

Two illegal workers jailed

Two Indian illegal workers, each holding a recognisance form, were jailed at Shatin Magistrates' Courts yesterday (October 31).

During an anti-illegal worker operation mounted on August 5, Immigration Department (ImmD) investigators raided a clubhouse in Jordan. A male Indian illegal worker, aged 28, was arrested. When intercepted, he was working as a dish washing worker. Upon identity checking, he produced for inspection a recognisance form issued by the ImmD, which prohibits him from taking employment. Further investigation revealed that he was a non-refoulement claimant. An employer suspected of employing the illegal worker was also arrested and investigation is ongoing.

In addition, ImmD investigators received a referral from the Hong Kong Police Force to further investigate an illegal employment case in September. Enforcement officers arrested a male Indian worker, aged 23, who was found performing odd-job work in Kwun Tong. Upon identity checking, he produced for inspection a recognisance form issued by the ImmD, which prohibits him from taking employment. Further investigation revealed that he was a non-refoulement claimant.

The two illegal workers were charged at Shatin Magistrates' Courts yesterday with taking up employment after landing in Hong Kong unlawfully and remaining in Hong Kong without the authority of the Director of Immigration and while being a person in respect of whom a removal order or deportation order was in force. They were sentenced to 22 months and two weeks' and 15 months' imprisonment respectively.

The ImmD spokesman warned that, as stipulated in section 38AA of the Immigration Ordinance, illegal immigrants or people who are the subject of a removal order or a deportation order are prohibited from taking any employment, whether paid or unpaid, or establishing or joining in any business. Offenders are liable upon conviction to a maximum fine of \$50,000 and up to three years' imprisonment. The Court of Appeal has issued a guideline ruling that a sentence of 15 months' imprisonment should be applied in such cases.

The spokesman reiterated that it is a serious offence to employ people who are not lawfully employable. The maximum penalty is imprisonment for three years and a fine of \$350,000. The High Court has laid down sentencing guidelines that the employer of an illegal worker should be given an immediate custodial sentence. According to the court sentencing, employers must take all practicable steps to determine whether a person is lawfully employable prior to employment. Apart from inspecting a prospective employee's identity card, the employer has the explicit duty to make enquiries regarding the person and ensure that the answers would not cast any reasonable doubt concerning the lawful employability of the person. The court will not accept failure to do so as a defence in proceedings. It is also an

offence if an employer fails to inspect the job seeker's valid travel document if the job seeker does not have a Hong Kong permanent identity card. The maximum penalty for failing to inspect such a document is imprisonment for one year and a fine of \$150,000.

Under the existing mechanism, the ImmD will, as a standard procedure, conduct initial screening of vulnerable persons, including illegal workers, illegal immigrants, sex workers and foreign domestic helpers, who are arrested during any operation with a view to ascertaining whether they are trafficking in persons (TIP) victims. When any TIP indicator is revealed in the initial screening, the officers will conduct a full debriefing and identification by using a standardised checklist to ascertain the presence of TIP elements, such as threat and coercion in the recruitment phase, and the nature of exploitation. Identified TIP victims will be provided with various forms of support and assistance, including urgent interference, medical services, counselling, shelter, temporary accommodation and other supporting services. The ImmD calls on TIP victims to report crimes to the relevant departments.

Mui Wo Temporary Public Fill Reception Facility closes

Attention TV/radio announcers:

Please broadcast the following as soon as possible:

The Civil Engineering and Development Department today (November 1) announced that as Strong Wing Signal No. 3 has been issued by the Hong Kong Observatory, the Mui Wo Temporary Public Fill Reception Facility will be closed at 2.40pm until further notice.

Marine Department announcement

Attention duty announcers, radio and TV stations:

Please broadcast the following message as soon as possible and repeat it at suitable intervals:

As Tropical Cyclone Warning Signal No.3 has been issued, the Marine Department reminds vessel owners, masters and persons-in-charge of vessels

that they should take precautionary measures immediately and properly secure their vessels at safe locations.

