

立法會

Legislative Council

LC Paper No. CB(2)1595/20-21

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by the Administration)

Ref : CB2/PL/MP

Panel on Manpower

Minutes of meeting

**held on Tuesday, 21 September 2021, at 10:45 am
in Conference Room 2 of the Legislative Council Complex**

**Members
present**

: Hon LUK Chung-hung, JP (Chairman)
Hon CHAN Chun-ying, JP (Deputy Chairman)
Hon WONG Kwok-kin, GBS, JP
Hon YIU Si-wing, SBS
Hon Alice MAK Mei-kuen, BBS, JP
Hon KWOK Wai-keung, JP
Hon POON Siu-ping, BBS, MH
Hon CHUNG Kwok-pan
Hon SHIU Ka-fai, JP
Hon Wilson OR Chong-shing, MH
Dr Hon Pierre CHAN
Hon Vincent CHENG Wing-shun, MH, JP

**Member
absent**

: Dr Hon CHIANG Lai-wan, SBS, JP

**Public Officers
attending**

: Item III

Mr Raymond LEUNG Kwok-kee
Chief Labour Officer (Offsetting Policy)
Labour Department

Item IV

Mr Jeff LEUNG Wing-yan, JP
Deputy Commissioner for Labour
(Occupational Safety and Health)

Mr WU Wai-hung, JP
Assistant Commissioner for Labour (Occupational Safety)

Mr WAN Chi-ping
Chief Occupational Safety Officer (System and Support)
Labour Department

Item V

Mr HO Kai-ming, JP
Under Secretary for Labour and Welfare

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

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

Item VI

Mr HO Kai-ming, JP
Under Secretary for Labour and Welfare

Mr Raymond LIANG Lok-man
Assistant Commissioner for Labour (Labour Relations)

Ms Jade WONG Sin-yee
Chief Labour Officer (Labour Relations)
Labour Department

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

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

Miss Karena LUK
Council Secretary (2) 1

Miss Lulu YEUNG
Clerical Assistant (2) 1

Action

I. Information paper issued since the last meeting

Members noted that no information paper had been issued since the last meeting.

II. Date of next meeting and items for discussion

(LC Paper Nos. CB(2)1472/20-21(01) and (02))

Regular meeting in October 2021

2. The Chairman advised that the next regular meeting would be scheduled for 19 October 2021 at 4:30 pm to receive a briefing by the Secretary for Labour and Welfare on the Chief Executive's 2021 Policy Address in respect of the policy initiatives on manpower. Members agreed that the Panel would also discuss "Unleashing female labour force" at that meeting, which would be advanced to start at 4:00 pm.

III. Update on the proposal to abolish the offsetting arrangement under the Mandatory Provident Fund System

3. At the invitation of the Chairman, Chief Labour Officer (Offsetting Policy)/Labour Department ("LD") provided members with an update on the preparatory work for abolishing the "offsetting" arrangement under the Mandatory Provident Fund System, as detailed in his speaking note tabled at the meeting.

(Post-meeting note: The speaking note of Chief Labour Officer (Offsetting Policy)/LD was issued to members vide LC Paper No. CB(2)1494/20-21 on 21 September 2021.)

IV. Hong Kong's occupational safety performance in the first half of 2021

(LC Paper Nos. CB(2)1472/20-21(03) and (04))

4. At the invitation of the Chairman, Deputy Commissioner for Labour (Occupational Safety and Health) ("DC for L (OSH)") briefed members on Hong Kong's occupational safety performance in the first half of 2021, as detailed in the Administration's paper.

Action

5. Members noted an updated background brief entitled "Occupational safety performance in Hong Kong" prepared by the Legislative Council ("LegCo") Secretariat.

