

LCQ7: Employment protection

Following is a question by the Hon Lam Chun-sing and a written reply by the Secretary for Labour and Welfare, Mr Chris Sun, in the Legislative Council today (December 13):

Question:

Regarding employment protection under the Employment Ordinance (Cap. 57), will the Government inform this Council:

(1) of the total number of unreasonable and unlawful dismissal claims in which the employees requested reinstatement or re-engagement as handled by the Labour Department (LD) in the past five years, with a tabulated breakdown by the nature of claims as set out below:

- (i) dismissal during pregnancy or maternity leave;
- (ii) dismissal during paid sick leave;
- (iii) dismissal after work-related injury and before determination/settlement and/or payment of compensation under the Employees' Compensation Ordinance (Cap. 282);
- (iv) dismissal by reason of the employee exercising trade union rights;
- (v) dismissal by reason of the employee giving evidence for the enforcement of relevant labour legislation; and
- (vi) dismissal for other reasons;

(2) among the claims mentioned in (1), of the number of those involving employees with monthly wages exceeding \$24,000;

(3) among the claims mentioned in (1), of (a) the number of those settled at the LD either by conciliation or because the employees decided not to pursue the claims, and (b) the number of those filed with the Labour Tribunal (LT) (with a tabulated breakdown by the result of claims as set out below):

- (i) withdrawn by the employees;
- (ii) settled by monetary remedy with mutual consent of both parties;
- (iii) reinstatement ordered by the LT;
- (iv) re-engagement ordered by the LT;
- (v) ruled against the employees;
- (vi) adjourned sine die; and
- (vii) result pending;

(4) among the claims mentioned in (iii) and (iv) of (3), of the number of those involving employees with monthly wages exceeding \$24,000, and the number of those involving employers failing to comply with the relevant orders to reinstate or re-engage the employees concerned;

(5) given that under section 32NA(1)(b) of Cap. 57, an employer failing to comply with an order for reinstatement or re-engagement made by the LT is required to pay a specified sum to the employee concerned, among the cases involving employers failing to comply with the relevant orders mentioned in

(4), of the number of those with the employers prosecuted for failing to pay the specified sum to the employees concerned; and

(6) whether it has reviewed and considered raising the ceiling amount of the specified sum under section 32NA(1)(b) of Cap. 57; if so, of the details; if not, the reasons for that?

Reply:

President,

In consultation with the Judiciary, our reply to the question raised by the Hon Lam is as follows:

(1) to (3) From 2018 to 2022, the Labour Department handled altogether 40 claim cases from employees requesting reinstatement or re-engagement under the protection against unreasonable and unlawful dismissal of the Employment Ordinance (EO). Of which, 15 claim cases involved employees each with a monthly salary above \$24,000. A breakdown of the cases by category and outcome is set out at Annex.

(4) and (5) During the above period, the Labour Tribunal did not make any order for reinstatement or re-engagement.

(6) Section 32NA(1)(b) of the EO, which requires an employer who does not comply with an order for reinstatement or re-engagement to pay a further sum to an employee, came into operation since October 19, 2018. As there is no such case so far, the Government at this stage has no plan to raise the ceiling amount of the sum as stipulated in the said section.