

SUBMISSION OF THE MFMW TO THE LEGISLATIVE COUNCIL ON EMPLOYMENT (AMENDMENT) (NO.2) BILL 2017

28, SEPTEMBER 2017

Mission For Migrant Workers (MFMW Limited) is writing to address our concern for the overcharging of job seekers by employment agencies.

1. Prevalence of overcharging among foreign domestic workers

There are over 360,000 foreign domestic workers in Hong Kong and most of them work here through the arrangements of recruitment agencies. Although there are regulations on the fees that these recruitment agencies charge, the problem of overcharging for job seekers, especially for foreign domestic workers, remains widespread and prevalent.

According to the 2016 MFMW Service Report, half of the clients (51%) who approached the MFMW self-reported various illegal practices of recruitment agencies including illegal collection, overcharging of fees and fraudulent loans. Of those who indicated the fee they paid, over 90% were charged with illegal amount prescribed by Hong Kong policies (equivalent to 10% of the minimum allowable wage). Usual amount collected by agencies ranges from HK\$5,001 to HK\$10,000 as reported by 47% of the clients while those who paid above HK\$15,000 is a high 21%.

2. Inappropriateness of the penalties

The MFMW believes that reasons for the widespread problem of overcharging are the leniency and inadequate severity of penalties on. Recruitment agencies overcharge job seekers to earn millions. A fine of \$50,000 is too light to stop them from overcharging workers. We support the amendments in Section 60(6),(7) and (8) to precisely impose heavier penalties for overcharging job seekers on commissions from \$50,000 to \$350,000.

Apart from increasing the penalties, we support the amendment to increase the imprisonment for those who are liable on conviction of overcharging.

3. Prosecution and law enforcement

Under the original version of Employment Ordinance, there is no guarantee that persons related are liable to the conviction. We support the proposed amendments in Sections 50(1) and 60(5), which make the offences related to overcharging applicable to persons who operate employment agencies violating the regulations. We believe that persons responsible can easily take advantage of the loophole and avoid being punished since the company is the only one to be liable. Penalties, such as fines, can be burdened by the company and there will be no penalties on any specific person who is responsible for the crime. Therefore, persons involved in recruitment agency's operation should be criminally liable to the conviction if the agency overcharges job seekers.

4. Limited power of the Employment Agencies Administration (EAA) and the Commissioner for Labour

The EAA and Commissioner for Labour are responsible for administering and executing Part XII of the Employment Ordinance (Cap. 57) and the Employment Agency Regulations (Cap. 57A) through licensing, conducting regular and surprise inspection, complaint investigation and prosecutions. However, the power of such institutions is found limited. From past experiences, insufficient power is given to EAA to actively investigate cases. EAA can only investigate when evidences are ready. However, the problem of overcharging is complicated and victims usually can hardly provide evidences. Therefore, as the arm of Labour Department to manage agencies, the EAA should be given the power to investigate before cases are

filed. Investigation work such as sending undercover and informants should be empowered to collect evidences.

The Commissioner For Labour should exert the administrative power to cancel, revoke or deny one's license when malpractices are found in recruitment agency before one is convicted.

5. Absence of compensation system to victims

It is a regret that there is never a compensation system for the victims of overcharging. Even though the victims can file complaints against illegal practices of recruitment agencies, they are not protected and compensated when agencies and the persons related are convicted. We believe that the penalties to the ones liable are crucial, but this is not enough in terms of protection for job seekers. We are suggesting the government should introduce a compensation system to victims of overcharging.

Recommendations:

1. Increase the penalty for offences on overcharging job seekers.
2. Prosecute associated persons operating employment agencies applicable to offences related to employment agencies.
3. Empower the EAA to investigate malpractices among employment agencies in an active manner.
4. The Commissioner For Labour should exert the administrative power to cancel, revoke or deny ones' licenses when malpractices are found.
5. Introduce a compensation system for the victims.

