

LCQ14: Policies and measures concerning foreign domestic helpers

Following is a question by the Dr Hon Elizabeth Quat and a written reply by the Secretary for Labour and Welfare, Dr Law Chi-kwong, in the Legislative Council today (June 5):

Question :

Last year, the Secretary for Labour and Welfare pointed out that there were nearly 380 000 foreign domestic helpers (FDHs) working in Hong Kong, that such number represented a growth by more than one-fold as compared to that of 20 years ago and accounted for nearly 10 per cent of the labour force, and that the number of FDHs might increase to 600 000 within the coming 30 years, accounting for more than 15 per cent of the labour force. On the policies and measures concerning FDHs, will the Government inform this Council:

(1) given that FDHs must leave Hong Kong within two weeks after the termination of their employment contracts, unless they have been granted exceptional approvals for extension of their stay, of the circumstances under which FDHs will be granted exceptional approvals;

(2) as some FDH employer groups have pointed out that some FDHs resign shortly after arriving in Hong Kong, how the Government ensures that FDHs will leave Hong Kong within two weeks after the termination of their employment contracts;

(3) whether it has sufficient manpower to investigate if there are cases of FDHs extending their stay without exceptional approvals; if it has, of the details; if not, the reasons for that;

(4) as it has been reported that the Government is considering the importation of carers from other places for subvented residential care homes for the elderly (RCHEs),

(i) whether measures are in place to ensure that the employment opportunities of local workers will not be affected; if so, of the details; if not, the reasons for that; and

(ii) whether it has assessed if the situation that the remuneration for RCHE carers is more attractive than that for FDHs will affect the supply of FDHs; if it has assessed and the outcome is in the affirmative, whether the Government will introduce measures to encourage more people to come to Hong Kong to work as FDHs; if the assessment outcome is in the negative, of the reasons for that;

(5) given that people who intend to hire a FDH must have a monthly household income of no less than \$15,000, but households whose income barely reaches this level can hardly afford the expenses associated with hiring FDHs

(including salary and employees' compensation insurance policies), whether the Government will consider reviewing such income threshold; if so, of the details; if not, the reasons for that;

(6) notwithstanding that it has been stated in the Standard Employment Contract (SEC) that a FDH must reside in the residence of his/her employer as named on his/her visa and perform domestic duties, of the measures put in place to ensure that FDHs will not engage in other work during holidays or outside working hours, which will affect the employment opportunities of local workers; and

(7) given that according to the requirements in SEC, FDHs are required, before they come to Hong Kong, to undergo medical examinations and to produce the reports to the employers for inspection, but some FDH employer groups have pointed out that ordinary employers (especially the elderly) do not have sufficient knowledge to comprehend such reports, and some employers have even been persuaded by the intermediaries into signing the employment contracts before receiving such reports, whether the Government will consider stepping up the monitoring of medical check-ups for FDHs so as to prevent FDHs with severe health problems from coming to work in Hong Kong; if so, of the details; if not, the reasons for that?

Reply:

President,

A consolidated reply in consultation with the bureaux and departments concerned to the sub-questions raised by the Member is set out as follows:

(1) & (2) Under the prevailing arrangement, foreign domestic helpers (FDHs) have to undertake in the visa application form for employment in Hong Kong that he/she will depart Hong Kong upon the completion of employment contract or within two weeks after the termination of employment contract, whichever is the earlier. This is one of the conditions of stay imposed on the FDHs by the Immigration Department (ImmD). An FDH who has overstayed is in breach of his/her condition of stay. According to the Immigration Ordinance, offenders are liable on conviction to a fine of \$50,000 and to imprisonment for two years.

ImmD has all along been processing employment visa applications of FDHs in a rigorous manner. If an applicant has any adverse records or breaches, ImmD may refuse his/her application.

If an FDH has been criminally intimidated or abused and is required to remain in Hong Kong for assisting in investigation or acting as a witness etc. after the termination or expiry of his/her contract; or he/she is awaiting the hearing of the Labour Tribunal or Minor Employment Claims Adjudication Board owing to a labour dispute; or if there are other compassionate grounds, ImmD may, based on individual merits, exercise discretion to allow him/her to extend his/her stay in Hong Kong as a visitor.

(3) In investigating cases on FDH overstayers, ImmD follows established

procedures, including gathering intelligence and taking referrals from different channels, and flexibly deploying manpower for follow up and investigation. After investigation, apart from prosecuting FDHs who have overstayed and contravened the conditions of stay, ImmD will also carry out enforcement operations against intermediaries or agents which aid and abet them. ImmD has also been enhancing publicity, to promulgate the messages that hiring illegal workers is a criminal offence and that employers must inspect travel documents of non-Hong Kong permanent resident job-seekers before hiring them; and to encourage the public to report suspected cases of illegal employment.

