勞動部　函

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速別：普通件

密等及解密條件或保密期限：

附件：如主旨

主旨：有關移工受聘僱期間懷孕及其後續工作權益相關處理原則一案，請查照。

說明：

一、依據總統府 108 年 8 月 12 日華總一信字第 10800079990 號函檢送 108 年 7 月 19 日總統府人權諮詢委員會第 36 次委員會議紀錄決議辦理。

二、法令規定：

(一)性別工作平等法第 11 條規定，略以雇主對受僱者之退休、資遣、離職及解僱，不得因性別或性傾向而有差別待遇。工作規則、勞動契約或團體協約，不得規定或事先約定受僱者有結婚、懷孕、分娩或育兒之情事時，應行離職或留職停薪；亦不得以其為解僱之理由。

(二)就業服務法(以下簡稱本法)第 73 條第 3 款及第 74 條規定，略以移工有聘僱關係終止之情事，應廢止其聘僱許可，且應即令其出國，不得再於我國境內工作。雇主聘僱外國許可及管理辦法(以下簡稱本辦法)第 45 條第 2 項規定，移工於聘僱許可有效期間因聘僱關係終止出國，雇主應於該外國人出國前通知當地主管機關，由當地主管機關探求移工之真意，並驗證之（以下簡稱解約驗證）。

(三)本法第 58 條第 1 項、第 2 項及本辦法第 20 條第 4 款規定，略以移工於聘僱許可有效期間內，

因不可歸責於雇主之原因出國者，雇主得向本部申請遞補。雇主原聘僱移工因受羈押、刑之執行、重大傷病或其他不可歸責於雇主之事由，致須延後出國，並經本部專案核定，得於原聘僱移工出國前，引進或聘僱新移工。本辦法第 44 條規定，移工不得攜眷居留。但受聘僱期間在我國生產子女並有能力扶養者，不在此限。

(四)本法第 59 條及外國人受聘僱從事就業服務法第 46 條第 1 項第 8 款至第 11 款規定工作之轉換雇主或工作程序準則（以下簡稱轉換準則）第 11 條規定，略以移工經本部核准轉換雇主或工作，應於 60 日內依相關規定辦理轉換作業。但移工有特殊情形經中央主管機關核准者，得延長轉換作業期間 60 日，並以 1 次為限。

三、基於保障雇主及移工權益，懷孕移工於受聘僱期間及後續工作權益，應依據下列規定辦理：

(一)禁止單方終止聘僱關係：當移工有懷孕、分娩等情事，雇主不得以上開事由終止聘僱關係。倘若雇主強迫遣返移工時，移工得透過 1955 專線或向地方政府提出申訴，另地方政府受理雇主解約驗證申請時，於向移工確認解約出國真意時，如有發現上開情事時，應不予同意解約驗證，以保障移工權益。倘雇主有違法片面終止聘僱關係之情事，已違反本法第 54 條第 1 項第 16 款其他違反保護勞工之法令情節重大，依本法第 54 條及第 72 條規定，應廢止或不予核發許可，並管制雇主 2 年不得提出申請。

(二)移工得終止聘僱轉換雇主：勞雇雙方合意終止聘僱關係並經本部廢止聘僱許可，懷孕移工有本法第 59 條第 1 項第 4 款規定不可歸責之事由，本部將同意移工得轉換雇主或工作。另移工於轉換雇主期間如有身心不適之情事，移工應檢具醫療機構開具之懷孕診斷證明或孕婦健康手冊，向本部申請暫緩辦理轉換雇主，經本部核定同意，得暫緩轉換雇主期間最長至妊娠結束日起 60 日，該移工欲恢復轉換雇主，應於該期間屆至日起 10 日內，依行政程序法第 50 條規定，向本部申請續行辦理轉換雇主，經本部核准者，得再延長轉換作業期限 60 日，並以 1 次為限。逾期申請者不予同意申請

續行轉換雇主，並應依規定出國。

(三)雇主得聘僱新移工：原依據本法第 58 條規定及本辦法第 20 條第 1 款規定，移工需出國或轉換雇主由新雇主接續聘僱後，始得向本部申請遞補或引進新移工。考量雇主用人需求，針對移工因故需延後出國且經本部核定同意時，原雇主已合於本辦法第 20 條第 4 款不可歸責雇主事由之規定，得引進或聘僱新移工，另製造業之雇主，該人數依外國人從事就業服務法第 46 條 1 項第 8 款至第 11 款工作資格及審查標準 (以下簡稱審查標準)第 14 條之 7 第 1 項第 4 款但書規定，不計入聘僱外國人之總人數計算，且不計入審查標準第 14 條之 7 第 1 項第 2 款規定人數。

(四)移工安置：為保障移工遭受人身傷害、或發生勞資爭議、雇主違法等所衍生之安置問題，本部已訂有受聘僱從事就業服務法第 46 條第 1 項第 8 款至第 11 款規定之外國人臨時安置作業要點，有關移工受聘僱期間符合上開安置要點規定者，得依規定予以安置。

正本：內政部移民署、衛生福利部、臺北市政府、高雄市政府、新北市政府、桃園市政府、臺中市政府、基隆市政府、新竹縣政府、新竹市政府、苗栗縣政府、彰化縣政府、雲林縣政府、南投縣政府、嘉義縣政府、嘉義市政府、臺東縣政府、臺南市政府、連江縣政府、澎湖縣政府、宜蘭縣政府、金門縣政府、花蓮縣政府、屏東縣政府、中國回教協會、財團法人中國回教協會高雄清真寺、財團法人中華啟能基金會春暉啟能中心、財團法人天主教耶穌會台北新事社會服務中心、財團法人天主教會社會慈善福利基金會(天主教海星國際服務中心)、財團法人台灣省天主教會新竹教區(天主教希望職工中心)、財團法人台灣省天主教會新竹教區(移民及外勞服務中心)、財團法人台灣省天主教會新竹教區(越南移工移民辦公室)、財團法人台灣省天主教會聖家天主堂、社團法人中華民國促進勞動力品質發展協會、社團法人台灣國際勞工協會、社團法人台灣勞工權益關懷協會、社團法人

台灣萬人社福協會、社團法人亞太國際勞動人權促進協會、社團法人彰化縣國際勞工關懷協會、聖保祿天主堂、駐臺北印尼經濟貿易代表處(印勞安置中心)、駐臺北印尼經濟貿易代表處(印勞安置中心中壢分部)、駐臺北印尼經濟貿易代表處(印勞安置中心桃園分部)、駐臺北印尼經濟貿易代表處(印勞安置中心瑞慶分部)、駐臺北印尼經濟貿易代表處(印勞安置中心臺中分部)

副本：勞動部勞動力發展署署長室、勞動部勞動力發展署國會聯絡室、勞動部勞動力發展署跨國勞動力事務中心、法源資訊股份有限公司(勞工法令查詢系統)、勞動部勞動力發展署跨國勞動力管理組(第 2 科、第 4 科)

เรื่อง: หลักการในการจัดการสิทธิประโยชน์ที่เกี่ยวข้อง กรณีแรงงานอพยพที่ตั้งครรภ์ ในช่วงการว่าจ้างงานและการทำงานต่อภายหลัง โปรดอ้างอิงและปฏิบัติตาม

อธิบาย:

