

For information on
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Legislative Council Panel on Manpower

Policies Relating to Foreign Domestic Helpers and Regulation of Employment Agencies

Purpose

This paper briefs members on the policies relating to foreign domestic helpers (FDHs) and regulation of employment agencies (EAs).

Background of Foreign Domestic Helpers Policy

2. Since the early 1970's, the Government allowed admission of FDHs to Hong Kong in order to meet the acute shortage of local live-in domestic helpers. FDHs who are permitted to work in Hong Kong may only perform full-time and live-in domestic duties, such as household cleaning, taking care of the elderly and children, cooking, etc. As at end-January 2014, there were about 323 400 FDHs in Hong Kong. They mainly came from the Philippines (51.4%) and Indonesia (46.3%), with the rest from Thailand, India and Sri Lanka, etc.

3. FDHs enjoy equal statutory rights and benefits as local employees. The labour laws in Hong Kong, including the Employment Ordinance (EO) and the Employees' Compensation Ordinance, are all along applicable to both local and imported workers, including FDHs, according FDHs the same legal rights as local workers, including rest days, statutory holidays, annual leave, sickness allowance, work injury compensation, etc. FDHs also have free access to the services provided by the Labour Department (LD) such as consultation and conciliation services.

4. Since the early 1970's, FDHs have been further protected by a Standard Employment Contract (the Contract) prescribed by the Government particularly for them. This Contract is the sole agreement recognised by the Government for hiring FDHs. It sets out the basic employment terms that employers must provide to FDHs, including a mandatory wage level not lower than the prevailing Minimum Allowable Wage, provision of free accommodation, free food (or food allowance in lieu), free medical treatment and return passage to and from their place of origin, etc. These benefits are not usually available to local employees.

Entry Arrangement for Foreign Domestic Helpers

5. FDHs may apply to work in Hong Kong if they fulfil the following requirements: they possess two-year relevant work experience; and their employers are Hong Kong residents who will offer terms of employment stipulated in the Contract. Employers must also meet the required minimum levels of income or assets. Apart from these criteria, FDHs also have to meet the normal immigration requirements, such as: holding a valid travel document with adequate returnability to his/her country of residence or citizenship, with no criminal record and raising no security or criminal concerns to the Hong Kong Special Administrative Region (HKSAR), and having no likelihood of becoming a burden to the HKSAR, etc. The Immigration Department (ImmD) has all along been assessing FDHs' employment visa applications rigorously and will consider rejecting such applications if the applicants (including the FDH and the employer) are found to have any adverse records or breaches.

6. Application by FDHs for change of employer within their two-year contract in Hong Kong will not normally be approved except under exceptional circumstances where the employer is unable to continue with the contract, owing to, for example, the employer's external transfer, migration, death or economic difficulty, or where there is evidence that the FDH has been abused or exploited. In order to obtain approval to change employers in Hong Kong, the applicant must provide proof to satisfy ImmD that his/her application meets such requirements.

7. The existing entry arrangement for FDHs is applicable to applicants from most countries and regions. Owing to immigration and security considerations, the current arrangement does not apply to residents of Mainland China, Macao SAR and Taiwan as well as nationals from Afghanistan, Cambodia, Cuba, Laos, the Democratic People's Republic of Korea, Nepal and Vietnam, etc.

Regulations of Employment Agencies

8. LD takes a very serious view of regulating the intermediaries placing FDHs and other EAs through licensing, inspection, complaint investigation and prosecution, etc. to ensure that they are operating in compliance with the law and protect the interests of job seekers.

9. According to the law, all EAs (including intermediaries placing FDHs) are required to obtain a licence from LD before they can operate any business of employment service in Hong Kong. Also, under EO and the Employment Agency Regulations (EAR), EAs are not allowed to receive from job seekers,

whether they are local job seekers or FDHs, any commission more than 10% of their first month's salary for successful job placement. EAs that operate without a licence or collect more than the prescribed commission as mentioned above would contravene the law and be subject to a maximum fine of \$50 000.

10. LD will arrange regular and surprise inspections to EAs, conduct investigation upon receipt of overcharging or malpractice complaints and institute prosecution where there is sufficient evidence. In 2013, LD prosecuted nine EAs that were suspected to have breached the law. Of these, six were convicted and two are still being dealt with by the court. In 2013, LD conducted 1 341 inspections to all EAs in Hong Kong, with over 75% of these inspections made to EAs placing FDHs.

11. If satisfied on reasonable grounds, the Commissioner for Labour may refuse to issue or renew a licence, or revoke the licence of an EA. In 2013, the licence of four EAs were revoked / not renewed respectively owing to: an EA being convicted of an offence in overcharging; a licensee being convicted of an offence involving dishonesty; a licensee being convicted of providing forged document to ImmD; and a licensee being considered not fit and proper to operate an EA after repeatedly failing to provide information to LD according to EO.

12. The existing legislation does not require accreditation by other governments as a prerequisite for obtaining an EA licence in Hong Kong. There is also no requirement for FDHs to take up employment in Hong Kong through EAs accredited by other governments. Regardless of whether individual EAs are accredited by other governments, they are subject to the regulation of EO and EAR. If licences are only issued to those EAs placing FDHs accredited by other governments, it may lead to market monopolisation or imbalance owing to the limitation of number, which may not be in the interests of both FDHs and employers. As a matter of fact, the EA which has arranged Miss Erwiana Sulistyaningsih (Erwiana) to take up employment in Hong Kong is one of the EAs accredited by the Indonesian Government.

