

Using Written Employment Contracts

**There is much to gain in using
written employment contracts**



Labour Department

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Foreword

If the terms of an employment contract are clearly laid down in writing, both employers and employees will benefit. We have compiled this booklet to highlight the major provisions of the Employment Ordinance (“EO”) (Chapter 57 of the Laws of Hong Kong) on terms of an employment contract and provide a “Sample Employment Contract” for the reference of employers and employees.

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I. Benefits of using written employment contracts

Under the Employment Ordinance (“EO”), a **contract of employment** can be made orally or in writing. Employee’s rights and benefits are protected under the EO, irrespective of whether the employment contract is made verbally or in writing.

Nevertheless, in view of the following benefits, employers are advised to enter into written employment contracts with their employees as far as possible:

- Helping employees to better understand the terms of their employment.
- Reminding both employers and employees of their contractual obligations.
- Minimizing unnecessary labour disputes.
- Protecting the interests of both parties.

**As the terms of employment can be verbally agreed,
why do we still need written employment contracts?**

Fanny worked as a saleslady in a boutique. When she took up the job early in the year, the shop manager told her that if she remained in the post by the end of the year, she would be entitled to an end of year payment. However, after the Lunar New Year, Fanny found that the company had not granted her the end of year payment. She asked the person-in-charge of the shop but was told that the payment was “gratuitous” in nature - it would be granted subject to the company’s profits and the performance of individual workers. As the manager who hired Fanny had already left the job, and the company had not entered into a written employment contract with Fanny, both parties stood fast on their views as to whether Fanny should be entitled to the end of year payment. What can be done to avoid the dispute?

Case analysis

- In the above case, the problem arose because the two parties only entered into a verbal employment contract and did not specify clearly the criteria for granting the end of year payment.
- To avoid dispute and safeguard the rights and benefits of both parties, before an employee takes up the job, his employer should enter into a written employment contract with him that clearly spells out the various employment terms, such as the criteria for granting the end of year payment and the time for the payment.

Isn't "trade practice" good enough to serve as the standard for employment terms?

Ben was a site contractor. Other than wage rates and working hours, Ben never made clear with his employees the other employment terms, just saying that "everything should follow the trade practice". Recently, he decided to dismiss Ah Ming for reason of substandard performance. He gave Ah Ming seven days' advance notice, which he considered to be a "trade practice". However, Ah Ming insisted that both parties had no prior agreement on the notice period for the termination of contract and requested Ben to give him one month's notice or wages in lieu of notice according to the provisions of the EO.

Case analysis

- In the above case, the two parties were in dispute because Ben did not specify clearly the notice period required for the termination of contract when discussing employment terms with Ah Ming. As both parties held differing views on what constituted "trade practice", the dispute arose. If the dispute could not be resolved through conciliation, it might require the court's adjudication in the end.
- To avoid dispute and safeguard both the rights and benefits of both parties, an employer should enter into a written employment contract with his employee setting out clearly various employment terms before the employee takes up the job.

Points-to-note when entering into an employment contract

Before signing the employment contract

- 1. Both the employer and the employee should have a clear understanding of the provisions of the Employment Ordinance and the Minimum Wage Ordinance.**

Employment Ordinance

The Employment Ordinance (“EO”) is the major piece of legislation governing employment terms and conditions in Hong Kong. The employment conditions offered by an employer to his employees can be more favourable than the provisions of the EO, but cannot be set below the minimum standards laid down in the Ordinance.

For details of regulations under EO on the employment terms, such as paid annual leave or rest day, please refer to “A Concise Guide to the Employment Ordinance” published by the Labour Department.

Minimum Wage Ordinance

The statutory minimum wage (SMW) comes into force on 1 May 2011 and the initial SMW rate is \$28 per hour. According to the Minimum Wage Ordinance, wages payable to an employee in respect of any wage period should be no less than the SMW rate on average for the total number of hours worked.

For details, please refer to the leaflet or reference guidelines on statutory minimum wage prepared by the Labour Department.

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 or the Minimum Wage Ordinance shall be void.

