

LCQ3: Labour interests and rights of employees who perform duties during and immediately after inclement weather

Following is a question by the Hon Ho Kai-ming and a reply by the Secretary for Labour and Welfare, Dr Law Chi-kwong, in the Legislative Council today (Oct 24):

Question :

As super typhoon Mangkhut which hit Hong Kong last month had caused extensive damage to the community, the authorities needed to deploy considerable manpower for the recovery efforts. During the time when the typhoon was gradually moving away from Hong Kong, the majority of employees needed to go to work while the transport networks were partially paralysed, which put them in an extremely awkward position. Regarding the protection of labour rights and interests of employees who perform duties during and immediately after inclement weather, will the Government inform this Council:

(1) whether it knows the number of workers engaged by outsourced service contractors who participated in the clearance work during and after the typhoon, and a breakdown of such number by job type; whether the Government will consider granting a special hardship allowance to those workers and regularising such an allowance; if so, of the details; if not, the reasons for that;

(2) of the number of reports received by the Government in respect of employees who sustained injuries while commuting to and from work during the time when Mangkhut hit Hong Kong; and

(3) how the Government will step up the protection of the occupational safety and health as well as other labour rights and interests of those employees who perform duties during and immediately after inclement weather; whether it will enact legislation to protect those employees who are unable to go to work owing to natural disasters against wage deduction, being withheld good attendance bonuses or dismissal; if so, of the details; if not, the reasons for that?

Reply:

President,

After consulting the relevant bureaux and departments, my consolidated reply to the Member's question is as follows:

(1) Individual government departments would, taking into account their

different operational requirements, tender and enter into a wide range of service contracts with their selected outsourced service contractors, each prescribing specific requirements and different scope of services, such as property management service, street cleaning and public hygiene, estate security and cleaning, parks and roadside horticultural maintenance service, or repair of various systems etc. As the scope and service requirements of different departments on outsourced service contractors vary from one another, and the Government does not have a standard list of outsourced service contracts that deal with the cleaning work during and after the storm, we do not have a definite number of additional staff employed by outsourced service contractors in handling the cleaning work in association with this storm. Besides, we understand that quite a number of existing outsourced service contracts already contain clauses on a requirement to perform cleaning work during and after typhoons. As such there would not be figures on extra manpower so incurred under these service contracts.

As there is no employment relationship between the Government and employees of outsourced service contractors, the Government does not have the practice of granting special hardship allowance to these workers. On the other hand, as we understand, some service contractors would grant special hardship allowance to their employees according to individual circumstances.

Despite the above, the Government is very concerned about the employment terms and conditions as well as the labour benefits of non-skilled employees engaged by government service contractors. The Chief Executive has just announced in her Policy Address measures for enhancing the protection of these non-skilled employees. These include the provision of at least 150 per cent of wages to non-skilled employees for working under Typhoon Warning Signal No. 8 or above. The improvement measures will be applicable to government service contracts which are tendered from April 1, 2019 onwards and rely heavily on the deployment of non-skilled employees. Other improvement measures include the entitlement to a contractual gratuity and statutory holiday pay upon employment for not less than one month. To provide incentives for outsourced service contractors to enhance the wage rates of their employees, we will also increase the technical weighting in marking schemes for tender assessment to not less than 50 per cent, and increase the weighting for "wage level" as an assessment criterion to at least 25 marks out of 100 marks in the technical assessment.

(2) The Labour Department (LD) does not keep employees' compensation claims statistics involving cases on accidents occurred to employees whilst travelling to and from work.

(3) LD attaches great importance to ensuring the work safety of employees. During regular inspections at workplaces, in particular those of high-risk industries such as the construction industry and the container handling industry which involve outdoor work activities, Occupational Safety Officers pay attention to the work arrangements and contingency measures in relation to working under inclement weather conditions. LD has been urging employers to avoid assigning employees to work during inclement weather such as typhoons and rainstorms. If it is inevitable for an employee to work during

inclement weather, the employer should assess the relevant risks in advance so as to ensure the work hazards are properly controlled, and adopt so far as is reasonably practicable the necessary measures to minimise the risks.

As regards employees' compensation, the Employees' Compensation Ordinance (ECO) provides that when Typhoon Signal No. 8 or above or when the Red or Black Rainstorm Warning is in force, the employer is in general liable to pay compensation under ECO if an employee sustains an injury or dies as a result of an accident while travelling from his place of residence to his place of work by a direct route within a period of four hours before the time of commencement of his working hours for that day, or from his place of work to his place of residence within a period of four hours after the time of cessation of his working hours for that day.

The nature and requirements of different jobs in various trades and industries vary from each other. Certain essential services need to maintain different levels of operation even under inclement weather conditions. The extent of impact caused by typhoons to public transport and road systems may differ. It is not practical to regulate work arrangements of employees under specific circumstances through across-the-board legislation, as it will overlook the operational needs of different industries and the community as a whole. It will also affect the flexibility of employers and employees in working out their work arrangements.

Taking into account the general interests of employers, employees and the community, LD has published the "Code of Practice in times of Typhoons and Rainstorms" to provide practical guidelines on work arrangements, resumption of work as well as calculation of wages and holiday arrangements under such circumstances. LD will continue to promulgate through various channels to remind employers to provide reasonable and practicable means having regard to the actual conditions and adopt a flexible approach so as to ensure the safety of employees, maintenance of good labour-management relations as well as the smooth operation of the organisations.