1. ตามหนังสือทำเนียบประธานาธิบดี เลขที่ 10800079990 ลงวันที่ 12 สิงหาคม 2019 (พ.ศ.2562) ที่ได้ส่งมาโดยแนบบันทึกการประชุมครั้งที่ 36 ของคณะกรรมาธิการที่ปรึกษาด้านสิทธิมนุษยชนของทำเนียบประธานาธิบดีในวันที่ 19 กรกฎาคม 2019 (พ.ศ.2562) นั้น มีมติให้ดำเนินการ
2. กฎหมายกำหนดว่า:
   (1) กฎหมายความเท่าเทียมกันทางเพศในที่ทำงานมาตรา 11 กำหนดไว้ว่า ในเรื่องต่าง ๆ ที่เกี่ยวกับลูกจ้าง ทั้งการเกษียณงาน การเลิกจ้างชั่วคราว การลาออก และการยกเลิกว่าจ้างถาวร นายจ้างจะต้องไม่เลือกปฏิบัติด้วยเหตุผลของเพศและรสนิยมทางเพศ กฎในการทำงาน สัญญาจ้าง หรือข้อตกลงจากการต่อรองกลุ่มจะต้องไม่กำหนดล่วงหน้าหรือตกลงกันไว้ก่อนแล้วว่าหากมีการแต่งงาน ตั้งครรภ์ คลอดบุตร หรือเลี้ยงดูบุตรจะต้องลาออกหรือลางานโดยไม่ได้รับค่าจ้าง และจะต้องไม่นำมาใช้เป็นเหตุผลในการยกเลิกว่าจ้างพนักงาน
   (2) กฎหมายบริการจัดหางาน (ต่อไปนี้จะเรียกว่ากฎหมาย) ในมาตรา 73 วรรค 3 และมาตรา 74 ได้กำหนดไว้ว่า โดยทั่วไปหากแรงงานอพยพมีความสัมพันธ์ของการจ้างงานที่สิ้นสุดลง จะต้องยกเลิกใบอนุญาตการจ้างงาน และสั่งให้ออกนอกประเทศทันที ไม่สามารถทำงานในประเทศต่อไปได้ การอนุญาตที่ให้นายจ้างจ้างชาวต่างชาติและข้อบังคับในการดูแลและจัดการ (ต่อไปนี้จะเรียกว่าข้อบังคับ) มาตรา 45 (2) กำหนดไว้ว่า แรงงานอพยพที่ใบอนุญาตการจ้างงานหมดอายุเนื่องด้วยความสัมพันธ์ของการจ้างงานสิ้นสุดลงและต้องออกนอกประเทศ นายจ้างจะต้องแจ้งต่อหน่วยงานดูแลท้องถิ่นก่อนที่ชาวต่างชาตินั้นจะออกนอกประเทศ หน่วยงานดูแลท้องถิ่นจะต้องไต่ถามถึงความประสงค์ที่แท้จริงของแรงงานอพยพ และพิสูจน์ความถูกต้อง (ต่อไปจะเรียกว่าการพิสูจน์ความถูกต้องของการเลิกสัญญา)
   (3) กฎหมายมาตรา 58 (1), (2) และข้อบังคับในข้อ 20 (4) กำหนดไว้ว่า โดยทั่วไปแรงงานอพยพออกนอกประเทศด้วยเหตุผลที่ไม่เกี่ยวกับความ

รับผิดชอบของนายจ้างในช่วงที่ใบอนุญาตการจ้างงานยังไม่หมดอายุ นายจ้างจะต้องแจ้งต่อกระทรวงเพื่อยื่นขอแรงงานใหม่ทดแทน หากแรงงานอพยพเดิมของนายจ้างถูกคุมขัง ถูกดำเนินคดีอาญา เจ็บป่วยรุนแรงหรือมีเหตุอื่นใดที่ไม่เกี่ยวกับความรับผิดชอบของนายจ้าง จนทำให้ต้องเลื่อนการออกนอกประเทศ และได้รับการอนุญาตในกรณีนี้จากกระทรวง สามารถนำเข้าหรือว่าจ้างแรงงานอพยพใหม่ก่อนที่แรงงานอพยพเดิมที่เคยถูกจ้างงานจะออกนอกประเทศ ข้อบังคับในข้อ 44 กำหนดไว้ว่า แรงงานอพยพห้ามนำสมาชิกในครอบครัวเข้ามาพักอาศัยในประเทศด้วยกัน แต่ในช่วงระหว่างการว่าจ้างงานหากให้กำเนิดบุตรและมีความสามารถในการเลี้ยงดูจะไม่ถูกจำกัดด้วยข้อบังคับนี้

(4) กฎหมายมาตรา 59 และกฎหมายบริการจัดหางานว่าด้วยการทำงานของชาวต่างชาติตามมาตรา 46 วรรค 1 ข้อ 8 ถึงข้อ 11 ได้กำหนดมาตรฐานและขั้นตอนในการเปลี่ยนนายจ้างหรือเปลี่ยนงาน (ต่อไปจะเรียกว่า มาตรฐานการเปลี่ยน) ซึ่งในข้อ 11 ได้กำหนดว่า แรงงานอพยพที่ได้รับอนุญาตจากกระทรวงให้เปลี่ยนนายจ้างหรืองาน ควรจะดำเนินการขอเปลี่ยนตามข้อกำหนดที่เกี่ยวข้องภายใน 60 วัน แต่แรงงานอพยพหากอยู่ในเงื่อนไขที่เป็นกรณียกเว้นจะได้รับอนุญาตจากหน่วยงานส่วนกลางของกระทรวงมหาดไทยไต้หวันให้ยืดเวลาในการขอเปลี่ยนออกไปเป็นเวลา 60 วัน โดยจะจำกัดการยืดเวลาออกไปได้เพียง 1 ครั้ง

3. บนพื้นฐานของการประกันสิทธิประโยชน์ของนายจ้างและลูกจ้าง สิทธิประโยชน์ของแรงงานอพยพที่ตั้งครรภ์ในช่วงการจ้างงานและการทำงานต่อภายหลัง ควรจะปฏิบัติตามข้อกำหนดดังต่อไปนี้:

(1) ห้ามยุติความสัมพันธ์ของการจ้างงานแต่เพียงฝ่ายเดียว: เมื่อแรงงานอพยพมีกรณีตั้งครรภ์ คลอดบุตร เป็นต้น นายจ้างจะต้องไม่ยุติความสัมพันธ์ของการจ้างงานด้วยเหตุข้างต้นที่กล่าวมา หากนายจ้างบังคับให้มีการส่งลูกจ้างกลับประเทศ แรงงานอพยพสามารถร้องเรียนผ่านสายด่วน 1955 หรือร้องเรียนต่อรัฐบาลท้องถิ่น นอกจากนี้เมื่อรัฐบาลท้องถิ่นรับเรื่องการขอพิสูจน์ความจริงเกี่ยวกับการยกเลิกสัญญาของนายจ้าง และเมื่อมีการยืนยันถึงความประสงค์อันแท้จริงที่จะยกเลิกสัญญาและออกนอกประเทศของแรงงานอพยพ หากพบว่ามีปัญหาข้างต้น ไม่ควรเห็นชอบกับการขอพิสูจน์ยืนยันการยกเลิกสัญญา เพื่อเป็นการประกันสิทธิประโยชน์ของแรงงานอพยพ หากนายจ้างยุติความสัมพันธ์ของการ

