

# Understanding Your Rights



What you really need to know  
to protect your rights as a foreign  
domestic worker in Hong Kong



**HELP**  
FOR DOMESTIC WORKERS  
家傭匡扶中心



Helpers for Domestic Helpers

# Understanding Your Rights

Published by

**Helpers for Domestic Helpers**

St. John's Cathedral

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# *Foreword*

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For nearly 40 years the growth of Hong Kong has been assisted by the small army of domestic helpers from neighbouring countries like the Philippines, Indonesia and, to a lesser extent, Sri Lanka, India, Bangladesh and Nepal, whose presence in so many homes has, in particular, released a great many local mothers into the local work force. They have become an indispensable part of Hong Kong's economy, cooking, cleaning and caring for children and the elderly and infirm.

Contemporary Hong Kong prides itself, not least at the official levels of Government, in being "Asia's World City" in which the rule of law and respect for human rights is observed and honoured to a degree which is exceptional in this region. It is a claim which, to be fair, is largely merited.

But, sadly, reality has too frequently fallen short of Hong Kong's much espoused ideals where the treatment of foreign domestic helpers ("FDHs") is concerned. While no doubt the majority of them have benefited from working here, far too many have found themselves the victims of exploitation. They are subject to a highly restrictive and draconian immigration regime which is strictly applied, sometimes, it must be said, quite heartlessly and without

any attempt to understand the difficulties FDHs so often encounter. It is all too easy for FDHs to transgress these controls, often through no fault of their own, but as a result of the cynicism, self interest and indifference of some employers.

Though Hong Kong possesses a well-developed system of employment law and the administrative and judicial machinery to enforce it, in practice making it work presents major problems for a group of people who cannot possibly afford to access professional legal assistance and who have no right to support themselves by taking other work once their employment is terminated – which it can be, and so often is, before the completion of the standard two year contract. Their continued presence in Hong Kong is at the sufferance of the Immigration Department and this gives employers enormous bargaining power in the resolution of labour disputes.

Not least amongst the exploiters of FDHs are the agencies who recruit them and the moneylenders who provide them with the loans they need to pay the exorbitant placement fees which the agencies charge. Combating the widespread malpractices of the agencies has proved to be one of the most intractable problems facing FDHs since their activities are transnational which makes it possible for the controls and protections available under Hong Kong law to be evaded with almost complete impunity.

Corruption in the FDHs' countries of origin is also a major factor in feeding the greed of the agencies whose only interest is in maximising the number of recruits regardless of whether there are real jobs to fill. It is notorious, for example that the typical Indonesian FDH has to pay almost the whole of her first seven months' earning to an agency.

*Helpers for Domestic Helpers* came into being, quite informally at first and on a very small scale, some twenty years ago on the initiative of some worshippers at St. John's Cathedral, several of them lawyers, the writer of this foreword amongst them, who offered a sympathetic ear to the problems of the many domestic helpers in the congregation, were appalled by what they heard and resolved to do something to help them. Word soon spread in the domestic helper community and that small band of helpers was soon overwhelmed. A few volunteers operating part-time in addition to their regular weekly jobs could not cope with the ever-increasing demand for their services.

But St. John's Cathedral came readily to the rescue. Its Council was soon persuaded that affording help to Hong Kong's foreign domestic helpers, and not just those of them who formed a substantial portion of its own congregation, was a cause which was worthy of the church's support as a practical exercise in Christian charity. And so the Cathedral provided premises and

funding to enable the work to go forward on a full time basis, and continues to do so to this day. As its work became more formalised, the name “Helpers for Domestic Helpers” was adopted. HDH, operating under its own Management Board, remains a Cathedral organisation and is ultimately answerable to the Cathedral Council.

Despite the institutional connection with the church, HDH has never been the least concerned with the religious affiliations of those who seek and are given its assistance. Proselytisation is no part of its aims. Those who need its help receive it, irrespective of their national origins and whether they belong to one Christian denomination or another, or are Muslim, as an increasing proportion are, or of no religious faith whatever.

This manual represents the accumulated wisdom of 20 years’ experience in helping FDHs. It provides advice on how to deal with most of the kinds of problems which are habitually encountered by them in respect of their employment and their immigration status. It is hoped that the manual will become widely available in the domestic helper community as a source of guidance and “first-aid”, but it is not intended to be a substitute for the hands-on help which individual cases will usually need and which HDH and other organisations of a similar kind can provide.

The Manager of HDH, Holly Allan, and her team of full and part time helpers are to be congratulated on the hard work which they have put into the production of this valuable booklet which has long been needed. Holly has led the work of HDH for some 8 years past and the fact that its reputation now stands so high is due in no small part to her dedication and leadership. We – and HDH's clients most of all – are greatly indebted to her for her zeal, commitment and industry. Her contribution to the work of assisting this city's foreign domestic helpers over the years has been truly enormous and I am pleased to have this opportunity to applaud it and accord it the recognition it deserves.

***James Collins***

***One of the original helpers***

***March 2012***



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# *Introduction*

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There are currently many written materials and other types of resources offering information on the rights of foreign domestic workers in Hong Kong. Most of these resources focus on the provisions in the Employment Ordinance or the standard foreign domestic helper employment contract. But simply knowing the law is often not enough; domestic workers need practical knowledge on what to do to protect their rights and deal with abuse or exploitation.

The aim of this manual is to provide practical advice based on *Helpers for Domestic Helpers'* (HDH) years of experience in dealing with common problems encountered by domestic workers. While the advice offered here is not exhaustive and does not guarantee that you can avoid being abused or exploited by an employer or an employment agency, it can help minimise the chances of them occurring. This manual will also offer advice on what you could do to seek redress if you have been a victim of abuse and/or exploitation, have been denied your statutory

entitlements or have been accused of a criminal offence. For example, instances of false accusations of theft or child abuse are particularly commonplace.

**Some of the advice offered in this manual requires taking actions that may put your employment at risk.**

You will have to make the ultimate decision whether to stand up for your rights or be passive in order to keep your job. However, remaining silent about violations of your rights does not guarantee that you will keep your job.

Whilst most employers in Hong Kong are decent and reasonable, there are common scenarios that HDH sees time and again where employers show little or no regard for domestic helpers' rights as an employee. Many such examples will be discussed in the following pages. This manual will also discuss some of the unscrupulous practices of rogue employment agencies and offer advice on how to tackle them.

Finally, we recognise that some problems between employers and domestic workers will arise due to

miscommunication or lack of understanding of each other's culture. This manual also provides advice on how you may develop a positive relationship with your employer and minimise disputes.

# *Knowing Your Rights*

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Whilst it is not a guarantee for protection, knowing your rights is the first step in protecting yourself from being taken advantage of. In Hong Kong, the employment of foreign domestic workers is regulated by the Government. The standard foreign domestic helper contract is very specific regarding many aspects of your employment, such as the amount of pay, living conditions, medical benefits, where you should work, the nature of your work and other details. It is very important for you as a foreign domestic worker in Hong Kong to know your legal rights and responsibilities. The best place to start is by reading your contract carefully. Both you and your employer are bound by the contract and either party who breaches the terms of the contract may be liable to pay compensation to the other party.

The Employment Ordinance (Chapter 57, Laws of Hong Kong) is the main piece of legislation governing employments in Hong Kong. It covers many areas of

employment protection and benefits for employees. The Employment Ordinance sets minimum entitlements for employees.

# *Employment Agencies and Placement Fees*

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In recent years, exploitation by employment agencies has been one of the major issues faced by foreign domestic workers. Our extensive experience on the issue, particularly with respect to Filipino workers, has given us a deeper insight of how employment agencies work, their modus operandi and their motivations. Since the majority of HDH clients are from the Philippines and Indonesia, we will focus on the relevant laws on agency fees in these countries and in Hong Kong.

## *The Law vs Reality*

### **Hong Kong**

According to Part XII of the Employment Ordinance and the Employment Agency Regulations (Chapter 57, subsidiary legislation), the maximum commission employment agencies in Hong Kong are permitted to charge you as a job applicant is an amount not exceeding



10% of your first month's wages. This may only be collected by the agency after you have been successfully placed and you have received your first month's wages. So if your monthly salary is \$3,740, a Hong Kong agency must not charge you more than \$374 for finding you an employer. If an agency charges you more than that amount, then that agency is breaking the law.

Expenses for processing your employment contract and entry to Hong Kong (such as medical examination, consulate fee, visa fee, insurance fee and air fare from your place of origin to Hong Kong) must be paid by the employer (see clause 8 of the standard domestic helper employment contract).

## **Philippines**

The Philippine Overseas Employment Administration (POEA) implemented a Reform Package in 2006 affecting Household Service Workers (HSW). Under the new guideline, **employment agencies in the Philippines are not permitted to charge placement fees to overseas workers bound for Hong Kong.** They may charge for

training, medical examination, photo, video and other necessary miscellaneous expenses but not placement fee. However, many agencies charge a placement fee of up to 150,000 pesos for deploying a domestic helper to Hong Kong. They get away with this illegal practice by preying on desperate job applicants who would not insist on being issued a receipt for their payment for fear that should they request one they will not be deployed. These employment agencies also collude with lending institutions that deal primarily with overseas workers to finance and cover up these illegal placement fees. As a result, there are rarely any paper trails that can prove that a worker has paid a placement fee.

In addition to this, under the Philippine Republic Act No.10022, it is unlawful for agencies in the Philippines to impose a compulsory and exclusive arrangement whereby an overseas Filipino worker (OFW) is required to undergo training or medical assessment only from institutions specifically designated by the agencies. Most domestic helpers who came to HDH for advice have been required to undergo training in specific institutions that appear to be

connected to their recruitment agency. Some of these agencies charge grossly excessive training fees -and for so called “internet launch” and “internet success” in order to disguise placement fees. They also require OFWs to pay for jackets or T-shirts with the agency logos and workers are required to wear them when they fly to Hong Kong. These are unnecessary expenses designed to maximise the profit of the agency at the workers’ expense.

## **Indonesia**

Under a decree (KEP.186/PPTK/VII/2008) dated 10 July 2008 of the Director General for Training and Placement of Manpower, the cost structure for placement of IDW to Hong Kong was set at Rp. 15,550,000 at a fixed exchange rate of HK\$1 to Rp. 1,000, or HK\$15,550. This includes training fees, service fees and other expenses for processing a worker’s visa to Hong Kong.

However, as with the Philippines, the law in Indonesia has not been strictly implemented. Indonesians are normally required to pay \$21,000 for obtaining a job as a domestic

helper in Hong Kong. Though it is not officially acknowledged, it is believed that of the total fee, \$18,000 is divided between the Hong Kong and Indonesian agencies and the remaining \$3,000 goes to the lending company that collects the payment.

Agency Regulations by Country	
Country	<i>Maximum placement fee/ agency commission</i>
Hong Kong	10% of a job applicant's first month's salary
Philippines	\$0 placement fee
Indonesia	\$15,550

## ***Tricks of the trade***

Agencies normally collect unlawful commission as placement fees through the following methods:

### **Cash payment**

This is the surest and simplest way agencies collect placement fees. They normally do not issue receipts because it is illegal for them to collect the fees in the first place. In many cases, a few weeks or even days after the helper begins her employment, she is dismissed from her job. There are numerous reports that the agencies themselves encourage the employers to dismiss their helper once the agencies have received their commission, so that they could place new workers and earn more commission.

