

LCQ6: Maternity protection for female employees

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 (May 23):

Question:

Recently, a working woman has relayed to me that following her notifying her employer of her pregnancy last year, her supervisor repeatedly made life difficult for her, including extending her probationary period, criticising her performance at work, hurling abuses at her for no reason and prohibiting other staff members from talking to her. After she had refused to resign of her own accord, she was dismissed summarily. Although she was reinstated upon intervention by the Labour Department (LD), she was eventually dismissed in less than a month after she had resumed duty from maternity leave, without receiving appropriate compensation. Regarding maternity protection for female employees, will the Government inform this Council:

(1) Of the respective numbers of complaints or requests for assistance received by LD and the Equal Opportunities Commission in the past three years concerning pregnant employees being discriminated or treated in a hostile way by employers, and employees being dismissed soon after resumption of duty from maternity leave, with a breakdown by the contents of the complaints or requests for assistance; among such cases, the number of cases in which the employers concerned were convicted by the court for violation of the relevant legislation;

(2) Whether it will conduct an in-depth study on the special needs of pregnant employees and the difficulties they encounter at work, and survey on the prevalence of the situation of such employees being unreasonably dismissed within a certain period of time (say, in less than one month, one month to less than three months, and three months to half a year) upon resumption of duty from maternity leave; if so, of the details; if not, the reasons for that; and

(3) Of the dedicated measures that have been put in place to enhance maternity protection for female employees; whether it has plans to comprehensively review and amend the Employment Ordinance, including extending the employment protection for employees against unreasonable dismissal during pregnancy to the first six months upon resumption of duty from maternity leave, so that female employees can feel at ease in regulating their physical and mental health during the period to facilitate their adaptation to the changes brought by the addition of new members to their families; if so, of the details; if not, the reasons for that?

Reply:

President,

The purpose of the provisions on maternity protection under the Employment Ordinance (EO) (Cap.57) is to accord protection to employees who become pregnant or who are on maternity leave to ensure that their employment rights, benefits and job security will not be affected because of their pregnancy or confinement during the period of their pregnancy and maternity leave. According to the EO, the employer shall not terminate a female employee otherwise than summary dismissal in circumstances of her serious misconduct during the period from the date on which her pregnancy is confirmed by a medical certificate to the date on which she is due to return to work on the expiry of her maternity leave. Moreover, under the Sex Discrimination Ordinance (Cap 480) (SDO), it is unlawful for an employer of a Hong Kong establishment to subject a woman to a disadvantage or dismiss her on the ground of her pregnancy. All types of employment (including contract work) are covered under the law.

A consolidated reply from the Constitutional and Mainland Affairs Bureau (CMAB) and me to the question raised by the Hon Ho Kai-ming is as follows:

(1) From 2015 to 2017, the Labour Department (LD) conducted criminal investigations into 53 suspected cases of unlawful dismissal of pregnant employees. Upon investigation, LD took out prosecution on 10 cases involving 11 employers (one of the cases involved two employers). After being tried by court, nine cases of 10 employers (involving 10 summonses) were convicted. LD does not keep any statistics on the number of cases relating to employees who are dismissed after returning to work upon the expiry of maternity leave. Furthermore, based on the information provided by the Equal Opportunities Commission (EOC), a total of 199 complaints involving cases of pregnancy discrimination under the employment field were received between 2015 and 2017, the majority of which were related to dismissal on the ground of pregnancy. Of the cases handled in the past three years, over 30 per cent were successfully resolved through conciliation after investigation, while about half of the cases were discontinued mainly for reasons that no unlawful act was found or the complainant had no desire to further pursue the complaint. Besides, the EOC has issued three legal proceedings in relation to pregnancy discrimination under the SDO. In one case, the parties settled through paying monetary payment to the Claimant; in another case, the Court granted a default judgment in favour of the Claimant; while legal proceedings of the remaining case are still ongoing.

(2) The LD has not conducted study on the special needs of pregnant employees and the difficulties they encounter at work, and survey on the situation of such employees within a certain period of time upon resumption of duty from maternity leave. On the other hand, the EOC conducted a "Study on Pregnancy Discrimination and Negative Perceptions Faced by Pregnant Women and Working Mothers in Small and Medium Enterprises" in May 2016. To enhance understanding of pregnancy discrimination among employers and employees, the EOC will strengthen its public education and publicity work, including providing training to employers and employees so as to eliminate acts of pregnancy discrimination in the local workplace.

(3) The E0 prohibits an employer from assigning heavy, hazardous or harmful work to pregnant employees. At present, it is already a criminal offence under E0 to dismiss an employee who is pregnant or on maternity leave. As regards employees returning to work after maternity leave, they are no different from other employees in terms of the protection accorded under E0.

The existing legislation has provided pregnant employees with appropriate protection on various aspects including maternity leave, occupational health and protection, etc. At present, we have no plan to amend the provisions on maternity protection of employment under E0. Nevertheless, we will continue to promote actively the message of maternity protection under the relevant legislation to employers, employees and the general public through publicity and promotional activities.