Evaluating the Two-Week Rule

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CONTENTS

1. Overview: Hong Kong's Two-Week Rule
2. Foreign Domestic Workers Trapped by the Two-Week Rule
3. Reforming the Two-Week Rule
4. Messaging Guide: How do we make it happen?
5. Audience Profiles: Who plays a part in this reform?
6. An Analysis of Labor Laws in Hong Kong
7. Coalition & Partnership
8. Stories
9. Call to Action: What can you do?
10. Measurement & Evaluation: How we measure our impact
11. Resource Library

Overview: Reforming the Two-Week Rule

Since 1987, Foreign Domestic Workers (FDWs) in Hong Kong have been bound by the Two-Week Rule, a policy requiring migrant workers to leave within 14 days of termination. [1] While originally created to deter "job-hopping," the practice of breaking contracts to seek higher paying employment, this regulation has created vulnerability for roughly 400,000 migrant workers in Hong Kong. [12]

In practice, the Two-Week Rule forces FDWs into an impossible situation. Because finding a new employer and processing a visa usually takes several weeks, if not months, workers who lose their jobs usually face homelessness and deportation. [2] Hence, due to the practical implications of termination, the Two-Week Rule effectively renders workers powerless; unable to speak up against employer abuse in fear of deportation and financial loss. [2] Even in instances where workers do seek legal justice against oppressive treatment, they are rarely able to stay within Hong Kong long enough for their cases entertained within the Labour Tribunal, making both proactive and reactive justice completely unattainable. [2]

To combat the dated belief of job-hopping, this advocacy toolkit aims to convince key stakeholders, such as the Hong Kong Immigration Department, the Hong Kong Labor Department, and Ministries of Foreign Affairs to embrace a replacement towards the two week rule.

This Policy Advocacy Toolkit will propose two viable solutions:

1. A Blanket Extension: Extending the departure window domestic workers have from 14 days to 42 days, in order to offer migrant workers adequate time to process visas and seek new employment.
2. A 'Tiered' System Approach: Holistically, evaluating the unique circumstances of each FDW, and offering different amounts of time to seek new employment based upon the specific circumstances of their termination.

Ultimately, this toolkit aims to discuss the specific hardships FDWs face within Hong Kong, propose alternatives to the current Two-Week Rule, and foster more dialogue about the rights and liberties of FDWs.

By objectively analyzing the nuances faced by FDWs, this policy advocacy toolkit aims to serve as a data-driven guide for policymakers and advocates. Throughout this toolkit, you will find several notable sections, including audience profiles, an analysis of current labor laws, and real life stories from migrant workers, all detailing why reform is imperative.

Foreign Domestic Workers Trapped by the Two-Week Rule

Although the Two-Week Rule was initially established and justified as a deterrence to "job-hopping," official governmental data highlights the misleading nature of the term. [7] According to official statistics from the Hong Kong Immigration Department (ImmD), collected over a five year period, only about 1,817 applications for visas were refused for suspected "job-hopping" out of a total 544,000 visa applications. [7] Numerically, this represents a mere 0.33% of all applicants, or around 3 out of 1000 applications. [7]

Realistically, the act of changing employers is incredibly difficult for the average FDW because of the extreme costs associated with the process. For starters, FDWs usually have to cover significant amounts of housing costs; and in addition, cannot legally stay with a new employer until a visa is issued. [4] In a time span of 2-to-6 weeks, even hostel fees for FDWs add up quickly. Not only do these workers need to survive within the city of Hong Kong, which requires several thousand dollars; they must also account for daily living costs, including food and transportation. Beyond the cost of living, many agencies within Hong Kong frequently charge FDWs several fees during this 2-to-6 week period of time. Although theoretically there exists a cap for placement fees at 10% of a FDWs first month's salary, hidden charges like document processing fees, administrative surcharges, and medical examinations usually remain unregulated.[9] Finally, many consulates such as the Philippine Consulate and Indonesian Consulate require paperwork and processing, additional steps that create significantly more expenditure. When combined, FDWs can expect to pay anywhere from 4,000 HKD to 7,000 HKD simply to survive and process a new labor contract–amounting to more than a full month's wage for a worker. [2] Practically, voluntary "job-hopping" is both economically and logistically unfeasible for workers earning 5,100 HKD a month.

