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Panel on Manpower

**Information note prepared by the Legislative Council Secretariat
for the meeting on 16 April 2019**

Foreign domestic helpers' access to healthcare services

The Panel on Manpower has not discussed the subject of healthcare services for foreign domestic helpers ("FDHs") per se. According to the Administration's replies to relevant questions raised by Members at Council meetings, Clause 9(a) of the Standard Employment Contract ("SEC") for FDHs requires that in the event that an FDH is ill or suffers from personal injury during the period of employment, irrespective of whether it is attributable to work, the employer shall provide free medical treatment to the FDH. Free medical treatment includes medical consultation, maintenance in hospital and emergency dental treatment. The FDH concerned shall accept medical treatment by any registered medical practitioner as provided by the employer. SEC does not set a ceiling on the amount to be borne by the employer or stipulate any specific exemption items. It is, however, stipulated in SEC that employers are not responsible for medical expenses during the period when FDHs leave Hong Kong of their own volition and for their own personal purposes. Furthermore, pursuant to the Employees' Compensation Ordinance (Cap. 282), all employers, including FDH employers, are required to take out employees' compensation insurance for their employees, to cover their liabilities under the law, including Common Law, if their employees are injured at work. The relevant questions raised by Members and the Administration's replies are in **Appendices I and II**.

2. The Administration will brief the Panel on Manpower on the access of FDHs to healthcare services at the meeting on 16 April 2019.

Press Releases

LCQ2: Employers to provide free medical treatment to foreign domestic helpers

Following is a question by the Hon Michael Tien and a reply by the Secretary for Labour and Welfare, Dr Law Chi-kwong, in the Legislative Council today (November 15):

Question:

The Standard Employment Contract (SEC) applicable to foreign domestic helpers (FDHs), which was drawn up by the Government, provides that in the event that an FDH is ill or suffers personal injury regardless of whether this arises out of employment ... the Employer shall provide free medical treatment to the helper.

Free medical treatment includes medical consultation, maintenance in hospital and emergency dental treatment. An FDH employer group has pointed out that FDHs are free to go out and engage in their favourite activities on non-working days (including statutory holidays, paid annual leave and rest days). Employers have no authority to stop FDHs from going out during inclement weather or interfere with their engagement in high-risk activities. If FDHs fall sick or sustain injuries due to accidents during such period of time, their employers are required to bear their medical expenses as per the contracts. However, the insurance policies on employees' compensation (labour insurance policies) taken out by employers for FDHs normally do not cover medical expenses incurred due to illnesses or injuries or accidents not attributable to their employment. I have received requests for assistance from a large number of FDH employers who said that they were required to bear huge medical expenses of their FDHs. In this connection, will the Government inform this Council:

(1) whether it knows the current number and percentage of FDH employers who have taken out insurance policies for FDHs covering medical expenses not related to work;

(2) given that the existing legislation does not require employers to bear their employees' medical expenses not related to work, whether the Government will review the aforesaid provision in SEC, so that the employers and employees share the relevant expenses among them in a more reasonable manner; if so, of the details; if not, the reasons for that; and

(3) whether the Government will consider enacting legislation to require that FDHs must take out the relevant medical insurance policies on their own or that employers must take out such insurance policies for their FDHs, in order to offer protection for both the employers and employees?

Reply:

President,

Clause 9(a) of the Standard Employment Contract (SEC) for foreign domestic helpers (FDHs) requires that in the event that an FDH is ill or suffers from personal injury during the period of employment, irrespective of whether it is attributable to work, the employer shall provide free medical treatment to the

FDH. Free medical treatment includes medical consultation, maintenance in hospital and emergency dental treatment. The FDH shall accept medical treatment by any registered medical practitioner as provided by the employer. Furthermore, pursuant to the Employees' Compensation Ordinance (ECO), all employers (including FDH employers) are required to take out employees' compensation insurance (EC insurance) for their employees, to cover their liabilities under the law (including Common Law) if their employees are injured at work.

My consolidated reply to the question raised by the Hon Michael Tien is set out below -

As explained above, it is a legal requirement for all FDH employers to take out EC insurance for their FDHs. The Labour Department does not maintain information about the detailed coverage of the insurance taken out by individual employers for their FDHs, including whether the insurance product covers non-work-related injuries and illnesses.

