



香港外傭僱主關注組
Support Group for HK Employers with
Foreign Domestic Helpers

To Secretary of Legislative Council
Panel on Manpower
Written Submission to
《Draft Code of Practice for Employment Agencies》



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Foreword

Support Group for Hong Kong Employers with Foreign Domestic Helpers

We are a registered society focusing on supporting Hong Kong employers of Foreign Domestic Helpers (FDHs). In addition, we intend to create social pressure by publicize various FDH issues, expecting related government departments respond to the circumstances and make changes at the policy level. We have been interviewed by major medias in Hong Kong, including radio and TV channels, newspapers and magazines. Moreover, we held various events in regards of controversial FDH issues, including "one person, one letter", petitions, demonstrations and different forms of press conferences, in order to let the community and the Government to increase understanding of the plight of employers of FDHs so as to provide appropriate support for them.

Our Organization has been established since 2013, the number of members has reached more than 10,000 people. We provide diverse support services for our members, including real-time query and communication platform, regular seminars, support hotline, conduct specialized reports and investigation with tertiary students, as well as direct cases support. Our diversified services not only promote employers' awareness of their rights regarding hiring of FDHs, but also through our actions, to unite the powers of FDH employers and together to restore the losing ground, fight for the legitimate rights of FDH employers.

The importance of the regulation of Employment Agencies

At present, the number of FDHs in Hong Kong are about 340,000, estimated FDH employers are about 300,000. More than 1,000,000 Hong Kong people are living in a family with FDHs, that is 15% of our population. Obviously FDHs are deeply affecting the living of Hong Kong people, and therefore appropriate support to the FDH employers is crucial, especially for those families with "working parents".

There are about 1,400 Employment Agencies providing FDH recruitment service in Hong Kong, whether they can be provide quality services to employers of FDH is really important. In fact, there were quite a few employers suffered from frauds from some unscrupulous employment agencies, not only failed to obtain expected services, but also suffered from both monetary loss and emotional distress.

For FDH employment agencies to comply with conduct of the industry, in addition to depending on the determination of agency owners, but also depending on the licensing authority - Labour Department, whether it actively establishes the relevant regulations, and how it promotes the implementation. Our Organization is pleased to see the launch of the "Draft Code of Practice for Employment Agencies" and we are inquiring different parties and collecting advice and opinions from them regarding this code of practice.

In the next session, we listed the aggregated advice from FDH employers towards the "Draft Code of Practice for the Employment Agencies", in order to provide relative references for Labour Department.

Employers' Views

2.1 Management's responsibilities

In Chapter 4 of the CoP, 4.2.1 says: "The licensee, company director(s) and/or nominated operator have the responsibility and are fully accountable for the operation of their EA." And 4.2.2 says: "The licensee, company director(s) and/or nominated operator are required to closely supervise all of their employment agency staff. They will be held accountable for all acts and conducts of all of their staff in relation to the provision of job-placement services even though they may not be the one(s) who failed to meet the statutory requirements and/or standards in this CoP." 4.9 says: "Maintain professional knowledge and stay up to date with latest laws and regulations relating to the industry."

Since the CoP recommends managers of employment agencies should bear the total responsibility regarding the services they provided, including the legality and the compliance of related conduct of the services carried out by any staff in the employment agencies; therefore, our Organization proposes all licencees of licensed employment agencies must go through a fundamental assessment about FDH employment service-related regulations, such as the regulations this CoP mentioned, including "Employment Ordinance", "Employees' Compensation Ordinance", "Personal Data (Privacy) regulations", "Immigration Ordinance" and standard employment contracts, in order to ensure that employment agencies are able to provide FDH employers and FDHs the accurate understanding of all relevant regulations, so the all parties are able to carry out lawful behaviors in a recruitment.

Meanwhile, since the Labour Department is unable to establish an employment agency licensing assessment and demerit points mechanism, in order to effectively monitor each practitioner of the industry possesses the standard service quality; therefore, our Organization proposes ALL employees of Employment Agencies, MUST BE registered to the Employment Agencies Administration of the Labour Department, in order to compose a systematic database, and prepare for necessary inspection when in need.

For the long-term strategy, our Organization strongly recommends the Labour Department to establish assessment and demerit points mechanism for all practitioners

in the FDH employment industry. And at the same time listing all illegal behaviours and their relevant penalties. Therefore, professional and high quality services can be ensured within the industry.