Occupational injuries statistics

6. Mr YIU Si-wing sought explanation why the occupational injuries statistics in the first half of 2020, including the number of fatal cases and non-fatal cases and the injury rate per 1 000 employees, were comparatively smaller than those in the corresponding period in 2019. Mr POON Siu-ping and the Chairman considered the occupational safety performance in the first half of 2021 unsatisfactory and noted with grave concern that the number of fatal cases and non-fatal cases had increased respectively from 113 and 12 389 in the first half of 2020 to 131 and 13 887 in the first half of 2021. These members also enquired whether the Administration had studied the causes with a view to formulating measures to enhance the occupational safety performance. Mr SHIU Ka-fai considered that the phenomenon might be attributable to the rising unemployment and underemployment situation under the deteriorating economy amid the COVID-19 epidemic in 2020. Sharing a similar concern, Mr KWOK Wai-keung sought clarification as to the impact of the COVID-19 epidemic on the occupational safety performance.

7. DC for L (OSH) acknowledged that the decrease in accidents for all sectors in the first half of 2020 as compared with the same period of 2019 was likely to be attributed to the rising unemployment and underemployment rates in various industries in the past months. Notably, the respective unemployment and underemployment rates in the construction industry in 2020 were 10.3% and 7.8% which were much higher than the figures in 2019. As such, it would be more appropriate to compare the occupational injuries statistics between 2019 and 2021.

Industrial accidents in the construction industry

8. Mr YIU Si-wing enquired whether LD had conducted any comparison study of the industrial accidents in the construction industry involving large-scale companies and small-scale companies and formulated specific counter-measures to address the work safety issues involved.

9. DC for L (OSH) and Assistant Commissioner for Labour (Occupational Safety) ("AC for L (OS)") responded that LD had analyzed the industrial accidents in the construction industry in the past years. Notably, most of the cases involved new works of large-scale government/private construction projects while about one third of which involved repair, maintenance,

Action

alteration and addition works ("RMAA works"). In enhancing occupational safety performance, LD continued to participate actively in site safety management committee meetings of large-scale public works projects so as to keep close tab on the projects' OSH conditions and risks. As regards work safety of the RMAA sector, LD continued to collaborate with the property management sector to implement the referral mechanism for RMAA works carried out in individual units of buildings ("the referral mechanism"). In addition, LD had stepped up area patrols to carry out inspections of RMAA works sites in a timely manner so as to curb high risk unsafe work-above-ground activities. DC for L (OSH) further advised that LD had also strengthened its publicity efforts in disseminating the OSH messages in the construction industry, including placing OSH messages at websites and mobile applications that were frequently visited by construction workers.

10. Noting that a total of 1 273 referrals were received by LD under the referral mechanism in 2021 (up to July), the Deputy Chairman asked about the reasons for conducting 486 follow-up inspections only and the criteria for conducting such inspections. DC for L (OSH) and AC for L (OS) advised that given the vast number of RMAA works and manpower constraints, LD adopted a risk-based approach in conducting inspections to RMAA works sites with higher risks. That said, inspections would be conducted to all RMAA works sites concerned upon receipt of complaints against work safety.

11. With respect to the 11 industrial fatalities in the construction industry in the first half of 2021, Mr SHIU Ka-fai sought information on the respective numbers of cases involving large-scale and minor works projects. DC for L (OSH) advised that up to mid-September 2021, there were 13 industrial fatalities in the construction industry involving six new works contractors and seven contractors undertaking RMAA works.

12. Having regard to a high proportion of fatal industrial accidents involved RMAA works and the fact that there was a large number of Registered Minor Works Contractors, Mr SHIU Ka-fai considered that the work safety issues could hardly be addressed simply by raising penalties of OSH legislation. Instead, LD should work in collaboration with the property management companies to enhance notification of RMAA works so as to identify the risks involved at an early stage.

13. Ms Alice MAK expressed the view that raising penalties of OSH legislation would increase the deterrent effect of non-compliance with OSH legislation and thereby ensuring a safe working environment for employees and enhancing work safety.

Action

14. DC for L (OSH) advised that OSH legislation imposed general duty of care on employers, occupiers of premises and employees regardless of the size of the companies and works projects concerned. The Government was of the view that the existing penalties imposed by the court on OSH offences were on the low side and did not have sufficient deterrent effect to propel the improvement of OSH performance. It was therefore considered imperative to raise the penalties of OSH legislation and to prevent the occurrence of industrial accidents.

