

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1444/19-20  
(These minutes have been seen  
by the Administration)

Ref : CB2/PL/MP

**Panel on Manpower**

**Minutes of meeting**  
**held on Tuesday, 17 March 2020, at 4:30 pm**  
**in Conference Room 2 of the Legislative Council Complex**

**Members present** : Hon HO Kai-ming (Chairman)  
Hon CHU Hoi-dick (Deputy Chairman)  
Hon LEUNG Yiu-chung  
Hon Claudia MO  
Hon YIU Si-wing, BBS  
Dr Hon KWOK Ka-ki  
Hon KWOK Wai-keung, JP  
Dr Hon Fernando CHEUNG Chiu-hung  
Dr Hon Helena WONG Pik-wan  
Hon Elizabeth QUAT, BBS, JP  
Hon POON Siu-ping, BBS, MH  
Dr Hon CHIANG Lai-wan, SBS, JP  
Hon Andrew WAN Siu-kin  
Hon SHIU Ka-fai, JP  
Hon SHIU Ka-chun  
Dr Hon Pierre CHAN  
Hon LUK Chung-hung, JP  
Hon Jeremy TAM Man-ho  
Hon Vincent CHENG Wing-shun, MH, JP

**Members absent** : Hon WONG Kwok-kin, SBS, JP  
Hon Christopher CHEUNG Wah-fung, SBS, JP  
Hon CHUNG Kwok-pan  
Hon YUNG Hoi-yan, JP

**Public Officers  
attending** : Item III

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

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

Ms Betty NG Shuk-fong  
Chief Labour Officer (Statutory Minimum Wage)  
Labour Department

Mr Sam SUM Kai-wah  
Senior Labour Officer (Labour Inspection)  
Labour Department

Item IV

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

Mr Simon LI Chi-chung, JP  
Assistant Commissioner for Labour  
(Employees' Rights & Benefits)

Mr KOO Chiu-shing  
Senior Labour Officer (Employment Claims Investigation)  
Labour Department

Mr Sam SUM Kai-wah  
Senior Labour Officer (Labour Inspection)  
Labour Department

Mr Daniel LEUNG Kwok-keung  
Senior Labour Officer (Employment Agencies Administration)  
Labour Department

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

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

Ms Priscilla LAU  
Council Secretary (2) 1

Miss Lulu YEUNG  
Clerical Assistant (2) 1

---

Action

**I. Information papers issued since the last meeting**

(LC Paper Nos. CB(2)611/19-20(01), CB(2)620/19-20(01) and CB(2)647/19-20(01))

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

- (a) letter dated 10 February 2020 from Dr KWOK Ka-ki suggesting the Panel to discuss issues relating to protection for employees under circumstances related to the Coronavirus disease 2019 ("COVID-19");
- (b) letter dated 13 February 2020 from Dr Fernando CHEUNG suggesting the Panel to discuss issues relating to impact of the COVID-19 outbreak on grassroots employees; and
- (c) letter dated 28 February 2020 from Dr Pierre CHAN suggesting the Panel to discuss the proposal of prescribing COVID-19 as an occupational disease under the Employees' Compensation Ordinance (Cap. 282) ("ECO").

**II. Date of next meeting and items for discussion**

(LC Paper Nos. CB(2)694/19-20(01) and (02))

Regular meeting in April 2020

2. Members noted that the Administration proposed to discuss the major findings of the 2019 Annual Earnings and Hours Survey and the latest development in the employment services of the Labour Department ("LD") at the next regular meeting on 21 April 2020. Members in general considered that in the light of severe impacts of COVID-19 epidemic in Hong Kong and in anticipation of the rising unemployment rate, there was a pressing need for the Panel to discuss specific measures to safeguard employment and protect employees' rights and benefits, including the proposal of prescribing COVID-19 as an occupational

Action

disease under ECO. Acknowledging members' concerns, the Chairman advised that he would further liaise with the Administration on the discussion items after the meeting. Members would be informed of the meeting arrangements in due course.

*(Post-meeting note: Members were informed of the meeting arrangements for the meeting on 21 April 2020 vide LC Paper No. CB(2)784/19-20.)*

**III. Implementation of Statutory Minimum Wage**

(LC Paper Nos. CB(2)612/19-20(01) and CB(2)694/19-20(03))

3. At the invitation of the Chairman, the Under Secretary for Labour and Welfare ("USLW") briefed members on the implementation of Statutory Minimum Wage ("SMW"), as detailed in the Administration's paper.