2.2 Offices of Employment agencies

In Chapter 4 of the CoP, 4.3.1 states that by law Employment Agencies are required to display their licences and the Second Schedule of EAR:

In the past, members of our Organization reflected to us some employment agencies not only failed to display their both their company names and employment agency licenses, but also operating other businesses, such as tourism, beauty, defining the related regulation in their own way. Therefore, many employers confused the responsibilities of the employees in these "employment agencies". When problem occurs, it becomes even harder to claim liability since whether the staff of this "employment agencies" is subject to employment agency regulation is in doubt. Some "agencies" are in the form of "Freelancers" and they are not attaching to an office. They recommend FDHs to employers by showing biographical information, although they may be licensed or working with a licensed employment agency, such employment services, not providing a suitable place to employers and the FDHs, is not appropriate.

Our Organization recommends ALL employment agencies must operate at a fixed place, the companies must put up signs with company names and display valid employment agency licenses. There must have space at least to put a desk, three chairs and a filing cabinet, in order to provide employers and FDHs a safe and comfortable environment to handle the paperworks.

2.3 Different languages on standard employment contract - Form ID407

In Chapter 5 of CoP, Appendix 5a Sample of standard Employment Contract (English version) – Form ID407.

In the past, English is selected to be the standard language of employment contract; however, Hong Kong SAR has been established for almost 20 years, many FDH employers do not know English, they do not understand they signed and agreed and they also do not know what are their rights and obligations.

Our Organization recommends the Labour Department and the Immigration issue a bilingual standard employment contract, ie Form ID407, with both Chinese and English. It is to enable staff of employment agencies to effectively explain to the FDH employers the contents and terms in the contract, in order to carry out Chapter 4 section 10 of CoP -Promote job-seekers' and employers' awareness of their rights and obligations and hence reduce any unnecessary misunderstandings and disputes in the future.

2.4 Labour Department connives "brokers 「艇仔」 " Inappropriately borrow the identity of Consulate-licensed agencies

At present, while the Immigration Department is processing the approval of one FDH visa, there is a requirement to submit the working permit of that FDH issued by the Department of Labor of the Consulate this FDH belongs to. During the approval process in the Consulate, the Consulate would consider whether the employment agency representing the FDH is a Consulate-licensed one, prior to the final approval. Meanwhile, the Consulate does not allow these licensed agencies to "lend" their identity to some of non-licensed agencies (those only licensed by Labour Department as employment agencies), in practice we call this "broker borrows the chop from licensed agency".

However, while the Labour Department issue licenses to about 1400 employment agencies, they have never queried about the competence of these agencies whether they are able to provide a recruitment service worth over HKD10,000, or have they been licensed by the Consulate as agents to handle FDHs to work in Hong Kong. In fact, many FDH employers complaints against employment agencies, mostly relating to those "brokers". They are not allowed to directly handle FDH paperworks with Consulate and at the same time subject to the permission of their affiliated Consulate-licensed agencies. When a problem occurs, they blame others immediately, pushing the problem to either the employer or the FDH. Moreover, they also claim that they are

not one of the contractual parties as the company chop on the employment contract belongs to another company. Most of the FDH employers did not notice this during they signed the contract. Therefore these "brokers" are able to escape from any responsibility completely.

Our Organization recommends when an employer agency apply for a license or license renewal, in addition to state which countries of FDH they are providing as a core requirement, but also required to list ALL of its affiliated consulate-licensed agencies. With these arrangements, Labour Department not only able to know the applicant's ability to operate an employment agency, but also easier for the department to trace in case of problem occurs in the future, in order to fully protect the interests of the employer and the FDHs.

In the long-term strategy, the Labour Department and the Immigration Department should review the FDH visa approval process, especially those applications from FDHs who have worked in Hong Kong before, assess in detail their condition regarding "exemption to submit working permit from Consulate", in order to resolve the contradictory relationship between Consulate and its licensed agencies and local employment agencies.

2.5 Employment Agencies Affairs - Foreign and local workers

Based on the "Employment Agency Regulations", there are no separate departments handling overseas employment and local employment. Therefore, severe pressure is applied to staff in Labour Department who work on Employment Agencies affairs. Since FDH recruitment is much more complicated than the local recruitment, it involves cultural differences, Labour authorities of the export countries, application procedures, as well as the two-year after-sale service and other issues.

