

# COUNTRY BRIEFER

## HONG KONG SAR

DECENT WORK FOR WOMEN  
MIGRANT WORKERS SERIES



### BACKGROUND



Hong Kong's economic prosperity and relative wealth in Asia and the Pacific region has made it a popular destination for migrant workers.

The minimum wage of a foreign domestic worker in the country is set at HKD 4,630 (USD 597) per month<sup>3</sup>, which is the highest in the region. In addition, with the relatively high wages, statutory weekly rest day and the existing vibrant migrant communities, might make migrant domestic workers consider Hong Kong over other countries in the region.



### COUNTRY OVERVIEW

Main source countries for migrant workforce	the Philippines, Indonesia, Thailand, Sri Lanka, Nepal. <sup>1</sup>
Women's share of total migration	Approximately 98 per cent of total migrant workers in Hong Kong.
Main sectors of employment	Domestic work <sup>2*</sup> , elderly care, construction.

At the same time, the growing participation of women in the workforce in Hong Kong has led to increasing demand for domestic workers to assist with household chores and caregiving.<sup>4</sup> Currently, domestic workers comprise around 5 per cent of the total population and 10 per cent of the total workforce in the territory and can be found in one in every seven households.<sup>5</sup> The overwhelming majority of migrant workers in Hong Kong are women domestic workers. Neoliberal policies of the Hong Kong government, which abrogate state responsibility to provide elderly and child care in favour of market-based solutions also contribute to the increasing demand for domestic and care work.



Hong Kong Labour law guarantees certain rights for migrant domestic workers, such as rest day, annual leaves, sick leaves, maternity protection, long service and severance payment.

In addition, all migrant domestic workers are employed under the government-prescribed Standard Employment Contract, entitled to Minimum Allowable Wage (MAW), free food or food allowance in lieu (HKD 1,121/USD 145 per month), suitable accommodation with privacy and mandatory employer-funded health insurance.



However, the existing law is not sufficient nor adequately implemented to promote, protect, and realise human rights and fundamental freedom of migrant workers. There are numerous documentations of migrant domestic workers in Hong Kong facing malnutrition, lack of rest days, poor living conditions, violence and lack of access to justice.

**Malnutrition** **Lack of Rest Day**  
**Poor Living Condition** **Violence**  
**Lack of Access to Justice**

Hong Kong's population is dominantly (over 90 per cent) Chinese ethnicity, further exposing women migrant workers to multiple and intersectional discrimination in a deeply homogenous society. The vast majority of domestic workers in Hong Kong come from the Philippines and Indonesia, and a smaller number of workers from countries such as Thailand, Sri Lanka and Nepal. The ethnic minority status of migrant domestic workers makes them further vulnerable to abuses as has been demonstrated by the racist statements towards migrant domestic workers.<sup>6</sup>



\* According to recent estimates, there are around 399,320 migrant domestic workers in Hong Kong.

# THE STATE OF 'DECENT WORK' FOR WOMEN MIGRANT WORKERS

## MINIMUM WAGE



The Minimum Wage Ordinance (MWO) is not applicable all migrant domestic workers due to the mandatory live-in requirement.

Justifying the provision of accommodation stated in the Standard Employment Contract, the Hong Kong government set up another minimum wage level, called Minimum Allowable Wage (MAW) for migrant domestic workers. MAW is far below the wage level set in the Minimum Wage Ordinance (HKD 37.5 per hour/ USD 4.8).

The MAW for migrant domestic workers is currently set at HKD 4,630 (USD 596) per month. Furthermore, given the long working hours of migrant domestic workers, in reality they earn around one third of the statutory minimum wage at around HKD 11 (USD 1.4) per hour.<sup>7</sup>



## THE MANDATORY LIVE-IN POLICY FOR MIGRANT DOMESTIC WORKERS

Before the policy was introduced in April 2003, migrant domestic workers had the option to arrange outside accommodation as long as they obtained the consent from the employers.

In 2017, Nancy Almorin Lubian, a Filipino domestic worker lodged a judicial challenge against the mandatory live-in policy, but lost her bid at the Court of First Instance. The Court ruled that the migrant domestic workers cannot acquire the right as their residence does not count as “ordinary residence”<sup>8</sup>. The judgement is a clear marker of the society’s stereotype on domestic workers as second-class citizens. In September 2020, the Court of Appeal upheld the previous ruling, which concluded that the mandatory live-in policy is not unconstitutional.

The mandatory live-in requirement leads to blurring the boundary between life and work and further contributes to working overtime. It also makes domestic workers vulnerable to physical, emotional, and even sexual exploitation and abuse as it puts workers under a complete power dominance of their employers.

The live-in requirement also infringes upon the privacy and quality of life of migrant domestic workers. While employers are mandated to provide appropriate living space for their workers with “reasonable privacy”, there is currently no mechanism for the government to enforce this. High housing costs in Hong Kong mean that domestic workers often end up sharing rooms with employers’ family members or sleeping in common areas.

A 2017 report by the Mission for Migrant Workers (MFMW) found that 43 per cent of the migrant domestic workers in Hong Kong did not have their own room. One in every 50 migrant domestic workers slept in areas such as toilets, storage rooms, stock room or warehouse, backdoor, basement, balcony, roof, etc.

The research also found that around 32,000 migrant domestic workers, representing 14 per cent of migrant domestic workers, did not have ready access to toilets, and 10 per cent of migrant domestic workers reported health hazards due to lack of ventilation.<sup>9</sup>

43%

did not have their own room

14%

did not have ready access to toilets

10%

reported health hazards due to lack of ventilation

1 in every 50

slept in toilets, storage rooms, stock rooms/warehouse, backdoor, basement, balcony, roof, etc.

