

Elements, reporting entity, determination and handling principles of the case involving an employed foreign worker having been unjustifiably absent from his/her work and not in contact for three consecutive days under Article 56, the Subparagraph 3 of Article 73, and Paragraph 1 of Article 74 of the Employment Service Act

I. Elements of the “unjustifiably absent from the work and not in contact for three consecutive days” referred to in Article 56 of the Employment Service Act (hereinafter referred to as the “Act”):

(I) The phrase “unjustifiably absent from the work for three consecutive days” means that the foreign worker is unjustifiably absent from his/her work for three consecutive days during his/her working days, without applying for leave with or notifying his/her employer, the employer’s agent, or his/her living care service staff.

(II) The phrase “not in contact” refers to any of the following circumstances:

1. Where the employer, municipal city government, or city (county) government (hereinafter referred to as the local competent authority) can't control the foreign worker's whereabouts, and the employer still fails to verify whether the contractor is the foreign worker himself/herself or it still impossible for the employer to control the foreign worker's whereabouts to fulfill the employer's responsibility to care and manage the foreign worker, even if the foreign worker contacts the employer via any one-way or two-way communication software or telephone.
2. Where the foreign worker fails to reside at the housing unit or notified accommodation location and thereby making it impossible for the housing unit or local competent authority to control his/her whereabouts

precisely, although the foreign worker already agrees to changes in the housing or accommodation location if any. Notwithstanding, the foreign worker who has left the employer's premises for three days is not considered "not in contact," if he/she has asked for help from the 1955 hotline, Ministry of Labor (hereinafter referred to as the "Ministry"), the local competent authority, housing unit recorded by the Ministry, or the representative office of the worker's home country in Taiwan, and relevant reporting or housing record is available.

II. The reporting entity and handling principles for "unjustifiably absent from the work for three consecutive days" under Article 56 of the Act:

(I) Where the foreign worker whose whereabouts is untraceable at airports of entering or departing countries, the employer's location, or life management location contracted by the employer, the elements constituting the foreign worker's "unjustifiably absent from his/her work and not in contact for three consecutive days" shall be reported by the employer according to laws. Meanwhile, where the foreign worker satisfies one of the following circumstances, having not been in contact for three consecutive days, the case shall also be reported by the employer:

1. Where the foreign worker has not obtained an employment permit as he/she entered the country for less than three days.
2. Where the period remaining on the employment permit is less than three days.
3. Where the foreign worker is under transfer of employer or has not left the country as required by laws.
4. Where a dispute is arising between the foreign worker and his/her employer, and no labor service is required by the employer from him/her then.

(II) Where the foreign worker whose whereabouts is untraceable at the housing unit prepared by the Ministry, the housing unit shall report to the Ministry, the local competent authority,

entry and exit administrative authority, and police authority immediately upon awareness of the foreign worker's whereabouts untraceable (i.e. who has unjustifiably been absent from his/her work for three consecutive days), in accordance with the "Directions Governing Temporary Housing of Foreign Workers Employed to Engage in the Work referred to in the Subparagraphs 8 to 11, Paragraph 1 of Article 46 of the Employment Service Act."

(III) Where the foreign worker's whereabouts is untraceable at a third party's premises (including the foreign worker's private residence) after he/she leaves the employer's location:

1. Reporting entity: Where the foreign worker is found having not been in contact for three consecutive days at a third party's premises (including the foreign worker's private residence), the employer, or the third party who provides the housing, shall report the case to the local competent authority immediately upon awareness or discovery of it, and then the local competent authority shall conduct investigation *ex officio*.
2. Handling principles adopted by the competent authority:
 - (1) Report from the employer:
 - ① Where the employer reports that the foreign worker has moved to a third party's premises and been unjustifiably absent from his/her work and not in contact for three consecutive days:
 - a. The Ministry shall check with the local competent authority to make sure whether the third party provides the foreign worker with the housing has reported the change of accommodation location. If the third party fails to report the same, the foreign worker's whereabouts shall be held untraceable, and the Ministry shall abolish the employment permit issued to the foreign worker per the employer's report and in accordance with the

Subparagraph 3 of Article 73 of the Act. Instead, if the third party has reported to the local competent authority, the Ministry shall notify the local competent authority in charge of the foreign worker's latest accommodation location to conduct an on-site visit at the location.

- b. Upon receipt of said notice from the Ministry, the local competent authority shall follow the "Directions Governing Practices About the Management of and On-Site Visit to Foreign Workers." Where the foreign worker is not seen during the visit, the local competent authority shall order the foreign worker in writing to report himself/herself to the local competent authority within three days in accordance with the requirements about service of notice under the Administrative Procedure Act. Meanwhile, the local competent authority shall notify the Ministry in writing of the investigation results, such as visit records, an official letter notifying the foreign worker to report himself/herself, and certificate of service to the Ministry.
- c. Where the foreign worker is not seen during the visit paid by the local competent authority and the foreign worker fails to report himself/herself at the time designated by the local competent authority, he/she shall be held as not been in contact for three consecutive days. Then, the Ministry shall abolish his/her employment permit pursuant to Subparagraph 3 of Article 73 of the Act. Where the foreign worker is seen during the visit paid by the local competent authority, or the foreign worker reports himself/herself at the time designated by the local competent authority although he/she is not seen during the visit,

he/she shall not be held untraceable for three consecutive days.

- ② Where the employer fails to advise that the foreign worker has moved to a third party's premises when reporting the case:
- a. Where the Ministry abolishes the employment permit pursuant to the Subparagraph 3 of Article 73 of the Act, but the foreign worker, or the third party providing him/her with the housing, reflects later that he/she has been housed at a third party's premises and the change in the accommodation location was also reported to the local competent authority, the local competent authority and the Ministry shall conduct an investigation and render a decision through the investigation procedure referred to in the paragraph ①.
 - b. Where the investigation result shows that the foreign worker should not be held untraceable for three consecutive days, the Ministry shall revoke said decision abolishing the employment permit in accordance with Article 117 and Article 118 of the Administrative Procedure Act; otherwise, the Ministry shall rule that the original decision abolishing the employment permit should be sustain.
- (2) Report by a third party: Where the foreign worker's whereabouts are untraceable at a third party's premises for three consecutive days after he/she leaves the employer's location, and the third party who provides the housing reports the same to the local competent authority, the local competent authority shall accept the third party's report pursuant to Article 168 of the Administrative Procedure Act. Then, the local competent authority and the Ministry shall conduct an investigation and render a decision through the

investigation procedure referred to in paragraph
(1)-①.