KEEPING PROPER EMPLOYMENT RECORDS – REFERENCE FOR EMPLOYEES

Labour Department
July 2015
**Foreword**

Under the Employment Ordinance, an employer must keep the wage and employment records (hereafter ‘employment records’) of each employee. These records should set out particulars of each employee such as his name, date of commencement of employment, job title, wages, period of leave and period of notice required for termination of contract. If an employee gets into the habit of keeping employment records, it will help him safeguard his employment rights.

This booklet highlights the importance of keeping employment records by employees, introduces them various employment records and the relevant provisions of the Employment Ordinance.
Why employees have to keep employment records?

Full and clear employment records can assist employees to:

- have a good grasp of their employment terms, rights and benefits;
- verify the amount of employment rights and benefits calculated by employers, as well as the leaves taken;
- keep track of employment history and skills acquired, hence facilitate employees’ future job search, continuing education and skills recognition;
- reduce labour disputes resulting from ambiguous employment terms and incomplete employment records;
- manage the “personal account” under Mandatory Provident Fund Schemes; and
- provide evidence to support their employment claims where necessary.
**Case**

The company at which Miss Lam has worked for 10 years suddenly underwent voluntary liquidation, and failed to settle all terminal payments. Miss Lam approached the Labour Relations Division of the Labour Department for assistance. She was later referred to the Department’s Wage Security Division to apply for ex gratia payment from the Protection of Wages on Insolvency Fund with regard to her claims for severance payment.

As Miss Lam’s reported length of employment differed from the company’s records and due to insufficient supporting documents, she encountered difficulties in her application for the ex gratia payment.

**Analysis**

The above case demonstrates that if an employee has properly kept employment records, these records can be served as important evidence to support his/her claims for employment rights and benefits when necessary.
There are many types of employment records, which may vary among different trades and companies. The following are examples of some common types of employment records:

<table>
<thead>
<tr>
<th>Types of Employment Records</th>
<th>Common Examples</th>
</tr>
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<tbody>
<tr>
<td>Record of commencement of employment / promotion / transfer</td>
<td>Job application form, appointment letter, written employment contract, notice of confirmation of probation, notice of promotion / transfer, etc.</td>
</tr>
<tr>
<td>Wage record</td>
<td>Pay slip, pay packet, wage receipt, notice of wage adjustment, bank passbook, bank monthly statement, copy of cheque, record of dishonoured cheque, copy of Employer’s Return of Remuneration and Pensions, copy of Tax Return–Individuals completed by an employee, cash deposit record(or pay-in slip), etc.</td>
</tr>
<tr>
<td>Commission record</td>
<td>Document on calculation of commission (e.g. document on commission rate, relevant transaction record, etc.), commission payment record, etc.</td>
</tr>
<tr>
<td>End of year payment record</td>
<td>Document on calculation of end of year payment, end of year payment record, etc.</td>
</tr>
<tr>
<td>Attendance, absence and leave record</td>
<td>Attendance and working hours record (e.g. clock card, duty roster, sign-in/sign-out record), overtime work record (including dates, duration of overtime work, etc.), holiday/leave record, etc.</td>
</tr>
<tr>
<td>Record on Occupational Retirement Schemes and Mandatory Provident Fund Schemes</td>
<td>Monthly contribution record, membership certificate, annual benefit statement, etc.</td>
</tr>
<tr>
<td>Types of Employment Records</td>
<td>Common Examples</td>
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<tr>
<td>Proof of entitlement to sickness allowance / maternity protection</td>
<td>Medical certificate, sick leave record, proof of pregnancy, medical report, etc.</td>
</tr>
<tr>
<td>Proof of entitlement to paternity leave</td>
<td>Birth certificate of the child, medical certificate on the delivery of the child, written statement(s) provided to the employer, etc.</td>
</tr>
<tr>
<td>Record on termination of employment</td>
<td>Dismissal letter, resignation letter, award/order made by the Labour Tribunal/Minor Employment Claims Adjudication Board, etc.</td>
</tr>
<tr>
<td>Others</td>
<td>Staff handbook, recommendation letter, notice on change of employment conditions, name card, staff identity card, entry pass, notice on company training, reference letter, relevant company notice, email correspondence or letter, etc.</td>
</tr>
</tbody>
</table>
Relevant Legislation

Employment Ordinance

Under section 44 of the Employment Ordinance, before an employee enters his employment, his employer must inform him of the conditions of employment, including:

1. **Wages** (including wage rate, overtime rate and any allowances);
2. **Wage period**;
3. **Length of notice required to terminate the contract**; and
4. **End of year payment or proportion of it and the payment period** (if applicable).

If the contract of employment is in writing, the employer must give a copy of the written contract to the employee.

