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**Bills Committee on
Employment (Amendment) Bill 2021**

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides background information and summarizes the deliberations of the Panel on Manpower ("the Panel") on the Administration's legislative proposal to increase progressively the number of statutory holidays ("SHs") under the Employment Ordinance (Cap. 57) ("EO"), from 12 days to 17 days, so that it will be on a par with the number of general holidays other than Sundays ("GHs").

Background

2. According to EO, an employee, irrespective of his or her length of service, is entitled to 12 days of SHs a year (commonly referred to as "labour holidays"). An employee is further entitled to holiday pay if he or she has been employed under a continuous contract¹ for not less than three months before an SH. For an employer who cannot arrange his or her employee to take leave on an SH, the employer may grant the employee an alternate holiday within a specified period if he or she notifies the employee not less than 48 hours in advance. Failure to grant SH to an employee is a prosecutable offence under EO, with maximum penalty of \$50,000.

3. The General Holidays Ordinance (Cap. 149) ("GHO") specifies 17 days of GHs, in addition to Sundays, in each year on which banks, educational establishments, public offices and government departments need not open. GHO does not oblige employers to grant their employees day-offs during GHs

¹ Under EO, an employee who has been employed continuously by the same employer for four weeks or more and has been working for at least 18 hours each week is regarded as being employed under a continuous contract.

nor to offer pay to employees on GHs. Whether an employee has day-offs and whether these day-offs are with pay or not are matters agreed between the employer and the employee concerned and not governed by law.

Employment (Amendment) Bill 2021

4. The Bill seeks to amend EO to increase progressively the number of SHs from 12 days by five increments with one additional day every two years until it reaches 17 days on a par with the number of GHs.

Deliberations of the Panel

5. The Panel has been following up the Administration's initiative of increasing progressively the number of SHs under EO. The Panel was consulted on the legislative proposal on 19 January 2021. The major views and concerns expressed by members on the legislative proposal are summarized in the ensuing paragraphs.

Pace of alignment of statutory holidays with general holidays

6. Some members held the view that the Government should be proactive in eliminating the disparity in the number of days between SHs and GHs, which was unfair to those employees currently being granted SHs only. It was pointed out that the alignment of SHs with GHs was one of the 10 new initiatives to benefit grassroots and underprivileged people as announced by the Government on 14 January 2020. The Government was obliged to take forward the legislative proposal as early as practicable. With respect to the proposal of increasing an additional day of SH in every two years such that in eight years' time the total number of SHs would be on a par with the number of GHs, some members criticized that the pace was unduly long and called on the Government to advance the timeframe of aligning the number of SHs with GHs.

7. Some other members, however, stressed that the Government should strike a proper balance between employers' affordability and employees' rights and benefits in taking forward the legislative proposal. In face of the worsening economic situation and increasing unemployment rate, these members cautioned that further enhancement of employees' rights and benefits at this juncture would put undue pressure on the business operation of employers. Some members also pointed out that some employers of foreign domestic helpers ("FDHs") were gravely concerned about possible need to take up household chores themselves or rearrange activities while their FDHs were on additional SHs.

8. According to the Administration, it noted the divergent views in the community over the legislative proposal. While some employers grudgingly accepted the legislative proposal, some other employers expressed reservations about the legislative proposal in the light of the worsening economic situation. Taking into consideration the concerns of the employers, particularly those medium, small and micro enterprises and also households employing FDHs, the Government considered it appropriate to increase progressively the number of SHs, i.e. increase one day of SH every two years in a progressive manner. It struck an appropriate balance between improving employees' benefits and facilitating employers including households employing FDHs, to make corresponding adjustments on an incremental basis and make necessary arrangement in their business operation, such as manpower deployment.

9. The Administration further advised that SHs were statutory employment benefit under EO, which were applicable to all eligible employees regardless of whether they were local or imported workers, including FDHs. Currently there were provisions under EO that alternative or substituted SHs could be arranged between employers and employees, and such arrangement would also be applicable to all eligible employees (including FDHs) in respect of the additional SHs.

Cost impact of aligning statutory holidays with general holidays

10. Members noted that according to the Administration's crude estimation, about 1.2 million or close to 40% of all employees would benefit from the legislative proposal and that the annual potential additional cost on businesses for each additional day of SH would be around 0.07% of the total wage bill of all business, if all business affected would hire substitute workers to fully make up for the manpower loss owing to additional SH entitlement. Most members generally considered that the cost impact of increasing the number of SHs on businesses was not significant. It should also be noteworthy that not all employers would need to hire substitute workers to make up for the manpower loss owing to additional SH entitlement. Some members further expressed the view that aligning SHs with GHs would help boost the economy as a whole since more people would take part in various recreational activities and dine out while they were on the additional holidays. These members called on the Administration to study the positive economic impacts to be brought about by increasing five days of SHs on the 1.2 million employees concerned.

Views of Labour Advisory Board

11. Some members were gravely concerned that the Government put forth the legislative proposal to the Legislative Council ("LegCo") in the absence of a

consensus among members of the Labour Advisory Board ("LAB"). It was pointed out that LAB served as a consultative platform for labour issues and that it had been the Government's long established practice to consult LAB and secure its support prior to taking forward various labour-related initiatives. These members expressed dissatisfaction that the Government had circumvented LAB and undermined the established mechanism of LAB in this matter.

12. According to the Administration, the Labour Department consulted LAB 14 October and 5 November 2020 on the legislative proposal in detail. The employee members considered that the alignment should be achieved in a shorter time than eight years as proposed. The employer members, on the other hand, considered that the proposal was their bottom line position. While there was no consensus could be reached within LAB on the pace of achieving the alignment of SHs with GHs, both the employer members and employee members of LAB did not have much disagreement on the goal of increasing progressively the number of SHs so that it would be on a par with the number of GHs, and on the need to introduce an enabling bill into LegCo for scrutiny with a view to designating the first additional SH in 2022.

13. The Administration further advised that in making any decisions related to employment benefits, the Government would first consult LAB with a view to reaching a consensus between the employee and employer sides before introducing the relevant proposals into LegCo. However, having regard to the controversy over the pacing of achieving alignment of SHs with GHs in the community and the fact that there was little prospect that a consensus could be reached between the employer members and employee members of LAB in the foreseeable future, deferring action until a consensus was reached in LAB would mean that employees, especially the grassroots, who were currently enjoying SHs only, would have to wait further to enjoy the additional employment benefits. It was incumbent upon the Government to take into account the different views of employee and employer sides and strike a balance for the interest of the society as a whole, and put forward the proposal by legislative means.

Relevant papers

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

Appendix

Relevant papers on the Employment (Amendment) Bill 2021

Committee	Date of meeting	Paper
Panel on Manpower	19.1.2021 (Item VI)	<u>Agenda</u>

Council Business Division 2
Legislative Council Secretariat
12 April 2021