Briefing on the Employment Rights and Benefits and Other Points-to-note for Foreign Domestic Helpers Working in Hong Kong



Outline of the Briefing

- 1. Standard Employment Contract
- Payment of Wages
- Rest Days, Holidays and Leaves
- 4. Sickness Allowance, Maternity Protection and Paternity Leave
- 5. Termination of Employment Contract
- 6. Labour Disputes
- 7. Important Advice
- 8. Further Information



Rights and Benefits of Foreign Domestic Helpers

The Hong Kong Special Administrative Region (HKSAR) Government is firmly committed to protecting the rights and benefits of all foreign domestic helpers (FDHs) working in Hong Kong.





Standard Employment Contract (SEC)



r	stract	

EMPLOYMENT CONTRACT

(For A Domestic Helper recruited from abroad)

991	and has the following terms:
1. The	Helper's place of origin for the purpose of this contract is
commencing	The Helper shall be employed by the Employer as a domestic helper for a period of two years on the date on which the Helper arrives in Hong Kong.
	The Helper shall be employed by the Employer as a domestic helper for a period of two
	encing on for employment with the same employer.
	[2018] [15] [15] [15] [15] [15] [15] [15] [15
commencing	The Helper shall be employed by the Employer as a domestic helper for a period of two years g on the date on which the Director of Immigration grants the Helper permission to remain is to begin employment under this contract.
3. The	Helper shall work and reside in the Employer's residence at
	The Helper shall only perform domestic duties as per the attached Schedule o tion and Domestic Duties for the Employer.
(b) employment	The Helper shall not take up, and shall not be required by the Employer to take up, any other with any other person.
admission to	The Employer and the Helper hereby acknowledge that Clause 4 (a) and (b) will form part on so of stay to be imposed on the Helper by the Immigration Department upon the Helper's owork in Hong Kong under this contract. A breach of one or both of the said conditions of started the Helper and/or any aider and abettor liable to criminal prosecution.
Kong Specia	The Employer shall pay the Helper wages of HKS
	The Empf oyer shall provide the Helper with suitable and furnished accommodation as per the nedule of Accommodation and Domestic Duties and food free of charge. If no food is provided rance of HKS
(c) shall acknow	The Employer shall provide a receipt for payment of wages and food allowance and the Helpe vledge receipt of the amount under his/her* signature.
	Helper shall be entitled to all rest days, statutory holidays, and paid annual leave as specified byment Ordinance, Chapter 57.
	The Employer shall provide the Helper with free passage from his/her* place of origin to Hong a termination or expiry of this contract, free return passage to his/her* place of origin.
date of his/h travelling is	A daily food and travelling allowance of HK\$100 per day shall be paid to the Helper from the er* departure from his/her* place of origin until the date of his/her* arrival at Hong Kong if the by the most direct route. The same payment shall be made when the Helper returns to his/her jin upon expiry or termination of this contract.
the Helper fr	Employer shall be responsible for the following fees and expenses (if any) for the departure of the his/her place of origin and entry into Hong Kong:—
(ii)	medical examination fees; authentication fees by the relevant Consulate; visa fee;
	insurance fee; administration fee or fee such as the Philippines Overseas Employment Administration fee, o other fees of similar nature imposed by the relevant government authorities; and others:

Standard Employment Contract

- The only piece of document recognised by the HKSAR Government for employing FDHs
- Specifies the terms and conditions of employment of FDHs in Hong Kong



Standard Employment Contract

- Minimum Allowable Wage (Clause 5(a))
- Employers must pay their FDHs not less than the prevailing Minimum Allowable Wage at the time of signing the contract



- Free food or food allowance in lieu (Clause 5(b))
- Free accommodation with reasonable privacy at your employer' s residence (Clause 5(b))
- Examples of unsuitable accommodation
 - > sleeping on made-do beds in the corridor with little privacy
 - > sharing a room with an adult/teenager of the opposite sex



Standard Employment Contract



- Free medical treatment (Clause 9(a)) for illness or personal injury suffered during the period of employment, including:
 - medical consultation
 - maintenance in hospital
 - > emergency dental treatment
- except for the period during which the FDH leaves Hong Kong of his/her own volition and for his/her own personal purposes

Standard Employment Contract 🛧



- Free passage (Clause 7)
 - > from your place of origin to Hong Kong for commencement of contract
 - > free return passage to your place of origin on termination or expiry of contract
 - > daily food and travelling allowance of \$100



