

For meeting on
19 January 2021

Legislative Council Panel on Manpower

Increasing Progressively the Number of Statutory Holidays under the Employment Ordinance

Purpose

This paper seeks Members' views on a proposal to take forward the initiative of increasing progressively the number of statutory holidays (SHs) under the Employment Ordinance (Cap. 57) (EO) so that it will be on a par with the number of general holidays (GHs).

Background

2. At present, EO provides for 12 days of 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. An employee is further entitled to holiday pay if he has been employed under a continuous contract¹ for not less than three months before an SH.

3. On the other hand, the General Holidays Ordinance (Cap. 149) (GHO) specifies 17 days of GHs, in addition to Sundays², 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, nor to offer pay to employees on GHs. Whether an employee is granted

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.

² GHs, which include 17 designated days and every Sunday, are specified in the Schedule to GHO. For the purpose of this paper, GHs are hereafter referred to as the 17 designated days only with all Sundays excluded.

day-offs on GHs and whether these day-offs are with pay or not are thus essentially matters agreed between the employer and the employee concerned that form parts of the terms of employment.

4. The days of which are specified in GHO as GHs but currently not SHs are –

- (a) Good Friday;
- (b) the day following Good Friday;
- (c) Easter Monday;
- (d) the Birthday of the Buddha, being the eighth day of the fourth lunar month; and
- (e) the first weekday after Christmas Day.

A comparison table of SHs and GHs is at Annex.

The Proposal

5. In early 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. 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) SH be increased by one day in every two years such that in eight years' time the total number of SHs matches that of GHs;
- (b) the five additional days of SHs should fall on GHs that are currently not SHs in accordance with the sequence as set out in paragraph 9 below; and
- (c) EO be amended in one legislative exercise to give effect to (a) and (b) above.

Apart from the above proposed changes, the other arrangements concerning SH provisions under EO shall continue to operate as they currently do.

Justifications

Recommendation (a): To increase one SH in every two years such that in eight years' time the total number of SHs matches that of GHs

6. As a statutory employment benefit under EO, any 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. Aligning the number of SHs with GHs in one go or within a short duration might bring about undue pressure on manpower and operating costs to employers (in particular micro, small and medium-sized enterprises) and those sectors with a relatively high proportion of employees who are granted SHs only (such as retail, estate management, security and cleaning services and food and beverage services). To implement the proposal of increasing SHs in a progressive and orderly manner by increasing one SH in every two years would help the concerned employers and industries adapt their business operations and cope with the changes on an incremental basis. Besides, it takes time for our society to adapt to the changes, including households employing FDHs may need to incur additional cost to hire part-time helpers. They may also need to take up household chores themselves or rearrange activities while their FDHs are on holidays.

7. In view of the above, without compromising the initiative of increasing progressively the number of SHs so that it will be on a par with GHs, and taking into account the potential economic impact of the COVID-19 pandemic, we recommend to increase one SH every two years, in order 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

8. 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.

9. 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

As the Birthday of the Buddha in 2022 will fall in May 2022, which is around the middle of the year, designating this day as the first additional SH would facilitate employers (including households employing FDHs) to have sufficient time to make necessary adjustment in view of potential economic impact of the COVID-19 pandemic.

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

10. Amendments to EO are required for giving 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.

Cost Impact Assessment

11. According to crude estimation³, out of 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 above proposal.

12. Assuming all businesses affected will hire substitute workers to fully make up for the manpower loss owing to additional 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

³ The crude estimation conducted by the Office of the Government Economist, in collaboration with the Census and Statistics Department, is based on the results of a supplementary questionnaire in the General Household Survey for Q2 2011 on employees taking SHs and GHs in Hong Kong and the 2019 Annual Earnings and Hours Survey.

industries⁴ (or \$0.63 billion, in 2019 dollars). The estimated increase in annual potential additional cost to low-paying sectors⁵ would amount to 0.17% of the total wage bill of these sectors for each additional day of SH.

Views of Labour Advisory Board

13. The Labour Department consulted the Labour Advisory Board (LAB) on 14 October 2020 and 5 November 2020 on the proposal in detail. The employer members and employee members of LAB candidly expressed their concerns and demands. The employee members considered that the implementation schedule of the proposal should be shortened. Nevertheless, both the employer and employee members of LAB did not have much disagreement on the goal of increasing 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, and on introducing the enabling bill into the Legislative Council (LegCo) for scrutiny with a view to designating the first additional SH (i.e. the Birthday of the Buddha) in 2022.

Implementation Timetable

14. As expressed in the 2020 Policy Address, CE earnestly hopes that an implementation plan acceptable to both employees and employers can be agreed in order to conclude this controversial labour welfare issue which has lingered on for years, so that the Government may strive to introduce the enabling bill into the LegCo for scrutiny within the term of the current Government. Subject to smooth passage of the enabling legislation, we aim to designate the first additional SH in 2022 with a view to achieving the alignment of the number of SHs and GHs by 2030.

⁴ Potential additional cost to households hiring FDHs is not included in the estimation.

⁵ 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).

Advice Sought

15. Members are invited to give views on the proposal to increase progressively the number of SHs as set out in this paper.

**Labour and Welfare Bureau
Labour Department
January 2021**

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