

立法會 *Legislative Council*

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Panel on Manpower

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 18 February 2021**

Enforcement of labour legislation

Purpose

This paper gives an account of the past discussions by the Panel on Manpower ("the Panel") on the enforcement of labour legislation by the Labour Administration Branch of the Labour Department ("LD").

Background

2. According to the Administration, the Labour Administration Branch of LD is responsible for enforcing the following major labour legislation:
 - (a) the Employment Ordinance (Cap. 57) ("EO") which covers a comprehensive range of employment protection and benefits for employees including wage protection, rest days, holidays with pay, paid annual leave, sickness allowance, maternity protection, severance payment, long service payment, employment protection, termination of employment contract and protection against anti-union discrimination. Employees who are owed wages, wages in lieu of notice and/or severance payments by insolvent employers may apply for ex-gratia payment from the Protection of Wages on Insolvency Fund ("PWIF");
 - (b) Part IV of the Employees' Compensation Ordinance (Cap. 282) ("ECO") which provides for compulsory insurance in relation to compensation for work injuries; and

- (c) the Minimum Wage Ordinance (Cap. 608) ("MWO") which provides for a minimum wage at an hourly wage for certain employees.

Inspections to the workplace and accommodation of imported workers are also conducted by the Labour Administration Branch of LD to ensure that workers entering Hong Kong for employment under the Supplementary Labour Scheme receive their statutory and contractual benefits.

Deliberations of the Panel

Protection of employees' rights and benefits under the Employment Ordinance

3. Members were concerned about the protection for employees' entitlement under EO, particularly whether the offences for defaulted wages had adequate deterrent effect in the event that there was no written employment contract. Some members considered that the penalties imposed by the courts for wage offences were on the low side and lacked deterrent effect. In their views, LD should reflect the situation through the Department of Justice ("DoJ") to the court.

4. According to the Administration, as stipulated under EO, an employer must inform each employee clearly of his conditions of employment. A contract of employment could be made orally or in writing, and included both express and implied terms. Nonetheless, as the use of written employment contract might help employees better understand the terms of their employment, remind both employers and employees of their contractual obligations, minimize unnecessary labour disputes and protect the interests of both parties, employers were encouraged to enter into written employment contracts with their employees as far as possible. The Administration stressed that under EO, employers had the statutory obligations to pay wages on time. Any employer who failed to do so wilfully and without reasonable excuse was liable to prosecution. The maximum penalty for wage offences under EO was a fine of \$350,000 and imprisonment for three years. Members were advised that depending on the merits of individual cases as warranted, LD would, in consultation with DoJ, request for application for review or appeal in respect of the penalties imposed by the courts. To help enhance the understanding of employers and the general public of the criminal liability of non-compliance with EO, LD had uploaded conviction records under EO onto its website for public viewing since January 2020.

5. Members were also concerned about the protection of rights and benefits of non-skilled workers of government service contractors. The Administration advised that apart from protection under EO, it had mandatorily required service contractors to sign the Standard Employment Contracts with their non-skilled workers, which set out clearly the monthly wages, working hours, mode of wage payment, etc. LD would conduct inspections to workplaces to interview the non-skilled workers and verify their relevant wage and employment records. If suspected breaches of EO were detected with sufficient evidence, it would prosecute the offenders. LD would also inform the relevant procuring departments details of the convictions for departments' imposition of administrative sanction, including termination of relevant service contracts and strengthening of monitoring measures as appropriate.

6. Some members expressed concern that employers might evade the responsibility of providing employees' with statutory benefits by forcing their employees to become self-employed persons ("SEPs"). Concern was particularly raised over the rights and benefits of food delivery riders who were hired by the online food delivery platform. The Administration advised that LD had all along been embarking on a full range of educational and publicity activities to raise the attention and alertness of the public on the differences in the rights and benefits under EO between an employee and an SEP. Employers could not make use of false self-employment contract to evade paying employment benefits to their employees under EO and ECO. Even though an employee was labelled as a contractor/SEP in a contract, he would not be deprived of protection under labour legislation if in essence an employer-employee relationship between the two parties concerned existed. Employers were also warned not to unilaterally change the status of a person from an employee to an SEP in the light of the legal consequences that might arise. In addition, LD had provided consultation and conciliation services to the parties involved in false self-employment disputes and a complaint hotline had been set up. Prosecution would be initiated if there was sufficient evidence on breaches of labour legislation.

7. In view of the worsening labour market, members were concerned about the provision of conciliation service by LD to resolve labour disputes. At its meeting on 21 April 2020, the Panel passed a motion urging the Administration to strengthen the conciliation service provided by LD to handle disputes between employers and employees.

