

Press Release

LCQ13: Protecting the rights and interests of workers employed by outsourced service contractors

Wednesday, June 7, 2017

Following is a question by the Hon Andrew Wan and a written reply by the Secretary for Financial Services and the Treasury, Professor K C Chan, in the Legislative Council today (June 7):

Question:

At present, quite a number of non-skilled workers are employed by outsourced service contractors (contractors) to provide cleaning and security services to government departments (outsourced workers). It has been reported that last month an aged outsourced cleaner fell sick at work allegedly due to overexertion and was sent to hospital by colleagues for treatment. The incident has aroused public concern whether outsourced workers' labour rights and interests are adequately protected. In this connection, will the Government inform this Council:

(1) whether the authorities have followed up the latest health condition of the worker following the aforesaid incident; whether they have investigated if the arrangements made by the contractor concerned in respect of the working hours, workload and working environment of outsourced workers are appropriate, and whether the contractor has contravened the employment contract, outsourced service contract or any labour legislation;

(2) as it has been reported that the said worker's workload was unreasonably high, whether the authorities will investigate if the workload to manpower ratio of the relevant outsourced services is reasonable; whether they will set the ratio as one of the items for evaluation of the tendering mechanism for outsourced services;

(3) as it has been reported that some contractors have stealthily slashed the number of workers employed in order to save cost, whether the authorities have investigated if contractors are employing an adequate number of workers in accordance with the outsourced service contracts; if they have, of the details, including whether relevant Mandatory Provident Fund contribution records

have been checked and whether surprise inspections or decoy operations have been conducted; if not, the reasons for that;

(4) whether it knows the percentage of outsourced workers who have not signed continuous contracts of employment with the contractors; whether the authorities will specify in the outsourced service contracts that contractors must sign continuous contracts of employment with their outsourced workers, so as to protect the labour rights and interests of workers;

(5) whether it has set requirements on the (i) lower limits for the rest time and resting space given to outsourced workers (especially cleaners) by the contractors and (ii) upper limits for the workload and working hours arranged for such workers by the contractors; if so, of the details; if not, the reasons for that and whether it will set the relevant requirements; and

(6) whether government departments which outsource their services at present have mechanisms and measures in place to enable outsourced workers to lodge complaints against contractors who have allegedly contravened the Employment Ordinance (Cap. 57) or employment contracts; if so, of the number of such complaints received by the authorities in the past five years, with a breakdown by content of complaint; whether a contractor bidding for new outsourced service contracts will be allotted penalty points for the reason that complaints against him have been found substantiated?

Reply:

President,

In accordance with government procurement regulations, procuring departments shall devise mechanisms to monitor whether contractors' performance fulfils contract requirements and comply with contract terms.

After consulting the Labour Department (LD) and the four major procuring departments in respect of service contracts that rely heavily on the deployment of non-skilled workers (namely the Food and Environmental Hygiene Department (FEHD), Government Property Agency (GPA), Housing Department (HD) and Leisure and Cultural Services Department (LCSD)), our reply to each part of the question is as follows :

(1) According to the information provided by FEHD, the cleansing worker concerned is a relief worker employed by the cleansing service contractor of FEHD. He was assigned to work at different locations to relieve other workers who were on leave. On the night of the incident, the cleansing worker admitted to the hospital due to respiratory infections. FEHD officers immediately visited the workers at the hospital that night, and asked the contractor to notify his family members and to arrange for deployment of a relief worker. The cleansing worker is now recuperating at home.

FEHD advises that the cleansing worker was required to work 7.5 hours from 11pm to 6.30am on the following day. On the night of the incident, he was assigned to sweep certain streets in the contract area twice. His workload was similar to that of other cleansing workers and it was not excessive. FEHD considers that there is no evidence at this stage indicating any breach of contractual terms or labour legislations by the contractor. FEHD will contact the cleansing worker for further investigation upon his recovery.

