

Government welcomes Court of Appeal judgment upholding legality of "live-in requirement"

The Government today (September 21) welcomed the ruling of the Court of Appeal in an appeal of a judicial review upholding the legality of the requirement that persons entering Hong Kong to work as domestic helpers shall work and reside in their employers' residence (known as the "live-in requirement").

A Government spokesman said, "We are pleased that the judgment confirms that the 'live-in requirement' is lawful. The 'live-in requirement' underpins the long-established Government policy that priority in employment should be given to the local workforce and importation of foreign workers should only be allowed when there is proven manpower shortage in specific trades that cannot be filled by local workers. It is along this policy objective that live-in foreign domestic helpers (FDHs) have been imported since the 1970s to meet the shortage of local live-in domestic helpers."

Before coming to Hong Kong, FDHs have to sign a Standard Employment Contract (SEC) with their employers and agree to the terms therein. Clause 3 of the SEC states that the FDH shall work and reside in the employer's residence. In addition to the contractual agreement, the FDH and the employer must each give an undertaking to the Government in the relevant visa application forms that the FDH would only work and reside in the employer's residence. In other words, FDHs are fully aware of the "live-in requirement" before signing the contract and they are admitted to Hong Kong on such basis.

The Government spares no effort in safeguarding the rights and benefits of the some 370 000 FDHs in Hong Kong, who enjoy the same statutory protection as local employees under Hong Kong labour law. Under the SEC, the employer should provide the FDH with suitable and furnished accommodation and with reasonable privacy free of charge. The employer is also required to give an undertaking in the relevant visa application form to provide the FDH with suitable accommodation and with reasonable privacy. The application will be refused if the employer fails to meet the requirement.

If an FDH considers that his/her employer has failed to provide suitable accommodation or has breached any of the terms concerning accommodation arrangements as provided in the SEC, or his/her employment rights are being infringed, he/she may approach the Labour Department for free consultation and conciliation services. He/she may also report the case to the Immigration Department (ImmD). If an employer breaches his/her undertaking to the Government and/or fails to provide the FDH with free, suitable and furnished accommodation as provided under the SEC, it will be one of the factors in ImmD's consideration of the employer's future applications for employing an FDH. The adverse record may lead to any such application being refused.

Further, in case employers and/or FDHs knowingly furnish a false representation/statement to immigration officers in the course of a visa application, including the intended accommodation arrangement, they may be subject to criminal investigation and prosecution of the relevant offence.