Rather than serving its intended purpose, the Two-Week Rule realistically functions as a legal trap that produces three distinct consequences:

1. Forces Workers to Stay Silent - Even when faced with physical and psychological abuse, the reality of deportation in 14 days from termination renders workers helpless. Especially when we consider the fact that FDWs have external obligations like remittances to send home. This put many FDWs in financially strenuous employment situations.
2. Blocks Access to Legal Help - Given the fact that labor court cases take several months, a worker who needs to leave within 14 days is physically unable to stay within Hong Kong for a verdict.
3. Entrenches Debt - The fee agencies charge FDWs to match with employers in Hong Kong is often too great to bear individually; leaving workers no choice but to take massive loans. If deported, FDWs will almost certainly be left with no income to pay off compounding debts.

Reforming the Two Week Rule

Although the Two-Week Rule may seem difficult to reform given its entrenchment within Hong Kong politics, the solution to addressing the Two-Week Rule is actually rather simple. This policy advocacy toolkit offers two main options:

Option A: A Blanket Extension to 42 Days
Although an extension of the Two-Week Rule to 42 days may seem random, it is backed by the realities faced by FDWs when seeking new employment. According to the Immigration Department of Hong Kong, it takes approximately 4-to-6 weeks for a FDW to successfully apply and receive a new employment visa. When put into practice, what the 4-to-6 week span required means is even if a worker is able to immediately find new employment, it is near impossible for them to renew their documents upon termination.

The largest practical benefit of a blanket extension is that practically, it is incredibly simple to implement. Unlike the 'Tiered' Approach, it requires no complex case-by-case evaluation from immigration officers and can easily be executed.

Option B: The 'Tiered' Circumstantial Approach
What a 'Tiered' Approach entails is replacing the current "one-size-fits-all" rule with a flexible timeline, based upon the rationale provided by migrant workers for contract termination. In order to determine what tier each termination entails, migrant workers can submit an application to the Immigration Department.

Tier 1: Standard Terminations (30 Days)
As the lowest tier, standard termination occurs within contexts where contracts naturally end or under standard procedure of termination. Unless migrant workers explicitly apply for an extension under Tier 2 or Tier 3, all workers are granted the 30-day window (a standard window the termination offers to migrant workers).

Tier 2: Employer Caused Disruptions (45 Days)
Unlike Tier 1, Tier 2 occurs within contexts where termination of employment is directly caused by issues on the employers side. In practice, what this could look like is employers facing financial hardship, moving to a new country or passing away.

Tier 3: Exploitation or Unlawful Dismissals (90 Days)
Tier 3 grants workers a 90-day extendable visa window based upon context and temporary working rights; ensuring workers pursuing legal action are able to support themselves while cases are heard.

Messaging Guide: How do we make it happen?

Realistically, it will be rather difficult to convince all stakeholders within Hong Kong to embrace reform towards the Two-Week Rule, something that has existed for so long. Hence, to garner support for policy reform, this policy advocacy toolkit offers several key methods of positioning—towards families, towards governments, and towards fairness and morality.

1. An Extension is Better for Hong Kong Families
   For the average family, finding a trustworthy FDW is incredibly important, given the importance of fit. Hence, when we consider the time and rigor required to properly research, screen, and interview domestic workers, it is only intuitive for us to allow domestic workers to stay longer. Otherwise employers are either forced to hire under immense time constraints or wait months when hiring overseas. If we were to expand the Two-Week Rule to 42 days, employers would gain the necessary time to hire experienced and pre-vetted workers for their households.