Standard Employment Contract

- Reimbursement of expenses for obtaining all necessary documents (Clause 8), such as
 - medical examination fees
 - authentication fees by the relevant Consulate
 - visa fees
 - insurance fees
 - administrations fees such as the Philippines Overseas Employment Administration fee, or other fees of similar nature imposed by the relevant government authorities
 - > other items specified in Clause 8 of the contract



Standard Employment Contract 4



A clause on cleaning outward-facing windows

(Item 6 in the *Schedule of Accommodation and Domestic Duties*)

- 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 the FDH's body extends beyond the window ledge except the arms





Standard Employment Contract 🛧 🧥



Vacation Leave Upon Contract Renewal (Clause 13)

- If both parties agree to enter into new contract upon expiry existing contract, the FDH shall, upon expiry of an old contract and before the commencement of a new contract*, return to his/her place of origin for vacation for not less than 7 days at the expense of the employer
- *Unless prior approval for extension of stay in Hong Kong is given by the Director of Immigration
- Whether the vacation leave is paid or unpaid would depend on the terms agreed in the SEC

Standard Employment Contract



Points to note for the Standard Employment Contract:

- Make sure that you understand the contents of the SEC before signing
- Keep the original copy of your signed SEC
- Must NOT provide any false information (including your wages and employment address) in your SEC or else you may be liable for criminal offence for doing so

Entitlements under the Employment Ordinance







Payment of Wages



Form of Payment

Wages can be paid in the form of

- > Cheque
- > Auto-payment
- Cash



Time of Payment

- Wages shall become due on the expiry of the last day of the wage period
- Wages should be paid not later than <u>7 days</u> after the end of the wage period

Liability of Late Payment



If the employer fails to pay the FDH wages within 7 days from the due date of payment, he/she is:

- > required to pay interest on outstanding wages
- > liable to prosecution and, upon conviction, to a fine of HK\$350,000 and to imprisonment for three years



Suspected Underpayment of Wages



If wages paid is less than that stipulated in the employment contract:

- Check with the employer;
- > Do NOT acknowledge receipt of wages which has not been paid; and
- > In case of underpayment report to Labour Relations Division of the Labour Department



Deduction of Wages

- Due to damage to or loss of employer's goods or property because of the FDH's negligence or default
 - Subject to a limit of HK\$300 in any one case;
 - Total deductions should <u>NOT</u> exceed one-fourth of the wages in the wage period

Deduction of Wages

- Absence from work
 - NOT exceeding a sum proportionate to the period of absence
- Recovery of advance or over-payment of wages
 - total sum should <u>NOT</u> exceed one-fourth of the wages in the wage period
- Recovery of loan made to the FDH with the FDH's written request
- Deductions authorised under any enactment to be made from the wages of the FDH



Deduction of Wages

 Total deductions, excluding absence, made in any one wage period must <u>NOT</u> exceed 50% of the wages payable for that period

 An employer who makes illegal deduction from wages of an employee is liable to prosecution and, upon conviction, to a fine of HK\$100,000 and to imprisonment for one year





Rest Days, Holidays & Leaves



Rest Days

- An FDH should have at least one rest day in every period of 7 days
- A rest day is a continuous period of not less than 24 hours
- Rest days can be granted on regular or irregular basis



Rest Days

- Employer must <u>NOT</u> compel an FDH to work on rest days, or he/she would be in breach of the law
- An FDH may work voluntarily on his/her rest days
- With the consent of the FDH, rest day can be substituted on another day
- Substituted rest day must be granted within the same month before the original rest day or within 30 days after it



All FDHs, irrespective of their length of services, are entitled to the following statutory holidays in a year:

- 1 January
- 2. Lunar New Year (LNY)'s Day
- 3. The second day of LNY
- 4. The third day of LNY
- 5. Ching Ming Festival
- 6. Labour Day (1 May)
- 7. The Birthday of the Buddha (added since 2022)



- 8. Tuen Ng Festival
- 9. HKSAR Establishment Day (1 July)
- 10. The day following the Chinese Mid-Autumn Festival
- 11. Chung Yeung Festival
- 12. National Day (1 October)
- 13. Chinese Winter Solstice Festival or Christmas Day
- 14. The first weekday after Christmas day (added since 2024)

Starting from 2022, statutory holidays will further be increased progressively to 17 days per year.

