

**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? What are the issues that his/her employer and employment agency (EA) (if applicable) should pay attention to?

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).

FDHs who are coming to work in Hong Kong from 26 September 2022 onwards are subject to the revised inbound control arrangement under the '0+3' model, i.e. they need not undergo quarantine at hotels upon arrival and are only subject to medical surveillance for three days, followed by self-monitoring for four days. They will be subject to multiple tests during the medical surveillance period and the subsequent four-day monitoring period. During the medical surveillance period, FDHs can work at the employers' residence and go out to conduct daily essential activities of lower risk, e.g. taking transport, entering supermarkets and markets, etc. They are, however, subject to Amber Code restrictions under the Vaccine Pass, and are not allowed to enter high-risk premises involving mask-off or group activities, as well as other premises requiring key protection.

In view of the conditions of individual families, the Commissioner for Labour has given in-principle approval for employers to choose to arrange FDHs to stay at licensed hotels or guesthouses to complete the three-day medical surveillance and the subsequent four-day self-monitoring. It is not necessary to make an application to the Labour Department (LD). If employers arrange FDHs to undergo medical surveillance and self-monitoring in licensed hotels or guesthouses, they should bear the accommodation expenses and provide food allowance to FDHs for that period. If an FDH cannot work in his/her employer's residence as a result of the employer's arrangement to have the FDH undergo medical surveillance and self-monitoring at a place other than the employer's residence, the employer should pay the FDH a sum equivalent to the remuneration that the FDH would have earned if he/she had worked for that period. The list of licensed hotels or guesthouses can be obtained via www.hadla.gov.hk/en/licensing_matters/hotels/overview.php.

Boarding requirements

Starting from 26 September 2022, FDHs coming to work in Hong Kong only need to present a proof of negative result of a rapid antigen test (RAT) conducted within 24 hours prior to the scheduled time of departure. Any proof of negative result of a nucleic acid test before departure is not required.

FDHs still need to complete the online Health & Quarantine Information Declaration of the Department of Health (www.chp.gov.hk/hdf) in advance, including declaration of vaccination records and the results of pre-departure RAT. They are also required to present the green health declaration QR code generated upon completion of declaration (which can be a downloadable version of the QR code, a screen shot or a printout) at check-in for verification by airlines for boarding. The health declaration QR code will be valid for 96 hours, i.e. FDHs can submit the declaration form as early as three days before their scheduled arrival time in Hong Kong (for instance, FHD arriving at Hong Kong on Monday may submit declaration form starting from Friday). They can then save the time by further updating the declaration after obtaining the negative result of a RAT.

For details of the above arrangement, please refer to the press release issued by the Government on 24 September 2022 (www.info.gov.hk/gia/general/202209/24/P2022092400048.htm).

Employers and EAs should remind FDHs to complete the online Health & Quarantine Information Declaration of the Department of Health in advance, declare vaccination records and the results of pre-departure RAT in order to obtain a green health declaration QR code (which can be a downloadable version of the QR code, a screen shot or a printout) for verification by airlines for boarding.

Q2: If an employer arranges his/her FDH to undergo the medical surveillance and self-monitoring at licensed hotel/guesthouse, 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 to complete the three-day medical surveillance and subsequent four-day self-monitoring. It is not necessary to make an application to LD. If employers arrange FDHs to undergo medical surveillance and self-monitoring 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 undergo the 3-day medical surveillance and 4-day self-monitoring at FDH boarding house?

A3: The Commissioner for Labour has given consent for FDHs to complete the 3-day medical surveillance and 4-day self-monitoring at licensed hotels or guesthouses. Therefore, the employer cannot arrange his/her FDHs to stay at places other than employer's residence and the abovementioned licensed hotels or guesthouses (e.g. FDH boarding houses or residence of FDHs' friends) for medical surveillance and self-monitoring.

Q4: What are the legal consequences for persons who fail to comply with a compulsory testing notice or compulsory testing direction?

