

Points to Note for Employers

on the Employment of Foreign Domestic Helpers

If you need to employ a foreign domestic helper (“FDH”), please take some time to go over this leaflet in order to understand your **major responsibilities** under labour legislation and the Standard Employment Contract (“the SEC”). It also provides some useful tips that can help you maintain harmonious labour relations with your FDH and act as a law-abiding and smart employer.

This leaflet highlights the major statutory and contractual provisions which employers should be aware of. However, it should be noted that **the relevant Ordinances and the SEC should remain the sole authority for the provisions explained.**

If you wish to know more about the relevant legislation, please refer to “**A Concise Guide to the Employment Ordinance**”, “**A Concise Guide to the Employees’ Compensation Ordinance**”, “**Practical Guide for Employment of Foreign Domestic Helpers**” and “**Proper Keeping of Wages and Employment Records**” issued by the Labour Department, and “**Guidebook for Employment of Domestic Helpers from Abroad**” issued by the Immigration Department.

Enquiries

	Hotline	Website
Employment Ordinance	2-71-71-771 (the hotline is handled by “1823”)	http://www.labour.gov.hk
Employees’ Compensation Ordinance		
Employment Agency Regulations		
Immigration Ordinance	2824 6111	http://www.immd.gov.hk

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Employers' Responsibilities under the Standard Employment Contract

You should sign the **Standard Employment Contract (SEC)**(ID 407) with your FDH. It is the **only document recognised** in Hong Kong for the purpose of employing an FDH. Major provisions in the SEC include:

DOs

- ✧ Pay your FDH wages in accordance with the amount specified in the SEC and which should not be less than the prevailing Minimum Allowable Wage (“MAW”) at the time you enter into the contract with the FDH. **If the employment contract is made on or after 30 September 2017, the MAW is \$4,410 per month.**
- ✧ Comply with other provisions stipulated in the SEC, such as:
 - provide free accommodation;
 - pay a food allowance if no food is provided to your FDH;
 - provide your FDH with free passage to and from his/her place of origin upon commencement of and on termination or expiry of the contract (including air ticket, food and travelling allowance);
 - provide free medical treatment, including medical consultation, maintenance in hospital and emergency dental treatment during the employment period (except for the period during which your FDH leaves Hong Kong of his/her own volition and for his/her personal purposes). **In this connection, you are strongly advised to take out an insurance policy with full medical and hospitalization coverage for the helper. You may also consider taking out a comprehensive insurance policy which provides medical and hospitalization coverage and satisfies the requirement under the Employees' Compensation Ordinance at the same time; and**
 - provide your FDH with free passage to return to his/her place of origin for home leave upon renewal of the contract.

DON'Ts

- ✗ Unilaterally impose or mutually reach a private agreement with your FDH on wages lower than that stipulated in the SEC.
- ✗ Ask your FDH to perform duties other than those domestic duties set out in the

Schedule of Accommodation and Domestic Duties attached to the SEC.

- * Ask your FDH to take up any other employment with any other person during his/her stay in Hong Kong within the contract period.

NOTE

✧ **The above three “DON'Ts” are criminal offences. Offenders are liable to prosecution and, upon conviction, to fines and imprisonment. For details, please refer to “Penalties” at page 14.**

TIPS

- ✧ You should comply with the provisions stipulated in the SEC as well as the Employment Ordinance (“EO”). As for the daily work requirements, you should discuss them with your FDH to reach agreement.
- ✧ You and your FDH should each keep a copy of the signed SEC. You should study carefully the provisions of the contract.
- ✧ You should not keep the personal identification documents (e.g. identity card, passport, etc.) of your FDH without your FDH's consent.

Employers' Responsibilities under the Employment Ordinance

FDHs are entitled to the **SAME rights and protection** as those of local employees provided under the EO. The employment terms offered to employees **shall not be lower than the prescribed minimum standards as stipulated in the EO**. Any term of employment you enter into with your FDH which purports to extinguish or reduce any right, benefit or protection conferred upon an employee by the EO shall be void.