จ้างงานแต่เพียงฝ่ายเดียวโดยมิชอบด้วยกฎหมาย ถือว่าละเมิดกฎหมาย มาตรา 54 (1) ข้อ16 ที่ว่าด้วยเหตุอื่น ๆ ที่เป็นการละเมิดกฎหมายคุ้มครองแรงงานอย่างรุนแรง ควรจะยกเลิกหรือไม่ออกใบอนุญาตให้แก่นายจ้าง รวมถึงควบคุมมิให้นายจ้างยื่นขอเป็นเวลา 2 ปี ตามที่กฎหมาย มาตรา 54 และมาตรา 72 ได้กำหนดไว้

(2) แรงงานอพยพสามารถยุติงานและเปลี่ยนนายจ้าง: กรณีที่ลูกจ้างและนายจ้างทั้งสองฝ่ายต่างตกลงที่จะยุติความสัมพันธ์ของการจ้างงานและกระทรวงได้ยกเลิกใบอนุญาตการจ้างงาน หากแรงงานอพยพที่ตั้งครรภ์มีเหตุผลที่ไม่เกี่ยวกับความรับผิดชอบของผู้ใดตามที่กำหนดไว้ในกฎหมาย มาตรา 59 (1) วรรค 4 กระทรวงจะเห็นชอบให้แรงงานอพยพเปลี่ยนนายจ้างหรือเปลี่ยนงานได้ นอกจากนี้ ในช่วงการเปลี่ยนนายจ้างหากแรงงานอพยพมีเรื่องไม่สบายทางกายหรือทางใจ แรงงานอพยพควรจะนำใบรับรองแพทย์ที่ยืนยันการการตั้งครรภ์หรือคู่มือสุขภาพสตรีมีครรภ์ที่ออกโดยสถานพยาบาลมายื่นขอระงับการดำเนินการเปลี่ยนนายจ้างชั่วคราวต่อกระทรวง หากกระทรวงพิจารณาแล้วเห็นชอบจะได้รับช่วงเวลาระงับการเปลี่ยนนายจ้างชั่วคราวยาวนานสูงสุดถึง 60 วัน นับจากวันที่การตั้งครรภ์สิ้นสุดลง หากแรงงานอพยพนั้นต้องการที่จะกลับมาเปลี่ยนนายจ้างอีกครั้ง ควรจะยื่นขอดำเนินการเปลี่ยนนายจ้างต่อในรอบนี้ภายในเวลา 10 วันก่อนวันหมดอายุต่อกระทรวง ตามที่ได้กำหนดไว้ในกฎหมายวิธีปฏิบัติราชการทางปกครองมาตรา 50 ผู้ที่ได้รับการอนุญาตจากกระทรวงจะได้รับการยืดเวลาในการดำเนินการเปลี่ยนนี้อีกภายใน 60 วัน และจำกัดเพียง 1 ครั้ง ผู้ที่ไม่ได้ยื่นขอภายในเวลาจะไม่ได้รับความเห็นชอบให้ยื่นขอเปลี่ยนนายจ้างต่อ และจะต้องออกนอกประเทศตามที่กฎหมายกำหนด

(3) นายจ้างสามารถจ้างลูกจ้างใหม่: เดิมตามที่กำหนดไว้ในกฎหมายมาตรา 58 และข้อบังคับในข้อ 20 ข้อย่อย 1 แรงงานอพยพจำเป็นต้องออกนอกประเทศหรือเปลี่ยนนายจ้างโดยมีนายจ้างใหม่ว่าจ้างต่อแล้ว ถึงจะยื่นขอการทดแทนหรือนำเข้าลูกจ้างใหม่ต่อกระทรวงได้ ทว่าพิจารณาถึงความจำเป็นในการใช้คนของนายจ้าง สำหรับในกรณีที่แรงงานอพยพยืดเวลาเพื่อในการออกนอกประเทศออกไปเพราะเหตุจำเป็นและโดยได้รับอนุญาตจากกระทรวง ถือว่านายจ้างเดิมมีความสอดคล้องกับข้อกำหนดในข้อบังคับข้อ 20 ข้อย่อย 4 ที่ว่าด้วยเหตุผลที่ไม่เกี่ยวกับความรับผิดชอบ

ของนายจ้าง จึงสามารถนำเข้าหรือจ้างลูกจ้างใหม่ได้ นอกจากนี้สำหรับนายจ้างด้านอุตสาหกรรมการผลิต จำนวนแรงงานไม่นับรวมเข้าในจำนวนการจ้างชาวต่างชาติทั้งหมด ตามข้อกำหนดที่เป็นเงื่อนไขในวรรค 1 ข้อ 4 ของมาตรา 14 (7) ที่ว่าด้วยคุณสมบัติในการทำงานและมาตรฐานในการตรวจสอบ (ต่อไปจะเรียกว่ามาตรฐานตรวจสอบ) ในกฎหมายบริการจัดหางานว่าด้วยการทำงานของชาวต่างชาติตามมาตรา 46 วรรค 1 ข้อ 8 ถึงข้อ 11 และไม่นับรวมเข้าในมาตรฐานตรวจสอบ มาตรา 14 (7) ที่ว่าด้วยจำนวนคนที่กำหนดในวรรค 1 ข้อ 2

(4) การจัดหาที่พักให้แรงงานอพยพ: เพื่อประกันมิให้แรงงานอพยพประสบกับการบาดเจ็บเสียหายส่วนบุคคล หรือการเกิดข้อพิพาทแรงงาน การที่นายจ้างฝ่าฝืนกฎหมาย เป็นต้น ซึ่งก่อให้เกิดปัญหาการจัดหาที่พักตามมา กระทรวงได้จัดทำหลักปฏิบัติในการจัดหาที่พักชั่วคราวให้แก่ชาวต่างชาติตามที่กำหนดไว้ในกฎหมายบริการจัดหางานว่าด้วยการทำงานของชาวต่างชาติตามมาตรา 46 วรรค 1 ข้อ 8 ถึงข้อ 11 หากมีแรงงานอพยพในช่วงการจ้างงานสอดคล้องกับข้อกำหนดในหลักการจัดหาที่พักข้างต้น จะต้องจัดหาที่พักให้ตามที่กำหนด

Subjek: Kasus prinsip penanganan terkait kehamilan dan hak kerja selanjutnya dari pekerja asing selama periode kerja, silakan diperiksa.

