

A Guide to the Employment Ordinance for

Summer Job Students

Foreword

Many students find jobs in the summer vacation to get work experience and earn pocket money. As most of them are new entrants into the job market, they are not familiar with their rights under labour laws. This booklet aims to enhance their awareness of employees' rights and responsibilities to prevent them from being owed wages or entering into disputes with employers.

This leaflet outlines the major provisions of the Employment Ordinance. For further information on the Ordinance, please refer to the publication “**A Concise Guide to the Employment Ordinance**” published by the Labour Department. If in doubt, they are welcome to contact us.

Workplace Consultation Promotion Division

Labour Department

[Employment Ordinance and Summer Job Students](#)

- The Employment Ordinance, Chapter 57 of the Laws of Hong Kong, is the major piece of legislation governing conditions of employment in Hong Kong. The Ordinance is applicable with a few exceptions to all employees in the non-government sector.
- The Employment Ordinance does not differentiate between “summer job workers” and those who are not. Summer job workers who are employees are entitled to the rights and protection under the Employment Ordinance.

- Irrespective of their hours of work, all employees covered by the Employment Ordinance are entitled to enjoy basic protection under the Ordinance, such as wage payment protection, restrictions on wage reductions, granting of statutory holidays, etc. Employees who are employed under a “continuous contract” are further entitled to enjoy other rights and benefits such as rest days, paid annual leave, pay for statutory holidays and sickness allowance.
- An employee who has been employed continuously by the same employer for 4 weeks or more, with at least 18 hours worked in each week, is regarded as being employed under a “continuous contract”.

Contract of Employment

- Employers and employees are free to negotiate and agree on the terms and conditions of employment. However, according to 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 Ordinance shall be void.
- A contract of employment can be made verbally or in writing. If it is made in writing, according to the Employment Ordinance, the employer shall give a copy of the written contract to the employee for reference and retention.
- Even when there is no written employment contract, all employees covered by the Employment Ordinance are still protected by the Ordinance.

- Before entering into a contract of employment, summer job students should make sure that they know who their employer is. They should also be fully aware of the terms of their employment, such as wage rate, working hours, overtime and other allowances, wage period, whether there is any probation period, rest day arrangements, wage payment arrangements and notice period required for contract termination.
- If the employer proposes to vary the conditions of service or work nature, summer job students should obtain detailed information about these changes before accepting them. Whenever in doubt, summer job students should consult their family or the Labour Department as soon as possible.

Contract for Service

- Jobs in certain industries or establishments are expected to be taken up by students in the capacity of “self-employed persons”. There is no employment relationship between the student and the company. The contract is a “contract for service” instead of a “contract of employment”.
- A “contract for service” is not governed by the Employment Ordinance and other labour legislation. Persons engaged under such a contract may not enjoy the protection under the Employment Ordinance, and may even expose themselves to risks in other aspects. Summer job students should clarify whether there is any

employment relationship between them and the company before they commence work. Whenever in doubt, they should consult their family or the Labour Department as soon as possible.

Introduction of the Major Provisions of the Employment Ordinance that are Particularly Relevant to Summer Job Students

Wage Protection

- Under the Employment Ordinance, employers have a statutory duty to effect wages to all of their employees on time, irrespective of whether the employees are designated as full-time, part-time, summer job, casual or substitute employees and irrespective of their hours of work.
- Wages shall become due on the expiry of the last day of the wage period or the day of termination of employment. 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 day of termination of employment. The wage period shall be deemed to be one month until the contrary is proved.
- If employees are owed wages, they should approach the field offices of the Labour Relations Division (please see the addresses in this leaflet) near their workplace for assistance as soon as possible.

- Under the Employment Ordinance, an employer who willfully and without reasonable excuse 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.
- Only under the circumstances prescribed in the Employment Ordinance (e.g. absence from work) can an employer deduct the wages of an employee. The Ordinance also specifies the total amount of wages of an employee that may be deducted by an employer. An employer who illegally deduct wages of an employee is liable to prosecution and, upon conviction, to a fine of \$100,000 and to imprisonment for one year.

Rest Days

- An employer is required to grant one rest day in every period of seven days to an employee who is employed under a “continuous contract”.
- Under the employee’s consent, an employer may substitute some other rest day of the employee within the same month before the original rest day or within 30 days after it.
- Except in cases of a breakdown of machinery or plant or in any other unforeseen emergency, an employer must not compel an employee to work on a rest day. For any rest day on which the employee is required to work, the employer has to substitute some other rest day within 30 days after the original rest day.

Statutory Holidays

- Irrespective of their hours of work and length of service, all employees are entitled to 12 statutory holidays every year. The statutory holidays that fall in the period between May and October include:
 - Labour Day (the first day of May)
 - Tuen Ng Festival
 - Hong Kong Special Administrative Region Establishment Day (the first day of July)
 - The day following the Chinese Mid-Autumn Festival
 - National Day (the first day of October)
 - Chung Yeung Festival
- An employee who has been employed under a “continuous contract” for not less than three months immediately preceding a statutory holiday is further entitled to pay on statutory holidays.

