

# 立法會 *Legislative Council*

LC Paper No. CB(2)1242/20-21

Ref : CB2/BC/6/20

## **Report of the Bills Committee on Employment (Amendment) Bill 2021**

### **Purpose**

This paper reports on the deliberations of the Bills Committee on Employment (Amendment) Bill 2021 ("the Bill").

### **Background**

2. At present, section 39(1) of the Employment Ordinance (Cap. 57) ("EO") provides for 12 days of statutory holidays<sup>1</sup> ("SHs") each year, which are statutory benefits of employees. All employees covered by EO, irrespective of their length of service and hours of work, are entitled to 12 days of SHs. Under section 40 of EO, an employee is further entitled to SH pay if he has been employed under a continuous contract<sup>2</sup> for not less than three months before an SH.

3. On the other hand, section 3 of the General Holidays Ordinance (Cap. 149) ("GHO") specifies 17 days of GHs, in addition to Sundays,<sup>3</sup> in each year on which banks, educational establishments, public offices and government departments need not open. GHO does not oblige employers to grant their

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<sup>1</sup> The 12 days of SHs are: (1) the first day of January; (2) Lunar New Year's Day; (3) the second day of Lunar New Year; (4) the third day of Lunar New Year; (5) Ching Ming Festival; (6) Labour Day; (7) Tuen Ng Festival; (8) Hong Kong Special Administrative Region Establishment Day; (9) the day following the Chinese Mid-Autumn Festival; (10) National Day; (11) Chung Yeung Festival; and (12) Chinese Winter Solstice Festival or Christmas Day (at the option of the employer).

<sup>2</sup> 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.

<sup>3</sup> GHs, which include 17 designated days and every Sunday, are specified in the Schedule to GHO. For the purpose of this report, GHs are thereafter referred to as the 17 designated days only with all Sundays excluded.

employees day-offs during GHs, nor to offer pay to employees on GHs. Whether an employee is granted day-offs on GHs and whether these day-offs are with pay or not are matters agreed between the employer and the employee concerned that form parts of the terms of employment.

4. In January 2020, the Chief Executive ("CE") put forward a series of initiatives to further improve people's livelihood, one of which is to increase progressively the number of SHs, from existing 12 days to 17 days, so that it will be on a par with the number of GHs.

## **The Bill**

5. The Bill was published in the Gazette on 5 March 2021 and received its First Reading at the Council meeting of 17 March 2021. The Bill seeks to amend section 39(1) of EO to add the five GHs (i.e. the Birthday of the Buddha (being the eighth day of the fourth lunar month), the first weekday after Christmas Day, Easter Monday, Good Friday and the day following Good Friday) that are currently not SHs, progressively from 2022 to 2030, to the list of SHs set out in that section.

6. The Bill, if passed, (except the provisions in relation to the first weekday after Christmas Day, Easter Monday, Good Friday and the day following Good Friday which would come into operation on the respective dates specified in clause 1(3) to (6) of the Bill) would come into operation on 1 January 2022. Other provisions governing SHs under EO shall remain unchanged.

## **The Bills Committee**

7. At the House Committee meeting on 19 March 2021, Members agreed to form a Bills Committee to study the Bill. Under the chairmanship of Hon WONG Ting-kwong, the Bills Committee has held two meetings with the Administration. The membership of the Bills Committee is in **Appendix I**.

8. The Bills Committee has invited written views from the public on the Bill and received seven written submissions. A list of organizations and individuals which/who have provided written views to the Bills Committee is in **Appendix II**. At the request of the Bills Committee, the Administration has provided a consolidated written response [LC Paper No. CB(2)1093/20-21(01)] to the written submissions.

## Deliberations of the Bills Committee

### Pace of alignment of statutory holidays with general holidays

9. Under clause 3 of the Bill, it is proposed that section 39(1) of EO be amended to add the following five days to the list of SHs set out in that section: the Birthday of the Buddha (being the eighth day of the fourth lunar month), the first weekday after Christmas Day, Easter Monday, Good Friday and the day following Good Friday. Clause 1(2) to 1(6) sets out the dates on which the respective SHs come into operation. The proposed five additional SHs and the respective proposed effective dates are as follow:

<b>Proposed sequence of additional statutory holidays</b>	<b>Proposed effective date</b>
(a) the Birthday of the Buddha	1 January 2022
(b) the first weekday after Christmas Day	1 January 2024
(c) Easter Monday	1 January 2026
(d) Good Friday	1 January 2028
(e) the day following Good Friday	1 January 2030