4. Members noted an updated background brief entitled "Implementation of statutory minimum wage" prepared by the Legislative Council ("LegCo") Secretariat.

Implementation of Statutory Minimum Wage

5. In respect of the 231 600 female workers who accounted for more than 80% of the increase in the employment by the fourth quarter of 2019 as compared to the pre-SMW level, Mr POON Siu-ping asked whether the Administration had ever conducted a survey on the characteristics of these female workers, such as their wage rates, occupations and positions of employment.

6. USLW responded that while female workers accounted for the majority of the increase in employment since the implementation of SMW, according to the statistics in the past years, employees earning the SMW rate were mainly those at older ages, with lower education, and engaged in non-skilled occupations. Separately, the number of employees earning the SMW rate had been reducing. Notably, with the low unemployment rate in the past few years, various industries were scrambling for labour. As a result, the number of low-skilled employees earning above the SMW rate had increased. The Administration was consolidating the most updated figures for the forthcoming review of the SMW rate.

Action

Enforcement work

7. Dr Helena WONG expressed concern that while 212 cases involving suspected violation of the Minimum Wage Ordinance (Cap. 608) ("MWO") were detected since the implementation of SMW and up to end-2019, there were only a total of 55 convicted summonses for underpayment of SMW recorded during the period. Dr WONG sought explanation in this regard and asked whether it was attributed to the difficulties in collecting evidence.

8. Assistant Commissioner for Labour (Development) ("AC for L(D)") responded that LD had completed the investigation of the above-mentioned 212 cases involving suspected violation of MWO, which were detected by labour inspectors during workplace inspections or reported by employees. Of them, LD confirmed that the employees of 49 cases had received SMW or recovered the shortfall of wages and there was a small number of cases where the employees subsequently withdrew their complaints, etc. A total of 51 cases had been referred to the Prosecutions Division of LD for follow-up. It was noted that some of the employees concerned were not willing to be the prosecution witnesses. LD had initiated prosecution against employers breaching MWO where there was sufficient evidence. A total of 55 convicted summonses for underpayment of SMW were recorded during the period mentioned earlier. In response to the enquiries of Mr LEUNG Yiu-chung and Mr POON Siu-ping about the breakdown by industry of the cases, USLW said that the cases involved various industries. AC for L(D) added that they included 19 convicted summonses from the security services industry, eight convicted summonses from the beauty care industry, six convicted summonses each from the communications and business services industries, and the others involved sectors of elderly care services and import/export trades, etc.

9. Noting that the seasonally adjusted unemployment rate had increased to 3.7% in December 2019 - February 2020 and envisaging that the situation would aggravate and result in further increase in the unemployment rate, Mr LUK Chung-hung expressed concern that there would be increase in the number of non-compliant cases with MWO. Mr LUK asked whether the Administration would strengthen the publicity and enforcement work in this regard.

10. USLW responded that in anticipation of further increase in the unemployment rate, it was expected that LD's workload in checking employers' compliance with MWO as well as handling employment

Action

claims would also increase. LD would strengthen its enforcement efforts, including conducting proactive workplace inspections of various establishments to ensure compliance with MWO, and would assess from time to time the manpower requirements involved and seek additional manpower resources in accordance with the existing mechanism if necessary.

11. In response to Mr LUK Chung-hung's further enquiry, AC for L(D) said that as revealed in the non-compliance cases with MWO in the past years, the amount of shortfall of wages, i.e. underpayment of SMW by employers, was small. The highest fine imposed on an employer convicted for non-compliance with MWO was \$45,000.

Consultation and conciliation services

12. Mr POON Siu-ping sought information on the provision of consultation and conciliation services by the Labour Relations Division ("LRD") of LD from 2019 up till March 2020, the number of cases settled through conciliation and number of cases in which employees' rights and benefits had been breached during LD's follow-up.

13. AC for L(D) responded that since the implementation of SMW, the number of SMW-related enquiries received by LD's hotline had decreased significantly and the number of employment claims relating to SMW handled by LRD had dropped from 153 in 2012 to 23 in 2019, indicating that members of the public had become familiar with the SMW requirement.

