

## **Chapter 4: Rest Days, Holidays and Leave**

An employee shall enjoy rest days, statutory holidays and paid annual leave during employment.

### **REST DAY**

#### **Eligibility for Rest Day**

An employee employed under a continuous contract is entitled to not less than one rest day in every period of seven days.

#### **Definition of a Rest Day**

A rest day is defined as a continuous period of not less than 24 hours during which an employee is entitled to abstain from working for his employer.

#### **Appointment of Rest Days**

Rest days shall be appointed by the employer. They may be granted on a regular or irregular basis:

- regular rest days - the employer should inform his employees of the arrangement
- irregular rest days - before the beginning of each month, the employer must inform his employees orally or in writing the appointed rest days or by displaying a roster showing the dates of the appointed rest days for each employee

An employer may substitute some other rest day with the consent of the employee, in which case it must be within the same month before the original rest day or within 30 days after it.

#### **Compulsory Work on Rest days**

An employer must not compel an employee to work on a rest day except in the event of a breakdown of machinery or plant or in any other unforeseen emergency. For any rest day on which the employee is required to work, the employer should substitute some other rest day within 30 days after the original rest day. The employer should notify the employee of the arrangement within 48 hours after the employee is required to work.

### ***Offences and Penalties***

An employer who without reasonable excuse fails to grant rest days to his employees is liable to prosecution and, upon conviction, to a fine of \$50,000.

An employer who compels his employees to work on their rest days is liable to prosecution and, upon conviction, to a fine of \$50,000.

### **Voluntary Work on Rest Days**

An employee, except young persons under the age of 18 employed in industry, may work voluntarily on a rest day.

Any condition in a contract of employment which makes payment of any type of annual bonus or end of year payment conditional on an employee agreeing to work on rest days is void.

### **Rest Day Pay**

Whether rest day is paid or not is to be agreed by employers and employees.

### **STATUTORY HOLIDAYS**

An employee, irrespective of his length of service, is entitled to the following statutory holidays :

1. the first day of January
2. Lunar New Year's Day
3. the second day of Lunar New Year
4. the third day of Lunar New Year
5. Ching Ming Festival
6. Labour Day, being the first day of May
7. Tuen Ng Festival
8. Hong Kong Special Administrative Region Establishment Day, being the first day of July
9. the day following the Chinese Mid-Autumn Festival
10. Chung Yeung Festival
11. National Day, being the first day of October
12. Chinese Winter Solstice Festival or Christmas Day (at the option of the employer)

(Regarding payment for statutory holiday, please see the part below on “Holiday Pay”)

**Work on Statutory Holidays**

If the employer requires the employee to work on a statutory holiday, the employer should make the following arrangement:

<b>Alternative Holiday Arrangement</b>	<b>Prior Notice to Employee on the Date of Alternative Holiday</b>
An alternative holiday should be arranged within 60 days before the statutory holiday; or	To be given not less than 48 hours' prior notice before the alternative holiday
An alternative holiday should be arranged within 60 days after the statutory holiday	To be given not less than 48 hours' prior notice before the statutory holiday

If the employer and employee agree, any day within 30 days before or after the statutory or alternative holiday may be taken by the employee as a substituted holiday.

**A Statutory Holiday Falling on a Rest Day**

If a statutory holiday falls on a rest day, the employee should be granted a holiday on the next day which is not a statutory holiday or an alternative holiday or a substituted holiday or a rest day.

**Holiday Pay**

An employee having been employed under a continuous contract for not less than three months immediately preceding a statutory holiday is entitled to the holiday pay. Holiday pay should be paid to the employee not later than the day on which he is next paid his wages after that statutory holiday.

The daily rate of holiday pay is a sum equivalent to the average daily wages earned by an employee in the 12-month period preceding the following specified dates. If an employee is employed for less than 12 months, the calculation shall be based on the shorter period.

Day(s) of Statutory Holiday(s)	Specified Dates
1 day	Day of the statutory holiday
More than 1 consecutive day	First day of the statutory holidays

*NOTE: In calculating the average daily wages, an employer has to exclude (i) the periods for which an employee is not paid his wages or full wages, including rest day, statutory holiday, annual leave, sickness day, maternity leave, sick leave due to work injuries or leave taken with the agreement of the employer, and any normal working day on which the employee is not provided by the employer with work; together with (ii) the sum paid to the employee for such periods. (see Appendix 2 for details)*

#### **Restriction on Pay in lieu of Holiday**

Regardless of whether an employee is entitled to holiday pay, an employer should grant his employee a statutory holiday, or arrange an “alternative holiday” or “substituted holiday”. An employer must not make any form of payment to the employee in lieu of granting a holiday. In other words, “buy-out” of a holiday is not allowed.

#### ***Offences and Penalties***

An employer who without reasonable excuse fails to grant statutory holidays, alternative holidays or substituted holidays, or fails to pay holiday pay to an employee is liable to prosecution and, upon conviction, to a fine of \$50,000.

