



Labour Department (Headquarters)

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13 June 2014

Clerk to Panel on Constitutional Affairs
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong
(Attn: Ms Joanne Mak)

Dear Ms Mak,

**Legislative Council Panel on Constitutional Affairs
Follow-up to the meeting on 19 May 2014**

At its meeting held on 19 May 2014, the Panel of Constitutional Affairs discussed the Report of the Hong Kong Special Administrative Region (HKSAR) on its follow-up on the Concluding Observations of the United Nations Human Rights Committee on the third report of HKSAR in the light of the International Covenant on Civil and Political Rights. Members requested the Government to provide further information on how it ensured the foreign domestic helpers' (FDHs) rights to decent living conditions and how it addressed the problems encountered by some FDHs who had to perform duties round-the-clock and/or on rest day. The Government's responses are provided in the ensuing paragraphs.

Living condition

2. To safeguard the rights of FDHs, Clause 5(b) of the Standard Employment Contract (SEC) stipulates that employers shall provide their FDHs with free, suitable and furnished accommodation as per the accommodation arrangements in the "Schedule of Accommodation and Domestic Duties" of SEC. When an FDH applies for an employment visa, both the employer and

the FDH are required to give an undertaking to confirm the above arrangements. If an FDH or an employer breaches the undertaking, the Immigration Department (ImmD) will take into consideration their conduct when considering the FDH's future applications for employment visas or extension of stay or the employer's future applications for employment of FDHs, and may refuse such applications.

3. In processing employment visa applications of FDHs, ImmD will scrutinize the "Schedule of Accommodation and Domestic Duties" of SEC and assess whether the accommodation arrangements provided by an employer for the FDH are suitable (e.g. the FDH will not share a room with an adult or a teenager of the opposite sex), have reasonable privacy (e.g. the FDH will not sleep on make-do beds in the corridor with little privacy), and have basic facilities/furniture (such as electricity and water supply, toilet and bathing facilities, bed and beddings, wardrobe, etc.), etc. ImmD may request the employer to furnish further information and may arrange field visits to the residence when necessary. The application will be refused if ImmD is not satisfied that the employer can provide suitable accommodation for the FDH.

4. If ImmD receives any report of an employer's failure to provide suitable accommodation for the FDH, ImmD will follow up on the complaint and arrange a field visit where necessary. If an employer and/or an FDH furnish false information in their application, they may contravene the Immigration Ordinance. Under the existing legislation, it is an offence for any person to make false representation to Immigration Officers. Offenders shall be liable to prosecution and a maximum fine of \$150,000 and imprisonment for 14 years on conviction. Aiders and abettors are also liable to prosecution.

Working arrangements and rest days of FDHs

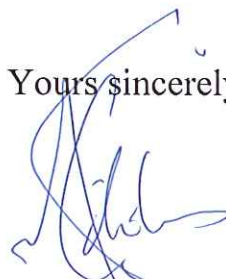
5. At present, all employees, including FDHs, may freely negotiate with their employers the terms and conditions of their employment that have not been specified in their employment agreements, though such terms and conditions must not be worse than those stipulated in the Employment Ordinance (EO) and other relevant legislation. In respect of FDHs, the terms of employment should not be worse than those stipulated in SEC. Given FDHs' distinctive working patterns that they work and rest in the same place, FDHs and their employers should negotiate the hours of work arrangement. The Labour Department (LD) will provide free consultation and conciliation services to employers and FDHs if needed.

6. Under EO, FDHs, like all local employees, are entitled to at least one rest day, i.e. a continuous period of not less than 24 hours, in every period of seven days, in addition to the statutory holidays and paid annual leave. Employers who without reasonable excuse fail to grant rest days to their employees are liable to prosecution and, upon conviction, to a fine of \$50,000.

Conclusion

7. FDHs are equally protected under the labour laws and are entitled to the benefits provided therein. In addition, they are protected by SEC which is specifically prescribed for them. FDHs having any dispute with their employers over the rights and obligations under EO or SEC or suspected of being abused should promptly seek assistance from LD. Free consultation and conciliation services will be provided by LD to assist the FDHs and their employers to resolve their disputes. If any breaches of laws are detected during the dispute resolution process, LD would take prosecution action and/or other follow-up action as appropriate.

Yours sincerely,



(Nicholas CHAN)
for Commissioner for Labour

c.c. Secretary for Constitutional and Mainland Affairs (Attn : Mr D C Cheung)
Secretary for Security (Attn: Ms Amy Wong)