Review of the Statutory Minimum Wage rate

14. Dr Fernando CHEUNG expressed grave concern that the increase of the initial SMW rate of \$28 per hour in 2011 to the revised rate of \$34.5 per hour in 2017 lagged far behind the cumulative inflation and that the coverage of the SMW rate had dropped from 6.4% of all employees in May to June 2011 (i.e. 180 600 persons) to 0.9% of all employees in May to June 2017 (i.e. 26 700 persons). It was believed that the percentage of employees earning the prevailing SMW rate of \$37.5 per hour should be less than 1% of all employees. Mr LEUNG Yiu-chung, Ms Claudia MO and Mr SHIU Ka-chun shared similar concerns. Mr SHIU sought explanation in this regard. Dr CHEUNG expressed further concern about the time gap between data collection and implementation of the revised SMW rate under the existing biennial

Action

review of the SMW rate. It was pointed out that the revised SMW rate, which would take effect in the following year, was recommended based on the statistics collected in the preceding year. As such, there was indeed a time gap of three years for the next SMW uprating. Dr CHEUNG expressed disappointment that the Administration had refused to address the deficiency of the review mechanism by conducting the review of the SMW rate on an annual basis so as to safeguard employees' basic livelihood.

15. Mr LEUNG Yiu-chung, Ms Claudia MO and Dr KWOK Ka-ki shared similar concerns. Expressing grave concern about the high living standard and high rental and price level, Mr LEUNG and Dr KWOK held the view that the minimum wage level should be reasonable so as to safeguard the livelihood of grassroots employees. Referring to the recommendation of the Oxfam Hong Kong that the Administration should consider adopting the living wage concept in setting a minimum wage level for employees in Hong Kong, Dr KWOK called on the Administration to conduct a review of the policy intent of SMW. Ms MO was gravely concerned that the minimum wage rate ("MWR") in Taiwan (i.e. more than \$40 per hour) was higher than the SMW rate in Hong Kong, although the property prices in Taiwan were comparatively lower than those in Hong Kong. She called on the Administration to consider setting a prescribed target number of employees receiving SMW in the next review of the SMW rate and to align it with MWR in the United States ("U.S.") and Taiwan as far as practicable. Mr SHIU Ka-chun was concerned about whether the forthcoming adjustment of the SMW rate would lag behind the inflation rate.

16. Sharing a similar view, Mr LUK Chung-hung remarked that the labour sector had all along called for an annual review of the SMW rate and adopting the living wage concept to protect the livelihood of grassroots employees.

17. Pointing out that around 70% of the non-skilled employees of government service contractors ("GSCs") were remunerated just at the SMW rate in the past, the Chairman sought an update on the percentage of these employees following the implementation of improvement measures for the government outsourced employees from April 2019.

18. Responding to members' views and concerns, USLW made the following points:

Action

- (a) SMW provided a wage floor to forestall excessively low wages. The employment earnings of grassroots employees improved solidly since the implementation of SMW. In September to November 2019, the average monthly employment earnings of full-time employees (excluding government employees and live-in domestic workers) of the lowest decile group rose cumulatively by 65.0% compared with the pre-SMW period, representing an increase of 23.6% in real terms after discounting inflation. While the concepts of wage floor and living wage were fundamentally different, it was noteworthy that the social security and taxation systems in Hong Kong were different from those in the United Kingdom where the living wage concept was adopted;
- (b) in making its recommendation on the revised SMW rate, the Minimum Wage Commission ("MWC") had considered relevant information and data collected from various surveys conducted regularly by the Census and Statistics Department, which included an Array of Indicators reflecting the latest socio-economic and employment conditions after the implementation of SMW and its upratings as well as forecasts of the local economic growth and inflation. MWC had also conducted extensive consultations with stakeholders and members of the public and had fully considered the views of various sectors of the community. It would be difficult to compress the time needed for the review process. The Administration therefore considered it appropriate to maintain the review of the SMW rate at least once in every two years;
- (c) although the improvement measures for government outsourced service contracts had taken effect for just one year, the initial statistics revealed that the wage level of non-skilled employees of GSCs had increased. For instance, the lower quartile hourly wage of cleansing workers engaged under service contracts of the Food and Environmental Hygiene Department had been increased to \$43.5 per hour; and
- (d) the Administration had put in place various poverty alleviation measures to help those in need. For example, eligible households could apply for an allowance under the Working Family Allowance ("WFA") Scheme as appropriate.



