

# **Proper Keeping of Wage and Employment Records**



**Labour Department (07/2009)**

## Foreword

This booklet sets out the major provisions of the Employment Ordinance on wage and employment record keeping, and provides sample and prescribed forms for employers' reference and deployment. In the interests of employees, these forms may also be used by them to keep record of their wages and employment.

Under the Employment Ordinance, employers are required to use a prescribed form (see *Appendix 5*) to record the *maternity leave* taken by their female employees and the *maternity leave pay* paid to these employees. As for wage and other employment records, employers can compile their own records based on the requirements of the Employment Ordinance. The sample forms at *Appendices 1-4* are meant for *reference only*.

For more detailed information about the statutory entitlements mentioned in the booklet, please refer to the *Employment Ordinance* or the publication “*A Concise Guide to the Employment Ordinance*” issued by the Labour Department. The Ordinance and the Guide are available on the Internet at:

Department of Justice - Bilingual Laws Information System:

<http://www.legislation.gov.hk>

Labour Department - Concise Guide to the Employment Ordinance:

<http://www.labour.gov.hk/eng/public/ConciseGuide.htm>

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**I.**

**Benefits of Keeping  
Wage and Employment  
Records**

## I. Benefits of Keeping Wage and Employment Records

### **1. Helping employers to comply with the provisions of the Employment Ordinance on record keeping**

Under the provisions of the Employment Ordinance, an employer must keep wage and employment records of each employee covering the period of his employment during the preceding 12 months, *irrespective of whether the employee is employed as “full-time”, “part-time”, “permanent”, “casual”, “assistant” or “substitute” worker (please refer to chapter III for details).*

### **2. Reducing unnecessary labour disputes and protecting the rights and benefits of both employers and employees**

Keeping accurate, clear and complete wage and employment records, *such as wage receipts, payroll records, dismissal letters, resignation letters, bank statements, Mandatory Provident Fund contribution records, employment contracts, attendance records as well as overtime work and leave records* **helps reduce unnecessary labour disputes and protects the rights and benefits of both employers and employees.**

To avoid possible disputes, each time when wages are paid, employers are advised to provide an employee with a statement setting out particulars of the wages for the wage period concerned. These particulars should cover: (a) **particulars of the amount earned** – including particulars of basic wages, and where appropriate, commission, overtime pay, allowances, or bonuses, etc.; and (b) **particulars of any deductions made from the wages and the reasons for the deductions.**

### **3. Helping employers to calculate employees' statutory benefits accurately**

Effective from 13 July 2007, employers have to calculate employees' statutory entitlements, *such as holiday pay, annual leave pay, sickness allowance, maternity leave pay, end of year payment and wages in lieu of notice*, on the basis of the average daily or monthly wages earned by the employee in the past 12 months (or a shorter period if employed for less than 12 months).

In calculating the average daily or monthly wages, if the employee was not paid wages or full wages under the following situations, the periods together with the sum paid to the employee for such periods shall be excluded:

- (i) The employee's taking any of the following leave:
  - leave provided under the Employment Ordinance (i.e. rest day, statutory holiday, annual leave, maternity leave or sickness day);
  - sick leave due to work injuries as provided under the Employees' Compensation Ordinance; or
  - leave taken with the agreement of the employer;
- (ii) The employee not being provided by the employer with work on any normal working day.

**Accurate, detailed and complete records of wages, attendance and leave taken are crucial to the calculations of the relevant statutory entitlements.**

### **4. Helping employers to formulate long-term human resource policy and planning**

Some wage and employment records such as overtime record, training record, performance appraisal record, etc., **offer useful information for human resource planning which is conducive to the long-term development of the organisation.**

## **II.**

# **Points-to-Note on Wage and Employment Record Keeping**

## **II. Points-to-Note on Wage and Employment Record Keeping**

Apart from the requirements of the Employment Ordinance, the following are some points that employers should take note of in keeping wage and employment records:

### **Confidentiality**

- ☐ Employers should keep the personal and employment records of employees in safe custody and should not disclose the records to outside parties.

### **Consistency**

- ☐ The record keeping system should be consistent, accurate and reliable.

### **Convertibility**

- ☐ It is in the best interests of employers if the record keeping system can be easily adapted to meet the changing needs and developments of the organisation.

## **Regular Review**

- ☐ To ensure its effectiveness, employers should regularly review the record keeping system. Some areas that require special attention are:
  - Is the information collected useful and essential?
  - Is adequate training provided to staff who are required to handle the records?
  - Is there any room for improvement in the existing record keeping system?

