

For information on
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Legislative Council Panel on Manpower

Enforcement of labour legislation by the Labour Administration Branch of the Labour Department

Purpose

This paper briefs Members on the latest enforcement actions taken by the Labour Administration Branch of the Labour Department (LD) to protect the statutory rights and benefits of employees under relevant labour legislation.

Enforcement of the Employment Ordinance

2. LD adopts a multi-pronged strategy to protect employees' statutory rights and benefits under the Employment Ordinance (EO) (Cap. 57), including the right to timely payment of wages and the statutory benefits of rest days, statutory holidays, annual leave with pay, etc. Labour inspectors conduct inspections of workplaces of various sectors to detect wage offences and breaches of other relevant legislation. If there is sufficient evidence that a company has committed wage offence with the consent, connivance or neglect of its director or responsible officer, the culpable director or responsible officer will also be prosecuted.

3. The Labour Relations Division (LRD) of LD provides voluntary conciliation service to assist employers and employees in organisations outside the government sector to resolve labour disputes and claims arising from EO, the Minimum Wage Ordinance (MWO) (Cap. 608) and the contracts of employment. In the course of conciliation, if the employer is suspected to have contravened EO or MWO and the employee is willing to assist in investigation, LRD will refer the case to the enforcement divisions of LD for follow-up investigation. We also widely publicise LD's complaint hotline (2815 2200) and encourage prompt reporting of breaches of EO so that speedy follow-up actions can be taken.

4. In 2020, LD secured 565 convictions for wilful defaults of wage payment in breach of EO, including 164 summonses convicted against company directors or responsible officers. During the year, the highest fine

imposed on a single case was \$310,000. Moreover, one company director convicted of wage offences was sentenced to two-month imprisonment, suspended for 12 months, while 120-hour and 200-hour community service orders were made against two company directors respectively. These convictions have helped deliver a strong message to employers that defaults in wage payment can lead to serious consequences and no employer can evade legal liabilities to pay wages through the veil of a limited company.

5. Other than wage offences, convicted summonses on holiday and leave offences under EO outnumber those involving other statutory rights and benefits. LD has sustained stringent enforcement efforts on these provisions. In 2020, there were 233 convictions on holiday and leave offences.

6. If offences of defaulting the awards of the Labour Tribunal (LT) and the Minor Employment Claims Adjudication Board (MECAB) under EO are suspected to have been committed wilfully and without reasonable excuse, LD will follow up, investigate and collect sufficient evidence with a view to prosecution. In 2020, LD secured 143 convicted summonses on these offences. Among the convicted summonses, 73 were against company directors or responsible officers. During the year, suspended imprisonment sentence was imposed on two company directors, with one of them sentenced to one-month imprisonment, suspended for 24 months, while the other one sentenced to two-month imprisonment, suspended for 12 months. Moreover, 120-hour to 160-hour community service orders were made against three company directors and one employer.

7. The Employment Agencies Administration of LD is responsible for enforcing Part XII of EO, the Employment Agency Regulations (EAR) (Cap. 57A) and the Code of Practice for Employment Agencies (CoP) in regulating employment agencies (EAs) through licensing, inspection, complaint investigation and prosecution. LD has all along been taking vigorous enforcement action in combatting irregularities of EAs. Apart from conducting inspections of EAs, investigation will be initiated upon receipt of complaints against EAs. If there is sufficient evidence to prove that offences under Part XII of EO or EAR have been committed by EAs, prosecution will be instituted. In addition, if an EA is found to have failed to comply with CoP, LD may revoke or refuse to issue or renew its licence, or issue warning for rectification of the irregularities detected.

8. In 2020, LD conducted a total of 1 405 inspections of EAs and successfully prosecuted 11 EAs, of which six were convicted of offences of overcharging of commission from job seekers or unlicensed operation of EAs.

During the same period, the licences of seven EAs were revoked or refused to be issued for reasons including the licensee having been convicted of the offences of overcharging of commission from job seekers or unlicensed operation of EAs, and failure of the licensee to comply with CoP.

9. LD also continues to collaborate with procuring departments in adopting multi-pronged measures to safeguard the employment rights of non-skilled workers engaged in government service contracts. For the protection of non-skilled workers of government service contractors, labour inspectors conducted 657 inspections and interviewed 2 294 workers of 76 government service contractors in 2020.

Enforcement of the Minimum Wage Ordinance

10. Since the implementation of Statutory Minimum Wage (SMW) in May 2011, the state of compliance by employers has been generally satisfactory. LD has conducted targeted inspection campaigns to check compliance with MWO. In 2020, nine cases of suspected violation of MWO were detected. LD had taken follow-up actions on all of these cases and confirmed that the employees concerned had received SMW or recovered the shortfall of wages. A total of eight convicted summonses for failure to pay SMW were recorded in the year.

Enforcement of the Employees' Compensation Ordinance

11. Under the Employees' Compensation Ordinance (ECO) (Cap. 282), employers are required to take out employees' compensation insurance (ECI) to cover their liabilities to pay compensation under the Ordinance and the common law. Labour inspectors conduct inspections of establishments in various trades to check employers' compliance with the compulsory ECI requirement and follow up on complaints against non-compliance including those lodged with LD's complaint hotline. In 2020, LD secured 971 convictions for failure to take out ECI.

12. ECO also provides that the employer should pay the injured employee periodical payments during the period of temporary incapacity of the employee as a result of work injury. An employer who fails to pay periodical payments without reasonable excuse commits an offence. In 2020, there were 68 convicted summonses for failure to pay periodical payments.

Prevention of abuse of the Protection of Wages on Insolvency Fund

13. The Protection of Wages on Insolvency Fund (PWIF) provides timely financial relief to employees affected by the cessation of business or insolvency of their employers. Ex gratia payment granted from PWIF covers arrears of wages and other statutory entitlements as stipulated in the Protection of Wages on Insolvency Ordinance (Cap. 380). LD proactively prevents PWIF from being abused to ensure that ex gratia payment is issued only to employees whose employers are genuinely insolvent. Moreover, the inter-departmental task force, comprising representatives from the Commercial Crime Bureau of the Hong Kong Police Force, Official Receiver's Office (ORO), Legal Aid Department and LD, which has been set up to strengthen co-operation among concerned departments, actively pursues the responsible individuals of companies including employers, company directors, etc. who may have illegally transferred company assets and/or deceived creditors through fraud, theft and conspiracy to abuse PWIF before business closure. The inter-departmental task force continues to play an active role in the protection of PWIF from abuse.

14. When investigating suspected wage offences and verifying applications for PWIF, LD will look into whether the responsible individuals of companies have acted unlawfully when operating the businesses and managing the companies' financial resources. Suspected cases will be referred to relevant law enforcement departments for action. For example, for cases referred by LD, ORO will consider applying to the court to disqualify the company responsible individuals from being directors and taking part in the promotion, formation or management of a company. In 2020, six persons involved in such cases were disqualified for periods ranging from two and a half years to five years. Coupled with LD's vigorous enforcement actions against wage offences, these measures deter employers from shifting their liabilities to pay wages and statutory entitlements to PWIF.

Conclusion

15. Members are invited to note the content of this paper.

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