

Practical Guide For Employment Of Foreign Domestic Helpers – What foreign domestic helpers and their employers should know

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Foreword

This guidebook aims at providing a quick reference on the rights and obligations of employers and employees pertaining to the employment of domestic helpers from outside Hong Kong. It attempts to answer some of the common questions raised by the foreign domestic helpers and their employers.

Foreign Domestic Helpers are entitled to the same benefits and protection under the Employment Ordinance. For details on the conditions of employment and the legal provisions, employers and foreign domestic helpers should refer to the standard employment contract (ID 407) and the Employment Ordinance which remains the sole authority for the provisions explained. The court is the authority on questions of interpretation of the law.

Chapter 1: On First Employment

For both employer and helper

Q1.1 What are the rights and responsibilities regarding my employment as a foreign domestic helper OR as an employer of a foreign domestic helper?

- A The basic rights and responsibilities regarding the employment of foreign domestic helper are specified in the standard employment contract (ID 407) (Appendix I). In addition, the Employment Ordinance is also applicable to employers and helpers alike.

Q1.2 Will there be any sanctions imposed on those helpers and employers for breaching the terms and conditions specified in the standard employment contract?

- A (please read in conjunction with Qs & As 1.1, 1.4, 1.5, 1.8 & 1.9 of the guidebook)
- ☆ Both the helper and employer are required to undertake to the Government of the HKSAR at Part 6 of the “Visa/Extension of Stay Application Form for Domestic Helper from Abroad” (ID 988A) and “Application for Employment of Domestic Helper from Abroad” (ID 988B) that they will strictly observe, among other things, the helper’s conditions of stay as well as the wage level, live-in and accommodation requirements.
 - ☆ If a helper breaches the undertaking, he/she may not be allowed to work in Hong Kong again. If an employer breaches the undertaking, his/her future application to employ foreign domestic helpers may also be refused.
 - ☆ Employers should not be easily persuaded to provide false information in the application and the standard employment contract pertaining to the employment of foreign domestic helpers, or to collude with others in deception with the intent to employ foreign domestic helpers by paying wages less than that stipulated in the standard employment contract. In a case, an employer who furnished false information to the Immigration Department about the wages of his foreign domestic helper was sentenced to four months' imprisonment and ordered to pay the wages in arrears to the helper. Employers are advised to abide by the law and pay the full amount of wages stated in the standard employment contract to their foreign domestic helpers. Otherwise, it is an offence and the employer is liable to prosecution.
 - ☆ Moreover, if an employer or a helper commits offences under the Employment Ordinance or the Immigration Ordinance, they are also subject to criminal prosecution.

For employer

Q1.3 What should I do upon my helper’s arrival to commence work?

- A
- ☆ You should pay your helper the daily food and travelling allowance of HK\$100 per day, as specified in the employment contract, for his/her journey to Hong Kong. You should also reimburse him/her the cost of preparing all necessary documents. See Chapter 2.
 - ☆ You are advised to explain to your helper the duties you expect him/her to perform. Such duties must be domestic duties as specified in the “Schedule of Accommodation and Domestic Duties”* of the employment contract.

- ☆ You should fix a date on which you will pay wages to your helper. See Chapter 3.
- ☆ You should appoint rest days for your helper. See Chapter 4.
- ☆ You should agree with your helper whether food will be provided during employment. If it is provided, it must be free of charge. If no food is provided, a food allowance of the amount specified in the employment contract should be given to the helper each month. For standard employment contracts signed on or after 1 October 2016, the applicable food allowance shall be not less than HK\$1,037 per month.
- ☆ You should take out employees' compensation insurance against your liabilities for your helper's injuries at work. This is a requirement under the Employees' Compensation Ordinance. Failure to do so is an offence in law, punishable by a fine and imprisonment. Besides, you are required to provide free medical treatment to the helper according to the standard employment contract, you are therefore advised to take out a comprehensive insurance policy to cover the related expenses when they arise. See Chapter 5.

Q1.4 Can I concurrently enter into another employment contract with my helper?

- A No. The standard employment contract (ID 407) is the only official employment contract for all foreign domestic helpers in Hong Kong. Any other employment contract entered between the employer and the helper is not enforceable in Hong Kong.

Q1.5 Can I ask my helper to work for another person or take up non-domestic duties?

- A No. It is an offence under the Immigration Ordinance to ask your helper to work for another person other than the employer named in his/her visa or to ask him/her to perform non-domestic duties. Employers found to have breached the Immigration Ordinance may face prosecution.

For helper

Q1.6 What should I do when I start working for my employer?

- A ☆ To facilitate reimbursement of costs of documentation by your employer, you should produce receipts for all relevant expenses incurred in preparing the documents.
- ☆ You are advised to ask your employer to explain your duties and get a clear idea of what your employer expects of you. You shall perform domestic duties as specified in the "Schedule of Accommodation and Domestic Duties"* of your employment contract.
- ☆ You should keep your own personal identification documents (e.g. identity card, passport, etc.). No other person, including your employer or staff of the employment agency, should keep these documents for you without your consent.

Q1.7 Can I live away from my employer’s home?

- A ☆ No. You should work and reside in your employer’s residence in accordance with Clause 3 of the standard employment contract. Your employer is required to provide you with free accommodation as per the standard specified in the “*Schedule of Accommodation and Domestic Duties*”^{*} of the employment contract.

(For those live-out arrangements which have been approved by the Director of Immigration before 1 April 2003, the helper is allowed to reside in places other than the employer’s residence provided that the employer continues to employ foreign domestic helper without a break of more than 6 months.)

Q1.8 Can I take up part-time employment with my employer’s consent?

- A No. It is an offence under the Immigration Ordinance for you to take up any employment with any person other than your employer named in your visa. You will be liable to prosecution and removal for breaching the conditions of stay. If you are so removed, you will not normally be allowed to come to Hong Kong again to work as a helper.

Q1.9 What should I do if my employer deploys me to work for another person or take up non-domestic duties?

- A You should report the matter to the Investigation Division of the Immigration Department.

Q1.10 What should I note on my personal safety and rights while I work in Hong Kong?

