

LCQ12: Statistics on foreign domestic helpers and intermediaries for foreign domestic helpers

Following is a question by the Hon Judy Chan and a written reply by the Secretary for Labour and Welfare, Dr Law Chi-kwong, in the Legislative Council today (January 19):

Question:

According to the Employment Ordinance (Cap. 57) (EO), any person who wishes to operate in Hong Kong an employment agency (EA) (including an intermediary for foreign domestic helpers (FDHs)) to provide job-placement services must apply to the Commissioner for Labour for a licence. It is not a requirement by the Government that FDHs have to obtain employment through FDH intermediaries, but the governments of individual source countries for FDHs may have such a requirement. It is learnt that some FDH intermediaries will therefore apply to the authorities of the countries concerned for relevant licences issued by their consulates. On the other hand, the epidemic has resulted in a drastic drop in the number of FDHs coming to Hong Kong. Regarding the statistics on FDH intermediaries and FDHs, will the Government inform this Council:

- (1) of the current number of EAs holding a licence under EO and engaging in the business of FDH intermediaries;
- (2) whether it knows the FDH source countries that currently require their migrant FDHs to obtain employment through FDH intermediaries, and the number of FDH intermediaries involved;
- (3) of the number of complaints about the misconduct of FDH intermediaries received by the authorities in 2020 and 2021, with a breakdown by the nature of complaints as set out in the table below;

Nature of complaints	2020	2021
(i) Failure to maintain proper records		
(ii) Operating an EA at a place other than the place of business specified in the licence		
(iii) Failure to notify the Labour Department of changes in the management and place of business within the statutory timeframe		
(iv) Overcharging of commission from job seekers		
(v) Unlicensed operation		

(vi) Furnishing any information which was known or reasonably ought to be known to be false or misleading in any material particular when submitting an application for renewal of licence		
(vii) Failure to display the licence or the schedule specifying the maximum commission which may be received from job seekers		

(4) whether, in respect of the complaints mentioned in (3), the authorities have revoked or refused to issue/renew the licences of the FDH intermediaries involved, or issued warning letters to them, or taken other law enforcement actions; if so, of the details and the relevant figures;

(5) whether, since the promulgation of the Code of Practice for Employment Agencies in January 2017 and the amendment of EO and the Employment Agency Regulations (Cap. 57A) in 2018, the number of complaints about FDH intermediaries received by the authorities has decreased; if so, of the details;

(6) of (i) the number of FDHs who applied to the Immigration Department (ImmD) for visas for employment in Hong Kong, as well as (ii) the number of such visas issued by the ImmD and the average time taken for vetting and approving each application, in each year from 2019 to 2021 (with a breakdown by nationality of FDHs);

(7) whether it knows (i) the number of FDHs who arrived in Hong Kong and their average waiting time for coming to Hong Kong, as well as (ii) the number of FDHs who were unable to come to Hong Kong as originally scheduled due to the epidemic, in each year from 2019 to 2021 (with a breakdown by nationality of FDHs); and

(8) given that at present the quotas for FDH quarantine facilities are limited rendering the booking of such facilities difficult, whether the authorities will consider using the date on which an FDH obtains a visa for employment in Hong Kong as a criterion for determining the order of priority for allocating quarantine quotas; if so, of the details; if not, the reasons for that?

Reply:

President,

According to Part XII of the Employment Ordinance (EO), all employment agencies (EAs) operating in Hong Kong, including EAs providing employment services for foreign domestic helpers (FDH-EAs), must have obtained a licence issued by the Labour Department (LD) before operation and are subject to regulation. It is an offence to operate an EA without a valid licence and is liable on conviction to a maximum penalty of a fine of \$350,000 and imprisonment for three years.

Having consulted the Security Bureau and the Immigration Department

(ImmD), my consolidated response to the Member's question is set out below:

(1) and (2) As at end-2021, there were 3 309 EAs with valid licence, among which around 46 per cent (1 527) were FDH-EAs. The Government does not require FDHs to find jobs or employers to hire FDHs through EAs.

As there is no provision in the EO and the Employment Agency Regulations (EAR) requiring EAs operating in Hong Kong to obtain accreditation on recruitment of FDHs from a foreign country to provide FDH placement services, the LD does not collect and compile the relevant information.