Enforcement of the Minimum Wage Ordinance

8. Members were advised that the state of law compliance of statutory minimum wage ("SMW") had all along been satisfactory. Nonetheless, when

reports about cases of non-compliance with the SMW requirement under MWO were received, LD would investigate each of the cases and take out prosecution if there was sufficient evidence to establish an offence. In addition, LD would, from June 2017, launch targeted inspection campaigns for low-paying sectors to ensure their compliance with MWO after the revised SMW rate had come into effect on 1 May 2017.

Abuse of the Protection of Wages on Insolvency Fund

9. Some members were concerned about the disparity in the level of penalty for convicted cases involving PWIF abuses against employers/company directors and employees. It was pointed out that the former would not only be sentenced to imprisonment or imposed a fine, but also would be disqualified from acting as company directors and taking part in the promotion, formation or management of companies for a period ranging from one and a half years to five years. These members considered that the level of penalty for employers was disproportionate to the gravity of the offence.

10. According to the Administration, the sentence for convicted cases involving PWIF abuses was a question for the court. Separately, the Official Receiver's Office would, having regard to the seriousness and circumstances of individual cases, recommend to the court to disqualify the concerned company directors from taking part in the promotion, formation or management of a company.

11. Given the deteriorating economy, some members called on the Administration to ensure that the applications for ex gratia payment from PWIF should be processed expeditiously in order to provide timely relief to the affected employees.

Compulsory insurance under the Employees' Compensation Ordinance

12. Members noted with concern that there was an increasing number of cases concerning employers not taking out insurance policies under ECO in recent years. Members considered that the crux of the problem was due to the difficulties encountered by small enterprises, in particular those in the catering sector, in taking out employees' compensation insurance ("ECI") as well as the high premiums. Members urged the Administration to consider setting up a central employees' compensation fund to replace the current arrangement of having employers to take out labour insurance policies with insurance companies.

13. According to the Administration, it was not advisable to make the drastic change of establishing a central employees' compensation fund as its cost-effectiveness was yet to be established. Stressing that enforcement of compulsory insurance for employees' compensation was one of the priority tasks of the Labour Administration Branch of LD, it would continue to step up its publicity efforts and enforcement actions to ensure that employers would take out ECI to cover their liabilities to pay compensation under ECO and the common law, thereby strengthening the protection of employees. The Administration further advised that in recognition of the difficulties in procuring insurance on the part of individual employers, the Hong Kong Federation of Insurers had, with the Administration's encouragement, set up the Employees' Compensation Insurance Residual Scheme to address the concerns and problems faced by individual industries in taking out ECI from the open insurance market. Some members, however, pointed out that the premium rates under the Scheme was even higher than that in the open insurance market, which was beyond the affordability of employers.

Workplace inspections

14. Members generally considered that the Administration should optimize the manpower resources for conducting more frequent workplace inspections to detect breaches of various labour legislation so as to better protect employees' statutory rights and benefits.

15. The Administration advised that labour inspectors in LD's Labour Inspection Division were responsible for the enforcement of various labour legislation. Apart from checking employers' compliance with MWO during inspections, labour inspectors would also check employers' compliance with the compulsory ECI requirements under ECO and relevant provisions under EO for providing their employees with statutory rights and benefits, including right to timely payment of wages and statutory benefits of rest days and holidays, etc. Enforcement teams would also conduct inspections upon receipt of complaints and carry out further investigation into suspected offences detected during inspections. To optimize the manpower resources and better protect the statutory rights and benefits of employees, LD would also assess from time to time the enforcement efforts and manpower requirements. Additional manpower resources would be sought under the existing mechanism if necessary.

Relevant papers

16. A list of the relevant papers on the Legislative Council website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
11 February 2021

Appendix

Relevant papers on the enforcement of labour legislation

Committee	Date of meeting	Paper
Panel on Manpower	20.1.2011 (Item III)	Agenda Minutes
	12.7.2011 (Item II)	Agenda Minutes
	15.12.2011 (Item V)	Agenda Minutes
Council meeting	19.12.2012	[Question 5] Asked by: Hon LEUNG Yiu-chung Taking out employees' compensation insurance policies
Panel on Manpower	28.5.2013 (Item III)	Agenda Minutes
Council meeting	5.6.2013	Motion on "Enacting legislation on the right to collective bargaining"
Panel on Manpower	21.4.2015 (Item V)	Agenda Minutes
	21.2.2017 (Item V)	Agenda Minutes
	21.3.2017 (Item IV)	Agenda Minutes
	18.4.2017 (Item V)	Agenda Minutes
	26.2.2018 (Item V)	Agenda Minutes
Panel on Manpower	17.3.2020 (Item IV)	Agenda Minutes CB(2)1381/19-20(02) (Annex B)

Committee	Date of meeting	Paper
	21.4.2020 (Item III)	Agenda Minutes

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