- A ☆ If you were being physical abused or your personal safety is at risk, call the police emergency hotline “999” immediately for assistance.
☆ If you are not paid your wages or any of your employment right is infringed, call the Labour Department 24-hour enquiry hotline “2-71-71-771” or approach the appropriate branch office of the Labour Relations Division of the Labour Department for enquiry and assistance (see Chapters 3 and 12).
☆ Always keep your passport and Hong Kong Identity Card yourself. No other person should keep your passport for you.
☆ You should not sign any documents if you do not understand or agree.

*The standard employment contract includes a “Schedule of Accommodation and Domestic Duties” which specifies the standard of accommodation and details of domestic duties performed by the helper.

Chapter 2: Reimbursement of Costs of Documentation

For employer

Q2.1 What expenses should I reimburse my helper under the employment contract?

- A ☆ Under the employment contract, you are responsible for expenses incurred by your helper in preparation of documents for taking up employment with you. Normally your helper would have paid such expenses and you should reimburse him/her as soon as possible when he/she produces the receipts. You are advised to ask him/her to acknowledge your reimbursement in writing and keep the receipts for proof of payment.
- ☆ Taking the case of a helper from the Philippines as an example, you may be asked to pay the following :
- ☆ Philippines Overseas Employment Administration (POEA) fee (collected by the Philippines Government for processing the exit permit and compulsory attendance of a briefing session for the helper prior to departure)
 - ☆ Mandatory insurance
 - ☆ Medical examination fee
 - ☆ Notarization fee (charged by the Philippine Consulate General in Hong Kong)
 - ☆ Visa fee (charged by the Immigration Department)

A sample receipt of reimbursement of expenses to Filipino domestic helpers is at Appendix II.

Q2.2 What expenses should I reimburse my helper if I renew his/her employment contract?

- A You should pay your helper the fees for notarizing the re-engagement contract collected by the relevant consulates in Hong Kong, fees charged by the Immigration Department and other expenses incurred by your helper for renewing the employment contract as specified in Clause 8 of the standard employment contract.

Q2.3 Should I pay the processing/documentation expenses to my helper who is hired through an employment agency in Hong Kong?

- A It depends on what expenses the employment agency undertakes to pay on your behalf and whether your helper has actually paid any necessary expenses out of his/her own pocket. If you have paid the employment agency any money to cover such expenses, you should ask the agency to furnish you with the relevant receipts for proof of payment.

Chapter 3: Payment and Deduction of Wages

For employer

Q3.1 Can I agree with my helper to pay lesser amount of wages than the minimum allowable wage (MAW)? What is the prevailing MAW?

- A ☆ No, an employer cannot agree with the helper to pay lesser amount of wages than the minimum allowable wage. Approval for the importation of foreign domestic helper is based on facts submitted to the Director of Immigration, whereby the employer has agreed to pay not less than the minimum allowable wage. An employer who underpays wages as stated in the standard employment contract is liable, upon conviction, to a maximum fine of HK\$350,000 and three years' imprisonment. The employer would also be committing serious offences of making false representation to an Immigration Officer and conspiracy to defraud. Any person convicted of making false representation is liable to a maximum fine of \$150,000 and imprisonment for 14 years. Any person convicted of the offence of conspiracy to defraud is liable to imprisonment for 14 years.
- ☆ The MAW is subject to regular review. For standard employment contracts made on or after 1 October 2016, the applicable MAW is HK\$4,310 per month. For contracts made before that date, an employer should pay the helper throughout the contract period wages not less than the rate specified in the standard employment contract.

Q3.2 How should I pay wages to my helper?

- A ☆ You are advised to pay wages by cheque or by autopayment into your helper's bank account. To do this, you have to obtain your helper's consent beforehand. If your helper does not prefer such methods of payment, you should pay him/her wages in legal tender.
- ☆ You are required to keep records of wage payments, e.g. relevant bank statements. You should also provide a receipt for payment of wages and food allowance and ask your helper to acknowledge receipt of the amount. A sample wage receipt is at Appendix III.

Q3.3 When should I pay wages to my helper?

- A ☆ You should pay wages to your helper not less than once every month. Wages shall become due on the expiry of the last day of the wage period. You should pay wages to your helper as soon as practicable but in any case not later than 7 days after the end of the wage period.
- ☆ If you wish to change the wage period and wage payment date, you should give prior notice to your helper and clear the outstanding wages.
- For example, your helper commenced employment on 1st of March . If

you intend to change the wage period as starting from the 16th of each month, you should clear the balance of the 15 days' wages (i.e. from 1st to 15th) within seven days after the 15th of March before you pay him/her on the new payment date in April .

For helper

Q3.4 What should I do when my employer pays me wages?

- A You should check the amount paid to you. If correct, you should acknowledge receipt of the amount on the receipt prepared by your employer.

Q3.5 What should I do if my employer pays less than my entitled wages?

- A If the amount is less than the wages stipulated in the employment contract, you should check with your employer to see if there is any mistake in calculation. Never acknowledge receipt of wages that you were not paid. If there is no satisfactory explanation for the underpayment, you should report the case to the appropriate branch office of the Labour Relations Division of the Labour Department immediately (see Chapter 12).

For both employer and helper

Q3.6 Can an employer deduct the helper's wages to compensate for damage to goods caused by him/her? What other items may an employer deduct from the helper's wages?

- A ☆ An employer can make deductions for damage or loss to the employer's goods or property directly attributable to the helper's negligence or default. In any one case, the sum to be deducted shall be the cost of the damaged item, subject to a limit of HK\$300. The total of such deductions shall not exceed one quarter of the wages payable to the helper in that wage period.
- ☆ The employer may also make deductions from the helper's wages under the following circumstances:
- ☆ deductions for absence from work not exceeding a sum proportionate to the period of absence;
 - ☆ deductions for recovery of any advance or over-payment of wages made by the employer to the helper. The total sum to be deducted shall not exceed one quarter of the wages payable to the employee in that wage period;
 - ☆ deductions, at the helper's written request, for recovery of any loan made by the employer to the helper; and
 - ☆ deductions which are required or authorized under any enactment to be made from the wages of the helper.
- ☆ Except with the approval in writing of the Commissioner for Labour, the total of all deductions, excluding those for absence from work, made in any one wage period must not exceed one half of the wages payable for that period.

