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Clerk to Bills Committee on Employment (Amendment) Bill 2017
Legislative Council Secretariat
Legislative Council Complex
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PathFinders Limited

Written submission to

HKSAR Legislative Council Bills Committee on Employment (amendment) Bill 2017

in advance of a meeting on

17 October 2017

Submitted on 6 October 2017

Introduction

This paper outlines the concerns of PathFinders Limited relating to proposals contained in the Employment (Amendment) Bill 2017 (“the Bill”) to remove the existing prerequisite for the employer’s agreement before ordering employment reinstatement or re-engagement.

For Foreign Domestic Workers (FDWs), who live at their employer’s residence, this could have significant repercussions. For PathFinders’ clients, who are typically pregnant FDWs, many of whom are unlawfully fired because they are pregnant, the consequences of enabling reinstatement/re-engagement could cause discomfort and stress for mother and unborn child.

Potential for resentment towards and harm to FDWs

If the employer of a FDW does not consent to a reinstatement (“RI”) or re-engagement (“RE”) order but one is issued nonetheless, the employer would have to re-hire an FDW they no longer wanted in their service or in their home and whose immigration employment visa the employer has probably already terminated.

Such an order is also impractical given the especially close working and living conditions of FDW employment.

On being reinstated or re-engaged, the FDW would find themselves having not only work, but also to live alongside an employer and family who effectively does not want them. The potential for resentment and hostility is high - even more so if the FDW is pregnant, since she and her unborn child will likely experience considerable stress.

PathFinders’ concern is that the Amendment proposed in the Bill could create a very challenging or even dangerous working environment for FDWs whose employer does not agree to the RI or RE order, but is compelled to re-employ the FDW by the court or Labour Tribunal.

Recommendations

With this in mind, PathFinders makes the following recommendations:

1. The Administration should ensure that employee protections, and especially those relating to FDWs, under the Employment Ordinance (Cap. 57) (“EO”) regarding RI or RE orders are not compromised by the employer’s consent to an RI or RE order.
2. The Administration should provide safeguards against forcing the RI or RE order on unwilling employers and employees so as to avoid any negative repercussions of such, in particular:
 - a. The requirement that the RI or RE order must be “reasonably practicable,” i.e. a subjective threshold that could be judged in favor of the employee, especially FDWs, after considering circumstances such as those surrounding the dismissal, the relationship between the employer and FDW and the difficulties the affected parties might face if an RI or RE order is imposed;
 - b. Both employer and FDWs are given equal opportunity of representation before any RI or RE order is made;

C. That special and very specific provisions be made for cases of dismissal connected to the pregnancy of the employee concerned, and especially for pregnant FDW employees, including how their employment visa will be treated, how their access to public healthcare and welfare services impacted, and the impact on that employment of any criminal investigations/prosecutions arising as a result of unlawful pregnancy-related employment termination and/or pregnancy discrimination.

About PathFinders Limited

PathFinders is a Hong Kong-based tax-exempt charitable organization in Special Consultative Status with the United Nations Economic and Social Council since 2017. We work to ensure that the most vulnerable children in Hong Kong, and their migrant mothers, are respected and protected. We believe that every child deserves a fair start in life. PathFinders was founded in 2008 after rescuing two babies born in poverty to migrant women in Hong Kong. Since then, PathFinders has helped over 4,600 babies, children and women. In a typical year, between 70-80% of the women we help are Indonesian nationals. In 2016, we helped over 900 new people (babies, children and women) in Hong Kong and almost 90% of the babies' biological fathers were living in Hong Kong.

For more information please visit: www.pathfinders.org.hk

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