

# 依就業服務法受聘僱之外國人曠職失去聯繫及自行離開雇主管理住宿地點處理原則

112 年 5 月 17 日訂定

## Guidelines for Handling Foreign Workers Hired in Accordance with the Employment Service Act Absent from Work Without Cause and Out of Contact for Three Consecutive Days or Who Leave Employer-Managed Accommodation

一、訂定目的：

Drafted May 17, 2023

為落實就業服務法（以下簡稱本法）第 56 條、第 73 條第 3 款、第 74 條第 1 項、雇主聘僱外國人許可及管理辦法（以下簡稱聘僱許可辦法）第 34 條第 5 項規定，明確規範受聘僱之外國人（以下簡稱外國人）曠職失去聯繫通報，及外國人自行離開雇主依聘僱許可辦法第 33 條第 2 項第 5 款規劃之住宿地點，應訪視外國人探求其真意及變更住宿地點通報等相關處理程序，特訂定本處理原則。

### 1. Purpose of regulations:

These Guidelines are drafted in order to implement the provisions of Article 56, Subparagraph 3, Article 73, Paragraph 1, Article 74, of the Employment Service Act (hereinafter The Act) and Paragraph 5, Article 34 of the Regulations on the Permission and Administration of the Employment of Foreign Workers (hereinafter The Employment Measures). They lay down clear regulations on reporting to the authorities when hired foreign nationals (hereinafter foreign workers) are absent from work without cause and out of contact, and when foreign workers leave accommodation arranged by an employer in accordance with Subparagraph 5, Paragraph 2, Article 33 of The Employment Measures, visiting said workers to determine their real opinion and reporting changes in accommodation.

二、外國人曠職未滿 3 日失去聯繫，雇主通知及政府機關執行查察之處理原則：

(一) 雇主通知執行查察之時機及方式：

- 1、當外國人有曠職失去聯繫情事，依本法第 56 條第 1 項但書規定，雇主得即通知入出國管理機關及警察機關執行查察。
- 2、雇主可自行或委任私立就業服務機構（以下簡稱仲介機構），以書面通知內政部移民署各區事務大隊所屬直轄市、縣(市)專勤隊(以下簡稱專勤隊)及直轄市、縣(市)警察(分)局分駐(派出)所(以下簡稱警察機關)執行查察，或逕至勞動部移工動態查詢系統之平臺（以下簡稱通報平臺）線上即時登錄外國人失去聯繫訊息（網址：<https://labor.wda.gov.tw/labweb/>），專勤隊及警察機關即可透過通報平臺查詢外國人資訊，啟動協尋作業。

2. The guidelines for employer notification and a relevant government agency investigation when a foreign worker is absent from work without cause and out of contact for fewer than three days are as follows:

(1) Times and methods for employers to report absent foreign workers to the authorities to be investigated:

1. When a foreign worker is absent from work without cause and out of contact, pursuant to the proviso in Paragraph 1, Article 56 of The Act, employers are required to immediately inform the entry and exit management agency and the police so they can conduct an investigation.
2. An employer can contact the authorities in writing or commission a private employment services agency (labor brokerage) to notify a special taskforce at special municipality, county (city) level under the local brigade of the National Immigration Agency, Ministry of the Interior and a special municipality (county) city level police station under a police (sub) bureau (hereinafter police authorities), to conduct an investigation. Alternatively, employers can also use the Ministry of Labor's Foreign Labor Searching System platform (hereinafter the Reporting Platform) to register online real time information on foreign workers who cannot be contacted (website: <https://labor.wda.gov.tw/labweb/>). Both the special taskforce and police authorities can use the Reporting Platform to check information on foreign workers and launch search assistance operations.

(二)專勤隊及警察機關查察尋獲曠職未滿 3 日失去聯繫外國人之處置方式：

- 1、專勤隊及警察機關應至通報平臺查詢外國人資料，並通知雇主或其委任之仲介機構，由雇主或仲介機構陪同外國人返回工作場所或住宿地點。
- 2、雇主或其委任之仲介機構拒絕陪同外國人返回工作場所或住宿地點，或雇主同意外國人自行離去者，專勤隊及警察機關應通知勞動部 1955 勞工諮詢申訴專線（以下簡稱勞動部 1955 專線），由該專線人員詢問外國人計畫住宿地點之地址、計畫住宿期間及聯繫方式，並紀錄。
- 3、專勤隊及警察機關認外國人有人身安全遭危害或有遭危害之虞等不宜通知雇主情事時，應給予外國人必要協助，並通知勞動部 1955 專線，由該專線人員詢問外國人最新住宿地點之地址、計畫住宿期間及聯繫方式，再轉由直轄市或縣(市)政府(以下簡稱當地主管機關)處理後續調查及安置等事宜。

(2) Methods of dealing with foreign workers who are found by special taskforces or police authorities after being absent from work without cause and out of contact for fewer than three consecutive days:

1. The special taskforce or police authority is required to check the foreign worker's information on the Reporting Platform and contact an employer or commissioned labor brokerage, the employer or a representative from the brokerage is then required to accompany the foreign worker back to his/her place of work or accommodation.

