

**立法會**  
***Legislative Council***

LC Paper No. CB(2)1912/18-19

(These minutes have been seen  
by the Administration)

Ref : CB2/PL/MP

**Panel on Manpower**

**Minutes of meeting  
held on Tuesday, 25 June 2019, at 9:00 am  
in Conference Room 2 of the Legislative Council Complex**

**Members present** : Dr Hon Fernando CHEUNG Chiu-hung (Chairman)  
Hon HO Kai-ming (Deputy Chairman)  
Hon LEUNG Yiu-chung  
Hon YIU Si-wing, BBS  
Dr Hon KWOK Ka-ki  
Hon KWOK Wai-keung, JP  
Hon POON Siu-ping, BBS, MH  
Hon Andrew WAN Siu-kin  
Hon CHU Hoi-dick  
Hon Jimmy NG Wing-ka, JP  
Hon SHIU Ka-fai  
Dr Hon Pierre CHAN  
Hon LUK Chung-hung, JP  
Hon Jeremy TAM Man-ho  
Hon AU Nok-hin  
Hon Vincent CHENG Wing-shun, MH

**Members absent** : Hon Starry LEE Wai-king, SBS, JP  
Hon WONG Kwok-kin, SBS, JP  
Hon Frankie YICK Chi-ming, SBS, JP  
Dr Hon CHIANG Lai-wan, SBS, JP  
Hon CHUNG Kwok-pan  
Hon SHIU Ka-chun

**Public Officers : Item III**  
**attending**

Miss Mabel LI Po-yi, JP  
Deputy Commissioner for Labour (Labour Administration)

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

Ms Eva LEUNG Lai-yin  
Registrar, Minor Employment Claims Adjudication Board  
Labour Department

Item IV

Mr Caspar TSUI Ying-wai, JP  
Under Secretary for Labour and Welfare

Mr Carlson CHAN Ka-shun, JP  
Commissioner for Labour

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

Ms Samantha LAM Yick-wah  
Senior Labour Officer (Workplace Consultation Promotion)  
Labour Department

Ms Sally TSUI Sheung-yee  
Government Security Officer  
Security Bureau

Ms Bertille LI Wan-yu  
Principal Executive Officer (Management)  
Civil Service Bureau

Item V

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

Mr Alex WONG Kwok-chun  
Assistant Director (Subventions)  
Social Welfare Department

Mr Raymond HO Kam-biu  
Assistant Commissioner for Labour (Development)

**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. Information paper issued since the last meeting**

Members noted that no information paper had been issued since the last meeting.

**II. Date of next meeting and items for discussion**  
(LC Paper Nos. CB(2)1674/18-19(01) and (02))

Regular meeting in July 2019

2. Members agreed that the following items proposed by the Administration be discussed at the next regular meeting on 16 July 2019:

- (a) Hong Kong's occupational safety performance in 2018; and
- (b) Occupational disease and occupational health situation in 2018.

3. The Chairman advised that as agreed by members at the Panel meeting on 21 May 2019, the Panel would also discuss "Strengthening rehabilitation services for employees injured at work" at the July meeting.

*(Post-meeting note: With the concurrence of the Chairman, the Panel meeting originally scheduled for 16 July 2019 was cancelled due to safety and security reasons. Members were informed vide LC Paper No. CB(2)1777/18-19 on 8 July 2019.)*

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### **III. Review of the jurisdictional limit of the Minor Employment Claims Adjudication Board**

(LC Paper Nos. CB(2)1674/18-19(03) and (04))

4. Deputy Commissioner for Labour (Labour Administration) ("DC for L (LA)") briefed members on the background of the Minor Employment Claims Adjudication Board ("MECAB") of the Labour Department ("LD") and the proposal to adjust the jurisdictional limit of MECAB from \$8,000 per claimant to \$12,000 per claimant, while retaining the maximum number of claimants per claim at 10, as detailed in the Administration's paper.

5. Members noted an information note entitled "Minor Employment Claims Adjudication Board" prepared by the Legislative Council ("LegCo") Secretariat.

#### Adequacy of the proposed adjustment

6. Mr POON Siu-ping welcomed in principle the proposal. He asked about the rationale for not raising the jurisdictional limit to \$13,600 per claimant so as to tie in with an increase of 70% in the median monthly employment earnings of all employees from 1997 to 2018 as shown in the Administration's paper. He also sought information on the decrease in the number of cases filed at MECAB from 2014 to 2018.