<u>Year</u>	Newly added statutory holidays
2022	The Birthday of the Buddha
2024	The first weekday after Christmas day
2026	Easter Monday
2028	Good Friday
2030	The day following Good Friday



- Employer should grant the FDH statutory holidays regardless of how long he/she has worked for the employer
- If the FDH has been employed continuously by the employer for 3 months or more prior to the statutory holiday, he/she is entitled to holiday pay

- If an FDH has worked on a statutory holiday, the employer must give him/her alternative holiday. An alternative holiday should be granted within 60 days before or after the statutory holiday, and with not less than 48 hours prior notice
- Payment in lieu of granting a statutory holiday is <u>NOT</u> permitted
- If a statutory holiday falls on a rest day, a holiday should be granted on the day following the rest day

Annual Leave

An FDH is entitled to paid annual leave after serving every period of 12 months with the same employer.

Years of Service	1-2	3	4	5	6	7	8	9 or above
No. of Days of Paid Annual Leave	7	8	9	10	11	12	13	14





Sickness Allowance, Maternity Protection & Paternity Leave



Sickness Allowance

An FDH is entitled to sickness allowance if:

- 1. he/she has accumulated sufficient number of paid sickness days;
- 2. the sick leave taken is not less than 4 consecutive days; AND
- 3. the sick leave is supported by an appropriate medical certificate



Sickness Allowance

The way to accumulate paid sickness days:

Number of Months of Service	Paid Sickness Days Accumulated Each Month
First 12 Months	2 days
Thereafter	4 days

Maximum number of days to be accumulated: 120 days

Sickness Allowance

Daily rate of sickness allowance =

$$\frac{4}{5}$$
 x average daily wages of the FDH

It should be paid not later than the normal pay day

Maternity Protection

A female FDH is eligible for a continuous period of 14 weeks' paid maternity leave* if she:

- 1. has been employed for **not less than** immediately before the commencement of scheduled maternity leave;
- 2. has given **notice of pregnancy** and her intention to take maternity leave to her employer after the pregnancy has been confirmed (e.g. presenting a medical certificate confirming her pregnancy to the employer); AND
- 3. has produced a medical certificate specifying the expected date of confinement if so required by the employer.

*Female FDHs whose confinement occurs before 11 December 2020 are entitled to 10 weeks' paid maternity leave.



Maternity Protection

Daily rate of maternity leave pay =

$$\frac{4}{5}$$
 x average daily wages of the FDH

 It should be paid not later than the normal pay day

Paternity Leave

- An eligible male FDH is entitled to 5 days of paternity leave for each confinement of his spouse / partner if he:
 - has been employed for not less than 40 weeks immediately before the day of paternity leave;
 AND
 - has provided the birth certificate of the child, with his name entered as the child's father
- Daily rate of paternity leave pay =

 $\frac{4}{5}$ x average daily wages of the FDH







Termination of Employment Contract



Termination of Employment Contract



Either party may terminate the contract with:

- One month's notice in writing; or
- > One month's wages in lieu of notice

Termination Payments

Termination payments may 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
- > Any other payments under the employment contract, e.g. free return passage, food and traveling allowance

Summary Dismissal Without Notice or Payment in lieu

An employer may terminate the contract without notice or payment in lieu if the FDH:

- willfully disobeys a lawful and reasonable order;
- misconducts himself/herself;
- > is guilty of fraud or dishonesty; **OR**
- > is habitually neglectful of his/her duties



Resignation Without Notice or Payment in lieu

An FDH may terminate the contract without notice or payment in lieu to the employer if he/she:

- reasonably fears physical danger by violence or disease;
- > is subjected to ill-treatment by employer; **OR**
- has been employed for not less than 5 years and is medically certified as being permanently unfit for the type of work engaged

Severance Payment

An FDH is entitled to severance payment if he/she:

- has not less than 24 months of service with the same employer prior to the termination; AND
- > is dismissed or the contract is not being renewed by reason of redundancy

Long Service Payment

A FDH is entitled to long service payment if he/she has worked continuously for not less than five years, and he/she:

- is dismissed or the fixed term contract is not being renewed by reason other than serious misconduct or redundancy;
- dies while in employment;
- > resigns on ground of ill health and able to produce appropriate medical certificate; **OR**
- > resigns on ground of old age when he/she is 65



Calculation of Severance Payment or Long Service Payment

- (Monthly wages $x \frac{2}{3}$) x Reckonable years of services
- Service of an incomplete year should be calculated on a pro-rata basis
- An FDH will NOT be <u>simultaneously</u> entitled to both Severance Payment and Long Service Payment



