many employers preferred a progressive approach in enhancing the PL benefits as revealed from the review. This could reduce the contention between the labour and business sectors as well as promote family-friendly employment practices ("FFEPs").

13. Responding to members' views and concerns, SLW advised that according to the outcome of the review, employees in general wished to have a longer duration of PL while some employers would prefer gradual improvement. The Administration would review the labour rights and benefits from time to time. It was the Government's policy to gradually improve employees' benefits in a way commensurate with the pace of Hong Kong's socio-economic development. The proposed increase in the number of PL days from three to five was considered appropriate and acceptable to the majority of employers.

14. Dr Helena WONG said that the Democratic Party had all along been in support of extending the duration of statutory PL to seven days with full pay and that of statutory maternity leave ("ML") be increased to 14 weeks with full pay. While welcoming the Administration's proposal of increasing statutory PL from three to five days, Dr WONG expressed dissatisfaction at the progressive enhancement. With a view to promoting FFEPs, Dr WONG called on the Administration to consider

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adopting providing financial subsidy to employers to cover the estimated annual additional cost of \$242 million arising from increasing PL to seven days with full pay. In her view, the additional cost impact on the Government was immaterial in the light of the huge fiscal reserve.

15. The Chairman expressed disappointment at the slow progress in enhancing the statutory PL benefits. The Chairman was of the view that the Administration should not incline to the business sector's interest in considering the improvement of the PL benefits. The Administration's determination in enhancing the PL benefits was of critical importance not only to improving the labour rights and benefits but also in the context of population policy and promotion of FFEPs.

16. SLW responded that the Administration reviewed employees' rights and benefits from time to time and would propose gradual improvement to employment benefits, taking into account the interests of employees and affordability of employers, bearing in mind that most of the enterprises in Hong Kong were of small- and medium-sized. Extending statutory PL from three to five days was considered appropriate and was a positive step forward in enhancing PL benefits.

17. Mr Jeremy TAM raised no objection to the Administration's proposal of increasing statutory PL from three to five days. With reference to the findings in the focus group discussions with employers during the review, Mr TAM highlighted that many employers preferred a progressive approach in increasing the number of PL days and some found five days' statutory PL acceptable while there were individual employers considering seven days' statutory PL acceptable. It was also noted from the findings of survey with employees during the review that 50% of the respondents suggested at least seven days instead of longer duration of PL. He considered such request rational. With a view to encouraging childbirth, Mr TAM called on the Administration to seriously consider extending the duration of PL to seven days.

18. SLW advised that in the focus group discussions of the review, quite a number of employers held that statutory PL should remain three days. The Administration considered the proposed increase of the number of PL days from three to five appropriate, which was a gradual improvement and could strike a reasonable balance between the interests of employers and employees.

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19. Pointing out that the great majority of Hong Kong's companies were small-, medium- and micro-sized enterprises ("SMMEs") and that the mainstay of Hong Kong's economy was the service industry, Mr YIU Si-wing expressed concern about the difficulties in business operation, in particular manpower deployment, faced by SMMEs (such as the travel industry) in the event that the number of PL days was further increased. Nevertheless, Mr YIU was in support of improving the labour rights and benefits in a progressive approach in the light of economic development and considered it imperative that an amiable labour relation could be maintained in the process. He called on the Administration to make reference to the experience of implementing statutory PL in the neighbouring regions/places when conducting future reviews.

Rate of PL pay

20. Mr POON Siu-ping considered it inappropriate to regard the nature of PL the same as ML and sick leave, and pitch the rate of PL pay at four-fifths of the employee's average daily wages as in the case of ML and sick leave. Mr POON also expressed concern about the disparity between the rate of PL pay for employees in the private sector and the civil service as government employees had already been granted five-day full pay PL. Mr POON urged the Administration to align the rate of PL pay with that of annual leave, i.e. in full pay.

21. Dr Helena WONG reiterated her earlier view that the Democratic Party was in support of full pay for both PL and ML.

22. SLW explained that the statutory PL pay rate was pitched at the same level as the ML pay and sickness allowance in view of their comparable nature. SLW added that the statutory PL pay rate was just the statutory minimum, and noted that some employers had been offering PL benefits to their employees above the statutory requirements.

Cost impact assessment

23. Mr LUK Chung-hung noted from the Administration's paper that the additional cost impact of increasing the PL days to five days or seven days would be around \$84 million and \$168 million per annum respectively if the rate of PL pay was maintained at four-fifths of an employee's wages. Mr LUK asked about the details of the cost impact assessment.

