

LCQ6: Regulation of employment agencies for placement of foreign domestic helpers

Following is a question by the Hon Yung Hoi-yan and a reply by the Secretary for Labour and Welfare, Dr Law Chi-kwong, in the Legislative Council today (September 29):

Question:

I have received quite a number of complaints from employers and prospective employers of foreign domestic helpers (FDHs), alleging that some employment agencies for placement of FDHs (EAs) have engaged in malpractices such as overcharging commissions, charging fees under all sorts of pretexts, failing to provide services in accordance with written service agreements, and abetting FDHs to "job-hop" to take advantage of the recent shortage of FDHs. In this connection, will the Government inform this Council:

(1) as it is learnt that the persons-in-charge of some EAs have, upon the EAs concerned being convicted and fined for unlawful acts, set up new EAs and continued to make huge profits by the same unlawful means, of the Government's follow-up actions to eradicate such situation;

(2) given that quite a number of complaints were about EAs charging FDH employers a great variety of hidden fees, resulting in such employers ultimately having to pay fees that were much higher than those set out in the service agreements, whether the Government will specify the types and maximum amounts of fees chargeable to FDH employers by EAs; if so, of the details; if not, the reasons for that; and

(3) as some FDH employers have relayed that the situation of EAs engaging in malpractices has become increasingly serious, whether the Government will review if the existing regulatory regime is outdated or pierced with loopholes and introduce corresponding amendments and increase the penalties; if so, of the details; if not, the reasons for that?

Reply:

President,

Having consulted the Security Bureau and the Immigration Department (ImmD), my consolidated response to the Member's question is set out below:

(1) According to the Employment Ordinance (EO), all employment agencies (EAs) operating in Hong Kong must obtain a licence from the Labour Department (LD). EO also provides that the Commissioner for Labour (the Commissioner) may revoke or refuse to issue or renew an employment agency (EA) licence under certain situations, including where the Commissioner is satisfied with

reasonable grounds that the licensee or the person intending to be the licensee has a conviction record of a specified offence, including fraud or dishonesty, has contravened any provision of Part XII of E0 or the Employment Agency Regulations (EAR), or has failed to comply with the requirements of the Code of Practice for EAs (CoP). The Employment (Amendment) Ordinance 2018 (E(A)O 2018) effective on February 9, 2018, has expanded the scope of the overcharging offence to cover associates of the licensee, including the management as well as persons employed by EAs; and set out new grounds for the Commissioner to revoke or refuse to issue or renew a licence (Note 1).

The LD has all along processed applications for issue and renewal of EA licence in accordance with the requirements in the E0, EAR and the CoP promulgated by the Commissioner. When processing a licence application, apart from checking the records of the EA's licensee, the LD would also scrutinise if the EA's operator, person intending to be the operator and the associates of the licensee (i.e. the management or employees) have any relevant conviction records. If it is found that the licensee or his/her associate has committed an offence under E0 or breached the CoP, the LD would refuse the application.

In addition, the LD has stepped up the inspections to EAs to scrutinise relevant records and documents to ensure that EAs are operating in compliance with E0, EAR and the CoP. Upon detection of possible irregularities, LD officers would seize relevant records and carry out further investigation with a view to preventing any irregularities in their operations.

(2) There is currently no provision under E0 governing the amount of fees collected by EAs from the employers. Employers, as consumers, may freely choose which EA services in the market they would like to engage, and agree with the EA the amount of payment and payment items. The LD has all along encouraged EAs to adopt an open and transparent approach in conducting their business. To protect the rights of the employers as consumers, the CoP requires EAs to draw up a service agreement (SA) with the employers to clearly list out the service terms and scope, details of the fees to be charged, the payment schedule, refund arrangement in case the EA services are not delivered in full, fees to be charged for selecting another foreign domestic helper (FDH), etc. If an EA is unable to deliver services as per the SA, the employer may file a complaint with the Consumer Council and may also institute civil claim proceedings. In addition, if an employer has come across any malpractice of EAs, he/she may file complaints with LD for investigation and follow up.

(3) The LD has all along taken rigorous enforcement actions in combatting irregularities of EAs. Prosecution will be initiated where there is sufficient evidence to substantiate an offence. Apart from implementing the two amendments mentioned in Part (1) above, the E(A)O 2018 has also increased the maximum penalties for the offences of overcharging job seekers and unlicensed operation from a fine of \$50,000 to a fine of \$350,000 and imprisonment for three years; extended the statutory time limit for prosecution of the above two offences from six to 12 months; and provided a legal basis for the CoP (Note 2) promulgated by the Commissioner. The E(A)O

2018 provides an even more solid foundation for the LD to combat irregularities of EAs. From 2019 to 2021 (up to August), the LD considered taking out prosecution against EAs involving offences of unlicensed operation or overcharging in 83 cases. Of these, the prosecution of 43 cases could be pursued wholly due to the amendments brought by the E(A)O 2018, including extending the statutory time limit for prosecution and expanding the scope of the overcharging offence to cover associates of the licensee.

In respect of job-hopping of FDHs, the LD has maintained close communication with the ImmD. The ImmD would thoroughly scrutinise the situation of the applicants, including the number and reasons for premature termination of contract in order to consider whether an FDH with premature termination of contract has abused the arrangement for changing employer. The ImmD and the LD also mount joint operations to inspect the EAs suspected of encouraging or inducing FDHs to job-hop. In addition, the LD has strengthened efforts in combatting suspected inducement of FDH job-hopping by EAs, including closely monitoring the business practice of EAs; conducting inspections to EAs offering cash incentives to FDH job seekers (particularly those who have terminated the contract prematurely) and their referrers, etc.

If an EA breaches the CoP, the Commissioner may revoke or refuse to issue or renew its licence, or issue warnings for rectification of the irregularities detected. From 2019 to 2021 (up to August), the LD revoked or refused to issue or renew the licences of 13, seven and six EAs respectively on the grounds that the licensees had been convicted of overcharging of commission from job seekers or unlicensed operation, or had breached the CoP, etc.

The LD has all along monitored the operation of EAs and their compliance with E0 and EAR and would review the effectiveness of the existing legislation in regulating the industry from time to time.

Note 1: The new grounds include: (1) the licensee or his/her associates has not complied with the CoP; (2) the associate of the licensee has contravened any provision of Part XII of E0 or any regulation made under section 62; and (3) the related person of the licensee has, within the preceding five years, been convicted of an offence against the person of a child, young person or woman or of an offence involving membership of a triad society, fraud, dishonesty or extortion.

Note 2: Under section 62A of E0, the Commissioner may issue a CoP setting out the principles, procedures, guidelines and standards for the operation, management or control of EAs for EAs to follow during operations.