

For information on  
19 December 2023

## **Legislative Council Panel on Manpower**

### **Protection for digital platform workers**

#### **Purpose**

This paper briefs Members on the measures being taken by the Labour Department (LD) for protecting digital platform workers (DPWs) and the way forward for this subject.

#### **Digital Platform Workers**

2. While the digital platform business is emerging around the world in recent years, there is yet a universal definition on DPWs worldwide. According to the International Labour Organisation<sup>1</sup>, “digital labour platforms” can mainly be classified into online web-based platforms and location-based platforms. Tasks arranged by the former are performed by persons online and remotely with examples like translation, design and software or programme development etc., whereas tasks arranged through the latter are carried out by persons at specified locations or in specific areas, such as providing delivery and home services.

3. Generally speaking, platform companies set up their own applications (including via the internet and mobile applications, etc.) for receiving job orders and they make use of “algorithms” to match clients and DPWs to provide services. The remuneration of DPWs is usually determined and paid by the platform companies.

#### **Situation of Other Places**

4. Having regard to their respective social systems and economic development, different economies are contemplating how to define DPWs and protect their interests. The progress of some places in examining this subject is set out below:

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<sup>1</sup> Reference is made to a report published by the International Labour Organisation in February 2021 entitled “World Employment and Social Outlook 2021 – The role of digital labour platform in transforming the world of work”.

- (i) the European Commission has proposed a Directive on working conditions in platform work, which specifies that if a digital platform meets certain criteria as set out in the proposed Directive, the digital platform is legally presumed to be an employer and must provide its DPWs with statutory employment protection. The proposed Directive is still under the interinstitutional negotiations among the European Parliament, the European Council and the European Commission, and there is yet to have a timetable for its implementation;
- (ii) the United Kingdom has published an employment status guidance, bringing together employment status case law and practical advice, to facilitate platform companies and DPWs to make reference to the guidance and differentiate whether the status of a DPW is “employee”, “worker”<sup>2</sup> or “the self-employed”. In case of disputes, adjudication will rest with the court;
- (iii) in Singapore, the Government has clearly defined that online delivery workers and ride-hailing drivers are not employees. Having regard to its local situation, Singapore is considering granting DPWs protection in specific areas<sup>3</sup> by legislation; and
- (iv) on the Mainland, the State Administration for Market Regulation, the National Development and Reform Commission and other ministries

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<sup>2</sup> In the United Kingdom, workers are entitled to less statutory employment rights than employees. If they fulfil the respective conditions stipulated in the relevant ordinance, they are entitled to protection such as minimum wage, standard working hours, paid holiday, and protection against unlawful deductions from wages.

<sup>3</sup> In September 2021, the Ministry of Manpower in Singapore set up the Advisory Committee on Platform Workers to look into strengthening the protections for specified DPWs in three areas, namely (i) enhancing work injury protection, (ii) improving housing and retirement protection, and (iii) facilitating the establishment of designated trade unions to enhance representation.

jointly issued two Guiding Opinions<sup>4</sup> in July 2021 to stipulate the responsibilities of platform companies for protecting the rights of workers engaged in new forms of work (such as car-hailing drivers and delivery workers). Following the Guiding Opinions, different provinces have also set out their regional instructions applicable to their context.

## **Situation of Hong Kong**

5. In Hong Kong, DPWs engaging in food and goods delivery services are relatively common. Their mode of cooperation with platform companies has been evolving, the nature of which is not entirely akin to an ordinary employment relationship<sup>5</sup>. The Government is currently addressing the protection for DPWs through three aspects, namely policy research, data collection and service provision.

### ***Policy Research***

6. LD has set up a Liaison Group comprising representatives of LD and major digital delivery platforms. The Liaison Group aims at enhancing the communication between LD and the stakeholders of the digital platform business on issues pertaining to DPWs and exploring possible measures for improving the protection for them. We hope to facilitate the platform industry to forge a common understanding on bettering the work arrangement and protection for DPWs. In addition, LD maintains rapport with various

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<sup>4</sup> The two Guiding Opinions are the “Guiding Opinions on Protecting Labour and Social Security Rights and Interests of Workers Engaged in New Forms of Employment” as well as the “Guiding Opinions Concerning the Implementation on Food Delivery Platform’s Responsibility to Effectively Safeguard the Rights and Interests of Delivery Workers”. In short, regardless of whether a DPW is in line with or not entirely in line with the circumstances for establishing a labour relationship, the platform company should still (i) enter into a written contract with him/her; (ii) set remuneration at a level not less than the standard of the minimum wage; (iii) provide him/her with insurance coverage for work-related injuries; (iv) reasonably arrange for the order allocation mechanism and labour intensity; and (v) cease using the “strictest algorithm” as an assessment requirement and relax delivery timeframe, etc.

<sup>5</sup> Whether the genuine status of a person is an employee depends on the actual circumstances of his provision of services. Even if a person is labelled as a self-employed person / contractor 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 of that person under the employment relationship, when there exists in essence an employment relationship between the contracting parties.

labour groups to listen to their views and gain understanding on the working conditions of DPWs.

