**4**

**Rest Days, Holidays and Leave**

**FOR BOTH EMPLOYER AND HELPER**

### Q4.1 What kinds of leave are foreign domestic helpers entitled to under the Employment Ordinance?

* **** Under the Employment Ordinance, foreign domestic helpers are entitled to the following leaves :
*  Rest days;
*  Statutory holidays; and  Paid annual leave.
*  If both parties agree to renew the contract, the helper shall, before the new contract commences, return to his/her place of origin at the expense of the employer for a paid/unpaid vacation of not less than 7 days according to the standard employment contract (unless prior approval for extension of stay in Hong Kong is given by the Director of Immigration).
*  Leave and payment records should be kept properly to avoid future disputes.

**REST DAYS**

**For employer**

### Q4.2 How should I appoint rest day to my helper?

*  You should provide your helper with not less than 1 rest day in every period of 7 days. A rest day is a continuous period of not less than 24 hours.
*  Rest days shall be appointed by you and may be granted on a regular or an irregular basis. Unless the rest days are on a regular basis, you should notify the helper his/her appointed rest days before the beginning of each month.

### **Q4.3 Can I require my helper to work on his/her rest days?**

  No. Except in unforeseen emergency, you shall not require your helper to work

* on his/her rest days. An employer who compels the helper to work on rest days is in breach of the Employment Ordinance and is liable to prosecution and, upon conviction, to a maximum fine of HK$50,000.
*  You may however, with the consent of your helper, substitute some other day for the appointed rest day. The substituted rest day shall be granted within the same month before the original rest day or within 30 days after it.

### Q4.4 Can I ask my helper to perform duties after he/she returns home on his/ her rest days?

 **STATUTORY HOLIDAYS**

**For both employer and helper**

### Q4.5 How long should a helper work before he/she can enjoy the statutory holidays in a year?

 All foreign domestic helpers, irrespective of their length of services, are entitled to the following statutory holidays:

 The first day of January  Lunar New Year’s Day

 The second day of Lunar New Year  The third day of Lunar New Year

 Ching Ming Festival

 Labour Day, being the first day of May

 The Birthday of the Buddha (newly added from 2022)  Tuen Ng Festival

 Hong Kong Special Administrative Region Establishment Day, being the first day of July

 The day following the Chinese Mid-Autumn Festival  National Day, being the first day of October

 Chung Yeung Festival

 Chinese Winter Solstice Festival or Christmas Day (at the option of the employer)  The first weekday after Christmas Day *(newly added from 2024)*

The additional statutory holidays from 2026 and thereafter are tabulated as follows:

|  |  |  |
| --- | --- | --- |
| **Year** | **Newly added statutory holiday** | **Total number of statutory holidays** |
| Starting from 2026 | Easter Monday | 15 |
| Starting from 2028 | Good Friday | 16 |
| Starting from 2030 | The day following Good Friday | 17 |

If the helper has been employed continuously by the employer for not less than 3 months immediately preceding a statutory holiday, he/she is entitled to the holiday pay.

**For Employer**

**Q4.6 Can I require my helper to work on statutory holidays?**

Yes, but you have to give him/her:

 not less than 48 hours’ prior notice; and

 an alternative holiday within 60 days before or after the statutory holiday.

### Q4.7 Can I ask my helper to forfeit a statutory holiday in exchange for extra wages with his/her consent?

 No. You must not make any form of payment to your helper in lieu of granting a statutory holiday.

An employer who without reasonable excuse contravenes this provision is liable to prosecution and, upon conviction, to a maximum fine of HK$50,000.

### Q4.8 If a statutory holiday falls on my helper’s rest day, is it obligatory for me to grant him/her another holiday?

**A** Yes. If the statutory holiday falls on a rest day, a holiday should be granted on the next day which is not a statutory holiday or an alternative/substituted holiday or a rest day.

**ANNUAL LEAVE AND VACATION LEAVE**

**For Both Employer and helper**

### Q4.9 How many days of annual leave should be given to a helper in a year?

A helper is entitled to paid annual leave after having been employed for every 12 months with the same employer. The helper’s entitlement to paid annual leave increases progressively from 7 days to a maximum of 14 days according to the length of service as follows:

|  |  |
| --- | --- |
| **Years of service** | **Number of days of paid annual leave in a year** |
| 1 | 7 |
| 2 | 7 |
| 3 | 8 |
| 4 | 9 |
| 5 | 10 |
| 6 | 11 |
| 7 | 12 |
| 8 | 13 |
| 9 or above | 14 |

For example, a helper is entitled to 9 days of annual leave after he/she has completed the 4th year’s service during the 2nd 2-year contract with his/her employer.

### Q4.10 Who determines the timing of annual leave taken by a helper?

A helper shall take the paid annual leave to which he/she is entitled within the following period of 12 months at a time appointed by the employer after consultation with the helper, confirmed by a written notice to the helper at least 14 days in advance.

### Q4.11 Should annual leave include rest days and statutory holidays?

No. Any rest day or statutory holiday falling within the period of annual leave will be counted as annual leave. Another rest day or holiday must be appointed.