

立法會

Legislative Council

LC Paper No. CB(2)971/20-21(06)

Ref : CB2/PL/MP

Panel on Manpower

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 20 April 2021**

Continuous contract under the Employment Ordinance

Purpose

This paper provides background information and summarizes the past discussions by the Panel on Manpower ("the Panel") on the subject of continuous contract under the Employment Ordinance (Cap. 57) ("EO").

Background

2. Schedule 1 to EO defines continuous contract as a contract of employment under which an employee has been employed for four weeks or more and has worked for 18 hours or more in each week. This is commonly known as the "4-18" requirement for a continuous contract. While certain protection and entitlement are accorded to all employees, irrespective of their duration of employment or hours of work per week, some other protection and entitlement are provided for continuous contract employees only. These include rest days, pay for statutory holidays, paid annual leave, paid maternity leave, paid sickness days, severance payment and long service payment, subject to the respective qualifying requirements.

3. According to the Administration, the notion of continuous contract rests on the premise that employees who have a regular employment relationship with their employers should be entitled to the full range of employment benefits. In any dispute as to whether a contract of employment is a continuous contract, section 3 of EO provides that the onus of proving that the contract is not a continuous contract rests on the employer.

4. The Labour Department ("LD") commissioned the Census and Statistics Department ("C&SD") to collect statistical data of employees engaged under employment contracts with short duration or working hours instead of a continuous contract (hereinafter referred to as "SDWH employees") including, inter alia, their distribution and proportion in the labour market as well as the industrial and occupational characteristics for the period from October to December 2009. The survey findings as published in the Special Topics Report No. 55 were released in July 2011.

Deliberations of the Panel

Employment situation of SDWH employees

5. When the Panel was briefed on the major findings of the Special Topics Report No. 55, members noted that the 148 300 SDWH employees, representing 5.2% of employees working in the non-government sector, at the time of enumeration were classified into three categories i.e. A, B and C. Members were advised that 56 300 Category A employees usually worked less than 18 hours per week; 75 800 Category B employees usually worked 18 hours or more per week but were employed in their present jobs for less than four weeks at the time of enumeration; and 16 200 Category C employees had worked continuously for their employers for four weeks or more and usually worked at least 18 hours per week but not continuously in their present jobs at the time of enumeration.

6. Members were further advised that it was mostly due to personal reasons, including family duties, educational pursuit, health problem, old age and no financial need, that the majority of Category A employees working less than 18 hours per week had not worked longer hours.

7. Under Category B, 25 600 employees did not expect to work in their present jobs continuously for four weeks or more. Members expressed deep concern about the reasons given by about half of these 25 600 employees for not being offered a longer term contract by their employers, including custom of trade, norm of company and business arrangement of company. Some members were of the view that these reasons were merely used as excuses of unscrupulous employers or well-established enterprises to evade their statutory responsibilities to provide SDWH employees with employment benefits. These members enquired about the measures to be taken by the Administration to curb such practice. In addition, clarification was sought on the impact assessment on the business environment and labour market should legislative amendments be introduced to EO to enhance the rights and benefits of SDWH employees.

8. The Administration explained that a higher proportion of the 25 600 SDWH employees were engaged in the construction sector in which due to the special characteristics of construction works, workers with a skill were usually engaged on a short-term basis and would leave the work site after that part of the works had been completed. Since "continuous contract" was the basis for determining an employee's eligibility for various employment rights and benefits under EO, any amendment to this statutory definition would have far-reaching implications on the labour market as a whole.

9. There was concern about analyses on the employment and demographic profiles for Category C employees. According to the Administration, it was the first time that C&SD captured data on such type of employees, which accounted for 0.6% of the total number of employees working in the non-government sector. Among them, 33.0% were engaged in the construction sector, 32.0% in the retail, accommodation and food services sector, 11.6% in the public administration, social and personal services sector and 11.1% in the transportation, storage, postal and courier services, information and communications sector.

Protection for employees not employed under a continuous contract

10. Members expressed concern about an increasing trend of employers scheduling the pattern of hours of work of their part-time employees in such an odd way that the employees concerned would not be entitled to protection and benefits that were accorded to continuous contract employees. Members were of the view that the Administration should plug the loopholes as soon as possible by putting forward legislative proposals to enhance employment protection and benefits for SDWH employees.

11. Some members considered that employees not employed under a continuous contract should be entitled, on a pro-rata basis, to the rights and benefits of a full-time employee. There were also suggestions that the "4-18" requirement should be removed and the subject matter should be examined in a wider context in association with the issues of minimum wage and standard working hours of employees. Following the implementation of the statutory minimum wage ("SMW") from May 2011, members expressed concern that it might have negative impact on the employment opportunities of these employees. It was suggested that the Administration should conduct a survey and collect relevant data to find out the possible impact of SMW in this respect.