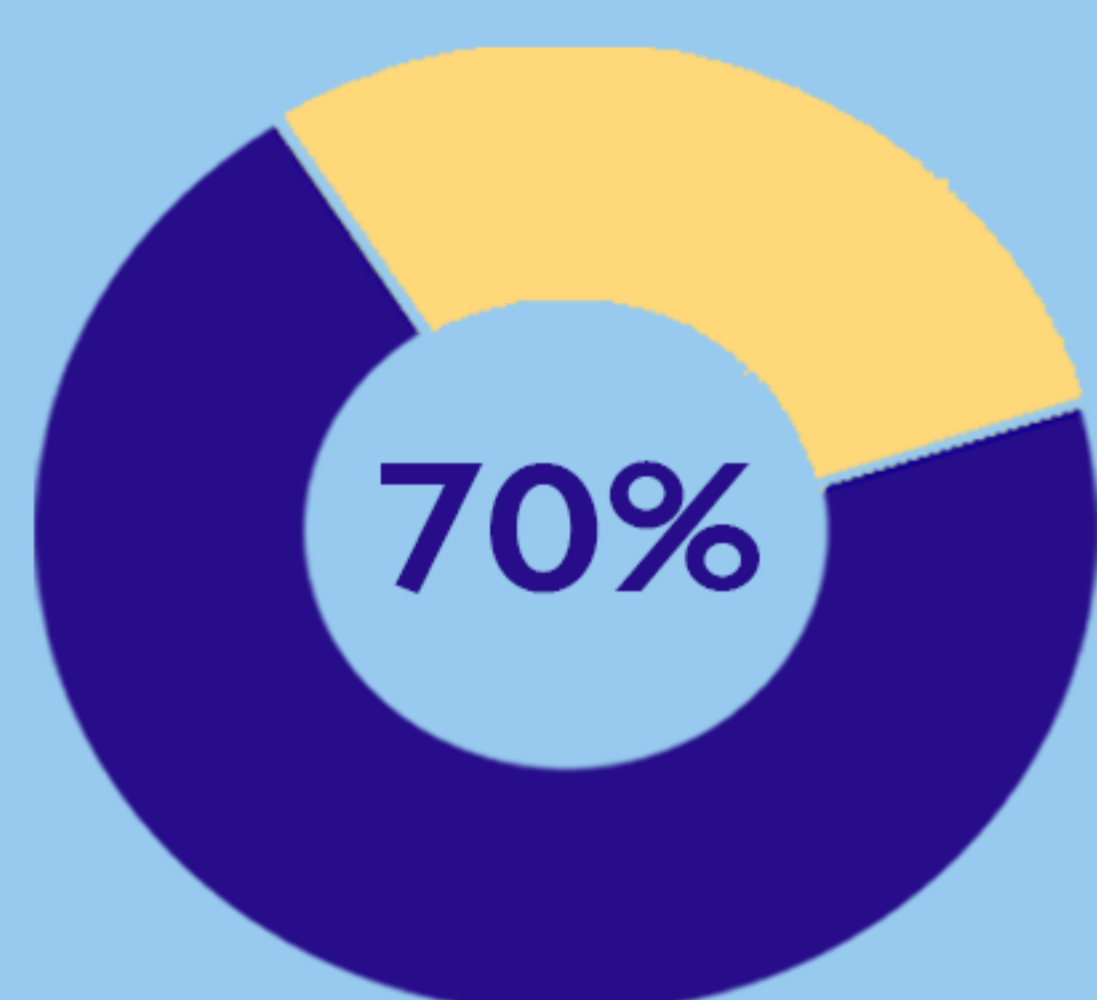
# THE STATE OF 'DECENT WORK' FOR WOMEN MIGRANT WORKERS

## WORKING HOURS

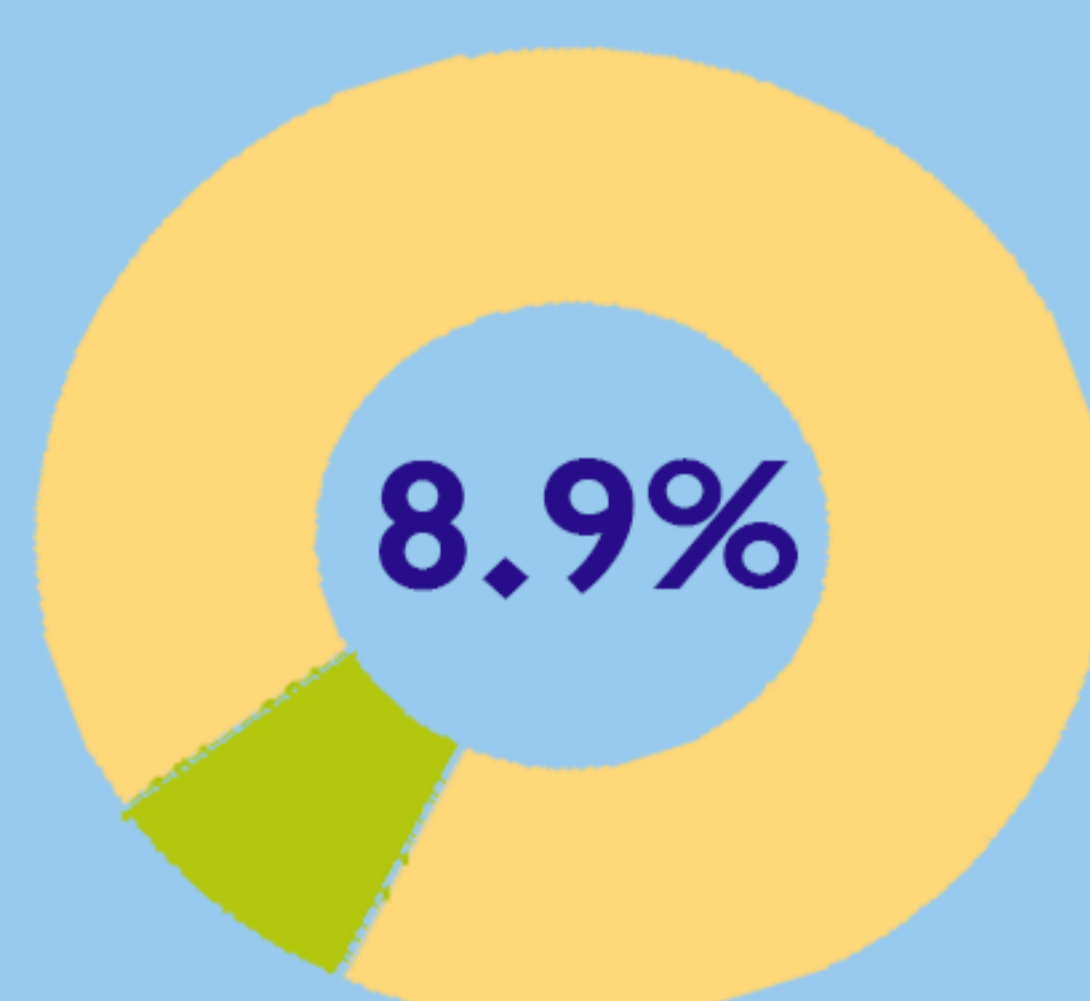


There is no statutory standard working hour system in Hong Kong, and migrant domestic workers tend to work long hours. According to a recent research conducted by the Chinese University of Hong Kong, more than 70 per cent of migrant domestic workers in Hong Kong work over 13 hours a day and 8.9 per cent said they worked more than 16 hours a day.<sup>10</sup> Even the labour law stipulates that there should be a 24 hour leave per week, many