2. Reform Resolves Current Administrative Pressures
   As noted by the Hong Kong Immigration Department, properly processing and reviewing applications for visa renewals requires around 4-to-6 weeks on average. [4] However, given the fact that currently domestic workers are only able to stay for two weeks, [2] it is administratively impossible for the Immigration Department to properly process all applications, leaving immense amounts of backlog, emergency extension requests, and administrative strain on the system. If we were to simply expand the Two-Week Rule to a period of 42 days or if we established a 'Tiered' Approach, the government can easily eliminate unnecessary applications and processes that currently exist.

3. Reform is Principally Justified to Dismantle the "Job-Hopping" Myth
   Given the fact that the primary justification to the Two-Week Rule is focused on decreasing "job-hopping," it is illogical and morally contradictory for us to maintain the Two-Week Rule when both the Hong Kong Immigration Department's statistics and the realities of Migrant Workers highlight the impracticality of "job hopping." As noted earlier, over a five-year period only about 1,817 out of a total 544,000 visa applications were actually rejected by the Immigration Department as "job-hoppers," meaning that even in the eyes of the Hong Kong government, "job-hopping" is a near zero percent problem. [5] Hence, for us to maintain the Two-Week Rule under the guise of a non-reality is inherently contradictory and unjust—it is a rule punishing the vast majority of FDW for a problem that exists primarily in rhetoric.

Audience Profiles: Who Plays a Part in This Reform?

In order to properly implement reform against the Two-Week Rule, stakeholder mapping is necessary to establish key stakeholders and their role in change.

Hong Kong Government (Immigration Department, Labour Department)

- The Immigration and Labour Departments are executive branches of the Hong Kong Special Administrative Region (HKSAR) Government, responsible for handling immigration, labor laws, and other legislation regarding domestic worker employment. [4]
- The interest and influence that the Hong Kong Government has is incredibly high, given the fact that they hold sole authority over the Two-Week Rule. Any policy extension whatsoever must be approved and enforced by them.

Local NGOs (e.g., Mission for Migrant Workers, Justice Centre)

- Non-governmental organizations and other community-based organizations are primarily responsible for offering direct assistance to migrant workers, whether it be helping with legal cases, offering financial support, or generally advocating for them. [3]
- Although the interest of NGOs is high in the aim of offering support to domestic workers, the relative influence most NGOs have is low, as they lack formal legislative power or any capacity to influence legislation. Hence, their ability to advocate for migrant workers is heavily reliant on indirect methodology, such as making use of the media.

Consulates-General in Hong Kong (e.g. Philippines, Indonesia)

- Consulates-Generals are the equivalent of a foreign nation's labor and welfare office. As an extension of the government it operates under, they are primarily responsible for verifying employment contracts, offering emergency assistance, and protecting the rights of their workers in Hong Kong. [6]
- The interests of Consulates-Generals are relatively high, given their dedication to maintaining the safety and wellbeing of their citizens. [6] While consulates may not have the direct capacity to rewrite immigration laws, they hold large amounts of diplomatic leverage, allowing them to negotiate with the Hong Kong Government when it comes to rights and regulations for their citizens. [4]

Employment agencies

- Employment agencies primarily act as a middleman between foreign domestic workers and Hong Kong households, connecting domestic workers within the Philippines, Indonesia, and other countries to families in Hong Kong which request domestic workers. Asides from connection itself, they also handle background checks, visa processing, and other logistical tasks. [8]
- The interest of employment agencies is relatively high, as they depend on a steady inflow of domestic workers seeking employment for their business model of placement to be profitable. However, when it comes to legislative change, the influence of employment agencies is rather low as they lack any influence on formal policy. [8]

An Analysis of Labor Laws in Hong Kong

Although Labor Laws in Hong Kong seem relatively just on paper, several legal loopholes and legislative policies make it such that the actual enforcement of these rights is practically impossible for FDWs. To understand what this looks like, an analysis of the Employment Ordinance (or Cap. 57) is necessary. [10]

