

Bills Committee on the Employment (Amendment) Bill 2021

The Government's response to the the draft Committee Stage Amendments proposed by Members

On 17 March 2021, the Government introduced into the Legislative Council (LegCo) the Employment (Amendment) Bill 2021 (the Bill) to increase progressively the number of statutory holidays (SHs), by an increment of one day at two-year interval each, from existing 12 days to 17 days, so that it will be on a par with the number of general holidays other than Sundays (GHs). Pursuant to the introduction of the Bill, five members of the Bills Committee have proposed draft Committee stage amendments (CSAs) to the Bill¹. These draft CSAs, albeit different in details, generally involve expediting the pace of the increase with a view to increasing at least four additional SHs within two to three years upon the commencement of the Bill; while a draft CSA proposed by a Member touches on the addition of a further SH. This paper sets out the Government's composite and preliminary response to the draft CSAs.

The scope of the Bill

2. The only objective of the Bill is to increase progressively the number of SHs under the Employment Ordinance (Cap. 57) (EO), from 12 days by five increments at two-year interval each in a designated sequence, until it reaches 17 days on a par with the number of GHs. This is clearly spelt out in the Bill and the LegCo Brief as follows:

- (i) The long title of the Bill states that the Bill is to “[a]mend Section 39(1) of the Employment Ordinance to **add the following 5 days, progressively from 2022 to 2030**, to the list of statutory holidays set out in that section: **the Birthday of the Buddha, the first weekday after Christmas Day, Easter Monday, Good Friday and the day following Good Friday**” (emphasis added);

¹ The draft CSAs are proposed by Hon LUK Chung-hung, Hon WONG Kwok-kin, Hon MAK Mei-kuen, Hon KWOK Wai-keung and Hon POON Siu-ping (LC Paper No. CB(2)1095/20-21(03) to CB(2)1095/20-21(07) refer).

- (ii) Clauses 1(2) to 1(6) set out the dates on which the respective SHs come into operation;
- (iii) Clause 3 amends section 39(1) of EO by adding the five days concerned in a designated sequence;
- (iv) Paragraph 1 of Explanatory Memorandum of the Bill recapitulates that the purpose of the Bill is to amend section 39(1) of the EO **to add the following 5 days progressively** to the list of SHs set out in that section—(emphasis added)
 - (a) the Birthday of the Buddha, being the eighth day of the fourth lunar month (starting from 1 January 2022);
 - (b) the first weekday after Christmas Day (starting from 1 January 2024);
 - (c) Easter Monday (starting from 1 January 2026);
 - (d) Good Friday (starting from 1 January 2028); and
 - (e) the day following Good Friday (starting from 1 January 2030);
- (v) Paragraph 1 of the LegCo Brief states clearly the purpose of the Bill is to increase progressively the number of SHs under the EO, from 12 days by five increments at two-year interval each until it reaches 17 days on a par with the number of GHs; and
- (vi) Paragraph 5 of the LegCo Brief also spells out clearly the reason for designating the relevant GHs that are currently not SHs as additional SHs and that it should be increased in a progressive and orderly manner. Paragraph 6 also sets out the proposed sequence of specifying the additional new SHs.

Draft CSAs proposed by Members

3. The draft CSAs proposed by Members can be classified mainly into two groups, namely: (a) altering the pace of increasing SHs and the sequence of specifying the SHs to be added; and (b) designating the the Victory Day of the Chinese People’s War of Resistance against Japanese Aggression as a new SH, in addition to the five new SHs made under the Bill.

(a) To alter the pace of increasing SHs and the sequence of specifying the SHs to be added

4. The draft CSAs proposed by the five Members would all give the effect of altering significantly the pace of increasing SHs as stipulated under the Bill and the LegCo Brief. They would essentially reduce the number of increments and compress the commencement dates of the increase of some SHs, with a view to increasing at least four SHs within the first two to three years upon the commencement of the Bill, making the increment intervals uneven.

5. As fully reflected in the Bill and the LegCo Brief, the Government has already taken into account the interests of employers and employees and the present economic situation, and has struck the most appropriate balance between these important considerations in formulating the increase in the number of SHs and the pace (i.e. by an increment of one day at two-year interval). Any other proposals with a hasty pace were considered unbalanced and unacceptable. Compressing unilaterally the commencement date of the five additional SHs from eight years to two to three years would be unfair to employers, and perhaps impractical in particular for micro, small and medium-sized enterprises as their proportion of employees who are granted SHs only are generally higher and will face substantive pressure to manage the manpower and operating costs. This is made all the more pressing and important to their business operation as the coronavirus disease 2019 pandemic takes a heavy toll on our economy. Apart from the business sector, over 300,000 employers of foreign domestic helpers (FDHs) and their households, especially those who need constant care and may need to employ temporary workers every time their FDHs are on holidays, will suffer serious impact if they were made to accept the sudden change in two or three years rather than in a more steady manner as in the Bill. As such, the Government considers that increasing one SH every two years in an orderly manner is the most balanced proposal and is the most practical arrangement in allowing a sufficient timespan for employers to adapt. In principle, the Government does not accept any alternative proposals to advance or expedite substantially the pace or timetable in increasing SHs.

6. With the above, the Government considers that the proposed draft Members' CSAs which seek to alter the pace of increasing SHs and the sequence of specifying the SHs to be added deviate from the intent of the Bill.

(b) To designate the Victory Day of the Chinese People's War of Resistance against Japanese Aggression (the Victory Day) as a new SH

7. One of the draft CSAs specifically proposed by Hon POON is to add the Victory Day, apart from the five days of SHs proposed in the Bill, as a further SH to be added. This is obviously outside the scope of the Bill. The LegCo Brief also spells out clearly about the Bill is that the five additional days of SHs should fall on GHs that are currently not SHs. As such, the above proposed CSA deviates from the object of the Bill.

Labour and Welfare Bureau
Labour Department
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