The requirement of Clause 9(a) of the SEC seeks to ensure that when employers hire FDHs to Hong Kong to provide household services at their residences, FDHs would not be deprived of or delayed in treatment for illnesses or personal injuries for want of means. Even if FDHs need to use public medical services, the expenses incurred should be borne by employers rather than the public purse. On the other hand, the SEC has already clearly defined the responsibilities of employers. For example, it has stipulated that employers are not responsible for medical expenses during the period which FDHs leave Hong Kong of their own volition and for their own personal purposes.

In sum, we consider it reasonable to hold employers responsible for the medical expenses of FDHs under their employment and do not see any strong justifications to abolish or revise such arrangement.

In fact, the insurance market currently offers various types of comprehensive insurance products for FDHs. Apart from the basic EC insurance coverage, there is also additional coverage, including medical expenses of hospitalisation and surgery, outpatient clinic and dental care, etc. In addition, quite a number of comprehensive FDH insurance products offer coverage on personal accident, expenses for FDH to return to place of origin owing to serious illness or injury and expenses for hiring a replacement FDH, etc. According to these comprehensive insurance products, even if FDHs require medical treatment due to injury arising from non-work-related activities or by an accident on a rest day, employers may submit medical claims to insurance companies in accordance with the comprehensive insurance plan taken out, or submit personal accident claims which include death or permanent disability of FDHs caused by severe accidents, etc. At the same time, the policy terms of each insurance product would list out in detail the general and/or personal accident-related items that are excluded from the policy coverage. In taking out FDH comprehensive insurance products, employers should, as in taking out other insurance products, carefully compare the products offered by different insurance companies and examine the policy terms to have a clear understanding of the coverage, for example, whether the policy terms have made it clear that accidents occurred in inclement weather would not be covered, etc. Employers should then decide on taking out additional types of coverage or scopes of medical coverage.

President, the existing arrangement has struck an appropriate balance between the requirement for employers to provide reasonable protection for their FDHs and the affordability of employers. There is also sufficient flexibility for employers to choose freely from various comprehensive insurance products providing additional coverage according to their own circumstances. Nevertheless, the Labour Department would step up promotion and publicity efforts to advise employers to consider taking out necessary comprehensive insurance products in compliance with the requirements under the ECO and SEC. On the other hand, the department will remind employers through employment agencies and insurance companies to ensure that they are fully aware of their responsibilities under the relevant legislation and SEC when employing FDHs, including their responsibility for the medical expenses of FDHs during the employment period. The department will also reinforce the promotional message that employers should consider taking out comprehensive insurance to lower the personal liability risk.

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Press Releases

LCQ18: The requirement for the provision of free medical treatment to foreign domestic helpers by their employers

Following is a question by the Dr Hon Elizabeth Quat and a written reply by the Secretary for Labour and Welfare, Dr Law Chi-kwong, in the Legislative Council today (December 6):

Question:

Clause 9(a) of the Standard Employment Contract (SEC), which was drawn up by the Government and is applicable to foreign domestic helpers (FDHs), provides that in the event that an FDH "is ill or suffers personal injury [regardless of whether this arises out of employment] ... the Employer shall provide free medical treatment to the Helper. Free medical treatment includes medical consultation, maintenance in hospital and emergency dental treatment". Recently, the Hong Kong Employers of Domestic Helpers Association and a number of FDH employers have relayed to me that this clause compels FDH employers to bear the medical expenses incurred by their FDHs due to critical illnesses, chronic diseases, giving birth or injuries caused by accidents during their engagement in high-risk activities, and it has not prescribed a cap on the amount of medical expenses to be borne by the employers. They therefore consider that such a requirement unfairly places an excessive and unreasonable financial burden on the employers. On the other hand, if an employee suffers from a critical illness or chronic disease and a certificate has been issued by a registered medical practitioner certifying that he/she is permanently unfit for the present job he/she is being engaged, his/her employer may terminate the employment contract immediately. However, in accordance with the requirements under the Personal Data (Privacy) Ordinance (Cap 486), a medical practitioner must not issue such a certificate to an FDH employer unless the FDH has given consent to disclosing his/her personal data to a third party. In this connection, will the Government inform this Council:

(1) whether there is currently a requirement that a prospective FDH or his/her prospective employer must, before the former's entry into Hong Kong, submit directly to the relevant government departments a health certificate and a medical examination report issued by authorised medical institutions in respect of the prospective FDH; if not, how the authorities ensure that a prospective FDH, who will stay in Hong Kong for a period of time, does not suffer from infectious diseases or chronic illnesses;