2. If an employer or labor brokerage refuses to accompany a foreign worker back to his/her place of work or accommodation, or the employer agrees to a foreign worker leaving, the special taskforce and police authorities should notify the Ministry of Labor's 1955 consultation & complaint service hotline (hereinafter the 1955 Hotline) and hotline personnel will record the address of the accommodation where the foreign workers plans to live, the duration of time he/she plans to live there and method of contact.
3. When a special taskforce or police authority determines that a foreign worker faces physical danger of the threat of physical danger and it is inappropriate to inform the employer, in such situations foreign workers should be given all necessary assistance and the 1955 Hotline notified. Hotline personnel will ask the foreign worker the address of their most recent accommodation, how long they plan to live there and how they can be contacted. This information is then passed on to special municipality or county (city) governments (hereafter the local competent authorities) to conduct follow up inspections and related placement.

(三)曠職未滿 3 日內失去聯繫外國人尋獲後，雇主與外國人聘僱關係處理原則：

- 1、雇主及外國人雙方合意繼續聘僱關係，外國人繼續為雇主提供勞務。
- 2、雇主及外國人雙方合意終止聘僱關係，依本法相關法令或「雇主辦理與所聘僱第二類及第三類外國人終止聘僱關係之驗證程序」辦理。
- 3、雇主提出相關事證終止與該外國人勞動契約，經當地主管機關調查事實情況後，函知勞動部依本法第 73 條第 3 款後段規定，廢止外國人聘僱許可。
- 4、外國人提出相關事證終止勞動契約，經當地主管機關調查事實情況後，函知勞動部依本法第 72 條規定，廢止雇主聘僱許可。

(3) After a foreign worker who has been absent from work without cause and out of contact for fewer than three consecutive days is found, the guidelines for dealing with the employer-worker employment relationship are as follows:

1. When an employer and foreign worker agree to continue their employment relationship, the worker will continue to provide labor services to the employer.
2. When an employer and foreign worker agree to terminate their employment relationship, they will proceed in accordance with the related provisions of The Act or pursuant to the "Verification Procedures When Employers Terminate Employment Relationships with Category II and Category III Foreign Workers."
3. When an employer provides related evidence in order to terminate a labor contract with a foreign worker, once the situation is confirmed by the local competent authority a letter is sent to the Ministry of Labor in accordance with regulations detailed at the end of Subparagraph 3, Article 73 of The Act and the foreign worker's employment permit is canceled.
4. When a foreign worker provides related evidence in order to terminate a

labor contract, once the situation is confirmed by the local competent authority a letter is sent to the Ministry of Labor in accordance with Article 72 of The Act and the employer's employment permit is canceled.

三、外國人連續曠職 3 日失去聯繫，雇主依法通知及勞動部廢止聘僱許可作業程序：

(一)雇主通知作業注意事項：

- 1、通知時點：外國人發生連續曠職 3 日失去聯繫者，雇主應依本法第 56 條第 1 項規定，於連續曠職 3 日失去聯繫之次日起 3 日內，以書面載明相關事項通知外國人住宿地點之當地主管機關、移民署各區事務大隊所屬直轄市、縣（市）服務站(以下簡稱移民署服務站)及警察機關，並依聘僱許可辦法第 68 條規定，同時副知勞動部。雇主已依規定以書面通知各機關後，亦可逕至勞動部外國人申請案件網路線上申辦系統（網址：<https://fwapply.wda.gov.tw/>）通知外國人連續曠職 3 日失去聯繫。
- 2、提供事證：雇主通知外國人連續曠職 3 日失去聯繫，應提供外國人連續曠職 3 日失去聯繫之日期、外國人行蹤不明前最後地點及無法聯繫外國人事證等。
- 3、外國人失去聯繫 3 日之計算方式：外國人連續曠職 3 日失去聯繫後，雇主應於發生連續曠職 3 日並失去聯繫時之次日起 3 日內，通知當地主管機關、移民署服務站及警察機關，期間之末日為星期日、國定假日或其他休息日者，以該日之次日為期間之末日；期間之末日為星期六者，以其次星期一為期間末日。例如外國人於 111 年 8 月 1 日起曠職失去聯繫，至 8 月 3 日已連續曠職 3 日失去聯繫，雇主應於 8 月 4 日起算 3 日內（即 8 月 6 日）通知當地主管機關、移民署服務站及警察機關，又如因期間末日 8 月 6 日為星期六，雇主得於次星期一即 8 月 8 日通知。

3. When a foreign worker is absent from work without cause and out of contact for three consecutive days the employer is legally required to notify the authorities and the Ministry of Labor will start procedures to cancel his/her employment permit.

