

Labour Rights under Different Employment Patterns



Foreword

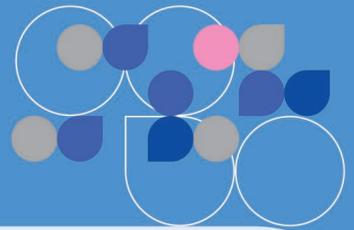
To meet operational needs or extend recruitment network, some employers employ their employees in flexible manner such as recruiting “part-time” employees of short hours of work, casual or substitute workers with short employment period or remuneration for staff reckoned on job or piece rated basis.

On the other hand, due to various reasons such as further study and family commitments, some job-seekers prefer to take up jobs of work hours matching their living schedules and hence flexible modes of employment would be a suitable option for them to achieve work life balance.

Many people may misunderstand that employees of employment with short hours of work or duration of employment such as “part-time” are not protected by labour legislation. This is a misconception.

In fact, all workers with employee status, no matter whether they are designated as “full-time” or “part-time”, casual, substitute or temporary work or remunerated on piece rate are protected by labour legislation.

Employment Ordinance



Employees, to whom the Employment Ordinance apply¹, **be they designated as “full-time”, “part-time”, casual, substitute employees or remunerated on piece rate, and irrespective of their working hours, are protected by the Ordinance** and entitled to the following rights and benefits under the Ordinance:

-  Wage payment protection
-  Restriction on deductions from wages
-  Statutory holidays
-  Maternity protection
(prohibition of assignment of heavy, hazardous or harmful work)
-  Employment protection (unreasonable and unlawful dismissal)
-  Provision of information on conditions of service by employers
-  Protection against anti-union discrimination, etc.

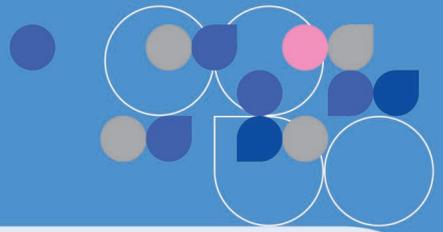
¹ Persons to whom the Employment Ordinance does not apply:

- A family member who lives in the same dwelling as the employer;
- An employee as defined in the Contracts for Employment Outside Hong Kong Ordinance;
- A person serving under a crew agreement under the Merchant Shipping (Seafarers) Ordinance, or on board a ship which is not registered in Hong Kong;
- An apprentice whose contract of apprenticeship has been registered under the Apprenticeship Ordinance, other than certain provisions of the Employment Ordinance.

Employment Ordinance

Under the Employment Ordinance, 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”**. An employee, who is employed under a “continuous contract” and meets the qualifying conditions stated in the Employment Ordinance, is also entitled to the following rights and benefits in addition to those mentioned in the preceding paragraph:

-  Rest days
-  Pay for statutory holidays
-  Annual leave with pay
-  Sickness allowance
-  Maternity protection
(maternity leave, payment for maternity leave, protection of a pregnant employee against termination of employment)
-  Paternity leave
-  Severance payment
-  Long service payment
-  Employment protection, etc



Unless an employer can provide valid reasons² or obtain prior consent from his employee, he should not unilaterally change terms of employment such as changing hours of work from “full-time” to “part-time”. Otherwise, the employee is entitled to lodge a claim for remedies against his employer on the ground of unreasonable variation of the terms of the employment contract under the Employment Ordinance.

If an employee is asked to switch to other modes of employment, **he must carefully consider the new employment terms**, assess the pros and cons involved, including whether the new employment contract is still regarded as a “continuous contract” under the Employment Ordinance.

For further information on the rights and benefits enjoyed by employees under the Employment Ordinance, please refer to the Labour Department’s publication “A Concise Guide to the Employment Ordinance” and other related publications.

² Valid reasons:

- the conduct of the employee;
- the capability or qualifications of the employee for performing his work;
- redundancy or other genuine operational requirements of the business;
- statutory requirements (i.e. it would be contrary to the law to allow an employee to continue to work in his original position or to continue with the original terms in his employment contract); OR
- other substantial reasons.

