

For information on
15 June 2021

Legislative Council Panel on Manpower

Employees' rights, benefits and welfare of digital platform workers and casual workers

Purpose

In response to a Member's request, this paper briefs Members of the rights, benefits and welfare of digital platform workers and casual workers as well as the measures adopted by the Labour Department (LD) in assisting relevant persons to clarify their relationship with the service companies.

Employment and Self-employment

2. According to the Quarterly Report on General Household Survey (First Quarter 2021) published by the Census and Statistics Department (C&SD), the number of employed persons in Hong Kong in Q1 2021 was 3 614 100, including 3 315 000 employees (91.7%)¹ and another 207 800 self-employed persons (5.8%). The Employment Ordinance (Cap. 57) (EO) is the main piece of legislation governing conditions of employment in Hong Kong. It covers a comprehensive range of employment protection and benefits for every employee engaged under a contract of employment. Irrespective of their duration of employment or hours of work per week (including casual workers), for employees covered by EO, protection is accorded to areas such as payment of wages, restriction on deductions from wages, entitlement to statutory holidays and protection against anti-union discrimination. Employees who are engaged under a "continuous contract"² and fulfilled the relevant conditions stipulated in EO are further entitled to other employment benefits such as rest days, paid statutory holidays and annual leave, sickness allowance, severance payment and long service payment, etc. On the other hand, the Employees' Compensation

¹ According to the Quarterly Report on General Household Survey (First Quarter 2021) published by C&SD, the figures of employed persons and employees have included foreign domestic helpers.

² Under EO, an employee engaged under a continuous contract is defined as one who has been employed by the same employer for four weeks or more and worked 18 hours or more each week, commonly referred to as "4-18".

Ordinance (Cap. 282) (ECO) provides for the payment of employees' compensation as required under ECO to employees who die or sustain injury from accidents arising out of and in the course of employment, or suffer from prescribed occupational disease due to the nature of the occupation. ECO applies to all full-time or part-time employees (including casual workers) who are employed under contracts of service or apprenticeship. EO and ECO are applicable only to employees both in terms of the rights conferred and the obligations imposed on them.

3. Apart from the above mode of employment, self-employment is part of the economic activities in many regions around the world. Some people may prefer working on their own account for greater autonomy instead of being bound by a monotonous work pattern or fixed working hours, while others may opt to develop their own businesses or provide services to different clients for the purpose of maximising profits. There are also those who, owing to family, health or other personal reasons, prefer to take up freelance jobs at home or jobs that are paid on completion of projects or assignments. These modes of work fall outside the remit of an employment relationship. The interests and obligations of the self-employed are defined by the terms of the service contracts or agreements drawn up between them and the other party in consideration of the services to be performed.

Development of Digital Platform Work

4. With reference to the report³ on digital labour platforms released by the International Labour Organisation in February 2021, digital labour platforms can be classified into two broad categories, with one of them being online web-based platforms, for which tasks are performed online or remotely by workers. These tasks may include services of translation, design and software development etc. Another category is tasks on location-based platforms which are carried out in person in specified physical locations by workers. Examples include acting as drivers of online hailing cars, providing delivery and home services etc.

5. It has come to our notice that different jurisdictions worldwide have shown their concern on the development of digital platform work. A number of countries or economies have commenced their study on the protection to workers (including freelancers and digital platform workers) and obligation of platform companies under this emerging mode of work arrangements while in

³ The relevant report is "World Employment and Social Outlook 2021 – The role of digital labour platforms in transforming the world of work".

the meantime drawing up relevant policies or proposals in this respect. Yet, there are divergent policies and directions in dealing with the protection to digital platform workers by different regions. Nevertheless, as policy development of different places is still at the inception stage, effectiveness of these measures is yet to be assessed.⁴ In addition, in view of the differences in the social system and economic development of various places, their policy and proposal can only serve as a general reference for Hong Kong.

Situation of Hong Kong

6. Regarding Hong Kong's situation, C&SD does not have relevant statistical figures of digital platform workers. Digital platform workers and casual workers often take up multiple jobs at a time. Subject to the actual circumstances of their specific job, even if a digital platform worker or a casual worker is labelled as a self-employed person according to the contract or agreement made between both parties, the other party to the contract must fulfil its obligations in respect of the statutory employment entitlements (including the protection under Statutory Minimum Wage) of those workers under the employment relationship, when there exists in essence an employment relationship between the contractual parties, otherwise it may be held criminally liable for offences under relevant benefit provisions of EO, ECO and other labour laws.

7. To avoid misunderstanding or dispute, and safeguard mutual rights and benefits, LD has been adopting the following three-pronged approach to assist persons concerned to clarify their status with their service companies.

(I) Promotion and Publicity

8. Through various channels and a wide range of promotional activities, LD publicises among employers, employees and the general public the differences between employees and self-employed persons as well as their rights and obligations. Major promotion and publicity activities include production of promotional posters and leaflets, broadcasting television and radio Announcements in the Public Interest, placing advisements through public

⁴ In the United Kingdom and California of the United States, the status of individual platform workers was clarified through litigation. Nevertheless, whether the court's judgment will be applicable to all the platform workers remains to be seen. In addition, Singapore and some provinces in the Mainland have adopted non-legislative means to implement measures for providing basic protection to freelancers and digital platform workers to meet their needs.

transport network, issuing newspaper feature articles, organising exhibitions, conducting related discussions and sharing through the 18 human resources managers' clubs covering various trades and industries, as well as nine industry-based tripartite committees, and placing advertisements at journals of major federations of trade unions, etc.

(II) Consultation service and assistance

9. Any persons who have entered into a contract of self-employment with the employer involuntarily and wish to file employment claims can approach the branch offices of the Labour Relations Division of LD for enquiries. We will assist them to clarify their status with the other contractual party by taking into account relevant factors and provide conciliation service for those involved in disputes of false self-employment. If no settlement can be reached between both parties after conciliation, the case will be referred to the Labour Tribunal for adjudication at the request of the claimant.

10. Regarding employees' compensation, if the contractual parties are in dispute over the existence of employment relationship, the Employees' Compensation Division of LD will endeavour to assist by clarifying with the injured employee his/her status as an employee and explaining to both parties the requirements under ECO. If the dispute cannot be resolved after LD's assistance, the injured employee will be referred to seek legal aid and the case shall be determined by the Court.

(III) Stepping up enforcement action

11. LD has been sparing no effort in safeguarding the statutory rights and benefits of eligible employees through rigorous law enforcement. Labour inspectors actively conduct inspections of workplaces of various industries to check employers' compliance with relevant labour laws. They also explain to both employers and employees their respective rights and obligations under the employment contract and labour legislation. Suspected breaches of labour laws will be promptly investigated upon detection and prosecution will be instituted against offending employers when there is sufficient evidence. Employees who suspect that they are deprived of their statutory labour rights and benefits as a result of false self-employment can report their cases to LD through its complaint hotline (2815 2200). Upon receipt of complaints, LD will conduct investigation pursuant to the law.

Way Forward

12. We will continue to closely observe the development and trend in the operation mode and features of digital platform workers. We will also explore with C&SD on the feasibility of conducting Thematic Household Survey on the working conditions of digital platform workers in Hong Kong. In view of the complexities and evolving nature of the subject, any policy change must be landed on a broad-based consensus achieved in the community. LD will continue to publicise among the general public, employees and employers the differences between “employees” and “self-employed persons”, as well as their relevant rights and obligations; and spare no effort in safeguarding the rights and benefits of employees under the labour laws through rigorous law enforcement.

13. Members are invited to note the contents of this paper.

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