

**Obligations and Rights of Employers and Foreign Domestic Helpers under
the Employment Ordinance and Standard Employment Contract
and Other Information
relating to Coronavirus Disease (“COVID-19”)**

Q1: The Government announced on 23 March 2020 enhanced anti-epidemic measures, including denial of entry to Hong Kong for all non-Hong Kong residents coming from overseas countries and regions by plane with effect from 0.00am on 25 March 2020.

Will a foreign domestic helper (“FDH”) planning to go to Hong Kong to commence a new contract or continue the current contract after vacation leave in his/her place of origin be affected?

A1: Regarding the immigration restriction imposed on all non-Hong Kong residents coming from overseas countries and regions with effect from 0.00am on 25 March 2020, FDHs holding a valid travel document and a valid visa for employment in Hong Kong and meeting general immigration regulations are allowed to enter/re-enter Hong Kong. They are not subject to the above mentioned immigration restriction.

The Government announced on 18 July 2020 the gazettal of the specifications under the Prevention and Control of Disease (Regulation of Cross-boundary Conveyances and Travellers) Regulation (Cap. 599H) (“the Regulation”) to impose conditions based on public health grounds in order to further reduce the number of imported cases of COVID-19. A traveller who, on the day on which the traveller boarded a civil aviation aircraft that arrives at, or is about to arrive at Hong Kong, or during the 14 days before that day, has stayed in any specified place (i.e. Bangladesh, India, Indonesia, Nepal, Pakistan, the Philippines and South Africa), he/she must meet the conditions specified by the Secretary for Food and Health. The relevant specifications came into effect at 0.00am on 25 July 2020.

The Government issued a press release on 22 July 2020 to announce that the Secretary for Food and Health published in the gazette new specifications to maintain the conditions imposed and include Kazakhstan and the United States of America as additional specified places with effect from 0.00am on 29 July 2020.

The travellers to whom the specifications under the Regulation apply include incoming FDHs as referred to in the preceding paragraph.

Relevant press releases

22 July 2020:

www.info.gov.hk/gia/general/202007/22/P2020072200750.htm

18 July 2020:

www.info.gov.hk/gia/general/202007/18/P2020071800038.htm

Q2(a): For an FDH to whom the specifications apply, what should he/she prepare for his/her departure to Hong Kong? What are the issues that his/her employer and employment agency (“EA”) (if applicable) should pay attention to?

A2(a): For an FDH to whom the specifications apply, before the FDH is checked-in for a flight to Hong Kong, he/she should produce the following documents to the operator of the aircraft for boarding the aircraft:

- (1) a letter or certificate in English or Chinese issued by a laboratory or healthcare institution bearing the name and identity card or passport number of the relevant FDH to show that:
 - (a) the relevant FDH underwent a nucleic acid test for COVID-19 the sample for which was taken from the relevant FDH within 72 hours before the scheduled time of departure of the specified aircraft;
 - (b) the test conducted on the sample is a nucleic acid test for COVID-19; and
 - (c) the result of the test is that the relevant FDH was tested negative for COVID-19;
- (2) the original of the report for the test issued by the laboratory or healthcare institution bearing the name and identity card or passport number of the relevant FDH;
- (3) a letter in English or Chinese issued by the relevant authority of the government of the place in which the laboratory or healthcare institution is located certifying that the laboratory or healthcare institution is recognised or approved by the government; and
- (4) the relevant FDH has confirmation in English or Chinese of room reservation in a **hotel** in Hong Kong for not less than 14 days starting on the day of the arrival of the relevant FDH in Hong Kong.

The relevant FDHs arriving at Hong Kong will be mandated to wait for their test results at a designated location after their deep throat saliva samples are collected for conducting testing for COVID-19 at the Temporary Specimen Collection Centre of the Department of Health (“DH”) pursuant to the Prevention and Control of Disease Ordinance (Cap. 599). If their test results are negative, they will be allowed to go to the hotel for which they made the reservation to continue the 14-day compulsory quarantine until completion.

The Labour Department (“LD”) reminds FDHs, employers and EAs to take note of the aforementioned specifications and make necessary preparations beforehand. If an FDH is not able to meet any of the conditions specified by the Secretary for Food and Health, he/she may not be allowed to board the flight to Hong Kong and newly arrived FDHs may be denied entry into Hong Kong upon arrival. Relevant FDHs are reminded to stay at the hotel address as stated in the quarantine order during the 14-day compulsory quarantine.

