

## LCQ15: Combating job-hopping acts of foreign domestic helpers

Following is a question by the Dr Hon Chiang Lai-wan and a written reply by the Secretary for Labour and Welfare, Dr Law Chi-kwong, in the Legislative Council today (December 12):

Question:

Since June 2013, the Immigration Department (ImmD) has stepped up its scrutiny of the employment visa applications of foreign domestic helpers (FDHs) who changed employers for several times, in order to curb suspected abuse by FDHs of the arrangements for premature contract termination in order to change their employers (commonly known as "job-hopping"). It has been reported that during the period from the implementation of the measure to August this year, ImmD found 10 863 cases of suspected job-hopping among 530 000 employment visa applications of FDHs, but eventually rejected 1 776 applications only. Besides, some employment agencies (EAs) have abetted FDHs to deliberately perform badly to get themselves fired, so that such FDHs can obtain one month's wages in lieu of notice as well as free air tickets and passages to return to their places of domicile while the EAs concerned can collect intermediary fees from new employers who have employed them (collusive job-hopping). There are views that the existing measures cannot effectively combat the aforesaid acts of FDHs and EAs. In this connection, will the Government inform this Council:

(1) in respect of the aforesaid cases of suspected job-hopping, of the number of those in which the ex-employers had given negative comments on the performance of the FDHs concerned in the premature termination notifications/complaint letters submitted by them, and among such cases, the number of those in which the employment visa applications of the FDHs concerned were subsequently approved;

(2) whether it will examine allowing employers to amend, subject to FDHs' consent, the Standard Employment Contract for employing FDHs, such as by adding a probation period or stipulating a longer or a shorter termination notice period; if so, of the details; if not, the reasons for that;

(3) whether it will consider setting up an inter-departmental working group which comprises representatives from the Labour Department and ImmD to gather intelligence and conduct investigations in respect of acts of job-hopping and collusive job-hopping; if so, of the details; if not, the reasons for that;

(4) whether it will contact FDH employer groups to step up the publicity among employers that they can report to ImmD suspected acts of job-hopping and collusive job-hopping; if so, of the details; if not, the reasons for that;

(5) in each of the past three years and this year (as at the end of

November), of (i) the number of complaints about collusive job-hopping received and, among them, (ii) the number of cases found substantiated, by the authorities as well as the penalties imposed on the EAs concerned; whether it will introduce a diversified punishment mechanism, such as requiring the management personnel of the EAs concerned to attend compulsory training courses; if so, of the details; if not, the reasons for that; and

(6) whether it has reviewed if the existing measures can effectively combat acts of job-hopping and collusive job-hopping, so as to suitably protect the rights and interests of employers of FDHs; if so, of the outcome; if not, whether it will conduct a review expeditiously?

Reply:

President,

Having consulted the Security Bureau, our consolidated response to the Member's question is set out below:

(1) The Immigration Department (ImmD) has all along been processing employment visa applications of foreign domestic helpers (FDHs) in a rigorous manner. If the applicant has any adverse records or breaches, ImmD will refuse his/her application.

Clause 12 of the Standard Employment Contract (SEC) for employment of FDHs provides that in the event of termination of the SEC, both the employer and the FDH shall give the Director of Immigration notice in writing within seven days of the date of termination. A copy of the other party's written acknowledgement of the termination shall also be forwarded to ImmD. These records will be kept and taken into account by ImmD when it assesses any future applications made by the FDH for employment visa or extension of stay.

Since June 2013, ImmD has strengthened the assessment of employment visa applications from FDHs who changed employers repeatedly to combat abuse in changing employers through the arrangement for premature contract termination (commonly known as "job-hopping"). In assessing FDHs' applications for employment visa, ImmD closely scrutinises the case details such as the number and reasons for premature contract termination in the last 12 months, with a view to detecting any abuse of the arrangements for premature contract termination. From June 2013 to end-October 2018, ImmD received around 544 000 employment visa applications from FDHs, of which 11 077 were subject to further scrutiny, accounting for 2 per cent of the total number of applications. Among the 11 077 cases closely scrutinised by ImmD, various exceptional circumstances may be involved, including premature contract termination on grounds of the transfer, migration, death or financial reasons of the ex-employer, or where there was evidence suggesting that the FDH had been abused or exploited. Of these 11 077 cases, ImmD refused 1 817 applications, 819 applications were withdrawn by the applicants, and 658 applications could not be processed further.

ImmD does not maintain statistics on the number of suspected "job-

hopping" cases which involve adverse comments from previous employers on the work performance of their FDHs.