Action

Productivity assessments for employees with disabilities

19. Dr Fernando CHEUNG called on the Administration to consider abolishing the productivity assessments for employees with disabilities under MWO which, in his view, was a discriminatory practice having regard to the policy objective of forestalling excessively low wages. In the light of the small number of assessment cases in the past few years, Dr CHEUNG urged the Administration to consider recruiting persons with disabilities to fill the civil service posts as far as practicable.

20. USLW responded that LD and the Social Welfare Department implemented different employment programmes, such as the Work Orientation and Placement Scheme, to encourage employers to hire job seekers with disabilities and provide them with on-the-job training, coaching and support through the provision of an allowance as appropriate. In addition, subsidies for upgrading workplace facilities were provided to employers of persons with disabilities. The Administration would further study enhancing employment support for job seekers with disabilities.

Other issues

*Child carers*

21. Expressing concern that child carers of the Neighbourhood Support Child Care Project ("NSCCP") were provided with an incentive payment at an hourly rate of around \$20 only, Dr Helena WONG called on the Administration to conduct a review of NSCCP such that child carers could receive an hourly payment of no less than the SMW rate.

22. Ms Claudia MO pointed out that MWR in U.S. was around \$56 per hour and that the charge for child care services in U.S. was more than \$100 per hour which far exceeded MWR.

23. USLW advised that there had been an increase in the level of incentive payment for all home-based child carers to \$25 per hour from January 2020 onwards in order to encourage more volunteers to join as home-based child carers.

*Supporting measures for employees*

24. In the light of the worsening economic conditions following the social incidents from June 2019 and the COVID-19 epidemic in Hong

Action

Kong, Mr SHIU Ka-fai expressed grave concern about the adverse impacts on the employment market. He pointed out that many employees engaged in the retail sector had been required to take no pay leave. The Chairman echoed that there were similar arrangements in other sectors, including the catering sector and airline companies. The Chairman and Mr SHIU asked about the supporting measures to be taken to address the situation.

25. USLW responded that according to past experience, the disbursement of government subsidy or allowance could be more efficiently carried out under the existing mechanism to help tide employees over their financial difficulties. In fact, the Administration had since August 2019 implemented four rounds of relief measures amounting to more than \$25 billion, and had further rolled out the Anti-epidemic Fund of \$30 billion in February 2020 to support enterprises and the general public affected by the COVID-19 epidemic. Notably, the Employees Retraining Board was entrusted by the Government to have swiftly launched the "Love Upgrading Special Scheme" in early October 2019 to assist those recently unemployed, on no-pay leave or under-employed to upgrade their skills or acquire skills for job-switching, with a view to re-entering the employment market as early as possible. As one of the new initiatives under the 2020-2021 Budget, each Hong Kong Permanent Identity Card holder would be provided with \$10,000 under the cash payout scheme to encourage and boost local consumption and relieve people's financial burden. Furthermore, the Administration would roll out different measures under the \$30 billion Anti-epidemic Fund as soon as possible to provide assistance or relief to enterprises and members of the public that were adversely affected by the COVID-19 epidemic. These measures included a special allowance for eligible WFA and Student Financial Assistance households, which involved some 200 000 low-income households with a funding commitment at \$990 million. All concerned bureaux and departments would press ahead with the initiatives under the Anti-epidemic Fund at full steam.

**IV. Enforcement of labour legislation by the Labour Administration Branch of the Labour Department**  
(LC Paper Nos. CB(2)694/19-20(04) and (05))

26. At the invitation of the Chairman, Deputy Commissioner for Labour (Labour Administration) ("DC for L(LA)") briefed members on the latest enforcement actions taken by the Labour Administration Branch

Action

of LD to protect the statutory rights and benefits of employees under relevant labour legislation, details of which were set out in the Administration's paper.

27. Members noted an updated background brief entitled "Enforcement of labour legislation" prepared by the LegCo Secretariat.

Penalties of wage offences

28. Mr POON Siu-ping and the Deputy Chairman expressed concern about the convictions for wilful defaults of wage payment in breach of the Employment Ordinance (Cap. 57) ("EO") in 2019. Mr POON noted with concern the imposition of suspended sentences against five company directors convicted of wage offences in 2019. The Deputy Chairman considered that the fine imposed on wage defaults was generally too low in the last quarter of 2019 as shown in the conviction records available at LD's webpage. Mr POON and the Deputy Chairman considered that the penalties imposed by the courts for wage offences were on the low side and lacked deterrent effect. Mr POON enquired whether LD would seek to reflect the situation through the Department of Justice ("DoJ") to the court. The Deputy Chairman raised a similar question.