Depending on the work requirements and performance of your FDH, you may offer him/her with better employment terms and protection than those provided under the EO and the SEC in order to enhance your FDH's motivation to work and establish harmonious labour relations.

NOTE

✧ An employer who contravenes the EO, for example, underpaying wages, not granting and paying statutory holidays and annual leave, illegally dismissing an FDH, etc., is liable to prosecution for criminal offences apart from having to compensate the FDH. For details, please refer to "Penalties" at page 14 and the "Concise Guide to the Employment Ordinance".

To fulfil your statutory responsibilities and avoid misunderstandings or disputes, you SHOULD note that:-

Wages

DOs

- ✧ **Pay wages** to your FDH **not later than 7 days** after the end of the wage period or termination of the contract.
- ✧ Keep proper wage and employment records of your FDH. You may refer to the booklet "Proper Keeping of Wage and Employment Records" for samples.

DON'Ts

- × Deduct wages of your FDH at will. The EO sets out stringent restrictions on wage deduction. For example, you may deduct wages of your FDH due to damage or

loss of your goods or property attributable to his/her negligence or default. The amount deducted in **each case shall not exceed HK\$300**. As for other restrictions on wage deduction, please refer to the “Practical Guide for Employment of Foreign Domestic Helpers”.

TIPS

- ✧ Pay wages by cheque or by autopayment into your FDH’s bank account, or by cash upon request.
- ✧ Provide a receipt for payment of wages and explain clearly to your FDH about the calculations. Ask your FDH to sign to acknowledge the mutually agreed amount of payment, and keep the receipt properly.

Holidays

Rest Days

DOs

- ✧ **Grant your FDH at least 1 rest day in every period of 7 days.**
- ✧ Obtain the consent of your FDH before arranging a substituted rest day to replace the original one. A substituted rest day shall be arranged within the same month before the original rest day or within 30 days after it.

DON'Ts

- ✗ Compel your FDH to work on a rest day.

Statutory Holidays

DOs

- ✧ Grant your FDH **12 statutory holidays**^{Note 1} in a year.
- ✧ Grant statutory holidays with holiday pay to your FDH if he/she has already been **employed for 3 months** preceding any of the statutory holidays.
- ✧ **Grant your FDH a statutory holiday even though he/she is not entitled to holiday pay due to employment less than 3 months.**
- ✧ Arrange an “alternative holiday” within 60 days before or after a statutory holiday if you require your FDH to work on the statutory holiday.
- ✧ If a statutory holiday falls on a rest day, a holiday should be granted on the day following the rest day.

DON'Ts

- ✗ Offer payment in lieu of granting a statutory holiday. In other words, “buy-out” of a holiday is not allowed.

^{Note 1} Statutory holidays refer to 1st January, Lunar New Year's Day, the 2nd and the 3rd day of Lunar New Year, Ching Ming Festival, Labour Day (1st May), Tuen Ng Festival, HKSAR Establishment Day (1st July), the day following the Chinese Mid-Autumn Festival, Chung Yeung Festival, National Day (1st October), and Chinese Winter Solstice Festival or Christmas Day (at the option of the employer).

Annual Leave

DOs

- ✧ Grant your FDH paid annual leave for every **12 months** of service at the following rate:
 - 7 days per year for the first and second years of service; and
 - starting from the third year, the number increases by 1 day per year up to a maximum of 14 days per year.
- ✧ Any rest day or statutory holiday falling within a period of annual leave will be counted as annual leave and another rest day or holiday must be appointed.

DON'Ts

- * Offer payment in lieu of granting the annual leave. (However, your FDH may choose to accept payment in lieu of his/her leave entitlement which exceeds 10 days.)

NOTE

- ✧ **Rest days, statutory holidays and paid annual leave are different holidays which cannot be replaced by one another.**
- ✧ Keep proper records of leave arrangements and payments.