Proposed Measures

13. The Government treats the case of Erwiana, allegedly abused and withheld wages by her employer, very seriously. Since the case came to light in mid-January 2014, the Police Force and LD have all along taken prompt and proactive action to follow up the matter, such as liaising closely with the Consulate General of Indonesia in Hong Kong, sending for the first time a joint team to Indonesia to collect evidence from Erwiana and explain to her direct her labour rights and the assistance that the Government would render. The

relevant investigation work is now in full swing.

14. Erwiana's case has aroused concerns in the community over how to protect the rights and benefits of FDHs, including their personal safety and the regulation of EAs. To prevent recurrence of similar incidents, LD is planning to implement various short, medium and long-term measures. LD will strengthen the publicity and educational efforts to increase FDHs' awareness of safeguarding themselves. All along, the relevant publicity has focused on employees' rights and benefits. Starting from this month (February), the publicity and educational efforts will be strengthened in other aspects such as how to deal with situations on intrusion of personal safety and confiscation of identity documents by others as well as channels for seeking redress. Besides, to facilitate FDHs' easier access to the relevant information, LD will place advertisements in Hong Kong's Indonesian and Filipino newspapers, and increase the frequency of staging information kiosks at the locations that FDHs usually gather on Sundays. Furthermore, LD will enhance, through announcements in the public interest on television, FDHs' understanding of their labour rights and an appeal will concurrently be made to the employers to urge them to treat FDHs well, and not to withhold their wages nor deduct their wages for paying any intermediary and training fees.

15. For regulation of EAs, LD is also planning to increase its manpower so as to strengthen the monitoring of and inspection to EAs. LD is considering how best to strengthen the present licensing mechanism with a view to introducing appropriate licensing conditions for EAs to comply in order to achieve better protection of the interests of both employers and FDHs. LD is also actively considering requiring those FDHs, who come to Hong Kong for the first time, to attend a briefing arranged by the Government to facilitate their understanding of rights and benefits while working in Hong Kong.

16. The Government considers that the most effective way to resolve the problem is to tackle it at its root. The Government will continue to request the Indonesian authorities to adopt proactive measures to alleviate Indonesian domestic helpers of the debt burden which would result in the helpers having to pay a huge amount of intermediary and training fees before they come to Hong Kong.

The "Two-week Rule"

17. Some consider that as the "two-week rule" whereby FDHs are required to leave Hong Kong within two weeks upon termination or completion of their contracts could deter FDHs from coming forward to lodge claims and following through the legal process even if their rights are infringed. It is

important to clarify that the prevailing policy that FDHs must leave Hong Kong upon completion of their contracts or within two weeks from the date of termination of their contracts, whichever is earlier, applies to all imported workers including FDHs. Implemented since 1987, the “two-week rule” is necessary for maintaining effective immigration control and it helps prevent FDHs from frequent job-hopping and taking up illegal work in Hong Kong after contract termination. The main purpose of the “two-week rule” is to allow sufficient time for FDHs to prepare for their departure; and it is not to facilitate them to find new employers.

18. In fact, the existing policy does not preclude FDHs from working in Hong Kong again after returning to their places of origin. In accordance with Clause 7 of the Contract, the employer shall provide the FDH with free return passage to his/her place of origin on expiry or termination of the contract.

19. As mentioned in paragraph 6 above, under any such exceptional circumstances where the employer is unable to continue with the contract, owing to, for example, the employer’s external transfer, migration, death or economic difficulty, or where there is evidence that the FDH has been abused or exploited, FDHs may apply for change of employer in Hong Kong without first returning to their places of origin. As such, there is sufficient flexibility under the “two-week rule” to cater for deserving cases under exceptional circumstances.

The Live-in Requirement

20. Some also consider that the “live-in requirement” renders FDHs more difficult to seek help from outsiders and thus vulnerable to abuse. It must be emphasised that the “live-in requirement” forms the cornerstone of Hong Kong’s policy of importing FDHs. It has been the Government’s established policy that, as in many other jurisdictions, priority in employment should be given to the local workforce, and importation of workers should only be allowed where there is proven manpower shortage in certain trades that cannot be filled by local workers. In accordance with this principle, FDHs have been imported since the early 1970’s to meet the acute shortfall of local live-in domestic workers.

21. The “live-in requirement” has been clearly specified in the Contract which has to be signed by both the employer and the FDH before the latter’s admission to Hong Kong. Hence such requirement should have been made known to the FDH before he/she assumes duty in Hong Kong. Employers are also required to submit details of the accommodation arrangement to be provided to their FDHs when submitting employment visa applications for their FDHs. Any person who intentionally makes false representations or provides false information in his/her submissions may be prosecuted. If an employer

breaches his/her undertakings of providing the FDH with suitable accommodation with reasonable privacy as stipulated in the FDH application, his/her conduct will be taken into consideration by the Government in processing his/her future FDH applications. The Government encourages FDHs to report their cases should they feel that they have been mistreated or abused.

22. Apart from the aforementioned policy considerations, the employers' affordability in providing separate accommodation to their FDHs, the possible increase in medical costs and other risks by allowing FDHs to live out, as well as other related issues such as the pressures on private housing and public transportation, etc., should also be taken into account. The Government considers it necessary to retain the "live-in requirement" for FDHs.

Conclusion

23. The Government attaches utmost importance to protecting the labour rights of FDHs and will not tolerate any form of abuse of them or illegal acts committed by any persons or EAs. The Government will continue to adopt a multi-pronged strategy through stringent enforcement action and strengthening of educational and publicity activities as well as continuing to liaise with the relevant Consulates of FDH exporting countries to urge them to tackle the issue at source so as to protect the interests of employers and FDHs.

Labour and Welfare Bureau
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