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24. SLW and C for L advised that the cost impact assessment was conducted by the Government Economist based on the number of eligible male employees for PL benefits in 2015, i.e. 42 300 working fathers in establishments other than the Government who were Hong Kong residents with their babies born in Hong Kong and recorded in the Birth Registry.

25. Pointing out that SMEs seldom engaged substitute workers when their male employees took PL, Mr LUK Chung-hung raised query that the cost impact had been exaggerated. Mr LUK called on the Administration to conduct a survey on the actual cost of engaging temporary/substitute workers arising from male employees taking statutory PL. Mr LUK also sought information on the number of male employees who had enjoyed the statutory PL benefits since its implementation, the number of enterprises involved and its percentage of the total enterprises in Hong Kong. SLW responded that the Administration did not keep such information. It was the prevailing practice in the Government that no substitute workers would be hired during ML, PL or annual leave taken by the government employees except under very special circumstances. Similar practice might be adopted in big establishments in the private sector while the actual manpower deployment would be decided and arranged by individual enterprises according to their operational needs. The cost impact assessment so conducted served to facilitate consideration of the proposal of enhancing PL benefits.

Legislative timetable

26. Mr POON Siu-ping asked about the legislative timetable for increasing statutory PL from three to five days. SLW said that subject to the Panel's support, the Administration would proceed with the drafting of the legislative amendments with a view to introducing it into LegCo as soon as practicable.

27. In concluding the discussion, the Chairman said that members raised no objection to the Administration's proposal of increasing statutory PL from three to five days. Nevertheless, he requested the Administration to take heed of members' call for extending further the PL duration to seven days.

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V. Hong Kong's occupational safety performance in the first half of 2017

(LC Paper Nos. CB(2)522/17-18(05) and (06))

28. At the invitation of the Chairman, Deputy Commissioner for Labour (Occupational Safety and Health) ("DC for L (OSH)") briefed members on Hong Kong's occupational safety performance in the first half of 2017 as detailed in the Administration's paper.

29. Members noted an updated background brief entitled "Occupational safety performance in Hong Kong" prepared by the LegCo Secretariat.

Occupational safety in the construction industry

30. Mr POON Siu-ping was gravely concerned that the number of fatal accidents in the construction industry had increased significantly from 10 in 2016 to 19 in 2017 (as at 30 November). Mr POON queried whether it was attributed to LD's insufficient monitoring efforts and difficulty in manpower deployment for worksite inspections. The Chairman expressed concern about LD's manpower resources for the workplace inspection work.

31. DC for L (OSH) advised that LD had bid and would continue to bid for additional manpower resources in the resources allocation exercises for stepping up inspection and enforcement targeting the construction industry. From 2010 to 2016, 63 additional Occupational Safety Officer ("OSO") posts were secured through the exercises. This apart, LD would continue to adopt a risk-based approach in devising measures to enhance the overall occupational safety and health ("OSH") of the construction industry to ensure that manpower was strategically deployed to higher-risk areas. Specifically, LD would participate in the Site Safety Management Committees of public works projects to urge contractors and the relevant duty holders to conduct risk assessments early in respect of hazardous work processes, devise safe working methods and take adequate safety measures. DC for L (OSH) advised that LD would also adjust the inspection strategy to the work sites concerned accordingly. LD would also enhance the promotion of the current complaint channel to encourage construction workers to lodge complaints against unsafe working environment, thus enabling LD to conduct more targeted inspections in a timely manner.

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32. Mr HO Kai-ming asked about the details of the reporting mechanism for hazards identified in work sites and whether consideration would be given to providing financial reward to encourage the public to make such reports.

33. DC for L (OSH) said that unsafe workplaces and work practices could be reported through LD's OSH complaint hotline. The suggestion for provision of financial reward would need to be carefully considered in terms of its effectiveness. In addition, LD had established referral mechanisms with the Housing Department, Buildings Department and the owners' corporations respectively for following-up on unsafe repair, maintenance, alteration and addition works.

Tunnelling work

34. Mr POON Siu-ping enquired about the timeframe for devising the guidelines on hand-dug tunnelling works. DC for L (OSH) advised that consultation with the industry stakeholders on the draft guidelines, which highlighted that hand-dug tunnelling method should only be adopted under exceptional circumstances and required relevant duty holders to take more stringent OSH measures, had been completed and the final draft was ready. LD aimed to issue the guidelines by end of 2017 to enhance the protection of workers engaged in tunnelling works.

