

For information on
21 September 2021

Legislative Council Panel on Manpower

The requirement of “continuous contract” under the Employment Ordinance

Introduction

This paper briefs Members on the requirement of “continuous contract” under the Employment Ordinance (Cap. 57) (EO) and discussion of related matters in recent years.

Existing provisions

2. Irrespective of their duration of employment or hours of work per week, employees are entitled to different levels of rights and benefits under labour legislation, including payment of wages, restrictions on deductions from wages, entitlement to statutory holidays, protection against anti-union discrimination, etc. as provided under EO; protection to employees who die or sustain injury from accidents arising out of and in the course of employment, or suffer from prescribed occupational diseases due to the nature of the occupation as provided under the Employees’ Compensation Ordinance (Cap. 282); and the protection of Statutory Minimum Wage to employees covered by the Minimum Wage Ordinance (Cap. 608). In addition, the Mandatory Provident Fund Schemes Ordinance (Cap. 485) requires employers to arrange enrolment on a mandatory provident fund scheme for employees covered by the Ordinance and employed for a period of 60 days or more.

3. Under EO, regardless of whether working full-time or part-time, employees employed by the same employer for four weeks or more and having worked for 18 hours or more per week (commonly referred to as the “4-18” requirement) are regarded as being engaged under a continuous contract. Subject to their meeting relevant eligibility criteria, these employees are further entitled to other employment benefits, such as rest days, pay for statutory holidays, paid annual leave, sickness allowance, statutory maternity leave, statutory paternity leave, severance payment, long service payment, etc.

4. The continuous contract requirement stipulated under EO is to establish that employers have the legal obligation to offer employment benefits to employees who provide stable service reaching a certain level. Nevertheless, for employees not engaged under a continuous contract, there have been concerns in the community on their failing to enjoy certain EO benefits.

Discussions on continuous contract in recent years

5. In July 2013, the Government sought the Panel's views on some proposed approaches¹ to deal with the continuous contract requirement. Besides, there were rounds of thorough discussions at the Labour Advisory Board (LAB). However, no consensus could be reached between employer members and employee members of LAB. LAB then decided that the discussion on the subject be suspended and be brought up at an appropriate juncture.

6. To gauge the latest situation of employees who are not engaged under a continuous contract, the Labour Department (LD) had commissioned the Census and Statistics Department (C&SD) to conduct a Thematic Household Survey (THS) during the period of October 2019 to January 2020. C&SD published the survey report² on 18 March 2021, and LD also briefed the Panel on the major findings of the survey at its meeting of 20 April 2021.

7. In summary, according to the survey findings, of the employees working in the non-government sector during the survey period, some 2 727 300 employees (93.1%) were working under a continuous contract. The remaining 203 500 employees (6.9%) were not engaged under a continuous contract (referred to as "short duration or working hours" (SDWH) employees in the survey report), with breakdown as follows:

¹ These proposed approaches included:

- (1) Removing the continuous contract requirement;
- (2) Pro-rating employees' benefits;
- (3) Changing the basis of calculation in continuous contract to a four-weekly basis, e.g. 4-72 (i.e. to work 72 hours or more within four weeks);
- (4) Lowering the weekly threshold of 18 hours required in continuous contract, e.g. 4-16 (i.e. to work 16 hours per week); and
- (5) Maintaining the status quo in the definition of continuous contract.

² "Thematic Household Survey Report No. 72"

<u>Category of SDWH employees</u>	<u>Number</u>	<u>Percentage</u>
(a) Usually worked less than 18 hours per week	155 800	76.6%
(b) Usually worked 18 hours or more per week but had worked for less than 4 weeks	37 800	18.6%
(c) Worked for their employers for 4 weeks or more and usually worked 18 hours or more per week (but not continuously)	9 900	4.9%

The survey result also illustrated that, of the SDWH employees in Category (a) above, 133 900 persons (85.9%) did not seek a job usually with 18 hours of work or more per week. Among them, 101 400 persons (among which 34.0% were full-time students) revealed that they would not accept such jobs due to educational pursuit and the need to take care of family, etc..

Way forward

8. The continuous contract requirement is the cornerstone upon which various employment benefits under EO are provided. Any change in this regard will have far-reaching implications on the labour market and the community as a whole. In considering whether any change would need to be made, the Government must prudently and thoroughly explore how to strike a reasonable balance between the benefits of employees and the affordability of employers, bearing in mind the overall interests of Hong Kong. LD is examining the subject which is targeted for discussion at LAB next year.

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

Labour and Welfare Bureau
Labour Department
September 2021