

FAQs about COVID-19 and the Disability Discrimination Ordinance for Foreign Domestic Workers and Their Employers

Foreign domestic workers (FDWs) in Hong Kong have been facing unique challenges since the outbreak of COVID-19, from additional workload and reduced rest periods to fear of dismissal by their employers after returning from a day off.

The Equal Opportunities Commission (EOC) recognises the vulnerable position of FDWs amid the pandemic and stands ready to handle complaints that fall within the purview of the Sex Discrimination Ordinance, the Disability Discrimination Ordinance, the Family Status Discrimination Ordinance and the Race Discrimination Ordinance.

To explain the anti-discrimination law – particularly the [Disability Discrimination Ordinance](#) (DDO) – and the protection it provides for FDWs in relation to COVID-19, the EOC has prepared this list of FAQs.

1. “I went out on my rest day. My employer dismissed me immediately after I returned, saying that it was because she/he believes I might have contracted the novel coronavirus. How does the DDO apply?”

The novel coronavirus falls within the definition of disability under the DDO, which includes the presence of organisms causing or capable of causing disease or illness in the body¹. The DDO also covers disability that is “imputed” to a person, i.e. thought or suspected to exist in a person.

However, under the DDO, it is not unlawful to discriminate against an employee with a disability if: (i) the disability is an infectious disease listed under the Prevention and Control of Disease Ordinance (e.g. COVID-19); AND (ii) the discriminatory act is reasonably necessary to protect public health².

When considering whether a certain act is “reasonably necessary”, employers should take into account the fact that the Government has been monitoring the latest developments of the pandemic and implementing social distancing measures as needed. Moreover, if an employer is concerned about infection risks after the FDW has gone out on a rest day, the employer may first consider asking the FDW to adopt preventive practices once she/he returns home (e.g. washing hands, changing clothes, taking a shower, etc.) and, when necessary (e.g. when symptoms emerge), to get tested.

Given the above, it may not be “reasonably necessary” for the purpose of protecting public health to dismiss an FDW when she/he returns home after a day out simply

¹ Section 2(1)

² Section 61

based on the perception or speculation that she/he has been infected with the novel coronavirus. As such, the dismissal might risk violating the DDO.

2. “I was previously infected with the novel coronavirus, but has now recovered. Can my employer dismiss me after my recovery?”

Since former illnesses (or former infections capable of causing disease) fall within the definition of disability under the DDO³, it may be unlawful for an employer to treat an FDW less favourably (e.g. by dismissing her/him) because she/he was previously infected with the novel coronavirus.

3. “My employer dismissed me when I was going through the 14-day mandatory quarantine. Is that lawful?”

While the anti-discrimination law enforced by the EOC may or may not apply (subject to the specific circumstances of the case, e.g. whether the dismissal was based on the FDW’s real or suspected infection of the novel coronavirus), the [Labour Department](#) has stated that if an employee has been ordered by a Health Officer to be put under medical surveillance or quarantine, then the employer would need to grant sick leave to the employee according to the requirements under the Employment Ordinance or the relevant employment contract.

If you have questions about your rights and obligations under the Employment Ordinance, please contact the Labour Department at the 24-hour hotline 2717 1771 / 2157 9537 (dedicated hotline for FDWs) or by email, fdh-enquiry@labour.gov.hk.

4. “Can my employer order me to stay home on my rest days?”

Although rest day arrangements would likely fall outside the remit of the anti-discrimination ordinances enforced by the EOC, the EOC urges employers to be more understanding of the needs and rights of FDWs, particularly in these difficult times.

The [Labour Department](#) has appealed to both FDWs and their employers to exercise mutual understanding on rest day arrangements. It has also reminded employers that compelling an FDW to work on a rest day without her/his agreement or failing to grant rest days to the FDW would violate the Employment Ordinance.

If you have questions about your rights and obligations under the Employment Ordinance, please contact the Labour Department at the 24-hour hotline 2717 1771 / 2157 9537 (dedicated hotline for FDWs) or by email, fdh-enquiry@labour.gov.hk.

³ Section 2(1)

5. “I am about to come to Hong Kong, and I heard that I would have to go through the 14-day compulsory quarantine. What should my employer and I do?”

Although accommodation arrangements for FDWs would likely fall outside the remit of the anti-discrimination ordinances enforced by the EOC, the EOC urges employers to be more understanding of the needs and rights of FDWs, particularly in these difficult times.

According to a [press release](#) issued by the HKSAR Government on 18 July 2020, if you have stayed in Bangladesh, India, Indonesia, Nepal, Pakistan, the Philippines or South Africa on or during the 14 days before the day you board your flight to Hong Kong, then before you are checked in for the flight, you should produce the following documents to the operator of the aircraft for boarding:

- A confirmation in English or Chinese of room reservation in a hotel in Hong Kong for not less than 14 days starting on the day of your arrival in Hong Kong;
- A letter or certificate in English or Chinese issued by a laboratory or healthcare institution bearing your name and identity card or passport number and showing that: (a) you underwent a nucleic acid test for COVID-19, the sample for which was taken from you within 72 hours before the scheduled time of departure of the specified aircraft; (b) the test conducted on the sample is a nucleic acid test for COVID-19; and (c) the result of the test is that you were tested negative for COVID-19;
- The original of the report for the test issued by the laboratory or healthcare institution bearing your name and identity card or passport number; and
- A letter in English or Chinese issued by the relevant authority of the government of the place in which the laboratory or healthcare institution is located certifying that the laboratory or healthcare institution is recognised or approved by the government.

The Labour Department has also reminded employers that they should bear the cost of the nucleic acid test for their FDWs, and comply with their obligations under the Standard Employment Contract, including bearing the accommodation expenses and providing food allowance to FDWs during compulsory quarantine.

If you have questions about your rights and obligations under the Employment Ordinance, please contact the Labour Department at the 24-hour hotline 2717 1771 / 2157 9537 (dedicated hotline for FDWs) or by email, fdh-enquiry@labour.gov.hk.

6. “How can I lodge a complaint with the EOC?”

The law requires that complaints be lodged with the EOC in writing. You may submit your complaint in person, by mail, by fax or via the online complaint form. Details are as follows:

Address: 16/F, 41 Heung Yip Road, Wong Chuk Hang, Hong Kong
Fax: 2106 2324
Online form: www.eoc.org.hk/eoc/graphicsfolder/complaint.aspx

You are welcome to contact the EOC at 2511 8211 if you have difficulties in writing your complaint or questions about the relevant procedures. Upon request, the EOC can also provide you with an interpreter as far as practicable.

7. “I am worried that if I lodge a complaint with the EOC, my employer will dismiss me.”

Discrimination by way of victimisation is prohibited under the DDO⁴. It is unlawful for an employer to victimise, i.e. treat an employee less favourably (e.g. by dismissing her/him) because the employee has lodged a complaint with the EOC under the DDO.

8. “Because of the ‘two-week rule’, it will be difficult for me to lodge a complaint with the EOC after my employer has dismissed me. What can I do?”

As long as you can provide your contact information, such as your correspondence address, telephone number or email address, you can lodge a complaint with the EOC under the anti-discrimination ordinances even though you are outside Hong Kong. Alternatively, you may authorise a representative to lodge a complaint with the EOC under the anti-discrimination ordinances. However, as the aggrieved person, you have the sole responsibility to provide information to support your allegations.

Equal Opportunities Commission
July 2020

⁴ Section 7