TIPS

- ✧ Your FDH may work voluntarily on rest days. If your FDH is willing to work on a rest day, you shall agree with him/her on the compensation for working on that rest day in advance.
- ✧ Discuss and agree on arrangements for statutory holidays or annual leave with your FDH in advance to cater for the needs of both parties.
- ✧ Avoid making frequent changes to your FDH's holidays. It is desirable to let him/her take sufficient rest to recuperate. This may also enhance work efficiency. You may also save the trouble of arranging other days as substitutes.

Sickness Allowance

DOs

- ✧ Pay sickness allowance at a rate equivalent to four-fifths of the average daily wages of your FDH not later than the normal pay day if he/she:
 - has accumulated sufficient number of paid sickness days^{Note 2};
 - the sick leave taken is not less than 4 consecutive days; and
 - the sick leave is supported by an appropriate medical certificate.

TIPS

- ✧ Undertake appropriate medical insurance for your FDH to cover the costs of medical consultation, hospital maintenance and emergency dental treatment.

Maternity Protection

DOs

- ✧ Grant 10-week maternity leave with pay at a rate equivalent to four-fifths of the average daily wages of your FDH not later than the normal pay day if she:
 - has been employed for not less than 40 weeks immediately before the commencement of the scheduled maternity leave;
 - has been confirmed pregnant by a medical certificate and has given notice of pregnancy to you; and
 - has produced a medical certificate specifying the expected date of confinement upon your request.

Paid Paternity Leave (effective from 27 February 2015)

DOs

- ✧ Grant 3 days' paternity leave with pay for each confinement of his spouse/partner at a rate equivalent to four-fifths of the average daily wages of your male FDH if he:
 - is the father of a new-born child or a father-to-be ;
 - has given the required notification to the employer;
 - has been employed for not less than 40 weeks immediately before the day

- of paternity leave; and
- has provided the required document to the employer within the time limit.

Note 2 FDHs are employed under continuous contracts. They are entitled to paid sickness days which accumulate at the rate of 2 days for each complete month of service during the first 12 months of employment and 4 days for each complete month of service thereafter. Paid sickness days are allowed to accumulate up to a maximum of 120 days.

Termination of Employment Contract

DOs

- ✧ According to the provisions of the SEC, you should give your FDH **one month's written notice** or one month's payment in lieu of notice for termination of the employment contract, except in the case where the FDH has committed serious misconduct.
- ✧ Termination payments **normally include**
 - outstanding wages;
 - payment in lieu of notice, if any;
 - payment in lieu of any untaken annual leave;
 - long service payment/severance payment, where appropriate; and
 - any other sum due to your FDH under the employment contract, e.g. free return passage, food and travelling allowance, etc.

NOTE

- ✧ You may summarily dismiss your FDH without prior notice or payment in lieu of notice if your FDH, in relation to his/her employment, willfully disobeys a lawful and reasonable order; misconducts himself/herself; is guilty of fraud or dishonesty; or is habitually neglectful of duties. However, you should note that summary dismissal is a serious disciplinary action. It only applies to cases where your FDH has committed very serious misconduct or fails to improve after repeated warnings. In case there is dispute or your FDH lodges a claim, whether a summary dismissal is justified should be decided by the court.

TIPS

- ✧ Due to differences in culture and habits, FDHs may not be able to adjust to the new working environment within a short time. Moreover, given the live-in arrangement, both you and your FDH need time to adjust to each other. Mutual understanding and acceptance as well as sincere communication are conducive to maintaining a harmonious relationship.

Statutory Restrictions on Termination of Employment Contract

Maternity Protection	An employer shall not dismiss a female employee who has been confirmed pregnant and has served a notice of pregnancy.
Paid Sick Leave	An employer shall not dismiss an employee whilst the employee is on paid sick leave.
Giving evidence or information to the authorities	An employer shall not dismiss an employee by reason of his giving of evidence or information in any proceedings or inquiry in connection with the enforcement of the Employment Ordinance, work accidents or breach of work safety legislation.
Trade Union Activities	An employer shall not dismiss an employee for trade union membership and activities.
Injury at Work	An employer shall not dismiss an employee injured at work before having entered into an agreement with the employee for employees' compensation or before the issue of related certificates of assessment.