### **Agency-related loan**

The most common tactic of unscrupulous agencies is to require an applicant to either sign a bogus loan agreement or enter into a loan contract with a lending company in order to disguise the collection of placement fees. There

are particular lending companies in Hong Kong and in the Philippines that work with employment agencies to perpetrate this illegal practice. In most cases the job applicant never receives the “loan” money but receives a loan repayment schedule after she begins her employment. The repayment period can be between 3 to 7 months and, in Hong Kong, the helpers are often instructed to pay through convenience stores such as 7-Eleven. If the helper fails to pay an instalment when it is due, she will receive threatening letters and telephone calls from the loan company and she and the employer will be harassed so that she feels pressured to pay the loan in order to protect her job. The harassment often leads to the helper’s termination. However, paying the loan does not guarantee that the helper can keep her job. In order to earn more commission, the employment agency may offer the employer a new maid once the current maid has fully paid the loan.

In the Philippines there are particularly notorious loan companies working with agencies that require job applicants to provide numerous signed blank cheques to

cover the loan repayments. This is done to force the worker to pay the loan even if her employment is prematurely terminated, because in the Philippines, a person can be prosecuted if a cheque that person has issued is bounced. If you as a borrower lost your job and are therefore unable to pay the loan, you and your guarantors/“co-maker” will receive a letter from the loan company threatening to take you to Court if you do not continue to repay the loan. Alternatively, you may be tricked into signing a new loan contract with a significantly higher repayment amount which could then trap you into an endless cycle of debt.

Similarly, it is common for an Indonesian domestic helper to be required to sign a loan agreement for \$21,000 before she comes to Hong Kong. The debt is then assigned by the agency to a Hong Kong finance company which demands 7 monthly instalments of \$3,000. The helper is normally not given a copy of the documents she signed in relation to the loan and her passport is kept by the agency until the loan is fully paid.

## **Wage deduction**

To ensure prompt payments, agencies sometimes enlist the help of employers in collecting illegal commission by asking the employers to deduct the fees from the domestic helper's monthly wages. The helper is usually asked to sign a false receipt for full wages before the reduced salary is actually given to her. **Such arrangements and wage deductions are unlawful.**

## **Bank deposit**

Agencies in Hong Kong take their recruits to a bank to open an account. The agency then takes the ATM card together with the PIN number and asks the employer to deposit the domestic helper's salary into the account. Once the salary is deposited, the agency withdraws the money and takes a significant percentage (usually between \$2,500 and \$3,000) as monthly instalment for its commission. The remaining amount is given to the helper.



## **Withholding termination payment**

There have been numerous cases where the domestic helper is asked to sign a receipt for her entitlements on premature termination of her contract, only for the employer to then pay her money to the agency. The agency keeps most, if not all, of the money in order to settle an unpaid “loan” which has been arranged by the agency for the worker to pay the placement fee. Once the helper has signed the receipt, it will then be difficult for the helper to prove that she has not received the payment.

Whilst domestic helpers are strongly advised not to pay illegal placement fees and commission to an employment agency, it is understandable that many of you will do so as your prime concern is to obtain a job in spite of the costs. Under the current situation, it is almost impossible to obtain a job without being charged an illegal placement fee unless you are someone who has just completed an employment contract or, under exceptional circumstances, have been given special consideration by the Immigration Department and allowed to apply for a change of employment without having to leave Hong Kong.

Should you decide to “bite the bullet” and agree to pay an excessive placement fee to an agency, the following are tips on how you can increase your chances of being able to recover the placement fee.

### Dos and Don'ts



➤ **Expressly ask for a receipt** for your payment (and take note of the reaction you get). More likely than not you will not be given one, but it does not hurt to ask.

- Since it is unlikely that you would be issued a receipt, **take a witness** with you when you pay any money to an agency. If possible, video record the payment.
- Alternatively, **ask to pay directly into the bank account of the agency**. If you are given a bank account to deposit your payment into, ask whose name

the account is in and keep the deposit receipt. Do not deposit to the bank account of a person who is not officially connected to the agency (for example another domestic helper who referred you to the agency who may be receiving commission from the agency or a “broker”). The agency will most probably deny receiving the money or being connected to that person once you file a complaint.

- **Keep records** of all your payments to the agency including the dates, amounts, the name and position of the person to whom you gave the money, and the specific items for which you are paying.
- Know the full names and contact details of the agency and its key personnel.
- It is not advisable to sign a loan contract with a lending company referred by an employment agency to pay for a placement fee though it is probably less onerous than paying the fee out of your own pocket.

- If you feel you do not have a choice and must sign a loan contract or agreement in order to get a job, **ask for a copy of the loan agreement.** Do not passively accept a refusal; be prepared to argue, put your objection in writing and keep a copy of the letter.
- **Verify the validity of the loan document.** It may be a bogus loan contract in which case you can challenge it when the loan company tries to collect payments from you. If the loan was arranged between the agency and the finance company or if you signed the “loan” document at the office of the agency and you did not receive any money, it is likely that the loan is invalid.
- When you receive a payment demand from the lending company in Hong Kong, **send the company a written demand for a copy of the loan agreement and a statement providing information on the terms of the loan. Stating expressly that your demand is made pursuant to section 18 and 19(1) of the Money Lenders Ordinance (Chapter 163, Laws of Hong Kong).** If the company fails to provide one, then, under

the law, so long as the default continues, the loan may be unenforceable.

- **Do not sign** a loan agreement with finance companies



in the Philippines that require you to sign numerous blank cheques to guarantee payment of the loan. You could be prosecuted under the Anti-bouncing Check law if

you are unable to pay the loan.

- If you are harassed by a debt collector by way of repeated and threatening telephone calls, record the calls and report them to the police. It is an offence in Hong Kong to persistently make telephone calls for the purpose of causing annoyance, inconvenience or needless anxiety (section 20 of Summary Offences Ordinance (Chapter 228, Laws of Hong Kong)).
- If a debt collector contacts your employer, you may

have a case under the Personal Data Privacy Ordinance.

- **If the employer deducts money from your wages in respect of agency fees, make sure that this deduction is reflected on any wage receipt that you sign.** If it is not (and it is very unlikely that the employer will do so), make sure to note it down yourself on the receipt before you sign it. If the employer does not ask you to sign a receipt, keep your own record of the amount of wages you receive each month including the dates when you actually received them. Also write a letter to the Labour Department (16/F, Harbour Building, 38 Pier Road, Central, Hong Kong) or to the nearest branch office of the Labour Relations Division in your area about the wage deductions. Keep a copy of your letter and the Labour Department's reply.

**If your employment is terminated, do not sign any paper stating that you have received your termination entitlements before you actually receive the payment.** Some employers or agencies may show

you the money in their hands to make you think that you will be paid after you sign the receipt, but they may not actually hand you the money once you have signed the receipt. This has happened many times and in such cases it is often difficult to prove that the helper has not received the money.



## ***Claiming the refund of your placement fees***

If you paid a placement fee to an agency in Hong Kong and you have some form of evidence of payment either by way of a receipt (which is unlikely) or a witness, you may file a claim at the Small Claims Tribunal (SCT).

### **POEA Claim (For Filipinos)**

If you paid a placement fee in the Philippines or have been required by your recruiter in the Philippines to sign a loan agreement there, you may file a complaint with the Overseas Workers' Welfare Administration (OWWA) in Hong Kong against your Philippine and Hong Kong agencies. The OWWA will contact the Hong Kong principal and arrange a conciliation meeting between you and the agency representative. The meeting is an opportunity for you to negotiate the return of all or at least part of your placement fee and/or the cancellation of any loan arranged by the agency. If the matter is not settled during the meeting you may pursue the case through the POEA. In addition to the placement fee refund, **if your employment was prematurely terminated without any valid reason,**



**you may also file a claim with the National Labour Relations Commission (NLRC)** against the agency for damages for illegal dismissal amounting to at least 3 months' salary for every year of the unexpired term of the contract. For example, if you were dismissed within 1 month of employment, you could claim at least 6 months' salary. It may even be possible to claim for monies equivalent to the wages you would have earned for the remaining period of the contract had it not been unreasonably terminated.

If you were the one who terminated the employment contract the agency is less likely to offer a substantial refund of your placement fee. This is because the agency is not exposed to any claim for damages for illegal dismissal. Therefore there is less pressure on the agency to offer a refund since it is more difficult to prove payment of placement fees for which agencies do not issue receipts.

We therefore advise you to carefully read what you are being asked to sign by the agency or your employer as there have been many cases where domestic helpers were

tricked or coerced into signing resignation letters even though they did not intend to resign. This effectively weakens their bargaining power against the agency. Another agency trick is to promise to find you another employer and keep you waiting until your permission to stay in Hong Kong expires.

## **The Conciliation Meeting at OWWA**

### **Negotiation strategies**

Although it may sometimes happen, it is rare for a Filipino worker to be able to recover in full the placement fees she has paid to the agency during the conciliation meeting at OWWA even though she is entitled to it. She will be expected to bargain. What many Filipino complainants often do is to ask for the refund of half of the placement fee she has paid or the lowest amount she is prepared to accept at the start of the meeting. That is not advisable. **Even if you are willing to accept less than what you have paid, you should always start by asking for full refund because the agency will almost always offer an amount much lower than what you ask for, if it offers**

any amount at all. You will then be expected to negotiate and lower your demand in order to reach a settlement agreement. So if you immediately ask for the lowest amount you are prepared to accept, chances are you will not get it. Start high and only reduce your demand a little after the agency makes a much lower offer but do not keep going lower if the agency's offer is not increasing to meet yours. You may, of course insist on a full refund if you wish especially if you have some evidence of your payment, have been unreasonable dismissed or if you have evidence of having been abused by the employer.

**Do not let anyone press you into accepting an amount that you are not happy with, or discourage you from pursuing your claim in the Philippines.** If you receive an unreasonable amount of settlement, it is not because you “lost” in the negotiation but because you accepted the offer. **Remember it is not your last chance to recover the money** and do not believe it when you are told (and you probably will be) that there is little chance of getting a refund in the Philippines. HDH has had many clients who were able to recover much more than what they were

offered by their agency in Hong Kong. But you have to be prepared to assert your rights and take action.

### **Commonly Asked Questions**

From debriefing clients after their conciliation meeting with agencies at the Philippine Consulate we have become familiar with the common arguments made by agencies during the meetings. The following Questions and Answers are based on those arguments.

#### **What should I remember when going to the conciliation meeting?**

Remember that it is illegal for employment agencies in the Philippines to charge a placement fee; therefore **you are entitled to the full refund of the placement fee you have paid**. The agency representative will either try to intimidate you or make you feel guilty by saying they have helped you come to Hong Kong to work and that they spent money to find you an employer and bring you here. Well, they did not do it to help you; they are in the business of recruiting workers for profit. The agency recruited you in

order to make money as employers pay the agencies for their services. Employers should pay for the cost of processing your contract, your work visa fee and your air fare from your place of origin to Hong Kong. These fees should not be borne by you. The laws prohibiting the charging of placement fees are in place to protect migrant workers.

**The agent says that I have already earned wages and received termination payment from my employer and therefore have recovered the costs of the placement fee.**

Tell the agent that the money you earned by working has nothing to do with the fact that the agency charged you an illegal fee, therefore the fee must be returned to you. If the money you worked for is allowed to be deducted from the placement fee refund, it would mean that only the agency profited from your labour.

**The agency says they could not give me a refund but would offer me “financial assistance”**

The agency does not like to use the word “refund” because that would mean admitting they have charged you an illegal fee. Instead, they use the words “financial assistance” to make you feel they are doing you a favour and therefore you are at their mercy. Say that you do not want financial assistance; you want them to return the money that they have collected illegally from you.