10. Some members are strongly of the view that the proposed pace of increasing an additional day of SH in every two years from 2022 to 2030 is unduly too long, as it would take eight years' time to achieve the alignment of the number of SHs with GHs. Given that the proposal of aligning SHs with GHs is one of the 10 new initiatives to benefit grassroots and underprivileged people as announced by CE in January 2020, the Government is obliged to take forward the legislative proposal as early as practicable to benefit about 1.2 million or close to 40% of all employees who are currently granted SHs only. These members have strongly urged the Administration to advance the pacing of increasing the additional SHs in three to five years' time.

11. Some other members including Mr SHIU Ka-fai have remarked that the business sector does not have strong views on the proposal to progressively align the number of SHs with GHs. It is, however, stressed that GHs and SHs are two different sets of holidays having their respective purposes and legal consequences. These members have cautioned that in face of the worsening economic situation and business environment amid the COVID-19 epidemic,

further advancing the pace in increasing SHs would put undue pressure on the business operation of employers. They consider that it is imperative to improve employees' rights and benefits gradually while maintaining Hong Kong's competitiveness. The Administration should be mindful of employers' affordability in taking forward the legislative proposal.

12. With respect to the business sector's concern about the cost impact of increasing SHs on businesses, some members including Mr LUK Chung-hung consider that the additional cost on businesses for each additional SH would not be significant, as not all employers would need to hire substitute workers to make up for the manpower loss owing to additional SH entitlement. On the other hand, the legislative proposal would bring about positive impact to the economy as more people would take part in various recreational activities and dine out while they are on the additional holidays.

13. The Administration has advised that it understands that labour groups hold different views on the pacing of the alignment exercise. The Administration has drawn the attention of members to the fact that the Labour Advisory Board ("LAB") had been consulted on the proposal in detail at its two meetings in 2020 but no consensus could be reached. The employee members consider that the alignment should be achieved in a shorter time than eight years as proposed. The employer members, on the other hand, consider that the proposal is their bottom line position. While some have suggested that this issue be discussed further by LAB with a view to reaching a consensus, in the view of the Administration, there is little prospect that a consensus can be reached by LAB in the foreseeable future. It is considered that deferring action until a consensus is reached in LAB would mean that employees, especially the grassroots, who are currently enjoying SHs only, would have to wait further to enjoy the additional employment benefits. Against this background, the Administration decided to introduce the Bill in the current legislative term rather than to withhold the legislative proposal indefinitely. According to the Administration, the proposal to increase the number of SHs progressively with one additional day every two years until it reaches 17 days on a par with the number of GHs has struck an appropriate balance between improving employees' benefits and facilitating employers including households employing foreign domestic helpers ("FDHs"), to make incremental adjustments and necessary arrangement in their business operation, such as manpower deployment.

14. The Administration has further advised that it is proposed in the Bill that the first additional SH would be the Birthday of the Buddha which would fall in May 2022. As a stand-alone holiday that does not fall within the peak travel seasons nor long school holidays, designating the Birthday of the Buddha as the

first additional SH would be more manageable and less impactful for businesses, employers and households with FDHs. In addition, designating the five days of GHs that are currently not SHs as additional SHs in a progressive and orderly manner would help avoid unnecessary confusion to the public.

15. Some members remain of the view that the alignment of the number of SHs with GHs should be achieved within a shorter time so as to safeguard the employees' rights. Mr WONG Kwok-kin, Ms MAK Mei-kuen, Mr KWOK Wai-keung, Mr POON Siu-ping and Mr LUK Chung-hung have indicated their respective intention to propose the following amendments to the Bill to expedite the pace of increasing the additional SHs.

