

LCQ5: Protecting labour rights and interests of non-local care workers

Following is a question by the Hon Luk Chung-hung and a reply by the Secretary for Labour and Welfare, Mr Chris Sun, in the Legislative Council today (June 7):

Question:

It has been reported that some residential care homes for the elderly and residential care homes for persons with disabilities (RCHs) have employed non-local care workers through the Supplementary Labour Scheme (SLS), and have deprived such workers of their labour rights and interests, such as making use of "dual contracts" to wrongfully deduct part of their salary, compensating their overtime work at an hourly rate lower than the statutory minimum wage, failing to provide accommodation allowance, and requiring them to take up work which are outside their scope of duties and to work as substitute staff on rest days. In this connection, will the Government inform this Council:

(1) of the number of RCHs granted approval for importing care workers through the SLS in the past three years; the total number of inspections of such RCHs conducted by the Labour Department (LD), together with the number and details of follow-up or punitive actions taken, including the number of RCHs on which administrative sanction was imposed;

(2) given that there are views that as quite a number of non-local care workers are worried about being dismissed or even retaliated against by their employers, they often dare not to report their employers' acts of contravention in their employers' presence during the LD's inspections, how the LD ensures the confidentiality of the reports and protects the privacy of the persons who make the reports; and

(3) how the LD ensures that inspection operations will all be conducted on a surprise basis, under which RCHs will not receive notice beforehand and public officers will not divulge the operational deployment, and what measures are in place to step up inspection and monitoring efforts, so as to ensure that labour rights and interests of non-local care workers are protected?

Reply:

President,

The Labour Department (LD) attaches great importance to protecting the employment rights of imported workers (including imported care workers) under the Supplementary Labour Scheme (SLS). Imported workers enjoy the same protection as local workers under Hong Kong's labour laws, including the protection on payment of wages and restrictions on deduction of wages under

the Employment Ordinance (EO). In addition, imported workers and employers must sign a Standard Employment Contract (SEC) prescribed under the SLS to further protect the employment rights and benefits of imported workers. The SEC stipulates that employers must pay wages to each imported worker by means of auto-pay and arrange imported workers to attend briefings on employment rights organised by the LD, so as to facilitate their understanding of employment rights and benefits, as well as the channels for seeking assistance and making complaints.

My reply to the Member's question is as follows:

(1) The numbers of applications in respect of the care sector approved under the SLS in 2020, 2021 and 2022 were 458, 513 and 772 respectively, and the involved numbers of imported care workers approved were 1 601, 1 699 and 3 721 respectively. The Government implemented time-limited relaxation measures for the care sector under the SLS during March to May 2022 to tackle the COVID-19 pandemic, hence the numbers of applications and imported care workers approved increased in that year. The number of residential care homes (RCHs) granted approval for importing care workers each year is broadly comparable to the number of applications approved.

Labour Inspectors (LIs) of the LD from time to time carry out inspections of workplaces and accommodations of imported workers provided by employers, and also stage targeted inspection campaigns in the light of the circumstances. In 2020, 2021 and 2022, LIs conducted respectively 1 252, 1 880 and 1 848 inspections of RCHs, and issued respectively 35, 48 and 50 written warnings each year.

During the aforesaid period, the LD imposed administrative sanction on six employers (including one employer of RCH for the elderly) after conviction for contravening the Immigration Ordinance, the Employees' Compensation Ordinance or the Employment Ordinance. All the valid approvals for the employers to import workers were withdrawn and the employers were debarred from participation in the SLS for two years.

(2) If imported workers suspect their employment rights have been deprived, they can call the LD's hotlines. They may also approach the offices of the Labour Relations Division of the LD to report or make enquiries. All complaints are handled in confidence.

During inspections, LIs conduct interviews with imported workers individually without the interference of any third party (including employers) to check whether employers have complied with the requirements of the EO and the SLS, and to ensure that the imported workers can express their views or lodge complaints with LIs on employment issues. LIs also on the spot provide imported workers with information cards on protection of employment rights featuring hotlines of the LD, the Immigration Department, the Hong Kong Police Force and the Mandatory Provident Fund Schemes Authority. Imported workers can call the hotlines to report or make enquiries at an appropriate time.

To protect employees' rights, the EO prohibits employers from

terminating employees who provide evidence or information to the authorities. The EO stipulates that an employer may not terminate an employee for providing evidence or information in legal proceedings for the purpose or in connection with the enforcement of the EO. Offenders may be prosecuted and fined up to \$100,000 upon conviction. Employers are also required to make compensation to employees in accordance with the provisions of the EO.

(3) LIs arranges inspections of imported workers' workplaces and accommodations provided by employers, having regard to such factors as the nature of the sectors, the risks of violations, and records of non-compliance and complaints.

The LD will not notify the responsible persons of workplaces before conducting inspections of workplaces. For effective enforcement, the LD may meet with employers or imported workers by appointment to check relevant information when necessary, such as employment records and attendance records. Such arrangements will not undermine the enforcement effectiveness.

The LD will continue to adopt a multi-pronged strategy, including inspections, law enforcement, administrative sanction, education and promotion, to protect the rights and benefits of imported workers.