
SUBMISSIONS TO THE BILLS COMMITTEE ON EMPLOYMENT (AMENDMENT) (NO.2) BILL 2017

September 2017

Introduction

This paper outlines the views of Justice Centre Hong Kong on the Employment (Amendment) (No. 2) Bill 2017 ('the Bill'), which, *inter alia*, seeks to raise the maximum penalty for the offences of overcharging job-seekers and unlicensed operation of employment agencies, provide a legal basis for codes of practice to be issued by the Commissioner for Labour and specify that the Commissioner for Labour may refuse to issue or revoke a licence for contravention of a code of practice. While it is a positive initiative of the Administration to seek to strengthen the regulation of employment agencies, further amendments to the Employment Ordinance, Cap. 57 and policy improvements are needed to enhance protection of job seekers from unlawful or undesirable act and practices of employment agencies and exploitation.

Dissemination of the Code of Practice as stipulated in the Bill

Clause 8 of the Bill seeks to empower the Commissioner for Labour to issue codes of practice. In particular, it is stated that '[t]he Commissioner is to make a copy of every code of practice available for inspection by the public free of charge during business hours at offices of the Government directed by the Commissioner'. Justice Centre welcomes this proposed amendment. We recommend the Bills Committee propose further amendments to s.62A(2) in Clause 8 of the Bill to read *'The Commissioner is to make a copy of every code of practice available for inspection by the public free of charge on the website of the Labour Department and during business hours at offices of the Government directed by the Commissioner.'* We also recommend the Bills Committee propose the introduction of a s.62A(3) into Clause 8 of the Bill to provide that the Commissioner for Labour is to make every code of practice available in the languages that the standard Employment Contract is made available in by the Immigration Department. As the Bill seeks to include contravention of the Code of Practice as one of the grounds for the Commissioner for Labour to exercise his/her discretion to refuse to issue or revoke a licence to operate an employment agency, it is especially important for job seekers, including migrant workers, to fully understand the Code of Practice and be able to lodge complaints with the Labour Department.

PROTECTING FORCED MIGRANTS' RIGHTS

Fair trade practices and the provision of accurate information to job seekers

Justice Centre's primary research study 'Coming Clean' on the prevalence of human trafficking and forced labour among migrant domestic workers in Hong Kong finds that 13.9% of the migrant domestic worker respondents felt that their working conditions were worse than the information they had received about it during recruitment. Misleading information during recruitment related predominantly to working hours and rest times.¹ Justice Centre welcomes the recognition of the Labour Department in paragraph 3.8.2 of the Code of Practice that migrant workers rely almost exclusively and heavily on the information provided by employment agencies regarding prospective employers and the provision in the same paragraph that employment agencies should not take advantage of employers and job seekers in this regard. Such a provision is important for protecting job seekers from deception or abuse of vulnerability in the recruitment process, which relates to the 'means' element of human trafficking as defined in the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children to the United Nations Convention against Transnational Organized Crime.

While the Trade Descriptions Ordinance, Cap. 362 ('the TDO') is mentioned as the basis of the statutory requirements in relation to fair trade practices in paragraph 3.8.1, it seems that currently the Administration promotes the TDO only in relation to employment agencies' provision of services to employers but not job seekers.² In particular, it is unclear whether, in the view of the Administration, the TDO applies to the provision of information by employment agencies to job seekers. Justice Centre asks the Bills Committee to seek clarification from the Administration on this point. Justice Centre believes that because both employers and job seekers are consumers who use the services of employment agencies, as a matter of principle the degree of legal protection given to job seekers should at least be equal to that available to employers.

If the Administration is of the view that the TDO protects job seekers, the Labour Department should specify this when revising the Code of Practice in future, especially in paragraph 3.8.2 as well as paragraphs 4.9.1 and 4.10.4 in relation to the awareness of employment agency associates and migrant domestic workers. The Labour Department should also promote knowledge of the TDO to job seekers. If the TDO does not apply to employment agencies' services to job seekers, Justice Centre recommends the Bills Committee

¹ Justice Centre Hong Kong, 'Coming Clean: The prevalence of forced labour and human trafficking for the purpose of forced labour amongst migrant domestic workers in Hong Kong', March 2016, available at: <http://www.justicecentre.org.hk/comingclean/>, p.43.

² See for example the leaflet issued by the Labour Department 'For your protection: Do's and Don'ts', April 2017, available at: http://www.fdh.labour.gov.hk/res/pdf/Dos_and_Donts_Leaflet_Eng.pdf

propose amendments to the Bill to criminalise the provision of false or misleading information to job seekers by employment agencies.

