

LEGISLATIVE COUNCIL BRIEF

Employment Ordinance
(Chapter 57)

EMPLOYMENT (AMENDMENT) BILL 2021

INTRODUCTION

A At the meeting of the Executive Council on 23 February 2021, the Council ADVISED and the Chief Executive ORDERED that the Employment (Amendment) Bill 2021 (“Bill”) at Annex A should be introduced into the Legislative Council (“LegCo”) to increase progressively the number of statutory holidays (“SHs”) under the Employment Ordinance (Cap. 57) (“EO”), from 12 days by five increments at two-year interval each until it reaches 17 days on a par with the number of general holidays other than Sundays (“GHs”).

JUSTIFICATIONS

2. In early 2020, the Chief Executive 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. Taking into account the interests of employers and employees and the present economic situation, the Government has worked out a proposal to take forward the initiative along the following –

- (a) the number of SHs should be increased progressively with one additional day every two years until it reaches 17 days on a par with the number of GHs;
- (b) the five additional days of SHs should fall on GHs that are currently not SHs;
- (c) EO should be amended in one legislative exercise to give effect to (a) and (b) above; and
- (d) other provisions governing SHs under EO should remain unchanged.

Recommendation (a): Progressive increase of SHs at two-year intervals

3. SHs are statutory employment benefit under EO. An increase in SHs will apply across the board to all employers and eligible employees, including some 370 000 foreign domestic helpers (“FDHs”) working in Hong Kong and their employers. To ensure a smooth transition, the pacing of the alignment exercise is of utmost importance. It is reasonable and necessary to provide sufficient time for preparations and adjustments so that the alignment would not put undue pressure on the manpower and operating costs of employers, in particular micro, small and medium-sized enterprises and those sectors with a relatively high proportion of employees¹ who are granted SHs only. This is made all the more pressing and relevant as the coronavirus disease 2019 (“COVID-19”) pandemic takes a heavy toll on our economy with those sectors offering SHs only suffering most. Apart from business, households employing FDHs would also need time to make necessary arrangements to adapt to the change while their FDHs are on holidays.

4. We understand that labour groups hold different views on the pacing of the exercise. While some have suggested continuing the discussion on the pacing issue at the Labour Advisory Board (“LAB”) until a consensus is reached between the employer members and employee members, there is little prospect that a consensus could be reached in the foreseeable future. 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. It is incumbent upon the Government to take into account the different views of employee and employer sides and strike a balance for the interest of our society as a whole. While taking heed of the demand of labour groups and the difficulties faced by business sectors, our proposal in increasing SHs in every two years seeks to strike an appropriate balance between improving employees’ benefits and facilitating employers (including households employing FDHs) to make corresponding adjustments on an incremental basis.

Recommendation (b): The five additional days of SHs should fall on GHs that are currently not SHs

5. Designating the relevant GHs that are currently not SHs as additional SHs in a progressive and orderly manner would help avoid unnecessary confusion to the public. It would also obviate debates on the criteria and selection of specific dates as new SHs, which will affect the progress of the exercise. A comparison table of SHs and GHs is at Annex B.

B

¹ Examples of sectors with a relatively high proportion of employees who are granted SHs only are retail, estate management, security and cleaning services and food and beverage services.

6. We recommend that the additional SHs could be increased in the following sequence –

Proposed sequence of SH to be added	Corresponding month
1. The Birthday of the Buddha	April / May
2. The first weekday after Christmas Day	December
3. Easter Monday	March / April
4. Good Friday	March / April
5. The day following Good Friday	March / April

7. We propose that the first additional SH should be the Birthday of the Buddha which will fall in May 2022. As a stand-alone holiday that does not fall within the peak travel seasons nor long school holidays, the Birthday of the Buddha as the first additional SH should be more manageable and less impactful for businesses, employers and households with FDHs.

Recommendation (c): To amend EO in one legislative exercise to give effect to (a) and (b) above

8. Amendments to EO are required to give effect to the proposal. We recommend amending EO in one legislative exercise instead of multiple exercises, such that there will be a clear roadmap and timeframe of aligning the number of SHs with GHs.

Recommendation (d): Other provisions governing SHs remain unchanged

9. We suggest maintaining the other provisions on SHs under EO, including the arrangement for granting / taking of SHs, the eligibility for SH pay, rate of SH pay and restrictions on pay in lieu of holiday.

