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Panel on Manpower

**Information note prepared by the Legislative Council Secretariat
for the meeting on 15 June 2021**

**Employee's right, benefits and welfare of
digital platform workers and casual workers**

The Panel on Manpower ("the Panel") has not discussed specifically the employees' right, benefits and welfare of digital platform workers and casual workers. However, in the context of discussing the enforcement of labour legislation by the Labour Department and the occupational safety performance in Hong Kong at the Panel meetings on 17 March and 17 November 2020 respectively, some members were concerned about the statutory rights and benefits of digital platform workers, especially the food delivery riders who were hired by the online food delivery platforms in form of self-employment. Citing the cases of severe work injury accidents involving digital platform workers engaged in food delivery jobs, these members expressed concern that some companies or employers concerned did not acknowledge the employment relationship and evaded their legal liabilities to make employees' compensation. They called on the Administration to strengthen enforcement against false self-employment and step up its efforts to enhance digital platform workers' awareness of their own employment rights and benefits.

2. According to the Administration's reply to an oral question raised by a Member at the Council meeting of 28 October 2020, whether a digital platform worker is an employee does not hinge solely on the label of the post or contract concerned, but is subject to the actual circumstances of the provision of services. If there exists in essence an employer-employee relationship between the contractual parties, the platform company should be responsible for the statutory employment benefits of those digital platform workers who are so-called "self-employed persons", otherwise it may be criminally liable under relevant benefit provisions of the Employment Ordinance (Cap. 57), the Employees' Compensation Ordinance (Cap. 282), the Minimum Wage Ordinance (Cap. 608)

and other labour laws. To safeguard the statutory rights and benefits of eligible employees, the Labour Department conducts workplace inspections to monitor employers' compliance with and educates employees on their protection under labour laws. Suspected breaches will be promptly investigated upon detection and prosecution will be instituted against offending employers when there is sufficient evidence. The relevant question raised by the Member and the Administration's reply is in the **Appendix**.

3. The Administration will brief the Panel on the employees' right, benefits and welfare of digital platform workers and casual workers at the meeting on 15 June 2021.

Council Business Division 2
Legislative Council Secretariat
9 June 2021

Press Releases

LCQ3: Employees' rights, benefits and welfare of digital platform workers

Following is a question by the Hon Luk Chung-hung and a reply by the Secretary for Labour and Welfare, Dr Law Chi-kwong, in the Legislative Council today (October 28):

Question:

In recent years, with more and more people taking orders on digital platforms to engage in jobs paid on a per-service basis such as food delivery and transport (platform workers), relevant work injury accidents and labour dispute cases have increased concomitantly. It is learnt that as the employment relationship between platform workers and platform companies is ambiguous, concerns have been aroused as to whether the employees' rights, benefits and welfare (e.g. paid leave, minimum wage and compensations for work injury accidents) of such workers are deprived of. In this connection, will the Government inform this Council:

(1) whether it has compiled statistics on the number of platform workers, in each month since January 2018, who took orders on digital platforms to engage in food delivery and transport, together with a breakdown by their average weekly working hours and average monthly incomes;

(2) whether it has surveyed platform workers' entitlement to various employees' rights, benefits and welfare, and whether the relevant levels are lower than those stipulated in the labour legislation; if it has surveyed, of the findings; if not, the reasons for that; and

(3) whether it will review the existing legislation to enhance the protection of the employees' rights, benefits and welfare of platform workers?

Reply:

President,

In determining whether a digital platform worker (platform worker) is an employee or not, it does not hinge solely on the label of the post or contract concerned, but is subject to the actual circumstances of the provision of services. Even if a platform worker is labelled as a self-employed person according to the contract or agreement made between both parties, the platform company is still required to fulfil its obligations as an employer under relevant labour legislation when there actually exists an employment relationship between the parties.

Having consulted the concerned departments, the reply to the Member's question is set out below:

(1) and (2) The Census and Statistics Department (C&SD) does not have the related statistics on the platform workers who "took orders on digital platforms to engage in food delivery and transport". C&SD has been conducting a series of continuous sample surveys to collect information to compile a number of

social and economic statistics. For example, the General Household Survey aims to collect information on the labour force, employment, unemployment and underemployment. It covers the land-based non-institutional population of Hong Kong (i.e. excluding inmates of institutions and persons living on board vessels) and the coverage of this survey includes all employed persons. Nevertheless, owing to the limitations of sample surveys, only statistics for broader industry groups or occupational groups can be provided from the survey results. Separate statistics for specific types of work, e.g. platform workers who took orders on digital platforms to engage in food delivery and transport, are not available.

(3) As mentioned above, it does not depend only on the label of the post or contract concerned but is subject to the genuine circumstances of the provision of services in order to determine whether or not a platform worker is an employee. If there exists in essence an employer-employee relationship between the contractual parties, the platform company should be responsible for the statutory employment benefits of those platform workers who are so called "self-employed persons", otherwise it may be criminally liable under relevant benefit provisions of the Employment Ordinance (EO), the Employees' Compensation Ordinance, the Minimum Wage Ordinance and other labour laws.

The Labour Department (LD) has been sparing no efforts 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 statutory rights and benefits can report their cases to LD's complaint hotline 2815 2200. LD will duly conduct investigation upon receipt of complaints.

In addition, any persons who have entered into a contract of self-employment with the employer involuntarily and wish to file 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.

Although the Government has no plan to expand the scope of EO to cover genuinely self-employed persons at present, labour legislation would be kept under review from time to time with regard to social changes and the pace of economic development.

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