(4) As regards the manpower supply for elderly service sector, as stated in "The Chief Executive's 2018 Policy Address", individual sectors have long been encountering human resources shortage and recruitment difficulties. With the tight labour force and ageing population, the elderly care service sector experiences a particularly acute situation. In this connection, the Government has, through a number of measures, been helping the subsidised elderly care service sector in employing additional manpower. For instance, to assist the sector in employing and retaining frontline care staff, the Government has since 2018 allocated additional resources to subsidised welfare service units, including elderly service units, to enhance the remuneration of frontline care staff. Meanwhile, the Government has also indicated that, on the premise that local workers' priority for employment should be safeguarded, consideration may be given to allowing greater flexibility for subsidised elderly service and rehabilitation service units to import carers.

Under the prevailing policy of importing FDHs, an FDH shall only perform domestic duties for the employer specified in the contract, and shall not take up any other employment with any other person, including not taking up employment with residential care home for the elderly.

(5) Under the prevailing policy, employers who wish to employ FDHs must be financially capable of employing an FDH after his/her household expenditure has been deducted. In general, for every FDH to be employed, the employer must have a household income of no less than \$15,000 per month or assets of comparable amount to support the employment of an FDH for the whole contract period. This requirement is intended to protect FDHs by ensuring that employers are financially capable of paying the wages of FDHs during the contract period.

The Government would review the aforementioned income and asset thresholds as appropriate. In considering the necessity of adjusting the income and asset thresholds, the Government would carefully consider the relevant socio-economic factors, including whether there is an actual need for adjustment, protection for FDHs, the financial capability of employers, and the impact on families in need of FDHs' services, etc. At present, the Government has no plan to adjust the prevailing income and asset thresholds.

(6) According to clause 4(a) of the Standard Employment Contract (SEC) for employing FDHs, an FDH shall only perform domestic duties for the employer as

per the Schedule of Accommodation and Domestic Duties annexed to the contract. Clause 4(b) states that the FDH shall not take up, and shall not be required by the employer to take up, any other employment with any other person. Clause 4(c) of SEC makes it clear that clause 4(a) and (b) will form part of the conditions of stay to be imposed on an FDH by the ImmD upon the FDH's admission to work in Hong Kong under the contract. It is also clearly stipulated that a breach of the said conditions of stay will render the FDH and/or any aider and abettor liable to criminal persecution. In addition, FDHs and their employers are required to give an undertaking to the Government on the said conditions of stay. If employers or FDHs breach the undertaking, such conduct will be taken into consideration in the FDHs' future applications for employment visa or extension of stay, or the employers' future applications for employing FDHs. The applications may be refused.

ImmD is also committed to combatting the employment of illegal workers, including FDHs who are involved in illegal employment in Hong Kong, in order to protect the employment opportunities of local workers. To further tackle the problem of illegal employment, ImmD conducts inspections in black spots of illegal employment from time to time and launches frequent inter-departmental joint operations with departments such as the Hong Kong Police Force and Labour Department (LD). Actions are taken against illegal workers as well as their employers who have contravened the Immigration Ordinance. At the same time, more efforts will be spent on collecting intelligence to enhance the effectiveness of the operations combatting illegal employment.

(7) Generally speaking, there is no stipulation by the Government on pre-employment medical examination of employees (whether local workers or overseas workers coming to Hong Kong for employment). Nevertheless, according to clause 17 of SEC, employers and FDHs shall declare that the FDH has been medically examined as to his/her fitness for employment as a domestic helper and his/her medical certificate has been produced for inspection by the employer. We recommend prospective employers to, before signing the contract, know about the physical conditions of the FDHs by inspecting the medical certificates in determining whether they are able to fulfill the relevant work requirements.

According to the Code of Practice for Employment Agencies (EAs) (the Code), EAs (including those providing FDH placement services) should ensure that the information provided to employers (including the aforementioned medical certificate) is consistent with the facts made known to them. If there are reasonable grounds to suspect that the information provided by the job-seeker is inaccurate or the information is incomplete, the EA should seek clarification and further information from the party concerned (e.g. the local or overseas business partners who referred the job-seeker). If an EA has contravened the requirements of the Code, LD may consider revoking or refusing to renew its licence.

If an EA has deployed unfair trade practices, such as false trade descriptions or misleading omissions, it may have breached the Trade Descriptions Ordinance. If an employer suspects that an EA has deployed

unfair trade practices, he/she may complain to the Customs and Excise Department or seek assistance from the Consumer Council.