

For Information

Legislative Council Panel on Security

Employment of Foreign Domestic Helper

Purpose

This paper sets out, in response to the Panel's request, information relating to the employment of foreign domestic helpers (FDHs).

Background Information

Existing Policy

2. FDHs were allowed to enter Hong Kong since the 1970's to take up full-time domestic duties due to the shortage of local full-time live-in domestic helpers and in order to relieve housewives from household chores for taking up employment. This is in line with the well-established principle that non-local persons are admitted for employment only if the jobs concerned are not readily taken up by the local work force.

3. Under existing immigration policy, FDHs are admitted into Hong Kong to work for a specific employer at a specified residence under a standard two-year contract. FDHs are normally permitted to stay for a period of two years commencing on the date on which the helper arrives in Hong Kong. The terms and conditions of employment are contained in the standard Employment Contract (ID407) (hereinafter referred to as "the Contract"). The Contract was last reviewed and revised in April 2003 to incorporate a mandatory live-in requirement so as to better reflect the policy intention to admit **live-in** FDHs to make up for the shortage of local workers who are willing to provide such services.

4. Under prevailing policy, an FDH should only perform domestic duties at his/her employer's residence and to serve the number of members of the employer's household as stated in the Contract. It is specified in Clause 4(a) of the Contract that an FDH should only perform domestic duties for the employer as listed in the "Schedule of Accommodation and Domestic Duties" attached to the Contract. The five broad categories of domestic duties are household chores, cooking, looking after aged persons in the household, baby-sitting and child minding. Other domestic duties may be specified in the Contract but are subject to approval by the Immigration Department. Clause 4(b) of the Contract provides that the FDH shall not take up, and shall not be required by the employer to take up, any other employment, including part-time domestic duties, with any other person. Clause 4(c) makes it clear that Clauses 4(a) and (b) will form part of the conditions of stay to be imposed on the FDH by the Immigration Department upon the FDH's admission to work in Hong Kong under the Contract. It is also clearly stipulated that a breach of the conditions of stay will render the helper and/or any aider and abettor liable to criminal prosecution.

5. When making an application to employ an FDH, the employer is required to sign an undertaking that, among other things, he/she will not ask, require, procure or cause the FDH to perform duties other than those domestic duties set out in the Schedule of Accommodation and Domestic Duties attached to the Contract; and that he/she will not ask, cause or allow the FDH to take up any other employment with any other person during the FDH's stay in the HKSAR and within the contract period.

6. Similarly, prior to being granted permission to enter Hong Kong to work, an FDH is required to sign an undertaking that, among other things, he/she will reside at the employer's residence and perform domestic duties as specified in the Contract; and that he/she will not take up any other employment with other person during his/her stay in Hong Kong.

Legal Provisions

7. An FDH who breaches his/her conditions of stay and his/her aider and abettor, if any, are liable to criminal prosecution. Regulation

2(4) of the Immigration Regulations (Cap.115A) provides that permission given to a person to land in Hong Kong for employment shall be subject to the condition of stay that he shall only take such employment or establish or join in such business as may be approved by the Director of Immigration. Section 41 of the Immigration Ordinance (Cap.115) provides that any person who contravenes a condition of stay in force in respect of him shall be guilty of an offence and shall be liable on conviction to a fine of level 5 (HK\$ 50,000) and to imprisonment for 2 years.

8. Any person who aids and abets the breach of a condition of stay shall be guilty of an offence under Section 41 of the Immigration Ordinance, and by virtue of Regulation 2(4) of the Immigration Regulations and Section 89 of the Criminal Procedure Ordinance (Cap.221), shall be liable on conviction to the same punishment.

Relevant Court Cases

9. In the case of *R vs. Fok Kam Tong*, Mr. Justice Mayo, in his judgment of April 1997 dismissing an appeal from an employer against his conviction for aiding and abetting the breach of a condition of stay imposed upon his FDH (Magistracy Appeal No.1040 of 1996), said that :

“There was no necessity for the magistrate to define what constituted the breach complained of. The facts spoke themselves.”