The Employment Ordinance (Cap. 57) is the primary ordinance that dictates what labor laws in Hong Kong look like, detailing the specific rights and protections workers have. [10]

While Cap. 57 applies broadly, many exclusions and other legal loopholes make it much harder for FDWs to access equality, such as:

1. The Statutory Minimum Wage - Cap. 57 explicitly excludes domestic workers from the Minimum Wage Ordinance (Cap. 608). [10] Hong Kong's statutory minimum wage is 43.1 HKD per hour, yet domestic workers are bound to a separate government-set minimum wage of just 5100 HKD a month. When we account for the fact that the average domestic worker works for 13 hours a day, six days a week, a minimum wage of 5100 HKD equates to an hourly rate of just 15.09 HKD per hour, almost three times less than the statutory minimum wage.
2. Statutory Dispute Mechanisms - Considering that Labour Tribunals usually take several months to process a case, FDWs under the Two-Week Rule usually need to pursue a legal claim under a visitor visa extension, forbidding them from engaging in any paid work. This creates an unavoidable tradeoff, where workers are forced between choosing statutory rights litigation under Cap. 57 or surrendering those litigation rights to leave Hong Kong, and continue work.
3. Exclusion from Retirement Savings Frameworks - While employers in Hong Kong are legally required to contribute 5% of a worker's monthly salary towards a retirement fund, employers of domestic workers are exempt by law from this requirement, making it much harder for domestic workers to accumulate employment-related capital in the long-term.[10]

Besides Cap. 57, a crucial statute that discriminates against FDWs is the Immigration Ordinance (Cap. 115). [4] Under Section 2(4)(a)(vi) of Cap. 115, the law explicitly states that any time spent in Hong Kong as a domestic worker does not count toward residency for the purpose of permanent residency. [4] Even if a domestic worker resides, works, and pays taxes for 20 years in Hong Kong, the law completely bars them from ever qualifying for permanent resident status (with the seven years required to achieve so).

Ultimately, the strict vulnerability of FDWs in Hong Kong is not just one caused by social circumstances. Rather, it is due to a cumulation of several oppressive legislative statutes currently set in Hong Kong's Ordinances.

Coalition and Partnership

Although reform is difficult, it is important to note that there are many existing civil society groups with the experience and numbers necessary. Below are potential paths that you can go about to form a coalition and partnership aimed at addressing migrant worker exploitation as a unified front.

Potential Partnering Organizations

- HELP For Domestic Workers - Frequently provides free legal advice and hosts educational workshops for migrant domestic workers in Hong Kong.

- Enrich Hong Kong - Offers financial literacy classes to migrant domestic workers in Hong Kong based on comprehensive data of the specific employment agencies and financial scams migrant workers are susceptible to.

- Mission for Migrant Workers - Most known for its grassroots work with migrant workers in Hong Kong, offering direct services like emergency shelter, health checkups, and legal assistance.

- Asia Pacific Mission for Migrants - Conducts extensive research on the rights and liberties of Migrant workers in Hong Kong and across Asia.

Methods to Mobilization

Written below is a step-by-step process that makes use of the tools advocacy groups have:

1. Pool Evidence and Data
   When you total up the data and research the aforementioned organizations have, you can easily build a comprehensive database of statistics and information, such as the financial nuances migrant workers face. Totaled up, building a registry highlighting the real impacts of the Two Week Rule is rather feasible.

2. Gather Real Life Stories
   Interview migrant workers and document individual case studies of workers affected by sudden contract terminations and the Two-Week Rule.

3. Host Grassroots Campaigns
   Host public awareness events at popular locations to build public support and awareness.

4. Co-Write a Policy Brief to the Hong Kong Legislative Council
   With this information, draft a policy paper with the signatories of your partnering organizations. When presented by multiple civil society groups and the general public, maintaining attention is possible.