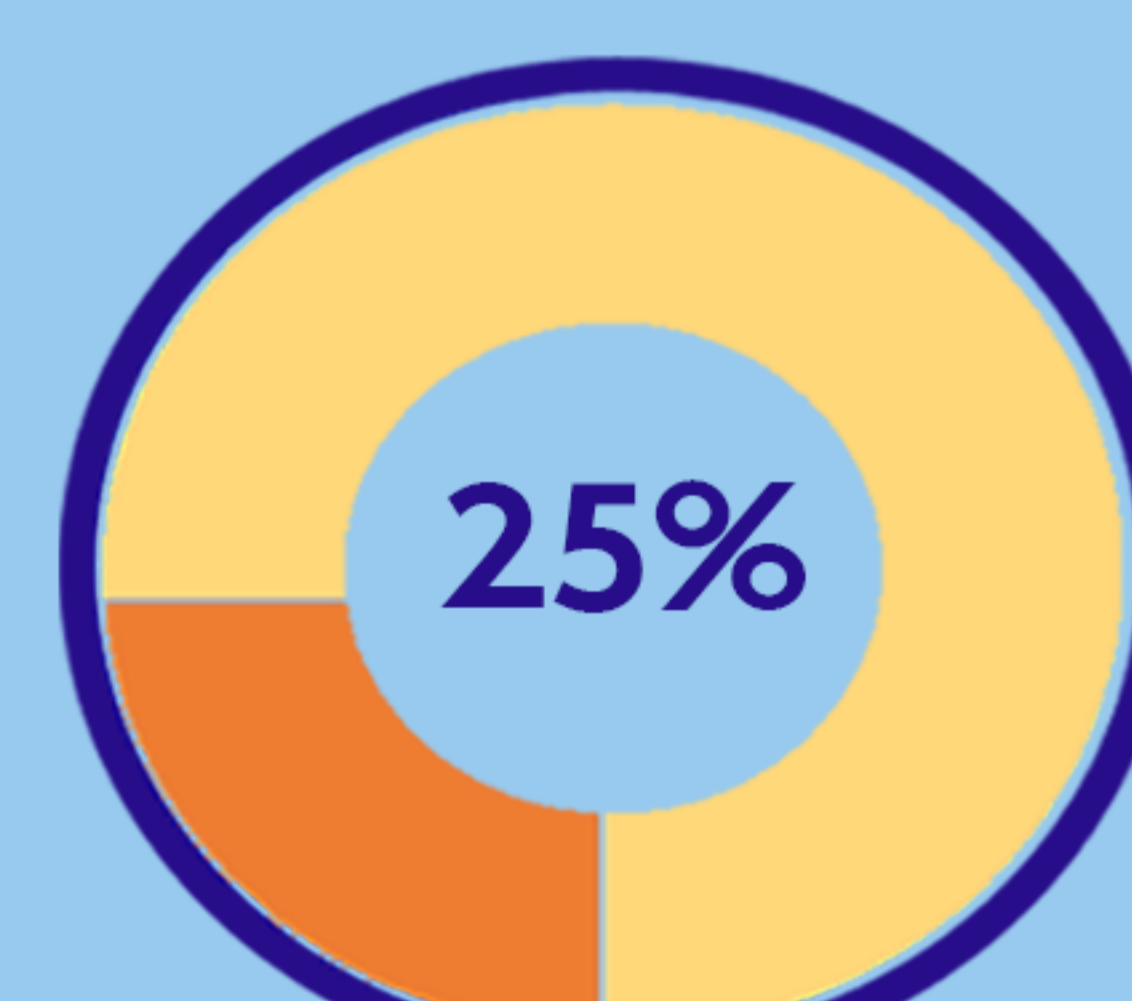
workers reported that they cannot enjoy a full rest day. During the COVID-19 pandemic time, the situation became even worse. A survey<sup>11</sup> conducted by the Asian Migrants Coordinating Body (AMCB) shows some workers are not allowed to go outside on the rest day and 25 per cent of those who did not go out on their weekly rest day still had to work inside the apartment. Some workers reported that they were asked to resign if they insisted on taking their day off.



Over 13 hours/day



Over 16 hours/day



No Day Off

## SOCIAL PROTECTION



While high-skilled migrant workers are covered by social security provisions, such benefits do not extend to migrant domestic workers.<sup>12</sup> For instance, all workers in Hong Kong are required to join the Mandatory Pension Fund Ordinance (MPF), a compulsory saving scheme for the pension fund. Both employees and employers need to contribute at least five per cent of the monthly salary during the employment period, and the employees can withdraw the fund after they reach the age of 60 or leave Hong Kong permanently. However, both local and migrant domestic workers in Hong Kong are not entitled to the mandatory pension scheme.

Also, while foreign professionals are eligible to apply for permanent residency after a seven-year stay, foreign domestic workers were not treated as “ordinary residents in Hong Kong” based on the Immigration Ordinance. This legal understanding prevents migrant domestic workers and their children from meeting the requirement to permanent residency.



**“...SOCIAL SECURITY PROVISIONS, SUCH BENEFITS DO NOT EXTEND TO MIGRANT DOMESTIC WORKERS.”**

# THE STATE OF 'DECENT WORK' FOR WOMEN MIGRANT WORKERS

## MATERNITY RIGHTS AND BENEFITS



Women workers employed under a continuous contract are entitled to ten weeks of statutory maternity leave. According to the Employment Ordinance amendment gazette in July 2020, all the women workers whose actual confinement occurs on or after 11 December 2020 will be entitled to a 14-week maternity leave. The daily rate of maternity leave pay is a sum equivalent to four-fifths (80 per cent) of the average daily wages; while the trade unions have demanded the government to amend the ordinance, so that the maternity leave pay payable is not just calculated at four-fifths, but in full.<sup>13</sup> The Employment Ordinance and the Sex Discrimination Ordinance (SDO) prohibit employers from dismissing a pregnant employee

from the date she is confirmed pregnant by a medical certificate to the date she is due to return to work upon the expiry of her maternity leave. However, implementation of this regulation is often lacking. Pathfinder, the NGO which supports pregnant migrant domestic workers and their children, deals with almost 1,000 cases each year to support migrant domestic workers who are reporting difficulties due to their pregnancy.<sup>14</sup> Those cases shared by migrant domestic workers include employers illegally dismissing their pregnant migrant domestic workers, babies being born and found in public parks, mothers in mental and emotional distress, fathers denying paternity of their own children, children living without legal identity for years and so on.

**NO IMPLEMENTATION**

Maternity Rights & Benefits



**CASES**



## RIGHTS AT WORK



Job stability and security are important indicators of decent work. Migrant domestic workers in Hong Kong are subject to a “two-week rule”, which stipulates that after the completion of a contract, the domestic worker must return to the country of origin within 14 days.<sup>15</sup> The stated purpose of this rule is to prevent migrant workers from “job hopping” or switching employers easily.

However, it has been noted by bodies such as the Committee on the Elimination of Racial Discrimination (CERD), the Committee on the Elimination of Discrimination against Women (CEDAW) and the International Labour Organization (ILO) noted that such rule is discriminatory and puts workers in a very vulnerable position in relation to their employers. It forces workers to stay with abusive employers instead of terminating such contracts since it is extremely difficult to initiate a Labour Tribunal case against a previous employer within the two-week period; or find a new job within such a short time.