#### **PAID ANNUAL LEAVE**

An employee is entitled to annual leave with pay after having been employed under a continuous contract for every 12 months. An employee's entitlement to paid annual leave increases progressively from seven days to a maximum of 14 days according to his length of service:

<b>Years of Service</b>	<b>Annual Leave Entitlements</b>
1	7
2	7
3	8
4	9
5	10
6	11
7	12
8	13
9 or above	14

**Granting of Annual Leave**

An employee shall take the paid annual leave to which he is entitled within the following period of 12 months.

The time of the leave should be appointed by the employer after consultation with the employee or his representative, confirmed by a written notice to the employee at least 14 days in advance, unless a shorter period has been mutually agreed.

Paid annual leave should be granted for an unbroken period. If the employee so requests, it may be granted in the following manner:

<b>Leave entitlement not exceeding 10 days</b>	up to 3 days can be granted separately; the balance should be granted consecutively
<b>Leave entitlement exceeding 10 days</b>	at least 7 days should be granted consecutively

Any rest day or statutory holiday falling within a period of annual leave will be counted as annual leave and another rest day or holiday must be appointed.

### **Annual Leave Pay**

The daily rate of annual leave pay is a sum equivalent to the average daily wages earned by an employee in the 12-month period preceding the following specified dates. If an employee is employed for less than 12 months, the calculation shall be based on the shorter period.

<b>Day(s) of Annual Leave</b>	<b>Specified Dates</b>
1 day	Day of the annual leave
More than 1 consecutive day	First day of the annual leave

*NOTE: In calculating the average daily wages, an employer has to exclude (i) the periods for which an employee is not paid his wages or full wages, including rest day, statutory holiday, annual leave, sickness day, maternity leave, sick leave due to work injuries or leave taken with the agreement of the employer, and any normal working day on which the employee is not provided by the employer with work; together with (ii) the sum paid to the employee for such periods. (see Appendix 2 for details)*

Annual leave pay should be paid to the employee not later than the normal pay day after the period of annual leave taken.

### ***Offences and Penalties***

An employer who without reasonable excuse fails to grant annual leave to an employee is liable to prosecution and, upon conviction, to a fine of \$50,000.

An employer who fails to pay annual leave pay to an employee is liable to prosecution and, upon conviction, to a fine of \$50,000.

### **Restriction on Pay in lieu of Leave**

An employee may choose to accept payment in lieu of the part of his leave entitlement which exceeds 10 days.

### **Payment of Annual Leave Pay on Termination of Employment Contract**

A leave year means any period of 12 months commencing on the day on which his employment commenced and an anniversary of such day.

If an employee has been employed for a leave year and his employment contract is terminated, irrespective of the reasons of termination, he should

be entitled to payment in lieu of any annual leave not yet taken. In calculating the daily rate of the payment, the “date of termination of contract” should be adopted as the “specified date”. (see the preceding part on Annual Leave Pay)

An employee with three but less than 12 months' employment in a leave year and his employment contract is terminated other than for the reason of summary dismissal due to his serious misconduct, he would be entitled to pro rata annual leave pay.

Calculation of Annual Leave Pay on Termination of Employment Contract:

Period of employment		Annual Leave Entitlements	
Less than 12 months	less than 3 months	Nil	
	3 to 12 months	summary dismissal	Nil
		resignation dismissed other than summary dismissal	$\frac{\text{annual leave entitled in the current leave year} \times \text{period of employment (days)}}{365}$
12 or more than 12 months	less than 3 months in the current leave year	annual leave not yet taken*	
	3 to 12 months in the current leave year	summary dismissal	annual leave not yet taken*
		resignation dismissed other than summary dismissal	$\frac{\text{annual leave not yet taken}^* + \text{annual leave entitled in the current leave year} \times \text{period of employment in the current leave year (days)}}{365}$

\* This refers to any untaken annual leave accrued in the previous leave year.

### Common Leave Year

An employer may elect any period of 12 consecutive months as the

common leave year for all of his employees. Should the employer wish to make this arrangement, he shall give one month's notice either to each of his employees in writing or by posting a notice in a conspicuous place in the place of employment.

If an employee has not been employed for 12 months in the common leave year, the employer should calculate his leave entitlement on a pro rata basis, and any fraction of a day resulting from the calculation should be counted as a full day's leave.

After consultation with his employer, the employee may opt to take the pro rata annual leave accrued preceding the commencement of the common leave year or carry it forward and combine it with his leave accrued in the next leave year.

[Example]

common leave year: 1.1.2010 to 31.12.2010

commencement date of employment: 1.9.2010

pro rata annual leave:  $122^* / 365 \times 7 = 2.34$  days (round up to 3 days)

(\*122 is the number of days between 1.9.2010 and 31.12.2010)

The employee may take the 3 days' leave in 2011, or combine it with his 7 days' leave accrued in 2011 and take 10 days' leave in 2012.

### **Annual Leave Shutdown**

If an employer intends to close down his business or part of his business for granting annual leave to his employees, he should inform the affected employees in writing at least one month in advance.

Where an employee is not yet entitled to paid annual leave in respect of any day during the period of shutdown but he has to stop work as a result, he should be granted paid annual leave during that whole period.

If the annual leave an employee is entitled exceeds the number of days of shutdown, he may take the remaining annual leave immediately following the shutdown.

The common leave year elected by the employer should not be affected by an annual leave shutdown as the annual leave granted shall be in respect of the leave year immediately preceding the period of the shutdown.