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Submission to Manpower Panel, Legislative Council linked to the Draft Code of Practice for Employment Agencies by HK Labour Department

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CoP Enforcement Planning, Enforcement Capacity and Complaints System:

1. The Code of Practice contains no legal sanctions or defined enforcement measures for employment agencies who are non-compliant with the CoP. There are no specific KPIs and monitoring guidelines adopted to measure the effectiveness of the code. How can the Labour Department ensure that the code is adopted and adhered to by employment agencies?
2. How will monitoring of EAs be accomplished?
3. Who within the Labour Department will be responsible for monitoring adherence to the CoP? Will there be dedicated Officers, and if so, how many?
4. Does the Labour Department encourage stakeholders including NGOs, FDWs and Employers to perform a 'watch dog' function? If yes, how?
5. Will CoP KPIs and monitoring guidelines be provided to stakeholders including NGOs, FDWs and Employers by the Labour Department?
6. What will be the process for stakeholders to report agencies that violate the code? Will the Labour Department establish/appoint a contact person to receive inquiries and complaints regarding adherence to the CoP? How will stakeholders be notified of the complaint process and appropriate Labour Department contact points?
7. How can complainants be protected from potential repercussions - will there be an on-line anonymous reporting system?
8. How can Labour Department action on reports be monitored by complainants?

Reporting Requirements - Hong Kong and Sending State EAs The Need to Close the Loop:

1. At CoP 3.2.6 it is mentioned that under current Hong Kong law, EAs are not required to provide ancillary services to job seekers such as training, accommodation, airport transport service, visa processing or school search for

children --- the responsibility for these services is passed on to partner agencies in the FDW Sending States. Very often, the provision of these kinds of services forms the basis of overcharging women applying for work in Hong Kong, which lead to very serious negative consequences for both the workers and employers. Adequate agency disclosure is therefore critically important. An adequate level of transparency must be provided by both Hong Kong EAs and their Sending State partners.

2. EAs operating in Hong Kong must be made responsible for the provision of disclosure of the services offered by their partner agencies in Sending States (including services which they require FDWs to receive), and at what cost. The Labour Department can make the responsibility for the performance of adequate due diligence on partner agencies in Sending States a condition of granting or renewing operating licences for the Hong Kong agencies. This is a practical solution to a difficult problem. Some Hong Kong agencies are already undertaking due diligence and monitoring of their Sending State EA partners to ensure they comply with ethical standards. This requirement must be imposed on all EAs operating in Hong Kong. Will the Labour Department undertake to impose responsibility on Hong Kong EAs for undertaking adequate due diligence on their Sending State partners?
3. A system to provide reliable confirmation of due diligence (Agency Audit System) CAN be agreed with the governments of the Sending States. The Labour Department and the Hong Kong government can, in cooperation with the Governments of the Sending States, and engaging independent third parties where necessary, perform regular audits on a sampling of EAs in Sending States to confirm the disclosure they have provided to their Hong Kong partners. Sending State agencies failing to provide adequate disclosure can be barred from providing domestic workers to Hong Kong. Hong Kong EAs who continue to accept domestic workers from barred Sending State agencies can be sanctioned, including loss of their operating licence. Will the Labour Department undertake to negotiate with Sending State governments for cooperation on the establishment of an adequate EA Audit protocol?

Indebtedness: EAs Promote Loans and Engage in the Financial Affairs of FDWs

EAs often encourage FDWs to take out loans/borrow money to settle placement fees and other agency fees of FDWs .. This leads to serious consequences for both the worker and the employer. The charging of placement fees by EAs is the single largest contributing factor to FDW indebtedness. How can the government ensure that EAs strictly limit their services to employment and do not promote loans or financial services of any kind, or engage in the financial affairs of FDWs in any way?

