

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 briefly on my rest day to send money back home / take a private call. 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.

¹ Section 2(1)

² Section 61

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 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 just dismissed me because I have tested positive for COVID-19. Is this a contravention of the DDO?”

An employer who dismisses an employee because she/he has been infected with COVID-19 may be liable for disability discrimination under the DDO. However, as stated above, it is not unlawful under the DDO to discriminate against an employee with a disability if: (i) the disability, as with COVID-19, is an infectious disease listed under the Prevention and Control of Disease Ordinance; AND (ii) the discriminatory act is reasonably necessary to protect public health⁴.

While employers may wish to rely on the aforesaid defence in the event of a claim, it must be noted that **the burden is on the employer to adduce evidence to prove that the dismissal (or the relevant discriminatory act) is indeed reasonably necessary for the purpose of protecting public health.**

To avoid unlawful discrimination, employers are strongly encouraged to assess the risks objectively with reference to the work responsibilities of the FDW concerned, and give due consideration to whether there is a practicable alternative.

The [Labour Department](#) has also reminded employers that they should not terminate or repudiate an employment contract with an FDW who has contracted COVID-19. Under the Employment Ordinance, an employer is prohibited from terminating the contract of employment of an FDW on a paid sickness day, except in cases of summary dismissal due to serious misconduct. If an employer contravenes the relevant provisions of the Employment Ordinance, she/he commits an offence and is liable to prosecution and, upon conviction, to a maximum fine of \$100,000.

³ Section 2(1)

⁴ Section 61

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. “I am about to come to Hong Kong to commence a new contract / resume work under an existing contract. What should my employer and I do?”

As stated in a [guide](#) published by the Labour Department, you can only board a flight to Hong Kong if you have been fully vaccinated and are able to produce the following documents:

- A recognised vaccination record;
- Proof of a negative polymerase chain reaction (PCR)-based nucleic acid test for COVID-19, conducted within 48 hours before the scheduled time of departure of the aircraft; and
- Confirmation of a room reservation at a designated quarantine facility (DQF) or a designated quarantine hotel (DQH).

Further, according to a [press release](#) issued by the Hong Kong SAR Government on 22 February 2022, starting from 1 March 2022, all FDWs coming to work in Hong Kong will need to undergo compulsory quarantine for 14 days, and may choose to do so either at a [DQF](#) or a [DQH](#). Six tests are to be conducted during the quarantine.

Following the quarantine, you will need to undergo self-monitoring for seven days, as well as compulsory testing on the 16th and 19th days of your arrival in Hong Kong, in compliance with the compulsory testing notice. The test taken on the 19th day of arrival must be conducted at a [Community Testing Centre](#).

While you may undergo the seven-day self-monitoring at your employer’s residence, the Hong Kong SAR Government also allows employers to arrange for FDWs to do so at a [licensed hotel or guesthouse](#), provided that it is not a serving DQF or DQH.

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 and the self-monitoring period.

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.

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5. “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.

6. “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 DDO⁵. 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.

7. “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
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⁵ Section 7