Our Organization proposes Labour Department to increase manpower to handle Employment Agencies affairs to cope with a lot of follow-up work in the future. We

must also establish a branching department dedicated to matters FDH employment agencies, such as organizing seminars for FDH employers and employment agencies practitioners.

2.6 Against FDH related non-profit organizations to provide employment services exempted from the regulation

In Footnote 3 of Chapter 3, "Part XII of EO and EAR does not apply to any EA - f(i) non-profit making organization":

At present, many FDH related non-profit making organizations in Hong Kong. These organizations may provide employment services to their members who are FDH. According to the CoP these organizations are likely to be exempted from Employment Agencies Regulations in the future.

Our Organization urges the Commissioner of Labour Department seriously consider the consequence of this arrangement, highest level of prudence is crucial for each Employment Agency application, regardless of what background it has.

2.7 Transparent inquiries and complaint channels

In the CoP it doesn't mention of channels for public to inquire and complaint.

Our Organization recommends Labour Department to establish additional channels for inquiry and complaint so that public can voice out by writing, telephone, e-mail and other online channels.

2.8 Form ID407 - FDH to return home

In Chapter 3 section 9 about "Observing immigration laws." and Chapter 5 Appendix 5a Sample of standard employment contract - issue to FDH:

In the past, reference is made to the Immigration Department with the content provided by Labour Department regarding the standard FDH employment contract - Form ID407 (For A Domestic Helper recruited from abroad – in English). This form will be signed by both employer and FDH and it serves as one of the approval

documents for the working visa of the FDH. Terms 7(a) of the contract says, "The Employer shall provide the Helper with free passage from his / her * place of origin to Hong Kong and on termination or expiry of this contract, free return passage to his / her * place of origin."

However, "Immigration Ordinance" has never required the FDH to return home. When the contract is being terminated or expires, the FDH just has exit Hong Kong. Therefore there are so many FDHs agree to accept the arrangement of some employment agencies to go to Macau or Mainland China, wait for the approval of working visa from Immigration Department and then return to Hong Kong. However, the ex-employers are required to provide free passage for their exiting FDH to return to "place of origin" regardless the FDH will use it or not; and the new employers are also required to provide free passage to the new FDH from "origin" to Hong Kong regardless whether the FDH is genuinely travelling from "origin". This is apparently a big loophole of this free passage requirement. Employers spent a fortune on these but there is a high chance that they are wasted. Unfortunately, the Immigration Department found excuses to justify this policy and said this is a "discretion" for the convenience of the employer to apply for FDHs in Hong Kong to renewal of contract.

While Immigration Department exercises the "discretion", have they ever considered they are over-using the "discretion"? Some FDHs and unscrupulous employment agencies may exploit this loophole and make huge profit!

Our Organization strongly recommends the Labour Department and the Immigration Department to review standard FDH employment contract as well as terms on Form ID407 ASAP, such as no requirement to FDHs to return to origin after contract ends under "Immigration Ordinance", then there should not be an obligation to employers to provide free passage for the FDHs to return to origin, as some former FDHs are indeed going to Macau or Mainland China after contract ends. This amendment will relieve anger of FDH employers towards the poor execution of "FDHs return home policy" of Labour Department and Immigration Department. In fact, this amendment will effectively reduce FDH employers' "unnecessary expenses."

In a long run, "the Immigration Ordinance" must be revised, requiring ALL FDHs to return home after contract ends. And at the same time, FDHs applying for working

visa needs to prove that they are genuinely travel from "origin". This proof will be one of the core prerequisites for working visa approval.

2.9 Additional regulations on Form D407 / Domestic Helpers Ordinance

In Appendix 5a - Sample of standard employment contract - issue to FDH:

Since the job nature of FDH is special, such as they need to stay in the employer's family, therefore it has key differences comparing to the work and the working environment of local workers. At the same time, their core responsibility is to take care families and most of the members of the families are children and elderly, as a result the required skills needed to reach a certain level, such as caring for a newborn, care for the frail elderly and so on. Additionally, some FDHs may ask the employers to "pay in lieu of leave" since they want to earn more money, but under EO it is not allow and it shouldn't be encouraged.

On the basis of not amending related regulations, Our Organization recommends Immigration Department to append additional terms on Form ID407 allowing employer and FDH to arrangement work-related agreements. Therefore both the employer and the FDH acknowledge the arrangement before the confirmation of the agreement. The additional terms not only helps different families with different needs, but also reduces disputes due to dissatisfaction with the other parties and hence the court can deal more effectively with litigation between employers and employees in genuine needs.

