

Bills Committee on Employment (Amendment) Bill 2021

The Government's response to issues raised by the Bills Committee at its meetings held on 13 April 2021

This paper sets out the Government's response to the issues raised by the Bills Committee on Employment (Amendment) Bill 2021 at its meeting held on 13 April 2021.

Number of Holidays Designated Specifically for Employees in Hong Kong and Some Economies

2. According to the information gathered by the Labour Department ("LD") in the public domain, the number of holidays designated specifically for employees in different economies varies from one another. The relevant information is set out at Annex 1.

Compliance of the Migration for Employment Convention (Revised), 1949 by Hong Kong and Comparison of the Labour Policy on Foreign Domestic Helper with Some of the Economies

3. Article 6 of the Migration for Employment Convention (Revised), 1949 (International Labour Convention No. 97) ("ILC No. 97") stipulates that each Contracting Party undertakes to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within its territory, a variety of treatments no less favourable than that which it applies to its own nationals, which includes holidays with pay. Although ILC No. 97 does not specifically restrict the wage level of foreign domestic helpers ("FDHs"), the principle of non-discrimination applies to a variety of treatments under Article 6 which also covers remuneration and other items in addition to holidays with pay. The labour legislation in Hong Kong applies to local and foreign workers (including FDHs). In other words, both local and foreign workers enjoy the same rights and protection under current labour legislation.

4. On the other hand, we wish to clarify that live-in domestic workers¹ are exempted from the Minimum Wage Ordinance (Cap. 608). This includes all

¹ The statutory minimum wage applies to all employees, whether they are monthly-rated, weekly-rated, daily-rated, hourly-rated, piece-rated, permanent, casual, full-time, part-time or other employees, and regardless of whether they are employed under a continuous contract as defined in the Employment Ordinance (Cap. 57). It, however, does not apply to specified persons including live-in domestic workers.

domestic workers who dwell free of charge in their employer's households, for example, domestic helpers, carers, chauffeurs, gardeners, or other personal helpers, irrespective of their sex, race or nationality (i.e. local or foreign). The major considerations for the exemption arrangement are the distinctive working pattern of live-in domestic workers and the legal requirement for statutory minimum wage, which is set on an hourly basis, rendering practical difficulties in the calculation and record of working hours of live-in domestic workers. This exemption arrangement also reflects the provision of in-kind benefits arising from live-in domestic workers' dwelling in the household of employers free of charge, including provision of free accommodation and usually free food by employers, as well as savings of transport costs for commuting between living and working places. Notwithstanding the above, all domestic workers, regardless of local or foreign, and whether they reside in their working places or not, enjoy equal protection and entitlements under the Employment Ordinance (Cap. 57) ("EO").

5. With respect to the compliance of the Hong Kong Special Administrative Region ("SAR") Government with ILC No. 97, we must point out that the Hong Kong SAR Government takes all international labour conventions applicable to Hong Kong seriously. Like local employees, FDHs enjoy equal and full protection and entitlements under EO, including wage payment, maternity protection, rest days, statutory holidays, annual leave, long service payment, etc. This policy is the cornerstone of Hong Kong's compliance with the applicable obligations under ILC No. 97. In the Central People's Government ("CPG")'s communication of June 1997 to the International Labour Organisation ("ILO") on the continued application of ILC No. 97 to the Hong Kong SAR with effect from 1 July 1997, it was stated that the international rights and obligations of a Contracting Party to ILC No. 97 would be assumed by the Government of the People's Republic of China. In accordance with the supervisory system of ILO, Hong Kong has been regularly submitting reports on application of ILC No. 97 to ILO through CPG, in order to discharge the international responsibility of the People's Republic of China.

6. Regarding the comparison of labour policy on FDHs among Hong Kong and other economies, LD has also gathered the relevant information on some economies, which is set out at [Annex 2](#).

Labour and Welfare Bureau
Labour Department
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**Number of Holidays Designated for Employees
in Hong Kong and Neighbouring Economies**

| Neighbouring Economies | Number of holidays designated for employees |
|------------------------|--|
| Thailand | 13 |
| Taiwan | 13 ¹ |
| Australia | 10 - 15 ² |
| Hong Kong | 12 |
| The Philippines | 12 |
| Singapore | 12 ³ |
| Malaysia | 11 ⁴ |
| New Zealand | 11 |
| Mainland China | 11 |
| Macao | 10 |
| Korea | 1 - 17 ⁵ |
| The United Kingdom | 0 ⁶ |
| Japan | 0 ⁷ |

