

Submission from Well Shine Co.

## **Introduction**

Foreign Domestic Helpers (“FDH”) has become a fact of life in Hong Kong. They help ease the workload of housewives; look after the young so that career-minded parents can pursue their careers; and care for the elderly to give the younger generation peace of mind. The FDH takes up mundane tasks so that their employers can be more productive. Without the FDH Hong Kong is likely to suffer from an even worse labour shortage.

By definite the FDH comes from a foreign location. It is impractical, and in most cases even impossible, for prospective employers to seek a suitable FDH from the source. The Employment Agency (“Agency”) serves to connect an employer with a FDH.

The recent incident involving the abuse of a FDH puts the Agency under the spotlight. The Agency is accused of being irresponsible and greedy. In this document I'll try to explain the work of an agency, its costs and fees structure, and how legislation (of the HKSAR Labour Department) and requirements (of various consulates) affect its operations.

In the last part of this document I venture to suggest measures to improve the quality of service provided by the Agency, as well as ways to improve the relationship between employers, Agency, and FDH.

## **The responsibilities of the Employment Agency**

Typically the Agency's involvement in the hiring of a FDH by a Hong Kong employer is as follows :

- A. Source FDH suited to the requirements of Hong Kong employers;
- B. Provide choices and recommendations of FDH to employers;
- C. Help employers prepare and submit application to hire FDH;
- D. Coordinate with local agency to deploy FHD to Hong Kong;
- E. Assure FDH is safely transferred to the employer;
- F. Help mediate between employer and FDH in case of problems;
- G. Assist FDH upon request.

### **A. Sourcing FDH**

The two main sources of FDH are the Philippines and Indonesia. While the government of

both countries have qualifying programs for domestic helpers designated to work overseas, these programs are aimed at persons with no prior experience. That is to say they are basic and generic programs that do not necessarily address the needs of the country in which the helper is to work. The Agency often has to travel to the source countries to select helpers based on the requirements of Hong Kong employers. Sometimes selected helpers are asked to strengthen some of their skills, such as cooking Chinese food or spoken Cantonese, to make them more agreeable to Hong Kong employers.

#### B. Recommending FDH

With the help of the local deployment agency or training facility, a biographical profile (“bio-data”) is constructed for each helper. The Agency will present one or more of these bio-data to prospective employers based on their requirements. In some cases the Agency will arrange video interview for the employer with helpers they have short-listed.

#### C. Submitting applications

An application to hire a FDH has to be processed by two authorities – the consulate of the FDH's home country and the HKSAR Immigration Department. The application process requires the submission of three forms (ID407, ID988a, ID988b) and a collection of supporting documents. The Agency has to check the completeness and accuracy of forms and documents, as well as follow up with the progress of the application to ensure the FDH can be deployment with minimum delay.

#### D. Deployment of FDH

While the processing of a FDH for deployment to Hong Kong, or any country for that matter, is the responsibility of the local agent, the Agency still need to continuously monitor progress to ensure the FDH arrives in the stated time frame. This is not as easy as it sound because nearly all local agencies tend to delay passing on unfavourable news such as a delay in the processing. In such cases it is up to the Agency to explain to, and pacify, the anxious employer.

#### E. Handing over the FDH

Upon her arrival the Agency needs to pick up the FDH from the airport and arrange medical examination, as well as application of a HK identity card for first-timers to Hong Kong. Very often the Agency has to arrange board and lodging for the FDH until she is picked up by her employer – at the cost of the Agency.

#### F. Mediation

Few FDH are able to communicate in Cantonese. Most of them, notably those from Indonesia, can barely speak English. The Agency frequently acts as a 'translator' for both employer and FDH, especially during the first few months of the employment when teething problems are most apparent. In addition to simple translation the Agency often plays councilor to both parties – the employer because they find it hard to convey their requirements, and the FDH who struggles to meet her employer's expectations. All these 'after-sales' services are provided at no extra income.

#### G. Assistance to FDH

The Agency is required by consulates to take care of FDH from their respective countries. FDH, especially first-timers to Hong Kong, can find it daunting to adjust to Hong Kong. We have to act as information service, councilor, or even legal aid in some disputes between employer and FDH that got out of hand. Again the Agency do not receive extra income for providing such services.

The Agency is the middle-man, and we take heat from both sides – employer and FDH – if things don't go their way.

### **Are Agencies 'blood-suckers' ?**

A lot of groups representing the interests of FDH stated in public that the Agency charges FDH hefty sums for deploying to Hong Kong, and that FDH often has to repay loans equivalent to several months of their wages. The part about loans are true in most cases, but the money did not end up in the hands of the Agency.

As stated before a prospective FDH (often called the “Applicant”) is usually required to go through formal training in her home country before she is qualified to work as a domestic helper. Additional training is often required to increase their level of skill to match Hong Kong employers' requirements. Such training are not free. Just as one would pay for their education to attain certain academic or vocational qualifications, these Applicants are required to pay for their education and training.

