

ANALYSING THE RECENT CHANGES TO LEGISLATION SURROUNDING FOREIGN DOMESTIC WORKERS IN SINGAPORE

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I. INTRODUCTION

According to recent International Labour Organization estimates, there are 11.52 million migrant workers in the world.¹ 237,100 of them reside in Singapore as of June 2016 and judging the trend from previous years, the numbers are projected to increase.² With the recent celebration of the 7th Foreign Domestic Worker's ["**FDWs**"] Day on 11th December 2016, it is opportune to acknowledge how far the law has come to protect the rights of FDWs and recognize that more can be done to further safeguard these rights. This article focuses on FDWs because the exclusively domestic setting in which they perform their employment duties makes regulation of their work conditions extremely challenging and every breakthrough is laudable. Furthermore, the presence of FDWs in Singapore makes ensuring that they have fair and reasonable rights a local affair.

I will evaluate some positive legislative developments and their effectiveness, namely the initiatives taken by Ministry of Manpower and sanctions for errant employers before proposing some general reforms.

II. POSITIVE DEVELOPMENTS

A. *Ministry of Manpower Initiatives*

The Ministry of Manpower ["**MOM**"] has been taking a proactive role in advocating for positive working relations between employers and FDWs. MOM's 'Employer's Guide: foreign domestic

¹ Department of Statistics, "ILO global estimates on migrant workers: Results and methodology" (2015), International Labour Organization Report, Online: < http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_436343.pdf >.

² Ministry of Manpower, "Foreign workforce numbers" (15 September 2016), Online: < <http://www.mom.gov.sg/documents-and-publications/foreign-workforce-numbers> >.

worker' pitches for open communication, sharing of concerns and assisted family integration where employers try to assimilate FDWs into their home. It comprehensively covers topics that range from medical costs to overseas leave.

To reduce tension between employers and FDWs, MOM's amended policy in 2010 ensures that security bonds are not forfeited if the FDWs violate Work Permit conditions that are attributed to her own behavior. The security bonds are at risk only when employers fail to observe the conditions of the bonds or in limited rare cases.³ Relaxation of regulations helps employers to loosen their control over their employees, as employers would not lose their deposit as long as they themselves abide by the terms.

Furthermore, MOM requires employers and FDWs to sign a safety agreement. The safety agreement ensures that all parties fully understand and acknowledge MOM's restrictions for cleaning the exterior surface of windows.⁴ MOM even took the special effort to ensure that the safety agreement signed by the FDWs would be in their native language. Such efforts are laudable as it shows FDWs that their rights do matter and the law looks out for them.

It is heartening that MOM supports the idea of trying to resolve misunderstandings or disputes amicably between parties first before approaching external parties for assistance. However, despite such explicit and unambiguous regulations, the guide is not binding and it lacks an unequivocal representation that MOM will take active actions against non-compliance. Words like 'should' are peppered throughout the guide such as "your FDW should not sleep near any dangerous equipment or structure that could potentially cause harm or hurt to her" and "You and your FDW should mutually agree on which day of the week she should take the rest day".⁵ 'Should' appears to be more of a recommendation or a desirable goal, in contrast, 'must' is used to express obligation or an unavoidable requirement.⁶ Examples of the usage of the word 'must' found in the guide include 'You must keep a record of all salary payments', 'You must

³ Foreign Manpower Management Division, "FDW Weekly Rest Day, A guide for Employers" (2013), Ministry of Manpower, Online: <<http://www.mom.gov.sg/~media/mom/documents/publications/fdw-weekly-rest-day/fdw-weekly-rest-day-english.pdf>>.

⁴ Ministry of Manpower, "Contracts and safety agreement for foreign domestic worker" (5 May 2015), Online: <<http://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-domestic-worker/employers-guide/contracts-and-safety-agreement>>.

⁵ Ministry of Manpower, "Rest days and well-being for foreign domestic worker" (28 March 2016), Online: <<http://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-domestic-worker/employers-guide/rest-days-and-well-being>>.

