

LCQ17: Protection for flexible workforce

Following is a question by the Hon Charles Mok and a written reply by the Secretary for Labour and Welfare, Dr Law Chi-kwong, in the Legislative Council today (June 13):

Question:

It has been reported that the "Gig economy" has become increasingly popular in recent years. Quite a number of people have switched to freelancing and taken up jobs through Internet platforms or applications. A study has pointed out that Hong Kong's flexible workforce (i.e. temporary employees, part-time employees, self-employed persons/freelance workers, etc.) has grown substantially in the past 10-odd years. However, flexible workers are subject to a greater risk of unemployment, lower employment income and more inferior labour benefits and protection, as compared with permanent employees. In this connection, will the Government inform this Council:

(1) Of the number of complaints received by the Labour Department in the past three years, which were made by flexible workers because their labour rights and interests had been undermined, and the respective numbers of related prosecutions and convictions;

(2) Whether it has compiled statistics on the current size of population taking up flexible jobs, as well as the occupation distribution, average number of working hours per week, average monthly income, and entitlements to labour benefits and protection (including paid sickness days and annual leave, holiday pay, employees' compensation insurance policies and the contributions made by employers to their Mandatory Provident Fund scheme accounts) of those people; and

(3) Given that the governments of a number of places (including the European Union, the United Kingdom, the United States, Singapore, etc.) have started to study and implement systems for protecting freelance workers, whether the authorities will, by making reference to the practices of such governments, amend the Employment Ordinance (Cap 57) and other relevant legislation to enhance the protection for flexible workers, as well as conducting relevant studies and public consultations?

Reply:

President,

The Employment Ordinance (EO) serves to provide for the protection of the employment conditions of employees. Employees covered by EO, irrespective of their hours of work, are entitled to certain fundamental protection under the Ordinance. For temporary employees, part-time employees and self-employed

persons/freelance workers mentioned in the question, temporary employees and part-time employees are those in the status of employees and are entitled to the rights and benefits under E0 when the relevant eligibility criteria are met. As regards self-employed persons/freelance workers who are not employees, E0 is not applicable. In determining whether a person is an employee or not, it does not hinge solely on the label of the post or contract concerned, but is subject to the actual circumstances of providing the services.

My reply to the Member's question is as follows:

(1) Since self-employed persons/freelance workers are not employees, the Labour Department (LD) does not keep statistics on their complaints. Furthermore, as the statistics on complaints and prosecutions in respect of employees whose employment rights and benefits are infringed maintained by LD do not have further breakdowns by employees' working hours or employment period, relevant statistics concerning temporary employees or part-time employees are not available.

(2) For temporary employees and part-time employees, the Census and Statistics Department (C&SD) provides the number of part-time employees by industry as well as their median hours of work and median monthly employment earnings in accordance with the results of the General Household Survey (GHS) for the first quarter (Q1) of 2018 at the Annex. Such survey does not have information on temporary employees.

For self-employed persons/freelance workers, C&SD provides the number of self-employed persons by industry as well as their median hours of work and median monthly employment earnings in accordance with the results of the abovementioned survey at the same Annex.

GHS does not collect information on such labour benefits and protection as paid sick leave and annual leave, holiday work salary, labour insurance and contributions under the mandatory provident fund (MPF) schemes by employers pertaining to self-employed persons and part-time employees. On the other hand, according to the information provided by the Mandatory Provident Fund Schemes Authority (MPFA), as some members of the workforce, such as regular employees who have been employed for less than 60 days, are exempt from joining MPF schemes, the statistics on MPF contributions maintained by MPFA do not cover all temporary employees, part-time employees and self-employed persons/freelance workers in Hong Kong.

(3) The Government reviews E0 from time to time having regard to social changes and the pace of economic development, with a view to improving the statutory rights and benefits of employees progressively.

Under E0, employees who are employed under a continuous contract and have fulfilled the relevant conditions stipulated in the Ordinance are entitled to a series of employment benefits such as rest days, paid statutory holidays, annual leave, sickness allowance, severance payment and long service payment, etc. While temporary employees and part-time employees are in the status of employees, they are accorded certain fundamental protection

under E0 even if they are not employed under a continuous contract. This includes payment of wages, restrictions on wage deductions, entitlement to statutory holidays and protection against anti-union discrimination, etc. In addition, the Employees' Compensation Ordinance provides for compensation payable to employees who sustain work injuries or suffer from prescribed occupational diseases, regardless of their hours of work or duration of employment. The Minimum Wage Ordinance also accords the protection of statutory minimum wage to employees within its coverage.

As regards self-employed persons/freelance workers, we note that concerns about their working conditions are still subject to exploration and deliberation in other places and a more comprehensive and systematic mode of protection is yet to be developed. Given this, it is difficult for the time being to make any methodical comparison or reference on the matter. At present, the Government has no plan to expand the scope of E0.