

24 May 2016

## Comments and Recommendations on Draft Code of Practice for Employment Agencies

### Introduction to Christian Action – Centre for Domestic Migrant Workers (DMW)

Our centre was established in 1993, DMW has provided comprehensive assistance to nearly 220,000 women and men irrespective of their race gender, nationality, race or their religion who have been economically exploited a, survived modern-day slavery, or have been unfairly treated or abused by their employers, agencies and other institutions.

We provide paralegal support, education and training to empower and enhance workers' capacities, shelter services to provide temporary accommodation, food, emergency support and well-being programmes for female workers who become homeless due to unlawful contract termination, etc. In addition, we also provide support to protect workers' rights in Hong Kong by accompanying clients to Labour Tribunal, court hearings, calling for adequate legislation and policies, and promoting awareness on migrant workers' issues in the wider communities.

Christian Action - Centre for Domestic Migrant Workers are in support of the draft code of practice for employment agencies. However, we would like to clarify some points and make a number of recommendations as follows:

### Chapter 3 Statutory requirements in relation to operating an employment agency

#### 3.11 Personal documents and property of job-seekers

3.11.2 Currently it is common, that EA's withhold the passports of the job-seekers. The Draft Code of Practice for Employment Agencies states clearly, that this act constitutes an offence, if it happens without the explicit consent of the passport holder (Section 3.11.2). Christian Action would strongly support any proactive measure to counteract this. Furthermore, Christian Action is wondering, if there is any particular way to report EA's

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that forcibly hold the passport of the job-seekers.

## Chapter 4 Standards which the Commissioner for labour expects from employment agencies

4.1.5 The Draft Code of Practice for Employment Agencies recognizes the vulnerability of foreign domestic helpers (FDH), especially those who recently arrived in Hong Kong. It states that EAs have a duty in ensuring proper placement of their FDH clients (Section 4.1.5). Christian Action is concerned how to ensure this essential task of EAs which, according to our knowledge, requires additional training when the FDHs arrive in Hong Kong. It is not clear who could provide this training and on whose cost.

4.1.6 The Government of HKSAR has been undertaking various promotional and educational activities to enhance the FDH's awareness of their rights (Section 4.1.6). Christian Action appreciates these efforts; however, to make them more effective, Christian Action recommends that a workshop/welcoming program at the Hong Kong Airport be conducted for FDHs prior to placement at employers' residence. Another approach to ensure FDH's rights is to organize site visits to ensure that FDHs are well-treated. This could be done by the Consulate-General cooperating with HKSAR Government. Online services in FDHs' native language could be a further instrument to raise awareness.

### 4.2 Management's responsibilities

4.2.2 The Draft Code of Practice for Employment Agencies underlines that licensees, company director(s) and/or nominated operators will be held accountable for all acts and conducts of all their staff in relation to the provision of job-placement services (Section 4.2.2). Christian Action fears a gap of liability for middlemen and brokers. At our Centre for Domestic Migrant Workers, Christian Action has seen cases regarding illegal agency fees being charge, yet we were not able to proceed at the Employment

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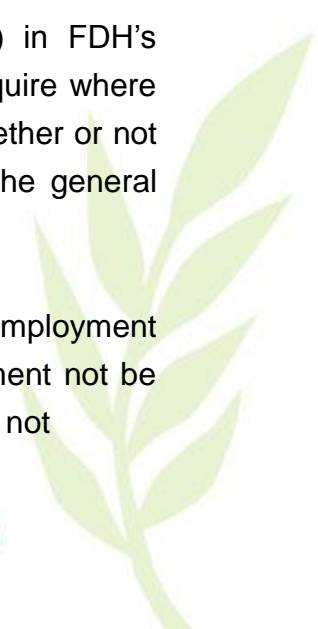


Agents Authority due to a presence of a middleman/broker. We are also seeing a number of brokers who cannot be prosecuted despite the violations.

- 4.3 Display of notices as required by law and government authorities
  - 4.3.1 EA's are required to display their licenses and the Second Schedule of EAR clearly visible at the entrance or on the website (Section 4.3.1). Christian Action would ask what consequences or penalties EA's have to bear in case of not publicly showing their license or Second Schedule.
- 4.4 Act honestly and exercise due diligence
  - 4.4.1 To facilitate job-seekers and employers to make informed decisions, Christian Action recommends to make not only a resume of the job-seekers, as stated in Section 4.4.1, but also one of the of employer, requirements for FDH, and job description (including family members, etc.). This helps to ensure information if provided at an early stage for better job-matching, and prevents misunderstandings and wrong expectations.
- 4.10 Promote job-seekers' and employers' awareness of their rights and obligations
  - 4.10.3 Related to FDHs who newly arrive, upon arrival in Hong Kong at the airport, information booklets received by them are taken by mischievous agencies who handle their placement. Christian Action therefore recommends awareness raising programs as proposed in section 4.1.6.
  - 4.10.4 Related to Standard Employment Contract (SEC) in FDH's mother language, Christian Action would like to enquire where EA's obtain SEC in FDH's mother language and whether or not SEC in FDH's mother language are available for the general public.
- 4.12 Avoid involving in financial affairs of job-seekers
  - 4.12.1 In this section Labour Department advises Employment Agencies involved in foreign domestic helper placement not be involved in the financial affairs of job-seekers such as not

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advising, arranging, encouraging, or forcing job-seekers to take out loans from any financial institutions or individuals.

It is not an uncommon practice that domestic helpers who newly arrive in Hong Kong, or who would like to change employment in Hong Kong, are arranged, requested, and forced to take a loan by Employment Agencies to pay employment agency fee by installments for several months. In just 3 months, from January to Marcy 2016, Christian Action has seen more than 20 cases related to agencies where agencies have become involved in job-seekers' financial matters in such manner.

In order to protect FDHs from illegal and excessive agency fee, we recommend that this suggestion by Labour Department to be put into law so that it can be enforced and the agencies involved in this practice can be prosecuted.

Lastly, it remains a major concern of Christian Action whether that the Code of Practice is implemented by all responsible parties. Whether or not it will bring the intended change in current practice is questionable, as long as the requirements are not enforceable.

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