7. DC for L (LA) advised that increase in wage levels over the past years was not the only factor for consideration in the adjustment of the jurisdictional limit of MECAB. As set out in the Government's paper, other factors such as the increase in the jurisdictional limits of other functions of the Judiciary had been taken into account. Moreover, the economic environment would affect the caseload of MECAB. The proposed adjustment to the jurisdictional limit was expected to entail an addition of some 500 claims annually, representing an increase of around 80% in the caseload of MECAB. She further advised that the major categories of claims filed with MECAB involved arrears of wages, payment in lieu of notice and annual leave ("AL") pay.

8. Mr LEUNG Yiu-chung pointed out that there would be fewer cases falling within the jurisdiction of MECAB in the future with further increases in the overall wage level. He considered the proposed adjustment to the jurisdictional limit too small and called for an increase to at least \$15,000 per claimant.

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9. DC for L (LA) advised that the number of cases taken up by MECAB constituted around 13% of the total number of cases filed with the Labour Tribunal ("LT") and MECAB in 2018, and MECAB's share was estimated to rise to 24% following the proposed change to the jurisdictional limit, with the additional cases to be taken up by MECAB on the basis of its existing resources. The increase of the jurisdictional limit should be considered having regard to the impact of the additional caseload on MECAB as well as the resources of LD. She added that if the proposal was supported by members, LD would proceed with the drafting of the enabling subsidiary legislation for submission to LegCo by the end of 2019. Mr LEUNG Yiu-chung requested the Administration to provide information on the number of claims filed with MECAB per year from 1997 to date.

Future review of the jurisdictional limit

10. Mr LEUNG Yiu-chung expressed disappointment that the jurisdictional limit of MECAB was reviewed after more than 20 years. Mr POON Siu-ping enquired the frequency and the timetable for future review of the jurisdictional limit. Mr LUK Chung-hung called for further review as early as possible.

11. DC for L (LA) said that LD agreed with members' views on conducting more regular review of the jurisdictional limit of MECAB in future. Similar views were expressed by some members of the Labour Advisory Board when the Board was consulted on the proposed increase in the jurisdictional limit of MECAB.

Filing claims with MECAB

12. The Deputy Chairman and Mr LUK Chung-hung were concerned about the efficiency of MECAB in providing simple and quick adjudication service. The Deputy Chairman sought information on the respective time taken for LT and MECAB to conduct the first hearing on a claim and whether the time taken would be reduced after the proposed adjustment to the jurisdictional limit took effect. Mr LUK enquired about the difference between the time taken for making a judgment on a claim in LT and MECAB and whether LT and MECAB faced a shortage of manpower which delayed case handling.

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Admin 13. Assistant Commissioner for Labour (Labour Relations) ("AC for L (LR)") responded that it took around 25 days in LT and 25 to 26 days in MECAB to conduct the first hearing on a filed claim in 2018. As regards the time taken for making a judgment on a claim in LT and MECAB, AC for L (LR) advised that no relevant information was available due to procedural difference in handling cases in LT and MECAB. DC for L (LA) added that LD would make staff redeployment when necessary and there was no case delay in MECAB due to insufficient manpower. At the request of the Deputy Chairman and Mr LUK Chung-hung, the Administration agreed to seek the requisite information from the Judiciary, if available.

Admin 14. To facilitate members' understanding of the adjudication service of LT and MECAB, the Chairman requested the Administration to provide flow charts to illustrate the respective procedures for handling employment claims in LT and MECAB, together with the average time of each procedure.

Other issues

15. The Chairman enquired the number of cases of MECAB with over 10 claimants per claim in the past. Registrar, Minor Employment Claims Adjudication Board responded that in 2018, there were only 10-odd cases each involving more than one claimant, with the highest number of claimants in a case being five. LD hence did not propose to increase the maximum number of claimants per claim.

16. In concluding the discussion, the Chairman said that members generally considered that the proposed increase in the jurisdictional limit of MECAB was inadequate. He called on the Administration to take into account the concerns raised by members when taking forward the relevant subsidiary legislation.