Minimum Wage Ordinance

Statutory Minimum Wage (SMW) is expressed as an hourly rate. In essence, 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 SMW rate**.

SMW applies to all employees, whether they are monthly-rated, weekly-rated, daily-rated, hourly-rated, piece-rated, permanent, casual, “full-time”, “part-time” or other employees, and regardless of whether or not they are employed under a continuous contract as defined in the Employment Ordinance, with the following exceptions:



persons to whom the Employment Ordinance does not apply³



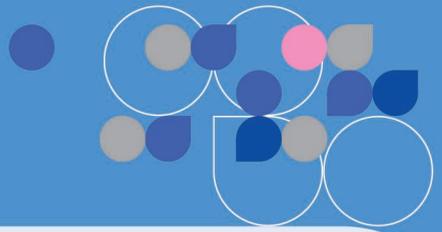
live-in domestic workers⁴, irrespective of their sex, race or nationality



specified student interns as well as work experience students during a period of exempt student employment

³ Please refer to Footnote 1. While certain provisions of the Employment Ordinance apply to registered apprentices under the Apprenticeship Ordinance, SMW is not applicable to the registered apprentices.

⁴ This refers to domestic workers (including domestic helpers, carers, chauffeurs, gardeners, boat-boys or other personal helpers) who dwell free of charge in their employing household.



SMW applies to employees with disabilities and able-bodied employees alike. In order to strike an appropriate balance between providing wage protection to employees with disabilities and safeguarding their employment opportunities, a special arrangement is also provided under the Minimum Wage Ordinance so that employees with disabilities whose productivity may be impaired by their disabilities are given the right to undergo productivity assessment to determine whether they should be remunerated at not lower than the SMW rate or at a rate commensurate with their productivity. **The right to invoke assessment is solely vested in the employees with disabilities, not their employers.**

For details of the Minimum Wage Ordinance and the special arrangement for employees with disabilities, please refer to the relevant leaflet and reference guidelines published by the Labour Department.

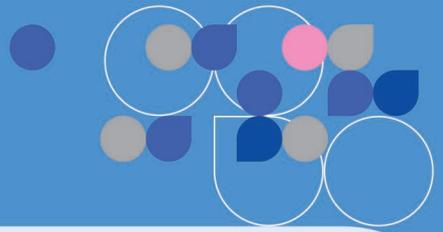
Employees' Compensation Ordinance



Under the Employees' Compensation Ordinance, no employer shall employ any employee in any employment unless **there is in force a policy of insurance** to cover their liabilities under the laws (including the common law) for injuries at work in respect of all their employees, **irrespective of the length of employment contract or working hours, "full-time" or "part-time", permanent or temporary employment.**



If an employee sustains an injury as a result of an accident arising out of and in the course of employment, his/her employer must **notify** the Commissioner for Labour of **the accident** within 14 days (7 days in respect of fatal cases) as required by the Employees' Compensation Ordinance, **and pay compensation to the employee.**



Major **items of compensation** under the Employees' Compensation Ordinance may include: periodical payments, medical expenses and compensation for permanent total or partial incapacity, etc. If an employee dies as a result of an accident arising out of and in the course of employment, his/her employer shall be liable to pay compensation for death to the eligible family members of the deceased employee and reimburse reasonable funeral and medical attendance expenses to persons who have paid such expenses.

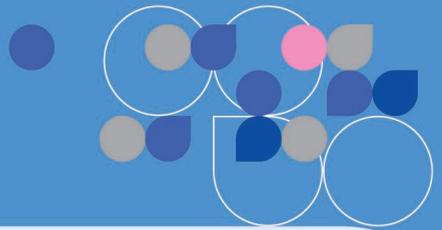
For information on the major provisions of the Employees' Compensation Ordinance, please refer to the Labour Department's publication "A Concise Guide to the Employees' Compensation Ordinance".