Updating guidelines/code of practice

35. Referring to the promulgation of guidelines/codes of practice by LD for practitioners in different industries, Mr Frankie YICK called on the Administration to step up its publicity efforts so as to enhance the awareness of employers of SMEs to comply with the requirements of relevant guidelines and codes of practice. Expressing concern that the industry had difficulties in complying with the draft Guidance Notes on Safe Use of Lorry-mounted Crane ("the GN"), Mr YICK appealed to the Administration to fully consult the industry stakeholders prior to its promulgation and follow up with them after implementation.

36. DC for L (OSH) shared the view on the importance of consulting industry stakeholders on devising relevant OSH guidelines/codes of practice. LD would follow up with the industry on their comments on the GN.

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Level of penalty

37. Mr POON Siu-ping considered that the existing penalty for breaching the OSH legislation was too low to achieve the deterrent effect. Noting the Administration's plan of bringing in higher penalties under the OSH legislation, Mr POON enquired about the legislative timetable for introducing the relevant legislation. Mr LEUNG Yiu-chung called on the Administration to expedite the relevant legislative work.

38. Mr LEUNG Yiu-chung queried the effectiveness of enhancing the deterrent effect by raising the maximum penalty for breaching the OSH legislation, given that it was rare for the court to impose the maximum penalty on law-defying duty holders. Mr LEUNG enquired whether the Administration would consider filing a review or an appeal to the court in respect of the conviction and penalty when necessary to enhance the deterrent effect.

39. Mr HO Kai-ming expressed dissatisfaction that no employer had so far been sentenced with an imprisonment term for breaching the OSH legislation. Mr HO called on the Administration to consider making non-compliance with the OSH legislation a criminal offence in the event that the relevant industrial fatality was resultant from negligence on the part of the duty holder, so as to achieve a greater deterrent effect.

40. Responding to members' concerns and views, DC for L (OSH) acknowledged that the current penalties for non-compliance with the OSH legislation were on the low side. Currently, breaching the OSH legislation would be liable to a maximum fine of \$500,000 and an imprisonment term of 12 months while the fines imposed by the court on convicted cases related to fatal industrial accidents in the construction industry was on average \$28,000 in 2016. In a bid to raise the level of penalty for non-compliance with safety requirements, LD had since 2011 submitted comprehensive information to the court for reference in sentencing. Depending on the circumstances of individual cases, LD would request the Department of Justice to consider filing reviews or appeals to the court in respect of the conviction and the penalty to increase the deterrent effect.

41. DC for L (OSH) further said that although the penalties for duty holders contravening OSH legislation had increased in recent years through a range of efforts of LD, LD considered that the current penalties for duty holders contravening OSH legislation were too low to reflect the

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seriousness of the offences and the consequences of the accidents. They failed to generate sufficient deterrent effect to improve the overall OSH performance. LD was therefore reviewing the penalty levels of the OSH legislation, including the imprisonment term, in full swing. While the Administration would continue to file reviews or appeals to the court in respect of the conviction and penalty when necessary, it was considering to raise the maximum fines of OSH legislation so that the court could hand down penalties at a level commensurate with the seriousness of the offences. The increase would also help send a clear signal to the Judiciary that the Administration took such OSH offences seriously. The Administration was considering whether it was appropriate to increase the maximum fines by pegging them with the financial means of the convicted, thus enabling the court to impose penalties with sufficient deterrent effect to alert the industry. In addition, the prosecution strategies, the relevant threshold and time-bar for prosecution of the offences would be reviewed as well. The review therefore involved quite a lot of issues. While LD could not commit to a concrete legislative timetable, LD aimed to complete the review as soon as possible and would consult LegCo in due course.

Audit review on occupational safety and health

42. Referring to Report No. 69 of the Director of Audit released in October 2017 ("the Report"), Mr POON Siu-ping noted with concern about the comments on the workplace inspections conducted by LD. Mr POON enquired about the follow-up actions taken by LD in this regard.