In case of an accident, a report should be made immediately to the Vessel Traffic Centre at 2233 7801.

Make prior work arrangements for typhoons and rainstorms

The Labour Department (LD) today (November 1) reminded employers to make prior work arrangements for staff during and after typhoons and rainstorms.

"To avoid disputes and confusion, employers should make prior work arrangements for staff and contingency measures during and after typhoons and rainstorms," an LD spokesman said.

"In working out and enforcing the arrangements, employers should give prime consideration to employees' safety, both in the workplace and during their journeys to and from work, and adopt a flexible approach. Whenever possible, they should consult their staff."

The work arrangements should cover the following matters:

- * Whether employees are required to report for duty when different typhoon signals or rainstorm warnings are issued;
- * When a typhoon signal or rainstorm warning is issued during working hours, whether employees will be released from work and, if so, the arrangements;
- * How wages and allowances will be calculated for staff who are required to report for duty, as well as those who are late for work or absent from work during typhoons and rainstorms;
- * For employees who are required to travel to and from workplaces during typhoons and rainstorms, whether transport facilities will be provided for them and, if so, the arrangements; and
- * The time for staff who have not reported for duty to resume work after a typhoon signal or rainstorm warning is cancelled, and other relevant arrangements as well as contingency measures.

"Employers should make realistic assessments of the requirements for staff and require only absolutely essential staff to report for duty in adverse weather conditions. When weather conditions continue to worsen and public transport services are to be suspended shortly, employers should release their staff as soon as practicable.

"When a Pre-No. 8 Special Announcement is issued during working hours, employers should release employees from work in stages as soon as

practicable. To ensure the safety of employees and to enable them to arrive home before suspension of public transport services, employees who have mobility problems (for example, pregnant employees or those with physical disability), employees who rely on transport services which are prone to being affected by adverse weather conditions (for example, ferry services) for commuting to and from work, and those who work in or are living in remote areas (for example, outlying islands) should be given priority to leave. Other employees should be released later in stages according to their travelling distance or the time required for returning home.

"If possible, employers should provide transport services for employees who are still required to travel to and from workplaces when Typhoon Warning Signal No. 8 or above or the Black Rainstorm Warning is in force, or give them a special travelling allowance as encouragement.

"As typhoons and rainstorms are natural occurrences that cannot be avoided, employers should not deduct wages of employees who are absent from or late for work because of inclement weather. Neither should employers dismiss an employee summarily based on these grounds," he said.

The spokesman also reminded employers to observe the statutory liabilities and requirements under the Employment Ordinance, the Occupational Safety and Health Ordinance, the Employees' Compensation Ordinance and the Minimum Wage Ordinance.

Employers should also note that they have an obligation to maintain a safe workplace for their employees under the Occupational Safety and Health Ordinance.

"If employees are required to work in times of typhoons and rainstorms, employers should ensure that the risks at work are properly controlled and reduced to levels that are as low as reasonably practicable," the spokesman said.

Under the Employees' Compensation Ordinance, employers are liable to pay compensation for death or injury incurred when employees are travelling by a direct route from their residence to their workplace, or from their workplace back to their residence after work, four hours before or after working hours on a day when Typhoon Signal No. 8 or above or a Red or Black Rainstorm Warning is in force.

To provide practical guidelines and samples of work arrangements for the reference of employers and employees, the LD has issued the booklet "Code of Practice in times of Typhoons and Rainstorms". The booklet can be obtained from branch offices of the Labour Relations Division or downloaded from the department's webpage (www.labour.gov.hk/eng/public/wcp/Rainstorm.pdf).

HAD's emergency hotline activated

Attention duty announcers, radio and TV stations:

Please broadcast the following as soon as possible and repeat it at suitable intervals:

Following the issuing of Tropical Cyclone Warning Signal No. 3, the Home Affairs Department has activated a round-the-clock hotline, 2835 1473, for public enquiries on the tropical cyclone.