29. DC for L(LA) advised that the maximum penalty for wage offences under EO was a fine of \$350,000 and imprisonment for three years. In 2019, LD secured 836 convictions for wilful defaults of wage payment in breach of EO, including 272 summonses convicted against company directors or responsible officers. The employer, company director or responsible officer concerned could be convicted of more than one summons if the wage default involved more than one employee. While the court imposed suspended sentences on five company directors convicted of wage offences in 2019, there were cases where sentences of immediate imprisonment were imposed on employers convicted of wage offences in previous years. Depending on the merits of individual cases as warranted, LD would, in consultation with DoJ, request for application for review or appeal in respect of the penalties imposed by the courts.

30. In response to the Deputy Chairman's enquiry, DC for L(LA) advised that LD had uploaded to its webpage conviction records on failure to pay wages or sums awarded by the Labour Tribunal or Minor Employment Claims Adjudication Board ("MECAB") under EO from October 2019 onwards for public viewing since 23 January 2020. LD took note of the Deputy Chairman's view on how to enhance the

Action

Admin

accessibility of conviction records on its webpage. The Deputy Chairman requested the Administration to provide information on the number of requests for application for review or appeal initiated by LD after consultation with DoJ in respect of the penalties imposed, with regard to the conviction records for October to December 2019 on failure to pay wages or sums awarded by the Labour Tribunal or MECAB as shown on LD's webpage.

31. Mr SHIU Ka-chun commented that apart from the upload of conviction records for public viewing, the Administration should step up its efforts to combat wage offences. Mr LUK Chung-hung considered that prosecution should be initiated against company directors who failed to pay wages wilfully. DC for L(LA) advised that if an employer was suspected to have contravened EO and the employee was willing to assist in investigation, the case would be referred to the enforcement divisions of LD for follow-up investigation.

#### Monitoring of the government service contractors and employment agencies

32. Mr POON Siu-ping enquired whether GSCs were found non-compliant with the labour legislation in those 823 inspections conducted by labour inspectors in 2019. DC for L(LA) advised that labour inspectors interviewed 2 445 workers of 105 GSCs during inspections in 2019 for safeguarding the employment rights of non-skilled workers engaged by GSCs. In the same year, there were four convicted summonses against offending GSCs.

33. Mr SHIU Ka-chun was concerned about the manpower responsible for handling complaints against employment agencies on suspected contravention of law or non-compliance of the Code of Practice for Employment Agencies, and the average time required for handling such complaint cases.

34. DC for L(LA) advised that the Employment Agencies Administration of LD was responsible for regulating employment agencies through licensing, inspection, complaint investigation and prosecution to safeguard the interests of job seekers and employers. To strengthen the monitoring of employment agencies, the annual inspection target was increased from 1 800 to 2 000 since 2018. In 2019, 2 043 inspections were carried out. In addition, LD set up a dedicated webpage entitled Employment Agencies Portal which provided

Action

information concerning, among other things, the non-compliance and irregularities of employment agencies for public viewing. Records of conviction of overcharging or unlicensed operation offence(s) by the court on or after 10 October 2018 would also be published for a period of 24 months, counting from the date of conviction. Senior Labour Officer (Employment Agencies Administration) supplemented that the staff establishment of Labour Officer Grade of LD's Employment Agencies Administration would increase from 25 to 27 in the coming year.

Protection of Wages on Insolvency Fund

35. In the light of the deteriorating economy, Mr POON Siu-ping cautioned that while measures were put in place to prevent the abuse of the Protection of Wages on Insolvency Fund ("the Fund"), it should ensure that the applications for ex gratia payment from the Fund should be processed as far as practicable in order to provide timely relief to the affected employees.

