

Points To Note for Construction Employers

Foreword

To promote harmonious labour relations in the construction industry, the Labour Department produces this leaflet to set out in simple terms the provisions of the Employment Ordinance on payment of wages and the related offences and penalties, as well as some good people management practices in respect of entering into written contract, keeping proper records and distinguishing employment status. We hope this will help remind employers to comply with the provisions of the Ordinance as well as to avoid unnecessary disputes.

Payment of Wages On Time

- ✿ It is the statutory obligation of employers to effect wages to employees on time. Such compliance is also fundamental for the maintenance of harmonious labour relations.
- ✿ According to the Employment Ordinance, wages shall become due on the expiry of the last day of the wage period. An employer should 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 or the date of termination of employment.
- ✿ An employer who fails to pay wages to an employee when it becomes due is liable to prosecution and, upon conviction, to a fine of \$350,000 and to imprisonment for three years.
- ✿ An employer is required to pay interest on the outstanding amount of wages to the employee if he fails to pay wages to the employee

within seven days when it becomes due. An employer who fails to pay interest on the outstanding amount of wages to the employee is liable to prosecution and, upon conviction, to a fine of \$10,000.

- ✿ If an employee engaged in building and construction works is owed wages by his direct employer (subordinate subcontractor), he may request the principal contractors, superior sub-contractors and superior nominated sub-contractors to pay the first two months' unpaid wages on behalf of his employer. The wages paid by the principal contractor, the superior sub-contractors and the superior nominated sub-contractors shall be a debt due by the employer of the employee to them. The debt may be recovered through civil claims proceedings.

Employers' Criminal Liability in Failing to Pay an Award of the Labour Tribunal or Minor Employment Claims Adjudication Board

- ✿ An employer who wilfully and without reasonable excuse fails to pay any sum awarded* by the LT or MECAB within 14 days after the date on which it is due is liable to prosecution and, upon conviction, to a fine of \$350,000 and to imprisonment for 3 years.
- ✿ The provisions apply to awards made on or after 29 October 2010.
- * For details, please refer to Chapter 12 of "A Concise Guide to the Employment Ordinance"

Written Contracts and Proper Records

- ✿ Employers should enter into written employment contracts with their employees and keep proper wage and attendance records of them, no matter whether they are full-time workers, casual workers, helpers or substitute workers. This will:
 - Help protect the interest of both the employer and the employee.
 - Ensure the employee fully understand his employment terms.
 - Remind both the employer and the employee to fulfill their contractual responsibilities.
 - Minimize unnecessary labour disputes.

- ✿ Employers and employees are free to negotiate and agree on the terms and conditions of employment that comply with the provisions of the Employment Ordinance. But it should be noted that, according to section 70 of the Employment Ordinance, any term of an employment contract, which purports to extinguish or reduce any right, benefit or protection conferred upon the employee by the Employment Ordinance shall be void.

Distinguish the Status, Know your Responsibilities, Avoid Disputes

- ✿ Sub-contracting is a common practice in the construction industry. Apart from employees, people working in the industry may be subcontractors or self-employed persons. As an “employee” and a “self-employed person” or “contractor” engaged under a contract for service have different rights and obligations, to avoid unnecessary dispute, it is important for the relevant parties to clarify their relationship before they enter into a contract.

(1) *“Employee” or “contractor/self-employed person” in the construction industry*

- An “employee” would be entitled to the rights and benefits provided according to the provisions of the Employment Ordinance and the Employees’ Compensation Ordinance including, among others, statutory holidays, paid sickness days, severance payment/long service payment, employees’ compensation, etc.
- A “contractor” subcontracts projects and sometimes employs his own employees. A “contractor” or “self-employed person” is not entitled to the benefits provided according to the provisions of the Employment Ordinance and the Employees’ Compensation Ordinance. If necessary, he should consider insuring himself against personal accident.

(2) *Points to note*

- “Contractors” as employers are required to take out insurance policies to cover their liabilities both under the Employees’ Compensation Ordinance and at common law for injuries at work in respect of all their employees.
- Employers should not unilaterally change the status of their employees to contractors / self-employed persons. This may amount to constructive dismissal and aggrieved employees may claim termination compensation against their employers.
- Even though the workers are labeled as “contractors”, “sub-contractors” or “self-employed persons”, if there exists in essence employer-employee relationship, the court may rule that the workers are still employees and entitled to statutory benefits.

Employers are still required to fulfill their responsibilities under the law.

This leaflet sets out in simple terms the provisions of the Employment Ordinance on payment of wages as well as some good people management practices. For brief outlines of the main provisions of the Employment Ordinance, please refer to the booklet: “A Concise Guide to the Employment Ordinance” published by the Labour Department. It should be noted that the respective ordinances themselves remain the sole authority for the provisions of the law mentioned.

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:
<http://www.labour.gov.hk/eng/tele/lr1.htm>