**What attitude should I take in the meeting? Should I be submissive and respectful?**

Remember that the agent has no authority over you. The agent is not your superior or boss. In fact you are a client of the agency. Do not be afraid to stand up to the agency or to challenge them. Be assertive and firm. Do not beg, because you are not asking for a favour, you are **simply demanding the return of your own money illegally taken from you**. The agency will try to intimidate you, but remember that it was the agency that violated the law so

they have no right to be angry with you for claiming a refund. State your case in a clear confident manner. Say:

*“I know my rights, I am entitled to a full refund because I applied for a job through an agency in the Philippines where it is illegal for it to charge a placement fee.”*

**If your contract was prematurely terminated by the employer, you can also add:**

*“If you do not refund my placement fee I will pursue my claim through the Philippine Overseas Employment Administration (POEA) and I will also file a claim for compensation for illegal dismissal with the NLRC (National Labour Relations Commission) in the Philippines.”*

**What do I say if the agency demands that I pay back the so-called ‘loan’ that they have arranged with a loan company?**

Demand that the loan be cancelled. Say: *“I did not borrow any money from the loan company. It was your agency (or your agent in the Philippines) that arranged this loan and received the money so I have no obligation to pay the loan.”*

### **What do I say if they refuse to cancel the loan?**

You should say: *“In that case I will file a case with the POEA for illegal recruitment.”*

### **What should I do if the agency only offers to waive any remaining loan but would not offer a refund of the cash payments I have made?**

Do not accept this as a full and final settlement. An offer to waive a fictitious or non-existent loan does not offer you any benefit. You should say: *“Of course you should cancel the loan because I did not receive any loan in the first place. I will not settle unless you return the money collected from me illegally.”*

### **What do I say if the agency wants to deduct money I have earned or payments I have received from my employer from the placement fee refund?**

You should say: *“The wages paid by my employer are my hard-earned money and it has nothing to do with your illegal*



*placement fee. I earned my salary and you have no right to deduct it from the refundable fees which you had no right to collect from me in the first place.”*

### **What do I do if I am not happy with what the agent offers and we don't settle?**

You may be asked to come back for another meeting. If they try to schedule the next meeting for the day before your visa expires (when you tend to be more desperate and might be more willing to settle for less), **ask for an Indorsement letter instead from the Philippine Consulate**. More likely than not, the agency's offer in the next meeting will not be much better than what it has offered during the first meeting. The Indorsement letter (headed “1<sup>st</sup> Indorsement”) will state that your complaint is being referred to the POEA.

### **What do I do next?**

If you are returning to the Philippines, take the “1<sup>st</sup> Indorsement” to the POEA. The POEA will schedule a meeting between you and the Philippine agency to try

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again to negotiate a settlement agreement (you may seek help from organisations such as HDH in preparing an affidavit for you to file with POEA or for advice on how to pursue your claims in the Philippines). If your employer terminated your employment contract prematurely without a valid reason, you may also file a claim with the National Labour Relations Division in the Philippines against the agency and the employer for damages for illegal dismissal. Since the Philippine government cannot force the employer to pay damages to you, it is the employment agency in the Philippines who would be required to compensate you because under the Philippine law, the agency and the employer are jointly and severally liable.

If you attend a meeting at the POEA with the agency, it would be advisable to bring a family member or a friend for support to boost your confidence in negotiating with the agency.

### ***Claiming a refund of commission paid to an agency in Hong Kong***

If you have paid excessive fees directly to an employment agency in Hong Kong you should also file a complaint with the Employment Agencies Administration (EAA) as soon as possible. A prosecution case against the agency may only be brought within 6 months from the time it committed the offence of receiving excessive commission. However, you may lodge a claim for the return of the money at the Small Claims Tribunal within 6 years. This is advisable especially for those who did not use an agency in their home country.

## ***Agency fees for jobs outside Hong Kong***

In recent years there have been numerous cases of foreign domestic helpers paying substantial amounts of money to agencies in Hong Kong that promised to find them jobs in the US, Canada or Europe. Many of these workers have waited for several months or even years to be deployed but the promised jobs never materialised.

Remember that even if the job you are applying for is outside Hong Kong, if you are applying through a Hong Kong agency, then Hong Kong laws on placement fees shall apply, meaning, the agency may only charge 10% of the first month's wages that you would receive once you have been successfully placed.

You can also lodge claims for refunds against such agencies at the Small Claims Tribunal but be prepared for a long period of litigation

Also be wary of agencies recruiting through the internet and asking for fees to be remitted to a bank account. It would be difficult to sue an agency that is outside the Hong Kong jurisdiction.

# *Understanding Your Employment Contract*

A foreign domestic helper and an employer in Hong Kong must sign the standard employment contract (Form ID 407) agreeing to the terms stated in this document.



They have been devised and imposed by the Labour and Immigration Departments with a view to protecting the helper's interests. **The helper needs to read and fully understand the terms of this contract before signing it.**

The contract, and the attached Schedule of Accommodation and Domestic Duties, will specify the terms of employment, the time period of the contract, the employer's address where the helper will work at and reside in, the monthly salary, and other details.

Both the employer and domestic helper are required to sign an undertaking (Form ID(E) 407K), which stipulates that both parties will strictly adhere to the domestic helper's conditions of stay as well as the wage level, live-in and accommodation requirements. If a domestic helper is found to have breached the undertaking, he/she may not be allowed to work in Hong Kong again.

## ***Duties of the Helper***

The Contract states that the **foreign domestic helper will work and live in the employer's residence and will only perform domestic duties for the employer**. It is illegal for the helper to work for any other person. This means that it is unlawful for you to live and/or work outside the address of the employer, including the home of the employer's friends or relatives. **It is also unlawful for you to work in any business establishment or to perform tasks not related to household duties** such as running errands for the employer's business or cleaning the employer's office.

Domestic duties to be performed by the domestic helper exclude the driving of a motor vehicle of any description for whatever purposes, whether or not the vehicle belongs to the employer, except with the expressed permission of the Immigration Department. If you were employed to perform driving duties, you will need to obtain an addendum to your contract from the Immigration Department that specifically states that you are permitted to perform driving duties.

Any breaches of the above will render the domestic helper liable to criminal prosecution.

**The Immigration Department takes illegal work very seriously, even if the domestic worker was only following instructions from the employer.** HDH has encountered cases where the domestic helper complains in writing to the Immigration Department that her employer was forcing her to work in other residences apart from the employer's home. The worker states in the letter that she knew it was illegal for her to do so but that she had no choice but to obey the employer's order or risk losing her



job. In such cases the Immigration Department would normally send a standard reply that it is a breach of a domestic helper's conditions of stay to take up unapproved employment and should she continue to do so, this would be taken into consideration when she applies for change of employment in the future. The Immigration Department may then begin an investigation of the helper for breach of condition of stay or wait until the helper applies for change of employment. It does not normally accept the reasoning that the helper was only following orders for fear of losing your job.

Even if you only work in the home of the employer, you should not be required to perform non-domestic duties - some employers use their home to prepare or process goods for sale. This is not part of your duties and you are entitled to refuse to do it. **You are also not obliged to perform services such as giving body massage to the employer.**

If your employer requires you to work for another person or to take up non-domestic duties, you should refuse and

explain to the employer that you cannot obey such orders because it would be illegal to do so. However, if the employer insists, then you may report the matter to the Immigration Department. However, be sure that you have not been performing the illegal work if you make such a report or you yourself could be subject to investigation

## ***Commencement of the contract***

There is sometimes confusion among domestic worker and employers as to when a contract commences. Some think that the contract commences on the date when it was signed by both parties which is normally the date that appears in the first paragraph of the contract. This is a misconception. Such misconception, in turn, results in misunderstanding as to the date when the contract expires, which is two years from the date the contract commenced.

According to Clause 2 of the standard Employment Contract for foreign domestic helpers, the employment shall be regarded as starting from:

- A. The date when the helper arrives in Hong Kong; or
- B. The day immediately following the expiry of a previous contract with the same employer (in case of contract renewal); or
- C. The date on which the Director of the Immigration grants the helper permission to remain in Hong Kong (in case of change of employment in Hong Kong to begin employment under the current contract).

The trick is to look at the date when your work visa was issued.

**A domestic helper is not permitted to work for the employer before her work visa is issued by the Immigration Department.**

Once the contract has commenced (in one of the above senses), and if she is willing and able to begin working, the domestic helper's entitlement to wages starts to accrue even if she was not asked by the employer to start working. Therefore the first wage period starts from the date the contract commences.

# ***E**mployment Entitlements*

## **Wages**

**The helper should receive the amount of wages stated in the employment contract.** It is a serious offence for an employer to underpay a domestic worker. (Advice on how to protect yourself from underpayment is discussed in the later part of the manual.)

All foreign domestic helpers in Hong Kong should not be paid less than the Minimum Allowable Wage or the amount stated in the employment contract, whichever is the greater.

If an employer tries to negotiate a salary that is less than the Minimum Allowable Wage, you are entitled to reject that.

Any arrangement between the employment agency and your employer to reduce a helper's wages below the minimum allowable wages is unlawful and unenforceable.

Employers must pay wages to the helper **within seven days from the due date** of the payment specified in the contract.

**If wages are not paid within one month from the due date, the helper may deem herself to have been dismissed by the employer without notice.** If the helper chooses to exercise such right, the employer is required to pay the helper wages in lieu of notice in addition to wages in arrears and other statutory and contractual termination entitlements.

## **Wage deductions**

The employer may deduct wages in the following situations:

An employer is allowed to deduct from the worker's wages to compensate for the damage to the employer's goods or property **that was caused by the worker's negligence.** The sum that may be deducted will be the value of the damage, **subject to a limit of HK\$300 per item. These deductions in any one wage period (usually one**

**month) shall not exceed 25% of the worker's wages in that wage period.** However, this does not preclude the employer from seeking full compensation for the damage or loss the employer suffered but not through unilaterally imposed wage deductions.

The employer may also make deductions from wages for absences from work but the employer may not make such deductions for extra rest days that the employer forced the worker to take.

The employer may not make deductions to pay the employment agency fees. Even if the helper has signed a loan agreement in order to pay the agency fees, which is illegal, the employer should not facilitate the collection of such fees.

Deduction can be made with the domestic helper's written consent for the recovery of any loan made by the employer to the domestic helper.

The total amount of all deductions in a month, excluding those for absence from work, should not exceed 50% of the helper's wages in that month.

### **Dos and Don'ts**

- If the employer makes any deductions from the worker's wages, this should be reflected in the receipt to be signed by the worker. **Do not sign a false receipt** stating that you have received your salary in full if wage deductions were made, even if the employer is entitled to make such deductions.
- Keep a record of the wages you receive including the amount and date you received the money.
- Notify the Labour Relations Division of the Labour Department and Immigration Department in writing if you are underpaid or if the employer makes unlawful wage deductions. Keep a copy of your letter and the authorities' reply.

- Do not use the employer's address as the return address for your correspondence with the authorities as the letters might be intercepted by the employer and withheld from you.



## Suitable Accommodation

Due to generally small sizes of flats in Hong Kong, not all families can afford to provide a private room exclusively for



their domestic workers. Having said that, **the employer is required to provide the domestic worker with free suitable and furnished accommodation with reasonable privacy**, as specified

in the contract. What the employer must not do is to misrepresent the accommodation arrangement in the employment contract. Some domestic workers are made to sleep in common areas such as the living room, kitchen or even in the bathroom even though the contract states that they would be provided with a private room or share one with the employer's children. Of course a helper coming to work in Hong Kong for the first time, will have signed the contractual undertaking about accommodation "blind", now knowing in advance the true nature of the accommodation she will be given.