OTHER OPTIONS

10. Introducing legislative amendments is the only way to achieve the policy objective of increasing progressively the number of SHs under EO.

THE BILL

11. The main provisions of the Bill are as follows -

- (a) Clause 1(1) sets out the short title of the Bill;
- (b) Clauses 1(2) to 1(6) set out the dates on which the respective SHs come into operation; and
- (c) Clause 3 amends section 39(1) of EO by adding the following five days to the list of SHs 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.

C 12. The existing provisions being amended are at Annex C.

LEGISLATIVE TIMETABLE

13. The legislative timetable will be –

Publication in the Gazette	5 March 2021
First Reading and commencement of Second Reading debate	17 March 2021
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

D 14. The proposal has economic, financial and civil service, and family and gender implications as set out at Annex D. There are no productivity or environmental implications. The proposal is in conformity with the Basic Law, including provisions concerning human rights. It does not affect the current binding effect of EO. The proposal should not have significant sustainability implications other than the economic implications as set out at Annex D.

PUBLIC CONSULTATION

15. The Labour Department (“LD”) consulted LAB twice, first on 14 October 2020 and then on 5 November 2020. Members representing employers and members representing employees (they are equal in number) expressed their concerns and demands in a candid and direct manner at LAB. 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 bottomline position.

16. While no consensus could be reached within LAB on the pace, there is no disagreement on the goal of increasing progressively the number of SHs until it is on a par with that 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.

17. We also consulted the LegCo Panel on Manpower on 19 January 2021. Divergent views were expressed by pro-labour and pro-business Panel members on the pacing of achieving alignment of SHs with GHs. However, there was no objection that the Government should proceed with introducing the Bill into LegCo.

PUBLICITY

18. A press release will be issued upon the gazettal of the Bill, and a Government spokesperson from LD will be available to handle media enquiries.

ENQUIRIES

19. Enquiries relating to this brief can be directed to Mr Raymond Liang, Assistant Commissioner for Labour (Labour Relations), at 2852 4099; Ms Jade Wong, Chief Labour Officer (Labour Relations), at 2852 3457; or Ms Annie Chan, Senior Labour Officer (Labour Relations)(Policy Support), at 2852 3696.

Labour and Welfare Bureau
3 March 2021

A BILL To

Amend 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.

Enacted by the Legislative Council.

1. Short title and commencement

- (1) This Ordinance may be cited as the Employment (Amendment) Ordinance 2021.
- (2) Subject to subsections (3) to (6), this Ordinance comes into operation on 1 January 2022.
- (3) Section 3(4) and (5) comes into operation on 1 January 2024.
- (4) Section 3(6) and (7) comes into operation on 1 January 2026.
- (5) Section 3(8) and (9) comes into operation on 1 January 2028.
- (6) Section 3(10) and (11) comes into operation on 1 January 2030.

2. Employment Ordinance amended

The Employment Ordinance (Cap. 57) is amended as set out in section 3.

3. Section 39 amended (grant of holidays)

- (1) Section 39(1)(j)—
Repeal

“and”.

- (2) Section 39(1)(k)—

Repeal the full stop

Substitute a semicolon.

- (3) After section 39(1)(k)—

Add

“(l) the Birthday of the Buddha, being the eighth day of the fourth lunar month.”.

- (4) Section 39(1)(l)—

Repeal the full stop

Substitute a semicolon.

- (5) After section 39(1)(l)—

Add

“(m) the first weekday after Christmas Day.”.

- (6) Section 39(1)(m)—

Repeal the full stop

Substitute a semicolon.

- (7) After section 39(1)(m)—

Add

“(n) Easter Monday.”.

- (8) Section 39(1)(n)—

Repeal the full stop

Substitute a semicolon.

- (9) After section 39(1)(n)—

Add

“(o) Good Friday.”.

- (10) Section 39(1)(o)—

Repeal the full stop

Substitute a semicolon.

- (11) After section 39(1)(o)—

Add

“(p) the day following Good Friday.”.

Explanatory Memorandum

The purpose of this Bill is to amend section 39(1) of the Employment Ordinance (Cap. 57) to add the following 5 days progressively to the list of statutory holidays set out in that section—

- (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).