Penjelasan:

1. Ditangani berdasarkan surat umum Kantor Kepresidenan 12 Agustus 2019 No. 10800079990, resolusi dari catatan rapat komite ke-36 dari Komite Penasihat Hak Asasi Manusia Kantor Kepresidenan pada tanggal 19 Juli 2019.
2. Peraturan Undang-undang:
   (1) Pasal 11 Undang-undang Kesetaraan Kerja Gender menetapkan, pemberi kerja tidak boleh memiliki perlakuan berbeda dalam hal pensiun, pesangon, pengunduran diri dan pemecatan karyawan karena jenis kelamin atau orientasi seksual. Aturan kerja, kontrak kerja atau kesepakatan kelompok, tidak boleh menetapkan atau menyepakati terlebih dahulu bila karyawan menikah, hamil, bersalin atau mengasuh anak, harus mengundurkan diri atau cuti tanpa dibayar; juga tidak boleh menggunakannya sebagai alasan pemecatan.
   (2) Undang-undang Layanan Ketenagakerjaan (berikutnya disingkat dengan Undang-undang) Pasal 73 ayat 3 dan Pasal 74 menetapkan, jika hubungan kerja pekerja asing berakhir, izin kerja akan dicabut, dan harus segera diperintah untuk keluar dari negara Taiwan, tidak boleh bekerja lagi di dalam wilayah negara Taiwan. Izin Pemberi Kerja Mempekerjakan Pekerja Asing dan Metode Manajemen (berikutnya disingkat dengan Metode) Pasal 45 ayat 2 menetapkan, pekerja asing selama masa berlaku izin kerja karena hubungan kerja berakhir dan keluar dari negara Taiwan, sebelum pekerja asing keluar dari negara Taiwan, pemberi kerja harus memberi tahu otoritas lokal, otoritas lokal akan mencari tahu maksud sebenarnya pekerja asing dan melakukan verifikasi (berikutnya disingkat dengan verifikasi pemutusan kontrak).
   (3) Undang-undang Pasal 58 ayat 1, ayat 2 dan Pasal 20 butir 4 menetapkan, pekerja asing dalam masa berlaku izin kerja, yang keluar dari negara Taiwan karena alasan yang tidak dapat dikaitkan dengan pemberi kerja, maka pemberi kerja boleh

mengajukan permohonan penggantian kepada Departemen. Pekerja asing sebelumnya yang dipekerjakan pemberi kerja dikarenakan ditahan, eksekusi hukuman, cedera berat atau perihal lain yang tidak dapat dikaitkan dengan pemberi kerja, sehingga harus menunda untuk keluar dari negara Taiwan, setelah melalui persetujuan Departemen terkait, boleh memasukkan atau mempekerjakan pekerja asing baru sebelum pekerja asing yang dipekerjakan semula keluar dari negara Taiwan. Undang-undang Pasal 44, pekerja asing tidak diijinkan membawa anggota keluarga datang untuk menetap. Tapi hal ini tidak berlaku bagi mereka yang memiliki anak yang dilahirkan di negara Taiwan selama periode kerja dan memiliki kemampuan untuk membesarkannya.

(4) Undang-undang Pasal 59 dan Undang-Undang Layanan Ketenagakerjaan pekerja asing yang dipekerjakan Pasal 46 ayat 1 butir 8 hingga 11 menetapkan Pasal 11 perubahan pemberi kerja atau prosedur kerja bagi pekerja asing (berikutnya disingkat dengan Pedoman Pergantian) menyatakan, pekerja asing setelah melalui persetujuan Departemen untuk mengganti pemberi kerja atau pekerjaan, dalam waktu 60 hari harus mengurus operasi pergantian sesuai dengan peraturan yang berkaitan. Namun pekerja asing bila memiliki kondisi khusus setelah melalui persetujuan otoritas pusat, boleh memperpanjang periode operasi pergantian selama 60 hari, dan terbatas hanya 1 kali.

3. Untuk melindungi hak pemberi kerja dan pekerja asing, pekerja asing yang hamil selama periode kerja dan hak kerja selanjutnya, harus ditangani berdasarkan peraturan berikut:

(1) Dilarang mengakhiri hubungan kerja sepihak: Sewaktu pekerja asing hamil, bersalin dan lainnya, pemberi kerja tidak boleh mengakhiri hubungan kerja dengan perihal yang disebutkan di atas. Bila pemberi kerja memulangkan pekerja asing secara paksa, pekerja asing boleh menghubungi hotline 1955 atau mengajukan keluhan kepada pemerintah daerah. Selain itu sewaktu pemerintah daerah menerima aplikasi verifikasi pemutusan kontrak, sewaktu memastikan maksud sebenarnya pekerja asing tentang pemutusan kontrak dan keluar dari negara Taiwan, bila menemukan ada hal yang disebutkan di atas, maka tidak boleh menyetujui verifikasi

pemutusan kontrak, demi melindungi hak pekerja asing. Bila pemberi kerja melanggar hukum dan secara sepihak mengakhiri hubungan kerja, telah melanggar Pasal 54 ayat 1 butir 16 Undang-undang terkait dan pelanggaran lain dari undang-undang perlindungan tenaga kerja yang merupakan pelanggaran yang serius, maka berdasarkan peraturan Undang-undang Pasal 54 dan Pasal 72, harus mencabut atau tidak menerbitkan izin, dan membatasi pemberi kerja tidak boleh mengajukan permohonan selama 2 tahun.

(2) Pekerja asing boleh mengakhiri pekerjaan dan mengganti pihak pemberi kerja: Kedua pihak buruh dan pemberi kerja setuju untuk mengakhiri hubungan kerja dan melalui Departemen mencabut izin kerja, pekerja asing hamil terdapat perihal yang tidak dapat dikaitkan dalam peraturan Pasal 59 ayat 1 butir 4 Undang-undang tersebut, Departemen akan menyetujui pekerja asing boleh mengganti pihak pemberi kerja atau pekerjaan. Selain itu selama pekerja asing mengganti pihak pemberi kerja bila ada ketidaknyamanan fisik dan mental, pekerja asing harus mengajukan bukti diagnosa kehamilan atau buku pedoman kesehatan ibu hamil yang diterbitkan lembaga medis, mengajukan permohonan penangguhan pergantian pemberi kerja kepada Departemen terkait. Setelah melalui persetujuan Departemen terkait, boleh menangguhkan periode pergantian pemberi kerja maksimal hingga 60 hari setelah kehamilan berakhir, bila pekerja asing tersebut ingin memulihkan permohonan pergantian pemberi kerja, harus dalam waktu 10 hari sejak tanggal berakhirnya periode tersebut, berdasarkan peraturan Pasal 50 Hukum Prosedur Administratif, mengajukan permohonan kepada Departemen terkait untuk melanjutkan pengurusan pergantian pihak pemberi kerja. Setelah melalui persetujuan Departemen, boleh memperpanjang batas operasi pergantian selama 60 hari, dan terbatas hanya 1 kali. Bagi yang mengajukan permohonan yang terlambat tidak akan disetujui untuk permohonan melanjutkan pergantian pihak pemberi kerja, dan berdasarkan peraturan harus keluar dari negara Taiwan.

(3) Pemberi kerja boleh mempekerjakan pekerja asing baru: Awalnya berdasarkan peraturan Pasal 58 Undang-undang tersebut dan

Pasal 20 butir 1 Metode tersebut, pekerja asing harus keluar dari negara Taiwan atau sudah berganti pihak pemberi kerja baru dan dipekerjakan oleh pemberi kerja baru, setelah itu baru boleh mengajukan permohonan kepada Departemen terkait tentang penggantian atau memasukkan pekerja asing baru. Mempertimbangkan kebutuhan pihak pemberi kerja, terhadap pekerja asing yang dikarenakan alasan tertentu harus menunda keluar dari negara Taiwan dan setelah melalui persetujuan Departemen terkait, pihak pemberi kerja yang semula telah memenuhi peraturan perihal yang tidak bisa dikaitkan dengan pemberi kerja Pasal 20 butir 4 Metode tersebut, boleh memasukkan atau mempekerjakan pekerja asing baru, selain itu bagi pihak pemberi kerja industri manufaktur, jumlah orang harus berdasarkan kualifikasi dan standar tinjauan bagi pekerja asing (selanjutnya disebut sebagai standar tinjauan) yang terdapat dalam Undang-undang Layanan Ketenagakerjaan Pasal 46 ayat 1, butir 8 sampai 11, Pasal 14-7 Ayat 1 butir 4 yang menyatakan bahwa jumlah total pekerja asing yang dipekerjakan tidak akan dimasukkan dalam penghitungan, dan tidak akan dimasukkan dalam jumlah yang ditentukan dalam Pasal 14-7 Ayat 1 butir 2 standar tinjauan.