## **Personal Data (Privacy) Ordinance**

- ☐ Employers should also observe the requirements of the *Personal Data (Privacy) Ordinance* and the *Code of Practice on Human Resource Management* issued by the Office of the Privacy Commissioner for Personal Data.
- ☐ For more detailed information about the above-mentioned Ordinance and Code, please visit the homepage <http://www.pcpd.org.hk> of the Office or call its hotline 2827 2827.

# **III.**

## **Obligations of Employers under the Employment Ordinance and Sample Forms for Keeping Wage and Employment Records**

### **III. Obligations of Employers under the Employment Ordinance and Sample Forms for Keeping Wage and Employment Records**

#### **(1) Wage and Employment Records**

Under section 49A of the Employment Ordinance:

- An employer must keep a record which sets out the wage and employment history of **each employee covering the period of his employment during the preceding 12 months.**
- The record should contain the following information of each employee:
  - name and identity card number;
  - date of commencement of employment;
  - job title;
  - wages paid in respect of each wage period;
  - wage period;
  - periods of annual leave, sick leave, maternity leave and statutory holidays entitled and taken, together with details of payments made in respect of such periods;
  - amount of end of year payment and the period to which it relates (if applicable);
  - length of notice required for termination of contract; and
  - date of termination of employment (if applicable).

- The wage record must be kept at the employer's place of business or at the place where the employee is employed, and they should be **kept for a period of another 6 months after the employee ceases to be employed.**
- Under section 63D of the Employment Ordinance, an employer who fails to keep the wage and employment record is liable to prosecution and, upon conviction, to a fine of \$10,000.
- Under section 72 of the Employment Ordinance, officers of the Labour Department may inspect the wage and employment record, inquire any person or seize anything which may appear to be evidence of an offence under the Ordinance. Any person who fails to comply with the requirements is liable to prosecution and, upon conviction, to a fine of \$100,000 and to imprisonment for one year. Employers are advised to keep employment records at the place of employment so that they will be available for inspection by officers of the Labour Department.
- Please refer to Appendix 1 for a sample form for keeping wage record.

## Appendix 1: Sample Form for Keeping Wage Record

Name of employee: \_\_\_\_\_

<b>Wage Period</b>	<b>Amount Paid</b>	<b>Payment Date</b> <i>(Note 1)</i>	<b>Details of calculation</b> <i>(Note 2)</i>

Note 1: Under section 23 of the Employment Ordinance, wages shall become due on the expiry of the last day of the wage period. An employer must pay wages to an employee as soon as practicable but in any case *not later than seven days after the end of the wage period*.

Note 2: Please specify: (a) **any payments made to the employee in respect of statutory holidays**; and (b) **particulars of the wages paid to the employee**, including particulars of the amount earned by the employee (including basic wages, commission, various allowances and overtime pay, etc) and particulars of the deductions made from the wages of the employee and the reasons for the deductions. These particulars are necessary for calculating statutory entitlements of the employee, such as holiday pay, annual leave pay, sickness allowance, maternity leave pay, end of year payment and wages in lieu of notice. For details about these entitlements, please refer to the Employment Ordinance or the publication “A Concise Guide to the Employment Ordinance” issued by the Labour Department.

## (2) Records relating to Statutory Holidays

- Under section 49A of the Employment Ordinance, an employer must keep a record which sets out the wage and employment history of **each employee covering the period of his employment during the preceding 12 months**, including the periods of statutory holidays to which the employee is entitled and the periods of statutory leave that he has taken, together with **details of payments made** in respect of such periods.
- Please refer to Appendix 2 for a sample form for keeping statutory holiday record.

### **Main Points about Statutory Holidays**

*(Sections 39 & 40 of the Employment Ordinance)*

- All employees, irrespective of their length of service and hours of work, should be granted statutory holidays. After an employee has been employed under a *continuous contract (Note)* for a period of 3 months immediately preceding a statutory holiday, he is entitled to holiday pay. Holiday pay should be paid to the employee not later than the day on which he is next paid wages after the statutory holiday.
- The daily rate of holiday pay is a sum equivalent to the average daily wages earned by an employee in the past 12 months preceding the day of the statutory holiday or the first day of the statutory holidays (or a shorter period if employed for less than 12 months). In calculating the average daily wages, if the employee was not paid wages or full wages under the situations mentioned in *Chapter I (section 3)*, the periods together with the sum paid to the employee for such periods shall be excluded.
- If an employee is required to work on a statutory holiday, the employer should give 48 hours' prior notice to the employee, and must arrange an alternative holiday within 60 days before or after the statutory holiday. If both parties agree, the employee may take any day within 30 days of the statutory or alternative holiday as a substituted holiday.