Remarks: The number of holidays of individual places may vary from time to time. The above information is the number of holidays in relevant places in 2020. (Source of information: Online search conducted by the Labour Department in March 2021)

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- ¹ In Taiwan, there are 12 statutory holidays each year. Due to election, Taiwan announced 11.1.2020 as a one-off paid holiday.
- ² In Australia, the number of holidays varies among states and territories.
- ³ In Singapore, there are 11 statutory holidays each year. Due to election, Singapore announced 10.7.2020 as a one-off paid holiday.
- ⁴ In Malaysia, there are 11 statutory holidays and specified additional holiday(s). No additional holiday was specified in 2020.
- ⁵ Korea has revised the law in 2018 that from 2020 onwards, business employing at least 300 employees need to provide to their employees general holidays, the provisions will be extended to business employing between 30 and less than 300 employees in 2021 and business employing between 5 and less than 30 employees in 2022.
- ⁶ There is no paid statutory holiday in the United Kingdom, but employees are entitled to 28 days' paid annual leave a year. Employers and employees can negotiate on including 8 days public holidays as part of the statutory annual leave.
- ⁷ There are 16 general holidays in Japan. However, there is no holiday for employees under its labour legislation as an employee's entitlement to holidays is subject to the terms of employment contract.

Comparison of Labour Policy on Foreign Domestic Helpers in Hong Kong and Neighbouring Economies

| | | Hong Kong | New Zealand | The United Kingdom | Singapore | Macao | Taiwan | Malaysia |
|----|---|---|--|---|---|--|--|---|
| 1. | Implemented the Migration for Employment Convention (Revised), 1949 (International Labour Convention No. 97)? | Yes | Yes | Yes | No | No | No | No ¹ |
| 2. | Is there any Standard Employment Contract for foreign domestic helpers (FDHs) prescribed by the Government? | Yes | No, but a written employment contract must be signed by the employer and employee. | Yes | No, but the government encourages the use of written employment contract. | No, but a written employment contract must be signed by the employer and employee. | No, but a written employment contract must be signed during the application process. | Yes |
| 3. | Any regulation on the minimum wage level of FDHs? If so, what is the standard? | Yes HK\$4,630 per month ² | Yes NZ\$20 (about HK\$113) per hour | Yes £8.91 (about HK\$96) per hour ³ | No According to the agreement of the employer and employee. However, according to the minimum wage level set | Yes The minimum starting point is MOP\$3,000 (about HK\$2,913) per month ⁵ | No NT\$17,000 (about HK\$4,573)(excluding FDHs from Thailand ⁶) | No According to the agreement of the employer and employee. However, according to the minimum wage level set |

¹ Excluding Sabah.

² For contracts signed on or after 28.9.2019, the Minimum Allowable Wage for FDHs in Hong Kong is HK\$4,630 per month.

³ Such wage level is applicable to employees aged above 23 in the United Kingdom.

⁵ The average monthly market wage level is MOP\$4,400 (about HK\$4,272) per month.

⁶ In Taiwan, the monthly wage for FDHs from Thailand should not be lower than NT\$23,800 (about HK\$6,402).

| | | Hong Kong | New Zealand | The United Kingdom | Singapore | Macao | Taiwan | Malaysia |
|----|---|-----------|-------------|--------------------|---|-------|--|---|
| | | | | | by the government of the sourcing countries of FDHs, from S\$450 to S\$570 (about HK\$2,635 to HK\$3,338) ⁴ per month. | | | by the government of the sourcing countries of FDHs, from RM1,000 to RM1,800 (about HK\$1,890 to HK\$3,402) ⁷ per month. |
| 4. | Are the numbers of holidays designated for employees the same for FDHs and local employees? | Yes | Yes | Yes | No The number of holidays for FDHs is set according to the employment contract. | Yes | No The law does not state that FDHs are entitled to statutory holidays. | No The law does not state that FDHs are entitled to statutory holidays. |

Note:

- The above information is based on an online search conducted by the Labour Department from the end of April to early May 2021. The content may vary from time to time.
- The conversion of foreign currencies to Hong Kong dollars listed in the table is calculated at the exchange rate on 1 May 2021.

⁴ The minimum monthly wage levels set by different sourcing countries for FDHs in Singapore: Philippines - S\$570 (about HK\$3,338); Indonesia - S\$550 (about HK\$3,220); Sri Lanka - S\$497 (about HK\$2,910); and Myanmar - S\$450 (about HK\$2,635).

⁷ The minimum monthly wage levels set by different sourcing countries for FDHs in Malaysia: Philippines – RM1,800 (about HK\$3,402); and Indonesia – RM1,000 (about HK\$1,890).