

For discussion on
18 June 2013

Legislative Council Panel on Manpower

Intermediary Charges for Foreign Domestic Helpers

Purpose

This paper briefs members on the intermediary charges for foreign domestic helpers (FDHs) working in Hong Kong.

Overview

2. To meet the shortfall of local live-in domestic workers, the Government has since the 1970s allowed the importation of FDHs to Hong Kong. As at end-April 2013, there were about 315 000 FDHs in Hong Kong. Most of them came from the Philippines (50%) and Indonesia (48%) while the rest were from Thailand, India, Sri Lanka, Nepal, Pakistan, etc. While there is no legal requirement in Hong Kong that FDHs must be recruited through the intermediary service of an employment agency (EA), such requirements are imposed by many of the FDH-exporting countries and these requirements vary from country to country¹. At present, EAs remain the most common channel through which Hong Kong people employ FDHs, and employers are subject to intermediary charges charged not only by EAs in both Hong Kong and the FDHs' originating countries, but also other intermediaries such as the local governments and training bodies.

Employment Agencies in Hong Kong

3. Under section 57(a) of the Employment Ordinance (Cap. 57) (EO), as in the case of other job seekers, EAs are only allowed to receive from FDHs the prescribed commission specified in the Second Schedule of the Employment Agency Regulations (Cap. 57A) (EAR), which is no more than 10% of the latter's first month's salary for successful job placement service.

¹ For example, the Philippines Government does not allow direct hiring for first-time FDHs, while the Indonesian Government only allows hiring through accredited EAs.

4. The Government takes a serious view of overcharging FDH's commission by EAs. The Employment Agencies Administration (EAA) of the Labour Department (LD) is responsible for enforcing Part XII of the EO and the EAR made thereunder. It regulates the operation of EAs providing FDH placement services through licensing, inspection, complaints investigation and prosecution to ensure that they are operating in compliance with the law.

5. Officers of the EAA make both regular and surprise inspections to EAs, conduct investigations upon receipt of overcharging or malpractices complaints, and take out prosecution where there is sufficient evidence. In 2012, EAA conducted 1 328 inspections of EAs, with over 70% of such inspections made to EAs placing FDHs. A total of 347 inspections of EAs placing FDHs were conducted in the first four months in 2013.

6. Under section 53(1) of the EO, the Commissioner for Labour may refuse to issue or renew a licence, or may revoke a licence, if he is satisfied on reasonable grounds that the EA is being, or is likely to be, used for unlawful or immoral purposes, or that the person operating, or intending to operate, the EA has contravened any provision of Part XII of the EO or the EAR. In 2012, we revoked two EA licences subsequent to the concerned licensee's conviction of overcharging, as well as aiding and abetting an FDH to breach her condition of stay, conspiracy to defraud and conspiracy to make false representation to an Immigration Officer. In the first four months of this year, we have revoked the licence of an EA after the licensee was convicted of an offence involving dishonesty. The renewal of another EA's licence was refused as the licensee was considered not fit and proper after repeatedly failing to provide information to EAA under section 72(1) of the EO.

7. We will continue to implement measures to ensure that local EAs are operating legally and providing accurate information to both employers and FDHs. All FDHs who are overcharged by EAs should file a complaint with EAA. For employers who consider the services provided by EAs unsatisfactory or do not match with the service agreements, they can also lodge a complaint with the Consumer Council and seek advice and assistance as appropriate. Furthermore, the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 (the Amendment Ordinance), which was enacted in July 2012, prohibits specified unfair trade practices that may be deployed against consumers, such as false trade descriptions of services and misleading omissions. It applies to the provision of services (including services provided by EAs to employers). The Commencement Notice of the Amendment Ordinance, which appoints 19 July 2013 as the date on which the Amendment Ordinance comes into operation, has been tabled at the Legislative Council.

8. We recommend employers to carefully select EAs with good reputation to help hire FDHs and to obtain a service agreement, stipulating clearly the relevant terms such as the FDH's information, date of availability, fees, etc., from the EA for future reference in case there is any dispute. The contract would also facilitate their seeking of appropriate redress if the EA breaches the agreement. We would also step up our publicity efforts to raise the employers' awareness of how they could better protect their rights in this regard. In addition, the Consumer Council has also provided consumer education to facilitate potential employers to make informed decisions in selecting EAs.

Fees charged by agencies outside Hong Kong

9. We understand that the Philippine Government has prohibited the collection of placement fees from FDHs in the Philippines. There are claims that the agency fees for placement of Filipino FDHs have been increased as EAs in the Philippines are trying to recover their loss from employers in Hong Kong. There is no restriction under Hong Kong's law on the amount of fees that can be charged by EAs on employers for services provided. Just as other commercial businesses, the amount of fees charged is subject to the mutual agreement between the customers (i.e. FDH employers) and the service providers (i.e. EAs). Nonetheless, noting the impact of the increase in placement fees on employers in Hong Kong, the Government has reflected our concern to the Consulate-General of the Philippines in Hong Kong and urged the Filipino side to take necessary measures to minimize the impact on employers in Hong Kong.

10. We also noted some reports claiming that some FDHs have incurred huge debt because of the high level of fees and commissions charged by EAs or recruiters in their home countries. Despite the fact that the Government does not have any jurisdiction on such overseas operations, we have proactively brought the matter to the attention of relevant Consulates General (CGs) in Hong Kong and urged them to draw the problem to the attention of their respective governments and for follow-up action. We know that a CG in Hong Kong has responded positively by refusing visa applications from FDHs who are sponsored by those broker agencies with a track record of "bonded labour".

11. Some FDHs claim that the 'two-week rule' prevents them from coming forward to lodge claims and following through the legal process for fear of losing their jobs and being forced to leave Hong Kong within two weeks of the termination or expiry of their contract. We wish to clarify that the same rule in fact applies to all imported workers, including FDHs, when their employment contract is prematurely terminated. In such circumstances, the

worker can stay in Hong Kong for up to two weeks from the date of termination of contract. The 'two-week rule' is required for maintaining effective immigration control, preventing job-hopping and imported workers working illegally after the termination of contracts. However, it does not preclude the workers concerned from working in Hong Kong again after returning to their place of domicile. Under some special circumstances such as the worker's previous employer being unable to continue with the contract because of migration, death or financial difficulty; or there is evidence that the worker has been abused or exploited, the Government may allow the worker to change employer in Hong Kong without having to return to the place of domicile.

Conclusion

12. When formulating policies on FDHs, the Government aims to strike a reasonable balance between the interests of employers and employees. We will listen to the views from both sides in this regard. We will also continue to adopt a multi-pronged strategy, comprising stringent enforcement action and proactive measures to deter malpractices of local EAs. We also organise extensive educational and publicity activities to raise employers' awareness of their right as a consumer. As for operations of overseas EAs, we will continue to bring the matter to the attention of the relevant CGs of the FDH exporting countries and urge them to tackle the issue at source so as to protect the interests of employers and FDHs.

Labour and Welfare Bureau
Labour Department
Commerce and Economic Development Bureau
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