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Note: An employee who has been employed continuously by the same employer for four weeks or more, with at least 18 hours worked in each week, is regarded as being employed under a *continuous contract*.

Appendix 2: **Sample Form for Keeping Statutory Holiday Record** (Note 1)

Year : \_\_\_\_\_

Name of Employee	The first day of January	Lunar New Year's Day	The second day of Lunar New Year	The third day of Lunar New Year	Ching Ming Festival	Labour Day (1 May)	Tuen Ng Festival	HKSAR Establishment Day (1 July)	The day following the Chinese Mid-Autumn Festival	Chung Yeung Festival	National Day (1 October)	Chinese Winter Solstice Festival / Christmas Day (Note 2)

Note 1 : In each box, please fill in the date of statutory holiday or, where appropriate, the date of alternative holiday or substituted holiday taken by the employee. Payment made for the holiday may be recorded in the wage record. Please refer to the Sample Form for Keeping Wage Record.

Note 2 : At the option of the employer. Please delete whichever is inappropriate.

### (3) Records relating to Sick Leave

Under section 37 of the Employment Ordinance:

- **For each employee**, an employer must keep a record of:
  - (a) his date of commencement and termination of employment;
  - (b) all paid sickness days accumulated by him under section 33 of the Employment Ordinance, including the number of paid sickness days accumulated in Categories 1 and 2;
  - (c) all paid sickness days taken by him under section 33 of the Employment Ordinance and the paid sickness days deducted from Categories 1 and 2; and
  - (d) all sickness allowance paid to him and the sickness days in respect of which sickness allowance was paid.
- The above record has to be signed by the employee within 7 days of his return to work from paid sick leave, and the employee has the right to inspect the record.
- Please refer to Appendix 3 for a sample form for keeping paid sickness days record.

**Main Points about Sickness Allowance**  
(Sections 33 and 35 of the Employment Ordinance)

- An employee employed under a *continuous contract* can accumulate paid sickness days at the rate of 2 paid sickness days for each completed month during the first 12 months of employment, and 4 paid sickness days thereafter. Paid sickness days can be accumulated up to a maximum of 120 days.
- An employee is eligible for sickness allowance if: (a) the employee has accumulated sufficient number of paid sickness days; (b) the sick leave taken is not less than 4 consecutive days; and (c) the sick leave is supported by an appropriate medical certificate (*Note*).
- The daily rate of sickness allowance is a sum equivalent to four-fifths of the average daily wages earned by an employee in the past 12 months preceding the sickness day or the first sickness day (or a shorter period if employed for less than 12 months). In calculating the average daily wages, if the employee was not paid wages or full wages under the situations mentioned in *Chapter I (section 3)*, the periods together with the sum paid to the employee for such periods shall be excluded.
- If a female employee is absent from work to attend medical examination in relation to her pregnancy check-ups, post confinement medical treatment, or due to miscarriage, any day on which she is absent shall be counted as sickness day. She will be entitled to sickness allowance for each day of the sick leave provided she has accumulated sufficient number of paid sickness days and can produce an appropriate medical certificate (*Note*).

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Note: The medical certificate should specify the number of days on which, and the nature of the sickness or injury on account of which, the employee is unfit for work.

### Appendix 3: Sample Form for Keeping Paid Sickness Days Record

Name of employee: \_\_\_\_\_ Date of commencement of employment: \_\_\_\_\_ Date of termination of employment: \_\_\_\_\_

Date			Days accumulated in each month under the Employment Ordinance	Category 1 (Note) (Maximum accumulation: 36 days)			Category 2 (Note) (Maximum accumulation: 84 days)			Amount of sickness allowance	Received by	
Year	Month	Day		Total accumulation	Sickness days taken		Balance	Total accumulation	Sickness days taken			
					Date	No. of days			Date			No. of days

Note: Paid sickness days are divided into two categories - paid sickness days can first be accumulated up to 36 days in Category 1 and then 84 days in Category 2. The conditions for taking paid sickness day(s) are summarised below:

Category 1: Supported by a medical certificate\* issued by a registered medical practitioner, a registered Chinese medicine practitioner or a registered dentist.

Category 2: Sickness days taken exceeds the number of paid sickness days remaining in Category 1. If required by the employer, a medical certificate\* issued by a registered medical practitioner, registered Chinese medicine practitioner or registered dentist attending the employee as an out-patient or in-patient in a hospital should be produced ; upon the employer’s request, a brief record of the investigation carried out and the treatment prescribed by the issuer of the medical certificate should also be produced.

