

Two foreign domestic helpers jailed for performing illegal work

One foreign domestic helper and one overstaying former foreign domestic helper were jailed by the Shatin Magistrates' Courts today (November 8) for performing illegal work.

During an anti-illegal worker operation conducted on November 6, Immigration Department (ImmD) officers from the Foreign Domestic Helpers Special Investigation Section raided multiple target locations including restaurants and grocery shops in the Islands District. Two Filipino males and one Filipino female, aged between 45 to 63, of which two were found to be current foreign domestic helpers while one of them was found to be a former foreign domestic helper who has overstayed in Hong Kong, were arrested while working as movers of food ingredients and as a dish-washing worker. Three employers suspected of employing the three illegal workers were also arrested.

Two of the arrested illegal workers were charged at the Shatin Magistrates' Courts today with breaching their condition of stay, and taking employment while being a person who, having been given permission to land in Hong Kong, had remained in Hong Kong in breach of their limit of stay imposed in relation to the permission and overstaying in Hong Kong respectively. Both of them pleaded guilty to all charges and were sentenced to a total of 14 months' imprisonment and six weeks' imprisonment respectively. The investigation against the remaining arrestees is ongoing, and more persons involved in the case may be arrested.

"A helper should only perform domestic duties for the employer specified in the contract. The helper should not take up any other employment, including part-time domestic duties, with any other person. The employer should not require or allow the helper to carry out any work for any other person," an ImmD spokesman said.

The spokesman also said, "Any person who contravenes a condition of stay in force in respect of him/her shall be guilty of an offence. Also, visitors are not allowed to take employment in Hong Kong, whether paid or unpaid, without the permission of the Director of Immigration. Offenders are liable to prosecution and upon conviction face a maximum fine of \$50,000 and up to two years' imprisonment. Aiders and abettors are also liable to prosecution and penalties."

The spokesman warned, "As stipulated in section 38AA of the Immigration Ordinance, an illegal immigrant, a person who is the subject of a removal order or a deportation order, an overstayer or a person who was refused permission to land is prohibited from taking any employment, whether paid or unpaid, or establishing or joining in any business. Offenders are liable upon conviction to a maximum fine of \$50,000 and up to three years' imprisonment."

The spokesman reiterated that it is a serious offence to employ people who are not lawfully employable. Under the Immigration Ordinance, the maximum penalty for an employer employing a person who is not lawfully employable, i.e. an illegal immigrant, a person who is the subject of a removal order or a deportation order, an overstayer or a person who was refused permission to land, has been significantly increased from a fine of \$350,000 and three years' imprisonment to a fine of \$500,000 and 10 years' imprisonment to reflect the gravity of such offences. The director, manager, secretary, partner, etc, of the company concerned may also bear criminal liability. The High Court has laid down sentencing guidelines that the employer of an illegal worker should be given an immediate custodial sentence.

According to the court sentencing, employers must take all practicable steps to determine whether a person is lawfully employable prior to employment. Apart from inspecting a prospective employee's identity card, the employer has the explicit duty to make enquiries regarding the person and ensure that the answers would not cast any reasonable doubt concerning the lawful employability of the person. The court will not accept failure to do so as a defence in proceedings. It is also an offence if an employer fails to inspect the job seeker's valid travel document if the job seeker does not have a Hong Kong permanent identity card. Offenders are liable upon conviction to a maximum fine of \$150,000 and to imprisonment for one year. In that connection, the spokesman would like to remind all employers not to defy the law by employing illegal workers. The ImmD will continue to take resolute enforcement action to combat such offences.

Under the existing mechanism, the ImmD will, as a standard procedure, conduct an initial screening of vulnerable persons, including illegal workers, illegal immigrants, sex workers and foreign domestic helpers who are arrested during any operation with a view to ascertaining whether they are trafficking in persons (TIP) victims. When any TIP indicator is revealed in the initial screening, the ImmD officers will conduct a full debriefing and identification by using a standardised checklist to ascertain the presence of TIP elements, such as threats and coercion in the recruitment phase and the nature of exploitation. Identified TIP victims will be provided with various forms of support and assistance, including urgent intervention, medical services, counselling, shelter or temporary accommodation and other supporting services. The ImmD calls on TIP victims to report crimes to the relevant departments immediately.