Mandatory Provident Fund Schemes Ordinance

The Mandatory Provident Fund Schemes Ordinance provides that for any employee of age 18 or over to below 65 who is employed under a written or verbal employment contract for a period of not less than 60 days irrespective of whether he is employed “full-time” or “part-time” and irrespective of his weekly working hours, **his employer must enroll him in a Mandatory Provident Fund (MPF) scheme and make contributions.**

For employees who are not employed under a “continuous contract” of Employment Ordinance, as long as their employed period is not less than 60 days, they are still covered by the MPF System.





The above 60-day rule does not apply to **“casual employees”** under the MPF System, i.e. short-term employees employed on a day-to-day basis or for a fixed period of less than 60 days in the catering industry or the construction industry. **Even if a “casual employee” is only employed for one day, the employer must make MPF arrangement for him.**

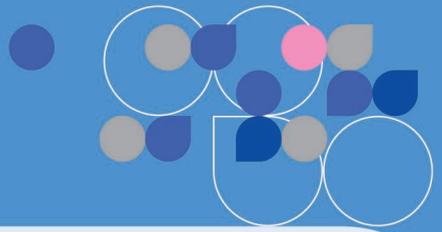
For further information on MPF System, please refer to the leaflets **“Employees' Handbook on MPF”** and **“MPF Industry Schemes”** published by the Mandatory Provident Fund Schemes Authority (MPFA) which can be downloaded from the website of the MPFA.



Good Human Resource Management Practices

-  “Full-time” employees and employees with short hours of work or period of employment alike are valuable assets of a company. Good human resource management practices help boost the morale, commitment and productivity of employees.
-  An employer should only take account of the company’s operational needs in recruiting employees in flexible manner. He should not limit the working hours of the employees, or by other means, to evade his liabilities under labour legislation.
-  Improper human resource management policies and practices will result in high turnover, unnecessary labour disputes, affecting goodwill and even increase in operational costs. In the end, the employers will suffer.





 The Employment Ordinance provides minimum standards on employment rights and benefits. To attract and retain talents, many employers adopt employee-oriented management practices such as **offering employment terms more favourable than statutory requirements** to employees. Some employers also grant rights and benefits to employees not fulfilling “continuous employment” requirement under Employment Ordinance of entitlements similar to those employed under “continuous employment”.

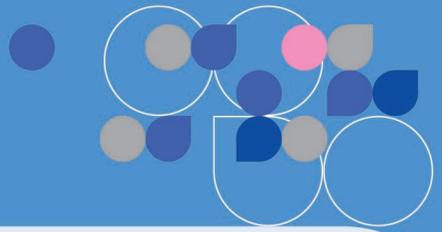
 Although an employment contract can be made verbally or in writing, employers should, as far as possible, **enter into written employment contracts** with their employees. This will help avoid labour disputes. (Employers may refer to the Labour Department’s publication “Using Written Employment Contracts” and “Proper Keeping of Wage and Employment Records” for information on how a written employment contract should be drawn up.)

Good Human Resource Management Practices

 The Human Resources Department of some companies has delegated the power of recruitment to branch managers or frontline supervisors. In these circumstances, the companies should **devise clear and consistent guidelines on how to recruit and manage employees** for reference of these managers and supervisors.

 Employers should not discriminate any person due to his/her sex, disability, family status, age, nationality, race, religion, marital status, pregnancy or sexual orientation. Employers should base on a consistent selection criteria and develop clear guidelines on recruitment and employment.





 In a rapidly changing labour market, employees of employment with short hour of work or duration of employment also have to equip themselves with necessary job skills to cope with challenges at work. In this regard, employers should, as far as possible, treat all employees alike and **provide them with adequate training and suitable promotion opportunities.**

 If additional “full-time” employees are needed, an employer should **give priority to “non full-time” employees performing similar duties in their companies.** Not only can this practice help reduce the recruitment and training costs, it can also help the employer to recruit the most suitable persons.



Enquiry:

For further information, please refer to the relevant publicity leaflets, provisions of the law or contact the Labour Department or Mandatory Provident Fund Schemes Authority.

Labour Department

Website: www.labour.gov.hk

Hotline: **2717 1771** (the hotline is handled by "1823")



Mandatory Provident Fund Schemes Authority

Website: www.mpfa.org.hk

Hotline: **2918 0102**

