

# Foreign domestic helpers in hong kong essay

[Business](#), [Industries](#)



Generally, the working and living condition is poor to the Fads in Hong Kong, therefore, the disputes between the employer and Fads arise more and more; ND the exploitation by the agency is another pressure on the Fads. It is worth to reveal the reality of Fads to the public arousing the public attention. To confer the reason behind, the paper is going to study on the existing social policies and social services discriminate against the Fads. There are three main sections in this paper, the first section is about the introduction and the background information of the Fads and the following section is the discussion with the policies towards the Fads, and the last section is the suggestion and conclusion. Fads are one major group of migrant workers in Hong Kong. According to the Immigration Department (ID), as of September 2012, the total Fads population is 311 , 455. Most of the Workers are come from Philippine and Indonesia, 152, 842 Filipinos workers, and 1 50, 375 Indonesian workers in Hong Kong. They are accounted for half of the total Fads' population.

Moreover, there are 3, 077 This and 4, 161 workers of other nationalities. Some 90% of Fads are female. Compared to 299, 961 at 2011 and 285, 681 at 2010, the total Fads' population continually increase which shows that the demand of FDA is large.

(ID, 2012) a) Exploitation by the Agency The main channel for employers to hire Fads is through the employment agency an the fees for agency will be charged. The Employment Agency Regulations of Employment Ordinance (chapter 57) regulated that the maximum commission received by an agency from the Fads should not exceed 10% of their first month's wages, it makes \$392 for a FDA. However, the agency would mislead them or claim a

training fees in order to charge excessive agency fees. The agency will collude with finance companies and encourage the Fads to borrow money in order to pay these illegal fees. They even withhold the workers' travel documents to force them to pay the fees. Out of eager to work and fear of unemployment, most of the Fads will pay for the fees, however, these illegal fees are usually without any receipt or written documents to proof. And they need to pay the fees again if they resign and work for another employer. In order to pay for the debt, the Fads will endure any unreasonable exploitation.

According to the research conducted by Consumer Council in 2010 and Hong Kong Economic Times in 2012 and 2013, the agency fees of different domestic helper employment agency around \$6, 500 – \$8, 200 for the employer in Hong Kong, compare to the last year around \$3, 880 – \$3, 988, it increased more than 70%. Consumer Council) For the Fads, 78% Indonesian workers need to pay about HACK\$ 21, 000, which is nearly 5 months of their salary. (Indonesian Migrant Workers Union (MIMI), 2012) The number of complaints against Employment Agencies (Ease) placing Fads receive by Consumer Council in the past three years keeps increasing from 214 in 2009 to 319 in 2012. Most of the cases involved overcharging. It shows the problem of overcharging agency fees are getting more seriously. ) Underpayment or Arrears of wages The situation of Fads being underpaid and overcharging agency fees issues are closely related. Most FDA was required to sign a fabled “ Salaries Receipt”, and the employment agencies and some employers can underpaid or arrears of wages.

Part of the salary is used as the FDA returned to the employment agency fee or work training costs, they need to pay directly to the finance company or transfer to the employment agency's account. The monthly income of underpaid Fads is only HACK which is about 50% of their Minimum Allowable Wage. According to a research concern about Indonesian worker conducted by Hong Kong Catholic Commission For Labor Affairs in 2011 (CAL), Nearly half of respondents (47.

%) said they had been underpaid, the most common method is payment in case but the wage amount is less than the provisions of the contract (72. 8%). And 57.

9% respondents said that employers and employment agencies had asked them to sign the fabled wage receipts, but the payment they received is less than the contract terms. Hong Kong Catholic Commission for Labor Affairs, 2011) c) Illegal work There are cases that the employer asked the Fads to work at their shop and restaurant, or work at their relatives home. Also, some of the Fads are looking for part-time Job at the internet. They illegally stay in Hong Kong and become black arrest labor, their wages can be HACK\$50 per hours which is much higher than the MAW. According to Immigration Department, as of April 2012, they have arrested 47 Fads who work illegally in 2012.

And there are 155 cases in 2011 and 204 cases in 2010. Immigration Department, 2012) d) Poor living condition The Fads are required to live in the employer's home, so they have no choice in their living place. Some of

the Fads have only small area to sleep, they may need to sleep at the floor, next to the rubbish bin, or even at the toilet.

Although the standard contract regulated the employer need to provide free accommodation for the Fads, there is no regulation for the size of their living area, and the Immigration Department does not have any investment to monitor the living environment of Fads. According to Mission for Migrant Workers (2011), 67% of 2,023 members did not have their own room, they often share room with children or elderly. Sometimes they sleep out in the living room or in other places like the pantry or laundry room, and do not have places to keep their own things. (Mission for Migrant Workers, 2011)

Concerning these problems about Fads, there are some employment policies to improve the employability of foreign domestic helpers, and the following will analyze the effectiveness of these policies. A) The Employment Agency Regulations Concerning about the agency exploitation, the Employment Agency Regulations (CAP AAA) regulated the maximum commission should not exceeding a sum equal to ten per cent of the first month's wages, and there are "Employment Agencies Administration" which responsible for carries out frequent inspections to employment agencies to ensure that they are operating within the limits of the law.