(2) as clause 8 of SEC provides that a prospective FDH employer shall be responsible for the medical examination fees incurred by the prospective FDH before his/her entry into Hong Kong, and clause 17 requires the employer to sign a declaration that "the Helper has been medically examined as to his/her fitness for employment as a domestic helper and his/her medical certificate has been produced for inspection by the Employer", whether, under these two clauses, the prospective employer has the authority to require, before signing the employment contract, the prospective FDH to submit his/her medical examination report, and whether the Government requires a prospective employer to perform a gatekeeping role to verify the healthiness of the prospective FDH and to act as a guarantor of the FDH's healthiness;

(3) whether it has assessed if the following two practices of prospective FDH employers will contravene the Disability Discrimination Ordinance (Cap 487): (i) deciding not to sign an employment contract with a prospective FDH upon knowing from the medical examination report of the FDH before his/her entry into Hong Kong that the FDH has health problems, and (ii) deciding to terminate an employment contract with an FDH upon learning from the report of a medical examination, which the FDH was arranged to undergo within one week upon the FDH's arrival at Hong Kong, that the FDH is suffering from a critical illness or chronic disease; if it has assessed, of the outcome;

(4) whether it currently provides support to prospective FDH employers for judging the authenticity of the medical certificates provided by prospective FDHs before their entry into Hong Kong; if not, how prospective employers may verify the authenticity of such documents;

(5) given that employers have no authority to stop FDHs from going out (even during inclement weather) or engaging in high-risk activities on non-working days, but employers are required to bear the medical expenses incurred by FDHs due to their injuries caused by accidents during such period of time, whether the Government will reconsider amending clause 9(a) of SEC to prescribe a cap on the amount of medical expenses to be borne by employers and expressly exclude the medical expenses incurred by FDHs due to critical illnesses, chronic diseases, giving birth and injuries caused by accidents during their voluntary engagement in high-risk activities on non-working days, so as to avoid employers having to bear unreasonable financial burden; if so, of the details; if not, the reasons for that;

(6) as some FDH employers have pointed out that a family with a monthly income of no less than HK\$15,000 is already eligible to apply for hiring an FDH but in the event that the huge medical expenses, incurred by an FDH due to a critical illness or injury caused by an accident, are not indemnified by the insurance policy taken out by the FDH employer or the amount of indemnity is inadequate, the family concerned will suffer financial hardship, whether the Government will provide financial support to this type of families; if so, of the details; if not, the reasons for that; and

(7) as some FDH employers have pointed out that it is increasingly common for foreigners to apply for taking up employment as FDHs in Hong Kong in order to obtain free or low-charge medical services of Hong Kong, of the Government's measures to address the problem?

Reply:

President,

According to Clause 17 of the Standard Employment Contract (SEC) for foreign domestic helpers (FDHs), the FDH and the employer (i.e. the contracting parties) declare that the FDH has been medically examined as to his/her fitness for employment as a domestic helper and his/her medical certificate has been produced for inspection by the employer. The employer and the FDH already indicate their consent to the terms of the contract upon signing the SEC.

My replies to the Member's sub-questions are as follows:

(1) and (2) Under the current policy, there is no stipulation by the Government on pre-employment medical examination of employees (whether local workers or overseas workers coming to Hong Kong for employment). It is not necessary for employers and FDHs to submit medical examination report of the FDH concerned to government departments. Nevertheless, according to the aforementioned Clause 17 of the SEC, FDHs are required to undergo medical examination before they come to Hong Kong and to produce the medical examination report to the employer for inspection.

(3) According to the "Code of Practice on Employment under the Disability Discrimination Ordinance" issued by the Equal Opportunities Commission, the Disability Discrimination Ordinance (DDO) (Cap 487) does not prohibit employers from asking a person with a disability to undergo a medical examination. Information of a medical nature may be used in assessing whether the person could fulfil the inherent requirements of the job. In order to determine whether a refusal to offer employment or a dismissal of a person with a disability from employment is in contravention of the DDO, it is necessary to consider all relevant factors, including the person's past training, qualifications and experience relevant to the job; his/her performance as an employee (where the person is already employed by the employer); whether the disability of the applicant or the employee would make him/her unable to fulfil the inherent requirements of the job; and whether the accommodation required by the person concerned would create unjustifiable hardship for the employer. It is not in contravention of the DDO for an employer to refuse to offer employment or dismiss a person with a disability from employment if the applicant or the employee with his/her disability is not able to fulfil the inherent requirements of the job and the accommodation required would create unjustifiable hardship for the employer.