(4) Penempatan pekerja asing: Untuk melindungi pekerja asing dari cedera pribadi, atau terjadi perselisihan perburuhan, masalah penempatan yang timbul dari pelanggaran hukum oleh pemberi kerja, Departemen telah menetapkan “Poin penting penempatan sementara untuk pekerja asing yang dipekerjakan untuk pekerjaan dalam Pasal 46 ayat 1 butir 8 hingga 11 Undang-undang Layanan Ketenagakerjaan”, mengenai pekerja asing selama periode kerja yang memenuhi peraturan poin penting penempatan yang disebutkan di atas, boleh ditempatkan menurut peraturan.

Nội dung chính: Nguyên tắc giải quyết việc người lao động nước ngoài mang thai trong thời gian được tuyển dụng và quyền lợi làm việc tiếp theo của họ, Đề nghị đối chiếu thực hiện.

Hướng dẫn:

1. Thực hiện theo công văn số 10800079990/Hua-zong-yi-xin-tzi ngày 12/ 08/2019 của Phủ Tổng Thống có đính kèm nghị quyết biên bản Hội nghị lần thứ 36 của Ủy ban Tư vấn Nhân quyền Phủ Tổng thống ngày 19/7/2019.
2. Quy định của các văn bản pháp quy:
   (1) Theo quy định của điều 11 Luật Bình đẳng giới trong công việc, chủ thuê không được vì sự khác biệt giới tính hay khuynh hướng giới tính mà phân biệt đối xử với người lao động trong các vấn đề nghỉ hưu, cắt giảm nhân sự, xin nghỉ việc và cho thôi việc. Trong các quy tắc công việc, hợp đồng lao động hay thỏa ước tập thể, chủ thuê không được quy định hoặc thỏa thuận trước rằng người lao động phải xin nghỉ việc hoặc nghỉ không lương do kết hôn, mang thai, sinh đẻ hay nuôi con; cũng không được cho người lao động thôi việc bởi những lý do trên.
   (2) Theo quy định tại khoản 3 điều 73 và điều 74 của Luật Dịch vụ việc làm (dưới đây gọi tắt là Luật này), khi quan hệ tuyển dụng lao động nước ngoài chấm dứt, phải hủy bỏ giấy phép tuyển dụng lao động đó, đồng thời lập tức yêu cầu lao động nước ngoài xuất cảnh, không được tiếp tục làm việc tại Đài Loan. Theo mục 2 điều 45 của Biện pháp cấp phép và quản lý chủ thuê tuyển dụng lao động nước ngoài (dưới đây gọi tắt là Biện pháp cấp phép quản lý) quy định, đối với người lao động xuất cảnh do chấm dứt quan hệ tuyển dụng trong thời gian giấy phép tuyển dụng vẫn còn hiệu lực, chủ thuê phải thông báo với cơ quan chủ quản địa phương trước khi người nước ngoài đó xuất cảnh, cơ quan chủ quản địa phương sẽ tiến hành tìm hiểu chứng thực nguyện vọng thực sự của lao động nước ngoài (gọi tắt là Chứng thực chấm dứt hợp đồng).
   (3) Theo quy định tại mục 1, mục 2 điều thuộc điều 58 của Luật này và khoản 4 điều 20 của Biện pháp cấp phép quản lý, trường hợp lao động xuất cảnh trong thời gian giấy phép lao động vẫn còn

hiệu lực mà nguyên nhân không phải do chủ thuê, thì chủ thuê được xin Bộ cho tuyển dụng bổ sung. Nếu lao động nước ngoài của chủ thuê ban đầu tuyển dụng bị bắt giam, thi hành án hình sự, mắc bệnh nghiêm trọng hoặc vì các nguyên nhân không phải do chủ thuê, dẫn đến xuất cảnh chậm trễ, sau khi đã được Bộ phê chuẩn theo hồ sơ riêng, thì chủ thuê được nhập hoặc tuyển dụng lao động nước ngoài mới trước khi lao động nước ngoài cũ xuất cảnh. Theo quy định tại điều 44 của Biện pháp cấp phép quản lý, lao động không được đưa theo người thân sang cư trú. Tuy nhiên, những lao động sinh con và có khả năng nuôi dưỡng trong thời gian được tuyển dụng tại Đài Loan sẽ không bị giới hạn bởi quy định này.

(4) Theo quy định tại điều 59 của Luật này và điều 11 thuộc Nguyên tắc về chuyển chủ và trình tự công việc của những công việc do người nước ngoài được tuyển dụng làm việc theo quy định từ khoản 1 đến khoản 8 thuộc mục 1 điều 46 của Luật Dịch vụ việc làm (dưới đây gọi tắt là Nguyên tắc chuyển đổi), đối với những lao động nước ngoài đã được Bộ phê chuẩn cho phép chuyển chủ hoặc chuyển đổi công việc, phải hoàn tất thủ tục chuyển đổi theo quy định trong vòng 60 ngày. Nhưng trường hợp lao động nước ngoài có lý do đặc biệt và đã được cơ quan chủ quản Trung ương phê chuẩn, sẽ được gia hạn thời hạn chuyển đổi thêm 60 ngày, và chỉ được gia hạn 1 lần.

3. Nhằm bảo đảm quyền lợi của chủ thuê và lao động nước ngoài, quyền làm việc trong thời gian được tuyển dụng và thời gian tiếp theo của lao động nước ngoài mang thai phải thực hiện theo các quy định sau:

(1) Nghiêm cấm đơn phương chấm dứt quan hệ tuyển dụng: khi lao động nước ngoài có thai, sinh nở, v.v, chủ thuê không được dùng những lý do nêu trên để chấm dứt quan hệ tuyển dụng. Nếu bị chủ thuê ép cho về nước, lao động nước ngoài có thể gọi đường dây nóng 1955 hoặc khiếu nại với chính quyền địa phương. Ngoài ra, trong quá trình chính quyền địa phương thụ lý hồ sơ xin chấm dứt hợp đồng lao động của chủ thuê, khi xác nhận nguyện vọng thực sự của việc chấm dứt hợp đồng để về nước của lao động nước ngoài, nếu phát hiện những sự việc nêu trên, sẽ không chứng thực chấm dứt hợp đồng, nhằm đảm bảo quyền lợi cho lao động nước ngoài. Nếu chủ thuê có tình trạng vi phạm, đơn phương chấm dứt

quan hệ tuyển dụng, tức là đã vi phạm với tình tiết nghiêm trọng thuộc nội dung "Những vi phạm pháp lệnh khác về bảo vệ lao động" tại khoản 16 mục 1 điều 54 của Luật này. Căn cứ vào điều 54 và 72 Luật này quy định, phải hủy bỏ hoặc không cấp giấy phép, đồng thời giới hạn chủ thuê không được xin tuyển dụng lao động nước ngoài trong vòng 2 năm.