There is no need to obtain consent from LD for the relevant FDHs to stay in a hotel (a place other than their employers’ residence) to undergo compulsory quarantine. For details, please refer to the answer to Q2(c).

For EAs, they have the responsibility to provide correct information to employers and FDH. They should remind and/or assist employers in making relevant arrangements to comply with the relevant specifications. If there is evidence that an EA has violated the requirements in the Code of Practice for Employment Agencies (“CoP”), the EA concerned will be penalised.

A list of hotels accepting reservations by inbound travellers from specified places under the Regulation is available on the Government’s “COVID-19 Thematic Website” (www.coronavirus.gov.hk/pdf/inbound/hotels_en.pdf). The listed hotels accept guestrooms reservations by inbound travellers from specified places to undergo 14-day compulsory quarantine, and undertake to adhere to the “Health Advice on Prevention of COVID-19 for Hotel Industry (Interim)” published by the DH. The list of hotels serves as reference and will be updated from time to time. Employers and EAs can also arrange for their FDHs to undergo compulsory quarantine at other hotels licensed by the Office of the Licensing Authority of the Home Affairs Department.

Q2(b): Who will bear the cost of the nucleic acid test for FDHs?

A2(b): Employers should bear the cost of the nucleic acid test for their FDHs. Employers applying to the Immigration Department (“ImmD”) to employ domestic helpers will be required to sign an undertaking to the Government, indicating that they will comply with the relevant specifications and bear the cost of the nucleic acid test when arranging for their FDHs to come to Hong Kong, in case their FDHs have stayed in a specified place on the day on which they boarded an aircraft that arrives at, or is about to arrive at Hong Kong, or during the 14 days before that day. Employers found to be in breach of the undertaking may be given an adverse record and ImmD may refuse their future applications for employment of FDHs.

Employers are also reminded to comply with their obligations under the Standard Employment Contract (“SEC”), including bearing the accommodation expenses and providing food allowance to FDHs during the FDHs’ compulsory quarantine.

Q2(c): For an FDH to whom the specifications do not apply (i.e. the FDH, on the day on which he/she boarded a civil aviation aircraft that arrives at, or is about to arrive at Hong Kong, or during the 14 days before that day, has not stayed in any specified place), are employers still required to arrange their FDHs to undergo compulsory quarantine? Do they need the consent of LD?

A2(c): The Government has earlier required all Hong Kong residents (including FDHs) arriving in Hong Kong on or after 19 March 2020 who have been to any overseas countries or regions in the past 14 days to undergo 14-day compulsory quarantine at designated places (home or other accommodation) under the Compulsory Quarantine of Persons Arriving at Hong Kong from Foreign Places Regulation (Cap. 599E). Therefore, even if the specifications under the Regulation do not apply to the FDH, he/she is still required to undergo compulsory quarantine at a designated place as required under Cap. 599E.

In the press releases issued on 18 and 19 March 2020, LD appealed to FDH employers and EAs (if applicable) to make necessary arrangement to accommodate compulsory quarantine for FDHs arriving in Hong Kong. Employers or their EAs should educate FDHs to stay at the place of quarantine at all times and follow the health advice of the DH throughout the compulsory quarantine.

The Government appeals to employers, especially those who live with elderly persons or children, to arrange for their FDHs to undergo compulsory quarantine at a suitable place outside their residence as far as possible to fulfill the quarantine requirement, and make necessary preparation beforehand. When identifying a suitable place for quarantine purpose, LD reminds employers and EAs to refer to the guidelines for Home Confinee (www.chp.gov.hk/files/pdf/infection_control_advice.pdf) issued by the Centre of Health Protection of DH.

If an employer is unable to provide suitable accommodation to his/her FDH, his/her application for employing the FDH may be refused. EAs provide job matching and referral services to employers. They have the responsibility to provide correct information to employers and FDHs, and should remind and/or assist employers in making relevant arrangements. If there is evidence that an EA violates the requirements in the CoP, the EA concerned will be penalised.

As stipulated in Clause 3 of the SEC, FDHs shall work and reside in the employer's residence at the address as specified in the contract throughout his/her employment in Hong Kong. In entering into the SEC, both the employer and FDH should sign to indicate agreement to the relevant terms. In addition, when making an application to ImmD for employing an FDH, the employer is required to undertake to the Government that his/her FDH would only reside in the address stated in the SEC. The FDH is also required to undertake that he/she would only reside in the employer's residence as stated in the SEC.

