

Hong Kong resident employer and illegal worker jailed

A Hong Kong resident employer and a Filipino illegal worker holding a recognisance form were jailed by Shatin Magistrates' Courts yesterday (March 17).

During operation "Twilight" conducted on September 10, 2019, Immigration Department (ImmD) investigators raided a restaurant in Mong Kok. An illegal worker was arrested while working as a dish-washing worker. Also, during an anti-illegal worker operation conducted on December 17, 2019, ImmD investigators raided a restaurant in Kwai Chung. Three illegal workers were arrested while working as dish-washing workers. The Hong Kong resident employer of the four illegal workers was also arrested.

The four illegal workers were jailed by Shatin Magistrates' Courts earlier. The Hong Kong resident employer was charged at Shatin Magistrates' Courts yesterday with four counts of being an employer of a person who was not lawfully employable. He pleaded guilty to the charges and was sentenced to two months' imprisonment for each count with parts of the sentences to run consecutively, making a total of three months' imprisonment.

In addition, during operation "Twilight" conducted on March 15, ImmD investigators raided a restaurant in Tsuen Wan. One female Filipino illegal worker, aged 48, was arrested while working as a dish-washing worker. Upon identity checking, she produced for inspection a recognisance form issued by the ImmD, which prohibits her from taking employment. Further investigation revealed that she was a non-refoulement claimant.

The illegal worker was charged at Shatin Magistrates' Courts yesterday with taking employment after landing in Hong Kong unlawfully and remaining in Hong Kong without the authority of the Director of Immigration or while being a person in respect of whom a removal order or deportation order was in force. She pleaded guilty to the charge and was sentenced to 15 months' imprisonment.

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 on 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 threats 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 intervention, medical services, counselling, shelter, temporary accommodation and other supporting services. The ImmD calls on TIP victims to report crimes to the relevant departments.