

LCQ5: Combating job-hopping of foreign domestic helpers

Following is a question by the Dr Hon Priscilla Leung and a reply by the Secretary for Security, Mr John Lee, in the Legislative Council today (February 3):

Question:

At present, employers have to bear high expenses for employing foreign domestic helpers (FDHs), which include the board and lodging expenses for 21-day compulsory quarantine in a hotel upon FDHs' arrival in Hong Kong. In the event that FDHs prematurely terminate their employment contracts or deliberately perform badly to force their employers to fire them so as to change employers (commonly known as "job-hopping"), the employers concerned will suffer great financial losses. Moreover, for the purpose of cutting expenses and reducing the risk of being infected with epidemic diseases, quite a number of prospective employers do not hesitate to pay higher salaries for employing those FDHs already in Hong Kong, thereby aggravating the situation of job-hopping. In respect of combating FDHs' job-hopping, will the Government inform this Council:

(1) of the number of employment visa applications received from FDHs in each of the past three years; among such applications, the respective numbers of those involving applicants whose original employment contracts had been prematurely terminated within 12 months preceding the submission of the applications and those rejected because the applicants concerned were considered as job-hopping; whether it has reviewed the effectiveness of the measures for combating FDHs' job-hopping;

(2) whether the Government will consider requiring that FDHs must come directly from their places of origin to take up the job in Hong Kong, and that FDHs who have completed or terminated their employment contracts must return to their places of origin within two weeks; whether it will establish a mechanism whereby former employers of FDHs may monitor if the FDHs concerned have actually returned to their places of origin; and

(3) as there are employment agencies abetting FDHs to job-hop, whether the Government will amend the legislation to allow employers of FDHs to recover related losses from such agencies, so as to enhance the protection for employers?

Reply:

President,

Having consulted the Labour and Welfare Bureau, the Immigration Department (ImmD) and the Labour Department (LD), my response to the question

is set out below:

(1) and (2) In accordance with the prevailing requirement, foreign domestic helpers (FDHs) working in Hong Kong who wish to enter into a new employment contract with another employer upon completion of the existing employment contract must, in general, leave Hong Kong and return to their place of origin and submit a new employment visa application to the ImmD. In the event that FDHs terminate their employment contracts prematurely within the two-year contract period, they must leave Hong Kong and return to their place of origin within two weeks from the date of termination of their contracts. Employment visa applications from FDHs who have not left Hong Kong and returned to their place of origin as required will not normally be approved except under exceptional circumstances. These exceptional circumstances include: premature termination of the contract was due to the transfer, migration, death or financial reasons of the original employer, or if there is evidence suggesting that the FDH has been abused or exploited. Besides, FDHs are required to leave Hong Kong before the expiry of their limit of stay imposed by the ImmD. An FDH who has overstayed is in breach of his/her condition of stay and is subject to prosecution. In 2020, 187 cases were convicted. The FDHs concerned were sentenced with a penalty ranging from a fine of \$2,000 to imprisonment of 12 months.

Job-hopping undermines employment relationship and leads to unfairness and inconvenience to the employers. The ImmD has all along been combating such behaviour proactively. A special duties team was set up in June 2013 for that purpose. In assessing visa applications, the ImmD would refer suspected cases to the special duties team for investigation, including scrutinising the number and reasons for premature termination of employment contract by the applicants.

According to the information provided by the ImmD, the number of employment visa applications by FDHs received by the Department between 2018 and 2020 is tabulated as follows:

Year	Employment visa applications by FDHs
2018	103 014
2019	102 495
2020	74 253

Note 1: The above figures do not include applications for renewal of employment contract with the same employer or for change of employer after completion of contract; and applications for premature termination of employment contract that the ImmD considers as reasonable having regard to the exceptional circumstances (including the aforementioned premature termination of contract due to the transfer, migration, death or financial reasons of the original employer, or if there is evidence suggesting that the FDH has been abused or exploited).

Note 2: The ImmD does not maintain the breakdown figures requested in part

(1) of the question.