⁶ Oxford Dictionaries, "Must, should or ought to?", Online: <<http://blog.oxforddictionaries.com/2014/03/must-should-ought/>>.

not retain your FDW's Work Permit' and 'you must minimally provide your FDW with a mattress, pillow and blanket'.

The interchangeable use of 'should' and 'must' leads to inconsistencies and readers may conclude that such offences have less severe repercussions and they are more likely to downplay the importance of that particular guideline, increasing the possibility of deviation from the guideline. This is especially worrying since it is understood that employers must not endanger the lives of FDWs, yet it is merely suggested as above that FDWs should not sleep near harmful equipment. To prevent misinterpretations and disparity in standards, 'should' ought to be replaced by 'must' in the guide when appropriate.

It is noteworthy that in the guide under the section 'Abuse and ill-treatment of a foreign domestic worker'⁷ and 'Employment rules for foreign domestic workers'⁸ possible penalties, such as debarment from hiring subsequent FDWs, are spelled out clearly. This approach should be extended to other sections and bringing in actual cases adds authenticity and legitimization to the guidelines and would prompt more employers to stick to the proposed regulations.

In any case, since it is administratively difficult to uncover and then enforce all breaches of the guide, introducing real-life cases detailing penalties would deter similar wrongdoings. Accordingly, I will now discuss changes to other binding legislation rather than mere guidelines.

B. *Sanctions for Errant Employers*

In 1998, the *Penal Code*⁹ was revised to increase penalties of offences regarding abuse of FDWs to provide greater protection for FDWs. Under s 73(2), where the offender is an employer of a domestic maid or a member of the employer's household, the court may sentence the offender to one and a half times the amount of punishment to which he would otherwise have been liable for. The case of *ADF v Public Prosecutor*¹⁰ can be used to illustrate the use of s 73(2) of the *Penal Code* to increase the employer's sentence for voluntarily causing hurt to a domestic worker under s 323.

⁷ Ministry of Manpower, "Abuse and ill-treatment of a foreign domestic worker" (5 May 2015), Online: <<http://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-domestic-worker/employers-guide/abuse-and-ill-treatment>>.

⁸ Ministry of Manpower, "Employment rules for foreign domestic workers" (29 June 2016), Online: <<http://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-domestic-worker/employers-guide/employment-rules>>.

⁹ (Cap 224, 1985 Rev Ed).

¹⁰ *ADF v Public Prosecutor*, [2010] 1 SLR 874.

A weekly rest day was implemented to ensure FDWs have a regular mental and emotional break from their domestic duties. With a mandatory weekly rest day, FDWs are empowered to exchange their rest day for a day's salary or a replacement rest day taken within the same month. Whether FDWs receive monetary compensation rather than utilizing the rest day depends on mutual agreement between the employer and employee.

Notwithstanding this development, there are some gaps in the content and enforcement of related legislation.

Some employers may have family members that require around the clock care of FDWs. There are others who would be more assured if their first time FDWs take their rest days after they have more settled in Singapore. A survey conducted by HOME in 2015 showed that 54% of 670 foreign domestic workers had a weekly day off.¹¹ On the other hand, 40% of the participants reported having a rest day less than once a week. It might be plausible that some FDWs may be intimidated or pressurized to agree to give up their rest day for remuneration due to the power imbalance. These FDWs need to be aware that they need not feel obliged to give in to their employer's demand especially when it is their basic right to have a weekly rest-day.

Likewise, with the standard employment contract last revised on 11 September 2006, before the mandatory weekly rest days,¹² it is apt to review and update the model contract to ensure that all the parties involved are informed about the latest developments. Even if a term is included in the contract, contracts are expensive and difficult to enforce. Hence, it might be better if the law guarantees a biweekly or monthly day off.