**DISCRIMINATORY**  
**"TWO-WEEK RULE"**

# THE STATE OF 'DECENT WORK' FOR WOMEN MIGRANT WORKERS

## RIGHTS AT WORK



Given that legal action takes at least two months to start, this rule creates a fundamental barrier to workers' access to justice or remedies. Abused workers who wish to pursue a legal case against a former employer or agency are forced to pay for multiple visa extensions while they are prevented by law from working, which creates enormous financial strain.

Since migrant workers' visa and place of residence in Hong Kong is tied to their employment contracts, they also face homelessness, destitution and are vulnerable to exploitation and trafficking if they lose their jobs.<sup>16</sup>

Migrant workers also face abuse, social stigma and are shunned in the employment market if they take legal recourse against previous employers. This creates further vulnerability to exploitation and even deterioration of their mental health.<sup>17</sup> The Hong Kong government has rationalised the two-week rule as an incentive for migrant domestic workers to return to their countries instead of looking for a new job or pursuing justice.<sup>18</sup> Given the difficulty in obtaining a new job or pursuing justice under the two-week rule, many migrant domestic workers are likely to suffer abuse in silence in order to keep their jobs.



## FREEDOM OF ASSOCIATION



According to the Trade Union Ordinance in Hong Kong, any person can become a member of a registered trade union if he/she is ordinarily resident in Hong Kong and engaged or employed in a trade, industry or occupation with which the trade union is directly concerned. Therefore, migrant domestic workers in Hong Kong are eligible to join a trade union or form a union. There are migrant domestic workers' unions based on their countries of origin, such as the Philippines, Indonesia, Thailand and Nepal.

Hong Kong has seen strong organising efforts from migrant workers' unions and civil society organisations on a wide variety of issues. Migrant trade unions and associations have carried out campaigns on abolition of the "two-week rule", increase of minimum wage, inclusion to the statutory minimum wage, and abolition of the mandatory live-in requirement as well as the ratification of the ILO Domestic Workers Convention (189) in Hong Kong.<sup>19</sup>

## STRONG MOVEMENT ADVOCACY

Abolish Two-Week Rule &  
Mandatory Live-in Requirement  
Minimum Wage



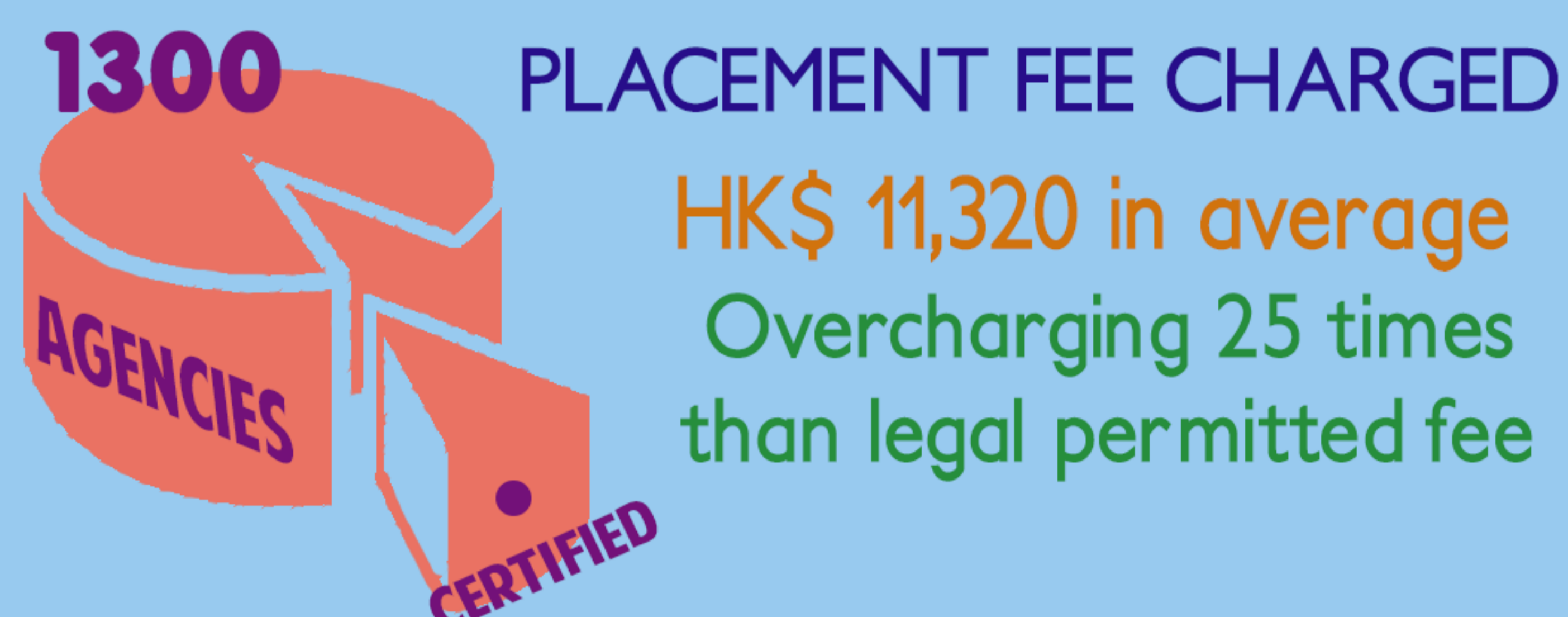
# THE STATE OF 'DECENT WORK' FOR WOMEN MIGRANT WORKERS

## LABOUR INSPECTION & REGULATION OF RECRUITMENT AGENCIES



Inspections by the Department of Labour are limited to recruitment agencies but not of actual workplaces of migrant domestic workers. There are around 1300 domestic worker agencies in Hong Kong, but only a small portion are accredited.<sup>20</sup> A study in 2016 found that domestic workers were not only charged illegal fees in their country of origin by recruitment agencies, but they had to pay further exorbitant fees when they arrived in Hong Kong.

The average amount paid by a migrant domestic worker to placement agencies in Hong Kong is HKD 11,320 (USD 1,458)– about 25 times more than the legally permitted limit.<sup>21</sup>



Domestic workers are forced to pay back these enormous sums to the recruitment agencies, usually deducted from their salaries over a period of four to six months, creating a situation of debt bondage. The recruitment agencies often compel workers into repayment by confiscating their passports or employment contracts as collateral. Receipts are seldom given for payments to the agencies, creating further vulnerability for the workers who are unable to show proof of payment in case of disputes.



