

**Motion on
“Conducting a comprehensive review of labour legislation to
improve labour rights and interests”
at the Legislative Council meeting of 21 March 2018**

Progress Report

Purpose

At the Legislative Council (LegCo) meeting of 21 March 2018, the motion “Conducting a comprehensive review of labour legislation to improve labour rights and interests” moved by Hon HO Kai-ming was passed. The wording of the motion is at Annex. This report informs Members of the progress of the work concerned.

Improvements to labour legislation in recent years

2. All along, the Government has from time to time been reviewing the labour legislation in the light of the socio-economic development to improve labour rights and protection, taking into account employees’ interests and employers’ affordability. After continuous improvements over the years, the scope of the existing labour legislation is rather comprehensive, covering various areas including upholding employees’ rights and benefits and safeguarding occupational safety and health (OSH). In the course of reviewing the labour legislation, the Government shall duly consider the views of both employers and employees with a view to taking into account the interests of both sides. In recent years, the Government has put in force the following major measures for enhancing the statutory rights of employees.

(i) Upholding employees’ rights and benefits

Employment Ordinance (EO)

3. The Government amended EO in 2010, making it a criminal offence for an employer who, wilfully and without reasonable excuse, defaults payment awarded by the Labour Tribunal (LT) or Minor Employment Claims Adjudication Board to enhance the protection for employees. Since February 2015, paternity leave (PL) has become a statutory right of employees under EO. Eligible male employees are entitled to three days’ PL with pay.

4. The LegCo passed amendments to EO early this year to strengthen regulation of employment agencies (EAs) and to afford better protection to job-seekers including foreign domestic helpers. The relevant amendments came into effect on 9 February 2018 upon gazettal. Under the amendments, the maximum penalty for the offences of overcharging commission from job-seekers and unlicensed operation by EAs was substantially raised from a fine of \$50,000 to a fine of \$350,000 and imprisonment for three years, the criminal liability of overcharging commission from job-seekers was extended to associates (including the management and staff of EAs) in addition to the licensee, new grounds were provided for the Commissioner for Labour to consider refusing to issue/renew or revoking licences, and the statutory time limit for prosecution of the unlicensed operation and overcharging offences was extended from six months to 12 months to allow job-seekers sufficient time to file complaints. In addition, the relevant amendments also provided a legal basis for the Code of Practice for EAs promulgated in 2017.

Minimum Wage Ordinance (MWO)

5. The Statutory Minimum Wage (SMW) regime has been established under MWO since May 2011 to forestall excessively low wages. Since the implementation of SMW and the three upratings, employment earnings of grassroots employees have witnessed sustained improvement. In the first quarter of 2018, the average monthly employment earnings of low-paid (i.e. those in the lowest decile group) full-time employees¹ rose by a cumulative 53.7% compared with the pre-SMW period (i.e. February to April 2011). Apart from outpacing the 36.0% gain for the average monthly employment earnings of all full-time employees over the same period, the figure was also higher than the cumulative increase of 24.1% in the underlying Composite Consumer Price Index, thereby signifying appreciable real growth in the earnings of the grassroots workers upon its implementation.

6. On employment, total employment increased by more than 320 000 compared with the pre-SMW period to 3.867 million in February to April 2018, with a particularly notable increase seen among older female workers². Although employment figures were affected by

¹ Excluding government employees and live-in domestic workers to whom SMW does not apply.

² The employment figures of February to April 2018 are provisional.

various factors such as economic conditions and cohort effect at the same time, the above figures reflected that the implementation of SMW has been conducive to encouraging more people to enter or re-enter the labour market.

Other employment rights and benefits

7. The Government amended the Protection of Wages on Insolvency Ordinance in 2012 to enable employees who are owed pay for untaken annual leave or pay for untaken statutory holidays by their insolvent employers to also come under the coverage of the Protection of Wages on Insolvency Fund with effect from June 2012.

8. In 2012, 2015 and 2017, the Government also raised the amounts of over ten compensation items under the Employees' Compensation Ordinance (ECO), the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (PMCO) and the Occupational Deafness (Compensation) Ordinance thrice to afford better statutory protection for eligible persons. Moreover, two resolutions moved by the Government were passed by the LegCo in early 2018 for their commencement upon publication in the Gazette on 9 February 2018 to increase the maximum daily rate of reimbursable medical expenses for in-patient or out-patient treatment under ECO and PMCO from \$200 to \$300 and the maximum daily rate of reimbursable medical expenses for in-patient and out-patient treatment received on the same day from \$280 to \$370. The increases have enhanced the protection of employees injured at work and prescribed occupational disease sufferers in terms of their medical expenses.

(ii) Safeguarding occupational safety and health

9. In respect of OSH, the Government in 2014 amended the Factories and Industrial Undertakings (Asbestos) Regulation to tighten the control of using asbestos in industrial undertakings, including prohibition on carrying out work with asbestos in industrial undertakings, regulating the removal or disposal of asbestos, and raising the penalties of several offences related to using asbestos or carrying out work with asbestos. A duty holder who contravenes the relevant regulation without reasonable excuse is liable to a maximum fine of \$200,000 and imprisonment for 6 months.