Safety of working at height

15. Mr KWOK Wai-keung expressed grave concern that "persons falling from height" continued to be the most common type of fatal industrial accidents in the construction industry. Mr KWOK asked about the new measures to be adopted to reduce risks associated with working at height.

16. DC for L (OSH) shared the concern that fall of persons from height in the construction industry remained on the high side in the past years. As a matter of fact, following the occurrence of such accidents, LD would issue a Work Safety Alert through its website and emails, giving a brief account of the accident concerned to duty holders, workers' unions, professional bodies of safety practitioners and others, reminding the industry of the importance of following safety precautionary measures to prevent recurrence of similar accidents. As mentioned earlier, LD had also stepped up area patrols to carry out inspections of RMAA works sites in a timely manner so as to curb high risk unsafe work-above-ground activities. Besides, LD further strengthened publicity and promotional work as well as education and training for the construction industry in 2021, with a view to disseminating messages on the risks and the serious consequences of falling from height to workers and other duty holders more effectively. Furthermore, the Government would introduce an Amendment Bill into LegCo to raise penalties of OSH legislation.

17. The Chairman sought information on the number of industrial accidents involving persons falling from height in the past years, in which injured workers concerned were not entitled to receiving employees' compensation because either the employers failed to take out employees' compensation insurance ("ECI") for them or the injured employees were regarded as self-employed persons by the employers. DC for L (OSH) would relay the request to LD's Labour Administration Branch to provide the requisite information.

Action

18. Having regard to the high premiums for taking out ECI for employees engaging in working at height, the Chairman called on the Government to consider setting up a central ECI fund to address the problem. DC for L (OSH) advised that the Government considered that the prevailing statutory requirement of employers taking out ECI under the Employees' Compensation Ordinance (Cap. 282) ("ECO") was effective to cover the employers' liabilities to pay compensation under the Ordinance and the common law, thereby safeguarding employees' rights. The Government had no plan to establish a central ECI fund.

19. The Chairman further called on LD to work in collaboration with the Buildings Department to conduct timely review of its Practice Notes to require developers when constructing new buildings to provide air-conditioner platforms with suitable guard-rails to facilitate air-conditioner maintenance.

Revised statutory notification mechanism

20. The Chairman enquired about the progress of the legislative work for the revised statutory notification mechanism of construction works to cover those with shorter durations or engaging fewer workers but involving a relatively high risk. DC for L (OSH) advised that subject to the progress of law drafting, the Government would introduce the relevant amendment legislation into LegCo as soon as possible.

Publicity and promotional work

21. The Deputy Chairman considered that the provision of simulated emergency situation, such as falling from height, at the OSH Immersive Experience Hall ("the Hall") of the Occupational Safety and Health Academy ("the Academy") situated in Tsing Yi could help raise the trainees' OSH awareness. He asked about the number of visitors to the Hall in the first half of 2021 and any plan in place to promote the simulated emergency situation to the construction workers so as to raise their OSH awareness.

22. DC for L (OSH) acknowledged that virtual working scenes in the Hall could help trainees understand the risks and serious consequences of industrial accidents and thereby the importance of adhering to safety measures. To his knowledge, the Construction Industry Council had set up similar facilities in Kowloon Bay. Besides, the Occupational Safety and Health Council ("OSHC") had made arrangements for those enrolled in its training programmes, industry stakeholders and students to visit the training facilities, including the Hall at the Academy, to raise the vigilance of the

Action

Admin

public about occupational safety issues. He would communicate with OSHC to provide the information requested by the Deputy Chairman.

Raising penalties of occupational safety and health legislation

23. Mr POON Siu-ping expressed concern about the progress of the legislative proposal of raising penalties of OSH legislation which was announced in the 2017 Policy Address. He called on the Government to be determined in taking forward the legislative amendment exercise regardless of the opposition views from the business sector. The Chairman said that the labour sector had called on the Government to expedite the relevant legislative work, given that the average fine for each summons for fatal industrial accidents in the construction industry was only about \$35,000 in the past years.