Statutory Restrictions on Termination of Employment Contract

An employer shall **NOT** dismiss an FDH:

- who has been confirmed pregnant and has served a notice of pregnancy;
- who is on paid sick leave;
- by reason of his/her giving of evidence or information due to the enforcement of relevant labour legislation;
- for trade union membership and activities;
- > before having entered into an agreement with the FDH for employee's compensation or before the issue of a certificate of

Statutory Restrictions on Termination of Employment Contract

Offences and Penalties



 An employer dismissing an FDH under the above circumstances is liable to prosecution and, upon conviction, to a fine of HK\$100,000

Employment Protection

An FDH may claim for remedies of Employment Protection against his / her employer under the following situation:

- unreasonable dismissal (employed for not less than 24 months)
- unreasonable and unlawful dismissal



Employment Protection

The 5 valid reasons for dismissal are:

- the conduct of the employee
- the capability or qualifications of the employee for performing his/her work
- redundancy or other genuine operational requirements of the business
- statutory requirements (i.e. it would be contrary to the law to allow an employee to continue to work in his/her original position)
- other substantial reasons



Employment Protection

Remedies for Employment Protection, to be awarded by the Labour Tribunal, include:

- > Reinstatement
- > Re-engagement
- > Terminal payments
- Compensation (only applicable for the case of unreasonable and unlawful dismissal)





Labour Disputes



Labour Disputes 5

In case of dispute, you may approach the branch office of Labour Relations Division nearest to the place of your employer's residence.

- > free consultation
- free & voluntary conciliation

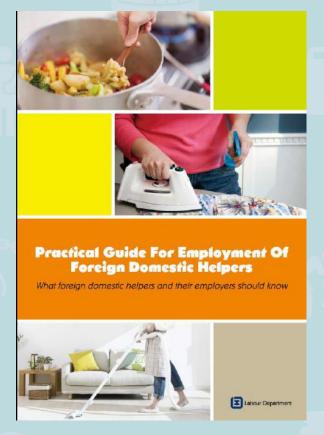
Labour Disputes

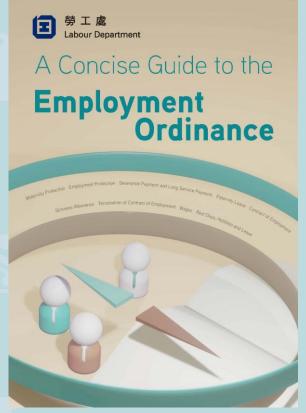
For claims under the Employment Ordinance and employment contract, if no settlement could be reached through conciliation

the claims will be referred to the Labour Tribunal or Minor Employment Claims Adjudication Board for adjudication

Practical Guide & Concise Guide

- The above information sets out only the highlights of the major statutory and contractual provisions with which FDHs are commonly concerned
- For details of employment rights and benefits, please refer to the Practical Guide and the EO Concise Guide











Important Advice



Live-in Requirement & Restriction on Deployment

- You shall <u>ONLY</u>
 - > perform domestic duties
 - > for your employer named on your visa, AND
 - reside in the employer's residence at the address stated on Clause 3 of the Standard Employment Contract
- You should <u>NOT</u> take up part-time employment
- Illegal deployment of work is prohibited



Do NOT Abuse the Arrangement for Premature Termination of Contract

- The Immigration Department (ImmD) closely scrutinises visa applications, including the number and reasons for premature contract termination in the last 12 months
- If an FDH is suspected of abusing the arrangement without justifiable reasons
 → his/her future applications for work as an FDH in Hong Kong may be refused
- If suspected of "job-hopping", an FDH may be requested to provide supporting documents to ImmD, including but not limited to the following:
 - previous Standard Employment Contracts
 - previous visa applications or visits to Hong Kong
 - records on termination of employment (e.g. reference letters, resignation/ termination letters, settlement forms signed with employers, copy of air ticket received from employers)
 - any other employment records received from employers (e.g. wage records, holiday and leave records)

Keeping of Personal Identification Documents and Employment Records

- Keep your passport and HKID Card yourself (No other person should keep your identification documents for you)
- Keep your employment records to safeguard your employment rights, including:
 - wage records
 - holiday and sick leave records
 - > records on termination of employment
- Do <u>NOT</u> sign documents that you do not understand or agree with