III. OTHER AREAS FOR REFORM

A. Employment Act

Currently, FDWs are protected principally under the Employment of Foreign Manpower Act. For instance, the case of *Public Prosecutor v Donobue Enilia*¹³ demonstrates the consequences of continuing to employ a FDW despite knowing that the work permit was revoked and when outstanding salary is unpaid. The employer was convicted by the trial judge under s 5(1) of the

¹¹ Anja Wessels, "Home sweet home?" (March 2015), Humanitarian Organization for Migration Economics, Online: < www.home.org.sg/wp-content/uploads/.../HOME_2015_Home-sweet-home_short.pdf >.

¹² Consumers Association of Singapore, "Employment Agencies (FDW)", Online: <<https://www.casetrust.org.sg/accreditation-detail.aspx?id=2>>.

¹³ *Public Prosecutor v Donobue Enilia*, [2005] 1 SLR(R) 220.

*Employment for Foreign Workers Act*¹⁴ [“EFWA”] for employing a foreign worker without a valid work permit and to a charge under s 22(1)(a) of the *EFWA* for failing to comply with the condition of the work permit to pay the foreign worker a salary. The High Court judge made an additional order of compensation to the FDW for the unpaid salary on top of the fines and levy incurred by the employer. FDWs are not covered by the *Employment Act*¹⁵ because it was deemed impractical by MOM to regulate specific aspects of domestic work, such as hours of works and work on public holidays.¹⁶

However, in order to cast a wider safety net, FDWs should be safeguarded under the *Employment Act*.

For example, under the *Employment Act*, from 1 January 2016, the maximum and minimum compensation limits for death, total permanent incapacity and medical expenses under *Work Injury Compensation Act*¹⁷ will be increased. Medical expenses limits increased to \$36,000, and upon death or total permanent incapacity, the minimum compensation is \$69,000 and \$88,000 respectively.¹⁸ In contrast, employers are only required to purchase the Personal Accident Insurance policy insurance when employing FDWs. The compulsory FDW’s medical insurance has a minimum coverage of \$15,000 per year for inpatient care and day surgery¹⁹ and the compulsory FDW’s personal accident insurance has a minimum coverage of \$40,000.²⁰

It may be administratively difficult to include FDWs in the *Employment Act* but an alternative could be leaving it to the Minister’s discretion. As per s 67 of the *Employment Act*, the Minister may apply the act to domestic workers. Hopefully, when the need arises, this section will not be overlooked and the Minister will exercise the given right to shield FDWs from oppressive and exploitative conditions.

¹⁴ *Employment of Foreign Workers (Amendment) Act 2007*, (No. 30 of 2007).

¹⁵ *Employment Act* (Cap 91, 2009 Rev Ed Sing)

¹⁶ Ministry of Manpower, “Contracts and safety agreement for foreign domestic worker” (5 May 2015), Online: <<http://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-domestic-worker/employers-guide/contracts-and-safety-agreement>>.

¹⁷ *Work Injury Compensation Act* (Cap 354 2009 Rev Ed Sing).

¹⁸ Ministry of Manpower, “Changes to Work Injury Compensation Act (WICA) in 2016” (1 July 2016), Online: <<http://www.mom.gov.sg/workplace-safety-and-health/work-injury-compensation/changes-to-wica-in-2016>>.

¹⁹ Ministry of Manpower, “Insurance requirements for foreign domestic worker” (15 April 2016), Online: <<http://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-domestic-worker/eligibility-and-requirements/insurance-requirements>>.

²⁰ Ministry of Manpower, “Insurance requirements for foreign domestic worker” (15 April 2016), Online: <<http://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-domestic-worker/eligibility-and-requirements/insurance-requirements>>.

B. Transfers of FDWs

The Work Permit binds FDWs to their employers and they do not have the option to quit, unless their employer decides to release them, either to return home or to work for another employer.

FDWs should be allowed to switch employers without sponsoring their employer's consent and without the threat of repatriation. In order to obtain a transfer, current employers need to sign the issuance declaration,²¹ which essentially functions like a release form. The obstacles faced by FDWs attempting to change employers act as an incentive for workers to endure ill-treatment by their employer.