Inadequate accommodation which departs substantially from the terms of the employer's undertaking in the contract is not permissible. The helper may report this to the Immigration Department in writing. It would help to have a photo of the sleeping accommodation enclosed with the letter.

Sharing a room with an adult or teenager of the opposite sex is also unacceptable.

## **Live Out Agreements**

Under the New Conditions of Stay imposed by the Immigration Department, foreign domestic helpers are not permitted to reside outside the employer's address except if the worker has been granted express permission by the Immigration Department. Such permission is rarely granted.

## **Food**

The food provided by the employer should not only be sufficient in quantity



but also be of reasonable quality. If the employer does not tell you what to eat or whether you may eat the food available in the household, you should ask. Do not assume that the employer refuses to provide you with food. If the employer clearly tells you that you are not permitted to eat their food or if the food provided is inadequate then ask for a food allowance as stated in clause 5(b) your standard employment contract.

## **Rest Days**

You are entitled to one rest day in every period of seven days. A rest day means that you may abstain from working for the employer for a continuous period of 24 hours.

Your employer decides your rest day. Rest days may be given on a regular or irregular basis. If the rest days are not fixed, the employer should notify the domestic worker of her rest days before the beginning of each month. It is unacceptable for the employer to tell you that you may take the day off only the night before or even on the day itself.

You and your employer may agree to substitute another day for your regular rest day. The substitute rest day must be granted within the same month and before the original rest day or within 30 days after it.

You should not feel forced to perform duties on your rest day. However, you may work voluntarily on your rest day.

### **Dos and Don'ts**

- If you are not granted regular weekly rest days, keep a record of the specific dates of rest days that you took, instead of noting down the appointed rest days that you were not allowed to take. This way it is easier to count how many days you are owed by deducting the number of days you have taken from the total rest days you are entitled to.
- Notify the Labour Department in writing if you are denied statutory rest days.



## Statutory Holidays

You are entitled to 12 statutory holidays per year, regardless of how long you have been working. **If you have been employed continuously by the employer for three months** preceding any of these holidays, you are entitled to holiday pay. The holidays are:

- ❖ January 1 (New Year's Day)
- ❖ Lunar New Year's Day
- ❖ The second day of the Lunar New Year
- ❖ The third day of Lunar New Year
- ❖ Ching Ming Festival
- ❖ May 1 (Labour Day)
- ❖ Tuen Ng ("Dragon Boat") Festival
- ❖ July 1 (Hong Kong SAR Establishment Day)
- ❖ The day following the Chinese Mid-Autumn Festival
- ❖ Chung Yeung Festival
- ❖ October 1 (National Day)
- ❖ Chinese Winter Solstice Festival **or** Christmas Day (at the option of the employer)

**If your employer requires you to work on a statutory holiday, the employer must give you at least 48 hours' prior notice.** If you work on a statutory holiday, you are entitled to another holiday within 60 days before or after the holiday on which you worked.

The employer cannot force you to accept payment in lieu of a statutory holiday.

If a statutory holiday falls on your rest day, a holiday should be granted on the day following the rest day which is not a statutory holiday or an alternative holiday

Statutory holiday pay is calculated based on the daily wage rate.

## **Paid Annual Leave**

You are entitled to 7 days of paid annual leave after working for a period of 12 months with the same employer. The number of annual leave days increases to 8 days after 3 years, and continues to increase by one day with each

additional year worked up to a maximum of 14 days (see table).

<b>Years of Service</b>	<b>Number of Days of Paid Annual Leave for a Leave Year</b>
1	7
2	7
3	8
4	9
5	10
6	11
7	12
8	13
9 or above	14

You may take paid annual leave within the following 12 months at a time agreed upon between you and the employer.

If a rest day or a holiday falls during your annual leave, they are counted as part of the annual leave and the employer must give you an alternative rest day or holiday. You may request to take the alternative rest days and/or

holidays immediately after the last day of your paid annual leave in order to extend your leave.

The dates of annual leave shall be determined by the employer after consultation with the helper.

The employer cannot force you to take a leave without pay when the employer goes on holiday or for the employer's convenience

Paid annual leave must be granted consecutively. However, you may request to take up to 3 days of your entitled annual leave on any day or days if you are entitled to less than 10 days annual leave. If you are entitled to more than 10 days leave, only 7 days are required to be taken consecutively while the remaining annual leave may be taken on any day or days.

If the contract is terminated, you may claim payment in lieu of any annual leave not yet taken. If you have been employed for at least three but less than 12 months, you are entitled to pro-rata annual leave pay except if the



contract was terminated due to serious misconduct on your part.

If you go on home leave, ask the employer to provide you with a supporting letter stating the period of leave and the date when you are expected to return to work. There have been cases of helper's being dismissed while on leave due to misunderstandings on the date when the worker is due to return to work.

If you are unable to return to work at the end of the agreed period of annual leave for valid reasons, do not fail to notify your employer by phone or better still, by sending phone text messages or a letter. Speak to your employer directly and do not rely on someone else such as the agency or another domestic worker to pass on the message to your employer. If you cannot return to work due to illness, obtain a medical certificate and send a copy by post or by fax to your employer as soon as possible and bring the medical certificate with you when you return to Hong Kong.

## Free Medical Treatment



Some employers refuse to pay for their domestic helper's medical treatment if the treatment is not covered by their medical insurance or if the insurance does not cover the full cost. When a domestic helper becomes ill in Hong Kong, the employer has the legal responsibility to pay for the helper's treatment whether the employer recovers the cost from her insurance provider or not as set out in clause 9(a) of the standard employment contract.

If you are ill and the employer refuses to let you see a doctor, you should seek medical treatment anyway and keep the receipts for the medical fees and the doctor's certificate. Show them to your employer and if the employer refuses to reimburse you, you may later file a claim for the reimbursement through the Labour Department.

Employers are not responsible for providing free medical care during the period when you leave Hong Kong for personal purposes, such as on home leave.

Employers are required to take out employees' compensation insurance to cover injuries sustained by an employee while performing her duties, or diseases contracted by the worker as a result of and in the course of employment.

## **Sick Leave and Sickness Allowance**

You are entitled to two paid sickness days for each month during the first 12 months of continuous employment. After 12 months, you are entitled to four paid sickness days for each month of service. Paid sickness days can be accumulated up to a maximum of 120 days.

In order to claim sickness allowance you must present a sick leave certificate to the employer.

You are not entitled to sickness allowance if you take less than 4 sickness days.

You cannot be forced by the employer to work during any sickness day which is supported by a sick leave certificate.

It is unlawful for an employer to dismiss a worker who is on **paid sick leave** except in cases of summary dismissal due to the worker's serious misconduct.

### **Dos and Don'ts**

- If you are required by the employer to work while you are on sick leave, politely but firmly refuse and explain to the employer that you are entitled under the law to abstain from working while you are on sick leave.
- You should always retain a copy of the sick leave certificate before you give one to the employer. It is sometimes difficult to obtain another copy if you need one later in case of dispute.
- If you visit a doctor accompanied by your employer, ask that your medical certificate be given to you, not your employer.

## Maternity Leave and Allowance

A female domestic worker, like any other female employee, whatever the nature of her work, is entitled to 10 weeks maternity leave after having completed 4 weeks of continuous employment. She will be entitled to maternity leave pay if she has been employed continuously for not less than 40 weeks.



Maternity leave pay is equal to four-fifths of the normal wages. It should be paid on the normal pay day of the helper.

It is unlawful for the employer to dismiss a pregnant domestic helper after she has served a notice of her pregnancy except in cases of summary dismissal due to the helper's serious misconduct.

If you are dismissed without valid reason while you are pregnant or on maternity leave, you would be entitled to claim the following:

- a) Wages in lieu of notice (if you were not given prior one month's notice)
- b) A further one month's wages
- c) Maternity leave pay for 10 weeks (if you have been employed for at least 40 weeks)
- d) Compensation for unlawful dismissal (the amount to be determined by the court).

### **Dos and Don'ts**

- Obtain a medical certificate confirming your pregnancy preferably before notifying your employer. This is because the employer might dismiss you before you could present the pregnancy certificate, in which case the employer could argue that the dismissal was not unlawful. It is therefore unwise to confide in the employer before you have the certificate. However, if you have told the employer of your pregnancy without first taking the precaution of equipping yourself with a certificate and the employer terminates you, you must **immediately** obtain a medical certificate specifying the date when you are due to give birth and present this to

the employer. The employer must then withdraw the termination as if it had never taken place.

- If possible, it is also advisable to have an independent witness present when presenting the pregnancy certificate to the employer. If there is no witness, you could send a copy of the certificate to the Immigration and Labour Department with a cover letter stating that you have notified your employer of your pregnancy.
- There have been numerous cases where the employer asks or forces the helper to sign a resignation letter when the employer learns of the helper's pregnancy. You should not agree to this unless you actually want to resign. Otherwise you may not be able to claim compensation if you are not able to prove that you have been pressured into signing the letter.

If you have been unlawfully dismissed due to pregnancy, in addition to compensation under the Employment Ordinance, you may also lodge a complaint with the Equal Opportunity Commission for sexual discrimination.

## **Compensation for Work Injury/Occupational Disease**



If you suffer an injury or contract a disease while performing your duties for the employer, you are entitled to compensation in accordance with the Employees' Compensation Ordinance (Chapter 282, Laws of Hong Kong)

If you are injured at work you should see a doctor and get a medical certificate. If necessary, you should also get a sick leave certificate and give a copy to your employer. You must also notify the Employee's Compensation Division of the Hong Kong Labour Department of your condition.



## ***Termination of employment contract***

Either the employer or the helper may terminate the employment contract before it expires by giving at least one month's notice in writing or by paying one month's wages in lieu of notice (WILON) to the other party (see clause 10 of your employment contract). There are also circumstances when a contract may be terminated without the need to give either notice or WILON. Such circumstances are discussed in this section.

### **Termination with one month's notice by the EMPLOYER**

A notice of termination must be written and must be correctly dated. It should also state the date of your last working day and you must be given a copy of this letter. If you do not obtain a copy, there is a risk that the letter might be later altered to your disadvantage. HDH has encountered such cases where dates or amounts written on the letter have been changed after the helper signed resulting in the helper being denied her entitlements.

### **Dos and Don'ts**

- Read the termination letter carefully before you sign. Do not acknowledge the letter if it contains false information or any information that you do not agree with.
- Make sure that the letter is correctly dated (i.e. the actual date when you received the notice) and/or write the correct date yourself next to your signature.
- Ask that a copy of the termination letter be made before you sign it because you might not be given one after you sign.

### **Warning letters**

A notice of termination should be distinguished from a warning letter. A notice of termination should indicate the last working day while a warning letter will normally state that the helper's contract would be terminated if certain reasonable expectations are not met. Warning letters

should not be acknowledged if they are ante-dated or given on the same day of the termination or if they contain false allegations. Warning letters are often used to justify summary dismissal.

### **Termination by payment of wages in lieu of notice by the EMPLOYER**

The employer may terminate your employment without giving you prior notice by paying you wages in lieu of notice.

If the employer has given you one month's notice but asks you to leave before the end of the notice period, the employer must pay you wages for the remaining notice period. For example, if the employer gives you one month's notice on June 25, but then tells you to leave on July 10, you will be entitled to receive 14 days wages in lieu of notice for the period July 11 to July 24 in addition to your earned wages up to July 10.

## **Termination with one month's notice by the HELPER**

According to clause 10 of the standard Domestic Helper Employment Contract, notice of termination must be in writing. A verbal notice is not sufficient and without documentation, it is easy for the other party to deny that a notice has been served. In fact even if you served a written notice on the employer, unless you have a copy of this letter signed by the employer, the employer may still deny having received the notice. The employer may then try to demand that you pay wages in lieu of notice when you leave at the end of the notice period.

