

For information on  
26 February 2018

## **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 in 2017.

#### **Enforcement of the Employment Ordinance**

2. LD adopts a multi-pronged strategy to protect employees' statutory rights and benefits under the Employment Ordinance (EO) (Cap. 57) which provides for various employment-related entitlements, including the right to timely payment of wages and the statutory benefits of rest days, statutory holidays and annual leave with pay, etc. We widely publicise our complaint hotline (2815 2200) and encourage prompt reporting of breaches of EO so that speedy follow-up actions can be taken. Labour inspectors conduct inspections of workplaces of various sectors to detect wage offences and breaches of other relevant legislation. To clamp down on breaches of EO, particularly wage offences, we have engaged former police officers as contract investigation officers to strengthen our capacity in collecting evidence and intelligence. If there is sufficient evidence that a company has committed wage offence with the consent, connivance or neglect of its director or responsible officer, the culpable director or responsible officer will also be prosecuted.

3. 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, the Minimum Wage Ordinance (MWO) (Cap. 608) and the contracts of employment. In the course of conciliation, if 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.

4. In 2017, LD secured 766 convictions for wilful defaults of wage payment in breach of EO, including 249 summonses convicted against company directors or responsible officers. During the year, the highest fine imposed on a single wage offence case was \$238,000. Moreover, one employer and three company directors convicted of wage offences were sentenced to imprisonment, while a community service order was made against a company director. These convictions have helped deliver a strong message to employers that defaults in wage payment can lead to serious consequences and no employer can evade legal liabilities to pay wages through the veil of a limited company.

5. Other than wage offences, convicted summonses on holiday and leave offences under EO outnumber those involving other statutory rights and benefits. LD has sustained stringent enforcement efforts on these provisions. In 2017, there were a total of 231 convictions on holiday and leave offences.

6. The provisions of EO on the offences of defaulting the awards of the Labour Tribunal and the Minor Employment Claims Adjudication Board (MECAB) took effect in October 2010. Where default cases are suspected to have been committed wilfully and without reasonable excuse, LD will follow up, investigate and collect sufficient evidence with a view to prosecution. Up to the end of 2017, LD secured 628 convicted summonses on these offences. The highest fine imposed on a single convicted case was \$300,000. A total of four employers and six company directors were sentenced to imprisonment, with the heaviest penalty being imprisonment for six months, suspended for 18 months. Of these, one employer and one company director were sentenced to immediate imprisonment for three months and two months respectively. Moreover, community service orders ranging from 100 to 240 hours were made against three employers and eight company directors.

7. LD also continues 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. For the protection of non-skilled workers of government service contractors, labour inspectors conducted 688 inspections and interviewed 2 424 workers of 94 government service contractors in 2017.

### **Enforcement of the Minimum Wage Ordinance**

8. Since the implementation of Statutory Minimum Wage (SMW) in May

2011, the state of law compliance has been generally satisfactory. With effect from 1 May 2017, the SMW rate has been increased to \$34.5 per hour. In 2017, LD organised publicity activities through various channels and conducted targeted inspection campaigns to check compliance with the new SMW rate.

9. From May 2011 and up to the end of 2017, a total of 195 cases of suspected violation of MWO were detected. LD had 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 45 convicted summonses for failure to pay SMW were recorded, two of which were on defaults of MECAB awards concerning failure to pay SMW.

### **Enforcement of compulsory insurance for employees' compensation**

10. 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 Ordinance and the common law. Labour inspectors conduct inspections to establishments of various trades to check employers' compliance with the compulsory ECI requirement and follow up on complaints against non-compliance including those lodged with LD's complaint hotline. In 2017, LD secured 697 convictions for failure to take out ECI.

### **Prevention of abuse of the Protection of Wages on Insolvency Fund**

11. The Protection of Wages on Insolvency Fund (PWIF) provides timely financial relief to employees affected by the cessation of business or insolvency of their 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 proactively prevents PWIF from being abused to ensure that ex gratia payment is issued only to employees whose employers are genuinely insolvent. Moreover, the 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, has strengthened co-operation among concerned 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.

12. 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 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 2017, eight persons involved in such cases were disqualified for periods ranging from two years to four and a half years. The Police also actively follows up on suspected cases referred by LD. Coupled with LD's vigorous enforcement actions against wage offences, these measures deter employers from shifting their liabilities to pay wages and statutory entitlements to PWIF.

### **Way forward**

13. LD will continue to implement enforcement measures to ensure that employees' statutory rights and benefits are well protected and to take action against those employers and company responsible individuals who wilfully violate the labour legislation. We will also sustain extensive publicity and promotional activities to enhance awareness of employers and employees of their respective obligations and entitlements under various labour laws.

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