Reviews and proposed amendments to labour legislation in progress

10. As shown from the above work, the Government has kept improving the labour legislation to enhance the protection of employees' rights and benefits. The Government will continue to review the labour legislation from time to time in the light of the socio-economic development. At present, the Government is undertaking the following reviews and amendments to the labour legislation.

(i) Abolishing the arrangement of “offsetting” the severance payment or long service payment with employers' mandatory contributions under the Mandatory Provident Fund system

11. The Government is determined to resolve the “offsetting” issue within this term to end this problem which has upset the labour relations for years. Having regard to the views of the business and labour sectors on the previous-term Government's proposal, the Government has put forth a preliminary idea on abolishing the “offsetting” arrangement and is now actively exchanging views on the preliminary idea with major stakeholders including the business and labour sectors. This preliminary idea is not yet the final decision of the Government. We will listen carefully to the views of the community on the preliminary idea. The Government will take into account the stakeholders' views as far as practicable in refining the preliminary idea.

(ii) Amending the reinstatement provisions of EO

12. The Government introduced the Employment (Amendment) Bill 2017 (the Bill) into the LegCo in May 2017 to empower LT to make an order for reinstatement or re-engagement of an employee upon unreasonable and unlawful dismissal without having to first secure the employer's agreement if LT considers that the order is appropriate and compliance of the order by the employer is reasonably practicable. An employer who fails to comply with such an order will be required to pay a further sum to the employee. Non-payment of the further sum will be made a criminal offence. The Bill was passed by the LegCo on 17 May 2018 and gazetted on 25 May 2018.

(iii) Increasing statutory paternity leave

13. The Government recommends that statutory PL be increased from the existing three days to five days and has secured the support of the Labour Advisory Board and the LegCo Panel on Manpower. The

Labour Department (LD) is currently preparing with the Department of Justice (DoJ) the enabling legislation, and plans to introduce a Bill into the LegCo within the current legislative year.

(iv) Reviewing statutory maternity leave

14. There have been suggestions from the labour and the women's sectors to improve the statutory maternity benefits of female employees, including extending the duration of statutory maternity leave from the existing 10 weeks to 14 weeks. The Government is now conducting a review to look into the possible way to improve the statutory maternity leave, taking into account the needs of working women and the affordability of enterprises.

(v) Formulating working hours policy

15. Working hours policy is a highly complex and controversial issue. Since there are divergent views on the legislative proposals put forward by the previous-term Government, the Government has decided not to pursue for the time being the two legislative proposals on "contractual working hours"³ and "mandatory overtime compensation"⁴, and to focus on formulating sector-specific working hours guidelines for 11 designated sectors through LD's industry-based tripartite committees, assessing the effectiveness of the guidelines through household surveys on working hours situation and introducing other supportive measures, including requiring or encouraging employers to disclose more information on working hours arrangements when placing job vacancies through LD to enhance transparency and launching large-scale education and publicity activities to promote family-friendly employment practices relating to working hours arrangements.

³ Mandatory written employment contracts with terms on working hours and overtime compensation arrangements shall be legally applicable to the lower-income grassroots employees.

⁴ The lower-income grassroots employees shall be entitled to statutory overtime compensation by way of overtime pay at a rate no less than the rate of the agreed wages (i.e. the wage rate calculated based on the agreed wages) or the equivalent time-off in lieu.

(vi) Reviewing the SMW rate

16. The Minimum Wage Commission is conducting a new round of review on the SMW rate and will submit a report on its recommendation to the Chief Executive in Council by end-October 2018.

(vii) Reviewing the level of penalty under OSH legislation

17. Under the existing Occupational Safety and Health Ordinance, the Factories and Industrial Undertakings Ordinance and their subsidiary regulations, a duty holder, if convicted, is liable to a maximum penalty of \$500,000 and imprisonment for 12 months. Although the fines for contraventions involving fatal construction accidents have increased in recent years, LD considers that the fines are still too low to reflect the seriousness of the offences and the consequences of the accidents, and fail to generate sufficient deterrent effect to improve the overall OSH performance. LD, in consultation with DoJ, is reviewing the penalties for OSH legislation and aims to come up with the direction for amending the relevant legislation within the current legislative session.

Way forward

18. In the course of reviewing the labour legislation, the Government will maintain close dialogue with the employer and employee sides as well as other relevant stakeholders to listen to different views with a view to building consensus. The Government looks forward to rational and pragmatic discussions among employers, employees and different sectors of the community, upholding the spirit of forging common grounds while allowing differences, to continue to improve the protection for employees by legislative or other appropriate means, while sustaining economic development and achieving a win-win situation for employers and employees to share the fruits of economic success.

Labour and Welfare Bureau
Labour Department
May 2018

(Translation)

**Motion on
“Conducting a comprehensive review of labour legislation to
improve labour rights and interests”
moved by Hon HO Kai-ming
at the Council meeting of 21 March 2018**

That this Council urges the Government to make safeguarding labour rights and interests its priority task and expeditiously conduct a comprehensive review of and make amendments to the various legislation relating to labour matters, so as to ensure that such legislation keeps pace with the times.