24. DC for L (OSH) responded that given that the penalties of the Factories and Industrial Undertakings Ordinance (Cap. 59) and the Occupational Safety and Health Ordinance (Cap. 509) had not been revised for over 20 years and that the legislation involved more than 600 penalty-carrying provisions, the process of law drafting took time. Subject to its progress, the Government would introduce the Amendment Bill into LegCo in the current term Government.

Employees' compensation for contracting COVID-19 at work

25. Ms Alice MAK considered it imperative for the Government to issue guidelines to employers on the necessary preventive measures to be taken to protect the employees from contracting COVID-19 at work. Ms MAK sought information on the number of compensation claims with employees suspected to have contracted COVID-19 arising out of and in the course of employment since the outbreak of COVID-19.

Admin

26. DC for L (OSH) said that he would relay the request to LD's Employees' Compensation Division to provide the requisite information. To his knowledge, LD received several hundreds of employees' compensation claims with employees suspected to have contracted COVID-19 arising out of and in the course of employment. Such claims had been or were being processed in accordance with the procedures, including obtaining medical reports and advice from the Centre for Health Protection of the Department of Health with reference to the contact tracing findings for consideration.

Action

V. Regulation of employment agencies

(LC Paper Nos. CB(2)1472/20-21(05) and (06))

27. At the invitation of the Chairman, the Under Secretary for Labour and Welfare ("USLW") briefed members on the latest initiatives taken by LD to regulate employment agencies ("EAs"), as detailed in the Administration's paper.

28. Members noted an updated background brief entitled "Regulation of employment agencies placing foreign domestic helpers" prepared by the LegCo Secretariat.

Regulation of employment agencies

29. Noting that LD's annual target number of inspections to EAs had been increased from 1 800 to 2 000 since 2018, the Deputy Chairman sought information on the actual number of inspections to EAs carried out over the past two years. Mr POON Siu-ping enquired whether these inspections targeted at all local licensed EAs or those EAs undertaking job placement business for foreign domestic helpers ("FDHs") ("FDH EAs") only and if there was sufficient manpower for the strengthening of inspections to EAs. Referring to paragraph 12 of the Administration's paper, the Deputy Chairman sought explanation on the inconsistency in numbers of licence revocation, refusal to issue/renew a licence and written warnings issued as published on LD's website and the Administration's paper. According to LD's website, the Commissioner for Labour ("C for L") only revoked or refused to renew licences of three EAs and issued 23 written warnings. Mr POON sought clarification on whether the six EAs that C for L revoked or refused to renew licences for in 2021 (up to August) were all FDH EAs and enquired about the number of new FDH EAs' licence application received by LD.

30. Senior Labour Officer (Employment Agencies Administration)/LD ("SLO(EAA)/LD") advised that the annual target number of inspections to EAs had been increased from 1 800 to 2 000 since 2018. From 2018 to 2021 (up to August), LD conducted 2 019, 2 043, 1 405 (the number of inspections in 2020 was affected by the special work arrangement due to COVID-19), and 1 456 inspections respectively. LD was confident that it would meet the annual target number of inspections in 2021. With regard to the number of licence revocation and refusal to issue/renew licence, EAs concerned might appeal to the Administrative Appeals Board ("AAB") within 28 days after being notified of LD's decision to revoke or refuse to issue/renew licence. The figures on LD's website would only be adjusted accordingly after AAB had made the decision on the appeal cases. Similarly, LD would update the

Action

relevant figures on written warnings issued on LD's website after it was confirmed that the EAs concerned did not submit applications for review on the warnings. In relation to the number of licensed EAs, it remained steady over the years, of which around 46% were FDH EAs.

31. Ms Alice MAK was of the view that the regulation of EAs should be mainly for FDH EAs as FDHs were in general not fully aware of their rights and obligations while working in Hong Kong and relied on the information provided by FDH EAs. Mr KWOK Wai-keung shared a similar view that the majority of complaints against EAs received by LD were related to FDH EAs as well as the relevant prosecutions so made. To Ms MAK's understanding, most FDHs who engaged in unlawful behaviour were coached or induced by FDH EAs. While supporting the publication of information in different languages to educate FDHs of their rights and obligations while working in Hong Kong, Ms MAK called on the Administration to step up its publicity at FDHs' popular gathering places and provide real examples of penalized FDHs for their reference.