Q3.7 What are the consequences if an employer fails to pay wages to the helper

on time?

- A ☆ If an employer fails to pay wages to the helper within seven days from the due date of payment, he/she is :
- ☆ required to pay interest on the outstanding amount of wages to the helper; and
 - ☆ liable to prosecution and, upon conviction, to a fine of HK\$350,000 and to imprisonment for three years.
- ☆ If wages are not paid within one month from the due date of payment, the helper may deem he/she has been dismissed by his/her employer without notice. Under such circumstances, the employer is required to pay payment in lieu of notice in addition to other statutory and contractual termination payment to the helper (see Chapter 8).

Chapter 4: Rest Days, Holidays and Leave

For both employer and helper

Q4.1 What kinds of leave are foreign domestic helpers entitled to under the Employment Ordinance?

- A ☆ Under the Employment Ordinance, foreign domestic helpers are entitled to the following leave:
- ☆ Rest days;
 - ☆ Statutory holidays; and
 - ☆ Paid annual leave.
- ☆ If both parties agree to renew the contract, the helper shall, before the new contract commences, return to his/her place of origin at the expense of the employer for a vacation of not less than seven days according to the standard employment contract.
- ☆ Leave pay and whether leave has been granted is a common cause of dispute between an employer and a helper. Leave and payment records should be kept properly to avoid future disputes.

REST DAYS

For employer

Q4.2 How should I appoint rest day to my helper?

- A ☆ You should provide your helper at least one rest day in every period of seven days. A rest day is a continuous period of not less than 24 hours.
- ☆ Rest days shall be appointed by you and may be granted on a regular or an irregular basis. Unless the rest days are on a regular basis, you should notify the helper his/her rest days before the beginning of each month.

Q4.3 Can I require my helper to work on his/her rest day?

- A ☆ No. Except in unforeseen emergency, you shall not require your helper to work on his/her rest day. An employer who compels the helper to work on a rest day is in breach of the Employment Ordinance.
- ☆ You may however, with the consent of your helper, substitute some other day for the appointed rest day. The substituted rest day must be granted within the same month and before the original rest day or within 30 days after it.

Q4.4 Can I ask my helper to perform duties after he/she returns home on his/her rest day?

- A You should not compel your helper to perform duties on his/her rest days. However, he/she may work voluntarily on his/her rest days.

STATUTORY HOLIDAYS

For both employer and helper

Q4.5 How long should a helper work before he/she can enjoy the statutory holidays in a year?

- A ☆ All foreign domestic helpers, irrespective of their length of services, are entitled to the following 12 statutory holidays in a year –
- ☆ The first day of January;
 - ☆ Lunar New Year's Day;
 - ☆ The second day of Lunar New Year;
 - ☆ The third day of Lunar New Year;
 - ☆ Ching Ming Festival;
 - ☆ The first day of May;
 - ☆ Tuen Ng Festival;
 - ☆ The day following the Chinese Mid-Autumn Festival;
 - ☆ Chung Yeung Festival;
 - ☆ Chinese Winter Solstice Festival or Christmas Day (at the option of the employer);
 - ☆ The first day of July; and
 - ☆ The first day of October.
- ☆ If the helper has been employed continuously by the employer for three months preceding any of these holidays, he/she is entitled to the holiday pay.

For employer

Q4.6 Can I require my helper to work on statutory holidays?

- A Yes, but you have to give him/her:
- ☆ not less than 48 hours' prior notice; and
 - ☆ an alternative holiday within 60 days before or after the statutory holiday.

Q4.7 Can I ask my helper to forfeit a statutory holiday in exchange for extra wages with his/her consent?

- A ☆ No. You must not make any form of payment to your helper in lieu of granting statutory holiday.
- ☆ An employer who contravenes this provision is liable to prosecution and, upon conviction, to a fine of HK\$50,000.

Q4.8 If a statutory holiday falls on my helper's rest day, is it obligatory for me to grant him/her another holiday?

- A Yes. If the statutory holiday falls on a rest day, a holiday should be granted on the day following the rest day which is not a statutory holiday.

ANNUAL LEAVE AND VACATION LEAVE

For both employer and helper

Q4.9 How many days of annual leave should be given to a helper in a year ?

- A A helper is entitled to paid annual leave after serving every period of 12 months with the same employer. The helper's entitlement to paid annual leave will increase progressively from seven days to a maximum of 14 days according to the length of service as follows:

<u>Years of Service</u>	<u>Number of days of paid annual leave for a leave year</u>
1	7
2	7
3	8
4	9
5	10
6	11
7	12
8	13
9 & above	14

For example, a helper is entitled to nine days of annual leave after he/she has completed the fourth year's service during the second two-year contract with his/her employer.

Q4.10 Who determines the timing of annual leave taken by a helper?

- A A helper shall take the paid annual leave to which he/she is entitled within the following 12 months at a time appointed by the employer after consultation with the helper, confirmed by a written notice to the helper at least 14 days in advance.

Q4.11 Should annual leave include rest days and statutory holidays?

- A No. Any rest day or statutory holiday falling within the period of annual leave will be counted as annual leave. Another rest day or holiday must be appointed.

Q4.12 Should vacation leave be granted in addition to annual leave? Is it paid or unpaid?

- A Vacation leave of not less than seven days should be granted in addition to the helper's entitled annual leave. However, whether this vacation leave shall be paid or unpaid would depend on the term agreed in Clause 13 of the standard employment contract.

Q4.13 Can an employer compel his/her helper to take no pay leave when the employer is going abroad?

- A The arrangement of taking no pay leave shall be of mutual consent to both parties. The employer shall not unilaterally impose such leave on his/her helper.

For employer

Q4.14 How should I grant annual leave to my helper on completion or termination of employment contract?