The employer cannot reject your notice of resignation and demand that you wait for a next helper hired to replace you to arrive, unless you are willing to accept such an arrangement to do so. Otherwise the employer cannot force you to continue working.

**When serving a written notice to the employer, remember to:**

- Write the date of when you are actually serving it to the employer and state the date when the notice takes effect.
- State your last working day.
- You may or may not write the reason for your resignation. It may sometimes be useful to let the employer and Immigration Department know of your reasons.
- Make two copies of the letter, one for the employer and one for you to keep.
- Ask the employer to acknowledge receipt of the notice by signing your copy of the letter.
- If the employer refuses to sign your copy or to accept the notice, photocopy the letter and send this to the Immigration Department accompanied by a cover letter explaining that you have served it on the employer but that the employer refused to sign it. Specify the date when you served the notice to the employer in your letter to the Immigration Department.

**(Sample)**

**Termination letter by domestic helper with one month's notice**

28 September 2011

Dear Ms. Chan,

Termination of DH Contract No. F942821

I, Maria De Jesus, hereby resign from the post of domestic helper, under DH Contract No. F942821, by giving you one month's notice effective 28 September 2011. My last working day will be on 27 October 2011.

The reason for my resignation is the deterioration of my health as a result of extremely long working hours and inadequate rest.

Yours sincerely

Maria De Jesus

Acknowledged by: \_\_\_\_\_  
Chan, Wendy  
(Employer)

## **Termination by payment of wages in lieu of notice by the HELPER**

If you want to leave your employment immediately and you have not given any prior notice, discuss with your employer if according to your experience your employer is a reasonable person and may be willing to listen to you and accede to your request. Tell him the situation you are in and see if he is willing to let you go. However, if that discussion is not fruitful or if you think such a discussion is not appropriate in your circumstances, you may leave by paying the employer an amount equivalent to one month's wages. You may also leave during the notice period, i.e. after giving prior written notice but before the end of the one month's notice period, but you will have to pay the employer an amount equivalent to wages for the remaining days of the notice, unless you have a valid reason to leave.

For example if you have served a notice to resign on 1<sup>st</sup> January, your last working day is supposed to be 31<sup>st</sup> January. If you then decide to leave on 20<sup>th</sup> January your employer should pay your wages up to 20<sup>th</sup> January and

you then have to pay your employer an amount equivalent to the wages from 21<sup>st</sup> January to 31<sup>st</sup> January.

## **Termination without notice by the EMPLOYER (Summary Dismissal)**

An employer may terminate the contract without notice and without payment in lieu of notice if the helper has done any of the following:

1. Wilfully disobeyed a **lawful and reasonable** order

Refusing to obey an unlawful order such as working outside the contract address or performing non-domestic duties is not a valid reason for summary termination.

2. Misconducts herself

Misconduct has to be serious enough, for example, the offence of theft or child abuse, to warrant a summary dismissal.

3. Is guilty of fraud or dishonesty
4. Is **habitually** neglectful of duties



It is not enough for the employer to say that your performance does not meet the employer's requirement. There has to be a repeated failure on your part to perform your duties to a reasonable standard.

## ***Wrongful Termination***

The issues of which party terminated the contract and why are often the source of dispute between employers and helpers. When an employment relationship breaks down and tensions run high either or both parties may suddenly decide to terminate the contract. Both parties may then demand wages in lieu of notice from the other.

### **Common scenarios and tricks by employers/agencies:**

1. The worker maybe tricked or coerced into signing a resignation letter or a so called "mutual agreement" to terminate the employment contract even though it was the employer who initiated the termination. In tense situations some helpers may be too distraught to think

clearly or are unable to resist pressure to sign a false letter.

2. The worker may be told to pack up and leave but is then accused of running away or resigning without notice.
3. The worker may be falsely accused of some kind of misconduct (for example, and quite commonly, stealing the employer's property) to justify denying her termination entitlements.

### **Dos and Don'ts**

- **If the employer asks you to leave, ask for a termination letter.**
- **If the employer refuses to give a termination letter, call a witness.**
- **If the employer asks you to sign a letter, read it carefully. It may be a resignation letter and if so, do**

**not sign it unless you are leaving on your own accord.**

- **Do not rely on the employment agent's words that your employer has terminated your contract. The employer may later deny that she initiated this and demand wages in lieu of notice from you. Ask the employer directly if you have been dismissed and if so, ask for a termination letter.**

## **Termination without notice by the HELPER**

As a helper you may terminate the employment contract without notice or payment in lieu of notice under the following circumstances:

1. You have been physically or sexually assaulted or threatened with violence.
2. Your employer subjects you to ill-treatment or abuse.
3. Your employer has failed to pay your wages within one month after they became due.

4. There has been a serious breach of contract by your employer (For example underpayment of wages, illegal deployment, physical abuse)
5. You have been employed for not less than five years and you are medically certified as being permanently unfit to perform the duties of a domestic helper.

If the employment contract is terminated, the employer must pay all outstanding wages and other sums due to the helper within 7 days after the date of termination.

If the helper or the employer terminates the contract without notice or payment in lieu of notice, they must make sure that they have sufficient evidence to justify this. If there is no justifiable reason for the termination, the aggrieved party may file a claim for wages in lieu of notice with the Labour Department.

## ***Unreasonable/Unlawful Dismissal Protection***

You may claim for remedies for **unreasonable dismissal** if you have been employed for a period of not less than 24 months and you are dismissed without valid reasons.

You may seek remedies for unlawful and unreasonable dismissal if you are dismissed without a valid reason and under the following circumstances:

1. You are dismissed while on paid sick leave.
2. You are dismissed after sustaining an injury out of and in the course of employment. Refer to the *Employee's Compensation Ordinance* for more details.
3. You are dismissed while pregnant or on maternity leave.
4. You are dismissed after you have given evidence or agreed to give evidence or information to a labour officer or to the court about an alleged offence committed by the employer under the Employment Ordinance.

5. You are dismissed for being a member of a domestic helpers' union or participating in the union's activities.

### **Valid Reasons for dismissing a domestic helper**

1. The helper purposely disobeys a lawful and reasonable order, misconducts herself, is guilty of fraud or dishonesty, or is habitually neglectful of her duties. Examples of these are theft and child abuse. It is not a valid reason for the employer to dismiss a helper for refusing to work in another address other than the home of the employer or to perform non-domestic duties.
2. The helper is not capable or qualified to perform her duties.
3. The employer no longer needs the service of or can no longer afford to employ a full-time domestic helper (in which case you are entitled to severance pay).

# ***Termination Entitlements***

You must consider a number of factors in order to calculate your entitlements upon termination or expiry of your contract. Such factors include the amount of time you worked for the employer and the reason why the employment contract was terminated.

Termination payments usually include:

- Outstanding wages
- Wages in lieu of notice, in case of premature termination without prior notice
- Compensation for statutory holiday(s) or rest day(s), if not taken
- Payment in lieu of any untaken annual leave and any pro rata annual leave pay for the current leave year
- Long service payment or severance payment, if appropriate
- Free return passage
- Food and travelling allowance of \$100 per day

## Long service payment

Your employer must pay long service payment to you if you have worked continuously for that employer for at least 5 years, and:

- Your contract is terminated by reason other than serious misconduct or the employer no longer requires the services of a domestic helper
- You are certified by a registered medical practitioner or registered Chinese medicine practitioner as permanently unfit for the present job and you resign
- You are aged 65 or above

You are **not** entitled to Long Service Pay under the following circumstances:

- If you were dismissed without notice due to serious misconduct



- If you terminated your employment except: if you were subjected to ill treatment; the employer breached the contract; or you are permanently unfit to work as a domestic helper or are 65 years old.
- If not less than 7 days before the expiry of the contract, your employer offered to renew the contract and you **unreasonably** refused the offer.

You cannot claim Long Service Payment and Severance Payment at the same time. If your contract is terminated because your employer no longer requires the services of a domestic helper, you are entitled to Severance Payment but not Long Service Payment.

Calculation of Long Service Payment:

Last month's wages x  $\frac{2}{3}$  x years of service.

Example: \$3,740 x  $\frac{2}{3}$  x 6.5 years = \$16,206.67

An incomplete year of service is to be calculated on a pro rata basis.

## Severance payment

If you have worked for the same employer continuously for not less than two years and you are dismissed or your contract is not renewed because your employer no longer requires the services of a domestic helper, this means that you have been made redundant and the employer must pay you severance payment.

### Calculation of Severance Payment:

**Last month's wages x  $\frac{2}{3}$  x years of service.**

An incomplete year of service is to be calculated on a pro rata basis.

## Return passage and travelling allowance to your place of origin



When your contract expires or is terminated prematurely, your employer is responsible for paying for your airfare back to

your place of origin. You and your employer should decide whether you would be provided with an air ticket or cash instead of an air ticket.

If your contract is terminated prematurely, you are normally permitted to stay in Hong Kong for 14 days after the termination. There have been many instances where FDHs are taken to the airport by the employer on the day they were dismissed or were given air tickets which have been booked soon after they were dismissed. An employer may do this in order to pre-empt you from pursuing your lawful entitlements. If you want to stay in Hong Kong during the 14 day period for whatever reason, the employer or agency has no right to force you to fly back to your home country immediately. Only the Immigration Department has the right to decide when you must leave Hong Kong. Therefore talk to your employer when you want your flight to be booked if the employer is providing you with an air ticket, and do not accept the ticket if your flight has been booked soon after your termination. Otherwise you may have to bear the cost, if any, of rebooking the ticket or, if you do not take the booked flight, the ticket may no longer be valid. It

will not be cost effective to lodge a claim with the Labour Department just for your airfare.

If the employer attempts to get you onto a flight out of Hong Kong against your will, call the police or inform an Immigration Officer at the airport if you have already been checked in for the flight.

Your employer is also responsible for providing you with travel allowance for your trip home. This allowance will be calculated depending on your journey time from Hong Kong to your place of origin. Under the standard Domestic Helper contract, this amounts to \$100 per day of your journey. You should travel by the most direct route back to your place of origin.

## *Procedures for Filing a Labour Claim*

Under the Employment Ordinance chapter 57, wages must be paid to the employee within 7 days after they became due. The employer also has 7 days to settle entitlements owed to the employee following the termination of an employment contract. If your employment was terminated and you do not receive the payment at the end of the 7 day period, you may file a claim with the Labour Relations Division of the Labour Department nearest the employment address.

Bring your Hong Kong ID card, passport, employment contract, termination letter (if you were given one), wage records and any other documents relevant to your claims.

You will be asked to fill in a claim form with the details of your claim.

You will then be given a written appointment for a conciliation meeting with the employer at a later date.

You will also be given a letter addressed to the Immigration Department to help with your application for extension of stay. You must present this letter to the Immigration Department if the conciliation meeting has been scheduled later than the date of expiry of your visa.

Remember that if your employment contract was prematurely terminated i.e. before the end of the two year term as stated in your passport, your permission to stay in Hong Kong will expire 14 days after the effective date of termination.

A conciliation meeting will be held at a Labour Relations Division office mediated by a labour officer. During the meeting, you and your employer will be given an opportunity to discuss the issues and negotiate a settlement. You must be prepared before you attend the conciliation meeting. Know what you are entitled to and

why you are entitled to them. (HDH can help with preparing domestic helpers for conciliation meetings).

Negotiate calmly and confidently. Do not let yourself be intimidated by the employer. Do not be rattled if the employer makes false allegations. Calmly and firmly deny the allegations and state your case.

