

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 (Form 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). 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) ☆ For applications relating to the employment of foreign domestic helpers received by the Immigration Department on or after 1 April 2003, both the helper and employer are required to sign an undertaking to the Government (the undertaking of the employer are under Part C of the “Application for employment of domestic helper from abroad” form, ID(E)407K). The undertaking stipulates that they will strictly observe 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 the amount 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.
- ☆ 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.

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.

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.

*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 I.

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 periodical review. For standard employment contracts made on or after 31 May 2006, the applicable MAW is HK\$3,400 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 before hand. 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 II.

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 pay 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 11).

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 deduction 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;
 - deduction 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 wages in lieu of notice in addition to other statutory and contractual termination payment to the helper (see Chapter 7).

Q3.8 Can an employer deduct the Employees Retraining Levy (which is imposed on 1 October 2003) from the wages of the helper?

- A ☆ The Employees Retraining Levy is payable by the employers of the helpers to Director of Immigration. It is not imposed on the helpers.
- ☆ In any case, the employer cannot deduct the levy or any part of it from the wages of the helper. Such a deduction is an offence under the Employment Ordinance and the employer is liable to prosecution and, upon conviction, to a fine of \$100,000 and one year's imprisonment.

Chapter 4: Rest Days, Holidays and Leaves

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 aboard?

- 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.
- ☆ 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 the 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 month of service thereafter subject to a maximum of 120 days.

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

- A The rate of sickness allowance is equal to four-fifths of the normal wages. 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:

- wages in lieu of notice;
 - a further sum equivalent to seven days' wages; 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 9).

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 Maternity leave pay is equal to four-fifths of the normal wages. 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:
- wages in lieu of notice;
 - a further sum equivalent to one month's wages; 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 9).

Chapter 7: Termination of Employment Contract

For both employer and helper

Q7.1 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 III.

Q7.2 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.

Q7.3 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.

Q7.4 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.

Q7.5 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 wages 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 11).
- ☆ You may of course waive the requirement of proper notice from the other

party.

For employer

Q7.6 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;
 - wages 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 8);
 - 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 10).
- ☆ It is advisable to keep the receipts for such payments. A sample of the receipt for payments is at Appendix IV.

Chapter 8: Severance Payment and Long Service Payment

For both employer and helper

Q8.1 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.

Q8.2 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 as permanently unfit for the present job and he/she resigns;
 - ☆ is aged 65 or above and he/she resigns; or
 - ☆ dies in service.

Q8.3 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.

Q8.4 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 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 but the employee has unreasonably refused the offer, the employee is not eligible for the entitlements.

Chapter 9: Employment Protection

For both employer and helper

Q9.1 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.

Q9.2 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.

Q9.3 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).

Q9.4 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 labour legislation, industrial accidents or breach of work safety regulations;
 - ☆ 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.

Q9.5 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 Chapter 9 of 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 10: Free Return Passage and Food and Travelling Allowance

For helper

Q10.1 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.

For employer

Q10.2 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.

Q10.3 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 11: Enquiries and Complaints

For both employer and helper

Q11.1 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 2717 1771(the hotline is handled by “1823 Citizen’s Easy Link”) ;
- ☆ 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 and is available at the branch offices of the Labour Relations Division of the Labour Department. Addresses of these offices are at Appendix V.

Q11.2 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.

(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) wages in lieu of notice.

The last working day will be (date) _____.

Reason(s) of resignation / dismissal :

Yours sincerely,

(Signature)
(_____) (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. Wages 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: : 2717 1771 (the hotline is handled by “1823” Citizen’s Easy Link”)
-  Home Page Address : <http://www.labour.gov.hk>
-  Enquiry in person to Offices of the Labour Relations Division of the Labour Department

Offices of the Labour Relations Division of the Labour Department

HONG KONG	
Hong Kong East 34/F., Revenue Tower, 5 Gloucester Road, Wan Chai, Hong Kong.	Hong Kong West 3/F., Western Magistracy Building, 2A Pokfulam Road, Hong Kong.
KOWLOON	
Kowloon South 2/F., Mongkok Government Offices, 30 Luen Wan Street, Mongkok, Kowloon.	Kowloon West Room 1009, 10/F., Cheung Sha Wan Government Offices, 303 Cheung Sha Wan Road, Kowloon.
Kowloon East Room 1206, 12/F., Stelux House, 698 Prince Edward Road East, San Po Kong, Kowloon.	Kwun Tong 6/F., Kowloon East Government Offices, 12 Lei Yue Mun Road, Kwun Tong, Kowloon.
NEW TERRITORIES	
Kwai Chung 6/F., Kwai Hing Government Offices, 166-174 Hing Fong Road, Kwai Chung, New Territories.	Tuen Mun Room 2720, Tuen Mun Parklane Square, 2 Tuen Hi Road, Tuen Mun, New Territories.
Shatin & Tai Po Rooms 304-313, 3/F., Sha Tin Government Offices, 1 Sheung Wo Che Road, Sha Tin, New Territories.	Tsuen Wan 5/F., Tsuen Wan Government Offices, 38 Sai Lau Kok Road, Tsuen Wan, New Territories.

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