

## **WOMEN'S COMMISSION**

### **Protection for part-time employees under relevant labour-related legislation**

#### **PURPOSE**

This paper sets out the protection for part-time employees under the Employment Ordinance (EO) (Cap. 57), Employees' Compensation Ordinance (ECO) (Cap. 282) and Mandatory Provident Fund Schemes Ordinance (MPFSO) (Cap. 485).

#### **PROTECTION OF EMPLOYEES' RIGHTS AND BENEFITS BY LAW**

2. The ECO applies to all employees, irrespective of their duration of employment and hours of work. Under the ECO, if an employee sustains an injury or dies as a result of an accident arising out of and in the course of his/her employment, the employer is in general liable for compensation under the Ordinance.

3. The MPFSO provides that for an employee employed under an employment contract for a period of not less than 60 days (except for those categories of employees exempted under the MPFSO), his/her employer has to arrange to have him/her enrolled in a mandatory provident fund scheme irrespective of his/her hours of work. As for a casual employee employed in the construction or catering industry for a period of less than 60 days, his/her employer is obliged to enroll him/her in a mandatory provident fund scheme within 10 days upon commencement of the employment.

4. The EO accords protection to all employees, irrespective of their duration of employment and hours of work, in areas such as payment of wages, restriction on deductions from wages, granting of statutory

holidays and protection against anti-union discrimination, etc. Employees engaged under a continuous contract, subject to their fulfillment of the respective qualifying requirements as specified in the EO, are further entitled to other employment benefits such as rest days, paid statutory holidays and annual leave, sickness allowance, severance payment and long service payment, etc. According to the EO, an employee engaged under a continuous contract is defined as one who has been employed under a contract of employment by the same employer for four weeks or more and has worked for 18 hours or more in each week (i.e. fulfilling the “4-18” requirement). Therefore, a part-time employee who meets the “4-18” requirement is entitled to the full range of employment benefits as a full-time employee under the EO.

## **REVIEW OF THE DEFINITION OF CONTINUOUS EMPLOYMENT UNDER THE EO**

5. According to the findings of a special enquiry on “Benefits of employees under the Employment Ordinance” published by the Census and Statistics Department (C&SD) in December 2007, it was estimated that some 2 732 700 employees worked in the non-government sector in the first quarter (Q1) of 2006. Among them, around 141 200 employees were not or had not been engaged under a continuous contract (hereinafter mentioned as non-“4-18” employees) at the time of enumeration, representing 5.2% of the total number of employees in the non-government sector. Of the 141 200 non-“4-18” employees, 66 300 were female, constituting 47.0% of the overall number of non-“4-18” employees. Other major findings of the special enquiry are given at **Annex**.

6. As any amendment to the definition of continuous contract will have far-reaching implications for the labour market (the part-time employment market in particular), and the community as a whole, the Government must conduct in-depth and thorough studies of non-“4-18” employees.

7. Therefore, the Labour Department (LD) commissioned C&SD to collect further statistical data on employees who are not engaged under a continuous contract, including their distribution and proportion in

the labour market, as well as their occupational characteristics, etc. The survey was conducted in the fourth quarter of 2009. Given the complexity of the subject and the wide variety of industries and occupations involved, the survey is expected to be completed by the end of this year. LD will, in its review, draw upon the findings of the survey. We are also consulting relevant stakeholders in the process.

## **PUBLICITY AND PROMOTIONAL EFFORTS**

8. While the survey is well underway, on the publicity front, we have been actively promoting the adoption of good people management practices which are equally applicable to full-time and part-time employees. In addition, through publicity and promotional efforts, LD has taken the initiative to explain to part-time employees their rights and benefits under the EO. To this end, an explanatory leaflet entitled “Part-time Employment – Know More About Labour Legislation” has been published for distribution to the public, in particular to trade unions and industries where part-time employment is more prominent. The leaflet succinctly sets out the basic protection and benefits conferred by the EO, ECO and MPFSO on employees irrespective of their weekly working hours and the additional benefits under the EO for employees employed under a continuous contract. This should help ensure that employees fully understand their protection under the EO before they decide to take up any employment that may fall outside the scope of continuous contract.

**Labour and Welfare Bureau**  
**Labour Department**  
**November 2010**

### **Major Findings of Special Enquiry on “Benefits of employees under the Employment Ordinance” in Q1 2006**

According to the Census and Statistics Department, some 2 732 700 employees were employed in the non-government sector in the first quarter of 2006. Among them, some 2 591 500 employees (94.8%) were employed under a continuous contract while the remaining 141 200 employees (5.2%) were not. These non-“4-18” employees comprised the following:

- (a) 52 400 employees (1.9%) who worked for less than 18 hours per week; and
- (b) 88 800 employees (3.3%) who worked for 18 hours or more in a week but who have been in employment for less than four weeks at the time of the survey.

#### **Characteristics of non-“4-18” employees**

2. Those 141 200 non-“4-18” employees showed the following characteristics:

- 53.0% were male;
- 31.8% aged 40-49;
- 55.1% attained secondary or matriculation education;
- 30.1% and 28.5% were engaged in the construction sector and community, social and personal services sector respectively;
- 31.9% worked in elementary occupations; and
- 41.6% were daily-rated and 26.9% were hourly-rated.

#### **Characteristics of non-“4-18” employees who worked less than 18 hours a week**

3. Of the 52 400 non-“4-18” employees who usually worked for less than 18 hours a week, 38 300 (73.0%) did not work longer hours for personal reasons, with 42.0% having to take care of housework or household members (including children, elder persons, disabled or sick members) at home, 19.3% in educational pursuit, 6.0% due to health problem or old age and 5.8% having no financial need. In other words, these employees worked under 18 hours a week of their own accord.

The 52 400 non-“4-18” employees who usually worked for less than 18 hours a week showed the following characteristics:

- 74.9% were female;
- 33.0% aged 40-49;
- 44.8% attained secondary or matriculation education;
- 53.6% were engaged in the community, social and personal services sector;
- 40.9% worked in elementary occupations; and
- 16.9% were daily-rated and 62.9% were hourly-rated.

**Characteristics of non-“4-18” employees who worked less than four weeks during enumeration**

4. Of the 88 800 employees who worked for 18 hours or more a week but less than four weeks at the time of the survey, some 45 900 employees (51.7%) expected that they would work continuously for four weeks or more. These employees would attain a continuous contract of employment and become “4-18” employees once they have completed four weeks’ service. The remaining 42 900 employees (48.3%) responded that they did not expect to work continuously for four weeks or more in their present job.

**Employment benefits of the employees not employed under a continuous contract**

5. Although non-“4-18” employees are not entitled to certain statutory employment benefits under the Employment Ordinance, the survey revealed that some of them were granted such benefits by their employers. Among the 141 200 employees who were not employed under a continuous contract at the time of the survey, 20.2% were granted statutory holiday pay, 21.6% enjoyed paid annual leave, and 3.8% were granted end-of-year payment. As for those 52 400 employees who usually worked for less than 18 hours a week, 8.1% were granted statutory holiday pay, 3.4% enjoyed paid annual leave and 3.4% were granted end-of-year payment.