32. Referring to the outbreak of COVID-19 among an FDH cluster who stayed in the boarding facilities of EAs, Ms Alice MAK and Mr SHIU Ka-fai said that it was pertinent to conduct inspections to deter and combat irregularities of FDH EAs.

33. USLW and Deputy Commissioner for Labour (Labour Administration) ("DC for L (LA)") advised that LD would continue with its enforcement and publicity efforts to enhance the professionalism and service quality of the EA industry, as well as promoting the awareness of FDHs about their employment rights and obligations while working in Hong Kong. As an enhancement of the publicity efforts, LD had since September 2020 set up the FDH Division to be responsible for, among other things, FDH's public education on their employment rights and obligations including distributing useful reference materials at FDHs' popular gathering places during their rest days.

34. Referring to an organization which introduced job seekers that were normally paid on a short-term, daily or hourly basis, to work in other institutions, the Chairman enquired whether such organization would be categorized as an EA. He cited that there was a listed company that introduced medical healthcare workers, who were often labelled as self-employed, to work in other institutions such as residential care homes for the elderly and vaccination centres. The Chairman held the view that the listed company should be regarded as an EA, although no employment relationship existed between the contractual parties (i.e. recruiting institutions and job seekers). The Chairman expressed disappointment at the lack of

Action

corresponding regulation for such organization which was suspected to incentivize other institutions to evade employers' responsibility and called on the Administration to review the definition of EAs. Pointing out that the matter was brought to the attention of the Food and Health Bureau ("FHB") earlier, the Chairman enquired if there was any follow-up by the Labour and Welfare Bureau/LD.

35. USLW advised that the categorization of whether an organization was an EA would depend on the facts and circumstances of each case. With regard to the definition of a self-employed person, it was not defined by means of self-proclamation and there was no one single conclusive test to distinguish an employee from a self-employed person. In differentiating these two identities, all relevant factors of the case should be taken into account, including whether an employment relationship could be established under the Employment Ordinance (Cap. 57) ("EO"). If an employment relationship was established between the contractual parties (i.e. recruiting institutions and job seekers), the organization that provided job placement service would be categorized as an EA. USLW would communicate with FHB about the case.

36. Referring to paragraph 3 of the Administration's paper, Mr SHIU Ka-fai sought clarification as to the maximum amount of commission charged by FDH EAs for a successful FDH placement. Noting that a number of FDH employers paid EAs service fees that accounted for more than one month's salary of FDHs, Mr SHUI enquired whether there was a maximum amount of service fees that could be charged by FDH EAs from FDH employers.

37. SLO(EAA)/LD said that EAs were only allowed to receive from job seekers, including FDHs, the prescribed commission specified in the Employment Agency Regulations (Cap. 57A) which should be an amount not exceeding a sum equal to 10% of the latter's first month's salary for successful job placement service. Given that the monthly salary of an FDH was some \$4,600, the maximum amount of commission charged by FDH EAs on FDHs for a successful FDH placement was some \$460. However, there was no provision under EO governing the level of fees that could be charged by EAs on employers for services provided. The amount of service fees charged was subject to the mutual agreement between the customers (i.e. FDH employers) and the service providers (i.e. EAs).

38. In light of over hundreds of complaints against EAs received by LD, Mr KWOK Wai-keung considered that the number of licence revocation and refusal to issue/renew licence was on the low side. Mr KWOK enquired whether there was a relation between the issuance of written and verbal warnings with the decision to revoke or refuse to issue/renew a licence and

Action

under what circumstances an EA licence would be revoked without prior written or verbal warnings.

39. SLO(EAA)/LD advised that the decision of whether to issue written or verbal warnings or to revoke an EA licence depended on the severity of each case. During EA inspections, written or verbal warnings would be issued if minor irregularities were detected. However, if the same item of irregularity was repeatedly found in an EA, LD would consider initiating the procedure of licence revocation.