\* *The medical certificate should specify the number of days on which, and the nature of the sickness or injury on account of which, the employee is unfit for work.*

#### **(4) Records relating to Annual Leave**

- Under section 41G of the Employment Ordinance, an employer must keep a record of:
  - (a) the date of commencement and termination of the employment of each employee;
  - (b) the date of commencement and termination of all periods of annual leave taken by each employee;
  - (c) the date of commencement and termination of all periods of closure of the employer's business or part of the business for the purpose of granting any annual leave to any of his employees; and
  - (d) all annual leave pay received by each employee.
- Please refer to Appendix 4 for a sample form for keeping annual leave record.

### **Main Points about Annual Leave**

*(Section 41AA of the Employment Ordinance)*

- Employees employed under a *continuous contract* for not less than 12 months are entitled to paid annual leave. The number of days of paid annual leave increases progressively from 7 to 14 depending on the employee's length of service.
- The daily rate of annual leave is a sum equivalent to the average daily wages earned by an employee in the past 12 months preceding the day of the annual leave or the first day of the annual leave (or a shorter period if employed for less than 12 months). In calculating the average daily wages, if the employee was not paid wages or full wages under the situations mentioned in *Chapter I (section 3)*, the periods together with the sum paid to the employee for such periods shall be excluded.
- 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 by the employer.



## **(5) Records relating to Maternity Leave**

- Under section 15B of the Employment Ordinance, an employer who employs female employees must maintain, **in a form prescribed by the Commissioner for Labour**, a record of:
  - (a) the maternity leave taken by the employees; and
  - (b) the maternity leave pay paid to the employees.
- Please refer to Appendix 5 for a prescribed form made under the Employment Ordinance for recording maternity leave and maternity leave pay.

## **Main Points about Maternity Leave and Maternity Leave Pay**

*(Sections 12 and 14 of the Employment Ordinance)*

- A female employee is entitled to maternity leave for a continuous period of 10 weeks if she has been employed under a *continuous contract* immediately before the commencement of maternity leave and has given notice of pregnancy to the employer.
- A female employee is eligible to maternity leave pay if:
  - (a) she has been employed under a continuous contract for not less than 40 weeks immediately before the commencement of the scheduled maternity leave;
  - (b) she has given notice of pregnancy and her intention to take maternity leave to her employer, such as producing a medical certificate that confirms her pregnancy; and
  - (c) if so required by her employer, she has produced a medical certificate specifying the expected date of confinement.
- Maternity leave pay is calculated at four-fifths of the average daily wages earned by an employee in the past 12 months preceding the first day of the maternity leave (or a shorter period if employed for less than 12 months). In calculating the average daily wages, if the employee was not paid wages or full wages under the situations mentioned in *Chapter I (section 3)*, the periods together with the sum paid to the employee for such periods shall be excluded.



## ENQUIRY

Website of the Labour Department: <http://www.labour.gov.hk>

Telephone Enquiry Service: 2717 1771 (the hotline is handled by the 1823 Call Centre)

### **Offices of Labour Relations Division:**

<b>Hong Kong</b>	Hong Kong East Office	34/F, Revenue Tower, 5 Gloucester Road, Wan Chai, Hong Kong.
	Hong Kong West Office	3/F, Western Magistracy Building, 2A Pokfulam Road, Hong Kong.
<b>Kowloon</b>	Kowloon East Office	Room 1206, 12/F, Stelux House, 698 Prince Edward Road East, San Po Kong, Kowloon.
	Kowloon South Office	2/F, Mongkok Government Offices, 30 Luen Wan Street, Mongkok, Kowloon.
	Kowloon West Office	Room 1009, 10/F, Cheung Sha Wan Government Offices, 303 Cheung Sha Wan Road, Kowloon.
	Kwun Tong Office	6/F, Kowloon East Government Offices, 12 Lei Yue Mun Road, Kwun Tong, Kowloon.
<b>New Territories</b>	Tsuen Wan Office	5/F, Tsuen Wan Government Offices, 38 Sai Lau Kok Road, Tsuen Wan, New Territories.
	Kwai Chung Office	6/F, Kwai Hing Government Offices, 166 – 174 Hing Fong Road, Kwai Chung, New Territories.
	Tuen Mun Office	Room 2720, 27/F, Tuen Mun Parklane Square, 2 Tuen Hi Road, Tuen Mun, New Territories.
	Shatin & Tai Po Office	Rooms 304 – 313, 3/F, Sha Tin Government Offices, 1 Sheung Wo Che Road, Sha Tin, New Territories.