2. Employer must inform his employees the employment conditions in detail.

Under section 44 of the EO, an employer must inform his employees in detail the conditions of employment under which they are to be employed, including:

- ✓ Wages (*including rate of wages, overtime rate and any allowances, whether calculated by the piece, job, hour, day, week or otherwise*)
- ✓ Wage period
- ✓ Length of notice required to terminate the contract
- ✓ End of year payment or proportion of it and the payment period (*if applicable*)

3. The employer should have obtained the employee's consent to the terms stated in the employment contract.

4. The employee should understand the employment terms and request the employer to clarify any terms that are ambiguous or unintelligible to him.

After signing the employment contract

1. Under section 44 of the EO, if the contract of employment is in writing, the employer shall provide a copy of the contract to the employee immediately after it is signed or validated.

2. Changes in particulars of employment conditions

Under section 45 of the EO:

- Whenever there is any change in the employment conditions referred to in section 44 or the conditions in force at any time, an employer must inform the employee of such change in a manner intelligible to the employee.
- Where there is any written amendment to the employment conditions, an employer must provide his employee with a copy of the written amendment immediately after the amendment is reduced to writing or validated.

- Where there is no written amendment to a contract of employment, upon receipt of a written request from his employee, an employer must deliver to the employee a notice in writing containing such changes in the employment terms.

Can an employer refuse to give a copy of an employment contract to his employee by saying that it is a “confidential document”?

Mr Cheung was a sales representative of a trading company. As the company was in urgent need of staff, on the day of interview, the person-in-charge did not explain in detail the conditions of employment to Mr Cheung. When Mr Cheung reported duty, he also failed to read carefully his written employment contract before signing it. He recalled that the person-in-charge had told him his monthly commission would be calculated at a rate of 30% of his sales volume. However, Mr Cheung later found that the company only paid him commission based on a rate of 20%. The employer refused to give Mr Cheung a copy of the written employment contract allegedly because it was a “confidential document” of the company and its disclosure was against the interests of the company.

Case analysis

Under section 44(3) of the EO, where an employer enters into a written employment contract with his employee, he must provide the employee with a copy of the employment contract. Therefore, in the above case the company could not refuse to give a copy of the employment contract to Mr Cheung by saying that it was a “confidential document” of the company.

III. Restrictions on contracting out

Under section 70 of the EO, any term of a contract of employment which purports to extinguish or reduce any right, benefit or protection conferred upon the employee by the EO shall be void.

**When the employment terms are in breach of the provisions of the EO,
is the employee obliged to comply with such terms?**

Mr Lee applied for a post of waiter in a restaurant. The employer found him suitable and offered him the job. They then entered into a written employment contract. Mr Lee later found that the following terms in the contract might be in breach of the EO:

- Mr Lee had to work on two of his rest days every month, and he could not make any objection.
- For work on a statutory holiday, the company would pay Mr Lee twice his daily wages as remuneration instead of granting him an alternative holiday.

Mr Lee was thinking of requesting the employer to rectify these dubious terms.

Case analysis

The EO stipulates that:

- (1) An employee employed under a continuous contract (i.e. employed continuously by the same employer for four weeks or more, with at least 18 hours worked in each week) is entitled to not less than 1 rest day in every period of 7 days.
- (2) All employees are entitled to statutory holidays. An employee having been employed under a continuous contract for not less than 3 months is further entitled to holiday pay. An employer must not make any form of payment to an employee in lieu of granting him a holiday. If the employer requires the employee to work on a statutory holiday, an alternative holiday should be arranged within 60 days before or after the statutory holiday.

In the above case, the contractual terms in question purported to deprive Mr Lee of his entitlements to rest days and statutory holidays under the EO. These terms are deemed to be void even if the employer and the employee have consented to them and signed to acknowledge their acceptance.

Key Points-to-Note on Entering into a Written Employment Contract

Benefits of using written employment contract

- The use of a written employment contract can minimise labour disputes. An employer is advised to enter into a written employment contract with his employee as far as possible.

Before signing a written employment contract

- Both the employer and the employee should have a clear understanding of the provisions of the Employment Ordinance and the Minimum Wage Ordinance.
- The employer should explain the contents of the employment contract to the employee in detail.
- The employee should understand the employment terms and request the employer to clarify any terms that are ambiguous or unintelligible to him.

