

To know the Employment Ordinance
Termination of Employment Contract:
Employers' Responsibilities and Employees' Rights

VO: On a Saturday afternoon, Siu Ling and her friend are having tea in a café

Male VO: Hi, Siu Ling, you look upset. What's the matter?

Female VO: My employer just told me not to return to work next month.

Male VO: Don't be sad. You will find another job. By the way, has your employer given you the termination payments in accordance with the Employment Ordinance and the employment contract?

Female VO: I have no idea what my employer should pay me. Do you know?

Male VO: In general, when terminating an employment contract, an employer needs to pay outstanding wages. An employer should give notice period or wages in lieu of notice to an employee to terminate an employment contract. If the employer requests the employee to leave service before the expiry of the notice period, the employer needs to pay the employee wages in lieu for the remaining notice period. If the employee has been employed for a leave year and has not yet taken the annual leave, the employer shall make payment in lieu of any untaken annual leave. In case of an employee dismissed in a leave year, if the employee has been employed under a continuous contract for not less than 3 months in the leave year and is not dismissed summarily due to serious misconduct, the employer needs to pay the employee the pro rata annual leave pay. If the employee has already been employed for not less than 5 years under a continuous contract, and the employee is not summarily dismissed due to serious misconduct and the dismissal is not by reason of redundancy, then the employer needs to pay long service payment to the employee. If, however, the employee is dismissed by reason of redundancy and the employee has already worked for the employer under a continuous contract for not less than 24 months, the employer needs to pay severance payment to the employee. Apart from the payments stipulated under the Employment Ordinance, if the employment contract has specified the payments to be made by the employer upon termination of the employment contract, the employer is also required to pay such payments to the employee. If the employment contract provides that an employee is entitled to end of year payment, if the employee is dismissed before completing a payment period, the employee is still eligible for a pro rata end of year payment if the employee has been employed under a continuous contract for not less than 3 months in the payment period and is not dismissed summarily due to serious misconduct.

Female VO: Then, when should the employer effect the termination payment?

Male VO: Except for severance payment, the employer should effect the termination payment as soon as possible but no later than seven days after the termination of employment contract. For severance payment, the employer shall make the severance payment to the employee not later than 2 months from the receipt of a written notice from the employee. So, if the employee wishes to claim for severance payment, the employee should serve a written notice to the employer on the claim and the written notice should be served within 3 months after the dismissal takes effect.

Female VO: I learnt that there are situations where an employer shall not dismiss an employee. Is it true?

Male VO: Yes. The Employment Ordinance provides that an employer shall not dismiss an employee under the following situations:- When a female employee who has been confirmed pregnant and has served a notice of pregnancy to the employer, the employer shall not dismiss her; Besides, if a pregnant employee is dismissed by her employer before she has served a notice of pregnancy, she may serve such notice immediately after being informed of her dismissal. Under such circumstances, her employer must withdraw the dismissal or the notice of the dismissal; When an employee is on paid sick leave, the employer shall not dismiss the employee; An employer shall not dismiss an employee who has suffered work injury before having entered into an agreement with the employee for employee's compensation or before the issue of a certificate of assessment; An employer shall not dismiss an employee for joining a trade union or participating in trade union activities; Besides, an employer shall not dismiss an employee by reason of the employee giving of evidence or information in any proceedings or inquiry in connection with the enforcement of labour legislation, industrial accidents or breach of work safety regulations.

Female VO: Thank you. I know more about my employee rights now.

Male VO: You are welcome. If you want to know more about the employee rights provided under the Employment Ordinance, you may visit the website of the Labour Department at the following address: www.labour.gov.hk or call the 24-hour Enquiry Hotline at 2717 1771. The hotline is handled by "1823".

VO: This slide show sets out in simple terms some of the main provisions of the Employment Ordinance (Chapter 57). It should be noted that the Ordinance itself remains the sole authority for the provisions of the law explained.