

For information on
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Legislative Council Panel on Manpower

Measures for protecting employment rights of imported workers under the Supplementary Labour Scheme

Purpose

This paper briefs Members on the various measures undertaken by the Government for protecting the employment rights of imported workers under the Supplementary Labour Scheme (SLS).

Supplementary Labour Scheme

2. SLS is administered by the Labour Department (LD). To ensure employment priority of local workers and safeguard their pay and benefits, employers must accord priority to filling available job vacancies with local workers. Employers with genuine difficulties in local recruitment may apply for importation of workers at technician level or below under SLS.

3. In 2015, 2016 and 2017, the numbers of imported workers applied for under SLS were respectively 4 689, 5 556 and 4 390, and the respective numbers of imported workers approved in the same year were 2 880, 3 802 and 2 765¹. According to the latest statistics of the Census and Statistics Department, the local labour force in March to May 2018 was 3 977 200 (provisional figures). Based on information from the Immigration Department (ImmD), as at end-May 2018, there were altogether 4 788 imported workers² working in

¹ The vetting of SLS applications received towards year-end may be completed in the following year, and hence the number of imported workers approved within the year does not correspond to the number of imported workers applied for in the same year.

² The majority of these imported workers were engaged as care workers (elderly service) (2 648 or 55%), farm workers (691 or 14%), gardening workers (346 or 7%) and construction workers (230 or 5%).

Hong Kong under SLS, representing around 0.1% of the aforesaid local labour force.

Measures for protecting the employment rights of imported workers

Protection under labour laws and the Standard Employment Contract

4. The Government attaches great importance to protecting the employment rights of imported workers. Imported workers and local workers are equally protected by labour laws of Hong Kong, particularly the comprehensive statutory employment protection provided by the Employment Ordinance (EO) and Employees' Compensation Ordinance (ECO) including payment of wages, restrictions on wage deductions, and the granting of rest day, statutory holidays, annual leave, and compensation for injury at work, etc.

5. Imported workers and their employers are required to enter into a Standard Employment Contract (SEC) prescribed by the Government in accordance with SLS. SEC is subject to a maximum span of 24 months. Imported workers are to be paid not less than the median monthly wages of local workers in comparable positions. The employer is required under SEC to make payment of wages to each imported worker by way of auto payment and to ensure that wages are paid directly into the imported worker's bank account in Hong Kong. Imported workers are also entitled to additional benefits specified by SEC, including furnished accommodation in compliance with the standard under SEC, free medical protection and free return passages to/from their places of origin provided by their employers.

Enhancing imported workers' awareness of employment rights

6. LD has been disseminating relevant information on SLS and labour laws of Hong Kong through various channels with a view to raising imported workers' awareness of their employment rights.

7. Under SEC, employers are required to release their imported workers to attend briefings organised by LD. At the briefings, LD explains to imported workers their protection under labour laws, and their employment rights and benefits under SEC as required by SLS. LD also checks if they are already in

possession of SEC. LD also distributes comprehensive information leaflets/pamphlets including “What an imported workers should know”, “A Concise Guide to the Employment Ordinance”, “Concise Guide to Statutory Minimum Wage” and information cards on protecting their rights. The information card sets out the telephone enquiry hotlines of LD and ImmD, etc., through which imported workers can enquire about their rights and benefits or report irregularities to LD or other relevant law enforcement departments/agencies if necessary.

8. Furthermore, LD widely distributes reference materials on labour laws through different channels, including employers’ associations, labour organisations, government departments such as relevant offices of LD and ImmD, the Home Affairs Enquiry Centres of the Home Affairs Department, post offices, public libraries and markets, as well as other organisations such as hospitals and clinics of the Hospital Authority. Employers concerned are required to display a poster on “points to note for imported workers under SLS” at imported workers’ workplaces and accommodation for reference.

Inspections of labour inspectors

9. Labour inspectors of LD carry out inspections of the workplaces and accommodation of imported workers from time to time. They conduct interviews with imported workers individually without interference of any third party (including the employer) so as to ensure that the workers can, where needed, lodge complaints on employment issues. During interviews with imported workers, labour inspectors will inquire and explain to them their statutory rights and benefits under EO and contractual entitlements under SLS, such as whether the employer has paid wages no less than the amount stipulated in SEC on time, whether arrangements of rest days, statutory holidays, annual leave and working hours are in order. During the inspection, labour inspectors will provide the above mentioned information card to imported workers on the spot for their future reference.

Consultation and conciliation services

10. Imported workers can enquire about labour laws such as EO and ECO through LD’s 24-hour hotline 2717 1771 (handled by “1823”), or browse information about employment rights and protection on LD’s website. In

addition, they can seek consultation service from the office of the Supplementary Labour Division (SLD), or branch offices of the Labour Relations Division (LRD) of LD. LRD also renders voluntary conciliation service with a view to assisting imported workers and their employers to resolve labour disputes and claims. For cases where settlement could not be reached, LRD would, on the request of the claimants, refer their cases to the Labour Tribunal (LT) or the Minor Employment Claims Adjudication Board³ for adjudication.

Complaint channels and administrative sanction

11. Imported workers can call LD's 24-hour hotline (2717 1771) or SLD's hotline (2150 6363) to lodge complaints if their employers are suspected to have breached labour laws or SLS requirements. LD conducts in-depth investigation into complaints received. LD will issue warnings to employers who have failed to comply with SLS requirements. Employers are liable to prosecution if they contravene relevant labour laws of Hong Kong. Cases of suspected contravention of the Immigration Ordinance (e.g. aiding, abetting, counselling or procuring imported workers to breach their conditions of stay) will be referred to ImmD for investigation. If employers have violated relevant labour laws, terms of SEC or SLS requirements, etc., the approval granted to them for importation of workers may be withdrawn. If an employer has serious adverse record(s) within two years prior to the date of submission of an application under SLS, the application will not be approved.

Employment disputes concerning imported workers

12. As regards the recent incident of employment disputes between a private care home for the elderly and its imported workers, LD has liaised with the concerned parties at once, and offered appropriate assistance to the imported workers, including provision of voluntary conciliation service and referral of unsettled employment claims to LT for adjudication. In parallel, LD is investigating the complaint of suspected breaches of EO by the care home. Subject to sufficiency of evidence and imported workers' agreement to serve as

³ Minor Employment Claims Adjudication Board adjudicates employment claims involving not more than 10 claimants for a sum of money not exceeding HK\$8,000 per claimant.

prosecution witnesses, LD will press ahead with prosecution action against the offending employer or the responsible persons of the care home. An employer who willfully and without reasonable excuse fails to pay wages to an employee when it becomes due is liable to prosecution and, upon conviction, to a fine of \$350,000 and to imprisonment for three years under EO.

Conclusion

13. LD will continue to strive to protect the employment rights of imported workers through a multi-pronged strategy and various measures.

14. Members are invited to note the content of this paper and give views.

Labour and Welfare Bureau
Labour Department
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