(3) and (4) In 2020 and 2021, the LD received 290 and 396 complaints involving FDH-EAs respectively, of which 208 and 334 involved non-compliance with the Code of Practice for EAs (CoP), service quality of EAs and EAs suspected of inducing FDHs to "job-hop". For the rest of the 82 and 62 complaints, they involved contravention of Part XII of the EO and the EAR. A breakdown of these complaints received concerning contravention of Part XII of the EO and the EAR is at Annex 1.

The LD has all along taken rigorous enforcement actions in combatting irregularities of EAs. Apart from conducting regular and surprise inspections of EAs to ensure their compliance with the requirements and provisions of the EO and the CoP, upon receipt of complaints concerning EAs, the LD will instigate investigation promptly. The LD will initiate prosecution where there is sufficient evidence to substantiate an offence. If an EA is found to have breached the CoP, the Commissioner for Labour may revoke or refuse to issue or renew its licence, or issue warnings for rectification of the irregularities detected.

In 2020 and 2021, the LD successfully prosecuted 10 and four FDH-EAs respectively. The breakdown of these cases by reasons of conviction is provided at Annex 2.

In 2020 and 2021, the LD issued 60 and 63 written warnings respectively to FDH-EAs for breach of the CoP. During the same period, the LD revoked or refused to issue/renew the licences of seven FDH-EAs each year. The number of revocation or refusal of issue/renewal of licence with respective grounds are provided at Annex 3.

(5) In January 2017, the LD promulgated the CoP to regulate EAs with a view to enhancing the professionalism and service quality of the industry. The CoP highlights the salient legislative requirements (Note 1) that EA operators must follow and sets out the minimum standards which the Commissioner expects from the EAs (Note 2).

In addition, the Employment (Amendment) Ordinance 2018 (E(A)O 2018) which became effective from February 9, 2018, strengthened the regulation of EAs, thereby better protects the interests of job seekers and employers engaging service of EAs. The major amendments of the E(A)O 2018 included increasing the maximum penalties for offences of overcharging job seekers and unlicensed operation from a fine of \$50,000 to a fine of \$350,000 and imprisonment for three years, as well as extending the statutory time limit

for prosecution of the above two offences from six to 12 months after the date of the commission of the offence; expanding the scope of the overcharging offence to cover associates of the licensee including the management as well as persons employed by EAs; setting out new grounds for the Commissioner to refuse to issue/renew or revoke EA licences (Note 3); and providing a legal basis for the CoP (Note 4) promulgated by the Commissioner.

As the CoP and the E(A)O 2018 extended the scope of regulation of EAs and enhanced the protection for job seekers and employers, there has been an increase in the number of complaints involving FDH-EAs received by the LD since 2017. From 2017 to 2021, the LD received 199, 357, 475, 290 and 396 complaints involving FDH-EAs respectively. The complaints mainly involved overcharging of commission from FDHs, unlicensed operation, non-compliance with the CoP and EAs inducing FDHs to "job-hop", etc.

The LD has stepped up its enforcement actions against the unscrupulous EAs. The E(A)O 2018 also provides an even more solid foundation for the LD's enforcement actions. Since the enactment of the E(A)O 2018, the LD has considered taking out prosecution against EAs involving offences of unlicensed operation or overcharging in 98 cases. Of these, the prosecution of 55 cases could only be pursued due to the E(A)O 2018 (including the amendments mentioned above). In respect of sentencing, the court fined an EA and its director in 2019 for the offences of overcharging of commission for a total of \$92,000, which was five times the amount of the highest fine (\$16,600) imposed on a case of the same offence before the legislative amendment. In the same year, the court ordered a fine of \$120,000 for a case involving unlicensed operation of an EA, which was eight times the amount of the highest fine (\$15,000) imposed on a case of the same offence before the legislative amendment. In 2020, the court imposed a fine of \$80,000 on a defendant in a case involving unlicensed operation of an EA. In 2021, the court imposed a sentence of 104 hours' community service order on a defendant in another case involving unlicensed operation of an EA.