- A ☆ When the employment contract is terminated, your helper should be given payment in lieu of any annual leave not yet taken in respect of every 12 months' completed service. For three but less than 12 months' service in a leave year (i.e. a period of every 12 months after the commencement of employment), your helper is entitled to pro-rata annual leave pay if the employment contract is terminated other than for the reason of summary dismissal due to his/her serious misconduct.
- ☆ *For example:* If your helper resigned or was dismissed after serving 18 months of service and he/she had not yet taken any annual leave, he/she should be given payment in lieu of annual leave for the first 12 completed months of service (i.e. 7 days), plus the pro rata sum in lieu of annual leave pay calculated to the days of employment (i.e. 7 days + 3.5 days = 10.5 days).
- ☆ However, if your helper is summarily dismissed due to his/her serious misconduct after serving 18 months, he/she would only be entitled to payment in lieu of annual leave for his/her first 12 months of service, i.e. 7 days.

Chapter 5: Medical Attention and Sickness Allowance

For employer

Q5.1 Should I pay for the medical expenses incurred by my helper when he/she is ill or injured?

- A ☆ Yes. When your helper is ill or injured, you shall provide free medical treatment to him/her whether or not it is attributable to his/her employment. Free medical treatment includes medical consultation, maintenance in hospital and emergency dental treatment. In this connection, you are strongly advised to take out an insurance policy with full medical and hospitalization coverage for the helper. You may also consider taking out a comprehensive insurance policy which provides medical and hospitalization coverage and satisfies the requirement under the Employees' Compensation Ordinance at the same time.
- ☆ For the avoidance of doubt, the revised standard employment contract introduced on 1 April 2003 makes it clear that, under the new contract, employers are not responsible for providing free medical treatment during the period when the helper leaves Hong Kong of his/her own volition and for his/her personal purposes e.g. on home leave.

Q5.2 Can I appoint a medical practitioner for my helper in times of illness or injury?

- A Under the employment contract, a helper shall accept medical treatment by any registered medical practitioner as provided by the employer. It is advisable to reach prior agreement with your helper as to which medical practitioner should be consulted in times of illness or injury.

For both employer and helper

Q5.3 Under what circumstances is a helper entitled to sickness allowance?

- A ☆ An employer should pay the helper sickness allowance if :
- ☆ he/she has accumulated sufficient number of paid sickness days;
 - ☆ the sick leave taken is not less than four consecutive days; and
 - ☆ the sick leave is supported by an appropriate medical certificate.
- ☆ Paid sickness days are accumulated at the rate of two paid sickness days for each completed month of service during the first 12 months of employment; and four paid sickness days for each completed month of service thereafter. Paid sickness days can be accumulated throughout the whole employment period, but shall not exceed 120 days at any one time.

Q5.4 What is the rate of sickness allowance? When should it be paid?

- A The daily rate of sickness allowance is equal to four-fifths of the average daily wages* of the helper. It should be paid not later than the normal pay day.

Q5.5 Can an employer dismiss the helper who is on paid sick leave?

- A ☆ No, except in cases of summary dismissal due to the helper's serious misconduct. Otherwise, it is an offence under which the employer is liable to prosecution and, upon conviction, to a fine of HK\$100,000.
- ☆ The employer is also required to pay the helper:
- ☆ payment in lieu of notice;
 - ☆ a further sum equivalent to seven days' wages as compensation*;
- and
- ☆ his/her entitled sickness allowance.
- ☆ The helper may also claim remedies for unreasonable and unlawful dismissal under the part of Employment Protection of the Employment Ordinance (see Chapter 10).

* For details of the calculation of sickness allowance and compensation, please refer to "A Concise Guide to the Employment Ordinance". Copies of the Guide can be obtained at the branch offices of the Labour Relations Division or downloaded from the homepage of the Labour Department.

Chapter 6: Maternity Protection

For both employer and helper

Q6.1 Under what circumstances is a helper entitled to paid maternity leave?

- A A helper is eligible for 10 weeks' paid maternity leave if-
- ☆ she has been employed for not less than 40 weeks immediately before the commencement of scheduled maternity leave;
 - ☆ she has given notice of pregnancy confirmed by a medical certificate to her employer; and
 - ☆ she has produced a medical certificate specifying the expected date of confinement if so required by the employer.

Q6.2 What is the rate of maternity leave pay? When should it be paid?

- A The daily rate of maternity leave pay is equal to four-fifths of the average daily wages* of the helper. It should be paid on the normal pay day of the helper.

Q6.3 Can an employer dismiss a pregnant helper?

- A ☆ No. Except in cases of summary dismissal due to the helper's serious misconduct, an employer is prohibited from dismissing a pregnant helper from the date on which she is confirmed pregnant by a medical certificate to the date on which she is due to return to work on the expiry of her maternity leave.
- ☆ An employer who contravenes the provision is liable to prosecution and, on conviction, a fine of HK\$100,000. He/She is also required to pay the helper:
- payment in lieu of notice;
 - a further sum equivalent to one month's wages as compensation*;
 - and
 - 10 weeks' maternity leave pay if, but for the dismissal, she would have been entitled to such payment.
- ☆ The helper may also claim remedies for unreasonable and unlawful dismissal under the part of Employment Protection of the Employment Ordinance (see Chapter 10).

*For details of the calculation of maternity leave pay and compensation, please refer to "A Concise Guide to the Employment Ordinance". Copies of the Guide can be obtained at the branch offices of the Labour Relations Division or downloaded from the homepage of the Labour Department.

Chapter 7: Paternity Leave

For both employer and helper

Q7.1 Under what circumstances is a helper entitled to paid paternity leave?

- A A male helper is entitled to 3 day's paid paternity leave for each confinement of his spouse/partner if he –
- ☆ has been employed under a continuous contract for not less than 40 weeks immediately before the day of paternity leave; and
 - ☆ has given the required notification to the employer; and
 - ☆ has provided the required document to the employer within the following period (whichever period expires first) –
 - 12 months after the first day of paternity leave taken; or
 - if he ceases to be employed, within 6 months after cessation of employment.

Q7.2 How should the helper notify his employer for taking the paternity leave?

- A ☆ The helper must notify his employer of his intention to take paternity leave at least 3 months before the expected date of delivery of the child (exact date of leave not required at this stage); and the date of his paternity leave before taking the leave .
- ☆ If the employee fails to give the abovementioned 3 months' advance notice to the employer, he must notify the employer of his date of paternity leave at least 5 days before that date.

Q7.3 When may paternity leave be taken?