Upon conviction, the maximum penalty will be a fine of \$50,000, and the Commissioner for Labor can refuse to issue or renew or to revoke a license to operate an employment agency. However, although there are regulations to limit the amount of the commission, the excessive agency fee is an open secret of the industry. Most of the agency charged H\$ agency fees for

employers, and the Fads even need to pay agency fees that equal to few months of their salary. There are 78% Fads said they had to pay excessive fees, but Labor Department (LAD) only received 54, 50, 54 complaints 2009, 2010 and 2011 respectively against EASE overcharging the Fads. It shows that the regulation is ineffective to improve the problems, it does not have a deterrent effect on the Employment Agencies.

The government should enforce the regulation strictly and step up to surprise inspections to EASE in order to investigate whether the EASE have breached the regulation. B) Employment Ordinance – Standard Employment Contract Concerning the problems of underpayment, according to the Standard Employment Contract for Fads under the Employment Ordinance, Fads employed by local employers must be paid a wage not lower than the Minimum Allowable Wage (MAW \$3, 920. Upon conviction, maximum fine of H\$350, OHO and three years' imprisonment. Apart from the MAW H\$3, 920 per month, the Fads also have entitlements included Food allowance, Free accommodation, Free passage to and from their place of origin, Free medical treatment, Paid or unpaid home leave with cost of passage at the expense of the employer. They also enjoyed at least one rest day per week, 12 statutory holidays in a year and paid annual leave. If the employer or the Fads wants to terminate the employment contract, the Fads is entitled to either severance payment or long service payment if they have work long enough for the same employer.

It shows that the standard employment contract had protected the rights of Fads. What is more, if the employer subsequently agree with the helper to

pay a wage lower than the MAW after signing a contract, they may be convicted of making false representation under the Immigration Ordinance (Cap. 115) and the maximum fine \$150,000 and imprisonment for 14 years. However, from 2006 to 2010, Labor Department handled a total 2,613 cases claim which involved Fads lodging claims for arrears of wages against their employers, but only secured a total of 363 convicted summonses on wages offences. And most of them only sentenced to hours of community service or fined.

It shows that the prosecution against underpayment is not enough, and the penalty is too light. (LAD, 2012) C) Schedule of Accommodation and Domestic Duties It is specified in the Contract that the Fads should only perform domestic duties for the employer as listed in the "Schedule of Accommodation and Domestic Duties" attached to the Contract (Clause 4(a)) and the FDA shall not take up, and shall not be required by the employer to take up, any other employment, including part-time domestic duties, with any other person (Clause 4(b)). Upon conviction, the maximum penalty will be a fine of \$50,000 and imprisonment for 2 years.

Moreover, the employer is required to provide the Fads with the free accommodation, but the Immigration Department does not have a clear definition on the minimum Fads' accommodation area. (Standard Employment Contract for Foreign Domestic Helpers) The regulation aims to deal with the problems of illegal work and the poor living environment for Fads. However, the problem of illegally stay is still seriousness in Hong Kong. Loophole of the policies for the Fads It is questionable that the policies or

protection mentioned above enough for Fads. Actually, there are some loopholes of the FDA policies so as to the employer and the Fads cannot be protected or even exploited.

A) Without any monitor on overstaying The Immigration Department did not conduct the report about the Fads' overstaying in Hong Kong regularly, so the relevant government department such as LAD, she is difficult to enforce any action on the Fads. According the Audit Report 2010, there are 3, 840 Fads are overstaying up to October 2009 in Hong Kong. And in the 100 cases of the overstaying, there are 60 percent of Fads overstaying more than one year. B) Poor information flow among the government department As mentioned above, the report made by Immigration department is important to the Police Station, such as the Identity Card checking by the police, if no data offer to the police, they may not know the information of the Fads whether they are overstaying in Hong Kong. Moreover, the case of employer was penalized by the Labor Tribunal because of the employer underpays Fads' wages, however, the relevant department still approve the application who have been underpayment to the Fads.

Furthermore, the Immigration department still ratifies the recruitment by the employer even if the employer went into bankruptcy, at the end, the arrears to the Fads was occurrence. Immigration department do not know whether termination on contract If the employers stop the contract early, he or she needs to inform the Immigration department written in the Standard Employment Contract, yet the Immigration department does not enforce it severely. Many disputes occur since the unclear policies and powerless of



law enforcement, to overcome the problems and make it more comprehensive and feasible way, it should be take some experiences of the policies of Fads from countries or cities as example for the reference. Importing the Fads from the other countries is becoming popular nowadays, they are mom from the poor countries fundamental. Fads is exploited and treated badly by the employer or the agency. The following part is going to have a look the Fads in the oversea.

There are three places such as the Canada, Taiwan and Singapore as example for the Hong Kong Government to take references. In Canada, the Fads are protected by the Minimum wages which the level of wages is same with the local resident, there is HACK\$ 75 per hour. The Fads work eight hours a day and overtime working with compensation, so Fads can earn HACK\$11, 000 a month averagely. Moreover, the Fads have the right to apply the permanent right of abode hill they have been working two years in Canada. (My Sweet Home Employment Agency, 2012) In Taiwan, the Fads are covered by the minimum wages with HACK\$ 4, 072.