Employment Agency (EA)

- Maximum commission an EA may receive from each job seeker: 10% of his/her first month's wages after successful placement
- Contravention of the relevant law is an offence, the EA shall be liable on conviction to a maximum penalty of a fine of HK\$350,000 and to imprisonment for three years

Employment Agency (EA)

- Do <u>NOT</u> pay the EA any expenses or fees other than the prescribed commission
 - e.g. registration fees, reservations fees, photocopying fees
- Do <u>NOT</u> pay the employment agency
 - > through a third party, including your employer, OR
 - by borrowing money from any financial services companies even when requested or suggested by the EA

Code of Practice for Employment Agencies (CoP)

The CoP was issued to enhance protection of jobseekers. When using EAs' services, all EAs must:

- Draw up service agreement with job-seekers
- Provide payment receipts to job-seekers
- Return the original signed Standard Employment Contract to job-seekers
- Provide job-seekers with a sample Standard Employment Contract in their mother language



Code of Practice for Employment Agencies (CoP)

The CoP was issued to enhance protection of jobseekers. When using EAs' services, all EAs must:

- Brief job-seekers of their rights and obligations as well as provide them with reference materials
- Avoid involvement in financial affairs of job-seekers
- NOT withhold job-seekers' passports or personal identification documents

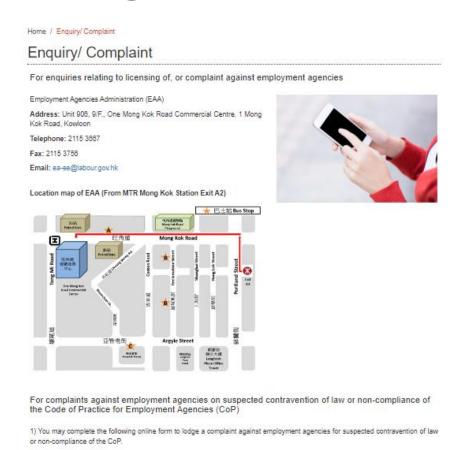


Employment Agencies Portal www.eaa.labour.gov.hk

- Access to information on engaging EAs in Tagalog, Indonesian, Thai, etc.
- Check if an EA has a valid licence in Hong Kong
- Shortlist EAs by different search criteria such as district and placement type
- Obtain useful reference materials and publications, including: the Code of Practice for EAs, press releases related to conviction of EAs, revocation / refusal of renewal of EA licences, etc.

Complaints against Employment Agencies

You may file complaints against EAs on unlicensed operation, overcharging commission or non-compliance of the Code of Practice for EAs via the Online Complaint Form at the EA Portal.



Online Complaint Form





Work Injuries

- If an employee sustains an injury or dies as a result of an accident <u>arising out of and in the course of his/her employment</u>
 - his/ her employer is in general liable to pay compensation under the Employees' Compensation Ordinance
- An injured employee should give the employer notice of the accident as soon as possible
- Failure to give prompt notice may jeopardise and delay the claim of employees' compensation

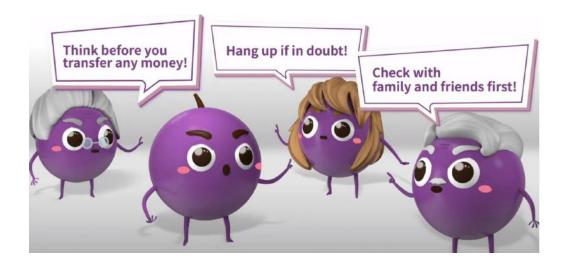
Financial Management



- Manage your personal finances prudently and avoid taking out loans
- Consider affordability and repayment ability before borrowing to avoid piling up of debts
- Do NOT let employment agencies get involved in your financial affairs
- Do NOT sign any financial documents that you do not understand or agree

Stay Alert to Scams

- Only conduct transactions with trustworthy and reliable parties
- Do <u>NOT</u> disclose to strangers your personal information such as your name, ID card number, bank account number and PIN
- If you have any doubt, cease the transaction and consider reporting to the Police









Anti-Money Laundering

Do <u>NOT</u> rent, lend or sell your bank accounts to others

Prevent your account from being abused for unlawful purposes

Source:

www.police.gov.hk/ppp_en/04_crime_matters/am
l.html



Useful Numbers

If you encounter any physical abuse or your personal safety is at risk

> call the Police emergency hotline 2 999

If you are

- illegally deployed to work in HK or in places outside HK, regardless of with your employer or another person
- required to take up non-domestic duties
- > call ImmD hotline **2** 2824 1551



