

**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: What is the current inbound control arrangement for a foreign domestic helper (FDH) planning to come to Hong Kong to commence a new contract or continue the current contract after vacation leave in his/her place of origin? What should he/she prepare for his/her departure to Hong Kong?

A1: FDHs holding a valid travel document and a valid employment visa may enter/re-enter Hong Kong subject to meeting general immigration regulations. The Government will announce the restrictions for persons arriving at Hong Kong from time to time in view of epidemic development. For the latest information, please refer to the Thematic Webpage on Health Quarantine Arrangements for Inbound Travellers (www.coronavirus.gov.hk/eng/inbound-travel.html).

From 29 December 2022 onwards, FDHs coming to work in Hong Kong are no longer required to undergo nucleic acid tests on the date of arrival at Hong Kong and on Day 2 after arrival. The Government advises all inbound persons to conduct daily rapid antigen tests (RATs) during the period between the day of arrival and Day 5 after arrival at Hong Kong.

Separately, inbound FDHs are required to conduct an RAT within 24 hours or undergo a polymerase chain reaction-based nucleic acid test within 48 hours prior to the scheduled time of flight departure and obtain a negative result for entering Hong Kong. Upon receiving the test results, relevant FDHs should keep the photos showing the test results or the test report for 90 days for presentation for checking on request by Government personnel. They may also voluntarily declare the test result via [the Department of Health's electronic health declaration form](#).

Q2: If an employer arranges his/her FDH to stay at licensed hotel/guesthouse for the first 5 days after arrival, does the employer need to seek the permission of the Commissioner for Labour?

A2: According to Clause 3 of the Standard Employment Contract (SEC), FDHs working in Hong Kong must work and reside in the employer's residence specified in the SEC during their employment period. In view of the conditions of individual families, the Commissioner for Labour has given in-principle approval for employers to arrange FDHs to stay at licensed hotels or guesthouses for the period from the day of FDHs' arrival in Hong Kong to Day 5 after arrival. It is not necessary to make an application to the Labour Department (LD). If employers arrange FDHs to stay in licensed hotels or guesthouses, they should bear the accommodation expenses and provide food allowance to FDHs for that period.

The list of licensed hotels or guesthouses can be obtained via www.hadla.gov.hk/en/licensing_matters/hotels/overview.php.

Q3: Can an employer arrange his/her FDH to stay at FDH boarding house after arrival in Hong Kong?

A3: The Commissioner for Labour has given consent for FDHs to stay at licensed hotels or guesthouses for the period from the day of FDHs' arrival in Hong Kong to Day 5 after arrival. Therefore, the employer cannot arrange his/her FDHs to stay at places other than employer's residence and the licensed hotels or guesthouses (e.g. FDH boarding houses or residence of FDHs' friends).

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

A4: When handling employment matters relating to FDHs, employers should observe their obligations and the requirements under the Employment Ordinance (EO) and the SEC. Wherever the EO is applicable, if an FDH has contracted a disease, his/her employer should grant him/her sick leave in accordance with the EO and the SEC. Under the 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 certificate¹;
- 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, LD appeals 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.

LD reminds employers that they should not terminate or repudiate an employment contract with an FDH who has contracted COVID-19. Under the EO, 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 relevant EO provisions, he/she commits an offence and is liable to prosecution and, upon

¹ 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.

conviction, to a maximum fine of \$100,000. Employers are also reminded of possible breach of contract if they repudiate the employment contract with their FDHs, or possible violation of the Disability Discrimination Ordinance, if they treat their FDHs less favourably (e.g. by dismissing them) because the FDHs have been infected with or recovered from COVID-19. Upon the recovery of the FDHs from COVID-19, employers are advised to arrange for their FDHs to start or resume work and maintain a cordial employment relationship with their FDHs.

Relevant press release

24 February 2022:

www.info.gov.hk/gia/general/202202/24/P2022022400323.htm

Q5: Will the facilitation measures assisting FDHs and their employers to cope with the special circumstances arising from the COVID-19 pandemic (including the flexibility arrangements of allowing an extension of the validity period of existing employment contracts and a deferral of FDHs' return to their places of origin) be further extended?