- A ☆ The helper may take paternity leave at any time during the period from 4 weeks before the expected date of delivery of the child to 10 weeks beginning on the actual date of delivery of the child.
- ☆ The employee may take all 3 days of paternity leave in one go or on separate days.

Q7.4 What is the required document to be provided by the helper for paternity leave pay?

- A ☆ The birth certificate of the child on which the helper's name is entered as the child's father.
- ☆ If the child is born dead or dies after birth and no birth certificate has been issued in respect of the child, the helper must produce a medical certificate certifying the delivery of the child.

Q7.5 What is the rate of paternity leave pay? When should it be paid?

- A ☆ The daily rate of paternity leave pay is a sum equivalent to four-fifths of the average daily wages earned by the helper in the 12-month period preceding the day of paternity leave.
- ☆ If a helper has provided the required document to the employer before the day on which paternity leave is taken, the employer must pay him paternity leave pay –
 - not later than the day on which he is next paid his wages after the day of paternity leave; or
 - if the employee has ceased to be employed, within 7 days after cessation of employment.
- ☆ If a helper provides the required document to the employer after taking paternity leave, the employer must pay him paternity leave pay –
 - not later than the day on which he is next paid his wages after the document is provided; or
 - if the employee has ceased to be employed, within 7 days after the document is provided.

Chapter 8: Termination of Employment Contract

For both employer and helper

Q8.1 Can an employer or a helper terminate the employment contract before it expires?

- A Yes, either party may terminate the contract by giving not less than one month's notice in writing or by paying one month's wages to the other party. A sample of the letter of termination is at Appendix IV.

Q8.2 What should I do upon termination or expiry of the employment contract?

For employer

- A ☆ You should clear all outstanding wages and other sums due to your helper, preferably by payment through the bank, and obtain a receipt for all payments.
- ☆ You are required to notify the Foreign Domestic Helpers Section of the Immigration Department in writing of the termination within seven days of the date of termination. It is not necessary to inform the Labour Department.

For helper

- A ☆ You should settle all accounts with your employer and ensure that all sums are paid to you before you sign any receipt.
- ☆ You are required to notify the Foreign Domestic Helpers Section of the Immigration Department in writing of the termination within seven days of the date of termination. It is not necessary to inform the Labour Department.

Q8.3 Can an employer or a helper terminate the contract without notice or payment in lieu?

- A Termination without notice or payment in lieu is allowed only under special circumstances.

For employer

You may summarily dismiss your helper without notice or payment in lieu of notice if your helper, in relation to the employment :

- ☆ wilfully disobeys a lawful and reasonable order;
- ☆ misconducts himself/herself;
- ☆ is guilty of fraud or dishonesty; or
- ☆ is habitually neglectful of his/her duties.

For helper

You may terminate your employment contract without notice or payment in lieu of notice if:

- ☆ you reasonably fear physical danger by violence or disease;
- ☆ you are subjected to ill-treatment by your employer; or
- ☆ you have been employed for not less than five years and you are medically certified as being permanently unfit for the type of work you are engaged.

Q8.4 What should I bear in mind when considering termination of the contract without notice?

- A ☆ Termination of employment without notice is usually preceded by disagreement between the employer and the helper. In the midst of heated arguments, things may be blown out of proportions and either party may there and then believe that it is justified for him/her to terminate the contract or to consider that it has been terminated. This often turns out to be ill-conceived. As independent witnesses are not usually available in a domestic environment, it will be difficult to re-construct the circumstances leading to the dispute and decide whether the action taken is justified.
- ☆ The best way to solve problems arising from employment is for the parties to talk things out. Try to be considerate and tolerant with each other in sorting out your differences. Most problems can be resolved without resorting to drastic actions.
- ☆ Termination of employment without notice should be considered only under very special circumstances. If you really have to do so, you should make sure that you have sufficient evidence to back up your case. Otherwise, you will likely face a claim from the other party.

Q8.5 What should I do if my helper leaves without giving me notice or payment in lieu?

OR

What should I do if my employer dismisses me without giving me notice or payment in lieu?

- A ☆ You should notify the Foreign Domestic Helpers Section of the Immigration Department if you consider that the contract has been unilaterally terminated by the other party. For the employer, if you are unable to locate the whereabouts of the helper, you may also wish to report the case of missing helper to the Police.
- ☆ If you consider that the other party is not entitled to terminate the contract without notice and you wish to claim payment in lieu of notice, you should approach the appropriate branch office of the Labour Relations Division of the Labour Department without delay. This Division will help you settle your claim by conciliation (see Chapter 12).
- ☆ You may of course waive the requirement of proper notice from the other party.

For employer

Q8.6 Upon termination or expiry of the contract, what items of payment should I pay to my helper?

- A ☆ The items and amount payable to your helper on termination or expiry of the contract depend on a number of factors such as the length of service and the reason for termination of contract. However, termination payments usually include :
- outstanding wages;
 - payment in lieu of notice, if any;
 - payment in lieu of any untaken annual leave, and any pro rata annual leave pay for the current leave year (see Chapter 4);
 - where appropriate, long service payment or severance payment (see Chapter 9);
 - any other sum due to the helper in respect of the employment contract, e.g. free return passage and food and travelling allowance (see Chapter 11).
- ☆ It is advisable to keep the receipts for such payments. A sample of the receipt for payments is at Appendix V.

Chapter 9: Severance Payment and Long Service Payment

For both employer and helper

Q9.1 Under what circumstances should an employer pay severance payment to a helper?

- A An employer should pay severance payment to the helper if he/she:
- ☆ is dismissed or the fixed term contract is not being renewed* by reason of redundancy; and
 - ☆ has not less than 24 months of service with the same employer immediately prior to the termination.

Q9.2 Under what circumstances should an employer pay long service payment to a helper?

- A An employer should pay long service payment to the helper if he/she has worked continuously for not less than five years, and :
- ☆ is dismissed or the fixed term contract is not being renewed* by reason other than serious misconduct or redundancy;
 - ☆ is certified by a registered medical practitioner or registered Chinese medicine practitioner as permanently unfit for the present job and he/she resigns;
 - ☆ is aged 65 or above and he/she resigns; or
 - ☆ dies in service.

