

# NOTES FOR THE GUIDANCE OF EMPLOYERS IN COMPLETING THE CONTRACT

## General

1. The attached is a standard contract prepared by the Labour Department for the convenience of employers recruiting employees from Hong Kong. Employers are advised to either use this contract or, should they wish to prepare their own contracts, draft them along the lines of this standard contract. In this connection, employers are reminded that all contracts for employment outside Hong Kong must contain the provisions of section 5 of the Contracts for Employment Outside Hong Kong Ordinance (Cap. 78) of the Laws of Hong Kong.
2. The contract should be completed in quadruplicate and signed by both parties. The signing of the contract by the employer and the employee should be witnessed. The witnesses should state their names and sign at the space provided.
3. If the employer or his authorized local representative is a company, the name and the designation of the person who signs on behalf of the employer should be stated below his signature and the chop of the employing or representing company, as the case may be, should also be impressed. If the signatory is a personal representative of the employer, the name and his Hong Kong identity card number should be stated below his signature.
4. Amendments may have to be made to certain clauses to suit special circumstances. All amendments to and deletions in the contract should be initialled by both the employer (or his authorized representative) and the employee.

## Special clauses

5.     Clause 1         : The maximum duration of a contract is either 2 years if the employee is not accompanied by dependents (3 years if so accompanied) or the maximum period prescribed by the law in the place of employment, whichever is the less.
6.     Clause 4(a)     : If the employee's wages are paid monthly, for instance, the words "day/week" should be deleted. The currency of payment should be specified.  
  
       Clause 4(b)     : The employer is expected to pay wages at least once a month or at more frequent intervals to be agreed upon by both parties concerned. Enter here the intervals of wage payments.  
  
       Clause 4(c)     : The employee's income tax can either be borne by the employer or the employee himself. Yet, for an employee taking up employment in Germany, the employer will be required to pay for the employee.  
  
       Clause 4(d)     : Other agreed conditions e.g. double-pay, bonus, central provident fund, social security scheme etc. should be entered here.
7.     Clause 5         : The employer is free to make any advances of wages to the employee. The advance prior to the employee's departure from Hong Kong should not exceed one month's wages and the advance on arrival should not exceed half month's wages. Any such advances must be interest-free. Deductions from wages as repayment of sums so advanced should not be more frequent than once a month; each cash deduction should not exceed one-seventh of the total advance and no deduction should be made until the employee has received his first month's wages.
8.     Clause 6(a)     : Hours of work vary according to the law in the place of employment. Normally 8 hours per day are considered to be standard working hours. In the case of domestic servants, it is not necessary to lay down the hours of work but an employer is expected to ensure that their hours of work are not excessive.  
  
       Clause 6(b)     : Either 'agrees' or 'is required' should be deleted. Normal overtime payment should be at not less than one and a half times the ordinary rate of pay. If a higher rate of overtime is agreed upon for overtime worked on any occasion in excess of a given number of overtime hours or after a certain hour, the rate should be stated in addition to the rate for normal overtime.  
  
       Clause 6(c)     : The rest day should be agreed upon by both parties concerned, but preferably it should be on Sunday or on a fixed day per week.

- Clause 6(d) : The employer shall grant paid annual leave and paid holidays in each year to the employee, the terms of which shall not be less favourable than those laid down in the Employment Ordinance (Cap. 57), law of Hong Kong.
- Clause 6(e) : For work on a rest day or on any paid holiday, the employer is expected to pay double the ordinary rate.
9. Clause 9(a) & (c) : It is recommended that the rate should be equivalent to approximately half the employee's normal daily wage.
- Clause 9(b) : Payment of airport tax can either be borne by the employer or the employee himself.
10. Clause 11(a) : This paragraph indicates minimum benefits for employees' compensation cases. The employer, if he so wishes, can provide more generous benefits (e.g. full pay during temporary incapacity).
- Clause 11(b) : The employer is expected to provide generous benefits. As a minimum, full wages for the first month of incapacity and half wages for at least three months thereafter should be paid.
11. Clause 12 : Working clothing should be provided by the employer if the work is dirty or causes heavy wear and tear.
12. Clause 13 : The provision of food is a matter to be decided by the parties concerned.
13. Clause 14(a) & (b) : In the event of termination of contract, the period of notice or wages in lieu of notice given by the employer in clause 14(a) should be the same as that given by the employee in clause 14(b). It is expected that the period of notice or wages in lieu of notice should range from one to two months.
14. Clause 20 : The original medical certificate must be presented to the Commissioner for Labour, Hong Kong, at the time of submitting the contract for attestation. The original may, on request, be returned to the employer if one copy of it has been provided to the Commissioner.
15. Clause 21 : "Dependant" means, according to the definition given in section 2 of the Contracts for Employment Outside Hong Kong Ordinance-
- (a) the spouse of an employee, and
  - (b) the employee's children, step-children, and lawfully adopted children, who are unmarried and under the age of sixteen years.
- If the employee is not accompanied by his dependents, the whole clause from (a) to (f) should be deleted. If the employee is accompanied by his dependents, the particulars (such as name, age and relationship) of his dependents should be stated in the space provided.
- Clause 21(d) : Food for dependants is a matter to be decided by the parties concerned.