Job-hopping of foreign domestic helpers

40. The Deputy Chairman sought clarification as to LD's joint operations with the Immigration Department ("ImmD") from the regular EA inspections conducted by LD. Noting that LD had received 120 complaints on FDH EAs inducing FDHs to job-hop in the first eight months of 2021, the Deputy Chairman and Mr POON Siu-ping enquired about the investigation progress of these complaints and if any prosecutions were made.

41. SLO(EAA)/LD explained that the joint operations were arranged on a need basis, depending on the intelligence gathered and upon receipt of complaints about FDH EAs inducing FDHs to job-hop. The joint operations might involve both regular and additional inspections. Unlike the cases involving overcharging commission from job seekers, the investigation on suspected job-hopping cases in general lacked written evidence and relied on circumstantial evidence, which would be difficult to obtain. Therefore, although LD had already instigated investigations into each complaint case, most of the complaints were still under investigation. USLW pointed out that clause 12 of the Standard Employment Contract stated that in the event of termination of the contract, the employer should fill in the form ID407e with the reason for termination of contract and submit it to ImmD. These records would be kept by ImmD and might be used as reference materials in the investigation of suspected job-hopping.

42. In light of the growing number of complaints involving FDH EAs inducing FDHs to job-hop from 2018 to 2021 (up to August), Mr YIU Si-wing and Mr KWOK Wai-keung expressed grave concern about the aggravating problem of job-hopping of FDHs and its impact on families employing FDHs as well as the society at large. Mr KWOK enquired the effectiveness of the series of measures carried out by LD against EAs inducing FDHs to job-hop and sought information on the relevant enforcement statistics including the number of FDH employment visa applications rejected because the applicants concerned were considered as job-hopping. Mr YIU called on the

Action

Administration to collect statistics of FDH EAs related to job-hopping and commence relevant study with a view to drawing up specific inspection and investigation strategies against these unscrupulous EAs as appropriate. Mr YIU appealed to the Administration to consider increasing penalties for FDH EAs that induced FDHs to job-hop and introducing a demerit points system for regulating EAs.

43. DC for L (LA) advised that due to the persistence of COVID-19, the supply of FDHs had been greatly affected, leading to concerns in the community over the problem of job-hopping of FDHs. LD had and would continue to strengthen communication and exchange of information with ImmD concerning FDHs suspected of job-hopping and, on a need basis, mount joint operations to inspect relevant EAs with a view to jointly combatting job-hopping of FDHs in a more proactive and focused manner. For example, some EAs had previously offered cash incentives to attract job-seeking FDHs to use their services for finding new employers and they stopped such business practices after LD's inspections. According to the Code of Practice for EAs ("CoP"), EAs were required to act honestly and exercise due diligence when providing placement services to employers and job seekers. If an EA failed to comply with CoP, C for L might revoke or refuse to issue or renew the licence of the EA concerned in accordance with section 53(1) of EO. Furthermore, ImmD had set up a special duties team to strengthen the assessment of employment visa applications of FDHs who changed employers frequently. USLW further advised that over the past three years, the special duties team vetted a total of 2 880 suspected job-hopping cases and refused 1 104 of them upon close scrutiny. It was believed that this measure helped deter and curb job-hopping.

44. Mr KWOK Wai-keung urged the Administration to include enforcement statistics related to job-hopping in the Administration's paper so as to facilitate public review. USLW took note of the member's suggestion and would include relevant statistics in the future paper as appropriate.

Other issues

45. While supporting the opening of Penny's Bay Quarantine Centre on Lantau Island for quarantine of newly arrived FDHs, Mr SHIU Ka-fai urged the Administration to keep a close watch on the development of COVID-19 and increase the supply of quarantine units for FDHs as appropriate so as to satisfy the market demand. USLW advised that the Government had made its best effort to provide assistance and facilitation to FDHs and their employers subject to changes in and the need for prevention and control of COVID-19. This was done with a view to increasing supply of FDHs in a gradual and orderly manner.

Action

VI. The requirement of "continuous contract" under the Employment Ordinance

(LC Paper Nos. CB(2)1472/20-21(07) and (08) and CB(2)1485/20-21(01))

46. At the invitation of the Chairman, USLW briefed members on the requirement of "continuous contract" under EO and discussion of related matters in recent years, as detailed in the Administration's paper.