Transfer FDWs are in high demand²² due to the expedite process compared to the 10 weeks or more to hire a first-timer and the slashed agent fees for transfer workers.

Unless there are legal issues or unresolved disputes, FDWs can circumvent paying a second round of agency fees by liaising with the new employer directly. There is no need to inform the previous agency of the departure and cost of the transfer is much less than that of an agency. Efforts need to be increased to raise awareness on such a hassle-free and low-cost method.

C. Repatriation of FDWs

Employers should give their FDWs due notice if they are cancelling their FDW's Work Permit. Nonetheless, employers are not required to do so. According to MOM,²³ employers can send their FDW home immediately after cancelling their Work Permit.

This contradicts the Security Bond Form for FDWs²⁴ where one of the stipulated provisions was that employers were to give "reasonable notice" of repatriation. Here lies the innate problem of determining what constitutes "reasonable" and enforcing this vague and ambiguous requirement.

²¹ Ministry of Manpower, "Transfer an FDW to a new employer" (3 October 2016), Online: <<http://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-domestic-worker/transfer-to-a-new-employer>>.

²² Ameila Tan, "More families keen to hire transfer maids", *The Straits Times* (6 April 2015), Online: <<http://www.straitstimes.com/singapore/more-families-keen-to-hire-transfer-maids>>.

²³ Ministry of Manpower, "Do I need to give my FDW any notice before sending her home?" (15 September 2016), Online: <<http://www.mom.gov.sg/faq/work-permit-for-fdw/do-i-need-to-give-my-fdw-any-notice-before-sending-her-home>>.

²⁴ Ministry of Manpower, "Security Bond Form for Foreign Domestic Workers (Domestic and non-Domestic)" (8 May 2015), Online: <http://www.mom.gov.sg/~media/mom/documents/services-forms/passes/fw_sb_form.pdf>.

To combat the conflicting statements, there should be a clause, which requires employers to give a minimum one-month notice for termination of employment contract. This allows the FDWs to have more time to find another employer.

IV. CONCLUSION

In today's economic context, paid domestic work is essential for the sustainability and operation of the economy beyond the household. Fortunately, it is clear that Singapore is moving in the right direction as much has been done for FWD's outside the legal sphere. In 2012, the compulsory Settling-In Programme was introduced for new FDWs to educate them on safety precautions and living in Singapore.²⁵ In 2013, all FDWs became entitled to a mandatory weekly rest day if their Work Permit was issued or renewed after 1 January 2013.²⁶ In 2014, a series of workshops titled "Law & You" was launched in hopes of empowering FDWs with the basic understanding of their legal rights.²⁷ In 2016, a new initiative titled "NUS-Home" was introduced to train FDWs to be para-counsellors in a bid to improve the mental health of FDWs.²⁸ FDWs have and will continue to contribute to Singapore, and hence Singapore should continuously strive to champion workplace equality for all these salaried employees. Hopefully, people will continue to commiserate with the plight of FDWs and speak out for those who cannot.

²⁵ Ministry of Manpower, "Settling-In Programme (SIP)" (14 October 2016), Online: <<http://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-domestic-worker/eligibility-and-requirements/settling-in-programme>>

²⁶ Foreign Manpower Management Division, "FDW Weekly Rest Day, A guide for Employers" (2013), Ministry of Manpower, Online: <<http://www.mom.gov.sg/~media/mom/documents/publications/fdw-weekly-rest-day/fdw-weekly-rest-day-english.pdf>>.

²⁷ Jolovan Wham, "Law and you: Legal education starts at HOME" (23 September 2014), Online: <<http://www.home.org.sg/1668/>>

²⁸ Kok Xing Hui, "Maids trained to be counselors to peers", *The Straits Times* (11 April 2016), Online: <<http://www.straitstimes.com/singapore/maids-trained-to-be-counsellors-to-peers>>