

By email only: (swhc@swhc.org.hk)

Clerk to Panel on Manpower
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

PathFinders Limited

Written Submission

to

HKSARG's Legislative Council's

Panel on Manpower

in advance of a meeting on 20 June 2017

to

Follow up on the Report of the Standard Working Hours Committee

<http://app3.legco.gov.hk/ors/english/Invite.aspx?Invid=10000067>

Submitted on 10 June 2017

Background

PathFinders Limited is a Hong Kong-registered charity with tax-exempt status.

We ensure that the most vulnerable children born in HK, and their migrant mothers, are respected and protected.

The focus and purpose of this submission is to give a voice to the women and children we serve at PathFinders. Specifically, is submitted by way of addendum to our July 2016 submission to this Committee, the content of which is reiterated and can be found [here](#):

Good Practices in Other Jurisdictions

PathFinders' July 2016 submission highlights examples of best working hours practices followed in other jurisdictions. Specifically where the working hours for foreign domestic workers (**FDWs**) are governed by local legislation, either as part of the local application of, or independently from, the standard working hours (**SWHs**) provisions set out in the UN International Labour Organisation's Convention No. 189¹ and other applicable treaties.

This second submission flags comparative best practices much closer to home, namely in Macau and Singapore. Both jurisdictions specifically include clauses regarding SWHs in their standard FDW contracts.

In Macau SAR

The Sample Labour Contract for Non-resident Domestic Workers² issued by the Macao SAR Labour Affairs Bureau specifically provides for discussion and agreement of the working hours:

"Clause 7 Working time

[Both parties agree to settle the working time based on the following options (please choose A, B or C)]:

A. The normal working hours of the Second Party are _____(6) hours per day

and _____(6) hours per week, with working time from _____ to _____(6) and a break of _____(6) minutes for meals and rest.

¹ Domestic Workers Convention, 2011 (No. 189) (Article 10). Available at: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C189, see as well Domestic Workers Recommendation, 2011 (No. 201). Available at:

http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:R201
² http://www.dsal.gov.mo/download/pdf_en/expatriation_laborlawtemp/nb_contracts_housework_e.pdf

B. The normal working hours of the Second Party are _____ (6) hours per day and _____ (6) hours per week, with working time schedule designated by the First Party.

C. The Second Party is exempted from the working time schedule, but still has the right to rest periods and other guarantees provided by law.”

In Singapore

In Singapore, Clause 11 of the Standard Employment Contract³ for FDWs provides as follows:

‘11. The Employer shall provide the FDW with _____ hours [recommended 8 hours] of continuous rest daily (except for occasional special-care cases), with reasonable rest periods during working hours.’

Recommendations

PathFinders respectfully urges this Committee:

1. To enquire into, and understand why, Hong Kong SAR’s FDW contract fails to provide any recommendations or provision(s) as to SWHs;
2. To enquire into and understand whether provision/recommendations for SWH for FDWs has previously been discussed/considered and, if so, what the outcome was and if not, why not; and
3. If the response to 2. above is yes, whether the reason(s) for the contract omission of SWHs for FDWs can still be justified today given the large numbers of FDWs in Hong Kong (around 340,000) and their well-publicised and specific vulnerabilities as live-in employees; and
4. Specifically on behalf of all pregnant, employed women in Hong Kong Kong, as well as PathFinders’ clients who are pregnant women and mothers with newborns, we urge this committee to enquire into and explain why no SWHs provisions exist and/or can be introduced for women (and specifically including those working as FDWs) during pregnancy and for the duration of their statutory maternity leave. There exists a policy and practice void as to how best the employer and FDW employee should manage a healthy, happy, successful, pregnancy or indeed how to deal with statutory maternity leave to ensure that the life of every unborn and vulnerable newborn in Hong Kong SAR is afforded maximum protection, regardless of the biological mother’s profession. Every child deserves a fair start in life.

³ http://asean.org/storage/2016/08/S8_Standard-Employ-Contract-2006.pdf

We thank this Committee for considering PathFinders' submission.

Please contact us should you wish to discuss our comments and/or require clarification.