(2) Lao động nước ngoài được chấm dứt làm việc, chuyển đổi chủ thuê: chủ thuê và người lao động nhất trí chấm dứt hợp đồng lao động và đã được Bộ phê chuẩn hủy bỏ giấy phép lao động tuyển dụng, theo quy định tại khoản 4 mục 1 điều 59 của Luật này, nếu nguyên nhân không phải do người lao động thì lao động có thai sẽ được Bộ phê duyệt đổi chủ hoặc chuyển đổi công việc. Ngoài ra, trong quá trình đổi chủ, nếu lao động nước ngoài gặp phải vấn đề về sức khỏe và tâm lý, thì có thể chuẩn bị chứng nhận có thai do cơ sở y tế cấp hoặc sổ khám thai, để xin phép Bộ cho tạm hoãn làm thủ tục đổi chủ. Sau khi được Bộ phê duyệt, thời gian được tạm hoãn đổi chủ dài nhất là 60 ngày kể từ ngày kết thúc thai kỳ, nếu lao động nước ngoài này muốn khôi phục thủ tục đổi chủ, thì trong vòng 10 ngày kể từ ngày kết thúc giai đoạn kể trên, lao động nước ngoài phải xin Bộ tiếp tục tiến hành thủ tục đổi chủ theo quy định tại điều 50 của Luật Thủ tục Hành chính. Sau khi Bộ phê duyệt, lao động nước ngoài sẽ được gia hạn thời gian làm thủ tục chuyển chủ dài nhất là 60 ngày, giới hạn chỉ được gia hạn 1 lần. Nếu để quá thời hạn mới làm thủ tục, người xin không được làm thủ tục đổi chủ nữa, đồng thời phải xuất cảnh theo quy định.

(3) Chủ thuê được tuyển dụng lao động nước ngoài mới: theo quy định tại điều 58 của Luật này và khoản 1 điều 20 của Biện pháp cấp phép quản lý, sau khi lao động nước ngoài muốn xuất cảnh hoặc được chủ mới tiếp nhận thì chủ thuê ban đầu được xin Bộ để bổ sung hoặc nhập lao động nước ngoài mới. Đối với trường hợp người lao động muốn hoãn xuất cảnh có lý do và đã được Bộ xét duyệt đồng ý, sẽ xem xét nhu cầu sử dụng lao động của chủ thuê ban đầu, nếu phù hợp với quy định tại khoản 4 Điều 20 của Biện phép cấp phép quản lý về nguyên nhân không phải do chủ thuê, sẽ được nhập hoặc tuyển dụng lao động nước ngoài mới. Ngoài ra, đối với chủ thuê thuộc ngành chế tạo, số lượng lao động thuộc diện này sẽ căn cứ theo quy định tại phần chú giải trong khoản 4

mục 1 điều 14-7 của Tiêu chuẩn tư cách làm việc và thẩm định đối với người nước ngoài làm những công việc thuộc khoản 1 đến khoản 8 mục 1 điều 46 của Luật Dịch vụ việc làm (gọi tắt là Tiêu chuẩn thẩm định), sẽ không tính vào tổng số lao động nước ngoài được tuyển dụng, cũng không tính vào số lượng lao động theo quy định của khoản 2 mục 1 điều 14-7 thuộc Tiêu chuẩn thẩm định.

(4) Sắp xếp nơi tạm trú cho lao động nước ngoài: nhằm đảm bảo quyền lợi được sắp xếp nơi ăn nghỉ cho những lao động nước ngoài gặp phải những vấn đề như tổn thương cơ thể, hoặc phát sinh tranh chấp với chủ thuê, chủ thuê có hành vi phạm pháp, v.v.; Bộ đã ban hành "Những điểm chính về sắp xếp nơi tạm trú cho người nước ngoài được tuyển dụng làm những công việc được quy định từ khoản 8 đến khoản 11, mục 1, điều 46 Luật Dịch vụ việc làm", trường hợp lao động nước ngoài vẫn đang trong thời hạn được tuyển dụng mà phù hợp các điều kiện trong "Những điểm chính về sắp xếp nơi tạm trú" nêu trên, sẽ được sắp xếp nơi tạm trú theo quy định.

勞動部　函
Liham mula sa Ministri ng Paggawa
發文字號：勞動發管字第 1080507452 號
Numero ng teksto: Labor isyu pamamahala numero walang. 1080507452
速別：普通件
Bilis ng kategorya: Pangkalahatang kaso
密等及解密條件或保密期限：
Kumpidensyal at iba pang mga kondisyon ng decryption o panahon ng kumpidensyalidad
附件：如主旨
Aneks: hal. keynote

主旨：有關移工受聘僱期間懷孕及其後續工作權益相關處理原則一案，請查照。
Keynote: Mangyaring suriin ang mga kaso hinggil sa mga prinsipyo ng paggamot na may kaugnayan sa pagbubuntis at iba pang mga karapatan at interes sa panahon ng trabaho ng mga migrant manggagawa.
說明：　Tulong
一、依據總統府 108 年 8 月 12 日華總一信字第 10800079990 號函檢送 108 年 7 月 19 日總統府人權諮詢委員會第 36 次委員會議紀錄決議辦理。
Ayon sa pampanguluhan palasyo noong Agosto 12, 12019, ang liham na ipinadala ni No. 10800079990 ng liham na ipinadala sa Presidential Advisory Committee on Human Rights on Human Rights noong Hulyo 19, 2019, ang ika-36 na Komite ng Commission on Records resolution.
二、法令規定：Ang akreay ay nagbibigay para dito
(一)性別工作平等法第 11 條規定，略以雇主對受僱者之退休、資遣、離職及解僱，不得因性別或性傾向而有差別待遇。工作規則、勞動契約或團體協約，不得規定或事先約定受僱者有結婚、懷孕、分娩或育兒之情事時，應行離職或留職停薪；亦不得以其為解僱之理由。
Ang Artikulo 11 ng Pagkakapantay-pantay sa Kasarian sa Gawain ay nagbibigay ng diskriminasyon batay sa sex o seksuwal na oryentasyon sa pagreretiro, paghihiwalay, paghihiwalay at pagtatapon ng mga empleyado. Trabaho patakaran, labor kontrata o grupo kasunduan ay hindi maaaring magbigay o pre-sumasang-ayon na ang isang empleyado ay dapat umalis o manatili nang walang bayad kapag siya ay may-asawa, buntis, panganganak o anak-pinalalaki;
(二)就業服務法(以下簡稱本法)第 73 條第 3 款及第 74 條規定，略以移工有聘僱關係終止之情事，應廢止其聘僱許可，且應即令其出國，不得再於我國境內工作。雇主聘僱外國許可及管理辦法(以下簡稱本辦法)第 45 條第 2 項規定，移工於聘僱許可有效期間因聘僱關係終止出國，雇主應於該外國人出國前通知當地主管機