- a. Placement fees should be the responsibility of employers. Workers should not be charged placement fees by EAs.. Part XII of the Employment Ordinance and the Employment Agency Regulations (Chapter 57, subsidiary legislation) allows for 10% of the workers' first month's wages to be collected by EAs as a placement fee, The Philippines government has made it unlawful for agents to charge placement fees since 2006 and Canada has banned the payment of placement fees since 2009..

Elimination of placement fees paid by FDWs in Hong Kong will help to avoid the abuses currently taking place, particularly where FDWs are charged significant fees by agents in order to secure employment contracts before expiration of the two week grace period. Can the Labour Department eliminate all placement fees paid by FDWs in Hong Kong?

- b. (i) Please list the particular offence or variety of offences that can be engaged when EAs promote loans, and engage in the financial affairs of FDWs? (ii) Which government office should be the contact point for reporting suspected contraventions of such offences? (iii) How can stakeholders best support the active monitoring of agencies and the enforcement actions of the authorities?

Evidence Gathering and Protection of Witnesses

The Labour Department is responsible for monitoring and disciplining EAs. This includes both investigations conducted by LD officers and cooperation with the Police to gather evidence of unlawful behaviour, as well as cooperating with the DOJ to prosecute offending agencies. The Labour Department has reported the gathering of adequate evidence as a critical hurdle for which they require the cooperation of stakeholders including NGOs, workers and employers.

1. Has the LD cooperated with the Police to investigate agencies, including the use of Cap. 589 (Interception of Communications and Surveillance) to gather evidence?
2. The two major reasons that workers hesitate to file complaints and act as witnesses is fear of retaliation by EAs and fear losing their employment. The provision of evidence by stakeholders raises question about the process, including the level of involvement of the NGOs advocating for witnesses, and the level of protection and support that can be expected for witnesses. Where a migrant worker is willing to act as a witness against an employment agency that has violated the code of practice, can the witness expect to receive protection from the Labour Department and DOJ to ensure they are not the victim of repercussions by the EA?
3. Will the LD undertake to hold the EA responsible for any retaliation against the witness?
4. Will the LD cooperate with the DOJ and ImmiD to ensure witnesses are supported in legal proceedings that may be taken against them resulting from their testimony?
5. In relation to question 4 directly above, is there currently any arrangement between the Labour Department, the Department of Justice and Immigration Department to ensure Witnesses are protected? If not, is there any ongoing discussion between these departments to implement a witness protection programme particularly in relation to domestic workers?
6. Is the Labour Department able to assist witnesses (workers) by working with their employers to emphasize the importance of the testimony, and to try to ensure that the worker will be able to keep their job?

Need for Continuous Education and Information to Ensure FDWs and Employers Know their Rights and Obligations:

- a. We appreciate the effort of the Labour Department to educate migrant workers about the rights and obligation utilizing various channels and methods;
- b. What are the plans to do the same for employers i.e. Employer Outreach?
- c. Singapore requires employers to attend a training workshop prior to employing a domestic worker. How can employers in Hong Kong be compelled to attend/ participate in a similar training process?
- d. Will stakeholders, particularly non-profit charities working with and for FDWs and employers, be invited to take part in Employer Outreach and offer such a service to EAs?
- e. Is the government able to provide resources to groups and organizations developing materials linked to Employer Outreach?

Language: Workers vs. Foreign Domestic Workers

1. During the Manpower Panel hearing on May 3 at which the LD presented the CoP to LegCo, FDWs s were generally referred to as mere commodities/goods. The Consumer Council was even tasked to handle issues linked to what can be done when FDWs are not able to do what they are contracted to do, prompting one LegCo member to ask if it's possible to 'return' FDWs and ask for a refund if employers are unhappy with their hire. We think this language reflects a negative bias towards FDWs. Is there a way to raise this issue with the LegCo, and the Consumer Council, and to work to change the language around FDWs so as to consciously treat them as employees?
2. Is it possible for the CoP to adopt the use of the term "workers" in reference to foreign domestic workers? This will encourage improved recognition of their equal rights and protection under the employment ordinance.

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