Severance Payment and Long Service Payment

DOs

Severance payment

- ✧ Pay severance payment if your FDH:
 - has **not less than 24 months of continuous service** with you prior to the termination; and
 - is dismissed or the contract expires without being renewed by reason of redundancy.

Long service payment

- ✧ Pay long service payment if your FDH has **not less than 5 years of continuous service** with you prior to the termination and
 - is dismissed or the contract is not renewed by reason other than serious misconduct or redundancy;
 - resigns on ground of ill health and is certified in a specified form by a registered medical practitioner or a registered Chinese medicine practitioner as permanently unfit for the present job;
 - resigns on ground of old age (i.e. aged 65 or above); or
 - dies in service.

NOTE

- ✧ The methods for calculating severance payment and long service payment are the same. The amount is equivalent to: monthly wages x 2/3 x years of service.
- ✧ Service of an incomplete year should be calculated on a pro-rata basis.
- ✧ The FDH is only entitled to either severance payment or long service payment if so qualified.

TIPS

- ✧ It is advisable to make provision for severance payment or long service payment in advance if necessary.

Employers' Responsibilities under the Employees' Compensation Ordinance

DOs

- ✧ Take out employees' compensation insurance policy for your FDH to cover your legal liabilities under the Employees' Compensation Ordinance ("ECO") and common law.
- ✧ Report any work injury or occupational disease suffered by your FDH by submitting a prescribed form to the Labour Department within 14 days of such an incident.
- ✧ Pay injured employee statutory compensation on time. The amount of periodical payments shall be equivalent to four-fifths of the difference between the FDH's monthly earnings at the time of the accident and the monthly earnings during the period of temporary incapacity.

Points to Note for Employers on Safety and Health Matters

- ✧ Effective from 1 January 2017, the SEC for FDHs includes a new clause on cleaning outward-facing windows to safeguard the occupational safety of FDHs. When requiring your FDH to clean the outside of any window which is not located on the ground level or adjacent to a balcony (on which it must be reasonably safe for your helper to work) or common corridor, this must be performed under the following conditions:-
 - The window being cleaned is fitted with a grille which is locked or secured in a manner that prevents the grille from being opened; and
 - No part of your FDH's body extends beyond the window ledge except the arms.
- ✧ Besides, light-duty working platform should be provided and used for works that are performed above ground; FDH's back should be kept straight when lifting heavy objects; hands should be washed immediately after touching poultry, raw meat and handling excreta. Suitable personal protective equipment should be provided and properly worn when using cleansing agents/ disinfectants or other dangerous substances.
- ✧ For enquiries on the safety and health of housework, please call the hotline of

the Occupational Safety and Health Council at 2739 9000.

Penalties

The major offences and the maximum penalties upon conviction under the EO, the ECO and the Immigration Ordinance (“IO”) are listed below:

<u>Offence</u>	<u>Maximum Penalties</u>
◆ Willfully and without reasonable excuse fails to pay wages on time or underpays wages to the FDH	A fine of HK\$350,000 and imprisonment for 3 years
◆ Unlawfully deducts the FDH's wages	A fine of HK\$100,000 and imprisonment for 1 year
◆ Fails to comply with the legislation to secure an insurance cover for the FDH	A fine of HK\$100,000 and imprisonment for 2 years
◆ Asks the FDH to work for another person other than the employer specified in the employment contract or asks him/her to perform non-domestic duties	A fine of HK\$50,000 and imprisonment for 2 years
◆ Makes false statement or representation to an Immigration Officer by proclaiming to pay MAW on the SEC but underpays the FDH during the employment period. (Any person who aids, abets, counsels or procures the commission by another person of any offence shall be guilty of the like offence)	A fine of HK\$150,000 and imprisonment for 14 years

NOTE: The above only includes **the major offences and penalties** under the EO, the ECO and the IO. As for other offences and penalties under these Ordinances or other relevant legislation which have not been stated in this leaflet, please refer to the relevant legislation for further information.

Employers should take note of the above and comply with the requirements.