

ASIA/HONG KONG: AHRC supports petition to suspend levy of all foreign helper's contracts

Asian Human Rights Commission

In response to the calls by migrants and other civil groups, the Hong Kong government has decided to suspend the levy for two years from August 1 instead of September 1. The suspension will now include existing contracts as well, only if employers are willing to renew those contracts in advance. This response by the government still does not truly alleviate the vulnerability of the workers, as noted in the following press release and petition. Further information regarding the levy and the situation of FDHs can be found here: <http://dayuhan.wordpress.com/>.

Press release by the Asian Human Rights Commission: AHRC-PRL-023-2008

(Hong Kong, July 25, 2008) The Asian Human Rights Commission (AHRC) supports a petition seeking the suspension of a levy, not only for new but for existing contracts of Foreign Domestic Helpers (FDHs), to avert threats to their job security.

On July 17, the Hong Kong Labour Department announced it would seek an amendment to the existing Employees Restraining Ordinance, which imposed a HKD 9,600 (USD 1,230) levy on employers for their worker's two-year contract for a period of two years. It sought the suspension to take effect by 1 September 2008.

The measure has been sought in an effort to relieve the employer's financial obligations because of the soaring inflation rate in the territory in recent times. However, even before it took effect some employers terminated early their worker's contracts, others delayed the hiring and thousands of others face threats of termination.

This has in fact prompted the Labour Department to reconsider its early proposal to have the suspension take effect from September 1 to August 1. However, this has not been able to avert the situation as some employers continue to carry on terminating contracts, and others are reportedly keen on doing so given the amount they could save.

"Since this proposal came out, there has been a pattern of termination of contracts amongst the workers. We have yet to get the exact number," said an organizer for Filipino migrant workers.

Apart from Filipinos, there are also FDHs which come from other Asian countries--Sri Lanka, Thailand, Nepal, Indonesia and Bangladesh, who would be affected. As is already known, these are workers whose families back home are financially dependent on the remittances they send from their work here.

In their written submission below before the Legislative Council, an alliance of migrant workers called the Asian Migrants Coordinating Body (AMCB), is petitioning that the suspension of the levy should also include existing contracts and those signed prior to August 1. They are deeply concerned that unless those existing contracts are covered, they face threats of being terminated.

For instance, an employer would be able to give a worker one month prior notice before terminating a worker's contract. Once a notice is already given, the employer's obligation would only be to cover the worker's plane ticket, which is around HKD 2,000, upon the due date—cheaper compared to the HKD 9,600 they could save if the levy is suspended.

The AHRC shares the serious concerns of migrant workers on this issue. We are also forwarding below the full text of the position paper by the AMCB, which has been submitted before the Legislative Council,

explaining the implications of this levy suspension. It calls upon the Council to seriously consider this matter.

The AMCB is also calling everyone concerned for the plight of the affected migrant workers to participate to demonstrate for this call on Sunday, July 27 at 3pm to 5:30pm at Chater Road in Central, Hong Kong.

FULL TEXT OF SUBMISSION TO THE LEGISLATIVE COUNCIL:

Submission of the Asian Migrants Coordinating Body (AMCB) to the HK Executive Council on the suspension of the levy on 22 July 2008

We, foreign domestic workers (FDWs) from different Asian nationalities, wish to forward our views and position to the Executive Council of the Hong Kong government with regards to the suspension of the levy and its implementation on August 1 as recommended by Labour and Welfare Secretary Matthew Cheung and the HK Immigration Department:

1. Suspension of the levy must be implemented for all FDWs – those with ongoing contracts and those who will apply on or after August 1

To exclude the ongoing contracts of more than 200,000 FDWs from the levy suspension puts our jobs in jeopardy. Employers will surely opt to terminate ongoing contracts for which they are paying the levy for and then hire a new domestic worker in order to avail themselves of the levy suspension. In fact, we have already received reports of FDWs with ongoing contracts who are already being threatened with contract termination.

1.a. The Immigration Department is not grounded in the reality of our employment situation when it said that termination of contracts will not happen. It is not true that employers shall be paying more if they hire a new employee because they have to pay for wage for one month, holidays, and the airfare of the FDW.

Whether the levy is suspended or not, wage and holidays are obligations that should be paid for. An employer only has to give a one month notice to an FDW, make her work for that month and the wage the employer will give is already covered by the said month's labor.