If the matter is not settled during the conciliation meeting either because you refuse to accept the employer's offer or the employer refuses to pay, you may pursue your claim in the Minor Employment Claims Adjudication Board (for claims below HK\$8,000) or the Labour Tribunal (for claims amounting to HK\$8000 or above). You may, however, reach a partial settlement of the entitlements whereby undisputed items could be paid by the employer and the disputed claims will be brought to the Minor Employment Claims Adjudication Board or Labour Tribunal.

Remember that the labour officer is not a judge. He or she has no power to decide who is right or to dictate the terms of the settlement. The labour officers' role is to explain the

rights and responsibilities of each party and to help the parties reach a settlement. The officer cannot force you to reduce your claim or accept the employer's offer if it is too low. The officer does not have the power to force the employer to pay if the employer refuses to do so.



# *Protecting Yourself*

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## *Underpayment of wages*

By law, the employer is responsible for providing a receipt to the helper for payment of wages and food allowance. Receipts should be correctly dated and reflect the exact amount the helper is paid. The helper is responsible for acknowledging the receipt of the amount with a signature. Copies of receipts should be kept by the helper and the employer.

The following are some of the methods employers and employment agencies use to underpay a domestic worker:

- The most common and simplest method is to give the helper an amount of cash less than the salary specified in the contract and then require the helper to sign a false receipt stating that she received her wages in full.

- The employer takes the domestic worker to a bank to open a savings account. The employer keeps the ATM card and deposits the worker's full monthly wages to the account, but the employer then withdraws the money herself and gives the worker an amount less than the full salary.
- The employer issues a cheque in the name of the helper, instructs the helper to cash the cheque and takes back a portion of the cash.

In all the above methods the employer is able to keep a false record purporting full payment of wages and it is often difficult to prove otherwise.

### **Dos and Don'ts**



1. **Under no circumstances should you sign a receipt that does not accurately state the amount paid.** Also, a receipt that does not specify any amount received (blank receipt) must never be signed.

2. Ask to be given the money and count it before signing the receipt.
3. A helper should always keep receipts and records of wages. If an employer refuses to give a receipt, you should keep your own record and also notify the Immigration Department and the Hong Kong Labour Department, in writing, about the underpayment and the employer's refusal to provide receipts.
4. If the employer insists on keeping your ATM card, report it to the bank, cancel the ATM card and apply for a new one.

These actions may of course put you at risk of being dismissed by your employer so you may have to choose between standing up for your rights or protecting your job. Alternatively, you may gather evidence of the ongoing violations of the employer and lodge a claim after your employment is terminated or when your contract expires. However, please note that the law lays down limitation periods for lodging labour claims. You must lodge your

claim within 6 years from the date any payment is accrued. In addition, if you have unpaid wages, should the employer file for bankruptcy, you may apply to the Protection of Wages on Insolvency Fund. However, even if, for example, you are owed 6 months' wages or more, only the last 4 months' unpaid wages would be covered by the Fund.

## ***Illegal Deployment***

Working and/or living in a place other than the contract address is an immigration offence. Working for a different employer or in a business establishment and performing non-domestic duties are also offences that may cause both the foreign domestic worker and the employer to be prosecuted. A foreign domestic helper who is convicted of such an offence may be imprisoned and subsequently made the subject of a deportation order and indefinitely barred from working in Hong Kong again, or at least for a long period of time.

If, despite a domestic helper's protest, her employer forces her to work outside the terms of the employment contract (i.e. work in a location that differs from the address on the contract), the helper, for her own protection, should notify the Immigration Department **as soon as possible**. It would be helpful to gather evidence, such as written instructions from the employer, to prove the case. However, it is also important to note that complaining to the Immigration Department about being forced to work illegally may also put the helper herself at risk of prosecution, particularly if she has been performing illegal work for a relatively long time. The Immigration Department is of the view that even if the helper is only following the employer's order, by working outside the contract address, the helper has breached her condition of stay.

The helper should act very promptly when faced with a situation of this kind. It is fatal to put it off and allow the unlawful situation to continue since the Immigration Department is not disposed to treat the problem with sympathy and understanding, but enforce the law strictly.

More often than not, at the end of the day, it will be the helper, not the employer, who suffers. Errant employers are seldom prosecuted and generally go unpunished for this sort of exploitation.

## ***Personal Belongings***

An employer should never take possession of a helper's personal belongings including mobile phones, passport, employment contract or other documents.

Always obtain a copy of important documents and keep it for your records. This includes the employment contract, receipts, police reports, medical certificates, letters written to the Immigration or Labour Department, letters received from the Immigration or Labour Department, and any written correspondence with your employer or an employment agency. They may be needed as evidence if a dispute arise in the future.

## ***Implied duty of trust and confidence***

While the standard employment contract for foreign domestic helpers contains clearly expressed terms defining the rights and responsibilities of the employer and the helper, there are also terms that are not written but are understood to be part of the contract. These are the implied terms.

Both parties to the employment contract have an implied obligation to treat the other party with trust and confidence. The employer has the obligation to provide a safe working environment and treat the helper with respect and dignity in the same way that the helper has a responsibility to provide the employer with honest and reasonable standard of service. Any act or behaviour by one party that seriously undermines the trust and confidence of the other party may result in the constructive termination of the employment contract.

Examples of breaches of this implied term are physical abuse and gross ill treatment of the helper by the

employer, and dishonesty or abuse of the employer's child on the part of the worker.

## ***Physical abuse and ill treatment***

No domestic helper, under any circumstances should be subject to violence or abuse. There is no justification for such treatment even if an employer is not satisfied with a domestic helper's performance.

However, if a domestic helper leaves her employment due to violence or abuse, the burden of proof is on her to prove that she has justification for leaving without prior notice. If she fails to prove this, the employer may demand payment from her of wages in lieu of notice. It is therefore important to gather evidence and to document incidents of abuse.

### **Dos and Don'ts**

- Keep a diary of incidents of ill-treatment and abuse by



your employer including dates, times and places of the incidents.

- Seek medical examination and treatment if you are injured and keep copies of medical records. If possible, take photograph of the injuries.
- Call the police if you have been seriously threatened or physically harmed. Show the Police any evidence that you have (for example, any photograph taken).
- Do not be persuaded to drop a complaint just because the police say “the investigation will take a long time”. Insist that your complaint be reported then seek legal advice
- Ask the police for the report reference number. This would be needed when you want to follow up the case and you may have to provide this information if you file a claim with the Labour Department.
- If you are injured ask to be taken to a doctor for a medical examination and treatment.

- Give clear statements to the police, read the written statement carefully and make sure that it is accurate before you sign it. There have been cases where the police taking the statement write things that are not true that could weaken the case, such as the incident being an accident. This gives the police an excuse not to pursue an investigation. You have the right to alter or add anything to the statement that you think is incomplete or inaccurate because it is your statement.
- Insist that the statement is taken down in a language you can understand and read, with the assistance of an appropriate interpreter if necessary. A statement written in Chinese, for example, is unlikely to be one which you can read for yourself so as to check its accuracy.
- If you cannot remember specific dates and time do not make them up. Inconsistencies in your statement may adversely affect your case at a later stage.

- Obtain a copy of your written police statement and anything you sign. You have a right to receive one. Do not be put off by excuses.

Once you have reported the incident to the police you are entitled to be informed by the police of the progress of the investigation. If necessary chase them to find out what is happening.

## ***False accusations of crime***

It is not uncommon for domestic helpers to be falsely accused of crimes by employers who want to avoid paying statutory entitlements to their helpers. The helper may be tricked or forced into signing an admission of guilt. This admission, of course, could then be used by the employer as justification for terminating the helper without notice or payment in lieu of notice and for not paying severance pay or long service pay.

In addition, as a general rule, once you have pleaded guilty to or been convicted of a criminal, including contraventions of immigration controls or immigration offence, you will have an adverse record and you may be deported and barred from working in Hong Kong again for a long period of time. Even if no formal deportation order is imposed, the Immigration Department, as a matter of policy, will not normally give approval for new domestic helper employment to a helper who is convicted of an offence.

## ***P**olice Arrest*

If you are arrested by the police you will be asked to give a cautioned statement. You are entitled to the assistance of an interpreter who can speak and write the language you are most comfortable with, usually your mother tongue. Do not be fobbed off with an interpreter whose dialect you are not entirely happy with.

Before putting questions to you and recording your answers, you will be “cautioned” in the following terms:

*“You are not obliged to say anything unless you wish to do so but whatever you say will be put in writing and may be given in evidence”*

Once you hear the above caution, then you may exercise your right not to say anything or answer any question. This right to silence is fundamental. But interrogators often continue putting questions despite a response by the interviewee that she does not want to say anything. Each question should be met with the same refusal to answer until the interrogator gives up the attempt to draw answers from the interviewee. Do not be worn down by the interrogator’s persistence.

In some cases it may be helpful to answer questions to clarify matters. In such circumstances it must be ensured that your statement is accurately recorded. But more often than not it is better not to answer anything, not even the first seemingly simple and innocent-sounding questions, because such initial answers are likely to be used as a platform from which to put much more difficult

questions which it may be disastrous to answer. The safest rule is always to insist on your right to silence.

### **Dos and Don'ts**

- Do not, under any circumstances, admit to an offence that you have not committed or sign a false confession.
- Remember: If you have made up your mind not to answer any questions (which is always recommended), stick to this decision and do not give any answers, not even answering “No” or “I have forgotten” as these are answers to questions. Indeed, it is always dangerous to answer any question without legal advice.
- **Do not believe in promises such as:**  
“Just admit everything and you will be able to leave the Police Station very soon” or “this is a very minor matter and there is no harm in admitting the offence” or “just admit the offence and I (the officer) will mitigate for you in Court” or “the Court will only ask you to pay a small fine in the end.”

\*The truth is, once you have made a confession in a cautioned statement, such a statement will be used against you. and the likely result is that you will be convicted with serious consequences including imprisonment and deportation.

Having said that, even if you have signed a confession in a caution statement, you should still enter a plea of “not guilty” when you are charged and brought to court. Though it will be more difficult to argue your case once you have confessed, it may still be possible to establish your innocence though your chances of being acquitted are greatly reduced.

## *Establishing a Positive Relationship With Your Employer*

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Most people are passive by nature. Assertiveness has to be learned. When a person is passive, opportunities can be lost and unpleasant or unbearable situations are tolerated. In time, bad feelings can build to a point where one event can trigger negative, or even explosive, behaviour towards the other person involved. Many people want to break out of their passive roles, but often they are afraid or they make the mistake of believing that the only alternative is to be aggressive, and they see aggressive behaviour as unacceptable. Assertiveness is the third option. Assertiveness is not aggressiveness.

Assertive behaviour is based on the belief that your rights, wants, and needs are important – just as important as the wants and needs of others. It is an alternative to aggressive behaviour. Aggressive behaviour stems from the belief that your wants and needs override those of others. Submission, or passive, behaviour arises from the

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belief that your rights, wants, and needs are less important than those of other people.

It is important to understand the difference between assertive behaviour, aggressive behaviour, and submissive/passive behaviour.

	<b>ASSERTIVE BEHAVIOUR</b>	<b>AGGRESSIVE BEHAVIOUR</b>	<b>SUBMISSIVE/ PASSIVE BEHAVIOUR</b>
<b>Beliefs</b>	You believe that your rights, wants, and needs are just as important as the wants and needs of others.	You believe that your wants and needs override those of others.	You believe that your rights, wants, and needs are less important than those of other people.
<b>Behaviour</b>	You have a relaxed stance, steady eye contact, calm voice, appropriate use of I-statements and suggestions and questions rather than opinions and threats.	You shout, point, make threats, swear and insult other people. Aggressive language includes over-use of I-statements, put-downs, stating opinions as facts.	You have fidgety movements, fear of eye contact, use a whining tone of voice, apologise, and avoid the subject at hand.