36. DC for L(LA) advised that LD prevented the Fund from being abused to ensure that ex gratia payment was issued only to employees whose employers were genuinely insolvent. An inter-departmental task force, comprising representatives from the Commercial Crime Bureau of the Hong Kong Police Force, Official Receiver's Office, Legal Aid Department and LD, was set up to pursue the responsible individuals of companies who might have illegally transferred company assets and/or deceived creditors through fraud, theft and conspiracy to abuse the Fund before business closure. LD would refer suspected cases to relevant law enforcement departments for action. In 2019, 17 persons involved in such cases were disqualified from being directors and taking part in the promotion, formation or management of a company for one to five years. To protect employees, LD would continue its enforcement actions to combat defaults on wage payment. The Fund would also provide timely financial relief to employees affected by the cessation of business or insolvency of their employers.

Self-employment

37. Mr SHIU Ka-chun expressed concern about the statutory rights and benefits of food delivery riders who were hired by the online food delivery platforms, like Deliveroo and FoodPanda, in the form of self-employment. Although some food delivery platforms took out personal accident insurance for their riders, Mr SHIU enquired whether

Action

LD would handle the complaints lodged by these riders if they failed to receive employees' compensation under the insurance coverage provided by their online food delivery platforms.

38. DC for L(LA) advised that LD had launched publicity activities to enhance public awareness of the differences in the rights and benefits under labour legislation between an employee and a self-employed person. Employees were reminded to clarify their rights and benefits with different status of employment before entering into a contract. It should be noted that even though an employee was labelled as a self-employed person in a contract, he would not be deprived of protection under labour legislation if in essence there existed an employer-employee relationship between the two parties concerned. If a person suspected to be engaged under false self-employment and his statutory rights and benefits be exploited, he should report to LD. LD would provide conciliation service for both parties to help resolve their employment disputes. LD would also conduct investigation and institute prosecution against the offending employers whenever there was sufficient evidence. Mr SHIU Ka-chun pointed out that many food delivery riders were ethnic minorities. Mr SHIU and the Chairman were of the view that LD should step up its effort to enhance these food delivery riders and those freelance workers' awareness of their own employment rights and benefits.

Issues relating to coronavirus disease 2019

*Obligations and rights of employers and employees*

39. Dr Fernando CHEUNG pointed out that during the outbreak of Severe Acute Respiratory Syndrome ("SARS"), LD had formulated guidelines on rights and obligations of employers and employees under EO. Notably, employers should grant sick leave to their employees subject to an isolation order issued by the Director of Health. If an employer asked his employee to stay away from work due to SARS, the employer should pay the employee wages and other benefits in accordance with EO and the employment contract. In view of the infection and COVID-19 epidemic in the community, Dr CHEUNG enquired whether an employee who was put under mandatory quarantine would be granted paid sick leave, and whether an employee would be paid with wages under employer's request to stay away from work during the COVID-19 epidemic. Mr LEUNG Yiu-chung held the view that as work-from-home arrangement was not practicable for some industries,

Action

sickness allowance should be granted to those employees subject to mandatory quarantine.

40. DC for L(LA) advised that LD had uploaded information on the obligations and rights of employers and employees under EO relating to COVID-19 at its webpage. An employee subject to quarantine ordered by a Health Officer of the Department of Health was entitled to sickness allowance if, among other criteria under EO, the sick leave was supported by an appropriate medical certificate. Employers were encouraged to be considerate and make flexible arrangements, including where practicable allowing employees to work from home or granting paid leave to them. If an employee was required to take no-pay leave because the employee had family members infected with COVID-19, the employer should conduct prior consultation with the employee concerned in order to reach mutually agreeable arrangements.

41. Expressing concern that some employers had asked their employees to take no pay leave during the pandemic, Mr LEUNG Yiu-chung called on the Administration to step up its efforts in enhancing employees' awareness of their rights in the consultation with their employers on the arrangement of taking no pay leave. DC for L(LA) took note of Mr LEUNG's view, adding that the definition of lay-off was stipulated under EO in relation to entitlement to severance payment. An employee, among other criteria under EO, should be taken to be laid off if the total number of days on which no work was provided and no wages were paid exceeded half of the total number of normal working days in any four consecutive weeks or one-third of the total number of normal working days in any 26 consecutive weeks.

