立法會 CB(2)1674/18-19(05)號文件(修訂本) LC Paper No. CB(2)1674/18-19(05) (Revised)

立法會參考資料摘要

《天然災害及緊急狀況停工安排條例草案》

引言

1. 本條例草案旨在為天然災害及緊急狀況停工安排訂定條文,訂明遇 天然災害及緊急狀況,行政長官會同行政會議按天然災害及緊急狀況應變 委員會制定的準則公佈停工安排,並因應有關條文修訂《僱員補償條例》 第5條 — 僱主就意外引致僱員死亡或喪失工作能力而支付補償的法律責 任。

背景和論據

惡劣天氣頻繁

2. 全球氣候變化日益嚴重,在氣溫暖化的情況下,天氣越見反常,惡劣天氣如風暴、風雪、酷熱、嚴寒影響著世界各地,香港也不能獨善其身。 2018 年 9 月,本港受到超強颱風「山竹」的吹襲,帶來極惡劣的天氣,引發破紀錄的風暴潮,亦導致多區出現嚴重水浸、樹木倒塌及建築物損毀等情況,各個地區飽受山竹的蹂躪。不少專家指出,由於氣候變化,本港出現超強颱風的機會將會增加。氣候變化帶來更頻繁的惡劣天氣,有需要加強僱員在惡劣天氣上下班的安全保障。

惡劣天氣導致交通運輸癱瘓

3. 惡劣天氣可導致交通運輸癱瘓。以颱風「山竹」為例,其風力強勁,令到市面受到嚴重破壞,道路不通。直到颱風信號解除了的第二天,公共運輸系統和整個運輸網絡的運作仍受到嚴重影響,未能全面恢復,巴士全面停駛,鐵路多處被倒塌的樹木阻塞。然而,當日停課不停工,上班有極大困難,地鐵站月台站滿上班的人群,但列車只能提供有限度服務,不少人更因空氣不流通而量倒。

僱員被無理扣減薪酬及假期

4. 工聯會在颱風「山竹」過後進行了一項問卷調查,結果顯示 7%的 受訪僱員因當日遲到而被扣薪或扣勤工; 19%的受訪僱員因當日未能上班 而被扣人工、扣勤工或扣假。雖然行政長官早已表明公務員當天不用扣薪、扣假,但在問卷進行期間,仍有 13%的受訪公務員因當日沒有上班而被扣假,政府的安排也如此混亂,其他私人機構的安排,更不堪設想。當天未能上班或遲到,並非員工的本意,不應被扣減人工、扣減假期。

現行法例未能為僱員提供適切保障

5. 現時《颱風及暴雨警告下的工作守則》沒有法律效力。儘管政府已就有關內容作出新修訂,訂明在政府發出「極端情況」公布後,除與僱主就「極端情況」下訂立有上班協定的必要人員外,僱員在八號颱風警告取

消後的兩小時,應留在原來的地點,而非立即啟程上班,並為僱主和僱員 提供上班及復工安排的參考示例;然而,《守則》只訂明惡劣天氣期間是 否上班,由僱主與僱員自行協商,所以不論八號或十號颱風警告、不論有 沒有公共交通工具行駛、不論上班道路有沒有障礙,員工都沒有不上班的 權利,僱員權益及安全完全不受保障。

- 6. 現時不論天氣有多惡劣、即使有沒有交通工具行駛,不少食肆、零售店仍要求員工上班營業。事實上,在颱風期間上班很容易發生意外,大風大雨下樹木、招牌和雜物橫飛、山邊山泥傾瀉的機會大增,種種情況都會傷及途人,也會把人吹倒受傷。員工為了「保飯碗」,仍須在如此惡劣的天氣下冒險上班,情況絕不人道。
- 7. 現時在八號或以上颱風訊號或紅色/黑色暴雨警告生效期間,僱員在他該日的工作時間開始前四小時內,以直接路綫由其居所前往其工作地點途中,或在他該日的工作時間終止後四小時內,由其工作地點前往其居所途中,如遭遇意外受傷或死亡,一律被視作在受僱工作期間因工遭遇意外而引致,可獲相關補償。但通常在颱風訊號或紅色/黑色暴雨警告生效前後,天氣有機會已轉惡劣,並因而易生意外,現時的保障並不足夠。