Taiwan also sets 40 days of probationary period for hiring the Fads in order to reduce the agency collude with Fads or break the contract suddenly by the Fads, protecting the employer and their loss. What is more, the Taiwan government also set the team to visit the employer to check whether they provide a reasonable accommodation for DEEDS. In Singapore, the Fads are paid by the minimum wages HACK\$ 3, 030, and Fads only have one day for rest in a month before 2012.

However, the working permit is easily and quickly for the Fads to apply in Singapore, only need one to two week, to compare with Hong Kong which is needed a least three month for the permit. All in all, the Hong Kong Government should take some references from the other places such as setting the probationary period for reducing Fads who resign with unreasonable as well as protecting the employer from the one month payment in lieu of notice when Fads resign within the probationary period. Moreover, setting a team for home visit by the LAD is also important for the Fads since it can protect and ranted the Fads with the reasonable accommodation and good working condition that the employer offered. 5. Suggestions on possible areas for policy changes According to the survey (HACKLE 2011), the majority of the Fads obtain basic education and they do not have good understanding of the labor laws in HACK, even if they are suffering from varies degree of exploitation and labor disputes, they seldom make a complaint. We believe that they are working in Hong Kong with less seniority and less educated, with the fact that they do not have enough social support networks, they will not make a complaint to the authorities since the procedure is implicated. We estimate that the “ two-week rule” and many other measures are hindering the motivation as well as the right to claim. In addition, with the implementation of the “ two-week rule”, in order to find a new employer as quick as possible, the foreign domestic helpers reluctantly accepted the illegal exploitation and overcharging intermediary fees under the contract of the employment agencies, thus the “ two- week rule” indirectly cause the FDA caught in an endless cycles of debt net.

With respect to the problems raised, we recommend the following actions for the overspent and also the public to help the situation of Fads. (A) Raise the concern and awareness of the public towards Fads In recent years, large amount of young Indonesian domestic helpers, which may not have many experience as well as education, are employed. In the absence of work experience and social network support, problem of Fads being exploited and labor dispute were hampered, they do not have the conscious to seek help. In fact, many survey found that the problem of exploitation in Indonesia Fads are more serious than those from Philippines. That is why we are suggesting the overspent and the related department, especially the labor department and immigration should pay concern and focus on the working situations of the Fads and offer them sufficient support services, for example, the exhibition on Employment Ordinance, Minimum Wage Ordinance and family-friendly employment practices, which launched by the LAD last month in Ho Man Tin, to strengthen their confident and assess related resources in need of help. B) Abolish the “ two week rule” and reduce the restrictions during litigation Under the “ two week rule”, Fads often worry about the complicated claims process ay delay their work or being dismissed by the employers because of the complaints. As a result, they feel not easy to exercise their rights to complaint or claim the payments.

They may not have the bargaining power, even if they understand the basic rights of working in Hong Kong, but we believe that the “ two-week rule” and the related other administrative measures are hindering them to proceed the compliant. In order to protect the fundamental labor rights of foreign domestic helpers more effectively, the government should canceled the “

two-week rule” practice, and allow the discretion to waive visa fees for foreign domestic helpers who apply to postpone because of the claims against the employer or employment agency has been accepted, until the end of the litigation. During the period of extension of stay to the end of the trial process, the government should also provide temporary shelter, food support and other services to the Fads. By building the regular contact with FDA-exporting countries, we hope to fight against the illegal exploitation of foreign domestic helpers. (C) Strengthen inspection and enforcement, prosecute violated FDA employer We recommend that the Government should strengthen the inspection and enforcement of the domestic helpers, prosecute those employers who have violated the “ E” and “ Immigration Ordinance”.

The government should review and increase the penalties for violation in order to prevent employers from the exploiting behavior of foreign domestic helpers. Meanwhile, the department shall assist Fads to gather evidence to claim against the employer. For FDA employers and employment agencies, cases of confiscation on personal belongings, such as identity cards and passports is to be improved.

We suggest that the Government should strengthen frontline police officers in dealing with employers r employment agencies. With sufficient evidence, the case should be classified as a criminal offense and should not be treated as handling labor disputes. D) Strengthen the supervision of employment agencies We suggest that the Government should strengthen the supervision of employment agencies, take the initiative to investigate suspected

violations of law, as well as those employment agencies that collect more than the prescribed commission. Make a “ blacklist” for these employment agencies that violated the law, so that employers and foreign employees can take as reference. Meanwhile, the government should strengthen the publication in mass media through television, radio and mobile transport publicity, to promote the bad practice of those employment agency’s and the way of exploitation. Encourage foreign domestic helpers choose the employment agencies with precautions.

At the same time, vigilance those employers who do underpay the wages of foreign domestic helpers or in conjunction with professional agencies to get benefit from Fads, it is actually a criminal offense, and they risked imprisonment. We hope, through these efforts of public education, can enhance the awareness of tooth employers and foreign domestic helpers, and as a consequence, reduce the situation of underpaid Fads and over-charging agency fees.