## 訂約須知 (備僱主參考用)

### 一般事項

- 一、附件乃一份由勞工處制訂的標準合約，方便僱主聘請香港僱員之用。僱主宜盡量使用該份合約；倘欲自行制訂合約，則須以此份標準合約作為草擬有關合約的準則。為此，本處必須提醒僱主，所有僱傭合約必須包括香港法例第七十八章《往香港以外地方就業合約條例》第五條的規定。
- 二、合約必須一式四份填妥；同時每份合約須由僱主及僱員分別簽署。雙方在簽署合約時，必須有見證人在場。見證人亦須寫下其姓名，並於適當的地方簽署。
- 三、如僱主或獲其授權的本地代表以公司名義招聘僱員，則須蓋上僱用公司或其代表公司的印章，並在簽名下方註明簽名人的姓名及職位。如簽名人是僱主的私人代表，則須在簽名下方註明其姓名及身份證號碼。
- 四、為適應個別特殊情況，合約內各項條款或須酌量修改，但所修改及刪除的項目，均須由僱主（或獲其授權的代表）與僱員雙方在旁簽署作實。

### 個別條款

- 五、第1條：

如僱員不攜帶家屬同行，僱傭合約的最長期限不得超過兩年，（如有家屬同行者則為三年）；或根據就業的地方的法例所規定的最長期限，但兩者以期限較短者為準。
- 六、第4(a)條：

如僱員的工資是以月薪計算，則須將「日/星期」刪去。而工資的幣值亦應註明。
- 第4(b)條：

僱主每月最少須發薪一次，倘經雙方同意，每月可超過一次發薪。雙方議定發薪的期限，應在此段載明。
- 第4(c)條：

雙方可議定由其中一方負責支付僱員的入息稅；一般而言，倘僱員前往德國就業，則入息稅由僱主支付。
- 第4(d)條：

倘僱主與僱員仍有其他協議，如年終雙糧、花紅、公積金或社會保障的計劃等，應在此段載明。
- 七、第5條：

僱主可預支工資給僱員。僱員離港前，預支工資的數目不得超過一個月的工資，僱員抵達就業的地方後，預支工資的數目不得超過半個月的工資。所有此等預支款項必須是免息的及以扣除工資方式償還。扣除工資每月不得超過一次，同時每次扣除數目不得超過僱員預支工資總數的七份一。僱員未收取第一個月的工資前不得扣除。
- 八、第6(a)條：

工作時間每因就業的地方的法例而異。通常是以每日八小時為標準工作時間。至於家庭傭工則無須規定工作時間，但僱主須確保此類家庭傭工每日工作時間不致過長。
- 第6(b)條：

「同意」或「須要」兩詞應選擇其一，把不適用者刪去。普通超時工作工資應不少於普通工資率的倍半。如照雙方議定，超過某一指定超時工作時數或在指定鐘點之後超時工作可得更高的超時工作工資，則是項超時工作工資率須與普通超時工作工資率一併載明。
- 第6(c)條：