Stories

For the purpose of providing empirical evidence behind the exploitation of FDWs, this policy advocacy toolkit will detail three high-profile stories of employee abuse—highlighting an example of the exploitation many domestic workers face. [11]



Abuse and Exploitation - Erwiana Sulistyaningsih
Daily Schedule: Erwiana was forced to work 21 hours a day, only allowed to sleep on a strict daily schedule from 1:00 AM to 4:00 AM on a floor mat rather than “suitable accommodation” as dictated by legislative requirements. [13]

Injuries: During her eight month tenure with Law Wan-tung, Erwiana faced severe impairment towards several critical body parts that were crucial to her daily functioning. Namely, the District Court (DCCC 421/2014) documented that the victim suffered from immense physical assault using a multitude of physical items, leaving her with facial lacerations and irreversible dental fractures. [14]

Documental Seizure: Upon arrival, vital documents including her passport, employment contract, and Hong Kong ID were confiscated by her employer. Over her eight months of employment, she received no wages whatsoever. [13]



Two-Week Rule Confinement - Kartika Puspitasari
Extreme Confinement and Deprivation: Over her two-year employment inside a Wan Chai apartment, Puspitasari was denied a bed, and forced to sleep on a plastic chair in the kitchen. Whenever her employers left the home, she was tied to a chair to bar her from leaving the apartment. She was also denied meals and the freedom of using the bathroom. [15]

Coercion: Similarly to Erwiana, Kartika received zero financial compensation for her two years of forced labor.

[15] Trapped by the threat of the Two-Week Rule and agency debt that would follow her back to Indonesia, Kartika was coerced into remaining under employment, knowing that resigning meant her visa would be cancelled in 14 days. [15]



Illegal Termination - Baby Jane Allas
Termination Upon Illness: Legislation and general labor laws in Hong Kong explicitly forbid termination on the basis of health conditions. [16x] However, upon Baby Jane Allas's diagnosis of stage-3 cervical cancer, Allas was quickly terminated just one month later, in which her employer explicitly cited her cancer as the reason for dismissal. [16]

No Healthcare Access: Given her termination, Allas's fees of residency and public healthcare immediately increased from 180 HKD to 5,000 HKD per night, rendering her unable to access important treatment for her cancer like chemotherapy.

Call to Action: What can you do?

Although the oppression of FDWs is somewhat difficult to address on an individual scale, addressing this disenfranchisement is relatively feasible if we approach it in a multifaceted manner. Below are three separate scales by which everyone can take steps towards meaningfully improving the conditions and legal protections of domestic workers in Hong Kong.

1. Individual Action
    - Pay Above the Minimum Wage: If individuals voluntarily adjust compensation beyond the government set minimum wage, then the relative market rate for domestic workers would simultaneously increase, leading migrant workers to receive a much fairer compensation.
    - Establish Clearer Working Hours: Because governmental legislation lacks clear definitions as to what the maximum hours you can work a week are, the vast majority of domestic workers right now are forced into working over 12 hours a day. Clearer boundaries as to what an acceptable maximum is would directly counterbalance the societal expectation that migrant workers should stay on call 24/7.

2. Community Action
    - Volunteering: Community volunteering with local NGOs is one of the most actionable steps we can take to offer direct support for migrant workers in Hong Kong. By offering our time to assist in casework, workshops, and other services, we can help grassroots charities like Mission for Migrant Workers advocate and assist domestic workers.
    - Financial Aid: By donating to community organizations, we can create an essential safeguard for workers who currently face termination and financial hardship at any given moment.
3. Legislative Action
    - Public Pressure: Although the average individual does not have much power over legislative policy, public pressure and scrutiny is one of the strongest steps we can take towards ensuring that the proper legal protections are in place. In practice, public pressure could ensure protections like:
        i. The abolishment/reform of the Two-Week Rule, extending the 14-day visa constraint under Cap. 115.
        ii. Repealing the Mandatory Live-In requirement that keeps many domestic workers under 24/7 pressure to work and offer services.
        iii. Establish Statutory Caps on Working-Hours, creating clear weekly working hour limits to Cap. 57.