Generally speaking, pursuant to Clause 15 of the SEC, save for the variations stipulated in Clause 15(a) to (d), any variation or addition to the terms of the contract during its duration (including the Schedule of Accommodation and Domestic Duties of the SEC) shall be void unless made with the prior consent of the Commissioner for Labour. Arranging an FDH to reside outside of the employer's address as stated in Clause 3 of the SEC does not fall within the items listed in Clause 15(a) to (d). Therefore, employers and FDHs must seek prior consent from the Commissioner for Labour to change the relevant accommodation arrangement.

Nevertheless, as the quarantine order is made by an authorised officer appointed by the Director of Health under the Compulsory Quarantine of Persons Arriving at Hong Kong from Foreign Places Regulation, and a person placed under the quarantine order shall be required by law to stay in a place set out in the quarantine order, as such, the Commissioner

for Labour's prior consent is not required if the FDH is undergoing compulsory quarantine in a place other than the employer's residence as stated in the quarantine order.

Relevant press releases

19 March 2020:

www.info.gov.hk/gia/general/202003/19/P2020031900394.htm

18 March 2020:

www.info.gov.hk/gia/general/202003/18/P2020031800890.htm

Q2(d): LD's press release on 18 July 2020 mentioned that employers applying to ImmD to employ FDHs would be required to sign an undertaking to the Government. What is the purpose of the undertaking? Where could employers download or obtain the undertaking?

A2(d): To tie in with the specifications under the Regulation, ImmD implemented a new arrangement for applications for FDH visas. Employers applying for a visa for their FDHs (including those applications having been submitted but pending approval or issuance of visas) will be required to sign an undertaking to indicate that they will arrange for the nucleic acid test and hotel quarantine for their FDHs, and be responsible for the relevant costs if their FDHs are arriving on or after 25 July 2020. If employers are found to have breached the undertaking, their FDHs may be denied entry into Hong Kong and future applications from those employers for employing an FDH may be refused.

The undertaking can be downloaded from the website of ImmD (www.immd.gov.hk/eng/forms/hk-visas/foreign-domestic-helpers.html) and obtained free of charge from ImmD Headquarters and Immigration Branch Offices.

Relevant press release

21 July 2020:

www.info.gov.hk/gia/general/202007/21/P2020072100671.htm

Q3: What are the issues that employers and FDHs should pay attention to should an FDH be arranged to undergo compulsory quarantine outside the employer’s residence? Can the employer arrange the FDH to take no pay leave?

A3: During an FDH’s compulsory quarantine, the employer should comply with the requirements of the SEC, including bearing the accommodation expenses and providing food allowance to the FDH.

The Employment Ordinance (“EO”) does not specify the arrangement of wages for FDHs undergoing compulsory quarantine. According to EO, wages generally means all remuneration in terms of money payable to an employee in respect of work done or to be done. In view of the special circumstances arising from the pandemic, LD encourages employers to be considerate and show understanding to such employees’ situation and make flexible arrangements.

EO has clear provisions on granting rest days, statutory holidays and paid annual leave by employers. Employer must abide by these provisions when granting these holidays. Details could be found in Chapter 4: Rest Days, Holidays and Leave of “A Concise Guide to the Employment Ordinance” (www.labour.gov.hk/eng/public/wcp/ConciseGuide/04.pdf).

EO does not have provisions on no pay leave. If an employer needs to arrange no pay leave for his/her FDH under certain special circumstances, he/she should discuss with the FDH in advance the arrangements for no pay leave to reach mutual agreement. In addition, both parties should pay attention to the relevant provisions of EO regarding entitlement to severance payment if an employee is laid off¹.

LD encourages employers and FDHs to have candid discussions on employment matters during the FDHs’ compulsory quarantine in order to reach mutually agreed arrangements and maintain good employer-employee relations.

¹ According to EO, an employee who has been employed for not less than 24 months under a continuous contract and has been laid off is eligible for severance payment. If an employee is employed on such terms and conditions that his/her remuneration depends on his/her being provided by the employer with work of the kind he/she is employed to do, he/she shall be taken to be laid off if the total number of days on which no work is provided or no wages is paid exceeds:

- half of the total number of normal working days in any four consecutive weeks; or
- one-third of the total number of normal working days in any 26 consecutive weeks.