47. Members noted an updated background brief entitled "Continuous contract under the Employment Ordinance" prepared by the LegCo Secretariat.

Employment situation and protection of employees engaged under employment contracts with short duration or working hours

48. Mr YIU Si-wing was of the view that some employees engaged under employment contracts with short duration or working hours ("SDWH employees") were freelance workers who preferred taking up employment in a flexible manner. Pointing out that there was a high demand for SDWH employees in the service industry, Mr YIU considered that the Government should first collate sufficient data on SDWH employees so as to study thoroughly such employment trend and need in various trades and industries, instead of proposing changes to the continuous contract requirement under EO across the board for all industries.

49. Assistant Commissioner for Labour (Labour Relations) ("AC for L (LR)") advised that LD had commissioned the Census and Statistics Department ("C&SD") to conduct a Thematic Household Survey ("THS") on SDWH employees during the period from October 2019 to January 2020 (i.e. THS Report No. 72) and the Panel was briefed on the major findings of the THS at its meeting in April 2021. As revealed from the survey findings, some 36% of SDWH employees were engaged in the retail, accommodation and food services sector, some 23% worked in the public administration, social and personal services sector and some 17% worked in the financing, insurance, real estate, professional and business services sector.

50. Mr POON Siu-ping sought information on the number of labour dispute cases handled by LD in the past years in respect of the employment entitlements because of the claimants not meeting the "4-18" requirement. AC for L (LR) advised that LD did not maintain separate statistics on employment claims for not meeting the "4-18" requirement.

Action

Review of the definition of "continuous contract"

51. Citing the varying nature and operation modes of various trades in the service industry, such as the catering sector, hotel industry and tourist guides, Mr YIU Si-wing enquired whether the Administration would explore the feasibility of formulating different continuous contract requirements for these trades. The Chairman echoed a similar view as suggested by some labour unions.

52. USLW responded that EO applied generally to employees in Hong Kong. While individual trades and industries had their distinctive features, it was not feasible to stipulate different standards of continuous contract requirements for specific trades and industries. In considering whether any change would need to be made to the continuous contract requirement, the Government had to explore prudently and thoroughly how to strike a reasonable balance between the benefits of employees and the economic development as a whole.

53. Noting that LD was examining the subject of "continuous contract requirement" under EO which was targeted for discussion at the Labour Advisory Board ("LAB") in 2022, Mr POON Siu-ping sought clarification as to the direction of the study. Mr KWOK Wai-keung echoed a similar concern. In the light of the increasing trend of employment pattern of fragmented work and that employees were not entitled to full protection and benefits under EO if they did not meet the "4-18" requirement, Mr KWOK and Mr POON were concerned whether the study would aim at safeguarding the labour rights and benefits of SDWH employees. Pointing out that no consensus had been reached on the subject at the meetings of LAB since May 2013 following the last Special Topic Enquiry ("STE") on SDWH employees conducted in 2009, Mr POON expressed further concern about how the Administration would handle the situation should no consensus be arrived on the subject again.

54. Mr SHIU Ka-fai said that he maintained an open stance towards review of the continuous contract requirement. In his view, some employees preferred to a flexible employment mode and that it was a matter of their own choice. The major concern of the business sector would be the additional staff cost arising from any changes to the continuous contract requirement, which would likely be transferred to consumers.

55. The Chairman pointed out that the odd pattern of hours of work, such as those in the catering sector, was scheduled by the employers, instead of employees' own choice. This would enable the employers concerned to

Action

evade the legal liabilities of providing their SDWH employees with full employment benefits for continuous employment under EO, such as rest days, pay for statutory holidays, paid annual leave, statutory maternity leave, statutory paternity leave, severance payment and long service payment. The Chairman called on the Administration to plug the loopholes as soon as possible by putting forward legislative proposals to enhance employment protection and benefits for SDWH employees. In his view, consideration could be given to lowering the "4-18 requirement" to "4-72 requirement" such that an employee would be considered to have satisfied the requirement for continuous contract and entitled to full employment benefits under EO if he/she had been working for 72 hours or more within four weeks. Moreover, the Administration should explore the feasibility of providing SDWH employees with employment benefits on a pro-rata basis if they worked less than 72 hours within four weeks.

