



香港天主教勞工事務委員會

HONG KONG CATHOLIC COMMISSION FOR LABOUR AFFAIRS

HOLY CROSS CENTRE, 7/F, 72 YIU HING ROAD, SHAUKIWAN, HONG KONG.

香港筲箕灣耀興道72號聖十字架中心七樓

TEL(電話) : 2772 5918 FAX(傳真) : 2347 3630 E-MAIL(電郵) : hkccla@hkccla.org.hk

WEBSITE(網址) : <http://www.hkccla.org.hk>



Research on the Opinions of the FDWs and FDWs' Employers towards the Performance and Service Quality of Employment Agencies in Hong Kong

6th, April, 2014

Executive Summary and Recommendations:

Hong Kong Catholic Commission For Labour Affairs (HKCCLA) is a commission office of the Catholic Diocese of Hong Kong aiming at protecting labour rights and serving workers in Hong Kong. **HKCCLA and Diocesan Pastoral Centre for Filipinos (and other Asian Migrants & Ethnic Minorities)** collaborated to conduct a survey and interviewed 302 foreign domestic helpers (FDHs) and 252 employers of foreign domestic helpers from October, 2013 to February, 2014, to explore their views on the performance and service quality of the employment agencies in Hong Kong.

The following findings were indicated in our survey

1. Overcharging of recruitment fee

The survey findings indicated that **most of the foreign domestic workers being interviewed had experienced overcharging of recruitment fees**. This happened no matter if they are “Being direct hire form overseas”, “Terminated contract and applying job in Hong Kong”, “Finished contract and changing employer in Hong Kong” or “Seeking contract renewal”. **Most of them are being charged \$6000 to up to \$9000 recruitment fee**, which is far beyond the stipulated recruitment fee as imposed by the government. **This reflects the overcharging of recruitment fee from employment agencies is very common.**

The survey further indicated that **overcharging is more prominent in cases when FDWs who are terminated contract and seeking another new contract in Hong Kong**. Out of 43 of these FDWs seeking employment from employment agencies when their contract was prematurely terminated, 38.1% indicated they were charged \$6000 to \$9000. **It is believed that the policy of the Two Week Stay Rule implemented by the Hong Kong Immigration Department is perhaps the major cause for FDWs submitting to the unfair fee charged by employment agencies.**

Under the two weeks rule, if an employment contract is prematurely terminated by either parties, unless the FDW can seek another employment within two weeks, he/she has to leave Hong Kong within 14 days after the termination of the contract. In desperation to find a new

contract, most FDWs have to reluctantly accept the overcharging recruitment fee. Moreover, if the FDWs return to their own country and seek employment in Hong Kong again, they have to pay a new recruitment fee to the employment agencies plus new training fee or other administrative fee. To avoid these added costs, most FDWs would rather rely on the employment agencies in Hong Kong to look for a new contract. These employment agencies see through their weaknesses and make use of the weaknesses to overcharging them.

2. Collection of excessive recruitment fee through a third party loan

The survey indicated that of the 302 FDWs interviewed, 56% of them paid the recruitment fee directly to the employment agencies. **The rest, 19.2% of them, paid through a financial company and 21.5% of them had their wages deducted by their employers and the employers in turn, paid directly to the employment agencies.** This reflects that **most employment agencies would use a third party loan to collect recruitment fees to avoid being scrutinized either by the country of origin of the FDWs, or the country of work, on the regulations of recruitment fees.**

3. Wide variety of service fee charged by employment agencies

The survey indicated that **employment agencies charge a wide range of recruitment fee from employers, ranging from \$1000 to \$9000.** And among all the fees, looking for “the new arrivals” FDWs recruitment fee is the highest, the average is up to \$5600. This perhaps has much to do with the more complicated administrative procedures in arranging for a first time FDW to come to Hong Kong.

4. Incomplete information given to employers by employment agencies

More than 20% to 50% of the employers interviewed indicated that the employment agencies did not fully explain to them all the procedures or administrative fees they have to pay to agency regarding employing a FDW, most commonly, “the training courses arranged for the FDWs”,(54.4%) “the reporting system to the relevant embassies”,(39.3%) “the certification of employment contract from the relevant embassies” (39.3%), “the fee charged by the local government from the country where the FDW comes from”(32.9%). If the employment agencies hide the information from the employers, the employers cannot make a fair decision and may therefore lead to arguments or disagreements on the actual cost the employers have to pay to employment agencies.