關，由當地主管機關探求移工之真意，並驗證之（以下簡稱解約驗證）。
Ang Artikulo 73, talata 3, at artikulo 74 ng Employment Services Act (na tinukoy dito bilang Batas na ito) ay nagbibigay na, siguro sa kaso ng pagwawakas ng relasyon ng mga migranteng manggagawa, ang kanyang trabaho ay mababawi at uutusang lisanin kaagad ang bansa. Artikulo 45, talata 2, ng Mga Panukala para sa Employment of Foreign Permits at Administrative Measures (na tinukoy dito bilang mga Panukala) stipulates na kung ang isang migrant termino ay nagtatampok sa kanyang trabaho sa panahon ng pahintulot ng trabaho, aabisuhan ng employer ang lokal na awtoridad bago umalis ang dayuhan, at ang lokal na awtoridad ay magtatanong tungkol sa tunay na ideya ng paglipat at verify (na tinukoy dito bilang pagwawakas ng verification).
(三)本法第 58 條第 1 項、第 2 項及本辦法第 20 條第 4 款規定，略以移工於聘僱許可有效期間內，因不可歸責於雇主之原因出國者，雇主得向本部申請遞補。雇主原聘僱移工因受羈押、刑之執行、重大傷病或其他不可歸責於雇主之事由，致須延後出國，並經本部專案核定，得於原聘僱移工出國前，引進或聘僱新移工。本辦法第 44 條規定，移工不得攜眷居留。但受聘僱期間在我國生產子女並有能力扶養者，不在此限。
Ang artikulo 58, talata 1, item 2, at artikulo 20, talata 4, ng Batas na ito ay nagbibigay na, siguro, ang paglipat ng mga manggagawa sa panahon ng bisa ng trabaho ay pinapayagan, dahil ang responsibilidad ay hindi maaaring matukoy bilang dahilan ng paglisan ng employer, ang employer ay kailangang gamitin sa ministri ng Employment. Orihinal na tinanggap ng employer ang paglipat ng mga manggagawa dahil sa pagpigil, ang kaparusahan, malubhang pinsala o karamdaman o iba pang responsibilidad ay hindi matutukoy bilang sanhi ng mga gawain ng employer, na nagreresulta sa pagkaantala sa pag-alis sa bansa, at pagkatapos ng pagsang-ayon ng proyekto ng Ministry, ang orihinal na trabaho ng mga migranteng manggagawa bago pumunta sa ibang bansa, sa pagpapakilala o trabaho ng mga bagong migranteng manggagawa. Artikulo 44 ng mga Panukala stipulates na migrant manggagawa ay maaaring hindi dalhin ang kanilang mga pamilya upang manatili. Gayunman, walang ganitong paghihigpit kung ito ay isang taong gumaw
(四)本法第 59 條及外國人受聘僱從事就業服務法第 46 條第 1 項第 8 款至第 11 款規定工作之轉換雇主或工作程序準則（以下簡稱轉換準則）第 11 條規定，略以移工經本部核准轉換雇主或工作，應於 60 日內依相關規定辦理轉換作業。但移工有特殊情形經中央主管機關核准者，得延長轉換作業期間 60 日，並以 1 次為限。
Artikulo 59 ng Batas na ito at Artikulo 11 ng artikulo 46, talata 1, talata 8 hanggang 11, ng Batas sa Employment Services ay nagbibigay na ang pagbabalik-loob ng mga manggagawa o ang mga patnubay para sa mga pamamaraan para sa conversion (na

tinukoy bilang mga gabay sa pagbabalik-loob) stipulates na ang paglipat ng mga manggagawa na inaprubahan ng Ministri para sa pagbabalik-loob ng mga employer o trabaho ay isasagawa sa loob ng 60 araw alinsunod sa kaugnay na mga probisyon. Gayunman, kung ang paglipat ng mga manggagawa kung may mga espesyal na sitwasyon na inaprubahan ng mga mahusay na awtoridad ng Taiwan awtoridad, ay maaaring magpalawak ng pagbabalik-loob sa loob ng 60 araw, hanggang sa isang pagkakataon.

三、基於保障雇主及移工權益，懷孕移工於受聘僱期間及後續工作權益，應依據下列規定辦理：Batay sa proteksyon ng mga karapatan at interes ng mga employer at migrant manggagawa, ang mga karapatan at interes ng mga buntis na migranteng manggagawa sa panahon ng trabaho at kasunod na trabaho ay dapat hawakan alinsunod sa mga sumusunod na probisyon

(一)禁止單方終止聘僱關係：當移工有懷孕、分娩等情事，雇主不得以上開事由終止聘僱關係。倘若雇主強迫遣返移工時，移工得透過 1955 專線或向地方政府提出申訴，另地方政府受理雇主解約驗證申請時，於向移工確認解約出國真意時，如有發現上開情事時，應不予同意解約驗證，以保障移工權益。倘雇主有違法片面終止聘僱關係之情事，已違反本法第 54 條第 1 項第 16 款其他違反保護勞工之法令情節重大，依本法第 54 條及第 72 條規定，應廢止或不予核發許可，並管制雇主 2 年不得提出申請。

Isa sa mga partido ay ipinagbabawal mula sa pagwawakas ng relasyon sa trabaho kapag ang transfer manggagawa ay buntis, panganganak, atbp., ang tagapag-empleyo ay hindi maaaring gamitin ang mga bakuran upang wakasan ang relasyon sa trabaho. Kung ang tagapag-empleyo ay sapilitang inuulit ang mga migranteng oras, ang migrant manggagawa ay maaaring mag-file ng reklamo sa lokal na pamahalaan sa pamamagitan ng linya ng 1955, at kapag tinanggap ng lokal na pamahalaan ang aplikasyon ng employer para sa pag-verification ng kontrata, hindi ito maaaring sumang-ayon sa pag-verification ng kontrata at protektahan ang mga karapatan at interes ng mga migranteng manggagawa kung matatagpuan ang mga ito para sa pag-verification ng kontrata. Kung ang tagapag-empleyo ay may labag sa batas at may tinapos na terminated ang relasyon sa trabaho, at iba pang mga gawa ng Batas na ito ay lumabag sa artikulo 54, talata 1, talata 16, iba pang paglabag sa Batas para sa proteksyon ng mga manggagawa, alinsunod sa mg

(二)移工得終止聘僱轉換雇主：勞雇雙方合意終止聘僱關係並經本部廢止聘僱許可，懷孕移工有本法第 59 條第 1 項第 4 款規定不可歸責之事由，本部將同意移工得轉換雇主或工作。另移工於轉換雇主期間如有身心不適之情事，移工應檢具醫療機構開具之懷孕診斷證明或孕婦健康手冊，向本部申請暫緩辦理轉換雇主，經本部核定同意，得暫緩轉換雇主期間最長至妊娠結束日起 60 日，該移工欲恢復轉換雇主，應於該期間屆至日起 10 日內，依行政程序法第 50 條規定，向本部