(2) Pursuant to clause 10 of the SEC, either the employer or the FDH may terminate the contract by giving one month's notice in writing or one month's wages in lieu of notice. According to section 9 of the Employment Ordinance (Cap 57) (E0), an employer may terminate a contract of employment without notice or payment in lieu if an employee, in relation to his/her employment, wilfully disobeys a lawful and reasonable order from his/her employer, misconducts himself/herself, is guilty of fraud or dishonesty, or is habitually neglectful in his/her duties, etc., if the relevant conditions are fully established.

The proposal of setting a probation period for FDHs or amending the notice period for contract termination involves complicated issues. Although the proposal may shorten the time required by employers to terminate the employment contract with their FDHs, it may give rise to other problems. For example, if a probation period is set, FDHs would also have the right to terminate a contract prematurely with their employers at any time within the probation period, and the employers are still required to bear the costs related to contract termination, including the return passage to the FDHs' places of origin. Also, employers cannot dispense with the expenses for hiring a new FDH, including travel expenses, visa fees and authentication fees, etc., even if there is a probation period. On the other hand, if FDHs are required to bear the risks of a probation period or a shorter notice period for terminating a contract, many FDHs may not be able to afford the costs of coming to work in Hong Kong, or they may suffer serious losses as a result of not passing the probation. This would affect the desire of FDHs to work in Hong Kong, thereby limiting employers' choices and even rendering them unable to employ FDHs.

The existing arrangement under the SEC that either the employer or the FDH may terminate the contract by giving one month's notice in writing or one month's wages in lieu of notice already provides a degree of flexibility to both parties and has taken into account the interests of both employers and FDHs. After considering the above factors, the Government has no plan to set a probation period for the employment of FDHs or amend the notice period required for contract termination.

(3), (4) and (6) The Government has all along been closely monitoring the suspected abuse of the arrangement for premature termination of contract by FDHs. Since June 2013, in order to combat suspected "job-hopping" by FDHs, ImmD has strengthened the assessment of employment visa applications from FDHs who changed employers repeatedly within a short period of time. ImmD later implemented a series of measures to further combat "job-hopping", including improving the visa application assessment workflow, increasing manpower to handle cases, and issuing clear operational guidelines to staff, which include checking relevant records of employers and FDHs, and contacting the former employers and FDHs suspected of "job-hopping" to understand the reasons for premature contract termination etc. ImmD will continue to strengthen the assessment and review the effectiveness of the measures from

time to time.

In relation to the arrangement for FDHs to return to their places of origin after contract termination, the Labour Department (LD) has all along been encouraging employers to purchase air tickets for FDHs instead of providing them with cash equivalent to the value of an air ticket. This is to reduce the chance of FDHs or employment agencies (EAs) not returning to their places of origin or not arranging FDHs to return to their places of origin after receiving from employers free return passage to the places of origin.

ImmD and LD will continue to maintain close contact on matters related to FDHs, and will follow-up and investigate as appropriate upon receiving complaints or reports of suspected "job-hopping" of FDHs.

In addition, LD has all along been organising education and publicity programmes for FDHs and their employers, such as holding briefing sessions for FDHs and employers, publishing promotional materials, and producing promotional videos, etc., in order to enhance their understanding of their respective employment rights and obligations and channels for seeking assistance, including reminding FDHs not to abuse the arrangement for premature termination of contract. This September, LD issued "A Handbook for Employing Foreign Domestic Helpers" to enable employers to understand their employment rights and obligations, including the arrangement for and way to handle contract termination between employers and FDHs.

If employers and FDHs have disputes regarding the rights under the E0 or the employment contract and cannot resolve them on their own, they may seek assistance from LD. LD will provide free consultation and conciliation services.

(5) EAs are not in breach of the relevant laws for providing job placement services to FDHs and/or employers. However, for each job placement, EAs are not allowed to charge the FDH commission of more than 10 per cent of the first-month wages after the FDH has been successfully placed in employment.

The Code of Practice for Employment Agencies (CoP), promulgated by LD pursuant to section 62A of the E0, provides that EAs should exercise due diligence in checking the accuracy of the information provided by both job-seekers and employers as far as practicable, and ensure that any information that is made available to employers or job-seekers is consistent with the facts made known to the EAs. The CoP also requires EAs to enter into service agreements with employers and list clearly the service coverage, itemised fees, date of reporting duty of the FDH, arrangement for replacing the FDH and refund policy, etc. Employers using the services of an EA should agree and clarify with the EA the service details before payment, and the agreed terms should be written down in a service agreement signed by both parties. When entering into a service agreement, employers and EAs may agree on matters about an FDH resigning shortly after arriving in Hong Kong, for example, whether a refund would be made and whether selecting another FDH would require separate service fees, etc.

If EAs cannot provide the services set out in the service agreement, employers can make a civil claim based on the service agreement to protect their rights as consumers. If EAs are in breach of the CoP requirements, including not entering into a service agreement with employers, their licences may be revoked or refused renewal by the Commissioner for Labour.

LD and ImmD do not maintain the statistics requested in the question.