After signing a written employment contract

- The employer shall provide a copy of the employment contract to the employee.
- Before making any subsequent change to the terms of the employment contract, the employer should first obtain the consent of the employee concerned.
- Where there is any written amendment made to the employment conditions, the employer shall provide the employee with a copy of the written amendment.
- Where there is no written amendment to a contract of employment, upon receipt of a written request from the employee, the employer shall deliver to him a written notice containing such changes in employment terms.

Restrictions on contracting out

- The conditions of employment stated in the employment contract must not be set below the minimum standards laid down in the Employment Ordinance or the Minimum Wage Ordinance¹. Otherwise, such employment terms shall be deemed to be void.

¹ The Minimum Wage Ordinance comes into force on 1 May 2011 and the initial statutory minimum rate is \$28 per hour.

Sample Employment Contract

To assist employers and employees to draw up written employment contracts, the Labour Department has prepared a sample employment contract for their reference.

The sample covers the major entitlements and protection enjoyed by employees under the EO. To know more about these entitlements (such as their eligibility criteria), please refer to the EO or the booklet “A Concise Guide to the Employment Ordinance” issued by the Labour Department, or visit the webpages below:

Department of Justice’s Bilingual Laws Information System:

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

“A Concise Guide to the Employment Ordinance”:

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

Sample Employment Contract

This contract of employment is entered into between _____ (hereinafter referred to as 'Employer') and _____ (hereinafter referred to as 'Employee') on _____ under the terms and conditions of employment below :

- 1. Commencement of Employment'** Effective from _____
 until either party terminates the contract.
 for a fixed term contract for a period of _____ * day(s) / week(s) / month(s) / year(s), ending on _____.
- 2. Probation Period'** No Yes _____ * day(s) / week(s) / month(s)
- 3. Position and Section Employed'** _____
- 4. Place of Work'** _____
- 5. Working Hours'** Fixed, at _____ days per week, _____ hours per day
from _____ *am/pm to _____ *am/pm
and _____ *am/pm to _____ *am/pm
 Shift work required, _____ hours per day
from _____ *am/pm to _____ *am/pm
or _____ *am/pm to _____ *am/pm
 Shift work required, at _____ working day(s) per *week/ month, totalling _____ hour(s).
 Others _____
(details of the arrangement on working hours and total working hours)
- 6. Meal Break'** Fixed, from _____ *am/pm to _____ *am/pm, *with/without pay
 Not-fixed, at _____ *minutes/hour(s) per day, *with/without pay
Meal break *is/ is not counted as working hour(s).
- 7. Rest Days'** On every _____, *with / without pay
 On rotation, _____ day(s) per *week/month, *with / without pay
(The employee is entitled to not less than 1 rest day in every period of 7 days)
- 8. Wages'**
(a) wage rate' Basic wages of \$ _____ per * hour/ day /week/month;
plus the following allowance(s) :
 Meal allowance of \$ _____ per * day / week/ month
 Travelling allowance of \$ _____ per * day / week/ month

[†] Please put a "✓" in the clause(s) as appropriate

* Please delete the word(s) as inappropriate

Attendance allowance of \$ _____ (amount)

(details of criteria and calculation of payment)

Others (e.g. commission, tips) \$ _____ (amount)

(details of criteria and calculation of payment and date of payment)

(b) overtime pay[†]

At the rate of \$ _____ per hour

At the rate according to * *normal wages* / _____ % of *normal wages*

(c) payment of wages & wage period(s)[†]

Every month, on _____ day of the month
for wage period from _____ day of the month to _____ day of *the month/ the following month.

Twice monthly, payable on

(i) _____ day of * *the month / following month*

for wage period from _____ day of the month to _____ day of *the month/ the following month.

(ii) _____ day of * *the month / following month*

for wage period from _____ day of the month to _____ day of *the month/ the following month.

Once for every _____ **day(s)/week(s)*

for wage period from _____ to _____.

9. Holidays[†]

The Employee is entitled to:

statutory holidays as specified in the Employment Ordinance

public holidays

plus other holidays (please specify) _____

10. Paid Annual Leave[†]

The Employee is entitled to paid annual leave according to the provisions of the Employment Ordinance (ranging from 7 to 14 days depending on the Employee's length of service).

