

Issued by: Ministry of Labor

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Topic: Where an employer provides a false report on any foreign worker whose whereabouts are untraceable, the relevant requirements shall apply. Where the foreign worker is proven to be free from untraceable whereabouts, the administrative decision for the abolishment of the employment permit will be revoked accordingly. Then, the foreign worker is allowed to recover his/her legal status for working in Taiwan, and no adverse effect will be caused by his/her right to work.

Subject: Concerning your written inquiry about the dispute over people's false report on untraceable whereabouts of the foreign worker employed by the people, please take notice of this matter.

Descriptions: 1. This response to your letter under Fu-Lao-Dong-2-Zi No. 1043406960 dated December 25, 2015.

2. According to Article 56 of the Employment Service Act (hereinafter referred to as the "Act"), should an employed foreign worker have been unjustifiably absent from his/her work and not in contact for three consecutive days, or should the employment of a foreign worker be terminated, the employer shall make notification in writing that sets out relevant matters to the local competent authority(ies), the entry and exit administrative authority and the Police of such event within three days thereafter. Further, according to Article 43 of the Act, unless otherwise specified in the Act, no foreign worker may engage in work within the Republic of China should his/her employer have not yet obtained a permit via application.

3. Your questions are answered as follows:

(1) As to whether the employer's false report on untraceable whereabouts of the foreign worker violates the Act: According to subparagraph 5, Paragraph 2 of Article 5 of the Act when recruiting or employing employee(s), the employer shall not submit false information or fake health examination sample (s) when applying for permit(s) to employ foreign worker(s), or dealing with

recruitment, import, or management thereof. Further, according to Paragraph 1 of Article 7 of the Administrative Penalty Act, an act in breach of duty under administrative law is not punishable unless committed intentionally or negligently. Therefore, if the employer's false report meets the circumstances referred to in subparagraph 5, Paragraph 2 of Article 5 of the Act but fails to satisfy the circumstances referred to in Paragraph 1 of Article 7 of the Administrative Penalty Act under which the act is not punishable, the employer shall be punished with the fine of more than NT\$300,000 but less than NT\$1,500,000 according to Paragraph 1 of Article 65 of the Act.

(2) If the foreign worker is proven to be free from untraceable whereabouts but his/her employment permit is abolished by us due to the employer's false report, whether the employer's renewed employment of such foreign worker will be against laws, or whether the foreign worker's right to work in Taiwan will be affected adversely: Where the foreign worker is proven to be free from untraceable whereabouts, we will revoke the administrative decision for the abolishment of the employment permit accordingly. Then, the foreign worker is allowed to recover his/her legal status for working in Taiwan. The employer's renewed employment of the foreign worker will not be held violating subparagraph 1, Article 57 of the Act, and his/her right to work will not be affected adversely either.