Evaluating Impact: The ‘Tiered’ Circumstantial Approach

Given the bureaucratic nature of proposing legislation, this Policy Advocacy Toolkit has three distinct metrics in evaluating the impacts of the ‘Tiered Circumstantial Approach, being the number of signatories received on an advocacy pledge from grassroots organizations in Hong Kong, the quantity of legislative council members that support this framework, and fin ally the administrative efficiency of this policy.

Although the overarching focus of this Policy Advocacy Toolkit is driving formal legislative adjustments, reform within Hong Kong rarely occurs without demands from the public. However, given the inefficient nature of gathering enough individual signatories, usually requiring thousands, coalition-building and gaining the support of several partnering organizations provides a way for policymakers to recognize that the ‘Tiered’ Circumstantial Approach is something widely accepted.

Only after the Tiered Circumstantial Approach receives a sufficient number of signatures from non-governmental organizations can impact be measured through political action. At this secondary stage, the traction and relative impact of this campaign shifts from one of public

support to legislative support, as ultimately the Legislative Council (LegCo) dictates whether or not this advocacy brief actually manifests a policy. In practice, this legislative support could look like signatories, legislative inquiries submitted by members, or debates proposed by council members on this motion.

The final and most practical measurement of impact for this Policy Advocacy Toolkit is the actual administrative efficiency of this policy and how it manifests within the lives of migrant workers following implementation. Even if this proposal is passed by the legislative council, how justly enforced this policy is remains crucial to whether or not migrant workers meaningfully benefit, as otherwise the same issues such as insufficient time to file a case to the Labor Tribunal reappear. Similarly, the effects of this policy on administrative agencies also have to be considered in a nuanced manner, as the long-term success of any policy is inherently contingent on the marginal cost relative to the policy's marginal benefit. If the Circumstantial approach manifests by decreasing the quantity of administrative backlog faced by the Labor Tribunal and simultaneously increases protections for migrant workers, then the fair conclusion to be made is likely the fact that a 'Tiered' Circumstantial Approach is beneficial for Hong Kong.

Resource Library

Linked below is a non-exhaustive list of potential resources you can potentially visit to take a more nuanced and in-depth look at the circumstances of migrant workers, as well as key organizations at the forefront of progressing migrant worker rights in Hong Kong.

Resources:

- Maid to Order in Hong Kong: An Ethnography of Domestic Workers - An incredibly powerful book by Nicole Constable, highlighting the legal traps and experiences of foreign domestic workers in Hong Kong.
- The Helper - A well acclaimed documentary set in Hong Kong, covering the diverse stories and contributions of migrant workers.
- Sunday Beauty Queen - A documentary that plays a twist on the classic Cinderella tale, detailing a Filipina domestic worker's dream of being a Beauty Queen within Hong Kong.
- Coming Clean - A landmark research report written by the Justice Center in 2016, aimed at investigating the extensive exploitation and oppression migrant workers face within what appears to be a consensual industry.
- Hong Kong Employment Ordinance (Cap. 57) - Analyzing statutory legislation within Hong Kong is an incredibly powerful way for readers to contextualize how employers are able to weaponize loopholes in policy.

- We Are Like Air - Captured by award-winning photographer Xyza Cruz Bacani, We Are Like Air goes beyond writing by depicting the lives and experiences of migrant workers within Hong Kong through purely image.

Organizations:

- HELP for Domestic Workers Hong Kong
- Enrich Hong Kong
- Mission for Migrant Workers
- Asia Pacific Mission for Migrants
- Pathfinders
- Bethune House

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