### ***Data Collection***

7. Apart from keeping in view of the policies and measures on protecting DPWs in different places, LD has commissioned the Census and Statistics Department to conduct a Thematic Household Survey (THS) on the working conditions of local DPWs. Household survey work of the THS, which will last for approximately three to four months, will commence soon. Upon completion of the survey as well as consolidation and analysis of the statistical data collected, it is anticipated that the survey results will be released in late 2024 to early 2025.

8. In addition, LD plans to invite platform members of the Liaison Group to collect the views of DPWs through a questionnaire or focus groups on how to enhance the protection for them.

9. We expect that the data and information collected through the above channels will be conducive to our formulation of strategies for protecting DPWs.

### ***Service Provision***

#### ***(i) Conciliation service***

10. The Labour Relations Division (LRD) of LD provides appropriate services for DPWs. From 2022 to October 2023, LRD handled a total of 34 cases<sup>6</sup> involving DPWs, among which 19 were resolved after LRD's intervention or conciliation. The majority of the remaining cases were referred to the Labour Tribunal (LT) or the Minor Employment Claims Adjudication Board for adjudication. There is another case being handled which involves more than 300 delivery platform workers, in which some of them were ruled as employees at LT. Since the platform company was unable to pay in accordance with the LT awards, LRD assisted those claimants and the remaining delivery platform workers involved in the case to apply for ex gratia payments from the Protection of Wages on Insolvency Fund.

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<sup>6</sup> The claimants considered their status as employees and filed claims against platform companies mostly for payment in lieu of notice and holiday pay upon termination of contract. Some also claimed for remuneration in arrears, termination compensation items, etc.

11. To strengthen the protection for individuals including DPWs who are uncertain of their working status, LRD has launched a special consultation service since December 2022. Designated staff assist enquirers in distinguishing whether their job nature relates to that of an “employee” or a “self-employed person / contractor” by going through a proforma on assessment of working status<sup>7</sup> and provide them with follow-up services.

**(ii) *Handling of work injury compensation claims***

12. The Employees’ Compensation Ordinance (ECO) provides that an employer must notify the Commissioner for Labour of any accident resulting in injury or death through the prescribed form within the specified period, irrespective of whether the accident gives rise to any liability to pay compensation. If a DPW, who considers himself as an employee, sustains an injury as a result of a work-related accident, he may report the case to the Employees’ Compensation Division (ECD) of LD. After receiving the reported case, ECD will assist the DPW in processing the work injury compensation claims. From 2022 to October 2023, LD received 23 work injury compensation claims<sup>8</sup> involving online platform delivery workers, among which the DPWs of 19 cases withdrew the claims / did not pursue further due to various reasons. There was no dispute on employer and employee relationship in three other cases and LD is following up on the remaining case.

**(iii) *Enforcement action***

13. Labour Inspectors of LD 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 labour legislation and employment contracts. Suspected breaches of labour laws will be promptly investigated upon

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<sup>7</sup> The proforma on assessment of working status lists the common features of differentiating an “employee” from a “self-employed person/contractor”, which have been taken into account in past court cases, for enquirers’ reference in assessing their working status. Designated staff of LD assist the enquirers to understand the common features and key factors to be considered regarding their working status.

<sup>8</sup> The DPWs concerned, who considered their status as employees, lodged claims against platform companies under ECO for periodical payments, medical expenses and/or compensation for permanent incapacity (if applicable) payable by employers under the Ordinance.

detection and prosecution will be instituted against offending employers when there is sufficient evidence. LD also conducts joint operations with the Police and the Immigration Department from time to time to combat illegal employment activities.

14. Employees who suspect that they are deprived of their statutory employment rights and benefits as a result of false self-employment can report their cases to LD through its complaint hotline (2815 2200). LD will conduct investigation upon receipt of complaints. From 2022 to October 2023, LD received three complaints<sup>9</sup> involving DPWs who suspected that they were deprived of labour rights and benefits due to false self-employment. After investigation, no concrete evidence to confirm the existence of an employment relationship could be found in one of the cases. Follow-up on the other two cases is underway.

*(iv) Publicity and promotion*

15. LD will continue to step up its efforts to publicise the differences between “employee” and “self-employed person” as well as their respective rights and obligations among employers, employees and the general public. Promotion and publicity activities include setting up a dedicated webpage, producing and distributing information kits, broadcasting Announcement in the Public Interest, disseminating promotional messages via the GovHK mobile application, and placing advertisements on newspapers and self-help courier lockers, etc.

**Way forward**

16. Taking into consideration the business model of digital platforms in the provision of services and the unique work arrangement between DPWs and platform companies, mandating both parties to handle the rights and benefits of DPWs by way of an employment relationship may not be conducive to the development of the industry. Such course may also hinder the job autonomy and flexibility currently enjoyed by DPWs, or even adversely affect the income of DPWs.

17. In the course of exploring and formulating a policy direction of protecting DPWs, we must carefully examine the feasibility as well as the pros and cons of different options taking into account the concerns and views of

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<sup>9</sup> The complainants considered their status as employees and the complaints mainly involved non-payment of wages and non-grant of statutory holidays/annual leave.

platform companies and DPWs. As mentioned above, LD will continue to encourage platform companies to better the work arrangement and protection for DPWs through the Liaison Group. We will also analyse the survey findings with a view to facilitating the formulation of a policy direction of protecting DPWs.

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

Labour and Welfare Bureau  
Labour Department  
December 2023