Applicants are often of limited means, which is why they opt to work overseas in the first place. More often than not and Applicant needs to take out loans to pay for their training. They would then make their monthly repayments from the salary they receive as domestic helpers. The local agent handling an Applicant's deployment would often ask the Agency to help collect the loan

repayments and remit them back to the originating lender. The Agency tends to oblige because it is locked-into a limited number of local agents for the supply of FDH. If the Agency does not cooperate it runs the risks of no marketable Applicants.

It is also true that some FDH interpret legislation in the home country and HKSAR Labour Ordinance to their advantage. For instance some refuse to make loan repayments because Labour Ordinance stated that the Agency cannot charge a FDH more than 10% of her salary. They have conveniently forgotten that the money they pass to the Agency every month is the repayment of their loan in their country for their training.

## **So what is the problem ?**

The news is inundated with stories of employers mistreating their FDH, and FDH abusing the trust of their employers. For some reason the Agency ended up as the cause of this discord. So what is the problem ?

In most cases the problem stems from a difference in interests. The employer, having paid a fair sum to hire the FDH, expects the FDH to work to or exceeding expectations. On the other hand the FDH, having paid a hefty sum for her training, expects to be able to meet expectations on the first try and breeze through the 2-year contract with a minimum of fuss. Needless to say both parties are wrong.

Difference in culture set both parties apart on fundamental values such as timeliness and efficiency. It takes quite some effort for an employer to educate the FDH on what is expected of her. It takes even more effort for the FDH to understand the quality of work deemed satisfactory in her home country is barely tolerable in Hong Kong. Both sides have to work hard to ensure harmony in the household.

However more often than not both parties take the easy way out by blaming the Agency. The employer thinks the Agency incapable of finding the 'good' FDH; whereas the FDH claimed she paid all that money for an employer that is over-demanding and impossible to work with.

And then there is the fault of the Employment Agency industry. Some agencies, desperate for FDH to promote to employers, uses unethical practices to lure FDH from their current contract. There are also third-party 'agents' who would do their 'recruiting' in places frequented by FDH on their days off. These bad seeds try to generate business by effectively 'recycling' FDH instead of bringing fresh ones in.

So it is true that not all employment agents act responsibly, but all parties concerned – employers, agents, and FDH – contributed to the problem.

## **Moving forward**

The Agency is not the only cause in the employer/FDH relationship problems. Nonetheless it would help the Agency maintain the role of mediator if it is able to demonstrate professionalism and ethics. I recommend the following course of action :

- A. Clear and official guidelines on the responsibilities of the Agency;
- B. Issuing of the Employment Agency License by the Labour Department requires demonstration of knowledge of related ordinance – i.e. a test;
- C. Active reinforcement of laws by the Labour Department to weed out parties carrying out recruitment of FDH without an Employment Agency license;
- D. New legislation or directive allowing the Agency to contact FDH during her work hours to check on her.

### **A. Guidelines for the Agency**

The Employment Ordinance as it currently stands does not mention the role and responsibilities of the Agency. If the Government, or the public, expects the Agency to step up and take responsibility then it is only fair to clearly define what those responsibilities are. For instance upon termination of a contract the FDH will have to leave the employer's residence. If the Agency is legally required to provide the FDH with boarding facilities then it should also be entitled to charge the FDH. Another example would be to charge the Agency with the responsibility of acclimatizing the FDH to the Hong Kong environment.

### **B. Employment Agency License**

Currently the issuance of an Employment Agency License requires only a cursory check on the background of the applicant. No effort is made to determine if this applicant has the knowledge to operate as an employment agent. Passing a test of the applicant's knowledge of the Employment Ordinance as well as the Employment Agency Guidelines proposed above should be a requirement for the issuance of the license.

### **C. Weeding out illegal operators**

As mentioned above these unlicensed operators recruit FDH already in Hong Kong. Stronger

actions should be taken against such persons and the licensed agencies they work with.

#### D. New legislation

Some employers forbid their FDH to take phone calls while at home, regardless of whether it is their work hours. Even the Agency cannot contact the FDH without prior consent and arrangement by the employer. If the Agency is charged with the responsibility of ensuring the FDH's well being then it should be given the authority to contact the FDH at any time. This legislation should also require the Agency be provided with a phone number through which the FDH can be reached – some employers do not disclose their home phone number, only leaving their mobile phone number for contact purposes.

Shouldering additional responsibilities require extra resources. If the Agency is expected to look after a FDH throughout the duration of her contract then the said Agency should also be able to charge the FDH for their services during the same period of time. For instance in the case of Singapore their employment agencies can charge FDH they process 10% of their salary each month for up to 2 years. A similar arrangement can be made in the case of Hong Kong FDH.

## **Conclusions**

Foreign domestic helpers make a real contribution to Hong Kong by taking up work that is mundane but necessary, and in so doing freeing up a significant portion of the Hong Kong labour force.

The increased number of reported conflicts between employers and FDH have put the role, ability, and ethics of employment agencies under question. This document looks at the FDH industry from the point of view of an agency, hoping to clear up some of the questions.

Currently employers seek the services of agencies based on reputation, recommendations, or simply advertisements. In the interest of employers the Government should ensure agencies are capable of performing their duties – some form of qualification process is desirable. On the other hand a FDH should be able to rely on her processing agency to provide her assistance when required.

For its efforts the Agency should be allowed to charged a predetermined but reasonable fee.