- (a) Mr WONG Kwok-kin's proposed amendments seek to increase the five additional SHs by three increments from 2022 to 2030, with the following sequence: the Birthday of Buddha and first weekday after Christmas Day starting from 1 January 2022; Good Friday and the day following Good Friday starting from 1 January 2023; and Easter Monday starting from 1 January 2030;
- (b) Ms MAK Mei-kuen's proposed amendments seek to increase five additional SHs by two increments from 2022 to 2030, with the following sequence: four additional SHs (i.e. Good Friday, the day following Good Friday, the Birthday of Buddha and first weekday after Christmas Day) starting from 1 January 2022; and Easter Monday starting from 1 January 2030;
- (c) Mr KWOK Wai-keung's proposed amendments seek to increase the five additional SHs by five increments from 2022 to 2030, with the following sequence: the Birthday of Buddha starting from 1 January 2022; the first weekday after Christmas Day starting from 1 January 2023; Good Friday starting from 1 January 2024; the day following Good Friday starting from 1 January 2025; and Easter Monday starting from 1 January 2030;
- (d) Mr POON Siu-ping's proposed amendments seek to increase the five additional SHs by three increments from 2023 to 2025, with the following sequence: the Birthday of Buddha starting from 1 January 2023; the first weekday after Christmas Day starting from 1 January 2024; Good Friday, the day following Good Friday and Easter Monday starting from 1 January 2025; and

- (e) Mr LUK Chung-hung proposed amendments seek to increase the five additional SHs by three increments starting from 1 December 2021 to 2023, with the following sequence: the first weekday after Christmas Day starting from 1 December 2021; Easter Monday and the Birthday of Buddha starting from 1 January 2022; and Good Friday and the day following Good Friday starting from 1 January 2023.

Mr POON Siu-ping has also indicated his intention to amend the Bill to the effect that the Victory Day of the Chinese People's War of Resistance against Japanese Aggression ("Victory Day") (i.e. 3 September) would be designated as a new SH starting from 1 January 2022, in addition to the five new SHs made under the Bill.

16. Some members have raised concern as to whether the long title of the Bill,<sup>4</sup> as currently drafted, would render individual Members' proposed amendments to the commencement of an additional SH outside the scope of the Bill. Concerning the proposed amendments to the long title of the Bill, the Legal Adviser to the Bills Committee has advised that rule 58(9) of the Rules of Procedure ("RoP") provides that if any amendment to the title of the bill is made necessary by an amendment to the bill, it shall be made at the conclusion of the proceedings detailed in RoP 58. Hence, an amendment to the proposed long title of a bill can only be made if an amendment made to the provisions in the bill makes it necessary to do so or there are some other technical reasons such as to improve the language or to clarify a certain point which is within the scope of the bill. By virtue of RoP 58(9), any amendment to the long title of a bill which has the effect of widening the scope of the bill is inadmissible. Besides, the admissibility of the proposed amendment is a matter to be decided by the President of Legislative Council ("LegCo"). In considering the admissibility of amendments proposed by individual Members to a bill, the President would consider, among others, whether an amendment to a bill is relevant to the subject matter of the bill as laid down in RoP 57(4)(a). When considering the subject matter of the bill, the President would take into account the long title, the Explanatory Memorandum and the provisions of the bill, the LegCo Brief on the bill and other relevant factors.

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<sup>4</sup> 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."

17. The Administration has advised that the only objective of the Bill is to increase progressively the number of SHs under 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. The amendments proposed by the five Members, albeit different in details, deviate from the intent of the Bill. In the view of the Administration, the proposed amendments would all give the effect of altering significantly the pace of increasing SHs and the sequence of specifying SHs to be added as stipulated under the Bill and the LegCo Brief. They would essentially reduce the number of increments and compress the commencement dates of some new 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. Compressing unilaterally the commencement dates of the five additional SHs from eight years to two/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 would 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 COVID-19 epidemic takes a heavy toll on the economy.

18. The Administration has further advised that the Bill proposes no amendments to other provisions on SHs under EO. The LegCo Brief also spells out clearly that the five additional days of SHs proposed in the Bill should fall on GHs that are currently not SHs. As such, Mr POON Siu-ping's proposed amendment to add the Victory Day as an additional SH is obviously outside the scope and deviates from the object of the Bill.

19. Mr SHIU Ka-fai has advised the Bills Committee that Members belonging to the Liberal Party have expressed reservations about the suggestion of further advancing the pace or timetable in increasing SHs. Mr Vincent CHENG has advised that Members belonging to the Democratic Alliance for the Betterment and Progress of Hong Kong are inclined to support the pace of increasing the five additional SHs as proposed in the Bill, which they consider has struck a proper balance between improving employees' benefits and facilitating employers to make corresponding adjustments in a progressive manner.

20. The Administration has stressed that 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 among all important considerations in formulating the pace in increasing five days of additional SHs (i.e. by an increment of one day at two-year interval). Any other proposals with a hasty pace are considered unbalanced and unacceptable.