A4: Inbound FDHs are subject to **compulsory testing on Day 0 (the day of arrival), Day 2, Day 4 and Day 6**, and **daily RAT tests during medical surveillance and self-monitoring periods** until Day 7 of arrival at Hong Kong. FDHs have to keep all the SMS (mobile phone text message) notifications containing the results of the test as well as photos of the RAT test results for checking by prescribed officers.

Any person who fails to comply with the compulsory testing notice or compulsory testing direction commits an offence and the maximum penalty upon conviction is a fine at level 4 (\$25,000) and imprisonment for six months. The fixed penalty for discharging liability for the offence is \$10,000. The person may also be issued with a compulsory testing order requiring him/her to undergo testing within a specified timeframe. Failure to comply with the order is an offence and the offender would be liable to a fine at level 5 (\$50,000) and imprisonment for six months.

Q5: What issues FDHs and employers need to take note of during FDHs undergoing the medical surveillance and self-monitoring period?

A5: **During the medical surveillance and self-monitoring period, FDHs are required to take daily RATs.** After obtaining negative results of RATs **on Day 2, Day 4 and Day 6 upon arrival at Hong Kong, they are required to undergo nucleic acid tests** on the same days at a community testing centre, a mobile specimen collection station, or arrange a self-paid test at a local medical institution recognised by the Government.

During the medical surveillance period, FDHs can work at their employers'

residence and can go out after obtaining a negative result of an RAT on that day, but they are subject to Amber Code restrictions under the Vaccine Pass and cannot enter high-risk premises involving mask-off or group activities, as well as other premises requiring key protection. FDHs can conduct daily essential activities of lower risk, e.g. taking transport, entering supermarkets and markets, etc. Upon receipt of consecutive negative test results, the FDHs' Vaccine Pass will be changed to Blue Code on Day 3 of arrival at Hong Kong.

Besides, FDHs have to monitor their health condition and take appropriate personal disease prevention measures including wearing a mask and maintaining hand hygiene.

Q6: What kind of high-risk places and places requiring special protection are restricted by Amber Code restrictions under the Vaccine Pass?

A6: Persons under the category of Amber Code cannot enter the following premises subject to "active checking" of the Vaccine Pass and other premises in the capacity of a customer or visitor:

(i) Premises regulated under the Prevention and Control of Disease (Requirements and Directions) (Business and Premises) Regulation (Cap. 599F) which are subject to "active checking" of the Vaccine Pass:

- Premises required to use the QR Code Verification Scanner and is regulated under Cap. 599F, i.e. catering business premises (including bars or pubs), amusement game centres, bathhouses, fitness centres, places of amusement, indoor places of public entertainment, party rooms, beauty parlours and massage establishments, club houses, clubs or nightclubs, karaoke establishments, mahjong-tin kau premises, indoor sports premises, swimming pools, cruise ships, indoor event premises, barber shops or hair salons and religious premises.
- Premises required to inspect the Vaccine Pass visually as far as feasible, i.e. outdoor places of public entertainment, outdoor sports premises and outdoor event premises.

(ii) Other premises: residential care homes for the elderly, residential care homes for persons with disabilities, schools and designated healthcare premises.

For FAQs on "Vaccine Pass (Red Code and Amber Code)", please refer to this link: www.coronavirus.gov.hk/pdf/FAQ_Red_and_Amber_Code.pdf.

Q7: Can an employer refuse his/her FDH holding an Amber Code to go to work?

A7: FDHs who are coming to work in Hong Kong from 26 September 2022 onwards need not undergo quarantine at hotels upon arrival and are only subject to medical surveillance for three days, followed by self-monitoring for four days. FDHs can work at the employers' residence during the

medical surveillance period and can go out to conduct daily essential activities of lower risk, e.g. taking transport, entering supermarkets and markets, etc. They are, however, subject to Amber Code restrictions under the Vaccine Pass, and are not allowed to enter high-risk premises involving mask-off or group activities, as well as other premises requiring key protection.