建議

8. 遇天然災害及其他緊急狀況,如交通癱瘓,行政長官會同行政會議按天然災害及緊急狀況應變委員會制定的準則公佈停工安排;以及修訂《僱員補償條例》第5條——在颱風訊號或紅色/黑色暴雨警告生效前後四

小時的上、下班途中,如遭遇意外受傷或死亡,一律被視作在受僱工作期間因工遭遇意外而引致,可獲相關補償。。

條例草案

- 9. 《條例草案》 的主要條文載列如下:
 - (a) 草案第 3 條賦權行政長官會同行政會議公佈停工安排。
 - (b) 草案第 4 條訂明設立天然災害及緊急狀況應變委員會及其組成成員。
 - (c) 草案第 5 條訂明天然災害及緊急狀況應變委員會的職能。
 - (d) 草案第 6 條修訂《僱員補償條例》(第 282 章)第 5 條,訂明停工期間上下班的僱員,可獲《僱員補償條例》訂明的損傷補償;另延長可獲損傷補償涵蓋的上下班時間。

立法日程

10. 立法程序時間表會如下 —

刊登憲報 待定

首讀和開始二讀辯論 待定

委員會審議階段 另行通知

恢復二讀辯論及三讀 另行通知

法例的約束力

11. 本條例草案並不影響《僱傭條例》及《僱員補償條例》的現行約束力。

財政及人手影響

12. 新增天然災害及緊急狀況應變委員會以現有應對天然災害及緊急狀況的政府部門組成,這些部門本身已需擔當相關工作,無須新增人手和開支;勞工顧問委員會是現有機制,因此不涉及新增的開支。

公眾諮詢

13. 颱風山竹過後市民上班混亂的情況,為人詬病,社會多方均表達強烈要求於惡劣天氣和緊急狀況要求作出停工的立法安排。

查詢

14. 如對本參考資料有任何查詢,請與本人助理黃小組聯絡(電話: 2537 9618 傳真: 2509 9092)。

工聯會立法會議員

陸頌雄

2019年6月20日

《天然災害及緊急狀況停工安排條例草案》

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本條例草案

旨存

訂立天然災害及緊急狀況停工安排條文;以及就相關事宜,訂定條文。 由立法會制定。

第1部

導言

1. 簡稱及生效日期

- (1) 本條例可引稱為《天然災害及緊急狀況停工安排條例》。
- (2) 本條例自行政長官會同行政會議以憲報公告指定的日期起實施。

2. 釋義

(1) 在本條例中 ——

工資 (Wages) 具有《僱傭條例》(第57章) 給予該詞的涵義;

- 天然災害及緊急狀況 (Nature disasters and emergency situation) 指嚴 重危害生命的事故,通常突如其來,可以或可能引致的傷亡, 並需要迅速應變以保障市民生命財產或公眾安全的自然或人為 事件;
- 天然災害及急緊狀況應變委員會(Contingency Committee for Nature disasters and emergency situation) 指根據第 4 條設立的委員會;

年假 (annual leave) 具有《僱傭條例》(第 57 章) 給予該詞的涵義;

假日(holiday) 具有《僱傭條例》(第57章) 給予該詞的涵義;

停工期間(period of suspension from work) 指行政長官會同行政會議 按天然災害及緊急狀況應變委員會制訂的停工準則公佈停工的 期間。

第2部

停工的安排

3. 停工的安排

(1) 遇天然災害或緊急狀況,行政長官會同行政會議按天然災害及 緊急狀況應變委員會制定的準則公佈停工安排。

- (2) 停工期間 ——
 - (a) 政府各局、部門以及所有公營機構停工,參與緊急救援工 作的除外;
 - (b) 私營企業及非政府組織 ——
 - (i) 停工;
 - (ii) 指定工作人員因業務需要於停工期間工作,需事先 獲天然災害及緊急狀況應變委員會批准。
- (3) 罪行

