

Press Release

LCQ3: Protecting the rights and benefits of employees of outsourced service contractors

Wednesday, November 23, 2016

Following is a question by the Hon Luk Chung-hung and a reply by the Under Secretary for Financial Services and the Treasury, Mr James Lau, in the Legislative Council today (November 23):

Question:

At present, quite a number of non-skilled workers are employed by outsourced service contractors (outsourced contractors) to provide services such as cleaning and security to government departments (outsourced workers). It is learnt that the remuneration packages for them are far inferior to those of civil servants and employees of other private enterprises with comparable duties. Some outsourced contractors have even evaded by various means their obligation to pay outsourced workers severance payment (SP) and long service payment (LSP) upon expiry of outsourced service contracts. In this connection, will the Government inform this Council:

(1) of the number of requests for assistance received in the past three years by various government departments from outsourced workers seeking help to resolve their disputes with employers, with a breakdown by the issue involved; whether the Labour Department and the departments outsourcing services have at present designated dedicated teams or manpower to deal with the employment arrangements and disputes relating to outsourced workers upon expiry of the outsourced service contracts;

(2) whether it knows the respective numbers of outsourced workers who changed jobs to work as non-civil service contract staff and civil servants in the past three years; if it knows, of a breakdown by government department; if not, whether the authorities will collect the relevant data in future; and

(3) whether it will consider reviewing expeditiously the relevant tender documents for outsourced service contracts and the Standard Employment Contract concerned to prevent outsourced contractors from evading their obligation to pay SP and LSP; if it will, of the details and timetable; if not, the

reasons for that?

Reply:

President,

Outsourcing is one of the ways adopted by government departments to deliver public services. Whether services should be outsourced is at the discretion of individual departments having regard to their operational needs. The government department which decides to outsource its services should put in place a mechanism to ensure that the service contractor performs to the standard laid down in the contract and complies with the contract terms.

My reply to the three parts of the question is as follows:

(1) Regarding the first part of the question, for government service contracts that rely heavily on the deployment of non-skilled workers, based on the information provided by the four major procuring departments, namely the Food and Environmental Hygiene Department, Government Property Agency, Housing Department and Leisure and Cultural Services Department, the number of cases received by respective departments in relation to disputes between outsourced service contractors and their employees for the last three years and until October 31 this year are set out at Annex and tabled for reference. Generally speaking, each department handled up to around 15 to 17 cases every year.

The four major procuring departments would monitor the performance of the service contractors after contract award. While no dedicated team or manpower is designated to handle the disputes between service contractors and their employees, the procuring departments would, upon receipt of requests for assistance from outsourced workers, normally refer the cases to the Labour Department (LD) for follow-up, with a view to resolving the labour disputes through LD's conciliation service.

The Labour Relations Division of LD provides conciliation services to employers and employees outside the government sector, including government outsourced service contractors, to help them resolve labour disputes through a network of 10 offices across the territory. Outsourced workers who have

disputes with their employers over employment arrangement and/or termination compensation under the Employment Ordinance (EO) and employment contract upon expiry of the outsourced service contract may approach LD for assistance. If no settlement could be reached after conciliation, the conciliation officer may, at the request of the employee, refer the claim to the Minor Employment Claims Adjudication Board or the Labour Tribunal for adjudication.

In addition, labour inspectors of LD conduct proactive inspections to workplaces to check service contractors' compliance with the legislative provisions and the Standard Employment Contract (SEC) and to educate employees on the protection accorded to them under labour laws and SEC. Suspected breaches, when detected, will be thoroughly investigated by labour inspectors of LD. Prosecution will be instituted against offending service contractors wherever there is sufficient evidence.

(2) Regarding the second part of the question, the Civil Service Bureau and the four aforementioned major procuring departments do not collect information on the number of outsourced workers subsequently employed by the Government as civil servants or non-civil service contract staff. As government departments do not require applicants to declare if they are or were employed by government service contractors during the recruitment process, the departments concerned do not and have no plan to collect the relevant information.

(3) Regarding the third part of the question, like employees in the private sector, employees of government service contractors are accorded protection and benefits under the EO, including severance payment and long service payment. Under the EO, if an employee who has been employed under a continuous contract for not less than 24 months and is dismissed by reason of redundancy, he is in general entitled to severance payment. Under the same Ordinance, an employee who has been employed under a continuous contract for not less than five years is entitled to long service payment if the requirements as specified in the EO are met. On termination of employment, the employer shall pay all the termination payments, such as outstanding wages, payment in lieu of notice, annual leave pay, and severance payment/ long service payment, etc. as soon as practicable.

At present, departments may adopt the Standard Terms and Conditions formulated by the Government Logistics Department as the terms of contract in procuring services. It is prescribed in these terms and conditions that service contractors shall observe all the applicable laws and regulations of Hong Kong, in particular those related to the rights and benefits of employees such as the EO, the Mandatory Provident Fund Schemes Ordinance and the Occupational Safety and Health Ordinance. In addition, the SEC prescribed by LD stipulates that service contractors shall comply with the requirements under the EO. In other words, the statutory entitlements for severance payment and long service payment have been included in the service contracts awarded by the four major procuring departments, as well as the SEC signed between the service contractors and their employees.

In case a service contractor or its permitted sub-contractor has breached the relevant legislation or failed to fulfill the contractual obligations, the procuring department will take regulatory actions in accordance with the contract. The contract may even be terminated if the contractor or its permitted sub-contractor is convicted of a breach of the EO or other relevant ordinances.

To tighten up the management of contractors of government service contracts that rely heavily on the deployment of non-skilled workers (excluding construction service contracts), the Government has put in place a mandatory requirement under the prevailing procurement arrangement: if a contractor has obtained any conviction under the EO which individually carries a maximum fine corresponding to Level 5 or higher within the meaning of Schedule 8 to the Criminal Procedure Ordinance, its tender offer(s) shall not be considered by government departments for a period of five years from the date of conviction. Under this mechanism, a contractor failing to make severance payment and long service payment to outsourced workers in accordance with the EO will be considered to have committed the relevant offences. Unless its application for review is accepted, the contractor shall not be awarded any government service contract for a period of five years from the date of conviction.

LD will continue to adopt a multi-pronged approach, which include reminding employers of the importance of timely payment of statutory benefits through educational and publicity efforts targeted at employers and employees, and proactively assisting employees who suspect their rights and benefits being infringed to pursue their claims against employers through the provision of

user-friendly consultation and conciliation services. Where there are any suspected breaches, LD will thoroughly investigate into the matter and institute prosecution against the offending employers and the responsible persons whenever there is sufficient evidence.

Ends