**IV. Proposed Member's Bill entitled "Arrangements for Suspension of Work During Natural Disasters and Emergency Situation Bill"**

(LC Paper Nos. CB(2)1674/18-19(05) (Revised) and CB(2)1718/18-19(01))

17. At the invitation of the Chairman, Mr LUK Chung-hung briefed members on his proposed Member's Bill entitled "Arrangements for Suspension of Work During Natural Disasters and Emergency Situation

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Bill" ("the proposed Bill") as detailed in LC Paper No. CB(2)1674/18-19(05).

18. Under Secretary for Labour and Welfare ("USLW") made an initial response of the Government to the proposed Bill as set out in the Administration's paper.

Working arrangements after super typhoons

19. The Deputy Chairman and Mr Vincent CHENG expressed grave concern that Super Typhoon Mangkhut ("Mangkhut") had brought devastation to the territory in September 2018 and that the post-Mangkhut clearance work was yet to be completed. Mr CHENG sought information on the number of cases lodging complaints with or seeking assistance from LD regarding resumption of work after cancellation of Typhoon Signal No. 8 ("T8") in the case of Mangkhut and asked how LD followed up on the cases. Commissioner for Labour ("C for L") responded that LD did not maintain the relevant statistics. That said, LD did receive enquiries in connection with work arrangements during and after the hit of Mangkhut. LD had provided conciliation services to facilitate the employers and employees concerned to understand the relevant legislative provisions and guidelines in the "Code of Practice in Times of Typhoons and Rainstorms" ("CoP") as well as to work out an amicable settlement.

20. Drawing reference to the announcement of suspension of work in the nearby regions, including Shenzhen and Macao, which were also battered by Mangkhut, the Deputy Chairman raised query about the Government's decision of not to follow suit having regard to the substantial and extensive damage caused by Mangkhut as well as the serious impediment to traffic and public transport services.

21. USLW responded that after the hit by Mangkhut in September 2018, the Government conducted a review of the mechanism for handling super typhoons ("the review"). One of the outcomes of the review was the measures formulated to address the difficulties experienced by the public in resuming work after cancellation of T8. Under "extreme conditions" announced by the Government, apart from essential staff who had an agreement with their employers to be on duty, employees would be advised to stay in the places they were currently in or in safe places, instead of heading for work immediately after cancellation of T8. AC for L (LR) elaborated the mechanism under "extreme conditions" as detailed in paragraph 7 of the Administration's paper and advised that in

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connection with the review outcomes and measures, LD had revised CoP to remind employers to draw up in advance with their employees reasonable and practical work arrangements in times of typhoons, rainstorm warnings and "extreme conditions" after super typhoons as well as other adverse weather conditions.

22. Pointing out that CoP was not legally binding, Mr KWOK Wai-keung, Mr POON Siu-ping, Mr Andrew WAN, and Mr LUK Chung-hung expressed grave reservations about how the Administration could ensure employers in the private sector to strictly observe CoP under "extreme conditions". Mr LUK informed members that according to the results of a survey conducted by the Hong Kong Federation of Trade Unions after the hit by Mangkhut, there were cases of wage deduction, being withheld good attendance bonuses and leave deduction regardless of the Administration's appeal to the employers to give due consideration and handle flexibly if employees could not resume work in time due to road and traffic conditions. Mr KWOK shared a similar concern. Mr WAN said that to his knowledge, there were cases in which the day was counted as employees' AL or statutory holiday ("SH") even if the employees were asked not to resume work. He was particularly concerned about protection of government outsourced workers under such circumstances. Mr LEUNG Yiu-chung and Mr POON asked how the Administration would handle cases of deduction of wages and AL or SH if employees were unable to report duty under extreme conditions.

23. Mr POON Siu-ping expressed further concern that some employees, such as reporters and healthcare staff, still had to report duty to maintain operation or services under inclement weather conditions. He enquired whether the Administration had ever conducted a review of the work safety and remuneration of these employees when performing duties under extreme conditions.

24. Responding to members' views and concerns, USLW said that when making work arrangements in times of and after typhoon and rainstorm warnings, post-super typhoon "extreme conditions" and other adverse weather conditions, employers should adopt a sympathetic and flexible approach, according top priority to employees' safety at all times. Generally speaking, employees' wages, allowances and good attendance bonuses should not be affected if they were not required to report for duty in accordance with the agreed work arrangements. Consideration should be given to granting an extra duty allowance to employees who reported for duty under adverse weather conditions. Also, employers should



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consider granting a travelling allowance to essential staff required to commute to and from their workplaces or paying them transport expenses. If public transport services were not available for essential staff to travel safely to and from their workplaces under adverse weather conditions, employers should consider providing safe shuttle transport services to them. Employers might request employees (whether they worked on shift or not), subject to their consent and physical conditions, to work beyond their normal shift in case staff on the next shift were unable to report for duty due to practical difficulties.