申請續行辦理轉換雇主，經本部核准者，得再延長轉換作業期限 60 日，並以 1 次為限。逾期申請者不予同意申請續行轉換雇主，並應依規定出國。
Ang paglipat ng mga manggagawa ay dapat tinapos ang trabaho ng employer　ang employer at employer ay sumasang-ayon na tapusin ang relasyon sa trabaho at pagkatapos ng Ministry annuls ang pahintulot ng trabaho, mga buntis na migranteng manggagawa ay may responsibilidad ng artikulo 59, talata 1, talata 4 ng Batas na ito ay hindi maaaring matukoy, ang Ministri ng Batas na ito ay hindi maaaring matukoy, ang ministri ng batas na ito ay hindi maaaring matukoy, ang ministri ng batas na ito ay hindi maaaring matukoy, ang mga buntis na migranteng manggagawa ay may responsibilidad sa artikulo 59, talata 1, talata 4 ng batas na ito ay hindi maaaring matukoy, ang Ministri ng Batas na ito ay hindi maaaring matukoy, ang ministri ng batas na ito ay hindi maaaring matukoy, ang mga buntis na migranteng manggagawa ay may responsibilidad sa artikulo 59, talata 1, talata 4 ng Batas na ito ay hindi maaaring matukoy, ang Ministri ng Batas na ito ay hindi maaaring matukoy, ang mga buntis na migranteng mangga
(三)雇主得聘僱新移工：原依據本法第 58 條規定及本辦法第 20 條第 1 款規定，移工需出國或轉換雇主由新雇主接續聘僱後，始得向本部申請遞補或引進新移工。考量雇主用人需求，針對移工因故需延後出國且經本部核定同意時，原雇主已合於本辦法第 20 條第 4 款不可歸責雇主事由之規定，得引進或聘僱新移工，另製造業之雇主，該人數依外國人從事就業服務法第 46 條 1 項第 8 款至第 11 款工作資格及審查標準（以下簡稱審查標準)第 14 條之 7 第 1 項第 4 款但書規定，不計入聘僱外國人之總人數計算，且不計入審查標準第 14 條之 7 第 1 項第 2 款規定人數。
Ang mga employer ay kailangang kumuha ng mga bagong migranteng manggagawa Ayon sa artikulo 58 ng Batas na ito at artikulo 20, talata 1, ng mga Panukala na ito, kung ang paglipat ng mga manggagawa ay kinakailangan upang iwanan ang bansa o upang i-convert ang employer upang i-renew ng isang bagong employer, dapat silang mag-aplay sa Ministry para sa pagpapalit o pagpapalit ng mga bagong migranteng manggagawa. Isinasaalang-alang ang mga pangangailangan ng employer, ang orihinal na employer ay sumusunod sa mga kinakailangan na artikulo 20, talata 4, ng mga Panukala na ito ay hindi ` na kinikilala bilang employer ng dating employer kapag kailangang ipagpaliban ang paglipat para sa anumang dahilan at sa pag-apruba ng Ministry, at na ang mga bagong migrante ay dapat ipagpaliban bilang karagdagan sa mga employer sa industriya ng manufacturing industriya, ang bilang ng mga tao ay hindi bibilangin bilang kabuuang bilang ng mga dayuhang nagtatrabaho bilang karagdagan sa artikulo 14 7, talata 1,
(四)移工安置：為保障移工遭受人身傷害、或發生勞資爭議、雇主違法等所衍生之安置問題，本部已訂有受聘僱從事就業服務法第 46 條第 1 項第 8 款至第 11

款規定之外國人臨時安置作業要點，有關移工受聘僱期間符合上開安置要點規定者，得依規定予以安置。Relokasyon: Para maprotektahan ang mga problema sa paglalagay ng lugar mula sa personal na pinsala sa mga migranteng manggagawa, o ang kaganapan ng mga pagtatalo sa trabaho, ilegalidad ng mga employer, atbp., ang Ministri ay stipulated na artikulo 46, talata 1, talata 8 hanggang 11, ng Batas sa Employment Services ay nagbibigay ng pansamantalang lugar ng mga dayuhan, at ang mga taong nakakatugon sa mga kinakailangan ng mga migranteng manggagawa sa panahon ng trabaho ay dapat na inilaan para sa pansamantalang lugar ng trabaho.

正本：內政部移民署、衛生福利部、臺北市政府、高雄市政府、新北市政府、桃園市政府、臺中市政府、基隆市政府、新竹縣政府、新竹市政府、苗栗縣政府、彰化縣政府、雲林縣政府、南投縣政府、嘉義縣政府、嘉義市政府、臺東縣政府、臺南市政府、連江縣政府、澎湖縣政府、宜蘭縣政府、金門縣政府、花蓮縣政府、屏東縣政府、中國回教協會、財團法人中國回教協會高雄清真寺、財團法人中華啟能基金會春暉啟能中心、財團法人天主教耶穌會台北新事社會服務中心、財團法人天主教會社會慈善福利基金會(天主教海星國際服務中心)、財團法人台灣省天主教會新竹教區(天主教希望職工中心)、財團法人台灣省天主教會新竹教區(移民及外勞服務中心)、財團法人台灣省天主教會新竹教區(越南移工移民辦公室)、財團法人台灣省天主教會聖家天主堂、社團法人中華民國促進勞動力品質發展協會、社團法人台灣國際勞工協會、社團法人台灣勞工權益關懷協會、社團法人台灣萬人社福協會、社團法人亞太國際勞動人權促進協會、社團法人彰化縣國際勞工關懷協會、聖保祿天主堂、駐臺北印尼經濟貿易代表處(印勞安置中心)、駐臺北印尼經濟貿易代表處(印勞安置中心中壢分部)、駐臺北印尼經濟貿易代表處(印勞安置中心桃園分部)、駐臺北印尼經濟貿易代表處(印勞安置中心瑞慶分部)、駐臺北印尼經濟貿易代表處(印勞安置中心臺中分部)
Orihinal: Ministry of the Interior Immigration Department, Ministry of Health and Welfare, Taipei Municipal Government, Kaohsiung Municipal Government, New Taipei Municipal Government, Taoyuan Municipal Government, Taichungi Municipal Government, Taichungi Municipal Government, Keelunging Municipal Government, Municipal Government, Taichungi Municipal Government, Keelunging Municipal Government, New Taipei Municipal Government, Taoyuan Municipal Government, Taichung Municipal Government, Keelunging Municipal Government, New Taipei Municipal Government, Taoyuan Municipal Government, Taichungi Municipal Government, Keelunging Municipal Government, New Taipei Municipal Government, Taicipal Government, Taichungi Municipal Government, Keelung Municipal Government, New Taipei Municipal Government, Taoyuan Municipal Government, Taichung Municipal Government, Keelunging Municipal Miaoli County Government,

Changhua County Government, Yunlin County Government, Nantou County Government, Jiayi Cou

副本：勞動部勞動力發展署署長室、勞動部勞動力發展署國會聯絡室、勞動部勞動力發展署跨國勞動力事務中心、法源資訊股份有限公司(勞工法令查詢系統)、勞動部勞動力發展署跨國勞動力管理組(第 2 科、第 4 科)
Mga Kopya: Opisina ng Direktor ng Labour Development of the Ministry of Labour, Congressional Liaison Office of the Labour Development Department of the Ministry of Labour, Transnational Labour Affairs Centre of the Labour Development Department of the Ministry of Labour, Law Source Information Co., Ltd (Labour Decree Inquiry System), Transnational Labour Development Center of the Labour Development Of Labour, Law Source Information Co., Ltd (Labour Decree Inquiry System of Labour Development)

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.