Q9.3 Would a helper be entitled to severance payment and long service payment simultaneously?

- A No. A helper will not be simultaneously entitled to both long service payment and severance payment. A helper dismissed by reason of redundancy is entitled to severance payment but not long service payment.

Q9.4 How are severance payment and long service payment calculated?

- A The following formula applies to the calculation of both severance payment and long service payment :

$[(\text{Monthly wages} \times 2/3) \times \text{reckonable years of service}]^{\text{Note}}$

^{Note} Service of incomplete year should be calculated on a pro rata basis.

(For details of calculation, please refer to the booklet “A Concise Guide to the Employment Ordinance”.)

*If not less than seven days before the date of dismissal/expiry of the fixed term contract in case of severance payment, and not less than seven days before the expiry of the fixed term contract in case of long service payment, the employer has offered in writing to renew the contract of employment or re-engage the helper under a new contract but the helper has unreasonably refused the offer, he/she is not eligible for the entitlements.

Chapter 10: Employment Protection

For both employer and helper

Q10.1 Under what circumstances can a helper make a claim for remedies against his/her employer for unreasonable dismissal?

- A
- ☆ The part on Employment Protection of the Employment Ordinance aims at discouraging employers from dismissing their employees in order to evade their liabilities under the Ordinance.
 - ☆ A helper may claim for remedies for unreasonable dismissal under the following circumstances:
 - he/she has been employed continuously for not less than 24 months; and
 - he/she is dismissed other than for a valid reason as specified in the Ordinance.

Q10.2 What are the valid reasons for dismissal?

- A Under the Employment Ordinance, the five valid reasons for dismissal are relating to:
- ☆ conduct of the employee;
 - ☆ capability or qualification of the employee for performing his work;
 - ☆ redundancy or other genuine operational requirements of the employer;
 - ☆ statutory requirements; or
 - ☆ other substantial reasons.

Q10.3 Under what circumstances can a helper make a claim for remedies against his/her employer for unreasonable and unlawful dismissal?

- A A helper may claim for remedies for unreasonable and unlawful dismissal under the following circumstances:
- ☆ he/she has been dismissed other than for a valid reason as specified in the Ordinance; and
 - ☆ the dismissal is in contravention of the law (see below).

Q10.4 Under what circumstances does a dismissal contravene the law?

- A Dismissal in the following circumstances contravenes the law:
- ☆ dismissal of a pregnant employee;
 - ☆ dismissal whilst an employee is on paid sick leave;
 - ☆ dismissal by reason of an employee giving evidence or information in any proceedings or inquiry in connection with the enforcement of the Employment Ordinance, work accidents or breach of work safety legislation;
 - ☆ dismissal for trade union membership and activities; or
 - ☆ dismissal of an injured employee before the parties concerned have entered into an agreement for employee's compensation or before the issue of a certificate of assessment.

Q10.5 What are the remedies for Employment Protection?

- A Remedies for Employment Protection, to be awarded by the Labour Tribunal, include an order of reinstatement or re-engagement, or an award of terminal payments and an award of compensation.

(You may refer to the “A Concise Guide to the Employment Ordinance” which is available from the Labour Relations Division of the Labour Department for more details of the circumstances in which an employee is protected under the Part on Employment Protection of the Employment Ordinance, the kinds of remedies an employee may be awarded and the procedures to claim such remedies.)

Chapter 11: Free Return Passage and Food and Travelling Allowance

For helper

Q11.1 Is my employer responsible for paying my passage back to my place of origin upon termination or expiry of the contract?

- A Yes. Upon termination or expiry of the contract, your employer should provide free passage, usually an air ticket covering airport tax for you to return to your place of origin, and a daily food and travelling allowance of HK\$100 per day.

For employer

Q11.2 What kind of air-ticket should I provide for my helper upon expiry or termination of contract? Should it be open-date or fixed-date?

- A This is not specified in the employment contract. Both parties may agree on an open-date or fixed-date ticket. However, you may wish to provide an open-date ticket in case your helper is unable to use a fixed-date ticket due to unforeseen circumstances.

Q11.3 How many days' food and travelling allowance is payable to my helper under the employment contract?

- A It depends on the journey time between Hong Kong and your helper's place of origin provided that he/she travels by the most direct route. In general, if your helper is from an Asian country, one to two days' food and travelling allowance should suffice.

Chapter 12: Enquiries and Complaints

For both employer and helper

Q12.1 Where can we seek further advice or assistance regarding the employment contract or the Employment Ordinance?

A You can :

- ☆ call the Labour Department 24-hour Telephone Enquiry Service at 2-71-71-771 (the hotline is handled by “1823”);
- ☆ approach a branch office of the Labour Relations Division of the Labour Department nearest to the helper’s workplace;
- ☆ make reference to the booklet “A Concise Guide to the Employment Ordinance” which sets out briefly the main provisions of the Ordinance. The booklet is available at the branch offices of the Labour Relations Division of the Labour Department or can be downloaded from the Labour Department homepage (<http://www.labour.gov.hk>). Addresses of these offices are at Appendix VI.

Q12.2 What services are provided by the Labour Department if I have disputes regarding the employment contracts or the provisions in the Employment Ordinance with my helper/ employer?

- A
- ☆ If you have problems or claims arising out of the employment contract or provisions under the Employment Ordinance which cannot be settled on your own, you can approach the Labour Relations Division for assistance.
 - ☆ The Labour Relations Division assists employers and helpers to resolve their labour disputes through the provision of free conciliation service. The conciliation officer will facilitate the employer and helper to reach a mutually acceptable settlement. If no settlement is reached and at the request of the party concerned, the claims will be referred, depending on the claim amount, to either the Minor Employment Claims Adjudication Board or the Labour Tribunal for adjudication.
 - ☆ If an employer cannot pay the wages in arrears or other payments on account of bankruptcy, the helper will be referred to the Legal Aid Department for assistance, and to the Wage Security Division for making an application for ex gratia payment from the Protection of Wages on Insolvency Fund.

Q12.3 Is an employer liable to prosecution for defaulting awards made by the Labour Tribunal or the Minor Employment Claims Adjudication Board?