Ultimately, in a long run Labour Department needs to establish "Domestic Helpers Ordinance" in order to protect all stakeholders in the industry. We need a new set of rules that is more suitable for Job nature of Domestic Helpers, this will eventually become a great contribution to protect the rights of the families with more than 340,000 FDHs.

2.10 FDH against health care workers is higher than the local

In Appendix 5a Sample standard employment contract sample-issue to FDH

Terms 9 (a) In the event that the Helper is ill or suffers personal injury during the period of employment specified in Clause 2, except for the period during which the Helper leaves Hong Kong of his / her own volition and for his / her * own personal purposes, the Employer shall provide free medical treatment to the Helper. Free medical treatment includes medical consultation, maintenance in hospital and emergency dental treatment

At present, FDHs enjoy medical protection higher than that of local workers, it is unreasonable. For general FDH employers, medical coverage within the contractual period for a FDH due to non-work related injuries or any future expenses is total beyond their burden.

Our Organization recommends the Labour Department revises Terms 9(a) on ID407 that is now requiring employer to provide free medical treatment with no cap. Revision should consider once it is proven that the FDH suffers from long-term illness and it is not work-related, the employer does not bear the obligation to cover the related medical expenses.

2.11 FDH physically "unfit to continue to work"

In Appendix 5a Sample standard employment contract sample-issue to FDH

Term 9 (C) - A medical practitioner certifying that the Helper is unfit for further service, the Employer may subject to the statutory provisions of the relevant ordinances terminate the employment and shall immediately take steps to repatriate the helper to his / her place of origin in accordance with Clause 7.

For all time, the requirement of FDH to have good physical condition, just as useless. According to the employers' reflections to Our Organization, although the physical condition of his/her FDH appeared to have serious problems, such as severe mental illness, cancer patients, sexually transmitted diseases, etc., and their illnesses affect their daily work and they are unable to take care young children and the frail elderly, the doctors are not going to certify the Helpers are unfit for further service, because the employment contract, that is Immigration Form ID407, does not specify the relevant physical requirements, such as blood pressure, heart function, and even no requirement regarding serious infectious diseases, so that the doctor is difficult to justify what kind of degree of physical standards should be considered as "unfit to continue to work". Therefore, highly unlikely any sickness will be certified a FDH as "unfit to continue to work".

Our Organization recommends the standard FDH employment contract must be clearly set out the physical fitness requirements, such as normal blood pressure, proper heart function is good, as well as no sexually transmitted diseases, FDH employers hence can apply term on 9(c) to reduce the risk of hiring an "unfit" FDH.

2.12 Appendix table amendments

Chapter 5 Appendix 3 – Sample form for Profile of FDH:

Our Organization suggests job seekers to provide recent photograph (If applicable) and the expected working condition and compensation.

Chapter 5 Appendix 6 - FDH Sample wage receipt for FDHs

Our Organization recommends to provide a receipt with Chinese/English, English/Indonesian, Chinese/Indonesian versions. Also amendment 1 (a) wages for statutory holiday(s) as "wages for rest day", while adding FDH's holiday record.

Chapter 5 Appendix 7a – Sample Letter of Termination of Employment Contract Initiated by FDH

Our Organization recommends to provide the letter in Chinese/English,
English/Indonesian and Chinese/Indonesian versions.

Conclusion

FDH Employers' expectations towards the "Draft Code of Practice for Employment Agencies"

Nowadays in our society, FDH employers mainly hire FDHs to take care of their families and their FDHs become the main support of these families with working parents, elderly and disabled. Among most of them need a "qualified" employment agency for the hiring a "qualified" FDH.

Nevertheless, FDH employers not only expecting the "Draft Code of Practice for Employment Agencies" is being a new era of the industry, but also expecting the Labour Department becomes a reliable licensing authority, enhancing the quality of service of the industry, protectomg hundreds of thousands families in Hong Kong with FDHs. At the same time, FDH employers ultimately expecting this CoP will become legal binding regulations, genuinely protecting all families with FDHs.

In the end, Our Organization will continue to scrutinize HKSAR Government, including all related department, as well as LegCo; focusing on reflecting the views and advice from Hong Kong FDH employers, establishing a thorough FDH support system in Hong Kong.