In addition, according to Clause 10 of the SEC, either the employer or the FDH may terminate the contract by giving one month's notice in writing or one month's wages in lieu of notice. Under Clause 9(c) of the SEC, in the event of a medical practitioner certifying that the FDH is unfit for further service, the employer may subject to the statutory provisions of the relevant Ordinances (including, among others, that an employer is prohibited from terminating the contract of employment of an employee on his/her paid sickness day, except in cases of summary dismissal due to the employee's serious misconduct) terminate the employment, but the employer is still required to arrange for the FDH to return to his/her place of origin in accordance with Clause 7 of the SEC.

(4) We recommend prospective employers to know about the physical conditions of the FDHs by inspecting the medical certificates in determining whether the latter are able to fulfil the inherent requirements of the relevant work. If the FDH refuses to undergo medical examination or to provide the employer with a medical examination report, the employer may refuse to sign the contract for employing the FDH.

If an employer hires his/her FDH through an employment agency (EA) and that EA provides a false medical examination report to the employer, the EA concerned would have contravened the Code of Practice for EAs (the Code). According to the Code, EAs should ensure that the information provided to employers is consistent with the facts made known to them. If there are reasonable grounds to suspect that the information provided by

the job-seeker is inaccurate or the information is incomplete, the EA should seek clarification and further information from the party concerned (e.g. the subject and/or the local or overseas business partners that refer the job-seeker/employer).

Apart from contravening the Code, the EA concerned may have breached the Trade Descriptions Ordinance (Cap 362) as well. This Ordinance regulates against unfair trade practices, including false trade descriptions, misleading omissions, aggressive commercial practices, bait advertising, bait-and-switch and wrongly accepting payment. Employers may complain to the Customs and Excise Department or seek assistance from the Consumer Council if they suspect that the EAs have deployed unfair trade practices.

To further protect the consumer rights of employers, the Code also explicitly requires EAs to draw up written service agreements with employers, including refund arrangements if the EA fails to deliver the agreed services in full, so that the employers may claim compensation from the EAs for the services that are not fully delivered and/or seek assistance from the relevant authorities.

(5) to (7) Clause 9(a) of the SEC requires that in the event that an FDH is ill or suffers from personal injury during the period of employment, irrespective of whether it is attributable to work, the employer shall provide free medical treatment to the FDH. Free medical treatment includes medical consultation, maintenance in hospital and emergency dental treatment. The FDH shall accept medical treatment by any registered medical practitioner as provided by the employer. The Clause neither sets a ceiling on the amount to be borne by the employer in providing free medical treatment to the FDH nor stipulates any specific exemption items. Nevertheless, the SEC clearly specifies that employers are not responsible for medical expenses during the period when FDHs leave Hong Kong of their own volition and for their own personal purposes. The aforesaid Clause 9(a) seeks to ensure that when employers hire FDHs to Hong Kong to provide household services at their residences, FDHs would not be deprived of or delayed in treatment for illnesses or personal injuries for lack of means. Even if FDHs need to use public healthcare services, the expenses incurred should be borne by employers. In sum, we consider it reasonable to hold employers responsible for the medical expenses of FDHs under their employment and do not see any strong justifications to abolish or revise such arrangement. We will monitor the relevant situation to decide whether it is necessary to review the above arrangements.

The insurance market currently offers various types of comprehensive insurance products for FDHs. Apart from providing employees' compensation insurance that employers must take out for their employees (or FDHs), there is also additional coverage, including medical expenses of hospitalisation and surgery, outpatient clinic and dental care, etc. In addition, quite a number of comprehensive FDH insurance products offer coverage on personal accident, expenses for FDH to return to place of origin owing to serious illness or injury and expenses for hiring a replacement FDH, etc. According to these comprehensive insurance products, even if FDHs require medical treatment due to injury arising from non-work-related activities or by an accident on a rest day, employers may submit medical claims to insurance companies in accordance with the comprehensive insurance plan taken out, or submit personal accident claims which include death

or permanent disability of FDHs caused by severe accidents, etc. At the same time, the policy terms of each insurance product would list out in detail the general and/or personal accident-related items that are excluded from the policy coverage. In taking out FDH comprehensive insurance products, employers should, as in taking out other insurance products, carefully compare the products offered by different insurance companies and examine the policy terms to have a clear understanding of the coverage, for example, whether the policy terms cover critical illnesses or whether the policy terms have made it clear that accidents occurring in inclement weather would not be covered, etc. Employers should then decide on taking out additional types of coverage or scopes of medical coverage.

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