Rest days, annual leave and statutory holidays should not be counted as normal working days during the above periods.

Q4: If an FDH is infected by COVID-19, what are the responsibilities of the employer? Can the FDH be dismissed?

A4: Where an FDH has contracted the disease, his/her employer should grant him/her sick leave in accordance with EO and the SEC. Under EO, an FDH employed under a continuous contract is entitled to sickness allowance (daily rate equivalent to four-fifths of the FDH's average daily wages) if –

- the sick leave is supported by an appropriate medical certificate²;
- the sick leave is not less than four consecutive days; and
- the FDH has accumulated sufficient number of paid sickness days.

Where a sick FDH has not accumulated sufficient paid sickness days to cover the period of sick leave, we appeal to the employer to be compassionate and consider granting the FDH paid sick leave.

Furthermore, under Clause 9(a) of the SEC, in the event that the FDH is ill or suffers personal injury during the period of employment (except for the period during which the FDH leaves Hong Kong of his/her own volition and for his/her own personal purposes), regardless of whether this arises out of employment, the employer shall provide free medical treatment to the FDH. Free medical treatment includes medical consultation, maintenance in hospital and emergency dental treatment. The FDH shall accept medical treatment provided by any registered medical practitioner.

An employer is prohibited from terminating the contract of employment of an FDH on his/her paid sickness day, except in cases of summary dismissal due to the FDH's serious misconduct. If an employer contravenes the provisions of EO, he/she is liable to criminal prosecution and may face civil claims. In addition, the employer may have breached the Disability Discrimination Ordinance implemented and enforced by the Equal Opportunities Commission.

² Appropriate medical certificate refers to a medical certificate issued by a registered medical practitioner, registered Chinese medicine practitioner or a registered dentist. It should specify the number of days on which, and the nature of the sickness or injury on account of which, the employee is unfit for work

Q5: Could an employer change his/her FDH's rest day or refuse to grant a rest day to his/her FDH?

A5: In view of the COVID-19 pandemic, the Government announced on 28 January 2020 a series of anti-epidemic measures, including reducing contacts among people in Hong Kong. The Government urged the public to maintain at all times strict personal and environmental hygiene, go out less and avoid social activities such as meal gatherings or other gatherings etc., and maintain an appropriate social distance with other people as far as possible for personal protection against infection and prevention of the spread of the disease in the community. To safeguard FDHs' health, LD issued press releases on 30 January and 27 March 2020 respectively appealing to FDHs to stay home for rest on their rest day as far as possible. If it is necessary to go out, they are advised to wear a surgical mask and to refrain from gathering in public places and staying in crowded places. FDHs may consider discussing rest day arrangements with their employers, including substituting another rest day, so as to avoid the health risk of gathering in crowded places.

LD also reminded employers in the press releases that an employer who compels an FDH to work on a rest day contravenes the provisions of EO and is liable to prosecution and, upon conviction, to a maximum fine of \$50,000. According to EO, if an employer requires his/her FDH to work on a rest day, he/she shall substitute another rest day within 30 days after the original rest day, and shall notify the FDH of the substituted date within 48 hours of the original rest day.

Besides, an employer may substitute another rest day with the consent of the FDH, in which case it must be within the same month before the original rest day or within 30 days after it.

LD appeals to employers to explain the special circumstances in discussing rest day arrangements with their FDHs and calls for mutual understanding in joining hands to fight the virus.

Relevant press releases

27 March 2020:

www.info.gov.hk/gia/general/202003/27/P2020032700238.htm

30 January 2020:

www.info.gov.hk/gia/general/202001/30/P2020013000428.htm

29 January 2020:

www.info.gov.hk/gia/general/202001/29/P2020012900006.htm

Q6: How would the Government assist FDHs and their employers to cope with the special circumstances arising from the COVID-19 pandemic?

A6: The Government announced on 30 June 2020 to extend, with immediate effect, the previous measures to assist FDHs and their employers to cope with the special circumstances arising from the COVID-19 pandemic.