僱員如於停工期間缺勤,

- (a) 僱主不得扣除工資、年假或任何假日;
- (b) 僱主不得解僱或作出任何違反僱員利益或對僱員不利的行 為;
- (c) 任何僱主如故意及無合理辯解而違反第 3(3)(a)或(b)條的 規定,即屬犯罪,可處罰款\$350,000及監禁3年。

第3部

停工準則的訂定

- 4. 設立天然災害及緊急狀況應變委員會
 - (1) 須設立天然災害及緊急狀況應變委員會;
 - (2) 委員會由直接參與救援工作的政府部門組成,勞工顧問委員會 成員為當然成員。
- 5. 天然災害及緊急狀況應變委員會的職能
 - (1) 制訂及不時修訂停工準則;
 - (2) 制訂豁免停工的申請條件及機制;
 - (3) 審批豁免停工的申請。

第4部

修訂《僱員補償條例》

6. 修訂第 5 條(僱主就意外引致僱員死亡或喪失工作能力而支付補償的法 律責任) (1) 第 5(4)(f)條, "僱員於"之後 ——

廢除

"烈風警告或暴雨警告期間內"

代以

"烈風警告或暴雨警告、或停工期間內、生效前 4 小時內及生效 終止後 4 小時內"

(2) 廢除

第 5(4)(f)(i)條 ——

代以

在其居所與其工作地點之間,並在該日其工作時間開始前,採 用直接路綫前往其工作地點,或在其居所與其工作地點之間, 並在該日其工作時間終止後,前往其居所(視屬何情況而定); 或

(3) 第 5(4)(f)(ii)(B)條之後 ——

加入

(C) **停工期間(period of suspension from work)** 指行政長官會同行政會議按天然災害及緊急狀況應變委員會制訂的停工準則公佈停工的期間。

摘要說明

本條例草案的目的,是賦予行政長官會同行政會議公布停工安排的權力; 訂立成立天然災害及緊急狀況應急委員會、其組成及職能的條文;修訂 《僱員補償條例》(第 282 章)訂明僱主就意外引致僱員死亡或喪失工作 能力而支付補償的法律責任適用於停工期間,及延長烈風警告或暴雨警 告、及停工期間可獲損傷補償的時效至生效前 4 小時內及生效終止後 4 小時內。

2. 本條例草案共有 4 個部份及 6 條條文。

第1部——導言

- 3. 草案第 1 條列出簡稱,並就生效日期訂定條文。
- 4. 草案第 2 條載有解釋本條例草案的釋義條文。

第2部 —— 停工的安排

5. 草案第3條賦權行政長官會同行政會議公佈停工安排。

第3部 —— 停工準則的訂定

- 6. 草案第 4 條訂明設立天然災害及緊急狀況應變委員會及其組成成員。
- 7. 草案第 5 條訂明天然災害及緊急狀況應變委員會的職能。

第4部 —— 停工準則的訂定

8. 草案第 6 條修訂《僱員補償條例》(第 282 章)第 5 條,訂明停工期間上下班的僱員,可獲《僱員補償條例》訂明的損傷補償;另延長可獲損傷補償的上下班時間。

$\langle\!\!\langle$ Arrangements for Suspension of Work During Natural Disasters and Emergency Situations Bill $\rangle\!\!\rangle$

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A BILL To

Provide for the implementation of the suspension of work during natural disasters and emergency situations; and for incidental matters.

Enacted by the Legislative Council.

Part 1

Preliminary

1. Short title and commencement

- (1) This Ordinance may be cited as the Arrangements for Suspension of Work During Nature disasters and Emergency situations Ordinance.
- (2) This Ordinance comes into operation on a day to be appointed by the Chief Executive in Council by notice published in the Gazette.

2. Interpretation

- (1) In this Ordinance —
- annual leave (年假) has the meaning assigned to it in the Employment Ordinance (Cap. 57);
- Contingency Committee for Natural Disasters and Emergency Situations (天然災害及急緊狀況應變委員會) means the Committee established under section 4:
- holiday (假日) has the meaning assigned to it in the Employment Ordinance (Cap. 57);
- nature disasters and emergency situations (天然災害及緊急狀況) means a serious disruption of life, that probably arose with little or no warning, that causes or threatens death or injury and demands a rapid response in order to protect life, property and public security;
- **period of suspension of work**(停工期間) means the period of suspension of work declared by the Chief Executive in Council;
- Wages (工資)has the meaning assigned to it in the Employment Ordinance (Cap. 57).