(2) FEHD advises that the contractor who engages the cleansing worker concerned is required to provide street sweeping, litter container emptying, bagged refuse collection, public toilet cleansing and refuse collection point cleansing services in the sites designated in the contract on the mid-night shift, involving a total of 19 cleansing workers. Every night, FEHD officers check the daily attendance records of contractor's staff and conduct on-site inspection on the performance of the cleansing workers to ensure that the contractor has provided services in accordance with the contract requirements. In the past month, FEHD officers have not detected any record of absence of work of contractor's staff on the midnight shift which may lead to increase in workload of individual staff.

At present, departments may include appropriate assessment criteria in the marking scheme, including workload and workload to staff ratio, having regard to their operational needs. As far as FEHD is concerned, the proposed manpower, post, working hours/work shifts/ working areas, etc. have been included in the management or work plans submitted by the tenderers for evaluation under the standard marking scheme as part of the assessment criteria.

(3) According to the information provided by the four aforementioned major procuring departments, they will closely monitor the performance of contractors. Details are provided at Annex 1. If the procuring departments detect any irregularities of contractors, they will take appropriate follow-up actions, including referring the cases to relevant enforcement department/organisation for follow-up.

(4) At present, contractors of service contracts that rely heavily on the deployment of non-skilled workers must sign the "Standard Employment Contract" (SEC) promulgated by LD with their non-skilled workers. An employee who has been employed continuously by the same employer for four weeks or more, with at least 18 hours of work in each week is regarded as being employed under a continuous contract. As such, whether a worker is employed under "continuous contract of employment" depends on the length of service and working hours per week as agreed between the contractor and the worker. The four aforementioned major procuring departments do not set mandatory requirement on signing "continuous contract of employment", and have no information on the percentage of workers who have not signed "continuous contracts of employment".

(5) At present, all contractors of service contracts that rely heavily on the deployment of non-skilled workers must sign the SEC promulgated by LD with their non-skilled workers. Contractors have to specify the meal breaks and daily maximum working hours of the workers in SECs.

On rest breaks and rest facilities, under the Occupational Safety and Health Ordinance (Cap. 509), employers must, so far as reasonably practicable, ensure the safety and health of employees at work, including ensuring that employees are given appropriate rest breaks. In this connection, LD has issued the Guide on Rest Breaks, which sets out that employers (including contractors of government cleansing contracts) should in consultation with their employees, work out rest breaks arrangements appropriate to the employees and meeting operational needs, including arranging appropriate rest breaks for employees working for a long period of time continuously.

Procuring departments will also provide employees of their contractors with appropriate rest facilities so far as reasonably practicable. In general, employees of contractors may make use of the rest facilities open for use by the

public and/or staff, if available.

(6) The four aforementioned major procuring departments adopt different serious measures in handling complaints lodged by non-skilled workers. These include setting up a Central Investigation Team to follow-up complaints against contractors for breaching employment conditions; conducting random checks and arranging regular interviews with the workers on employment matters; and affixing at the roll call points three months before the expiry of the service contracts to remind workers that they should check their eligibility for severance payment and long service payment etc. at the expiry of their employment contracts. Hotlines are also provided for the workers to make enquiries/ complaints to the authorities concerned.

The number and breakdown of the complaints relating to the suspected breach of the Employment Ordinance (Cap. 57) or breach of employment contracts received by the four aforementioned procuring departments in the past five years is set out at Annex 2.

One default notice will be issued to each contractor if it has breached any contractual obligations in respect of wages, daily maximum working hours, signing of SEC and wage payment by means of autopay to their non-skilled workers. Each default notice attracts one demerit point. If a contractor has accumulated a total of three demerit points over a rolling period of 36 months before the tender closing date, its tenders will not be considered for five years from the date the third demerit point was awarded.

In addition to the four aforementioned aspects, HD will put on record the breaches of other requirements or requirements not covered by the SEC. These records will become score deducting or consideration factors in the performance assessment of contractors and evaluation of tenders.

Ends