Extension of validity period of existing contracts

The flexibility arrangement announced on 4 February 2020 and 19 March 2020 to enable employers to extend the validity period of the existing contracts with their outgoing FDHs will be further extended. The flexibility arrangement aims to assist those employers whose contracts with their existing FDHs are due to expire soon, but are in the situation where the newly hired FDHs cannot fly in to commence the new contract. The Commissioner for Labour has now given further in-principle consent for all FDH contracts that will expire on or before 30 September 2020, to vary the period stated in Clause 2 of the SEC by extending the period of employment up to 31 October 2020, on the basis that such variation is mutually agreed upon by both the employer and the FDH.

If the contract with the current FDH has already been extended under the flexibility arrangement announced on 4 February 2020 and/or 19 March 2020, the employer may submit an application to the ImmD to further extend the period of employment and stay of the FDH up to 31 October 2020, if both the employer and the FDH mutually agree to the variation.

Extension of limit of stay as visitors

As announced by the Government on 21 March 2020, applications from FDHs to extend their limit of stay in Hong Kong as visitors will be flexibly considered. FDHs whose existing contracts are due to expire or are terminated on or before 30 September 2020 may apply to ImmD for an extension of limit of stay in Hong Kong (for a maximum period of one month) as visitors for the purpose of finding a new employer in Hong Kong, if they are unable to return to their place of origin due to the pandemic in their place of origin and/or international travel restrictions arising from the pandemic.

An FDH who has already extended his/her limit of stay as a visitor in Hong Kong under the flexibility arrangement announced on 21 March 2020 may submit an application to ImmD to further extend his/her limit of stay as a visitor for the purpose of finding a new employer in Hong Kong. ImmD will exercise discretion to grant the FDHs concerned an

extension of stay for a maximum period of one month depending on individual case merits under the special circumstances arising from the pandemic.

Deferral of home leave

Under the existing mechanism, an FDH on a renewed contract with the same employer, or due to start a new contract with a new employer upon the expiry of an existing contract may apply to ImmD for deferring home leave for no more than one year after the existing contract ends, subject to agreement of his/her employer or new employer.

As announced by the Government on 21 March 2020, FDHs who have previously been approved to defer home leave upon the start of their new contract but need to further defer home leave may apply to ImmD for further extension of limit of stay for not more than six months, subject to mutual agreement between FDHs and their employers.

In view of the latest situation of the COVID-19 pandemic, FDHs who are still unable to return to their place of origin for home leave within their current limit of stay may continue to apply to ImmD for an extension of limit of stay. If the FDHs concerned who have already been granted a further extension of stay as per the preceding paragraph (i.e. the total extension of limit of stay amounts to not more than one and a half years) wish to further defer their home leave, ImmD will, on individual case merits, consider exercising discretion to grant them a further extension of limit of stay for not more than three months. Arrangements should be made by the employer for the FDH to return to his/her place of origin for vacation within the extended period, and to use his/her entry visa (with a validity in line with the extension of stay granted) upon his/her return to Hong Kong for completion of the contract.

For enquiries, please contact ImmD by calling the enquiry hotline at 2824 6111 or by email to enquiry@immd.gov.hk.

Relevant press releases

30 June 2020:

www.info.gov.hk/gia/general/202006/30/P2020062900892.htm

21 March 2020:

www.info.gov.hk/gia/general/202003/21/P2020032000829.htm

19 March 2020:

www.info.gov.hk/gia/general/202003/19/P2020031900394.htm

4 February 2020:

www.info.gov.hk/gia/general/202002/04/P2020020400547.htm

Q7: How could FDHs and their employers seek assistance if they have further enquires on employment matters?

A7: LD's FDH portal (www.fdh.labour.gov.hk/en/home.html) contains information and publications on employment rights and benefits of FDHs and employers and other relevant matters. The information is available in Chinese, English, Tagalog, Bahasa Indonesia, Thai, Hindi, Sinhala, Bengali, Nepali, Urdu, Myanmar language and Khmer to facilitate FDHs to obtain the relevant information.

FDHs and employers may browse the "COVID-19 Thematic Website" (www.coronavirus.gov.hk/eng/) for health advice on prevention of pneumonia and respiratory infection. The website contains information in Chinese, English, Tagalog, Bahasa Indonesia, Thai, Hindi, Sinhala, Bengali, Nepali and Urdu.

If FDHs and their employers have enquiries on employment matters, they may seek LD's assistance through the dedicated FDH email account (fdh-enquiry@labour.gov.hk) and the online form on the FDH portal (www.fdh.labour.gov.hk/en/contact_us.html).

**Labour Department
July 2020**