A5: In order to assist FDHs and their employers to cope with the COVID-19 pandemic, the Government has since early 2020 implemented a series of facilitation measures for FDHs and their employers, including the flexibility arrangements of allowing an extension of the validity period of existing employment contracts and a deferral of FDHs' return to their places of origin. The Government has closely monitored the development of the pandemic to review and adjust the measures. Taking into account that flights between Hong Kong and major FDH-sending countries have gradually resumed after the lifting of the place-specific and route-specific flight suspension mechanisms on 1 April and 7 July respectively this year, the lifting of the compulsory quarantine requirement on arrival in Hong Kong with effect from 26 September, as well as the gradual relaxation of inbound control measures, the Government has reviewed the situation and decided to discontinue the abovementioned flexibility arrangements from 1 May 2023 onwards. To allow sufficient time for FDHs and their employers to make corresponding arrangements, **the following flexibility arrangements announced on 19 December 2022 will be implemented until 30 April 2023. The Government reminds employers and FDHs to discuss matters relating to employment, contract renewals or the return to FDHs' places of origin as soon as possible to avoid breaching the relevant requirements.**

The flexibility arrangements are set out below:

Extension of validity period of existing contracts

For all FDH contracts expiring on or before 30 April 2023, employers may apply for extending the validity period of the existing contracts with their outgoing FDHs. For such contracts, the Commissioner for Labour has given in-principle consent for extending the employment period stated in Clause 2 of the SEC for a maximum period of six months, on the basis that such variation is mutually

agreed upon by both the employers and FDHs concerned. However, applications for further extension of contracts which have already been extended under the previously announced flexibility arrangements will not be considered. If an employer needs to continue to employ his/her FDH beyond the six-month extended period, the employer should consider applying for a contract renewal with the existing FDH. **All applications should reach the Immigration Department (ImmD) on or before 30 April 2023. Late submission will not be accepted.**

Deferral of return to place of origin

Under normal circumstances, 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 his/her return to the place of origin for not more than one year after the existing contract ends, subject to the agreement of his/her current employer or new employer. Under the relevant flexibility arrangement, if an FDH is unable to return to his/her place of origin within the aforementioned one-year period, he/she may, upon agreement with the employer, apply to ImmD for a further extension of the limit of stay until the end of his/her contract such that he/she may return to the place of origin within that period.

If the aforementioned one-year period expires on or before 30 April 2023, the FDH may submit such application to ImmD within eight weeks prior to the expiry of the existing limit of stay to further extend the limit of stay until the end of his/her contract. **All applications should reach ImmD on or before 30 April 2023. Late submission will not be accepted.** The Government reminds employers and FDHs that the above flexibility arrangement must be mutually agreed between them, and that the requirement of FDHs returning to their place of origin remains in force. Employers should arrange for their FDHs to return to their place of origin within the extended limit of stay. **For FDHs with the aforementioned one-year period expiring on or after 1 May 2023, the period for them to return to the place of origin will not be further extended.**

In addition, the Government reminds FDHs and potential FDH employers that, in accordance with the prevailing FDH policy of the Government, an FDH shall leave Hong Kong upon completion of an employment contract or within two weeks from the date of contract termination, whichever is the earlier. Save for exceptional circumstances deemed reasonable by ImmD (including the premature termination of contract owing to the transfer, migration, death or financial reasons of the original employer, or where there is evidence that the FDH has been abused or exploited), an application from an FDH for a change of employer in Hong Kong within the two-year contract period will normally not be approved. An FDH who wishes to have a new employer must leave Hong Kong and submit a fresh employment visa application to ImmD.

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

Relevant press release

19 December 2022:

www.info.gov.hk/gia/general/202212/19/P2022121900349.htm

Q6: How could FDHs and their employers seek assistance if they have further enquiries on employment matters?

A6: 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
31 January 2023