5. Unhappy experience encountered with the employment agencies and unwittingly being aided and abetted by the employment agencies to break labour law

Most of the employers being interviewed had unhappy experience in their encounters with the

employment agencies, **most of these experience are concerned with substandard quality of services**. Of these, most prominent is “employers’ dissatisfaction with the discrepancies between what the agencies presented as the FDW’s working experience, their academic qualifications and their language and the real picture when the FDW actually arrives to work with them” (35.9%). 24.3% of these employers are also not satisfied that the agencies cannot arrange the FDW to start employment on the actual agreed date. Although the overall percentage of dissatisfaction is not overwhelming, **it does point out that employment agencies varied in the standard of services offered**. For an inexperienced employer, if he/she cannot read the contract between the FDW and employment agency, and the agency cannot stick to what they offer, e.g. delay on the date of employment, discrepancies in academic qualifications, late arrival to Hong Kong, or even change of FDW instead of the original one chosen, he/she may suffer monetary loss and inconvenience caused by the time gap.

The survey also revealed that in their encounters with employment agencies, employers maybe unwittingly aided and abetted to break labour law, e.g. “employment agencies ask them to confiscate personal belongings of the FDW” (12.4%), “employers are asked to retain part of the FDW’s wages and in turn, pay these wages to the employment agencies as recruitment fee” (8%), “employment agencies instruct/advise the employers not to give rest days or statutory holidays to the FDW”(3.6%). **These findings indicated that some unscrupulous employment agencies misled the employers thus employers break labour law without knowing it.**

6. Illegal information given to FDW by employment agencies

At the same time, **the survey revealed that some employment agencies ask FDWs to perform illegal acts or provide false information to them leading them to break the law**. These acts include “Being asked to work on rest days” (27.8%), “Buying food with the FDW’s own money” (26.6%), “Seeking a new work visa not from own country but from Macau or Mainland China” (22.4%) or “Personal belongings including passports being confiscated by agencies”. (16.6%) **FDWs are deprived of their own labour rights if employment agencies misled them by providing untrue information.**

7. Rare cases of actual complaints to the employment agencies

Of the 142 employers who had complained about unhappy experience in their encounter with employment agencies, **only 10.6% actually file a complaint against the employment agencies**. Similarly, of the 181 FDWs who complained about being given untrue information from the employment agencies, **only 9.4% have made a complaint to relevant government departments**. **Most of the FDWs stated that they did not take action for “Fear of losing their job” (46.9%), “lacking of knowledge about complaint procedure” (44.4%) or “Fear of the complicated procedures involved”**. (27.2%)

8. Employers' common consensus to enhance monitoring of the employment agencies and right to apply for work visas for the FDW without going through employment agencies

Most of the employers (75.8%) interviewed agreed that the government should regulate the standard of services. 74.6% of them agreed that the Labour Department should monitor the standard of services and those not meeting the standards should have their license revoked and the responsible person banned from sitting on the board of directors of the employment agencies. Moreover, 60.7% agree that the government should put pressure to the embassies of the relevant countries and require them to disclose the contents of the local mandatory labour insurance and ways to make a claim.

74.3% of the employers also agreed that besides recruiting FDWs through employment agencies, employers and FDWs should be allowed to process their own employment contract and to apply for a work visa for a FDW through the Immigration Department and the local embassies. This is one way to minimize manipulation from the employment agencies. **52.2% of the FDWs interviewed also agree to the above proposal** from employers.

Recommendation

1. Abolition of the Two Week Rule

The government should **abolish the two week rule** in the Immigration Ordinance and use discretion in overriding the visa fee during the waiting for trial period when FDWs had already stated a case in court against their employers or employment agencies. Temporary accommodation, food allowance, and other assistance should also be provided.

In the long run, the government **should allow those FDWs on an employment related court case to continue their employment and also to shorten the period to wait for trial.** This would minimize their inhibitions to file for a court case as they do not need to worry about their livelihood and also enhance their confidence to seek the rights and justice for themselves.