Moreover, because of the pressure of repayment to the agencies, migrant domestic workers are deterred from making any complaint against abuse from employers or poor working conditions.<sup>22</sup> In the landmark case of Eriwana Sulistyaningsih, a migrant domestic worker who had appealed for help after being repeatedly tortured by her employer, she was sent back to her employer's place by the agency simply because she had debt to repay.<sup>23</sup>



Labour rights campaigners have also raised questions about the quality of the inspections by the Labour Department. According to a study in 2019, 96 per cent of the agencies that the interviewees have used were not fully compliant with crucial elements of the Code of Practice, while 57 per cent of interviewees were charged illegal agency fees by unscrupulous employment agencies in Hong Kong.<sup>24</sup> However, between 2014 and 2016, when 5,233 inspections of recruitment agencies were conducted, only 13 had their

license revoked and 23 were fined between HKD 1,500 and HKD 45,000 (approx. USD 200–5,700). Activists have argued that such minute punishment does not provide enough of a deterrent to agencies.<sup>25</sup> The Hong Kong government has also been accused of paying little attention to the demands of workers' rights groups, making little effort to gather evidence of working and living conditions of migrant domestic workers and instead allowing the recruitment agencies to submit their own reports.<sup>26</sup>

### EMPLOYMENT AGENCIES



96% Not fully complied  
57% Charging illegal fees

### RECRUITMENT AGENCIES



5,233 Inspection conducted  
13 License revoked  
23 Fined HK\$1,500-HK\$45,000

# THE STATE OF 'DECENT WORK' FOR WOMEN MIGRANT WORKERS

## THE CASE OF ERWIANA SULISTYANINGSIH

### JUSTICE FOR A MIGRANT DOMESTIC WORKER AND THE WAY FORWARD



Erwiana Sulistyaningsih came to Hong Kong from Indonesia at age 21.



Despite the horrific abuse, Erwiana's spirit was not broken, and with the help of organizations such as Mission for Migrant Workers (MFMM), she took legal action against her former employer.



In December 2017, Law was also found guilty in a civil claim for damages caused to Erwiana, and she was ordered to pay HKD 810,000 (USD 103,600) by the District Court.

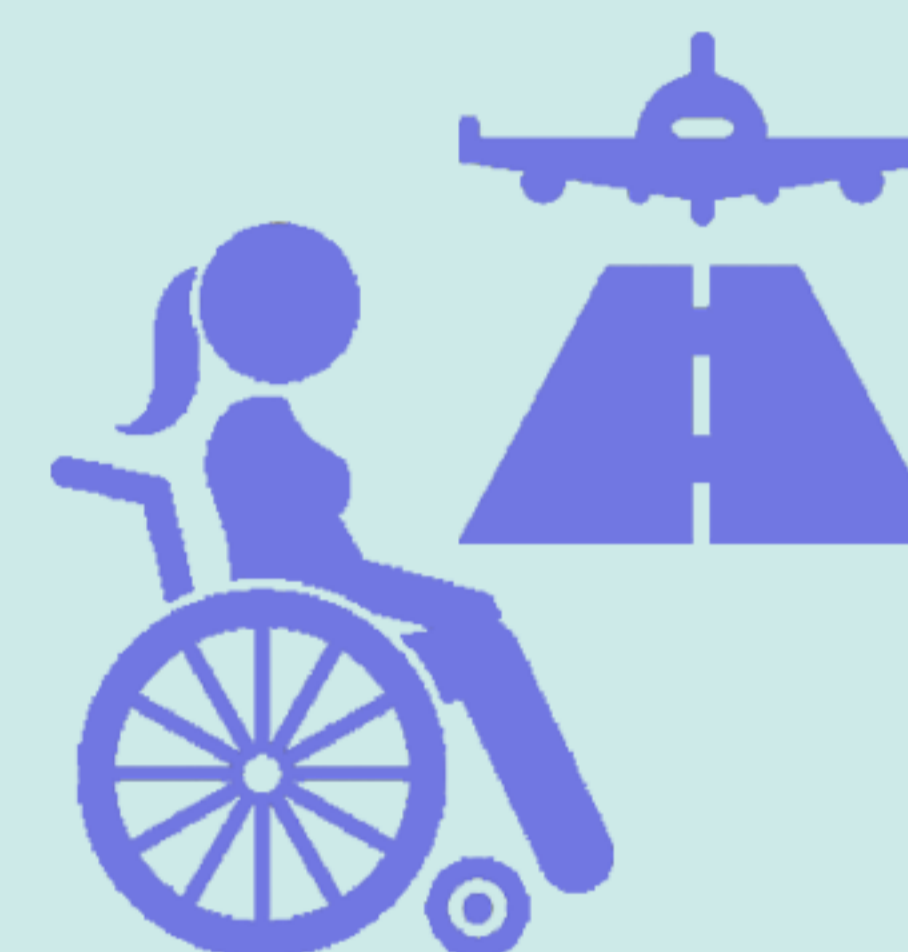
She endured months of torture at the hands of her employer, Law Wan-tung.

2013



Law Wan-tung, who not only abused her physically but tried to break her spirit by threatening to kill her family. Erwiana was not paid for her months of work.

2014



Just eight months after arriving, she was forced to return home with burns, bruises and open wounds, barely able to see and

2015



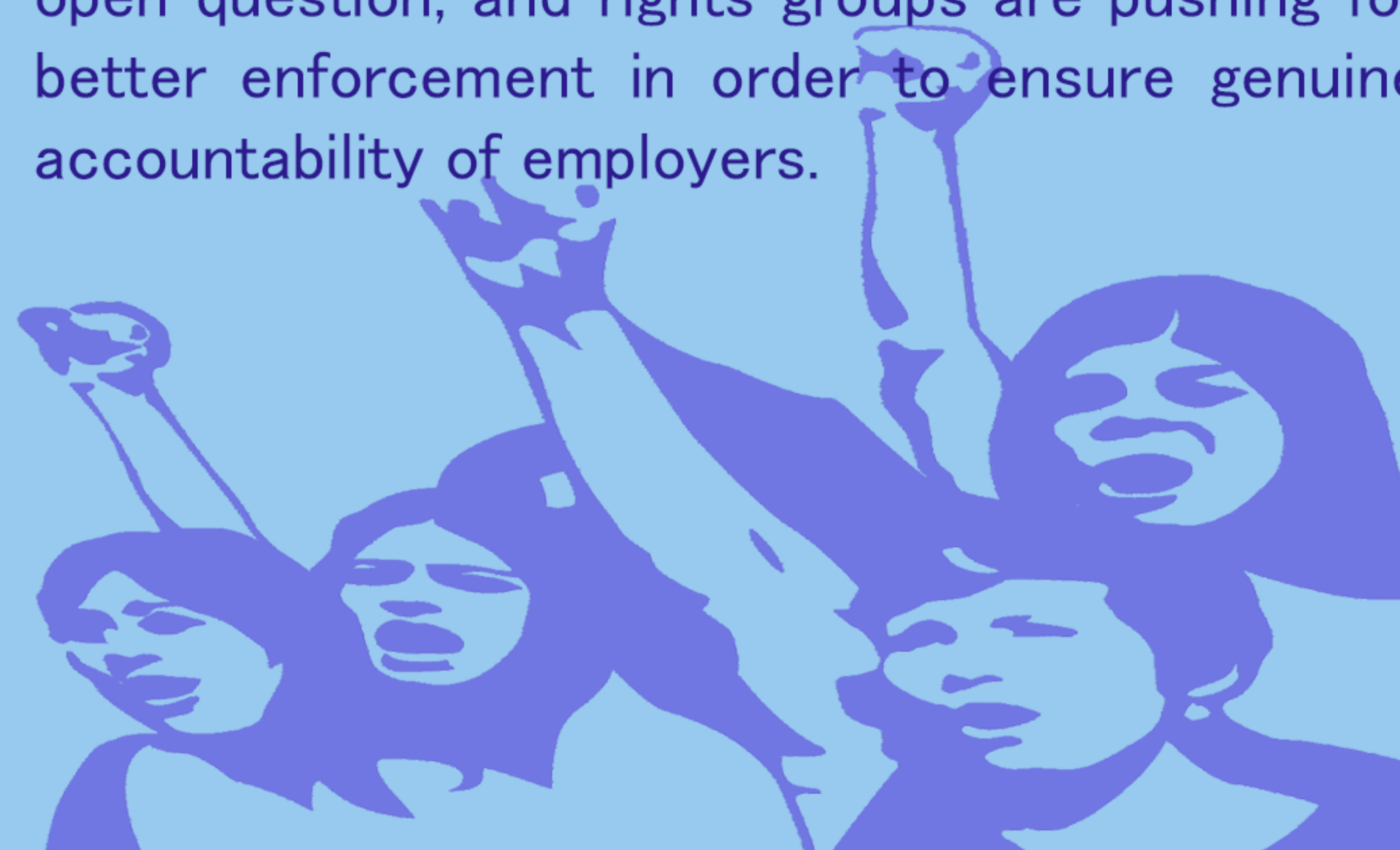
After over one year of legal proceedings, Law Wan Tung was found guilty of assault and criminal intimidation of Erwiana and two other domestic workers. She was fined HKD 15,000 (USD 2,000) and given six years of jail sentence.