Employment agencies' involvement in indebtedness of migrant domestic workers

It has been documented in the research report 'Between a rock and a hard place' conducted by the Hong Kong Federation of Asian Domestic Workers (FADWU) and the Progressive Labour Union of Domestic Workers in Hong Kong (PLU) that some migrant domestic workers are persuaded or even forced by their employment agencies to take out loans in Hong Kong.³ This is especially concerning if the relevant employment agencies overcharge the migrant domestic workers. Concern over this has also been raised by the Hon Paul Tse in his question for then Secretary for Labour and Welfare Mr Stephen Sui in the Legislative Council on 24 May 2017.⁴ Addressing such coercion into debts or facilitation of overcharging with debts is important for preventing exploitation or human trafficking. This is because migrant domestic workers with excessive recruitment debt are six times more likely than those with lower debt levels to be in forced labour, as found in Justice Centre's research.⁵

While currently employment agencies that coerce job seekers to take out loans or persuade them to do so to pay agency fees that exceed the statutory limit may have their licences revoked by the Commissioner for Labour, it is a discretion exercised by the Commissioner only. On the enforcement front, Justice Centre would like to know, where an employment agency contravenes the requirement in paragraph 4.12 of the Code of Practice on not getting involved in the financial affairs of job seekers, whether investigations will be conducted into whether the employment agency overcharges job seekers, which is a criminal offence. Similarly, Justice Centre would like to know, where a money lender is arrested for lending at an interest rate exceeding the statutory limit or other offences laid out in the Money Lenders Ordinance, Cap. 163 ('the MLO'), whether investigations will also be conducted into whether an employment agency is involved and, if so, whether that the employment agency overcharges job seekers. For example, in the case mentioned by then Secretary for Labour and Welfare Mr Stephen Sui in the Legislative Council question mentioned above, the Administration suspects that the loansharking syndicate has loaned money to around 1,200 migrant

³ Hong Kong Federation of Asian Domestic Workers and Progressive Labour Union of Domestic Workers in Hong Kong, 'Between a rock and a hard place: The charging of illegal agency fees to Filipino domestic workers in the Philippines and Hong Kong', October 2016, available at: <http://www.idwfed.org/en/resources/between-a-rock-and-a-hard-place>, p. 27.

⁴ Hon Paul Tse, 'LCQ21: Foreign domestic helpers being debt-ridden and overcharged by intermediaries for foreign domestic helpers', 24 May, available at: http://www.lwb.gov.hk/eng/legco/24052017_2.htm.

⁵ Justice Centre Hong Kong, 'Coming Clean', p.55.

domestic workers.⁶ Justice Centre would like to know if investigations have been conducted into whether any of these 1,200 workers or other job seekers using the services of the same employment agencies were persuaded by or even forced by their employment agencies to take out the loans and whether the agencies overcharged them.

Recommendations

We call upon the Bills Committee to:

- Propose further amendments to s.62A(2) in Clause 8 of the Bill to read *'The Commissioner is to make a copy of every code of practice available for inspection by the public free of charge on the website of the Labour Department and during business hours at offices of the Government directed by the Commissioner.'*
- Propose the introduction of a s.62A(3) into Clause 8 of the Bill that reads 'The Commissioner is to make every code of practice available in the languages that the standard Employment Contract (ID407) is made available in by the Immigration Department';
- Seek clarification from the Administration on whether, in the view of the Administration, the TDO applies to employment agencies' provision of services to job seekers, not just employers;
- Propose amendments to criminalise the provision of false or misleading information to job seekers by employment agencies, if the Administration holds the view that the TDO does not apply to employment agencies' provision of services to job seekers; and
- Request information from the Administration on where an employment agency is found to contravene the provision in the Code of Practice on not getting involved in the financial affairs of job seekers, whether investigations will be conducted into whether the employment agency overcharges job seekers; and
- Request information from the Administration on where a money lender is arrested for lending at an interest rate exceeding the statutory limit or other offences laid out in the MLO, whether investigations will also be conducted into whether an employment agency is involved and, if so, whether that the employment agency overcharges job seekers.

For further information, please contact Annie Li, Research and Policy Officer (+852 5661 6944; annie@justicecentre.org.hk).

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⁶ See note 4.

About Justice Centre Hong Kong

Justice Centre Hong Kong is a non-profit human rights organisation working to protect the rights of Hong Kong's most vulnerable forced migrants: refugees, other people seeking protection, and survivors of torture, human trafficking and forced labour.

For more information please visit: www.justicecentre.org.hk