


Labour Department (Headquarters)
勞工處 (總處)

Your reference 來函編號 :
 Our reference 本處檔案編號 :
 Tel. number 電話號碼 : 2852 3633
 Fax number 傳真機號碼 : 3101 1018

7 October 2013

Clerk to Panel on Manpower
 Legislative Council
 Legislative Council Complex
 1 Legislative Council Road
 Central
 Hong Kong
 (Attn: Miss Betty Ma)

Dear Miss Ma,

**Follow-up to meeting on 18 June 2013 –
 Intermediary Charges for foreign domestic helpers**

At the meeting of the Panel on Manpower held on 18 June 2013, Members requested the Administration to provide further information on the intermediary charges for foreign domestic helpers (FDHs). Our reply is set out below.

- (1) Application of the Domestic Workers Convention, 2011 (No. 189) of the International Labour Organisation to Hong Kong Special Administrative Region (HKSAR)

Under Hong Kong's labour laws, domestic workers (including FDHs) enjoy equal and full protection and entitlements as local workers. Other than the statutory provisions, FDHs are further protected by a Standard Employment Contract (the Contract) prescribed by the Hong Kong SAR Government. The Contract requires employers to pay FDHs a wage level not lower than the prevailing Minimum Allowable Wage set by the Government, and to provide FDHs with free accommodation with reasonable privacy, free food (or food allowance in lieu), free medical treatment, as well as free passage from and to his/her place of origin, etc. These terms are not usually available to local workers.

We reiterate that the Government is committed to safeguarding the rights and benefits of our workforce, including domestic workers. We have put in place various measures to protect their rights and benefits. We will review the feasibility of the application of the Domestic Workers Convention, 2011 (No. 189) to the HKSAR as and when necessary.

(2) Policy consideration of the existing entry arrangement for FDHs

Currently, the FDH policy is generally applicable to nationals of all countries except a few, namely: Afghanistan, Cambodia, Cuba, Laos, Korea (Democratic People's Republic of), Nepal and Vietnam because of immigration and security considerations. Owing to immigration control reasons, the FDH policy is not applicable to Chinese residents of the Mainland, Macao and Taiwan, whose entry must comply with the relevant immigration policies. The Immigration Department (ImmD) regularly reviews the visa policies, including the entry arrangements for FDHs, and introduces changes when circumstances so warrant to ensure that the policies continue to meet social needs.

(3) Information regarding the number of employment agencies (EAs) involved in overcharging complaints

In 2012, the Employment Agencies Administration (EAA) of the Labour Department (LD) received 44 complaints against overcharging by 37 EAs.

(4) Whether FDHs whose employment contract was prematurely terminated must leave Hong Kong and return to their places of domicile within two weeks of the termination of their contract

Under the existing policy, FDHs must leave Hong Kong upon completion of their contract or within two weeks from the date of termination of their contract, whichever is earlier. Application by FDHs for change of employer within their two-year contract in Hong Kong will not normally be approved except under exceptional circumstances, e.g., if the FDH's contract is terminated on grounds of the transfer, migration, death or financial reasons of the ex-employer, or if there is evidence suggesting that the FDH has been abused or exploited. If the FDH wishes to enter into an employment contract with a new employer, he/she must leave Hong Kong and submit a new employment visa application to the ImmD. In assessing application for change of employer after premature contract termination, ImmD will ensure that the FDH concerned has departed

Hong Kong before an employment visa will be issued. In the light of the strong demand for FDHs in local families, ImmD often receives employers' requests to expedite processing of their FDHs' employment visas. On the other hand, FDHs whose previous contracts have been terminated owing to various reasons also wish to resume employment as soon as possible to make ends meet. As a measure to facilitate both parties, ImmD adopts a flexible approach in handling the requirement imposed on FDHs that they return to their places of domicile upon termination of their contract.

ImmD is concerned about possible abuse of premature contract termination arrangements by FDHs, and has adopted a corresponding measure to address the issue by fortifying the assessment of employment visa applications of FDHs who change employers repeatedly. Under the new measure, ImmD will, in assessing employment visa applications of FDHs, closely scrutinise their case details, such as the number of and reasons for premature contract termination within 12 months, with a view to detecting any abuse of the arrangements for premature contract termination. If ImmD suspects that there is abuse, the application will be refused. In the past three months or so, ImmD has refused 75 employment visa applications which were suspected to involve abuse of the arrangements for premature termination of contract. ImmD believes that the new measure will help deter such abuse and will review its effectiveness from time to time. Also, if it is discovered that the premature contract termination is due to the employer's non-compliance with contractual terms or abuse/ exploitation of FDHs, future applications for employment of FDHs from these employers will be refused.

- (5) In respect of FDH employers' obligation to provide free passage to their FDHs for returning to their places of domicile upon termination or expiry of employment contracts, whether such requirement could be waived in the event that it was mutually agreed between employers and the FDHs concerned that the latter would not return to their places of domicile, but merely depart for Macao

In accordance with Clause 7 of the Contract for employing FDHs, employers are required to provide their FDHs with free passage from Hong Kong to their place of origin on termination or expiry of the contract. The rationale behind this requirement is that since it is the employers who hire FDHs to work in Hong Kong, they have the responsibility to ensure the FDHs' smooth return to their home countries upon completion or pre-mature termination of the contracts. Otherwise, the FDHs concerned may be stranded in Hong Kong owing to lack of

means to travel. Both contracting parties are required to comply with the terms of the Contract, and any agreements to vary the contract terms which may affect the employment rights and benefits of either party will not be effected. The Administration has no plan to change the policy.

While the contract did not specify the means by which the return passage should be provided, i.e., employers and their FDHs could agree mutually on whether to provide cash or air ticket for the latter to return from Hong Kong to their place of domicile, the Government always encourage employers to provide to the FDHs concerned air tickets to their place of domicile as far as practicable so as to deter FDHs from merely going to nearby places instead of returning to their places of domicile. To further protect their interests, the Government suggests that employers and FDHs should also keep the payment receipt of the air ticket as documentary proof.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Nicholas Chan', written over a faint circular stamp or watermark.

(Nicholas CHAN)
for Commissioner for Labour

c.c. Secretary for Security (Attn : Miss Renita AU)