2. The Bill makes no amendment in respect of other aspects of statutory holiday.

Comparison Table for General Holidays and Statutory Holidays

General Holidays (Schedule to General Holidays Ordinance)	Statutory Holidays (s.39 of Employment Ordinance)
Every Sunday	—
The first day of January	The first day of January
Lunar New Year's Day	Lunar New Year's Day
The second day of Lunar New Year	The second day of Lunar New Year
The third day of Lunar New Year	The third day of Lunar New Year
Ching Ming Festival	Ching Ming Festival
<i>Good Friday</i>	—
<i>The day following Good Friday</i>	—
<i>Easter Monday</i>	—
Labour Day, i.e. 1 May	Labour Day, i.e. 1 May
<i>The Birthday of the Buddha, i.e. the eighth day of the fourth lunar month</i>	—
Tuen Ng Festival	Tuen Ng Festival
Hong Kong Special Administrative Region Establishment Day, i.e. 1 July	Hong Kong Special Administrative Region Establishment Day, i.e. 1 July
National Day, i.e. 1 October	National Day, i.e. 1 October
The day following the Chinese Mid-Autumn Festival	The day following the Chinese Mid-Autumn Festival
Chung Yeung Festival	Chung Yeung Festival
Christmas Day	Chinese Winter Solstice Festival or Christmas Day (at the option of the employer)
<i>The first weekday after Christmas Day</i>	—
Total : 17 days (not including Sundays)	Total : 12 days

39. Grant of holidays

- (1) Subject to subsections (1A), (2) and (3), an employee shall be granted a statutory holiday by his employer on each of the following days*— (*Amended 137 of 1997 s. 3*)
- (a) Lunar New Year's Day or, if that day falls on a Sunday, then the fourth day of Lunar New Year; (*Amended 27 of 1982 s. 2; 23 of 2011 s. 5*)
 - (b) the second day of Lunar New Year or, if that day falls on a Sunday, then the fourth day of Lunar New Year; (*Amended 23 of 2011 s. 5*)
 - (c) the third day of Lunar New Year or, if that day falls on a Sunday, then the fourth day of Lunar New Year; (*Amended 23 of 2011 s. 5*)
 - (d) Ching Ming (清明) Festival;
 - (da) Labour Day, being the first day of May; (*Added 100 of 1997 s. 2. Amended 35 of 1998 s. 5*)
 - (e) Tuen Ng (端午) Festival; (*Amended 35 of 1998 s. 5*)
 - (f) the day following the Chinese Mid-Autumn (中秋) Festival or, if that day falls on a Sunday, then the second day following that Festival; (*Amended 27 of 1982 s. 2; 23 of 2011 s. 5*);
 - (g) the Chung Yeung (重陽) Festival;
 - (h) the Chinese Winter Solstice Festival (冬節) or Christmas Day, at the option of the employer;
 - (i) the first day of January; (*Replaced 53 of 1976 s. 2*)
 - (j) Hong Kong Special Administrative Region Establishment Day, being the first day of July; and (*Added 137 of 1997 s. 3. Amended 35 of 1998 s. 5*)
 - (k) National Day, being the first day of October. (*Added 137 of 1997 s. 3. Amended 35 of 1998 s. 5*)
- (1A) The operation of subsection (1)(da) shall be suspended for the year 1998. (*Added 137 of 1997 s. 3*)

- (2) An employer may, instead of granting an employee a holiday on a statutory holiday, grant the employee an alternative holiday on another day (which is not a statutory holiday or a substituted holiday) within the period of 60 days immediately preceding or next following the statutory holiday, if the employer has notified the employee, either orally or in writing or by notice posted in a conspicuous place in the place of employment, of the day on which he will be granted the alternative holiday—
 - (a) where the alternative holiday is to be taken on a day within the period of 60 days immediately preceding the statutory holiday, not less than 48 hours before that day; or
 - (b) where the alternative holiday is to be taken on a day within the period of 60 days next following the statutory holiday, not less than 48 hours before the statutory holiday.
 - (2A) Subsection (2) shall apply to and in relation to a holiday under subsection (4) as it applies to and in relation to a statutory holiday. *(Added 137 of 1997 s. 3)*
 - (3) An employer and his employee may agree that another day shall be substituted for a statutory holiday or an alternative holiday or a holiday under subsection (4), if such substituted holiday falls within the period of 30 days of such statutory holiday, alternative holiday or holiday under subsection (4). *(Amended 27 of 1982 s. 2)*
 - (4) Where—
 - (a) a statutory holiday falls on a rest day, or in the case of an employee who is a young person, on a day on which, by virtue of the Employment of Young Persons (Industry) Regulations (Cap. 57 sub. leg. C), the employment of the employee in an industrial undertaking is not allowed, the employee shall be granted a holiday on the next day thereafter which is not a statutory holiday or an alternative holiday or a substituted holiday or a rest day; or *(Amended 7 of 2001 s. 9)*
 - (b) a statutory holiday falls on the same day as that of another statutory holiday, an employee shall be granted a holiday on the next day thereafter which is not a statutory holiday or an alternative holiday or a substituted holiday or a rest day. *(Replaced 137 of 1997 s. 3)*
 - [#](5)-(9) *(Repealed 137 of 1997 s. 3)*
- (Amended 53 of 1976 s. 2; 137 of 1997 s. 3)*