Sickness Allowance

- An employee who is employed under a “continuous contract” can accumulate two paid sickness days for each completed month of his employment during the first 12 months of employment, and four paid sickness days for each completed month of employment thereafter. Paid sickness days can be accumulated up to a maximum of 120 days.

- Provided an employee has accumulated sufficient number of paid sickness days and the sick leave taken is not less than four consecutive days and supported by an appropriate medical certificate, an employee who is employed under a “continuous contract” is entitled to sickness allowance on sickness days at the rate of four-fifths of his average daily wages.
- Except in cases of a summary dismissal due to the employee’s serious misconduct, an employer is prohibited from terminating the contract of employment of an employee whilst the employee is on paid sick leave.

Paid Annual Leave

- Under the Employment Ordinance, an employee is entitled to annual leave with pay after having been employed under a “continuous contract” for every 12 months. The entitlement to paid annual leave increases progressively from seven days to a maximum of 14 days according to his length of service.
- If an employee has three but less than 12 months of employment under a “continuous contract” and his employment contract is terminated other than for reason of a summary dismissal due to his serious misconduct, he would be entitled to pro rata annual leave pay.

Termination of Contract of Employment

- To terminate a contract of employment, an employer or an employee has to give proper notice or wages in lieu of notice to the other party according to the terms of the employment contract.

- According to the Employment Ordinance, in the case of a “continuous contract” of employment, the length of notice required for termination is as follows:
 - If the employee is on probation, within the first month of probation, either party may terminate the contract without giving any notice to the other party.
 - If the employee is on probation, after the first month of employment, either party may terminate the contract by giving notice of the agreed period to the other party, but not less than seven days.
 - If there is no probation or the probation period has lapsed, either party may terminate the contract by giving notice of the agreed period to the other party, but not less than seven days, and if no notice period has been agreed upon, not less than one month.

- Wages in lieu of notice – Instead of giving notice, either party may pay an amount of wages commensurate with the length of the notice period as required under the Employment Ordinance to terminate the contract of employment.

- Under special circumstances prescribed in law, such as the employee has committed serious misconduct or the employee reasonably fears physical danger by violence or disease, an employer or employee may terminate a contract of employment without giving any notice or payment in lieu of notice.

- Summer job students should note that except under special circumstances prescribed in law, if they want to terminate their employment contract, they should give prior notice to the employer according to the employment contract and the Employment Ordinance. Otherwise, they should pay to the employer wages in lieu of notice as compensation.

Major Points-to-Note

- Summer job students should clarify whether there is any employment relationship between them and the company before they commence work.
- Before entering into a contract of employment, summer job students should make sure that they fully understand the employment terms and agree with them.
- Employment contracts can be made either verbally or in writing. Even when there is no written employment contract, an employee covered by the Employment Ordinance is still protected by the Ordinance.
- The Employment Ordinance does not differentiate between “summer job workers” and those who are not. Summer job workers who are employees enjoy the benefits and protection under the Ordinance.
- If employers propose to vary the conditions of service or work nature, in considering whether to accept the changes or not,

summer job students should obtain detailed information about these changes from the employer. Whenever in doubt, they should consult their family or the Labour Department as soon as possible.

(This leaflet sets out in simple terms the major provisions of the Employment Ordinance that are particularly relevant to summer job students. It should be noted that the Ordinance itself remains the sole authority for the provisions of the law explained. For further information on the Ordinance, please refer to the publication "A Concise Guide to the Employment Ordinance" published by the Labour Department or make use of the enquiry service of the Department.)

Enquiries

Hotline: 2717 1771 (handled by "the 1823 Call Centre")

Website of the Labour Department :

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

Offices of the Labour Relations Division of the Labour Department :

Hong Kong	
Hong Kong East	34/F, Revenue Tower, 5 Gloucester Road, Wan Chai, Hong Kong.
Hong Kong West	3/F, Western Magistracy Building, 2A Pokfulam Road, Hong Kong.
Kowloon	
Kowloon East	Room 1206, 12/F, Stelux House, 698 Prince Edward Road East, San Po Kong, Kowloon.
Kowloon South	2/F, Mongkok Government Offices, 30 Luen Wan Street, Mongkok, Kowloon.

Kowloon West	Room 1009, 10/F, Cheung Sha Wan Government Offices, 303 Cheung Sha Wan Road, Kowloon.
Kwun Tong	6/F, Kowloon East Government Offices, 12 Lei Yue Mun Road, Kwun Tong, Kowloon.
New Territories	
Tsuen Wan	5/F, Tsuen Wan Government Offices, 38 Sai Lau Kok Road, Tsuen Wan, New Territories.
Kwai Chung	6/F, Kwai Hing Government Offices, 166 – 174 Hing Fong Road, Kwai Chung, New Territories
Tuen Mun	Room 2720, 27/F, Tuen Mun Parklane Square, 2 Tuen Hi Road, Tuen Mun, New Territories.
Shatin & Tai Po	Rooms 304 – 313, 3/F, Sha Tin Government Offices, 1 Sheung Wo Che Road, Sha Tin, New Territories.

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