Between 2018 and 2020, there were respectively 1 184, 1 709 and 1 776 employment visa applications by FDHs suspected of job-hopping and referred to the special duties team for follow-up. During the three year period, the special duties team rejected 165, 267 and 319 applications suspected of job-hopping respectively. Besides, there were respectively 200, 132 and 217 applications that were withdrawn by applicants who were under investigation or could not be followed up. Compared to 2018, the number of applications rejected by the special duties team in 2020 increased by 93 per cent.

In view of the COVID-19 epidemic, the Government launched a series of anti-epidemic measures, including allowing FDHs to apply for extension of their limit of stay for not more than one month in Hong Kong. The policy intent of this measure was to respond to the demands of employers who need to employ FDHs and to reduce FDHs' risk of COVID-19 infection due to travelling to and from their places of origin. In view of the abuse of the measure by individual FDH for job-hopping, as well as the concerns about the infection risks of FDHs who stay in boarding facilities, the Government announced adjustments to the measure concerned on December 30, 2020. Starting from that day, FDHs whose employment contracts are prematurely terminated must leave Hong Kong within two weeks upon termination of the employment contract in accordance to the prevailing policy, thereby preventing abuse of the mechanism for job-hopping by individual FDH. At the same time, the ImmD will expedite the processing of employment visa applications submitted by FDHs currently staying in Hong Kong to minimise FDHs' length of stay in boarding facilities.

Clause 12 of the Standard Employment Contract for recruiting FDHs provides that in the event of termination of the contract, both the employer and the FDH shall give the ImmD notice in writing within seven days of the date of termination. The relevant notice has a dedicated section for the employer and the FDH to fill in the reason for termination of contract. These records will be kept and taken into account by the ImmD when it assesses any future applications made by the FDH for employment visa.

Clause 7(a) of the Standard Employment Contract provides that on premature termination or expiry of the Contract, the employer shall provide the FDH with free passage from Hong Kong to his/her place of origin. The rationale behind this requirement is to ensure the FDH's smooth return to his/her place of origin and avoid the scenario whereby the FDH concerned may be stranded in Hong Kong owing to the lack of means to travel. Although the contract does not stipulate the specific requirement of the passage to be provided by the employer to the FDH, the Government always suggests that the employer provides an air ticket for travelling from Hong Kong to the FDH's place of origin instead of giving a cash amount equivalent to the value of an air ticket. This measure helps minimise FDH's chance of overstaying in Hong Kong. For employment visa applications by FDHs who terminate their contracts prematurely, as the ImmD will only grant employment visas to applicants who have already left Hong Kong except for those under exceptional circumstances, there is assurance under the existing mechanism that the applicants have

indeed left Hong Kong.

The ImmD takes the problem of job-hopping by FDHs seriously. The special duties team will review and adjust its work strategy from time to time and will adopt more proactive measures, such as stepping up random check on applications which involved premature termination of contract, and strengthening communication and exchange of information with LD with a view to identifying employment agencies (EAs) that are suspected to have encouraged or induced FDHs to job-hop.

(3) Pursuant to the Code of Practice for Employment Agencies (CoP), EAs should ensure that the candidates offered to employers could satisfy the employers' requirements. In general, employers expect FDHs offered by EAs to be able to complete the two-year Standard Employment Contract. LD has received complaints about EAs inducing FDHs to job-hop, including EAs providing monetary incentives such as cash rewards to attract job-seeking FDHs to use the EAs' services for processing contract renewal or finding new employers. LD has initiated investigation into each complaint, sent officers to inspect EAs and reminded them not to encourage FDHs to job-hop. The EAs concerned have ceased such improper business practices. LD has also issued letters to all EAs to remind them that they should not encourage or induce FDHs to job-hop through improper business practices.

The CoP requires EAs to enter into a written service agreement with employers and job-seekers respectively, which clearly lists out the service terms and scope as well as the fees charged by the EA. LD has reminded employers through various channels that they should clarify with EAs the various refund arrangements and terms of guarantee, including the refund arrangement for cases of premature contract termination by FDHs.

If there is sufficient evidence to prove that an EA has not complied with the CoP, LD may revoke or refuse to issue or renew its licence, or issue warning to the EA requiring it to make rectifications.

If an EA cannot provide the services set out in the service agreement, the employer may make a civil claim to protect his/her rights as a consumer.

Thank you, President.