42. In response to Dr Fernando CHEUNG's enquiry about whether COVID-19 would be prescribed as an occupational disease under ECO, Assistant Commissioner for Labour (Employees' Rights & Benefits) advised that employees infected with the disease at work were protected under section 36 of ECO. In determining whether a disease should be prescribed as an occupational disease under ECO, the Administration would make reference to the criteria adopted by the International Labour Organization, including whether there was a causal relationship between the disease and certain occupation exposures; and whether the disease occurred among the exposed workers at a significantly higher rate than in the general population, such that the link between the disease and the occupation could be reasonably presumed or established in individual cases. On the proposal to prescribe COVID-19 as an occupational

Action

disease, the Administration would keep in view the medical and epidemiological information of the outbreak, especially the number of cases originated from work and their industry distribution, as well as the extent and risk of community infection, in order to make appropriate recommendations.

*Provision of face masks*

Admin

43. Dr Fernando CHEUNG enquired about whether it was the employers' responsibility to provide face masks and protective items for their employees. While employees infected with the disease at work were protected under ECO, Mr LEUNG Yiu-chung requested the Administration to advise whether employers who failed to provide surgical masks to those employees confirmed to have infected with COVID-19 at workplaces would be liable for committing negligence under ECO.

Admin

44. The Deputy Chairman expressed concern that cleansing workers engaged by GSCs were only provided with one face mask per day which was not sufficient. He sought information on whether employers would be in breach of section 6 of the Occupational Safety and Health Ordinance (Cap. 509) if they failed to provide adequate and appropriate surgical masks and protective items for their employees while performing duties. The Administration agreed to provide a written response after the meeting.

[The Chairman directed that the meeting would be extended by 15 minutes.]

Service provided by the Labour Relations Division

45. Expressing concern about the high unemployment rate of 3.7% in December 2019 to February 2020 and the worsening employment market in the foreseeable future, Mr LUK Chung-hung held a strong view that the limited counter services and conciliation service provided by LRD of LD during the COVID-19 epidemic was inadequate to resolve labour disputes. He urged LRD to resume normal office hours and provide full-fledged counter services and conciliation service, with provision of adequate protective equipment to its frontline staff. Mr LUK also considered that officers of LRD should assume a more proactive role in resolving labour disputes. The Chairman considered that despite the special work arrangements and suspension of counter services of LRD,



Action

LD should deploy more manpower to man telephone hotlines and arrange conciliation service through video conferencing so as to maintain its services.

46. DC for L(LA) explained that in light of the special work arrangements for government employees and the development of COVID-19 infection, counter services of LRD were once suspended, and gradually resumed on Mondays, Wednesdays and Fridays from 2 March 2020. To maintain public services, LRD set up additional temporary hotlines at all the 10 branch offices to answer enquiries, and around 1 600 written enquiries were also handled in February 2020. LRD provided consultation service to employers and employees as well as resolved labour disputes, including potential ones, through proactive follow-up. DC for L(LA) stressed that in providing conciliation service, the conciliation officer was a neutral intermediary who assisted both employers and employees in exploring the crux of problem concerned and seeking a mutually acceptable settlement. On the other hand, for public health considerations, the ticketing system served as a crowd management measure to contain the number of people in the waiting area of the branch offices of LRD.

Admin

47. The Chairman requested the Administration to provide the number of labour dispute cases handled by LRD in February 2020, i.e. during suspension of counter services under the special work arrangements.

Motion

48. The Chairman said that Mr LUK Chung-hung had indicated his intention to propose the following motion. He ruled that the motion was directly related to the agenda item under discussion.

"本港失業率持續攀升，企業裁員、僱員被迫減薪及放取無薪假等情況持續不斷，惟勞工處不但沒有針對僱員的實際需要作出足夠支援，反以疫情安全為由縮減服務，包括只於星期一、三及五提供櫃位服務及增設派籌制度限制求助人數；將所有勞資調解會改為電話處理；以及熱線電話長期無人接聽等。就此，本會要求政府正視疫情對勞動市場的衝擊，並敦促勞工處：

- (a) 在加強防疫措施的前提下，全面恢復正常運作，包括辦公時間及勞資調解會等；

Action

- (b) 恢復原有接見市民安排，取消派籌配額制度；及
- (c) 加強保障及宣傳疫情下的勞工權益，包括增加人手以應對未來可能出現的大量求助個案，並向社會大眾發出清晰明確的信息，讓勞資雙方明白抗疫期間自己所享有的僱傭責任及權益。"

49. As the meeting was near the extended closing time, the Chairman suggested and members agreed that the motion be dealt with at the next regular meeting.

50. There being no other business, the meeting ended at 6:47 pm.

Council Business Division 2  
Legislative Council Secretariat  
20 August 2020