(6) and (7) The number of employment visa applications by FDHs received by the ImmD between 2019 and 2021 and the relevant figures are tabulated at Annex 4.

In addition to the above employment visa applications by FDHs, the ImmD has approved over 200 000 and 340 000 cases of other applications respectively in 2020 and 2021 (including FDHs' applications for change of employer/contract renewal with the same employer after completion of the existing contract, and from employers for extending the validity period of existing contracts with FDHs as well as from FDHs for further deferral of return to their place of origin under special arrangements, etc.) to facilitate families in need to continue to receive support from FDHs as far as possible.

In view of the COVID-19 pandemic, the ImmD has specifically maintained the entry figures of FDHs since July 2020. In the past two years, the number of inbound FDH trips at various immigration control points is tabulated as follows:

Year	2020 (July – December)	2021
Number of inbound FDH trips (Note 5)	19 328	22 394

The Government does not maintain the average waiting time for FDHs to come to work in Hong Kong. As regards the submission of applications for entry visa for FDH employment in Hong Kong, it normally takes about four to six weeks for the ImmD to complete the processing of an application upon receipt of all necessary documents. During the pandemic, the ImmD has implemented a series of measures to expedite the processing of FDH employment visas including streamlining of workflow, flexible manpower deployment and enhanced application of electronic services, etc. In general, the processing of a case can be completed as fast as two weeks upon receipt of all necessary documents by the ImmD. Besides, the ImmD has set up a dedicated "Online Services for Foreign Domestic Helpers" website and has in December 2021 further launched electronic services for visa application and an "e-Visa" arrangement. There is no need for FDHs and their employers to attend an office of the ImmD in person to go through the formalities, which is both convenient and time-saving.

(8) The local epidemic situation has worsened rapidly. The Government must vigilantly uphold the policy of guarding against importation of cases. The admission of FDHs to Hong Kong should be implemented in a risk-controlled as well as gradual and orderly manner. The number of Designated Quarantine Facilities (DQFs) and the room quotas should only be prudently adjusted under this principle to alleviate the serious shortage of FDHs in Hong Kong.

There are, at present, three DQFs, namely Rambler Garden Hotel in Tsing Yi, Courtyard by Marriott Hong Kong Sha Tin and Regala Skycity Hotel, providing a total of 2 138 rooms for quarantine of FDHs. Starting from February 1, 2022, Rambler will provide an additional 150 rooms, such that there will be up to 2 288 rooms among all DQFs to meet the demand. Employers of FDHs and EAs can reserve a room through the online booking system of the respective hotels.

The Government is aware that there are suggestions on the booking arrangement of DQFs from different sectors of the community, for instance, prioritising quota for room reservation at the DQFs by order of the issue date of the visa. The administrative arrangement involved therein (including arranging submission of documents as proof such as work visa and vaccination record, etc. as well as the registration from families employing FDHs, compiling of the waiting list, making announcement on the order of priority, accepting new registrations regularly and updating the waiting lists, etc.) is complicated. It may cause delay and affect more FDHs waiting to come to work in Hong Kong.

The Government understands the need of local families for FDHs and will consider whether more DQFs can be provided having regard to the global and local epidemic situation.

Note 1: For example, EAs are not allowed to overcharge job seekers, should

adopt fair trade practices, comply with the Immigration Ordinance, not to withhold the personal property of job seekers such as passport, employment contract, bank ATM card, etc.

Note 2: For example, maintaining transparency in business operations, drawing up service agreements with job seekers and employers, providing payment receipt, avoiding getting involved in the financial affairs of job seekers, etc.

Note 3: The new grounds include: (1) the licensee or his/her associates has not complied with the CoP; (2) the associate of the licensee has contravened any provision of Part XII of the EO or any regulation made under section 62; and (3) the related person of the licensee has, within the preceding five years, been convicted of an offence against the person of a child, young person or woman or of an offence involving membership of a triad society, fraud, dishonesty or extortion.

Note 4: Under section 62A of the EO, the Commissioner may issue a CoP setting out the principles, procedures, guidelines and standards for the operation, management or control of EAs.

Note 5: The above number of inbound FDH trips includes incoming FDHs who entered Hong Kong to commence a new contract and returning FDHs who came back to continue working in Hong Kong.