2017

The Erwiana case is not only groundbreaking because of the exemplary punishment received by the employer, but it also shows how long and how horrific the abuse can go undetected before any action is taken.

Migrant rights groups have rallied around the Erwiana case in order to push for long-term systemic changes. As a result, a recruitment agency **CODE OF PRACTICE** was drafted by the Hong Kong government to ensure that agencies are held to stricter accountability standards. While the code of practice was initially legally non-binding, further advocacy by civil society has led to an amendment to make it **LEGALLY BINDING**.

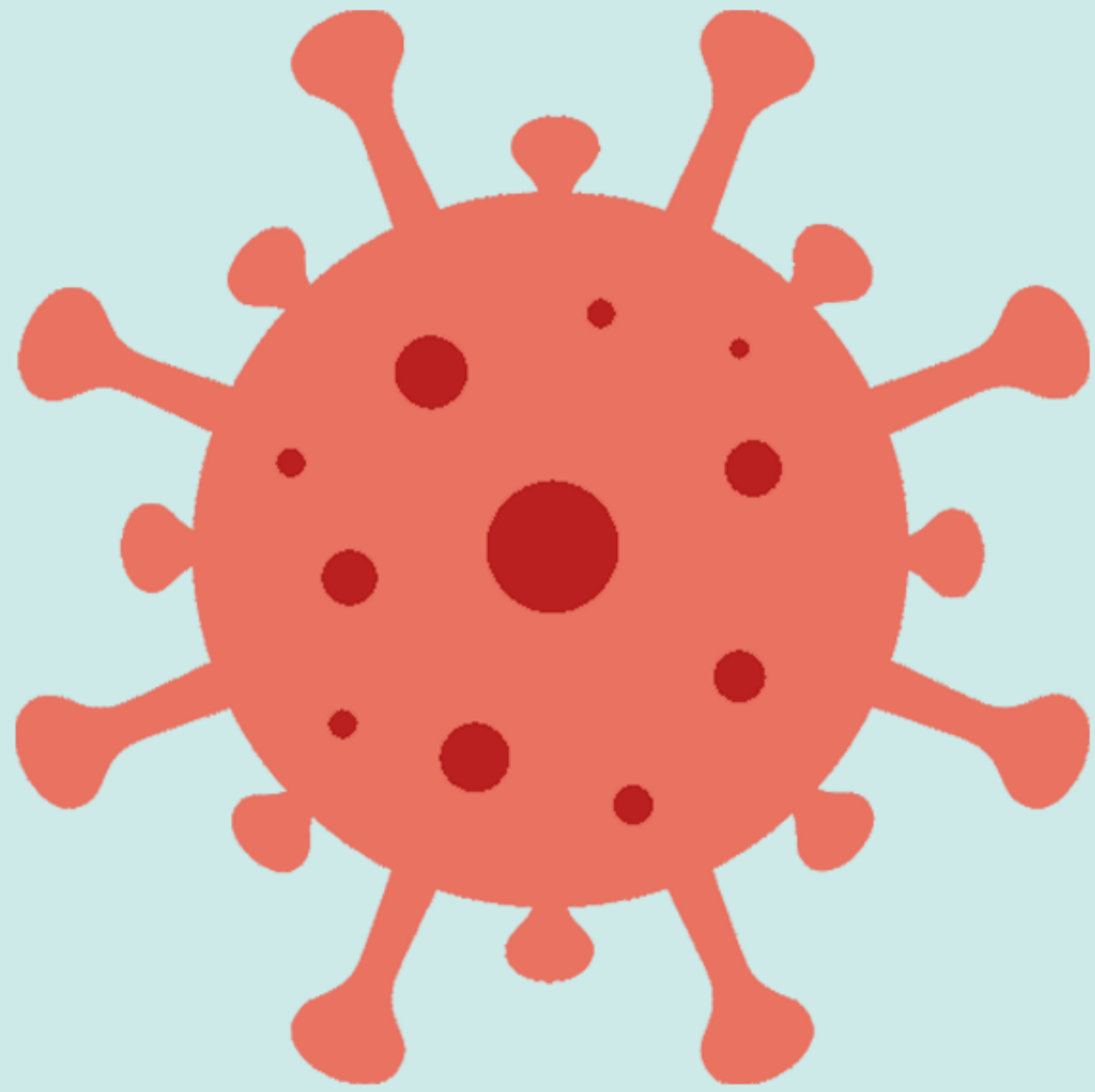
**FINES FOR OVERCHARGING** workers has also been increased from HKD 50,000 (USD 6,441) to **HKD 350,000 (USD 45,090)**. However, implementation of this code of practice is still an open question, and rights groups are pushing for better enforcement in order to ensure genuine accountability of employers.