休息日可由雙方決定，但以固定在星期日或每星期的某日為佳。
- 第6(d)條：

僱主須每年給予僱員有薪年假及有薪假日，而此等條款須不遜於香港法例第57章《僱傭條例》所訂者。
- 第6(e)條：

如僱員在休息日或任何有薪假日工作，僱主應照普通工資率

雙倍給薪。

- 九、 第 9(a) 及 9(c)條： 每日的旅途津貼和生活費應約為僱員每日工資之半。
- 第 9(b)條： 雙方可議定由其中一方負責支付機場稅。
- 十、 第 11(a)條： 本段所述為僱員賠償的最低數額。倘僱主願意時可給予僱員更優厚的待遇（例如在僱員因傷暫時不能工作期間給予全薪）。
- 第 11(b)條： 僱主應給僱員優厚的待遇。僱主在僱員不能工作的第一個月內最低限度應給予全薪，其後的三個月，應最少給予半薪。
- 十一、 第 12 條： 如僱員從事的工作，常令其衣服染污或對衣服易引致損壞者，僱主須供給工作衣服予僱員。
- 十二、 第 13 條： 伙食供應問題可由雙方自行決定。
- 十三、 第 14(a)及 14(b)條： 假如終止僱傭合約的話，僱主按照第 14(a)條的規定而須給予僱員的通知期限或以工資代替通知的數目，應與第 14(b)條所規定僱員必須給予僱主者相同。通知期限或代替通知的工資應介乎一至兩個月。
- 十四、 第 20 條： 在呈交僱傭合約予香港勞工處處長核簽時，必須呈示醫生檢驗證明書正本。倘已將該檢驗證明書的副本呈交勞工處處長，則僱主可提出要求而獲退還正本。
- 十五、 第 21 條： 按照《往香港以外地方就業合約條例》第 2 條所載的定義，「家屬」乃指 –  
（甲） 僱員的配偶；及  
（乙） 僱員的子女，其配偶與前夫或前妻所生的子女，及經過法定手續收養的子女；而此等子女為未婚而年齡未及十六歲者。  
倘該僱員祇是一人前往工作，則應將整段條文由 (a) 至 (f) 段刪去。  
若僱員帶同家屬前往工作，則應在空格內列明其家屬的各項詳情（例如姓名、年齡及關係）。
- 第 21(d)條： 家屬的伙食問題，可由雙方自行決定。

**Documents required for contract attestation**

In accordance with the Contracts for Employment Outside Hong Kong Ordinance, the following documents have to be presented to the External Employment Service (EES) of the Labour Department for contract attestation:

- (i) four / five copies of the signed and completed employment contract, the terms of which must not conflict with the Ordinance;
- (ii) the original of the employee's medical certificate certifying his fitness to perform the work contemplated by the contract; (The validity of the medical certificate should be issued within 6 months before the date of attestation of the contract.)
- (iii) three copies of letter of guarantee signed between the employee and the guarantor who is nominated by the employer;
- (iv) one photo of the employee;
- (v) the employee's identity card; and
- (vi) a dependant form stating the particulars of the employee's dependant(s); and the following document(s), if applicable -  
the employee's marriage certificate, the identity card of the employee's spouse and the birth certificate(s) of the employee's children under the age of 16 years.  
(the dependant(s) could choose to bring along the original document(s) in person to EES or to provide a copy of the document(s) for the employee to present to EES)

Note : Before attesting a contract, the EES will arrange a briefing session and an officer will explain the details of the contract to the employee.

核簽合約時所需文件

根據《往香港以外地方就業合約條例》，辦理核簽合約時，下列文件需呈交勞工處港外僱傭事務組審核：

- (一) 已簽署妥當的僱傭合約共四/五份，合約內所訂的條件不得與《往香港以外地方就業合約條例》有所抵觸 \*；
- (二) 有效的僱員體格檢驗證明書正本，以證明僱員適宜從事合約內所擬定的工作；  
(體格檢驗證明書的有效期為六個月)
- (三) 由僱員與僱主擔保人所簽署一式三份的擔保書；
- (四) 僱員相片乙張；
- (五) 僱員的香港身份證；
- (六) 僱員家眷資料及證明親屬關係的文件，如結婚證書、配偶身份證及十六歲以下子女出生證明書等。  
(家眷可選擇親自前來本處出示上述文件的正本 或由僱員將文件的副本帶來本處)

\* 註：核簽合約時，本處將安排約見僱員，以便解釋合約細則。