25. C for L added that the current mechanism for the work and resumption of work arrangements in times of adverse weather conditions had since the promulgation of CoP operated smoothly. The revised CoP further provided guidelines to employers and employees on the work and resumption of work arrangements in the event of the Government issuing the new post-super typhoon "extreme conditions" announcement. Introducing further legislation was considered not suitable given the diversity in nature of requirements of different jobs in various trades and industries during adverse weather conditions. To avoid disputes and confusion, employers should make prior work arrangements with employees and contingency measures during and after adverse weather conditions, including how wages and allowances would be calculated for employees who were required to report for duty, as well as those who were late for work or absent from work during such conditions. Employers could not reduce employees' entitlements to AL, SHs or rest days under the Employment Ordinance (Cap. 57) to compensate for the loss of working hours resulting from the issue of T8 or above or the announcement of a Black Rainstorm Warning or post-super typhoon "extreme conditions". Given that remuneration was payable to an employee in respect of work done, it might not constitute a wage offence if an employer did not make wage payment to an employee who did not report duty because of adverse weather conditions. However, with a view to maintaining good labour-management relations, LD strongly appealed to employers not to withhold wages of employees who were absent from work under such circumstances. Notably, pursuant to the terms of the government service contracts and the Standard Employment Contract in relation to the improvement measures since April 2019, if non-skilled employees engaged by the government service contractors were required to work when T8 or above was hoisted, the contractors should pay wages calculated at the rate of not less than 150% of the wages that the employees concerned were originally entitled to. LD would initiate investigation upon receipt of relevant complaints.

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26. USLW and C for L further advised that to promote understanding of the newly revised CoP which also provided guidelines to employers and employees on the work and resumption of work arrangements in the event of the Government issuing the new post-super typhoon "extreme conditions" announcement, LD would strengthen its promotional work towards employer associations, trade unions and human resources practitioners, etc., including arranging briefings and broadcasting television and radio Announcements in the Public Interest. LD would continue to launch promotional activities through various channels to publicize extensively the content of the latest CoP, with a view to reminding employers to implement reasonable and practicable measures for employees having regard to their actual circumstances.

Handling of super typhoons

27. Mr Vincent CHENG was concerned about the Administration's preparedness, in particular coordination among different bureaux/government departments ("B/Ds"), in handling super typhoons in the light of the approaching typhoon season. Mr KWOK Wai-keung expressed concern about the response capabilities of various B/Ds in handling super typhoons.

28. Government Security Officer of Security Bureau ("SB") responded that the Government had conducted a review of the mechanism of handling future super typhoons. In gist, in case of super typhoons (or other natural disasters of a substantial scale), a Steering Committee would be set up under the chair of the Chief Secretary for Administration, which would be responsible for overseeing the preparedness, response and recovery stages, as assisted by the relevant B/Ds. Pursuant to the review, individual B/Ds had also strengthened their respective preparedness before the coming typhoon season. For instance, relevant B/Ds had liaised with the MTR Corporation Limited in respect of the arrangement of public transportation services. To facilitate the Steering Committee to apprehend the situation in handling super typhoons, such as disruption of public transport and extensive road blockage caused by collapse of trees, the Administration would strengthen the internal information dissemination within government departments so as to make assessment and informed decisions in the response and recovery stages. The Administration would make use of the Common Operational Picture which was an electronic, map-based platform for real-time sharing of emergency information among relevant B/Ds under adverse weather

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conditions. On 30 May 2019, SB held an inter-departmental table-top exercise which simulated a super typhoon scenario to test the preparedness, response and recovery capabilities as well as the decision-making process and interoperability of relevant B/Ds. Other external parties involved in the handling of natural disasters were also invited to take part in the exercise. Based on the outcome of the exercise, the Government would enhance relevant B/Ds' general awareness and coordination in various aspects of contingency handling.