43. DC for L (OSH) responded that LD was proactively following up on the recommendations in the Report. In respect of workplace notification, LD was examining whether there was room for improvement. Currently, contractors were required under the OSH legislation to notify LD of relevant works projects in accordance with the relevant statutory requirements covering project duration and number of workers employed. LD would review the notification requirements to expand its coverage to more workplaces as appropriate. Consideration was being given to cover refining the notification criteria with a view to better monitoring workplaces with relatively higher OSH risks. LD would make reference to relevant overseas experience. Legislative amendments might be necessary.

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44. The Chairman noted with concern about comments in the Report concerning the absence of prosecution taken by LD against non-compliance of the statutory notification requirement for notifiable workplaces. He was also concerned about the number of inspections recorded in the Controlling Officer's Report ("COR") being larger than the number of workplaces actually inspected. The Chairman enquired about the progress of the improvement work.

45. DC for L (OSH) explained that the discrepancy between the number of inspections reported in CORs and the number of workplaces inspected was because the former could more meaningfully reflect the output of the concerned OSOs. Depending on the size of a worksite, the number of workers and the OSH risks involved, some inspections needed to be undertaken by more than one OSO. Each individual OSO would separately report the inspection as his/her output. LD considered the current method of reporting inspection output appropriate as it accurately reflected OSOs' inspection efforts. In light of Audit's observations, LD would explain what the number meant in future CORs. As regards the statutory requirement of notifying LD of the workplace before commencement of operation, a risk-based approach had been adopted in the past in taking enforcement actions against non-compliant cases. LD was reviewing whether more stringent enforcement action should be taken, including taking out prosecution without giving prior warning.

Work injury compensation claims

46. Mr LEUNG Yiu-chung pointed out that there were many work injury compensation claims in which employers did not acknowledge the injuries of the employees were work related, regardless of LD's views on the likelihood and relevance of the cases being work injuries. Consequently, LD had to refer such cases to the Legal Aid Department for further processing and the injured workers would receive no compensation or income to support their living during the time-consuming legal proceedings. Mr LEUNG was concerned about the insufficient protection for injured employees in work injury compensation claims. He enquired about the possibility of empowering LD to adjudicate on disputes between employers and employees in work injury compensation claims.

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47. Mr HO Kai-ming said that LD should play a more proactive role in handling work injury compensation claims to relieve injured employees' pressure in making such claims. Apart from providing conciliation service to employers and employees concerned when the claims were in dispute, consideration could also be given to providing assistance to injured employees in the process of claiming compensation and rehabilitation services to facilitate their early return to work.

48. DC for L (OSH) pointed out that upon completion of the assessment on a claim, C for L would assess the compensation to be made by the employer under the Employees' Compensation Ordinance (Cap. 282). Any objection to the compensation assessment by either party could be raised through the relevant mechanism to the Court. He would relay members' views and suggestions to the responsible officers of LD.

Prevention of health hazard due to prolonged standing

49. Mr CHU Hoi-dick expressed concern that employees in certain trades and industries, in particular those engaged in the retail sector, suffered from strain of lower limbs arising from prolonged standing at work. To his knowledge, some researchers had conducted in-depth studies and made suggestions on the issue. He urged the Administration to exchange views with these researchers and squarely address the phenomenon of health hazard due to prolonged standing. For instance, the Administration should classify strain of lower limbs as an occupational disease under the relevant OSH legislation, and conduct a survey to understand the extent of the problem among employees in the service industry and formulate guidelines on work and rest break arrangements and provision of chairs for employees, e.g. cashiers, as far as practicable. In addition, consideration should be given to including OSH-related information, such as rest and meal breaks and requirements for prolonged standing at work, in the job vacancies displayed at LD's job centres.

50. In response, DC for L (OSH) said that LD had always been very concerned about the occupational health of employees whose work involved prolonged standing. As reported to the Panel in July 2017, LD had strengthened the OSH awareness of employers and employees through different means and channels. In light of the fact that the work nature of many employees in the retail and catering industries involved prolonged standing, LD augmented the promotion strategy at the end of

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2016 to include meeting with the management of major chain corporations of these two industries to discuss with them how to reduce health risk of employees whose work involved prolonged standing. These included providing chairs for employees at their work locations if so permitted such that employees could take a brief rest during work. The corporations contacted had responded positively, and taken appropriate measures to strengthen the protection of employees against the risk of prolonged standing. The Administration was looking into other issues raised concerning the issue of prolonged standing.

51. There being no other business, the meeting ended at 6:21 pm.

Council Business Division 2
Legislative Council Secretariat
22 February 2018