2. Stepping up efforts to monitor employment agencies

Besides the "Employment Agencies Ordinance" which regulates agency fees, **the government should also imposed stringent regulations on the issues of employment agency license.** There should be **regulation against debt bondage**, meaning the agencies cannot arrange with a third party such as financial institution to force the FDW to sign a loan with that third party thus binding them to a debt and agencies therefore avoiding responsibilities. There should also be **regulation**

on the standard employment contract with clear service agreements, clear indication of responsibilities on both parties, standard of fee and any special arrangements. There should be **regulation to ban the confiscation of personal belongings including passports**, identity cards and employment contracts of the FDW. Moreover, the employment agencies **should be closely monitored to avoid disputes** between employers and employment agencies.

The government should make references to the Singapore employment agencies licensing requirements, such as **requiring the key persons to attend a course and obtain certification before being allowed to apply for an employment agency license.** This would ensure the key persons understand the legal responsibilities, licensing requirements and quality service standards of an employment agency.

Besides, the Labour Department **should increase investigative officers so that they can actively investigate all the employment agencies which are suspected to have committed acts against labour law or overcharging agency fees.** Like Singapore, **all the licensed employment agencies should be listed and all relevant legislations should be posted on the website of the Labour Department** for easy reference for the employers. The government should also attempt to **implement a system of deduction of points to regulate employment agencies.** If the employment agencies give false information to employers or FDWs, points should be deducted from them according to the point system regulation, and depending on the number of points deducted, the agency could be put on a monitor list or in the severe case, had the license revoked.

3. Enhance assistance to FDWs

Besides regularly giving out information to educate and raise their awareness about their labour rights, the government **should arrange for newly arrived FDWs to attend pre-employment course so that they can fully understand the labour rights and job situation in Hong Kong.**

Although the Labour Department has set up a hotline to handle all the cases of labour legislations for both employers and FDWs, due to cultural insensitiveness and insufficient language skills of the frontline staff handling these enquiries, often they are not able to answer enquiries or to follow up on cases of FDWs being abused. We suggest **the Labour Department to set up a 24 hours FDWs enquiry hotline and to be manned by staff familiar with both Filipino and Indonesian languages to answer enquiries, act as mediator, and provide legal consultation.** Moreover, the Labour Department should take the example of Taiwan, and **initiate outreach services such as home visits to employers** three months before they hire FDW **to understand the kind of living situation the FDW would get once being hired**, to see if the employers' home and the home facilities **are adequate enough and complied with the requirements specified in the standard employment contract.** If employers were found to have violated the standard requirements or the working environment is unreasonable, the employers must raise the standards

to meet the requirements otherwise, they may commit an offence.

4. **Enhance assistance to employers**

The government should also **arrange talks for the first time FDW employers to let them understand the relevant labour law and responsibilities concerning the hiring of the FDW.** In order to handle the disputes between employers and employment agencies, the government should set up a hotline for mediation and for settling the dispute. At the present time, there are three departments in Hong Kong handling disputes with employment agencies, namely, the Labour Department, the Consumer Council and the Customs and Excise Department that handles the Trade Descriptions Ordinance (商品說明條例) . However, **the public do not have sufficient understanding about all these three Departments on their work related to complaints against employment agencies and therefore the government should enhance propaganda regarding what each department handles so that employers know where to put in their complaints.**

5. **Liaise regularly with the FDW exporting countries and work together to minimize illegal acts depriving FDWs.**

It is harsh enough for a FDW to work in Hong Kong that is totally foreign to her. As a responsible government, Hong Kong should **provide adequate protection to FDWs both according to the law of Hong Kong and International Covenant on labour rights.** Hence the government should **enhance the liaison with FDW exporting countries and set up mutually agreed standards to protect FDWs and to exchange information** periodically, so that any loopholes that will hurt the rights of FDWs, such as excessive recruitment fee, underpayment of wages, etc., can be stopped. The government should **request both the Indonesian and Filipino government to stop the requirements that employers must get through an agency to hire FDWs.** Instead, **both employers and FDWs should be allowed to apply directly to the embassy for work contract or change of employers.** Only in that case, the manipulation from employment agencies can be minimized.