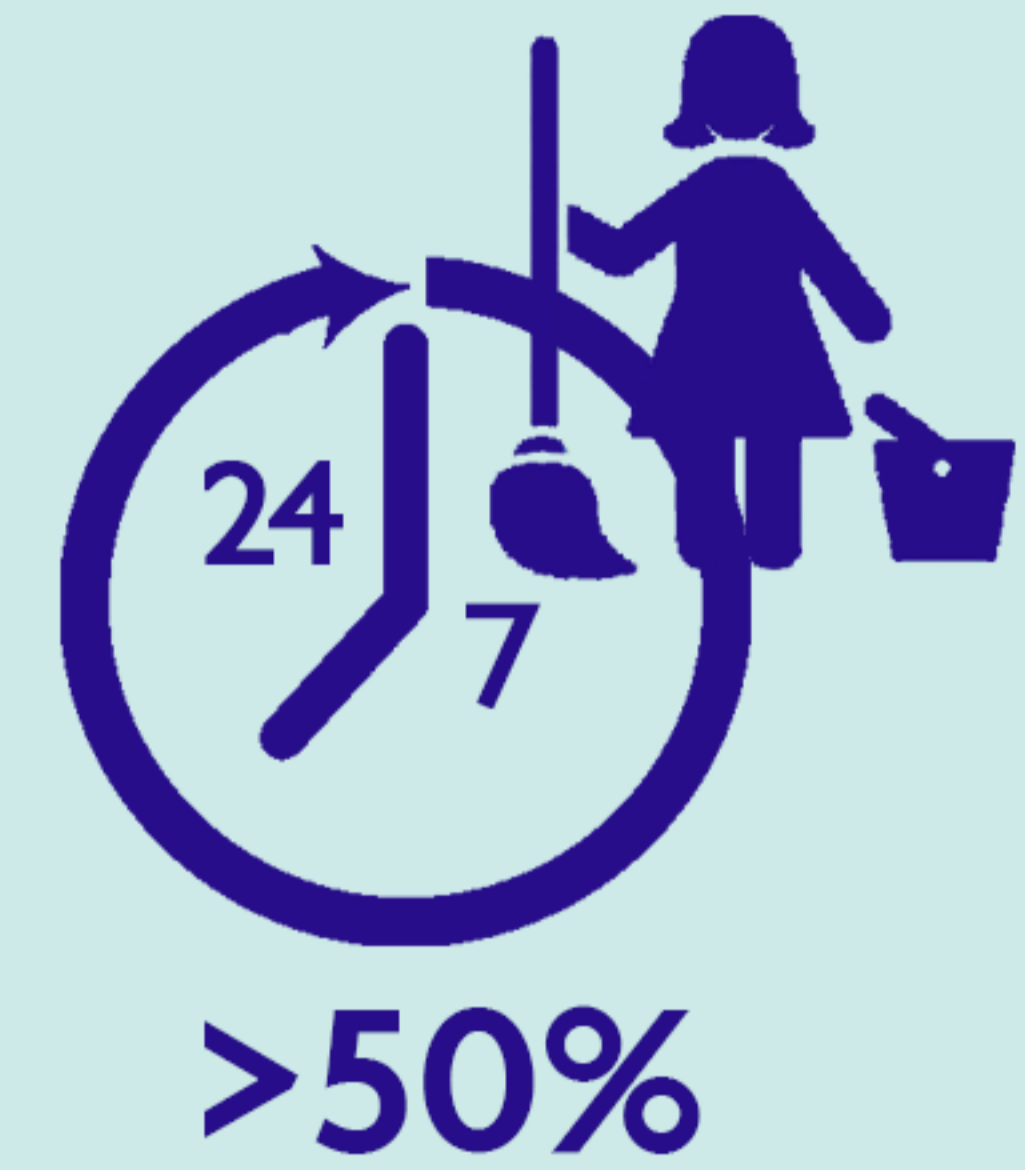
# THE STATE OF 'DECENT WORK' FOR WOMEN MIGRANT WORKERS

## IMPACT OF COVID-19

### PANDEMIC ON MIGRANTS WORKERS IN HONG KONG



An online survey of domestic workers in Hong Kong in March 2020 found that more than half had faced increased working hours during the pandemic. Migrant domestic workers also experience job losses, visa uncertainty and increasing cost or inaccessibility of healthcare.



When migrant domestic workers lose their jobs, they are required by law to leave Hong Kong within 14 days. During the pandemic due to border closure, the government granted visa extensions to workers at a cost of HKD 230/USD 30 per month which has placed a significant financial strain on workers.

According to Hong Kong's Standard Employment Contract, domestic workers who lose their jobs also lose access to public services, including healthcare. During the pandemic this not only created additional financial strain for domestic workers but also made it difficult for workers in abusive or dangerous employment situations to leave their jobs. Moreover, it is very challenging for migrant domestic workers to seek help during the pandemic as they are not allowed to leave the house during their day off. Legal support available to workers is also limited or delayed during this period, creating additional vulnerability for migrant domestic workers.

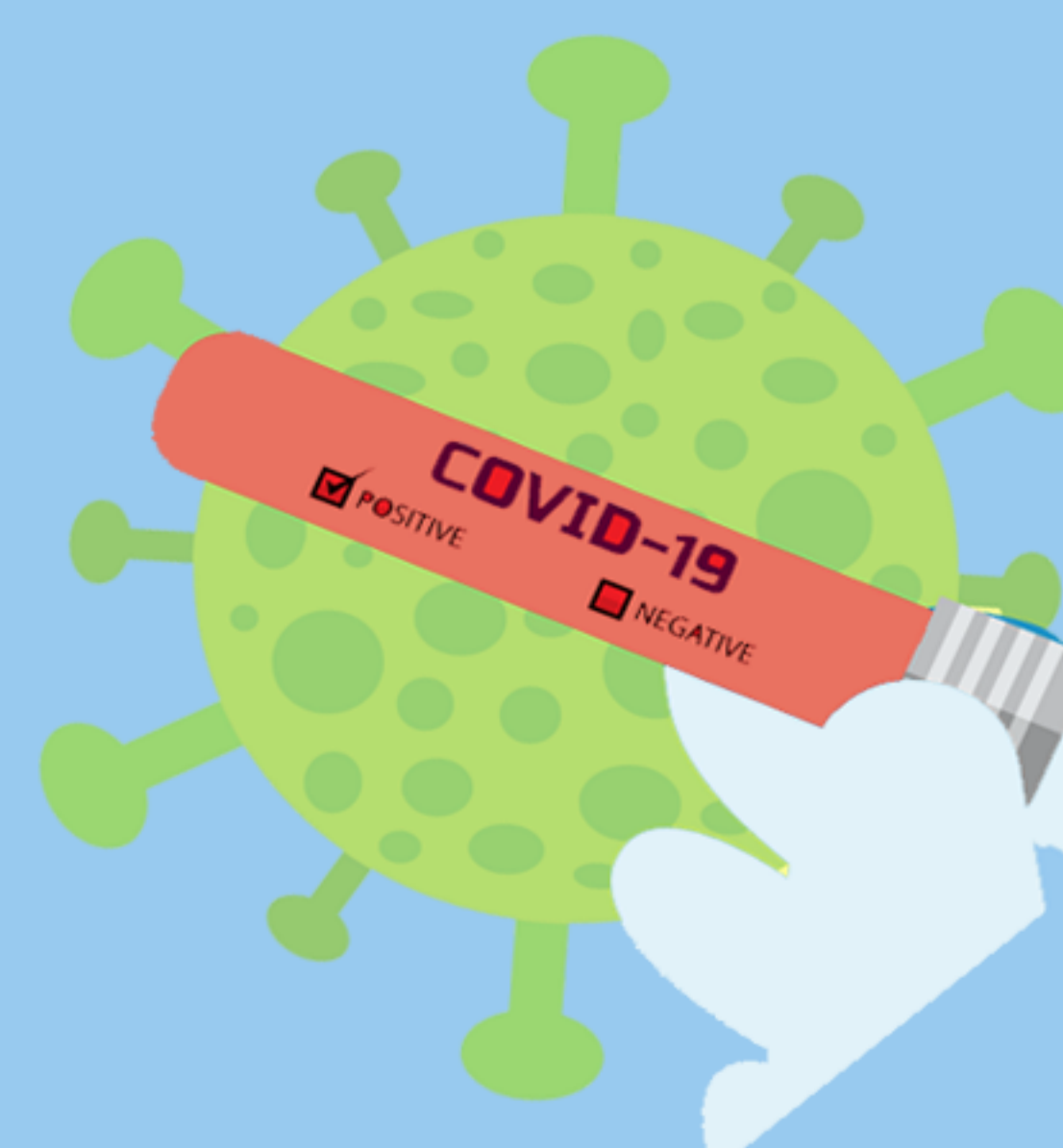
#### "TWO-WEEK RULE"