“It was common ground that the FDH was only permitted to work as a domestic helper in the employer’s household.”

10. From January 2004 to April 2005, a total of 37 employers were prosecuted for aiding and abetting in the breach of a condition of stay by FDH. Four cases involved the deployment of FDH to work for non-household relatives living in other premises. Prosecution was undertaken on advice from the Department of Justice. Of the four cases, one was convicted, one acquitted after trial, and the remaining two have yet to be heard by the court. In respect of the *HKSAR vs. Christine Law*

Yuk-han case in which the defendant was acquitted on 30 September 2004, we understand that the main reason for the acquittal was that the court did not accept the testimony of the prosecution witness.

A Simulated Case

11. A simulated case in a recent television programme has given rise to a debate on whether FDHs can be deployed to work outside the employer's home. As explained in paragraph 4 above, FDHs are not allowed to take up part-time work for another person, no matter on a regular or occasional basis. Whether an FDH has breached his/her conditions of stay in a particular situation and whether aiding and abetting is involved in the case is a matter of fact.

12. Since domestic duties are sundry in types, it is unrealistic to list all domestic duties in detail and exhaustively in the Contract, although the broad categories of domestic duties are listed in the Schedule of Accommodation and Domestic Duties attached to the Contract. Duties like bringing children of the employer's household to school, to the playground, to attend medical treatment, birthday party or music lessons; bringing food or personal belongings to the employer's working place for his/her use; going to supermarket to buy food for the employer's household; cleaning a car used by the employer or his household members for domestic purposes (but not, for example, in the context of a car wash or car repair business owned by the employer) etc. are all activities arising from and within the scope of domestic duties as construed by common sense. Nevertheless, whether a duty is within the scope of the Contract or not is ultimately a matter of fact. The Immigration Department will thus carefully consider the facts and circumstances of each case and seek legal advice where necessary. Whether or not to prosecute will depend on the sufficiency of evidence and the public interest. The Immigration Department has clearly explained to the public its unequivocal stance on numerous occasions following the broadcast of the programme in question.

Guidelines and Publicity

13. The requirement for FDHs to perform domestic duties at his/her

employer's residence as specified in the Contract is a reasonable arrangement which is in the interest of the FDHs, their employers and the community at large. It would be unfair to the FDHs if employers are given the right to deploy them to work for other persons in other premises. This would also deprive job opportunities for local domestic helpers who may readily take up part-time domestic work. As regards the employers, they enjoy fairly convenient and easy access to the services of FDHs which, but for the protection afforded by the requirement in question, might need to be tightened.

14. The Immigration Department has published a "Guidebook for the Employment of Domestic Helpers from Abroad" which sets out detailed information on eligibility criteria, application procedures, restrictions on deployment, insurance and other relevant requirements. The Guidebook, available in both English and Chinese, is distributed together with the set of FDH application form and the standard Contract. Paragraphs 38 to 40 of the Guidebook draw employers' attention to Clauses 4(a) to (c) of the Contract relating to the conditions of stay of FDH. Paragraph 39 makes it clear that employers should not require or allow the FDH to carry out any non-domestic work or take up any other employment, including part-time domestic duties, with any other person. Employers should carefully read the terms and conditions relating to the employment of FDHs set out in the Guidebook which is made available to them before they enter into a Contract with an FDH. Government has also broadcast Announcements in the Public Interest on a regular basis to remind FDHs not to take up illegal employment in breach of the law. To enhance the public's understanding of the policy governing the employment of FDHs, we would prepare answers to some commonly asked questions which will be uploaded onto the Immigration Department's website.

Enquiries

15. Any enquiry on issues relating to the employment of FDHs can be made to Immigration Department (at its hotline 2824 6111, by fax 2877 7711 or by e-mail to enquiry@immd.gov.hk) or the Labour Department (by telephone at 2717 1771 or by e-mail to enquiry@labour.gov.hk).

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