12. According to the Administration, removing or lowering the "4-18" requirement for continuous contract under EO would have cost implications for

employers, as they would also have to offer the full range of employment benefits to those employees who worked for shorter hours. The retail, catering and entertainment businesses had a greater demand for part-time staff. Employers in these trades might need to reduce their workforce so as to contain the additional staffing cost if the "4-18" requirement was relaxed. Removing the requirement would also adversely affect the employment opportunities of those who preferred to work shorter hours. Besides, it would impact on the marginal workforce who might have difficulty competing with other job-seekers in the full-time employment market. Furthermore, it might reduce the flexibility of certain industries which would normally adjust their part-time workforce when there were fluctuations in the demand for their goods and services. Given the wide implications on employers and employees, any proposal to remove or reduce the "4-18" requirement for continuous employment should be considered carefully in this light. Members were advised that LD had commissioned C&SD to collect statistical data to facilitate the impact assessment of the implementation of SMW. The Administration would make reference to those data during its review of the definition of continuous contract under EO.

13. The Panel passed a motion at its meeting on 17 January 2008 urging the Government to proceed immediately to amend EO for protection of non-"4-18" employees so that they would be entitled to the statutory employment rights and benefits. Members were advised that the Administration would conduct a review on the definition of "continuous contract" under EO in the light of the latest developments in the labour market.

Review of the definition of "continuous contract"

14. Members expressed grave concern about the progress of the review conducted by the Administration on the definition of "continuous contract" under EO and the Administration's timetable for completing the review. Some members expressed dissatisfaction about the slow progress in conducting the review, given that the special topic enquiry on SDWH employees had been conducted as early as in 2009.

15. At its meeting on 19 March 2013, the Panel received views from deputations on the continuous contract requirement. Most members and deputations gave views to the Panel took the view that legislative amendments should be introduced to enhance the protection of the employment rights of employees who did not meet the "4-18" requirement for a continuous contract.

16. The Panel further discussed the review of continuous contract requirement under EO at its meeting on 31 July 2013. Some members called

for the removal of "4-18" requirement and the provision of employment benefits for SDWH employees on a pro-rata basis. Among these members, some of them expressed support for changing the "4-18" requirement to the "4-72" requirement as a transitional arrangement, under which an employee was considered to have fulfilled the continuous contract requirement and was entitled to full employment benefits if he/she had worked 72 hours or more within four weeks. To address the technical problems involved in the pro-rata calculation of benefits, some members considered that the Administration and the Labour Advisory Board ("LAB") should focus the deliberation on the calculation of pro-rating employees' benefits.

17. Some other members, however, were not supportive of the approach to provide employment benefits on a pro-rata basis as the calculation would involve high administration fee. These members cautioned that such approach was detrimental to the business environment. As a majority of SDWH employees were engaged by the small and medium enterprises ("SMEs"), any proposed changes to SDWH employees' entitlements would increase the employers' operating cost and might result in business closure and shrinkage of labour market. They requested the Administration to conduct an impact assessment of pro-rating employees' benefits on the operation of SMEs.

18. Members were advised that the Administration had no pre-conceived position on any of approaches to deal with the continuous contract requirement. Any proposals to amend the requirement should ensure that the definition would provide clear and well-defined delineations in determining whether individual employees were entitled to the relevant benefits. The approach adopted should be simple, clear and easy to administer so as to avoid labour disputes. The Administration would convey members' views to LAB for consideration. Given the complexity of the subject, LAB would take more time to deliberate on the issue.

19. The Panel passed a motion at its meeting on 31 July 2013 urging the Administration to abolish the "4-18" requirement, and proposing that staff members who had worked for 18 hours a week should be entitled to full protection of rights and benefits under EO, whereas those who had worked for less than 18 hours a week should be entitled to the labour protection on a pro-rata basis.

Recent development

20. In the Thematic Household Survey ("THS") conducted during October 2019 to January 2020, C&SD was commissioned to collect information on SDWH employees. The survey findings as published in the THS Report

No. 72 were released in March 2021. The Administration will brief the Panel on the survey findings at its meeting on 20 April 2021.

Relevant papers

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

Council Business Division 2
Legislative Council Secretariat
14 April 2021

Appendix

Relevant papers on continuous contract under the Employment Ordinance

Committee	Date of meeting	Paper
Panel on Manpower	16.6.2005 (Item VI)	Agenda Minutes
Panel on Manpower	17.1.2008 (Item IV)	Agenda Minutes
Panel on Manpower	21.10.2010 (Item II)	Agenda Minutes
Legislative Council	10.11.2010	Official Record of Proceedings (Question 18)
Panel on Manpower	17.2.2011 (Item II)	Agenda Minutes
Legislative Council	16.3.2011	Official Record of Proceedings (Question 9)
Panel on Manpower	17.11.2011 (Item IV)	Agenda Minutes LC Paper No. CB(2)694/11-12(01)
Panel on Manpower	19.3.2013 (Item IV)	Agenda Minutes
Panel on Manpower	31.7.2013 (Item III)	Agenda Minutes