(1) Employer notification guidelines:

1. Notification time: When a foreign worker is absent from work without cause and out of contact for three consecutive days, the employer is required, within a three day period, and pursuant to the provisions of Paragraph 1, Article 56 of The Act, to submit a written notification containing related facts with the local competent authority in the location where the foreign worker lives, as well as special municipality, county (city) service stations (hereinafter NIA service stations) under National Immigration Agency (NIA) local brigade and the police authorities. In accordance with Article 68 of The Employment Measures, they also inform the Ministry of Labor. After the employer has informed related agencies in writing as required, he/she should go to the Ministry of Labor's "Foreign National Applications Online Processing System" (<https://fwapply.wda.gov.tw/>) to inform the foreign worker in question that he/she has been reported as absent from

- work without cause and out of contact for three consecutive days.
2. Providing evidence: When an employer informs the authorities that a foreign worker has been absent from work without cause and out of contact for three consecutive days, evidence must also be provided of the dates the foreign worker has been absent and out of touch for three days, the last place the foreign worker was seen and of being unable to contact said worker.
  3. Method of calculating whether a foreign worker has been out of contact for three days: After a foreign worker has been absent from work without cause and out of contact for three consecutive days, the employer is required, within a three-day period, to inform the local competent authority, NIA service station and police authorities. When the third day falls on a Sunday, national holiday or other rest day, the last day will instead be calculated as the following day; When the third day falls on a Saturday the last day is taken as the following Monday. For example, if a foreign worker is absent from work and cannot be contacted for three consecutive days from August 1-3, 2022, the employer has three days to notify the local competent, NIA service station and police authorities starting from August 4 (to August 6). However, because in this example August 6 falls on a Saturday, the employer is required to notify the authorities no later than August 8.

(二)勞動部廢止聘僱許可程序：

1、廢止聘僱許可及限令出國：勞動部接獲雇主通知外國人連續曠職3日失去聯繫後，應依本法第73條第3款前段規定廢止外國人聘僱許可，及依第74條第1項規定，應即限令其出國，不得再於我國境內工作。

2、異常案件處理：

(1)勞動部發現有通報異常或屬高風險名單（例如外國人於第三人處，由第三人通報外國人失去聯繫者、雇主曾不實通報經裁罰者、或雇主最近一次通報失去聯繫之6個月內有多次通報失去聯繫人數累計達10人以上，且經撤銷達2人以上者），由勞動部1955專線人員進行初步查證，續行通知當地主管機關優先查處及回報。

(2)當地主管機關於接獲上開通知後，應參照「執行外籍勞工管理及訪查實務要點」規定辦理訪查雇主、外國人及外國人失去聯繫之處所。

(3)外國人之住宿地點非為雇主規劃安排者，當地主管機關訪視未遇外國人本人，應依行政程序法相關規定調查事實及證據，並以書面命外國人於3日內至當地主管機關到場說明。當地主管機關應將訪查表、通知外國人報到之公文書及送達證書等具體調查結果函知勞動部。

(2) Cancellation of employment permits by the Ministry of Labor:

1. Cancellation of an employment permit and being ordered to leave Taiwan within a fixed period of time: When the Ministry of Labor receives notification from an employer that a foreign worker has been absent from

work without cause and out of contact for three consecutive days, it will in accordance with the first section of Subparagraph 3, Article 73 of The Act cancel the worker's employment permit and in accordance with the provisions of Paragraph 1, Article 74, order the individual to leave the country within a fixed period of time, banning him/her from working in the Republic of China (Taiwan) in the future.

2. Dealing with unusual cases:

- (1) When the Ministry of Labor receives reports of unusual or high risk situations (for example a foreign worker lives in the residence of a third party, a third party reports that the worker cannot be contacted, the employer has previously been fined for making false reports or where in the six months prior to the most recent report an employer has reported multiple instances of being unable to contact foreign workers involving more than 10 workers in total and has had employment permits canceled for two workers or more) personnel from the 1955 Hotline will conduct a preliminary investigation and notify the local competent authority to launch a priority investigation and report back on the case.
- (2) When the local competent authority receives the aforementioned notification, it is required to visit the employer, foreign worker and the place where the worker can no longer be contacted in accordance with the "Guidelines for Management and Inspection of Foreign Workers."
- (3) If a foreign worker lives in accommodation not arranged by the employer and is not there when the local competent authority visits the residence, they are required to investigate whether the worker actually lives there and produce evidence to that effect in accordance with relevant administrative procedures, while also issuing an order for the foreign worker to visit the local competent authority within three days to explain the situation. The local competent authority is also required to submit the visitation form, official notification instructing the foreign worker to report in person, certificate of delivery and any other investigation results to the Ministry of Labor.