If the contract of employment is not in writing, before the employment is entered into, an employee may issue a written request to ask his employer to deliver him a notice in writing containing the relevant conditions of employment.

Before making any change to the conditions of employment or proposing such change to the employee, an employer should clearly explain the change or proposed change to the concerned employee. Where there is any written amendment made to the employment conditions or upon receipt of a written request from an employee, the employer must give a copy of the written amendment to the employee.

The terms of employment must not be set below the standards as laid down in the Employment Ordinance. Otherwise, such employment terms shall be void.
The Minimum Wage Ordinance has specified that wages payable to an employee in respect of any wage period, when averaged over the total number of hours worked in the wage period, should be no less than the Statutory Minimum Wage (SMW) rate\(^1\).

Any term of an employment contract which purports to extinguish or reduce any right, benefit or protection conferred upon the employee by the Minimum Wage Ordinance shall be void.

The use of written employment contract can help minimise unnecessary labour disputes. An employer is advised to enter into a written employment contract with his employee as far as possible. For details, please refer to the booklet “Using Written Employment Contract” published by the Labour Department.

\(^1\)For details of the statutory minimum wage rate, please refer to the booklet “Statutory Minimum Wage: Reference Guidelines for Employers and Employees” published by the Labour Department.
Points-to-Note

Before accepting an employment offer, an employee should know the identity of the employer, including name of company, registration address, name and post of the person-in-charge or company representative, etc.

If the employment contract is not in writing and the employer is not a limited company (i.e. an employer in personal capacity engaging employees), an employee should take note of the following which may help him identify the employer to safeguard his employment rights:

✔ Before entering into employment, an employee may issue a written request to ask his employer to deliver him a written notice containing relevant conditions of employment in accordance with the Employment Ordinance;

✔ An employee should take note of the particulars about the employer or the company name (i.e. trading name of the employer) as shown in documents\(^2\) or in the workplace/office premises;

✔ An employee may clarify with other third parties such as staff, clients, principal contractors (for construction and building works);

✔ An employee may apply for a copy of Business Registration Certificate from the Business Registration Office of the Inland Revenue Department; and

✔ If the employer intends to change conditions of employment or work nature, before the employee consider accepting such changes, he/she should clarify with the employer the details. Whenever in doubts, the employee can consult the Labour Department.

\(^2\)Such as job advertisement, business card showing name of the company or employer, envelope, letterhead, staff registration form, sign-in/sign-out record, receipt, business registration certificate, etc.
The Employment Ordinance

The Employment Ordinance is the major piece of labour legislation in Hong Kong, which lays down the minimum standards for various employment rights and benefits of employees. For details, please refer to the full text of the Ordinance or the booklet “A Concise Guide to the Employment Ordinance” published by the Labour Department or visit the web pages below to obtain the information:

The Employment Ordinance
Bilingual Laws Information System of the Department of Justice:
http://www.legislation.gov.hk

A Concise Guide to the Employment Ordinance
**ENQUIRIES**

**Enquiry Hotline:** 2717 1771 (the hotline is handled by “1823”)

**Homepage Address:** http://www.labour.gov.hk

**Enquiry in person to Offices of the Labour Relations Division:**

**Hong Kong**

- **Hong Kong East Office**
  - 34/F, Revenue Tower,
  - 5 Gloucester Road, Wanchai, Hong Kong

- **Hong Kong West Office**
  - 3/F, Western Magistracy Building,
  - 2APokfulam Road, Hong Kong

**Kowloon**

- **Kowloon East Office**
  - UGF, Trade and Industry Tower,
  - 3 Concorde Road, Kowloon

- **Kowloon West Office**
  - Room 1009, 10/F,
  - Cheung Sha Wan Government Offices,
  - 303 Cheung Sha Wan Road,
  - Sham Shui Po, Kowloon

- **Kowloon South Office**
  - 2/F, Mongkok Government Offices,
  - 30 Luen Wan Street, Mongkok, Kowloon.

- **Kwun Tong Office**
  - 6/F, Kowloon East Government Offices,
  - 12 Lei Yue Mun Road, Kwun Tong, Kowloon.

**New Territories**

- **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**
  - Unit 2, East Wing, 22/F,
  - Tuen Mun Central Square,
  - 22 Hoi Wing 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.

**Personal Data Privacy**

- **Office of the Privacy Commissioner for Personal Data Privacy**
  - Website: http://www.pcpd.org.hk
  - Telephone: 2827 2827
  - Fax: 2877 7026

**Mandatory Provident Fund Schemes**

- **Mandatory Provident Fund Schemes Authority**
  - Website: http://www.mpfa.org.hk
  - Telephone: 2918 0102
  - Fax: 2259 8806