

# LCQ1: Protection for food delivery workers of digital platforms

Following is a question by the Hon Kingsley Wong and a reply by the Secretary for Labour and Welfare, Mr Chris Sun, in the Legislative Council today (May 28):

Question:

There are views that food delivery workers on Hong Kong's digital platforms (platforms) are not covered by various forms of labour protection. This situation lags behind that in both the Mainland and the West. In this connection, will the Government inform this Council:

- (1) as the Government indicated in November last year that it would propose a direction to strengthen the protection of platform workers, which "may include proposals that can only be implemented by legislation", of the scope of the protection and legislative details being considered by the authorities, and when the legislative proposals are expected to be introduced into this Council;
- (2) given that the Supreme People's Court issued guiding cases last year, pointing out that the key to determining whether there is a labour relationship between enterprises and workers is to establish whether there are "facts surrounding the employment", which constitute dominant labour management, whether the authorities have drawn reference from such cases to formulate the relevant safeguarding direction; if so, of the details; if not, the reasons for that; and
- (3) as it has been reported that some Mainland enterprises have paid the "five insurances and one housing fund" for platform delivery workers so that they are protected by law in the event of old age, illness, work-related injury, unemployment, maternity and so on, whether the authorities have encouraged Hong Kong platform enterprises to follow suit, such as making Mandatory Provident Fund contributions for platform delivery workers?

Reply:

President,

The Government is concerned about the protection for digital platform workers (platform workers) and has established a Liaison Group comprising representatives from the Government, platform companies, and labour organisations to explore suitable proposals to enhance the protection for platform workers. In response to the Member's question, the reply is provided below:

- (1) The Labour Department (LD) completed statistical surveys and conducted

consultations last year, including the Thematic Household Survey, an opinion survey for platform workers, as well as focus group meetings to collect data on the working conditions of platform workers and their views on protection matters. The results of the above surveys revealed that platform workers were most concerned about work injury compensation. In addition, the LD organised a retreat in November last year to facilitate representatives from the Government, platform companies, labour sector, academics and the insurance industry to express and exchange views on how to protect platform workers, including issues of work injury compensation.

Having regard to the data and views collected from the above surveys and through various channels, the Government will introduce a proposal for further enhancing the rights and benefits of platform workers within this year, and will consider reinforcing the protection for platform workers through legislative means. In collaboration with platform companies and other stakeholders through the Liaison Group, the Government will continue to take forward the work on protection for platform workers.

(2) The Government has studied the guiding cases of the Supreme People's Court in the Mainland and recognised that the Court determined the relationship between platform companies and workers based on the facts of work arrangements. The Court took into account such factors as "personal subordination", "economic subordination" and "organisational subordination" in an integrated manner in determining whether a dominant labour management relationship existed. Given the specific circumstances of each case differ, the Court needs to adjudicate the existence of a labour relationship or not for each and every case.

In Hong Kong, the court has also established a series of factors to distinguish whether an individual is classified as a self-employed person, an independent contractor or an employee. Relevant factors include whether the purported employer exercises control over the purported self-employed person's work; and whether the purported self-employed individual can hire helpers to assist with the work, whether he provides his own equipment or tools, and whether he bears the financial risk over his/her business. If in essence there exists an employer-employee relationship, even if an employer claims that an employee is a self-employed person or a contractor, the employer must fulfill the responsibilities under labour legislation in respect of that employee, including bearing the criminal liability for violating provisions of employment rights.

We will continue to monitor the policies and measures in the Mainland and other places on the protection for platform workers, and contemplate how to formulate appropriate policies to strengthen the protection for platform workers with regard to the local circumstances.

(3) To the LD's understanding, platform companies in Hong Kong generally take out personal accident insurance for their platform workers, and provide safety training and disseminate information on workplace safety to platform workers with a view to preventing and reducing accidents.

In accordance with the Mandatory Provident Fund Schemes Ordinance, employees and self-employed persons aged 18 to 64 (save for exempt persons) are required to join the Mandatory Provident Fund (MPF) Scheme. If a platform worker is an employee as defined in the Employment Ordinance, the platform company as the employer is obliged to enrol these employees in an MPF scheme and arrange employer and employee mandatory contributions. If a platform worker is a self-employed person, he is required to arrange his own enrolment in an MPF scheme and make mandatory contributions.

The Government will continue to encourage platform companies to adopt suitable measures to improve the welfare of platform workers through the Liaison Group.