In view of the conditions of individual families, the Commissioner for Labour has given in-principle approval for employers to choose to arrange FDHs to stay at licensed hotels or guesthouses to complete the three-day medical surveillance and the subsequent four-day self-monitoring. If employers arrange FDHs to undergo medical surveillance and self-monitoring in licensed hotels or guesthouses, they should bear the accommodation expenses and provide food allowance to FDHs for that period. If an FDH cannot work in his/her employer's residence as a result of the employer's arrangement to have the FDH undergo medical surveillance and self-monitoring at a place other than the employer's residence, the employer should pay the FDH a sum equivalent to the remuneration that the FDH would have earned if he/she had worked for that period. Employers should not deduct the holidays where an FDH is entitled to under the Employment Ordinance (EO), such as paid annual leave.

Q8: If an FDH is infected by COVID-19, what are the responsibilities of the employer? Can the FDH be dismissed?

A8: When handling employment matters relating to FDHs, employers should observe their obligations and the requirements under the 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.

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.

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 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.

Please note that under the Employment (Amendment) Ordinance 2022 which comes into operation on 17 June 2022, a sickness day under the EO also includes a day on which an employee is absent from work by reason of his/her compliance with a specific requirement that imposes a restriction on movement under the Prevention and Control of Disease Ordinance (Cap. 599) (e.g. the restriction imposed by an isolation order, a quarantine order or a “restriction-testing declaration”, while the restriction imposed on persons arriving at Hong Kong is not included). If an FDH provides the proof required and relevant conditions are fulfilled, the employer is required to grant sickness allowance to the FDH. In addition, if the employer dismissed the FDH or varied the terms of employment contract by reason of his/her absence from work due to the compliance with a specific Cap. 599 requirement (even less than 4 days), it is considered as unreasonable dismissal or unreasonable variation of terms of employment contract. An FDH who has fulfilled relevant criteria may lodge a claim for remedies under unreasonable dismissal (employment period not less than 24 months) or unreasonable variation of the terms of the employment contract against the employer². For details, please refer to LD’s website (“Sickness Allowance and Employment Protection under Anti-Epidemic Measures”: www.labour.gov.hk/eng/news/EAO2022.htm).

² Remedies for the unreasonable dismissal/unreasonable variation of the terms of the employment contract include: an order for reinstatement or re-engagement; or an award of terminal payments.

Relevant press release

24 February 2022:

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

17 June 2022:

www.info.gov.hk/gia/general/202206/17/P2022061700202.htm

Q9: Could an employer change his/her FDH's rest day or refuse to grant a rest day to his/her FDH?

A9: In view of the COVID-19 pandemic, the Government appeals to 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 repeatedly issued press releases appealing to FDHs to avoid meal gatherings, food sharing and other social activities on their rest day and stay home for rest 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 the EO and is liable to prosecution and, upon conviction, to a maximum fine of \$50,000. According to the 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.

Q10: How would the Government assist FDHs and their employers to cope with the special circumstances arising from the COVID-19 pandemic?

A10: On 21 September 2022, the Government announced that the measures to assist FDHs and their employers to cope with the COVID-19 pandemic continued to be in place.

Extension of validity period of existing contracts

For all FDH contracts that will expire on or before 31 December 2022, 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 employer and the FDH concerned. However, applications for further extension of contracts which have already been extended under the previously announced flexibility arrangements will not be considered.

If arrangements cannot be made for a newly hired FDH to come to Hong Kong within the above-mentioned six-month extended period, and the 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.

Deferral of return to the 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 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.

In view of the COVID-19 pandemic, the Government further extends the current 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. Such applications are acceptable within eight weeks prior to the expiry of the existing limit of stay of the FDHs (i.e. same as those for contract renewal).

The Government reminds employers and FDHs that the above flexibility arrangement must be mutually agreed between the employer and the FDH, and that the requirement that FDHs should return to their place of origin continues to be in place. Employers should arrange for their FDHs to return to the place of origin within the extended limit of stay.

The Government will continue to monitor the situations and review the above measures and flexibility arrangements as and when necessary. For enquiries on FDH visa applications, please contact ImmD by calling the enquiry hotline at 2824 6111 or by email to enquiry@immd.gov.hk.

Relevant press releases

21 September 2022:

www.info.gov.hk/gia/general/202209/21/P2022092000373.htm

Q11: How could FDHs and their employers seek assistance if they have further enquiries on employment matters?

A11: 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
26 September 2022**