Sometimes a work situation or a situation involving money makes a person act in a passive way, even if that person is assertive or confident at home. New or risky situations, such as migrating to a new country with debt, may make passive behaviour more common. However, there are ways to be assertive, to speak up and speak out, without jeopardizing your job or your benefits.

To be assertive you need to be able to:

- Know what you want
- Be sure what you want is fair and reasonable
- Ask for what you want clearly
- Stay calm
- Try to address only one issue at a time
- Accept both praise and criticism with composure, calmness, and an even-temper
- Allow yourself to express negative feelings in the appropriate way and place
- Refuse inappropriate requests
- Show anger when appropriate
- Give a personal opinion when appropriate

- Complain when appropriate
- Ask for help when appropriate

In order to be assertive, you need to have a positive outlook on life and a sense of your own self worth. You need to know and be clear about your rights and responsibilities. Some people come from countries or families where they were criticised or their value as a human being was demeaned. Women in particular are vulnerable to a negative self-image. Assertiveness is not to be blind to your shortcomings and problems, but to help you have a more balanced view of yourself.

To be assertive you also need to identify your rights as a foreign domestic worker and as a human being. You have the right to:

- Have the terms of your contract adhered to
- Expect that your employer follow the Hong Kong labour laws
- Be treated with respect and dignity
- Work in a safe environment

- Privacy
- Make reasonable mistakes

## ***Coping with Hostility and Criticism***

Assertive behaviour is not always met with a reasonable, respectful response. People may respond to you with hostility in the form of insults or blame. Perhaps the person knows that what you have said is true and right, but they don't want to change anything or they don't like being spoken to in this way by an employee. They may try and find fault with you to escape dealing with the issue. You need to be aware of these possible reactions and remember not to respond in that same way.

Insults or verbal abuse are unfair. If someone offers genuine criticism, then it should be specific and designed to help, not to undermine you. If you are lacking in self-confidence, then you may find any kind of criticism difficult to accept. If you have a true awareness of your own strengths and weaknesses, then you should be able to:

- recognise unfair criticism and reject it

- accept fair criticism and use it to your advantage to do better

In handling criticism like this, you force your critic to see the seriousness of what they are doing to you. If you criticise someone else, you should do it openly, honestly, and with specific information.

## ***Clarifying Job Responsibilities and Entitlements***

For your sake and for your employer's sake, it will be useful if you talk about your work roles and responsibilities the first time you meet. Your employer may initiate this meeting, but if he/she does not, ask your employer to sit down for a little while so that you can clarify what is expected of you and how your entitlements will be handled. It is always good practice to write down your employer's requirements and instructions for future reference.

Here are some things you should ask about and find out:

- Who are the members of the household?
- What will my duties be?
- What will my daily schedule be?
- Will I need training for any of my job responsibilities?
- How will my food be managed?
- What are my living accommodations?
- When is my pay day?
- How will I receive my wages? (cash with receipt, check, or auto-payment into bank account)
- What day is my rest day?

You should know the terms of your contract so that you can talk about them confidently with your employer. If your employer tells you that you are expected to perform tasks that are outside the terms of your contract, you will need to speak up about this. You and your employer have an obligation to follow the contract. It is possible that your employer has requested you to do work outside the terms of your contract only because he/she has not studied the

contract and the law in detail. If you are bold enough to speak up, your employer may discover that he/she should not have instructed you to do certain things and this will certainly be helpful in terms of avoiding similar problems in future. Also, if any of the information that you hear during this meeting puts you in an unsafe situation, you should talk about it at this time.

## *Addressing Problems*

Problems and issues will sometimes arise that you will need to talk about with your employer. It may make you afraid to have to talk about problems with your employer, but these conversations are necessary. Some employers will listen and be reasonable, some will not. Either way, your first step is to talk to them. You must bring the problem to their attention. If your employer does respond favourably to your concerns, you have other options for your next steps to address employment problems.

As a worker from outside of Hong Kong, it is important for you to know the values and attitudes of the people of Hong Kong, both Chinese and Westerners, so that you will be able to be more effective in your communication with your employer.



## ***Values and Attitudes of Employers from Hong Kong***

Behaviour towards bosses in Hong Kong is different from that of many other cultures. Knowing these things about cultural beliefs and attitudes in Hong Kong can help you to talk to your employer more effectively and help you get a better result.

Hong Kong Chinese strongly value social order, authority, and obedience. To many Chinese, children are to defer to parents, employees are to defer to their employers – the person “below” to the person “above” in all things. Employees, according to many Hong Kongers, are meant to have quiet acceptance of employment circumstances, and keep a social harmony.

Even though many Hong Kong Chinese may hold these cultural notions, foreign domestic helpers should not be denied their rights or fair employment because of these notions. When employment problems arise, a foreign

worker will need to resolve – not accept – the issue by talking to her employer.

## ***Values and Attitudes of Western Employers***

Many domestic helpers believe that Western employers are less strict and more relaxed than employers from Asia. In the United States, the United Kingdom and Australia, it is not as common for individuals to employ live-in helpers. As a result, some Western employers may choose to treat their helpers more like a member of their family rather than an employee. While this makes for a more pleasant working environment, a helper should not see this as an opportunity to be relaxed with their duties. Western employers may be more lenient, but they have high expectations for hired help. Many Western employers want their helpers to cook food from their region, speak clear English, and be assertive when dealing with their children. Most Western employers appreciate a helper who discusses problems openly, honestly, and confidently.

## ***Values and Attitudes of Migrant Workers***

Many foreign domestic helpers' home cultures may have taught them to be submissive and subservient to employers. Domestic helper training may have reinforced these attitudes, instructing helpers to get along with employers' desires and demands, no matter what. Helpers may worry that, if they voice even a valid complaint, they may lose their job. Although it is important to have a positive relationship with your employer, some issues cannot and must not be ignored. They need to be addressed openly in order to be resolved and corrected.

## ***How to communicate with your employer***

Here are some tips to help you to talk to your employer about issues that need to be addressed:

- Remind yourself that you have certain rights under your employment contract, such as your full amount of pay, a regular rest day, and job safety. You need to know all of your rights and entitlements. Knowing

these things will increase your confidence when you speak with your employer.

- You also have certain obligations under your contract. You have signed a legal agreement. For example, your contract states that you will only work at the address of your employer as stated on the contract (unless the employer moved to a new address, in which case the employer has to notify the Immigration Department). To work in any other location, even if your employer tells you to, is violating the contract and breaking the law. If the Immigration Department hears of it, you could suffer severe penalties. You need to know the law and follow the law, even if an employer tries to press you to do otherwise.
- Your employer has obligations to you according to the contract. You need to know these also, so that you can bring them up in a confident, but non-threatening manner.

- Don't think that the problem will go away by itself. No matter how afraid you may feel, plan to talk to your employer. If you need to, be persistent. Ask your employer for a chance to talk about the issue. If he or she puts you off with an excuse, simply ask to schedule an appointment to talk as soon as possible.
- Prepare yourself to talk to your employer so that you can clearly and concisely state your issue or what you would like. Try to only address one issue at a time. Organise your thoughts before you talk. Be sure of your facts. Gather all the relevant information that supports your stance, such as any contractual obligations on the part of your employer. Be simple, straightforward, and honest.
- Be polite and respectful.
- Do not lose your temper or show strong emotion, especially in front of other people. Watch your body language: don't cross your arms or point your finger. Remain calm, rational, and in control. It is the best

way to act if you want your employer to take you seriously.

- If your employer is expecting you to do something that is against your contract, say so. Remind your employer that you, as well as your employer, could suffer legal penalties. You can even face deportation, if the Immigration Department finds out that you broke the terms of your contract.
- Make a positive suggestion to solve the problem, if you can.
- Try to avoid confrontational words and behaviour. Try saying “I” instead of “you”. For example, say “I need my full pay on my pay day” rather than “You haven’t given me my full pay.” Yelling or accusing will not help you.
- Try to end on a positive note. Let your employer know that you want to do the best job you can, but the issue needs to be resolved. Try to end with a definite

conclusion. Before ending your chat, restate what both of you will do going forward. Remember that, by law, you have the right to refuse work you think is unsafe.

- Get directions, receipt of payment, and any other important information in writing whenever possible. Keep copies of anything you sign.

# *Abusive Situations*

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Most employers are decent and fair, and will be open to discuss and resolve problems with their domestic helper. But there are some employers who have bad, selfish motives and intentionally act to cheat, abuse, and take advantage of their helper. Some employers hire foreign helpers never intending to give them their full wage, or conspire with employment agencies that charge helpers excessive or illegal “placement fees.”

People like this believe that a helper will not know their legal rights or will be too afraid to take any action in an illegal or abusive situation. But domestic helpers must not let themselves be mistreated or exploited.

There are government agencies and organisations that can help domestic helpers receive justice. In these situations, a domestic helper will have to take action and initiative to talk to these people, such as the police, Immigration and Labour Department Officers. The same assertive



behaviour used when speaking to an employer should be used when talking to these people also. Using assertive behaviour shows that you have respect for yourself, and it encourages others to treat you with more respect. Also, when you know your rights, you and your complaints will be taken more seriously.

**You have the right to be treated fairly and with respect and to be safe in your work. You have the power to help protect yourself.**

# *Hong Kong Customs, Taboos and Superstitions*

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Hong Kong is a multi-cultural city. As a foreign domestic helper, your employer may be Chinese, Australian, German, British or one of many other nationalities. However, the majority of employers in Hong Kong are Chinese. Therefore, it is important for helpers to know some aspects of Chinese culture. Not every Chinese household follows all traditions or believes every superstition. But knowing specifics of Chinese culture, traditions, taboos, and even superstitions may help you to avoid unnecessary misunderstandings and conflicts with your Chinese employer.

## *Chinese New Year's Traditions*

- Before Chinese New Year's Day, the entire house is cleaned, and then all brooms, brushes, dusters, dust pans and other cleaning equipment are put away. Sweeping or dusting should not be done on New

Year's Day for fear that good fortune will be swept away.

- After New Year's Day the floors may be swept, but the rubbish is swept into the corners and not taken out until the fifth day. There is a superstition that if you sweep the dirt out over the threshold, you will sweep one of the family members away.
- To sweep the dust and dirt out of your house by the front entrance is to sweep away the good fortune of the family. It must always be swept inwards and then carried out, only through the back door, then no harm will follow.
- During the New Year's holidays, everyone should refrain from using foul language and bad or unlucky words. Death and dying are not mentioned. Ghost stories are also taboo.

- Chinese tradition holds that, if you cry on New Year's Day, you will cry all through the year. Therefore, children are tolerated, even though they misbehave.
- Washing hair is not done on New Year's Day because it would mean that you wash away good luck for the New Year.
- Books and shoes are not bought over the holiday period (in some families, during the whole of the first lunar month), because the Cantonese word for "book" sounds like the word for "lose" and the word for "shoes" sounds like the word for "rough" or "sigh".
- Opening the windows is thought to let in good luck.
- Sharp and pointed objects are put away because they cut off good luck. Hair cutting is not done during the New Year's holidays.
- The Chinese believe that if you start the New Year in the debt, they will finish the year in the same way. For

good luck, they pay people they owe before the New Year.