The proposed Bill

29. Mr LUK Chung-hung highlighted the unprecedented destruction and widespread damages brought about by Mangkhut as well as the strong community call for suspension of work in view of the difficulties faced by members of the public to go to work immediately after T8 was replaced with T3 when the public transportation services had not yet resumed to the normal level. In his view, there was no conflict between the proposed Bill and CoP. While CoP provided reference guidelines to employers and employees on the work and resumption of work arrangements in times of adverse weather conditions, Mr LUK explained that the main purpose of the proposed Bill was to provide for the implementation of the suspension of work during natural disasters and emergency situations. In the light of the global warming and the expected increase in extreme weather conditions, in particular more frequent onslaught of super typhoons, Mr LUK considered it necessary to strengthen the protection of labour rights and benefits of employees when travelling between their places of residence and workplaces or working under such circumstances. He added that the proposed Bill sought to provide for a mechanism of application for exemption from suspension of work. While welcoming advice and views from the Administration for fine-tuning the legislative proposal, he appealed to the Administration to seriously consider introducing a piece of legislation on its accord to serve the purpose.

30. Mr POON Siu-ping said that the labour sector all along called for protection of labour rights and benefits through legislation, which was also the objective of the proposed Bill. Mr LEUNG Yiu-chung echoed a similar view.

31. Mr SHIU Ka-fai held the view that employers in general were very concerned about the safety of their employees. While acknowledging difficulties experienced by some employees in resuming work

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immediately after cancellation of T8, Mr SHIU pointed out that the circumstances of employees commuting from home to workplace in different districts were as varied as the impact of inclement weather on public transport and road systems there. As such, Mr SHIU expressed reservations about suspension of work across the board for all trades and industries which would adversely affect the business operation.

32. USLW responded that following the experience with Mangkhut last year, the Government conducted the review and acknowledged that there was room for improvement. As mentioned earlier, the Steering Committee would be a standing mechanism for handling super typhoons and would make announcement of "extreme conditions" as appropriate. As regards legislating for suspension of work during natural disasters and emergency situations, USLW said that pragmatic operational matters like the diversity in nature and requirements of different jobs in various trades and industries had to be taken into account. Some essential services, for instance, public transportation, still had to maintain different degrees of operation under inclement weather conditions.

33. Mr YIU Si-wing was in support of adopting the newly revised CoP as reference guidelines for employers and employees on the work and resumption of work arrangements under "extreme conditions" rather than complying with a piece of legislation across the board by all trades and industries. Mr YIU cited the tourist and hotel industries as examples to illustrate the needs of flexibility in work arrangements under "extreme conditions". He called on the Administration to fully consult the industry stakeholders when drawing up the revised guidelines. USLW reiterated that LD would strengthen its promotional efforts towards employer associations and trade unions regarding the revised CoP.

34. Mr KWOK Wai-keung expressed support for the proposed Bill which sought to, among others, make amendments to the Employees' Compensation Ordinance (Cap. 282) ("ECO"). He considered that employers should be liable to making compensation for death or incapacity resulting from accidents during and within four hours before and after a gale warning, a rainstorm warning or a period of suspension of work in force.

35. Mr LEUNG Yiu-chung, Mr Andrew WAN and Mr YIU Si-wing expressed concern about protection of employees who were required to work under adverse weather conditions, in particular the insurance coverage for injury or death caused by accidents when travelling to their workplaces.

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36. C for L responded that under ECO, an accident to an employee resulting in injury or death was deemed to arise out of and in the course of employment if it happened to the employee when he was travelling from his place of residence to his place of work by a direct route within a period of four hours before the time of commencement of his working hours for that day, or from his place of work to his place of residence within a period of four hours after the time of cessation of his working hours for that day, when T8 or above, or a Red or Black Rainstorm Warning was in force. Under these circumstances, the employer was liable to pay compensation under ECO. At the Chairman's request, the Administration agreed to provide the response in writing after the meeting.

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37. The Chairman said that Mr LUK Chung-hung might consider to take forward the proposed Bill in accordance with the relevant procedures for presentation of bills by Members to LegCo.

**V. Manpower shortage for elderly care services and importation of labour**

(LC Paper Nos. CB(2)1674/18-19(06) to (09), CB(2)1718/18-19(02) to (03) and CB(2)1728/18-19(01))

38. Owing to time constraint, members agreed that discussion on the item would be deferred to a future meeting.

39. There being no other business, the meeting ended at 10:55 am.