LIMITED ACCESS



In August 2020, the Hong Kong government announced a limited set of measures to help migrant workers, including free COVID-19 testing and masks. But no other measures were taken to provide financial or medical support to unemployed migrant workers.



FREE





# LAW AND POLICIES ON MIGRANT WORKERS' RIGHTS

All employees in Hong Kong, including the migrant domestic workers, are entitled to basic protection under the Employment Ordinance such as payment of wages, restrictions on wages deductions and the granting of statutory holidays. Employees who are employed under a continuous contract\* are entitled to further benefits such as rest days, paid annual leave, sickness allowance, severance payment and long service payment. The Labour Department is primarily responsible for regulating and enforcing the laws to protect the rights of migrant domestic workers. An overview of key legislative protection for workers (including migrant domestic workers) is as follows:

## STANDARD EMPLOYMENT CONTRACT

(applied to migrant domestic workers only)

A two-year Standard Employment Contract specifies the terms and conditions of employment of a migrant domestic worker in Hong Kong. Under the Standard Employment Contract, workers are entitled to:

- Minimum Allowable Wage
- Food allowance if no food is provided by the employer
- Free accommodation
- Free passage to and from their place of origin
- Free medical treatment, including medical consultation, maintenance in hospital and emergency dental treatment
- Paid or unpaid home leave with cost of passage at the expense of the employer

## PAYMENT OF WAGES

Wages should be paid not later than seven days after the end of the wage period or date of termination of contract. An employer who fails to pay wages to a worker within seven days after they become due is liable to prosecution and, upon conviction, to a fine of HKD 350,000 (USD 45,161) and to imprisonment for three years.

## DEDUCTION OF WAGES

Deduction of wages is prohibited except:

- Due to damage to or loss of employer's goods or property attributable to the negligence or default of the "helper" (deduction cannot exceed HKD 300/ USD 38 each time)
- Absence from work not exceeding a sum proportionate to the period of absence;
- Recovery of advance or over-payment of wages; and
- Recovery of loan made to the helper with the helper's written request, etc.

Total deductions, excluding those for absence from work, must not exceed one half of the wages payable in that wage period.

\* An employee who has been employed continuously by the same employer for four weeks or more, with at least 18 hours worked in each week is regarded as being employed under a continuous contract.

# LAW AND POLICIES ON MIGRANT WORKERS' RIGHTS

REST DAYS	At least one rest day in every period of seven days
STATUTORY HOLIDAYS	<ul style="list-style-type: none"><li>● 12 statutory holidays in a year; and</li><li>● holiday pay if he/she has already been employed for three months preceding any of the statutory holidays.</li></ul>
ANNUAL LEAVE	<p>Paid annual leave after serving every period of 12 months with the same employer at the following rate:</p> <ul style="list-style-type: none"><li>● seven days each for the first and second year of service; and starting from the third year, the number increases by one day per year up to a maximum of 14 days.</li></ul>
SICKNESS ALLOWANCE	<p>A migrant domestic worker is entitled to sickness allowance if he/she:</p> <ul style="list-style-type: none"><li>● has accumulated the number of paid sickness days;</li><li>● the sick leave taken is not less than four consecutive days; and</li><li>● the sick leave is supported by an appropriate medical certificate</li></ul>
SEVERANCE PAYMENT	<p>Migrant domestic workers are entitled to severance payment if he/she:</p> <ul style="list-style-type: none"><li>● has at least 24 months of service with the same employer prior to the termination; and</li><li>● is dismissed or the contract is not being renewed by reason of redundancy.</li></ul>
LONG SERVICE PAYMENT	<p>Migrant domestic workers are entitled to long service payment if he/she:</p> <ul style="list-style-type: none"><li>● has been employed continuously for not less than five years</li><li>● is dismissed or his/her contract is not renewed by reason other than serious misconduct or redundancy</li></ul>

# STATUS OF RATIFICATION OF INTERNATIONAL INSTRUMENT AND CONVENTIONS

NAME	ADOPTION STATUS
INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR)	✓
INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ICESCR)	✓
INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (ICERD)	✓
CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)	✓
INTERNATIONAL CONVENTION ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES (ICMW)	✗
ILO 29 FORCED LABOUR CONVENTION	✓
ILO 87 CONVENTION ON FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE	✓
ILO 97 MIGRATION FOR EMPLOYMENT CONVENTION	✓
ILO 98 CONVENTION ON RIGHT TO ORGANISE AND COLLECTIVE BARGAINING	✓
ILO 100 CONVENTION ON EQUAL REMUNERATION	✓
ILO 105 ABOLITION OF FORCED LABOUR CONVENTION	✓
ILO 111 DISCRIMINATION IN EMPLOYMENT AND OCCUPATION CONVENTION	✗
ILO 143 MIGRANT WORKERS (SUPPLEMENTARY PROVISIONS) CONVENTION	✗
ILO 156 WORKERS WITH FAMILY RESPONSIBILITIES CONVENTION	✗
ILO 181 ON PRIVATE EMPLOYMENT AGENCIES CONVENTION	✗
ILO 183 MATERNITY PROTECTION CONVENTION	✗
ILO 189 DOMESTIC WORKERS CONVENTION	✗
ILO 190 VIOLENCE AND HARASSMENT CONVENTION	✗

✓ Remains in force after transfer of sovereignty

✗ Not ratified

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## Asia Pacific Forum on Women, Law and Development

**Email : [apwld@apwld.org](mailto:apwld@apwld.org)**

**Website: [www.apwld.org](http://www.apwld.org)**

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