

**ATTENTION: The Hon. LAU CHIN-SHEK
CHAIRMAN, MANPOWER PANEL, LEGISLATIVE COUNCIL,
HKSAR
C/O LEGISLATIVE SECRETARIAT**

FAX: 2877-8024

Dear Mr.Lau,

No doubt you have seen the attached reply by Government LEGCO question No.17 regarding foreign domestic helpers not being allowed to drive occasionally as part of their domestic duties.

I believe these answers are not at all satisfactory and would like to comment on responses (b), (c) and (d):

- 1) Response (b): This ignores the many other occasional driving needs by employers besides needs of those residing where public transport is not available such as: buying groceries, running errands, taking children and employers to doctors or in emergencies to hospital, driving employers at night to and from social functions (where they would drink alcohol and would be a public menace if they were to drive), driving old and infirm people who can not drive or easily use public transportation, etc.

Taxis are not always available late at night or in remote areas and many taxi drivers do not speak English and refuse to take non-Chinese passengers, so this clearly is not a solution. Also such a burden is unreasonable for those who have a car and who have a legally licensed person living in the house who is willing and available to perform such OCCASIONAL driving duties.

I stress the word OCCASIONAL because no one will hire a local chauffeur for occasional driving duties. Who would pay someone to sit around 8 hours a day for perhaps one hour's driving each day? This is not to mention the fact that local drivers do not speak English and accordingly are not employable by English speaking expatriates. Furthermore local drivers will not perform household chores and will not live in and accordingly are not available for late night emergencies or off- hour errands.

- 2) Response (c): The threat of putting both the domestic helper and employer in jail for 2 years is greatly offensive to expatriates, who can take their families and business to other more friendly places such as Singapore. This goes against the entire community's desire to keep Hong Kong an international, cosmopolitan, friendly city that attracts foreign investment and highly skilled expatriate staff.

The inconvenience and burden of not having domestic helpers, who occasionally drive, is in itself very off-putting to expatriates, who can choose not to live and work in Hong Kong. But the threat of jail adds insult to injury and is universally viewed as OUTRAGEOUS by each and every English speaking expatriate. It appears the Government has totally ignored the views and feelings of expatriates and the negative effect this policy would have on retaining and attracting business to Hong Kong.

Let me be specific. The transport union said about 400 local driver's posts have been taken by FDHs, but no independent study has been done to back up this allegation. This real number may only be about 100. In any case 2,367 FDHs hold valid driver's licenses which means that approximately 2,000 innocent FDHs and their employers are being discriminated against and greatly harmed in a vain attempt to help at most 400 local drivers. If we say that the average employer is a family of 4 persons, this means 8,000 expatriates and 2,000 FDHs or a total of 10,000 people, who have done no wrong, will be made to suffer. This obviously is way out of proportion. Furthermore, if only a handful of outraged expatriates move their families and businesses out of Hong Kong because of this misguided policy, the number of jobs lost in Hong Kong will far exceed 400, and these are high paying jobs.

Government should not underestimate the depth of feeling and anger in the expatriate community over this issue. The damage to Hong Kong's economy will be significant.

- 3) Response (d): If the Government will only act on complaints, then why don't they follow this policy and act on complaints against those FDHs who drive full time in breach of their EXISTING employment contracts? That is, if the existing regulations were enforced, there would be no problem. It is only a few illegal full time FDHs drivers who are stealing local driver's jobs. Why punish the thousands of innocent FDHs and their employers to stop the abuse of at most 400 people who are breaking the current regulations? Instead why not enforce the already existing regulations? It would obviously be easier and more practical to target the few existing abusers than to try to enforce a new regulation that attempts to make criminals out of thousands.

Respectfully submitted,

Noel Thomas Patton

Written Reply**LEGCO QUESTION NO. 17**

Date of sitting: 17 November 1999

Asked by : Hon Eric LI

Replied by : S for S

Question : The Immigration Department will implement on 1 January next year a new stipulation to only process applications for employing foreign domestic helpers, ("FDHs") made in accordance with the new standard employment contracts for FDHs which stipulate against FDHs undertaking any driving duties. Upon the implementation of the new stipulation, FDHs will not be allowed to drive to purchase daily necessities for their employers or to drive their employer's children to and from school. In this connection, will the Government inform this Council:

- (a) of the legal basis for imposing a total ban on FDHs performing driving duties;
- (b) whether it has assessed the impact of the new stipulation on families residing or with children studying at schools located in areas where convenient public transport is not available;
- (c) of the measures that will be put in place to prevent employers and employees from reaching private agreements for the FDHs to continue to undertake driving duties; and
- (d) whether sample checks will be conducted on foreigners who are driving, to see if they are FDHs undertaking driving duties for their employers; if so, of the measures that will be put in place to avoid causing unnecessary nuisances to foreigners at the wheel?

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Reply :

Madam President,

(a) It is our long-established policy on entry for employment that, in allowing foreign workers to work in Hong Kong, the job opportunities and wages of local workers should not be adversely affected. Under the Immigration Ordinance, all persons who enter Hong Kong for employment are subject to the condition of stay that they shall only take such employment as may be approved by the Director of Immigration. Other conditions of stay may also be imposed by the Director as appropriate. To implement the ban on FDHs performing driving duties, a new condition of stay to this effect could be imposed by virtue of the power conferred under section 11 of the Immigration Ordinance.

(b) The Government has not been able to assess the impact of the new stipulation on families residing or with children studying at schools in areas where convenient public transport is not available because there are no available data on the number of such households. However, it is believed that the impact would not be significant because there are other viable alternatives such as making use of school bus and taxi, the performance of driving by family members, or the hiring of a local chauffeur.

(c) Approval of applications for FDHs to come to work in Hong Kong is based on information, including the employment contract, provided by the employer and the FDH. If the employer and the FDH give false or misleading information, they are liable to an offence under section 42 of the Immigration Ordinance punishable summarily with a maximum fine at level 6 (HK\$100,000) and imprisonment for two years. At the same time, those FDHs who breach their condition of stay commit an offence under section 41 of the Immigration Ordinance and are liable on conviction to a maximum fine at level 5 (HK\$50,000) and imprisonment for two years. The employer or any other person procuring the driving duties is also liable to an offence of aiding and abetting the FDH to breach the condition of stay and is punishable with the same punishment. *1.-p. \$50,000 FINE AND JAIL FOR 2 YEARS!*

(d) In enforcing the ban, the Government would act on complaints and would pursue cases of FDHs who are subject to the ban. It is not envisaged that cars driven by foreigners will be stopped on the streets for the purpose of undertaking random checks.

It should be pointed out that the ban will be imposed only when new contracts are drawn up. FDHs permitted to work under existing contracts will not be affected. Nor does the ban apply to FDHs driving vehicles during their rest days for their own pleasure.