## ***Everyday Beliefs and Household Culture***

- Many Chinese employers do not like to see their domestic worker cry or wear a “long face”. For them this brings bad luck.
- Colour is important in Chinese tradition. Red is a bright and happy colour, bringing a sunny and bright future. White, blue, and black are associated with death, and are avoided.
- Some numbers are lucky and some are unlucky. The number eight is very lucky since the Chinese word for eight sounds very close to the Chinese word for prosperity. “Four” is an unlucky number since the Chinese pronunciation sounds like the word for “death.”
- Gifts are not opened when received.

- Strands of noodles signify long life. Cutting the noodles means you are snipping your life short.
- Proper arrangement of furniture is done to get good “Feng Shui” which will have a positive effect on health, wealth and personal relationships.

## ***Relationship Customs***

- Chinese conversations in public tend to be loud and you might think that the people talking are arguing. But arguments usually do not result in especially loud speech. Arguments usually involve the use of curses and swear words.
- The concept of “saving face” is very important in Chinese culture. Chinese avoid being made to look foolish, stupid, embarrassed, having to back down or admit fault. They sometimes act to “save face.”

- To the Chinese it is improper to lose your temper. Being firm is acceptable, as long as you remain polite.

As you interact with your employer, having an understanding of the Chinese ways of thinking may help you communicate with more success and harmony.

## *Practice Scenarios*

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It is possible that you may find yourself in a situation similar to the ones given below. The sample conversations are examples of how a domestic helper might want to respond in such a situation. But, each actual interaction with an employer will have its own history and circumstances. Not every employer will respond in the same way. Not every employer-helper relationship is the same. Use these scenarios as general guidelines and suggestions, not as strict rules to be followed. Always use good judgement and common sense.

*What do you do when you are being asked by your employer to sign a false receipt? What do you say?*

**Never let yourself get pressured into signing any kind of a statement that is false.**



**Employer:** “Anna, here is your pay and here is the receipt for you to sign.”

**DH:** (making eye contact, speaking clearly) “Ma’am, this receipt says you are paying me \$3740, but you are only giving me \$2000.”

**Employer:** “I don’t have the rest of the money right now. I will have to go to the bank. I’ll give it to you next week. You can just go ahead and sign the receipt now.”

**DH:** (offering alternative) “I’m sorry, Ma’am, but I cannot sign this receipt because it does not show the money I am getting now. I can’t sign a receipt that isn’t true. I can either wait or sign the receipt after you give me all of my pay, or you can change the amount that is written on the receipt and then I will sign another receipt later for the rest of my pay”

**Employer:** (getting angry, loud, swearing) I said I would pay you next week! Just sign the damn receipt!!

**DH: (staying calm, reminding of contractual agreement)** Ma'am, I just can't sign a receipt that isn't true. And also, we agreed on my pay day. You signed the contract, and we have an agreement, don't we? I should not have to wait until next week for my pay.

**Employer: (angrier)** How can you be so ungrateful! I've treated you so well!

**DH: (staying calm, maintaining eye contact)** I know you've treated me well (**only addressing one issue at a time**), and I want to work very hard for you and do things the way you like them. But, ma'am, I still can't sign a receipt that isn't true and I should receive my wages on the day that it is due.

*What do you do when your employer tells you he needs you to clean his mother's house because his mother's helper went on home leave? What do you say?*

**Working at an address other than the one written on your contract is illegal.**

**Employer:** “Eva, my mother’s helper went on home leave so I need you to go over there this afternoon and clean her house and prepare dinner for her.

**DH: (making eye contact, speaking clearly)** “Sir, I am sorry but I cannot clean and cook for your mother because it is against the law to work at an address that is not the one written on my contract.”

**Employer: (shaking his head, becoming angry)** “We do not need to tell anyone about this arrangement since it is only temporary. You follow my orders and go to my mother’s house!

**DH: (remaining calm, maintaining eye contact)** “Sir, I cannot follow your instructions in this situation. The Immigration Department is very strict about domestic helpers only working at the address listed on their contract. If we disobey the law we could both be arrested and penalised.

**Employer: (pointing his finger at Eva)** If you do not do this, I will fire you and find someone else who will do this!

**DH: (remaining calm, addressing issue at hand)** If you feel the need to fire me then that is your decision. I hope you realise that I am just trying to follow the law just as I follow rules that you establish in your own home but I cannot obey your unlawful order.

If your employer fires you after you refuse to work in a different address, the employer will have to pay all the entitlements that are owed to you such as wages in arrears, wages in lieu of notice, air ticket and travel allowance. You may then ask the Immigration Department for special consideration to allow you to apply for change of employment without having to leave Hong Kong stating that you were dismissed because you had disobeyed your employer's order for you to work illegally.

## Common Questions

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*What do I do if an employment agency charged me an excessive and illegal placement fee?*

In Hong Kong, employment agencies may charge a commission or placement fee to foreign domestic helpers. These fees may not exceed 10% of the helper's first month's salary. However, many domestic helpers have been scammed out of money by paying excessive placement fees. It is common for a helper to be required to pay monthly instalments to an agency or a money lender in respect of these fees. If this has happened to you, your first step would be to stop paying, then talk to or send a letter to a representative of the employment agency that charged this fee and seek a refund of the money you have already paid.

If the employment agency will not refund your money, you may file a complaint with the Employment Agency Administration (EAA), a division of the Hong Kong Labour

Department. After receiving your complaint the EAA will contact the Employment Agency for investigation and possible prosecution. However, in order to recover your money, you will have to lodge a claim with the Small Claims Tribunal of Hong Kong. Filipino domestic helpers can also file a complaint with the Philippine Consulate especially if you paid the placement fee to a Philippine agency. The Consulate will arrange a meeting with a representative from the Hong Kong employment agency so you can seek a refund.

*What do I do when my employer terminates my contract, but then refuses to pay Wages in Lieu of Notice or any other entitlements? What do I say?*

Both you and your employer have the right to terminate the contract by giving one month's notice or by paying wages in lieu of notice. If your employer is the one to terminate the contract and asks you to leave immediately, the employer owes you wages in lieu of notice, along with your other entitlements. If your employer offers to pay some of your entitlements, you

can accept that money as long as you do not have to sign a false receipt. Do not sign for anything you have not received, even if your employer promises the remainder at a later time.

If your employer refuses to pay what is owed to you, after 7 days, you can file a claim with the Hong Kong Labour Department.

*What do I do when my employer calls the police and accuses me of theft?*

The employer may make a false accusation of stealing if they want to terminate your contract but do not want to pay you what you are owed. Employers have even planted items in the helper's belongings to make it look as if the helper stole the item.

First you should talk to your employer and state your innocence. But if it is a false accusation, the employer already knows you are innocent. If the employer is intent on a false accusation, they may call the police. Do not touch an item that does not belong to you if it is found

amongst your belongings even if the employer or the police asked you to take it out from your luggage.

If the employer truly believes you have stolen something, and calls the police, do not be afraid. If there is no evidence, the police cannot hold you. Calmly and confidently tell the truth to the police officer.

If an employer calls the police, and has you arrested, you may consider your contract terminated, even though the words have not been spoken. This is considered “constructive dismissal” by the employer. The employer still owes you wages and entitlements including wages in lieu of notice if he/she is unable to prove that you have committed theft.

If your employer refuses to pay what is owed to you, after 7 days you can file a claim with the Hong Kong Labour Department.



*What do I do when my employer hits me because she thought I was too slow with my housework? What do I say?*

The first thing a domestic helper needs to do is to stop the attack. Under no circumstances should an employer hit the domestic helper. Somehow, get away from the employer and call the police. When the police arrive, calmly and clearly explain what happened. If the police cannot communicate well in English, call someone who could help you explain to the police. The police will normally take you to the Police Station to file an official report. The police may also take you to the hospital so that the doctor can assess and make a record of any injuries. Do not accept it if the police say it is only a minor matter, and do not believe them if they tell you that you would have difficulty obtaining another employment in Hong Kong if you pursue the case.

You do not have to continue to work for an employer that has hit you. Ill-treatment by an employer is a valid reason for terminating your contract. Because of the

employer's behaviour, you are still owed your entitlements. However, it is important to be able to prove that you have been subject to violence or ill-treatment by the employer for you to claim your entitlements.

After you have left the residence, you can contact the employer by phone to collect your belonging, wages and other entitlements. Do not go back to the residence alone. If possible, take a friend with you or seek the assistance of the police.

If your employer refuses to pay you your entitlements, after 7 days, you can file a claim with Hong Kong Labour Department.

*What do I do if my employer terminates my contract, but then tells me to sign a statement saying that I was the one who terminated the contract? What do I say?*

If your employer is the one to terminate the contract, the employer owes you wages in lieu of notice, along with your other entitlements. If you terminate your contract without prior notice, you have to pay your employer

wages in lieu of notice. The reason your employer might ask you to sign a resignation letter is so that he/she does not have to pay you what he owes. Do not sign anything false!

If your employer will not pay you your entitlements, after 7 days from the termination of the contract, you can file a claim with the Hong Kong Labour Department.

## *About HDH*

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Helpers for Domestic Helpers (HDH) is a non-profit organisation that provides legal advice, counselling and guidance to foreign domestic workers in Hong Kong. HDH was originally a spontaneous initiative by a small group of lawyers who worshipped at St. John's Cathedral where, as is still the case, a substantial part of the congregation were Filipino domestic helpers. They perceived a widespread need for an organisation that could offer free legal counselling and practical assistance to domestic helpers who, of course, could seldom afford the professional services of a private lawyer due to the obvious financial limitations affecting low income earners.

The work began, very informally at first, in the late 1980s with the holding of Sunday "clinics" in Cathedral premises to which helpers could bring their problems and receive help in resolving them. The operation soon developed into full-time one operating under a small core of full-time staff as the demand for its services increased beyond the

capacity of just a few part-time volunteers. While HDH is an entirely non-sectarian ministry which helps all those who seek its services without regard for their nationality, race or religion, its work has always been generously supported by St. John Cathedral, to whose Council it is ultimately answerable, as an integral part of the church's pastoral outreach into the community.

There are about 260,000 foreign domestic workers in Hong Kong, most of whom come from poor countries in Asia where there are limited job opportunities. This forces them to leave their families behind in order to earn a living abroad and support their dependants at home.

Over the years HDH has assisted thousands of domestic helpers in distress and helped recover millions of dollars in compensation through the Courts or direct intervention.

HDH is able to provide a high level of service with the help of dedicated volunteers with various professional backgrounds including a number of lawyers.

The services HDH provides include:

- Explaining to domestic workers their legal rights and guiding them in pursuing claims in the Labour Tribunal and other Courts;
- Giving advice in cases where a domestic helper is accused of a criminal offence which, typically, will be one arising from or otherwise connected with their immigration status or employment;
- Assisting domestic helpers to draft witness statements and Court documents for use in Court proceedings;
- Preparing clients for conciliation meetings and Court hearings;
- Liaising with various Government agencies including the Police, Immigration and Labour Departments about clients' cases; and
- Writing letters to employers and recruitment agencies on behalf of clients and helping to negotiate settlement agreements when possible, to avoid protracted litigations.

HDH constantly endeavours to find ways to ensure that domestic helpers not only understand their legal rights, but also know the best way of protecting and pursuing these rights.

***Helpers for Domestic Helpers*** (HDH) is a non profit organisation that provides legal advice to foreign domestic workers in Hong Kong. HDH is an outreach program of St. John's Cathedral.

Often, knowledge of the law is not enough to safeguard ones rights. This manual, a product of HDH's many years of experience in dealing with various issues faced by domestic workers, provides practical advice on how to address the most common problems they encounter and minimise the chances of them occurring.

The manual also offers tips on how domestic workers can assert their rights while maintaining a positive relationship with their employers.

***Helpers for Domestic Helpers***

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