This leaves only the airfare as the true additional payment. This shall only cost less than HKD 2,000 and compared to what can be saved from paying the HKD 600 levy, any practical-thinking employer will choose the former.

Also, the employers can then hire someone who is already in Hong Kong to further be exempted from paying for the airfare of their new employee.

1. b. The threat of termination of ongoing contracts is clear and present. Only the lack of a final guidelines of the implementation of the suspension inhibits employers from finally ending current contracts.

If the HK government decides to suspend the levy only for new contracts, we are expecting an avalanche of termination of jobs of FDWs. It will surely be catastrophic for many of us who will not be covered by the levy suspension.

To move the start of the implementation of the suspension to an earlier date but with the same framework of covering only new contracts will only mark an early open season for termination of contracts.

We attached herewith a partial list of cases of FDWs whose job security are now threatened just with the announcement of the levy suspension. Surely the number will skyrocket as soon as the date of implementation is finalized and ongoing contracts are not covered.

1. c. According to the Chief Executive, the suspension of the levy is supposedly made to give relief. How it can be so if the majority of FDWs are excluded?

For the part of FDWs with ongoing contracts who are the great majority, to have an exclusionary levy suspension is no relief at all. In fact, the risk to our job security that it has resulted in worsens our anxieties.

If ongoing contracts shall not be included in the suspension, it will not also relieve immediately many employers, especially the middle-income earners, of the burden of the levy. They have to wait for many more months just to get qualified to the levy suspension.

1. 2. Delay in the implementation of the levy threatens the employment of FDWs who are now renewing their contracts as well as new FDWs

When the government announced the suspension but without clear guidelines and specific date of implementation, it has created the thinking among employers to wait and see before pursuing the contract processing of an FDW. Thus there have already been cases of withdrawal of employment contract by employers who decided to defer the processing of the contract of the FDW until the suspension is implemented.

FDWs who have experienced this are now left in limbo for they are not allowed to work while waiting for their visa here in Hong Kong. Those who will be forced to make an exit are also worried if their future employer will pursue their hiring.

This, however, is just the tip of the iceberg. Still the biggest problem is the resulting open season of contract termination due to the non-coverage of existing FDW contracts.

Only by making the policy applicable to all contracts will this be prevented.

1. 3. Discussions on the levy suspension have excluded the views of FDWs who were the ones gravely affected by the levy when it was implemented in 2003 and are now also bearing the immediate brunt of the suspension.

We are highly-disappointed by the reported remarks of Labour and Welfare Secretary Matthew Cheung who was quoted as saying that “it is understandable that employers have concern and confusion. We will do what we can to make this measure beneficial and convenient to employers”. (South China Morning Post, page 1)

We ask why our situation and wellbeing are not considered. It is inconsistent of the Hong Kong government to have passed a Racial Discrimination Ordinance recently and then, after only a few days, blatantly disregard one of the biggest sector of ethnic minorities.

What is urgent right now is for the suspension of the levy to cover all contracts of FDWs (ongoing and new) and to be implemented immediately.

The matter of what will be done to the levy already paid for in full or in installment for ongoing contracts can follow from this decision. The government may decide to refund them and refunds can be made pro rata and can be issued in lump sum or installment. The government can as well decide to put a cap on the collection of those who are paying the levy in installment basis.

We maintain that the suspension of the levy must also benefit FDWs from whom the levy was taken five years ago. This can be in the form of a significant and substantial wage increase.

We urge the Hong Kong Executive Council to take these points into account when it discuss and finalize the details of the levy suspension.

The Hong Kong government has pledged to share the benefit of the economic boom to the people of Hong Kong. FDWs are also workers and have also contributed to the economic rebound.

Our rights, job security wellbeing must be protected and upheld. Suspension of the levy must cover ALL CONTRACTS and must be done NOW.

If justice is to be given to foreign domestic workers, the HK government must totally do away with the levy in the future.

Submitted by: Asian Migrants Coordinating Body (AMCB)

Members:

Association of Indonesian Migrant Workers (Asosiasi Tenaga Kerja Indonesia, ATKI)
Association of Sri Lankans (ASL)
Far East Overseas Nepalese Association (FEONA)
Friends of Thai (FOT)
Thai Regional Alliance (TRA)
United Filipinos in Hong Kong (UNIFIL-MIGRANTE-HK)