

Subject: Please take notice of the handling principles on migrant workers pregnancy during the employment and the workers' rights to work

Descriptions:

1. The case is handled per the resolution mentioned in the minutes of the 36th meeting of the Office of the Presidential Office Human Rights Consultative Committee dated July 19, 2019, submitted via the official letter of Office of the President under Hua-Zong-Yi-Xin-Zi No. 10800079990 dated August 12, 2019.
2. Laws & Regulations:
 - (1) According to Article 11 of the Act of Gender Equality in Employment, employers shall not discriminate against employees because of their gender or sexual orientation in the case of retirement, lay-offs, severances, and termination. Work rules, labor contracts, or collective bargaining agreements shall not stipulate or be arranged in advance that when employees marry, become pregnant, give birth, or partake in child care activities, they have to sever or have a leave of absence without pay. Employers also shall not use the above-mentioned factors as excuses for termination.
 - (2) According to Subparagraph 3 of Article 73, and Article 74 of the Employment Service Act (hereinafter referred to as the "Act"), where a migrant worker meets any circumstance resulting in termination of the employment, his/her employment permit shall be annulled, and then the worker shall be immediately ordered to depart from the country and be barred from further engaging in work in this country. According to Paragraph 2 of Article 45 of the Regulations on the Permission and Administration of the Employment of Foreign Workers (hereinafter referred to as the "Regulations"), where a migrant worker departs from this country within the validity of the employment permission as a result of the termination of employment, the employer shall notify the local competent authority prior to his/her departure, and the local competent authority shall investigate and verify the real intention of the worker (hereinafter referred to as "Verification for Cancellation of Employment Contract").

- (3) According to Paragraph 1 and Paragraph 2 of Article 58 of the Act, and the Subparagraph 4 of Article 20 of the Regulations, where a migrant worker has departed from this country due to reason(s) not attributable to their employer, the employer may apply with the Ministry for replacement thereof; where departure for a migrant worker is postponed due to judicial custody, penalty, major disease or injuries, or other reasons not attributable to the employer and upon special approval by the Ministry, the employer may introduce or employ a new migrant worker before the former worker leaves this country. According to Article 44 of the Regulations, no migrant workers are allowed to bring along with his/her family to stay for residence, unless the migrant worker gives birth to offspring in this country during the term of employment and can maintain their livelihood.
 - (4) According to Article 59 of the Act and Directions of the Employment Transfer Regulations and Employment Qualifications for Foreigners Engaging in the Jobs Specified in Subparagraphs 8 to 11, Paragraph 1, Article 46 of the Employment Services Act (hereinafter referred to as the “Transfer Regulations”), a migrant worker who is approved by the Ministry to transfer his/her employer or job shall conduct the transfer process pursuant to the relevant requirements within sixty days, provided that the migrant worker who meets certain special circumstances as approved by the central competent authority may extend the transfer process for another sixty days one time only.
3. In order to protect the interests and rights of employers and migrant workers, the pregnant workers’ interest and right during the employment period and their right to work shall be handled in the following manners:
 - (1) Unilateral termination of the employment relationship is forbidden: An employer is forbidden to terminate the employment relationship with a migrant worker with the excuse that the worker is pregnant or in labor. Where the employer deports the migrant worker coercively, the migrant worker may file a complaint via the 1955 hotline or with the local government. Furthermore, upon acceptance of the employer’s application for

the Verification for Cancellation of Employment Contract and verification of the migrant worker's real intention on termination of the contract and departure, the local government finds said circumstance, it shall not approve the cancellation of employment contract, in order to protect the migrant worker's interests and rights. Where the employer terminates the employment relationship unilaterally against the law, the employer shall be held as violating the Subparagraph 16, Paragraph 1 of Article 54 of the Act for being in serious violation of applicable laws and regulations protecting laborers. Therefore, according to Article 54 and Article 72 of the Act, the employment permit shall be annulled or rejected, and the employer is prohibited from filing another application within two years.

- (2) A migrant worker is allowed to terminate the employment and transfer employers: Where both the employer and worker agree to terminate the employment relationship and the employment permit is abolished by the Ministry, and the migrant worker meets the Subparagraph 4, Paragraph 1 of Article 59 of the Act for similar circumstances not attributable to the worker, the Ministry agrees that the migrant worker may transfer the employer or job. Meanwhile, where the migrant worker feels uncomfortable physically and mentally during the transfer of employer, he/she shall submit a certificate of diagnosis for pregnancy issued by a medical institution or Maternal Health Booklet to apply with the Ministry for a suspension of the transfer. Upon the Ministry's approval, the transfer of employer may be extended for no more than 60 days at the end of the pregnancy. Where the migrant worker wishes to resume the transfer of employer, he/she shall apply with the Ministry for the resumption of the transfer pursuant to Article 50 of the Administrative Procedure Act within ten days upon the expiration of the said-noted time limit. Upon the Ministry's approval, the transfer may be extended for another sixty days for one time only. The application filed beyond the said-noted time limit will be rejected, and the migrant worker shall leave this country as required.
- (3) The employer may hire new migrant workers: Where a migrant worker is required to leave this country or the employer is

transferred and succeeded by a new employer in accordance with Article 58 of the Act and the Subparagraph 1, Article 20 of the Regulations, the employer may apply for employment or introduction of new migrant workers. In consideration of the employer's need for human resource, when a migrant worker's departure is postponed with causes upon the Ministry's approval, the former employer may introduce or employ a new migrant worker insofar as it has satisfied the Subparagraph 4 of Article 20 of the Regulations (other reasons not attributable to the employer). Further, for employers in the manufacturing industry, the number of such workers shall be excluded from the total number of employed foreign workers, in accordance with the Subparagraph 4, Paragraph 1 of Article 14-7 of the Reviewing Standards and Employment Qualifications for Foreigners Engaging in the Jobs Specified in Subparagraphs 8 to 11, Paragraph 1 to Article 46 of the Employment Service Act (hereinafter referred to as the "Reviewing Standards"), and also from the number of workers referred to in the Subparagraph 2, Paragraph 1 of Article 14-7 of the Reviewing Standards.

- (4) The housing of migrant workers: For the housing issues derived from the protection of migrant workers from personal injury, management-labor disputes, and employer's violation laws, the Ministry has established the Directions Governing Temporary Housing referred to in the Subparagraphs 8 to 11, Paragraph 1 of Article 46 of the Employment Service Act. Any migrant worker who satisfies said Directions Governing Temporary Housing shall be provided with housing as required.