Information relating to the review on the applicability of the Employment Ordinance to live-in domestic helpers

Introduction

At the meeting of the LegCo Panel on Manpower held on 21 December 1999, Members requested the Administration to provide further information in connection with the review on the applicability of the Employment Ordinance (EO) to live-in domestic helpers (DHs). This paper provides the information sought.

Implementation of International Labour Conventions (ILCs) in Singapore and Taiwan

2. Singapore has been a member country of the International Labour Organisation (ILO) since 1965, and has ratified 20 ILC so far. It has not, however, ratified ILC 97 concerning Migration for Employment. The convention requires a Member to apply without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory treatment no less favourable than that which it applies to its own nationals in respect of employment and social security matters including maternity protection under the law.

3. Taiwan is ***not*** a member country of the ILO and therefore is not a signatory of any ILC.

Overseas practices in respect of separate employment-related legislation for live-in DHs

4. We are not aware of any separate legislation in other countries which specifically governs the employment conditions of live-in DHs.

Pregnancy as a reason for different treatment under the EO

5. Under the various international conventions and covenant that Hong Kong has subscribed to, we are obliged to treat all employees equally under the EO unless there are overriding reasons for a different treatment. These conventions and covenant include the Convention on Eliminations of All Forms of Discrimination Against Women (CEDAW), International Labour Convention No. 97 (ILC 97) on Migration for Employment and International Covenant on Civil and Political Rights (ICCPR).

6. We consider that pregnancy does not constitute an overriding reason for the exclusion of live-in DHs from the whole or part of the EO. The reasons are :

(a) Medical opinion has confirmed that domestic duty, when performed in the ordinary way, would not be injurious to a pregnant DH if the pregnancy is not complicated medically. Up till the end of March 2000, the Labour Department has not received any complaint from live-in DHs about the assignment of heavy, hazardous or harmful work by their employers during their pregnancy.

(b) From the results of a survey conducted by the Labour Department, the most common bone of contention between employers and live-in DHs was disagreement as to whether or not their employment relationship had been terminated by dismissal or by resignation. Pregnancy of the DH did not pose a significant problem between the two parties.

Legal advice on the proposed flexible arrangement under the provisions for maternity protection in the EO

7. According to the legal advice from the Department of Justice, the proposed flexible arrangement is not inconsistent with the provisions of the Sex Discrimination Ordinance (Cap. 480), Hong Kong Bill of Rights, International Covenant on Civil and Political Rights, Convention on Elimination of all Forms of Discrimination Against Women and International Labour Convention No. 97 because the proposal merely provides an additional statutory alternative for both the employers and the live-in domestic helpers (DHs) to terminate the contract of employment upon mutual consent. It will not undermine the existing rights and benefits which the DHs are entitled to enjoy under the provisions for maternity protection in the EO.

8. For the information of Members, the Labour Advisory Board noted at its meeting on 28 March 2000 that in view of the lack of support from relevant employers' association and employees' groups, the Administration would no longer consider the proposed "flexible arrangement".

Labour Department
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