

CHAPTER 4

Frequently Asked Questions

1. Q : If an employment agency has been convicted of Part XII of the Employment Ordinance and the Employment Agency Regulations, will there be any impacts to the employment agency licence?

A : Pursuant to s.53(1)(c), (d) and (e) of Employment Ordinance, the Commissioner for Labour may refuse to issue or renew a licence, or may revoke a licence, if the person operating or intending to operate the employment agency, the related person or employed individual of the employment agency has contravened any provision of Part XII of the Ordinance or Employment Agency Regulations. If an employment agency is convicted of any serious offences, such as overcharging commission or unlicensed operation, the Commissioner will revoke or refuse to issue / renew its licence. From 2015 to 2018, the Commissioner revoked or refused to renew the licences of 12 employment agencies which were convicted of overcharging job-seekers.

2. Q : My company would help every job-seeker to make copies of documents and prepare job application letter. Could I receive photocopying fee or registration fee to cover the expenses? Besides, could I request the job-seeker to compensate for the loss of my company if he / she fails to report duty for the employment we have found for him / her or quits the job within a short period of time?

A : Section 57 of Employment Ordinance and Regulation 10(2) of the Employment Agency Regulations state that the maximum commission which may be received by an employment agency from a job-seeker shall be an amount not exceeding a sum equal to ten percent of the first month's wages received by such person after he / she has been placed in employment by the employment agency. It is illegal for an employment agency to receive from a job-seeker, in connection with obtaining employment for him / her, any reward or payment in respect of expenses or otherwise, except the prescribed commission.

Overcharging commission is a serious offence. If the licensee of an employment agency or the associate of the licensee is convicted of this offence, the Commissioner for Labour will refuse to renew, or will revoke its licence.



3. Q : Some foreign domestic helpers have borrowed money from overseas employment agencies or loan firms. Could I collect loan repayment from the helpers on behalf of the overseas employment agencies or loan firms?

A : Section 57 of the Employment Ordinance and Regulation 10(2) of the Employment Agency Regulations state that the maximum commission which may be received by an employment agency from a job-seeker shall be an amount not exceeding a sum equal to ten percent of the first month's wages received by such person after he / she has been placed in employment by the employment agency. To avoid misunderstanding, employment agencies should not get involved in the financial matters between the foreign domestic helper and overseas employment agency or loan firm, which should be dealt with by themselves direct. Also, employment agencies shall not request the employers to deduct wages from their helpers for repaying debts owed to overseas employment agencies or loan firms. An employer who makes unlawful deduction from wages of an employee commits an offence under the Employment Ordinance and is liable to a maximum fine of \$100,000 and imprisonment for 1 year.

4. Q : I have successfully placed a job-seeker. She proposed giving me the commission before she had received her first month's wages for the sake of convenience. Could I receive the commission?

A : Employment agency could only receive commission from job-seekers after they have received their first month's wages. It is illegal for any employment agency to receive commission before the job-seekers receive their first month's wages.

5. Q : It is my company policy not to receive any commission from job-seekers. Am I still required to display Part II of the Second Schedule at the place of business?

A : Regulation 10(3) of the Employment Agency Regulations states that a licensee shall display Part II of the Second Schedule at all times in a conspicuous position at the office location. As such, irrespective of whether the employment agency receives commission from job-seekers, the licensee must cause Part II of the Second Schedule to be displayed at the place of business of his / her employment agency.

6. Q : My company registers overseas job-seekers and refers them to work outside Hong Kong. Are we required to apply for an employment agency licence?

A : Section 50(1) of the Employment Ordinance states that "employment agency" means a person who operates a business the purpose of which is to obtain employment for another person, or to supply the labour of another person, to an employer. The concerned company must apply for an employment agency licence from the Commissioner for Labour if it intends to conduct the aforementioned employment agency business in Hong Kong, irrespective of whether the job-seekers are Hong Kong residents or not and their workplace is within or outside Hong Kong. No one should conduct employment agency activities in Hong Kong before being granted an employment agency licence.

7. Q : My company holds a valid employment agency licence. Can I engage some self-employed agents to solicit business and operate the agency for me?

A : Section 51(1) of the Employment Ordinance states that a person must not operate, manage or assist in the management of an employment agency unless he / she is the holder or he / she is an associate of the holder of a licence or certificate of exemption issued in respect of the employment agency. Other persons who are not the holder or associate of the holder of a licence / certificate of exemption are not permitted to engage in any employment agency activities. Also, any person who is an associate of the holder of a licence or certificate of exemption is not permitted to operate, manage or assist in the management of another employment agency (whether it is licensed or not) only because he / she is an associate of a licensee.



8. Q : My employment agency refers Hong Kong residents to work overseas. If the job-seeker has already left Hong Kong, am I still required to keep his / her record?

A : Section 56 of the Employment Ordinance states that a licensee shall maintain a record of all job-seekers registered with his / her employment agency, and the records shall be retained for a period of not less than 12 months after the expiration of each accounting year of the employment agency concerned. Regardless of whether the job-seeker is in Hong Kong or not, the employment agency shall maintain records in compliance with the said provision.

9. Q : Would my company breach the Personal Data (Privacy) Ordinance by requiring job-seekers to provide me with their Hong Kong Identity Card number and other personal data?

A : Section 56 of the Employment Ordinance states that a licensee shall maintain a record of job-seekers containing the person's name, address, Hong Kong Identity Card number (in the case of a non-resident, passport number and citizenship), fee and commission received, date of employment and name and address of employer. If the collection of the above personal data is for the purpose of complying with the Employment Ordinance, it would not constitute a breach of the Personal Data (Privacy) Ordinance. However, in collecting, holding, processing or using job-seekers' personal data, employment agency must comply with the Data Protection Principles of the Personal Data (Privacy) Ordinance.

Remark: To obtain information on the collecting, holding, processing or using of personal data, you may make enquiries at the Office of the Privacy Commissioner for Personal Data or visit their website: www.pcpd.org.hk.