- A An employer who wilfully and without reasonable excuse fails to pay any sum* awarded by the Labour Tribunal or the Minor Employment Claims Adjudication Board within 14 days after the date on which it is due, is liable to prosecution and, upon conviction, to a fine of \$350,000 and to imprisonment for 3 years.

*For details, please refer to the Employment Ordinance and relevant leaflet.

Appendix I

D.H. Contract No. _____

Employment Contract (For A Domestic Helper recruited from abroad)

This contract is made between _____ ("the Employer") and _____ ("the Helper") on _____ and has the following terms:

1. The Helper's place of origin for the purpose of this contract is _____
 2. (A)[†] The Helper shall be employed by the Employer as a domestic helper for a period of two years commencing on the date on which the Helper arrives in Hong Kong.
(B)[†] The Helper shall be employed by the Employer as a domestic helper for a period of two years commencing on _____, which is the date following the expiry of D.H. Contract No. _____ for employment with the same employer.
(C)[†] The Helper shall be employed by the Employer as a domestic helper for a period of two years commencing on the date on which the Director of Immigration grants the Helper permission to remain in Hong Kong to begin employment under this contract.
 3. The Helper shall work and reside in the Employer's residence at _____
 4. (a) The Helper shall only perform domestic duties as per the attached Schedule of Accommodation and Domestic Duties for the Employer.
(b) The Helper shall not take up, and shall not be required by the Employer to take up, any other employment with any other person.
(c) The Employer and the Helper hereby acknowledge that Clause 4 (a) and (b) will form part of the conditions of stay to be imposed on the Helper by the Immigration Department upon the Helper's admission to work in Hong Kong under this contract. A breach of one or both of the said conditions of stay will render the Helper and/or any aider and abettor liable to criminal prosecution.
 5. (a) The Employer shall pay the Helper wages of HK\$ _____ per month. The amount of wages shall not be less than the minimum allowable wage announced by the Government of the Hong Kong Special Administrative Region and prevailing at the date of this contract. An employer who fails to pay the wages due under this employment contract shall be liable to criminal prosecution.
(b) The Employer shall provide the Helper with suitable and furnished accommodation as per the attached Schedule of Accommodation and Domestic Duties and food free of charge. If no food is provided, a food allowance of HK\$ _____ a month shall be paid to the Helper.
(c) The Employer shall provide a receipt for payment of wages and food allowance and the Helper shall acknowledge receipt of the amount under his/her* signature.
 6. The Helper shall be entitled to all rest days, statutory holidays, and paid annual leave as specified in the Employment Ordinance, Chapter 57.
 7. (a) 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.
(b) A daily food and travelling allowance of HK\$100 per day shall be paid to the Helper from the date of his/her* departure from his/her* place of origin until the date of his/her* arrival at Hong Kong if the travelling is by the most direct route. The same payment shall be made when the Helper returns to his/her* place of origin upon expiry or termination of this contract.
 8. The Employer shall be responsible for the following fees and expenses (if any) for the departure of the Helper from his/her place of origin and entry into Hong Kong:-
 - (i) medical examination fees;
 - (ii) authentication fees by the relevant Consulate;
 - (iii) visa fee;
 - (iv) insurance fee;
 - (v) administration fee or fee such as the Philippines Overseas Employment Administration fee, or other fees of similar nature imposed by the relevant government authorities; and
 - (vi) others: _____
- In the event that the Helper has paid the above costs or fees, the Employer shall fully reimburse the Helper forthwith the amount so paid by the Helper upon demand and production of the corresponding receipts or documentary evidence of payment.
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. The Helper shall accept medical treatment provided by any registered medical practitioner.
(b) If the Helper suffers injury by accident or occupational disease arising out of and in the course of employment, the Employer shall make payment of compensation in accordance with the Employees' Compensation Ordinance, Chapter 282.
(c) In the event of 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.
 10. Either party may terminate this contract by giving one month's notice in writing or one month's wages in lieu of notice.
 11. Notwithstanding Clause 10, either party may in writing terminate this contract without notice or payment in lieu in the circumstances permitted by the Employment Ordinance, Chapter 57.

* Delete where inappropriate.

† Use either Clause 2A, 2B or 2C whichever is appropriate.

12. In the event of termination of this contract, both the Employer and the Helper shall give the Director of Immigration notice in writing within seven days of the date of termination. A copy of the other party's written acknowledgement of the termination shall also be forwarded to the Director of Immigration.

13. Should both parties agree to enter into new contract upon expiry of the existing contract, the Helper shall, before any such further period commences and at the expense of the Employer, return to his/her* place of origin for a paid/unpaid* vacation of not less than seven days, unless prior approval for extension of stay in Hong Kong is given by the Director of Immigration.

14. In the event of the death of the Helper, the Employer shall pay the cost of transporting the Helper's remains and personal property from Hong Kong to his/her* place of origin.

15. Save for the following variations, any variation or addition to the terms of this contract (including the annexed Schedule of Accommodation and Domestic Duties) during its duration shall be void unless made with the prior consent of the Commissioner for Labour in Hong Kong:

(a) a variation of the period of employment stated in Clause 2 through an extension of the said period of not more than one month by mutual agreement and with prior approval obtained from the Director of Immigration;

(b) a variation of the Employer's residential address stated in Clause 3 upon notification in writing being given to the Director of Immigration, provided that the Helper shall continue to work and reside in the Employer's new residential address;

(c) a variation in the Schedule of Accommodation and Domestic Duties made in such manner as prescribed under item 6 of the Schedule of Accommodation and Domestic Duties; and

(d) a variation of item 4 of the Schedule of Accommodation and Domestic Duties in respect of driving of a motor vehicle, whether or not the vehicle belongs to the Employer, by the helper by mutual agreement in the form of an Addendum to the Schedule and with permission in writing given by the Director of Immigration for the Helper to perform the driving duties.

16. The above terms do not preclude the Helper from other entitlements under the Employment Ordinance, Chapter 57, the Employees' Compensation Ordinance, Chapter 282 and any other relevant Ordinances.

17. The Parties hereby declare 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.

Signed by the Employer _____
(Signature of Employer)

in the presence of _____
(Name of Witness) _____
(Signature of Witness)

Signed by the Helper _____
(Signature of Helper)

in the presence of _____
(Name of Witness) _____
(Signature of Witness)

* Delete where inappropriate.