四、勞動部及當地主管機關受理外國人失去聯繫申訴及廢止聘僱許可之救濟處理：

外國人有遭受雇主不實之連續曠職 3 日失去聯繫通知情事者，得向當地主管機關或勞動部 1955 專線申訴。當地主管機關應依行政程序法相關規定調查事實及證據，並將查證結果函知勞動部。經查證確有不實者，勞動部應撤銷原廢止聘僱許可及限令出國之行政處分。

4. Handling appeals and remedies relating to foreign workers being out of contact for three consecutive days and the cancellation of employment permits by the Ministry of Labor and local competent authority:

If an employer falsely reports that a foreign worker was absent from work without cause and out of contact for three consecutive days, an appeal can be filed with the local competent authority or using the MOL's 1955 Hotline. In accordance with the

provisions of the Administrative Procedure Act, the local competent authority is required to investigate the facts of the case, secure evidence and inform the Ministry of Labor of the results of the investigation in writing. In the event an employer is found to have made a false report, the ministry will revoke its cancellation of the employment permit and lift its administrative sanction for the foreign worker to leave Taiwan within a fixed period of time.

- 五、勞動部及當地主管機關受理非當事人舉發外國人失去聯繫處理原則：
- (一)非聘僱關係當事人，發現外國人有連續曠職 3 日失去聯繫情事，亦得通知勞動部 1955 專線；勞動部或當地主管機關於受理陳情後，得為必要之處置。
  - (二)勞動部及當地主管機關應依前 2 點規定進行調查及認定。

5. Guidelines for the Ministry of Labor and local competent authority when dealing with third party reports about foreign workers being out of contact:

- (1) When a third party not involved in the employment relationship discovers a foreign worker has out of contact for three consecutive days, they are required to notify the 1955 Hotline; When the Ministry of Labor or local competent authority receive such a petition they are required to take action.
- (2) In accordance with the aforementioned two points the Ministry of Labor and local competent authority are required to conduct an investigation and confirm the particulars of the case.

六、外國人自行離開雇主規劃安排之住宿地點，變更居住於其他住宿地點之處理原則：

- (一)變更住宿地點通知：外國人於變更住宿地點 3 日內，應將最新住宿地點之地址、計畫住宿期間及聯繫方式告知雇主，由雇主通知住宿地點所在地之當地主管機關，或自行通報上開資訊至住宿地點所在地之當地主管機關。
- (二)訪視外國人探求真意：當地主管機關於外國人通報變更住宿地點之 3 日內，應依聘僱許可辦法第 34 條第 5 項、行政程序法調查事實及證據相關規定，訪視外國人探求其真意，並查明外國人變更後住宿地點居住事實，及有無聘僱關係爭議等事項。
- (三)訪查未遇外國人處理：外國人之住宿地點非為雇主規劃安排者，未經變更住宿地點所在地之當地主管機關確認真意及有居住事實前，以外國人最近一次經訪視並探求真意之通報地址為其住宿地點。外國人如須再次變更於雇主管理以外之其他住宿地點，應依前 2 款規範辦理。

6. Guidelines for dealing with foreign workers who leave employer-arranged accommodation or move to different accommodation:

- (1) Change of accommodation notification: When a foreign worker changes accommodation, he/she is required, within three days of moving, to inform their employer of the new address, how long they plan to live there and provide a method of being contacted. The employer then informs the local competent

authority in the area where the accommodation is located or the worker can report the above information to the local competent authority in the place where the accommodation is located in person.

- (2) Visitation with foreign worker to determine their real opinion: In accordance with Paragraph 5, Article 34 of the Employment Measures and provisions in the Administrative Procedure Act, on investigating the particulars of a case and collecting evidence, when a foreign worker reports a change in accommodation the local competent authority is required to visit the worker and determine his/her real opinion within three days of being notified. This visit should ascertain whether the foreign worker is actually living at the new address after changing accommodation and whether the change in accommodation is related to any employment relationship dispute etc.
- (3) Visiting a foreign worker's accommodation when they are not present: When a foreign worker lives in accommodation not arranged by an employer and before the local competent authority in the area where the new accommodation is located confirms the real opinion of the worker and that he/she is living there, the accommodation location will be considered to be the notification address where the worker was last visited and his/her opinion solicited. If a foreign worker needs to change accommodation again to another location not arranged by an employer, the provisions detailed in the above two subparagraphs should be followed.