Part 2

Arrangements for Suspension of Work

3. Suspension of work arrangements

- (1) The Chief Executive in Council declares the suspension of work according to the criteria set by the Contingency Committee for Natural Disasters and Emergency Situations when encountering natural disasters or emergency situations.
- (2) In the period of suspension of work
 - (a) all government bureaus, departments and public authorities shall carry out the suspension of work except those involved in emergency relief work;
 - (b) private enterprises and non-government organizations
 - (i) suspension of work;
 - (ii) personnel designated to work during the period of suspension of work due to business needs shall be approved by the Contingency Committee for Nature Disasters and Emergency Situations in advance.

(3) Offence

Where an employee who is absent from work during the period of suspension of work,

- (a) no deduction of wages, annual leave or any holiday shall be made by an employer;
- (b) no dismissal or any action shall be taken against the interest of and is not favourable to an employee by an employer;
- (c) Any employer who wilfully and without reasonable excuse contravenes section 3(3)(a) or (b) commits an offence and is liable to a fine of \$350,000 and an imprisonment for 3 years.

Part 3

Criteria for suspension of work

- **4.** Establishment of the Contingency Committee for Natural Disasters and Emergency Situations
 - (1) Contingency Committee for Natural Disasters and Emergency Situations shall be established;
 - (2) the committee should be comprised of government departments directly involved in emergency relief work and members of the Labour Advisory Board shall be ex-officio members.
- 5. Functions of the Contingency Committee for Nature Disasters and

Emergency Situations

- (1) formulates and revises from time to time the criteria of suspension of work and deals with related issues;
- (2) formulates conditions and mechanism of the exemption of suspension of work;
- (3) to approve the exemption of suspension of work application.

Part 4

Amendments to the Employees' Compensation Ordinance

- 6. Section 5 amended (Employer's liability for compensation for death or incapacity resulting from accidents)
 - (1) Section 5(4)(f), after "to the employee when," —

Repeal

"within the duration of a gale warning, or of a rainstorm warning,"

Substitute

"within the during of and within 4 hours before and after a gale warning, a rainstorm warning or a period of suspension of work in force,"

(2) Repeal

section 5(4)(f)(i)

Substitute

- " (i) to his place of work by a direct route before the time of commencement of his working hours for that day or to his place of residence after the time of cessation of his working hours for that day, as the case may be; or"
- (3) After section 5(4)(f)(ii)(B) —

Add

"(C) **period of suspension of work** (停工期間) means the period of suspension of work declared by the Chief Executive in Council"

Explanatory Memorandum

The objects of this Bill are to confer the Chief Executive in Council the power to declare the arrangements for the suspension of work, to provide for the establishment of a Contingency Committee for Nature Disasters and Emergency Situations, functions and composition of its members, amend the Employees' Compensation Ordinance (Cap.282) to prescribe the employer's liability for compensation for death or incapacity resulting from accidents during the suspension of work; and extends the time span of commuting to

work that entitles to the compensation of injury to four hours before and after a gale warning, a rainstorm warning and a period of suspension of work in force.

2. The Bill has 4 parts with 6 clauses.

Part 1—— Preliminary

- 3. Clause 1 sets out the short title.
- 4. Clause 2 contains definitions that are necessary for the interpretation of the Bill.

Part 2 —— Arrangements for Suspension of work

5. Clause 3 confers the Chief Executive in Council the power to declare the arrangements for the suspension of work.

Part 3 —— Criteria for suspension of work

- 6. Clause 4 provides for the establishment of a Contingency Committee for Nature Disasters and Emergency Situations and composition of members.
- 7. Clause 5 prescribes the functions of the Contingency Committee for Natural Disasters and Emergency Situations Committee.

Part 4 —— Criteria of suspension of work

8. Clause 6 amends section 5 of the Employees' Compensation Ordinance (Cap.282) to prescribe employees are entitled to the compensation for injury during the period of suspension of work and extend the time span of commuting to work that entitles to the compensation for injury.