Editorial Note:

- * For additional statutory holidays in 1981, 1986, 1997 and 2015, see 39 of 1981, 35 of 1986, 84 of 1997, s. 2(1) of 111 of 1997 and s. 2(b) of 9 of 2015.
- # For savings provisions, please see s. 6 of 137 of 1997.

Implications of the Proposal

Economic Implications

According to crude estimation, among all employees in Hong Kong (excluding government employees and live-in domestic helpers), about 1.2 million or close to 40% would benefit from the proposal.

2. Assuming all businesses affected will hire substitute workers to fully make up for the manpower loss owing to additional statutory holiday (SH) entitlement, a crude estimation indicates 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 industries¹ (or \$0.63 billion, in 2019 dollars). The impacts on sectors with higher proportion of employees entitled to and taking SHs, such as the low-paying sectors (LPS)², will be relatively larger. Specifically, the corresponding annual potential additional cost to LPS as a whole would amount to around 0.17% of the total wage bill of these sectors for each additional day of SH.

3. The cost impact on businesses would be smaller if they could adopt different mitigation measures, such as reshuffling work duties of existing staff. Furthermore, implementing the proposal of increasing SHs in a progressive and orderly manner by increasing one SH every two years, rather than increasing one SH every year or aligning SHs with general holidays (GHs) in one go, should allow businesses to better adapt themselves and cope with the changes on an incremental basis.

4. Separately, households hiring foreign domestic helpers (FDHs) will incur additional cost if they choose to engage part-time local domestic helpers to substitute FDHs on their extra days off. Nevertheless, they may make arrangements to mitigate the potential additional cost, such as taking up household chores themselves or rearranging their activities while FDHs are on holidays.

Financial and Civil Service Implications

5. Given that government employees including Non-Civil Service Contract staff (with effect from 1 April 2020) are already entitled to GHs, increasing the number of SHs to bring it on a par with the number of GHs will have no additional financial implications for the Government. While subvented organisations will determine the level and salary package of their own employees, the Government will bear the additional cost in relation to the implementation of the proposal granting additional SHs to workers under outsourced government service contracts as such cost will be reflected in the bidding prices ultimately. The estimated additional cost for each extra SH offered to workers under major outsourced government service contracts is around \$15 million. We expect that the bureaux and departments concerned should be able to absorb their share of the additional cost.

¹ Potential additional cost to households hiring FDHs is not included in the estimation.

² The “low-paying sectors” as identified by the fifth-term of Minimum Wage Commission (2019-2021) include: (i) retail; (ii) food and beverage services; (iii) estate management, security and cleaning services; and (iv) other low-paying sectors (including elderly homes, laundry and dry cleaning services, hairdressing and other personal services, local courier services, and food processing and production).

Family and Gender implications

6. Employees who would benefit from the proposal could enjoy more leisure time and healthier work-life balance with more time to spend with their family, which should be conducive to family relationship and commitment. As the proposal is also applicable to FDHs working in Hong Kong, there might be slight impact on FDH employers whose household support would be affected by the additional holidays for their FDHs. However, such impact on FDH employers would be mitigated by the progressive increase in SH by one day every two years, and family responsibility might in turn be strengthened in respect of taking care of the elderly and young children in the family. There are more female³ low-income employed persons, and many of them also assume the role of family carers. The proposal to increase progressively the number of SHs to be on a par with the number of GHs would benefit them as they could spend more time with their families.

³ According to "Women and Men in Hong Kong - Key Statistics (2020 Edition)" published by the Census and Statistics Department, the number of female and male employed persons (excluding FDHs) with monthly employment earnings less than \$10,000 was 296 700 and 186 000 respectively in 2019.