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

56. USLW advised that in examining the subject of "continuous contract requirement", the Government would listen to members' views and stressed that as long as there existed in essence an employment relationship, employees engaged under a continuous contract were entitled to employment protection and benefits under EO. USLW further advised that LAB was an important consultative platform for labour issues. While the outcome of deliberation on the subject of "continuous contract requirement" under EO by LAB was not yet known, the Government would be committed to forging consensus on the matter. AC for L (LR) added that LD was exploring with C&SD to collate further information based on the raw data of the THS for the purpose of examining the subject.

57. The Chairman enquired about the specific timetable for discussion on the subject by LAB in 2022 and called on the Administration to put forth a legislative proposal on the subject within the current-term of Government as far as practicable. USLW responded that the Government aimed at reverting the subject to the Panel following the discussion on the subject by LAB in 2022.

Member's motion

58. The Chairman said that Mr KWOK Wai-keung had indicated his intention to propose a motion under this agenda item. He ruled that the motion was directly related to the agenda item. Members agreed that the motion should be proceeded with.

Action

Motion moved by Mr KWOK Wai-keung

59. Mr KWOK Wai-keung moved the following motion:

"《僱傭條例》下「連續性合約」的規定多年未變，令香港僱傭權益一直落後其他亞洲先進地區。現行法例下，僱員需連續受僱於同一僱主四星期或以上，每周工作 18 小時或以上，才擁有「連續性合約」下的僱傭福利，如有薪年假、疾病津貼、遣散費、長期服務金等。然而，僱主故意把僱員四星期中的部分或所有星期工時壓低至少於 18 小時或以多間公司僱用僱員等方式迴避「連續性合約」規定的情況亦已持續多年，情況極不理想。因此，委員會要求政府儘早檢討《僱傭條例》下「連續性合約」的規定，以加強保障勞工權益，現建議：

1. 「連續性合約」規定由現時「每周工作一定時數或以上」改為「以四周合計工作一定時數或以上」，即僱員為同一僱主工作四周內的工時總數達一定時數或以上，他的僱傭合約便視為「連續性合約」；
2. 四周合計的總工時要求不應高於 72 小時；及
3. 四周合計工作時數少於「指定時數」的僱員按比例獲僱員福利。"

(Translation)

"The requirement of 'continuous contract' under the Employment Ordinance ("EO") has remained unchanged for years, and as a result, Hong Kong has all along been lagging behind other advanced regions in Asia in respect of employment rights and benefits. Under the existing legislation, an employee has to be employed continuously by the same employer for four weeks or more and work for 18 hours or more in each week in order to be entitled to employment benefits provided under a 'continuous contract', such as paid annual leave, sickness allowance, severance payment and long service payment. However, over the years some employers circumvent the requirement of 'continuous contract' by deliberately compressing the number of working hours of their employees to less than 18 hours in some or all of the four weeks, or having their employees hired by multiple companies, etc. and such situation is highly undesirable. As such, this Panel requests the Government to review as early as possible the

Action

requirement of 'continuous contract' under EO, with a view to enhancing the protection for labour rights and benefits, and it is now proposed that:

1. the requirement of 'continuous contract' be changed from the present 'working for a certain number of hours or more in each week' to 'working for a certain number of hours or more in an aggregate of four weeks', i.e. an employment contract will be regarded as a 'continuous contract' if the total number of hours that an employee works for the same employer in four weeks has reached a certain number of hours or more;
2. the requirement of the total number of working hours in an aggregate of four weeks should not exceed 72 hours; and
3. employees having the number of working hours in an aggregate of four weeks less than the 'specified number of hours' to be entitled to employees' benefits on a pro-rata basis."

60. The Chairman put Mr KWOK Wai-keung's motion to vote. The Chairman said that three members voted for the motion, no member voted against it, and two members did not vote. The Chairman declared that Mr KWOK Wai-keung's motion was carried.

61. There being no other business, the meeting ended at 12:52 pm.