The Employee is entitled to the following paid annual leave according to the rules of the company (please specify) _____

11. Maternity Benefits[†]

The Employee is entitled to maternity leave and maternity leave pay according to the provisions of the Employment Ordinance.

The Employee is entitled to the following maternity leave and maternity leave pay according to the rules of the company (please specify) _____

12. Sickness Allowance[†]

The Employee is entitled to sickness allowance according to the provisions of the Employment Ordinance.

The Employee is entitled to sickness allowance according to the rules of the company under the following circumstances:

- If the number of sickness days taken is _____ day(s) or below, an appropriate medical certificate in support of the sick leave **is /is not* required.

- If the number of sickness days taken is _____ day(s) or more, an appropriate medical certificate in support of the sick leave is required.

Others (please specify) _____

[†] Please put a "✓" in the clause(s) as appropriate

* Please delete the word(s) as inappropriate

- 13. Termination of Employment Contract'** A notice period of _____ * *day(s) /week(s)/ month(s)* or an equivalent amount of wages in lieu of notice (notice period not less than 7 days).
During the probation period (if applicable) :
- within the first month : without notice or wages in lieu of notice
- after the first month : a notice period of _____ * *day(s)/ week(s)/ month(s)* or an equivalent amount of wages in lieu of notice (notice period not less than 7 days).
- 14. End of Year Payment'** An amount of * \$ _____ *or equivalent to* _____ *month's basic/ normal* wages upon completion of each
 **calendar / lunar year*
 specified period : from _____ to _____
Payment is to be made within _____ days before commencement of the following
* *calendar /lunar year*.
- 15. Mandatory Provident Fund Scheme'** The Employer and the Employee are to make contributions towards the Mandatory Provident Fund Scheme in accordance with the requirements specified in the Mandatory Provident Fund Schemes Ordinance.
 In addition to the mandatory contribution, the Employer provides monthly voluntary contribution to the Mandatory Provident Fund Scheme * *in the amount of* \$ _____
/ at a rate of _____ *% of the Employee's monthly wages.*
 In addition to the mandatory contribution, the Employee provides monthly voluntary contribution to the Mandatory Provident Fund Scheme * *in the amount of* \$ _____
/ at a rate of _____ *% of the Employee's monthly wages.*
- 16. Work Arrangements during Typhoon'** The Employee is required to work when typhoon signal no.8 or above is hoisted and is entitled to * *typhoon allowance / travelling allowance at* \$ _____ *or* _____ *% of normal wages.*
 The Employee is not required to work when typhoon signal no.8 or above is hoisted and no wages will be deducted during the period. The Employee is required to resume duty if the typhoon signal no.8 is lowered not less than _____ hours before close of working hours.
- 17. Work Arrangements during Black Rainstorm Warning'** The Employee is required to work when black rainstorm warning is hoisted and is entitled to * *rainstorm allowance / travelling allowance at* \$ _____ *or* _____ *% of normal wages.*
 The Employee is not required to work when black rainstorm warning is hoisted and no wages will be deducted during the period. The Employee is required to resume duty if the black rainstorm warning is cancelled not less than _____ hours before close of working hours.
- 18. Others** The Employee is entitled to all other rights, benefits or protection under the Employment Ordinance, the Minimum Wage Ordinance, the Employees' Compensation Ordinance and any other relevant Ordinances.
(If appropriate) Additional rules and regulations, rights, benefits or protection promulgated under the * *Company Handbook /* _____
also form part of this contract.

[†] Please put a "✓" in the clause(s) as appropriate

* Please delete the word(s) as inappropriate

The Employer and the Employee hereby declare that they understand thoroughly the above provisions and agree to sign to abide by such provisions. They shall each retain a copy of this contract for future reference.

Signature of Employee

Signature of Employer or Employer's Representative

Name in full : _____

HK I.D. No : _____

Date : _____

Name in full : _____

Position held : _____

Date : _____

Chop of the Company

[†] Please put a “✓” in the clause(s) as appropriate

* Please delete the word(s) as inappropriate

ENQUIRY

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

Telephone Enquiry Service : 2717 1771 (handled by “1823 Call Centre”)

Offices of the Labour Relations Division:

Hong Kong	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.
Kowloon	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.
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	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.