Schedule of Accommodation and Domestic Duties

1. Both the Employer and the Helper should sign to acknowledge that they have read and agreed to the contents of this Schedule, and to confirm their consent for the Immigration Department and other relevant government authorities to collect and use the information contained in this Schedule in accordance with the provisions of the Personal Data (Privacy) Ordinance.

2. Employer's residence and number of persons to be served

A. Approximate size of flat/house _____ square feet/square metres*

B. State below the number of persons in the household to be served on a regular basis:
 ____ adult ____ minors (aged between 5 to 18) ____ minors (aged below 5) ____ expecting babies.
 ____ persons in the household requiring constant care or attention (excluding infants).
 (Note: Number of Helpers currently employed by the Employer to serve the household _____)

3. Accommodation and facilities to be provided to the Helper

A. Accommodation to the Helper

While the average flat size in Hong Kong is relatively small and the availability of separate servant room is not common, the Employer should provide the Helper suitable accommodation and with reasonable privacy. Examples of unsuitable accommodation are: The Helper having to sleep on made-do beds in the corridor with little privacy and sharing a room with an adult/teenager of the opposite sex.

Yes. Estimated size of the servant room _____ square feet/square metres*

No. Sleeping arrangement for the Helper:

Share a room with _____ child/children aged _____

Separate partitioned area of _____ square feet/square metres*

Others. Please describe _____

B. Facilities to be provided to the Helper:

(Note: Application for entry visa will normally not be approved if the essential facilities from item (a) to (f) are not provided free.)

(a) Light and water supply Yes No

(b) Toilet and bathing facilities Yes No

(c) Bed Yes No

(d) Blankets or quilt Yes No

(e) Pillows Yes No

(f) Wardrobe Yes No

(g) Refrigerator Yes No

(h) Desk Yes No

(i) Other facilities (Please specify) _____

4. The Helper should only perform domestic duties at the Employer's residence. Domestic duties to be performed by the Helper under this contract exclude driving of a motor vehicle of any description for whatever purposes, whether or not the vehicle belongs to the Employer.

5. Domestic duties include the duties listed below.

Major portion of domestic duties:-

1. Household chores

2. Cooking

3. Looking after aged persons in the household (constant care or attention is required/not required*)

4. Baby-sitting

5. Child-minding

6. Others (please specify) _____

6. The Employer shall inform the Helper and the Director of Immigration of any substantial changes in item 2, 3 and 5 by serving a copy of the Revised Schedule of Accommodation and Domestic Duties (ID 407G) signed by both the Employer and the Helper to the Director of Immigration for record.

Employer's name and signature

Date

Helper's name and signature

Date

* delete where inappropriate.

tick as appropriate.

(Sample – for reference only)

Receipt for Reimbursement of Processing Fees

I, _____, ID / Passport No.

_____, acknowledge receipt of the reimbursement of processing fees from my employer _____ on (date)

_____ *in cash / by cheque/ by bank autopay.

- | | | |
|-----|---|----------|
| (a) | Mandatory Insurance | \$ _____ |
| (b) | Medical Examination Fee | \$ _____ |
| (c) | Notarization Fee | \$ _____ |
| (d) | Visa Fee | \$ _____ |
| (e) | Philippines Overseas Employment Administration (POEA) Fee | \$ _____ |
| (f) | Others | \$ _____ |

Received by (Signature) : _____
(Name) ()

Witnessed by (if any)(Signature) : _____
(Name) ()

* delete where appropriate

(Sample – for reference only)

Wage Receipt

I, _____, ID / Passport No. _____, acknowledge receipt of payment of the following items from my employer _____ on (date) _____

*in cash / by cheque/ by bank autopay.

1. Wages (from _____ to _____) \$ _____

inclusive of payment for the following :

(a) statutory holiday(s) (date(s) : _____)

(b) annual leave (from _____ to _____)

(c) sick leave (from _____ to _____)

(d) others (please specify) _____

2. Food allowance (from _____ to _____) \$ _____

Received by (Signature) : _____

(Name) (_____)

Witnessed by (if any)(Signature) : _____

(Name) (_____)

* delete where appropriate

(Sample – for reference only)

Letter of Termination of Employment Contract

Dear _____,

I, _____ Would *resign from the post of domestic helper / dismiss you from the post of domestic helper under the Domestic Helper Contract No. _____, effective on (date) _____

*(a) by giving you _____ days / month(s) notice / with no notice.

*(b) by giving you _____ days / month(s) payment in lieu of notice.

The last working day will be (date) _____.

Reason(s) of resignation / dismissal :

Yours sincerely,

(_____) (Name)
_____ (Date)

Acknowledged receipt by (Signature) _____
(Name) (_____)
Date _____

* delete where appropriate

(Sample – for reference only)

Receipt for Payments upon Termination / Expiry of Contract

I, _____, ID / Passport No. _____, receive the following payments from my employer _____ on (date) _____

*in cash / by cheque/by bank autopay.

1. Wages (from _____ to _____) \$ _____

inclusive of payment for the following :

(a) statutory holiday(s) (dates : _____)

(b) annual leave (from _____ to _____)

(c) sick leave (from _____ to _____)

(d) others (please specify) _____

2. Food allowance (from _____ to _____) \$ _____

3. payment in lieu of notice \$ _____

4. Untaken annual leave pay (_____ days) \$ _____

5. Long service payment / severance payment \$ _____

6. Food and Travelling allowance \$ _____

7. Payment in lieu of air-ticket / return air-ticket of \$ _____

_____ (Airline)

8. Others (a) _____ \$ _____

(b) _____ \$ _____

Signature of Helper : _____ Signature of Employer : _____

(Name) ()




(Name) ()

Witnessed by (if any)(Signature) : _____

(Name) ()

* delete where appropriate

Enquiries

-  Enquiry Hotline: : 2-71-71-771 (the hotline is handled by “1823”)
-  Homepage Address : <http://www.labour.gov.hk>
-  Enquiry in person to Offices of the Labour Relations Division:
<http://www.labour.gov.hk/eng/tele/lr1.htm>

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