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Panel on Manpower

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 21 September 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") had commissioned the Census and Statistics Department ("C&SD") to conduct surveys on the employment pattern and characteristics of employees engaged under employment contracts with short duration or working hours ("SDWH employees"). The previous related survey was conducted by C&SD in the fourth quarter of 2009 in the form of Special Topic Enquiry ("STE") via the General Household Survey. LD commissioned C&SD again to conduct a Thematic Household Survey ("THS") on SDWH employees during the period from October 2019 to January 2020. The survey report (THS Report No. 72) was published on 18 March 2021.

Deliberations of the Panel

Employment situation of SDWH employees

5. When the Panel was briefed on the major findings of the THS Report No. 72, members noted that there were some 203 500 SDWH employees during the survey period. Of these employees, 27.1% and 27.2% were aged 20 to 29 and 30 to 49 respectively. Concern was raised about the high proportion of young employees engaging in employment with short duration or working hours instead of a continuous contract. Members were concerned about the policies and measures in place to address the situation.

6. The Administration advised that as revealed from the findings of THS Report No. 72, some 133 900 SDWH employees usually worked less than 18 hours per week in the present job at the time of enumeration and did not seek a job usually with 18 hours of work or more per week, and 75.7% of them would not take up jobs usually with 18 hours of work or more per week even if they were offered. It was also noteworthy that 37.1% of them indicated that educational pursuit as the reason, and 27.7% indicated that they needed to take care of housework or family members including children, older persons, disabled or sick members at home.

Protection for employees not employed under a continuous contract

7. 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. There was a view that the "4-18" requirement should be removed or lowered.

8. 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 in 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.

9. The Administration further advised that currently, employees engaged under a continuous contract were entitled to full employment protection and benefits under EO. The eligibility threshold for the employment benefits was comparatively lower and lax than those of the neighbouring places. It was necessary to strike a proper balance between employers' affordability and employees' interest in further enhancing employees' benefits. Members were also advised that the findings of THS Report No. 72 revealed that some SDWH employees were granted certain statutory employment benefits under EO, although they were not entitled to such benefits. Specifically, the survey findings revealed that 13.3% (i.e. around 27 000 persons) were granted statutory holiday pay and 12.8% (i.e. around 26 000 persons) were granted paid annual leave. The Administration would continue to encourage the employers to provide SDWH employees with employment benefits more favourable than the statutory requirements and would closely keep in view the market situation.

Review of the definition of "continuous contract"

10. Most members expressed grave concern about the progress of the Administration's review of the definition of "continuous contract" under EO and its timetable for completing the review. These members were also concerned that employees were not entitled to full protection and benefits under EO if they did not meet the "4-18 requirement", even though these employees had worked 72 hours or more within four weeks for the same employer. It was pointed out that the labour sector had been calling for lowering the "4-18 requirement" to "4-72 requirement" such that an employee would be considered to have satisfied

the requirement for continuous contract and entitled to full employment benefits under EO if he/she had been working for 72 hours or more within four weeks. There was also a view that SDWH employees should be provided with employment benefits on a pro-rata basis if they worked less than 72 hours within four weeks.

11. 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 the 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.

12. 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.

13. 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 the Labour Advisory Board ("LAB") for consideration.

14. The Administration further advised that following the last STE on SDWH employees conducted in 2009, LAB had since May 2013 deliberated in detail the pros and cons and practicability of various approaches to deal with the continuous contract requirement under EO at its several meetings but no consensus had been reached on the subject. Given the complexity of the subject, LAB would take more time to deliberate on the issue. Noting members' concerns on SDWH employees, LD commissioned C&SD again to conduct a THS during October 2019 to January 2020 to better understand the latest situation of the employment pattern and characteristics of SDWH employees. On the basis of the survey findings, LD would continue to study the subject and listen to views of the employer and employee sides.

Relevant papers

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

Council Business Division 2
Legislative Council Secretariat
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Appendix

Relevant papers on continuous contract under the Employment Ordinance

Committee	Date of meeting	Paper
Panel on Manpower	16.6.2005 (Item VI)	<u>Agenda</u> <u>Minutes</u>
Panel on Manpower	17.1.2008 (Item IV)	<u>Agenda</u> <u>Minutes</u>
Panel on Manpower	21.10.2010 (Item II)	<u>Agenda</u> <u>Minutes</u>
Legislative Council	10.11.2010	<u>Official Record of Proceedings</u> <u>(Question 18)</u>
Panel on Manpower	17.2.2011 (Item II)	<u>Agenda</u> <u>Minutes</u>
Legislative Council	16.3.2011	<u>Official Record of Proceedings</u> <u>(Question 9)</u>
Panel on Manpower	17.11.2011 (Item IV)	<u>Agenda</u> <u>Minutes</u> <u>LC Paper No. CB(2)694/11-12(01)</u>
Panel on Manpower	19.3.2013 (Item IV)	<u>Agenda</u> <u>Minutes</u>
Panel on Manpower	31.7.2013 (Item III)	<u>Agenda</u> <u>Minutes</u>
Panel on Manpower	20.4.2021 (Item V)	<u>Agenda</u> <u>Minutes</u>