Applicability of the Bill to foreign domestic helpers

21. Some members including Ms Starry LEE and Mr SHIU Ka-fai have drawn the attention of the Bills Committee to the concerns of many employers of FDHs about the applicability of the Bill to FDHs working in Hong Kong. They have pointed out that these FDH employers are concerned that they may need to incur additional cost to hire part-time helpers to take care of their family members who need constant care, take up household chores themselves or re-arrange activities while their FDHs are on additional SHs. It is also pointed out that the terms of employment of FDHs are not entirely the same as local employees. As opposed to the employment of local employees, FDHs and their employers are required to sign a Government-prescribed Standard Employment Contract for FDHs under which FDHs are entitled to additional benefits like Minimum Allowable Wage, free food (or food allowance in lieu), free accommodation, free medical protection and free return passages to/from their places of domicile provided by their employers. This apart, FDHs are exempted from the Minimum Wage Ordinance (Cap. 608) ("MWO"). Sharing the concerns, some members have enquired about the SH entitlement of and labour policy on FDHs in the neighbouring places and the rationale for applying the Bill to FDHs. Mr SHIU Ka-fai has advised that Members belonging to the Liberal Party have strong reservations about the applicability of the Bill to FDHs.

22. According to the Administration, the number of holidays designated specifically for employees in different economies varies from one another. That said, in some economies, the numbers of holidays designated for local employees and FDHs are the same. In Hong Kong, like local employees, FDHs enjoy equal and full protection and entitlements under EO, including SHs, rest days, annual leave, long service payment, etc. This policy is the cornerstone of Hong Kong's compliance with the applicable obligations under the Migration for Employment Convention (Revised), 1949 (International Labour Convention No. 97). With respect to the exemption of live-in domestic workers, including FDHs, from MWO, the Administration has explained that the major considerations for the exemption arrangement are the distinctive pattern of live-in domestic workers and the legal requirement for statutory minimum wage, which is set on an hourly basis, rendering practical difficulties in the calculation and record of working hours of live-in domestic workers. The Administration has stressed that SHs are statutory employment benefits under EO, which are applicable to all eligible employees regardless of whether they are local or imported workers, and whether they reside in their working places or not.



23. The Administration has further advised that currently there are provisions under EO that alternative or substituted SHs can 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.

### **Amendments to the Bill**

24. The Administration and the Bills Committee will not propose any amendments to the Bill. Mr WONG Kwok-kin, Ms MAK Mei-kuen, Mr KWOK Wai-keung, Mr POON Siu-ping and Mr LUK Chung-hung have indicated their respective intention to propose amendments to the Bill as elaborated in paragraph 15 above.

### **Resumption of Second Reading debate**

25. The Bills Committee raises no objection to the resumption of the Second Reading debate on the Bill at the Council meeting of 7 July 2021.

### **Consultation with the House Committee**

26. The Bills Committee reported its deliberations to the House Committee on 18 June 2021.

Council Business Division 2  
Legislative Council Secretariat  
28 June 2021

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

**Membership list \***

<b>Chairman</b>	Hon WONG Ting-kwong, GBS, JP
<b>Members</b>	Hon Starry LEE Wai-king, SBS, JP Hon CHAN Kin-por, GBS, JP Hon WONG Kwok-kin, SBS, JP Hon Alice MAK Mei-kuen, BBS, JP Hon KWOK Wai-keung, JP Hon POON Siu-ping, BBS, MH Hon SHIU Ka-fai, JP Hon LUK Chung-hung, JP Dr Hon CHENG Chung-tai Hon Vincent CHENG Wing-shun, MH, JP  (Total : 11 members)
<b>Clerk</b>	Miss Betty MA
<b>Legal adviser</b>	Mr Alvin CHUI

\* Changes in membership are shown in **Annex to Appendix I**.

**Annex to Appendix I**

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

**Changes in membership**

<b>Member</b>	<b>Relevant date</b>
Hon SHIU Ka-fai, JP	Since 13 April 2021

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

List of organizations/individual which have provided written submissions

1. Liberal Party
2. The Hong Kong Federation of Trade Unions
3. Hong Kong Manufacturing Industry Employees General Union
4. The Hong Kong General Union of Security & Property Management Industry Employees
5. Employee representatives of Labour Advisory Board
6. The Federation of Hong Kong and Kowloon Labour Unions
7. Ms LAW Wing-suet