Enquiries & Complaints

For enquiries and complaints regarding <u>labour</u> <u>matters</u>, please seek advice from the Labour Department through:

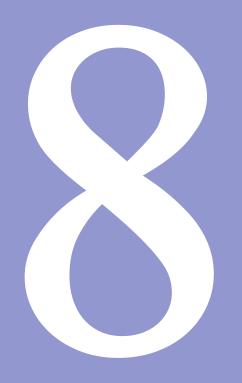
- Dedicated FDH Hotline:
 - 2157 9537 (with interpretation service in 11 languages from 8 am to 10 pm)
- Enquiry email:
 fdh-enquiry@labour.gov.hk
 - Branch offices of Labour Relations
 Division

Handy Information Card

You should keep this card closely to yourself and report illegal acts to the relevant departments promptly.









Further Information

Foreign Domestic Helpers Portal www.fdh.labour.gov.hk

The portal provides information relating to employment of FDHs in Hong Kong, including:

- policy on importation of FDHs
- publication and publicity materials on the rights and obligations of FDHs and their employers under the labour laws and the Standard Employment Contract for hiring FDHs





Online Enquiry / Complaint Form

You may complete the following online form to file an enquiry/complaint relating to your employment in Hong Kong:

CONTACT US

P You can make enquiries/complaints relating to employment of foreign domestic helpers in Hong Kong via the following channels:

24-hour Hotline (handled by "1823"): 2717 1771

2157 9537 (Dedicated hotline for foreign domestic helpers)

Email: fdh-enquiry@labour.gov.hk

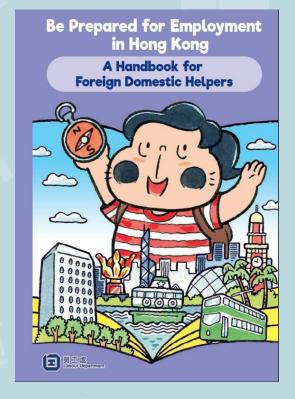
Fax: Online Form: Online Enquiry/Complaint Form
(Dedicated channel for foreign domestic helpers)



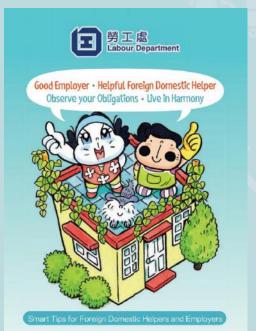
Tips for Employers of Foreign Domestic Helpers — The responsibilities of taking out employees' compensation insurance and providing free medical treatment

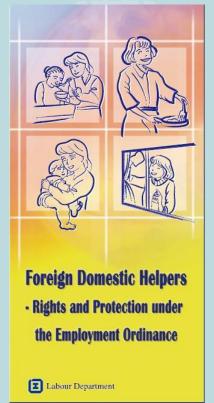
Carefully select your Employment Agencies Beware of Employment Traps

Other FDH Publications













Videos - Practical Kit for FDHs in Hong Kong

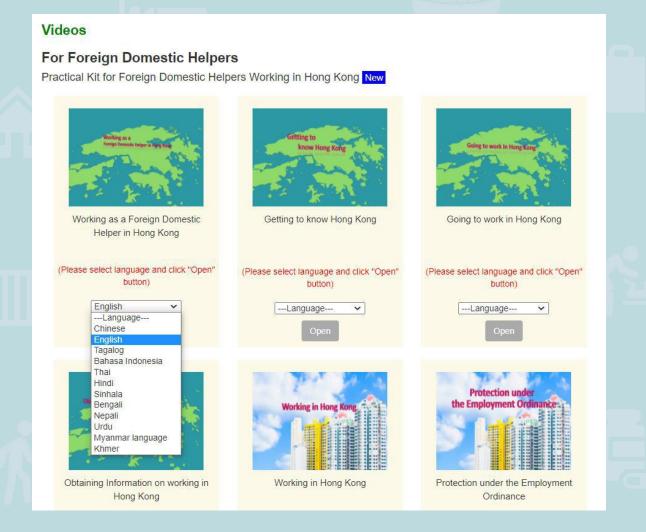








Videos - Practical Kit for FDHs in Hong Kong www.fdh.labour.gov.hk/en/publication.html#5



Q & A Session



