

Using Written Employment Contract



**Clear Terms
of Employment Contract**

Clarify Terms

Read Carefully

Mutually Agreed

Copy of Contract

**Protect Both
Employers and Employees**



Labour Department

Foreword

If the terms of an employment contract are clearly laid down in writing, both employers and employees will benefit. This booklet is compiled to highlight the major provisions of the Employment Ordinance (“EO”) (Chapter 57 of the Laws of Hong Kong) on the terms of an employment contract and provide a “Sample Employment Contract” for the reference of employers and employees. It is also available on the Labour Department Homepage at

**[www.labour.gov.hk/eng/public/pdf/wcp/
WrittenContract.pdf](http://www.labour.gov.hk/eng/public/pdf/wcp/WrittenContract.pdf)**



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I. Points-to-note When Entering into a Written Employment Contract

Employers should draw up **reasonable and fair employment terms**, such as mutually agreed wages and benefits, conditions of work (including working hours and overtime compensation arrangements), holidays as well as the notice period for termination, etc. Not only will it strengthen employees' sense of belonging to the company and help employers to attract and retain talents, it will also enhance the corporate image.

(1) Before Signing the Employment Contract

i. Know the Legal Requirements

Employment Ordinance (“EO”)

The 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 the provisions of the EO, please refer to “A Concise Guide to the Employment Ordinance” published by the Labour Department.

Minimum Wage Ordinance (“MWO”)

According to the MWO, wages payable to an employee in respect of any wage period should be no less than the statutory minimum wage 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 EO or the MWO shall be void.

ii. Explain Clearly the Employment Terms

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 piece, job, hour, day, week or otherwise);
- Wage period;
- Length of notice required to terminate the contract; and
- End of year payment or proportion of it and the payment period (if applicable).



Other employment conditions such as working hours, overtime compensation arrangements, holidays arrangements, etc., should also be clearly specified.

iii. Clarify the Employment Terms

Employees should request their employers to clarify any terms that are ambiguous or unintelligible to him. For instance, where employees may occasionally need to work overtime, are the overtime compensation arrangements clearly specified?

iv. Read the Employment Terms Carefully

Before entering into employment contracts with employers, employees should read the employment terms carefully, in particular the clauses involving financial liabilities. For instance, whether there are clauses requiring the employee to make a monetary compensation if he resigns before the time limit specified; or to pay a huge amount of money before commencement of employment. If the employee is in doubt, he should ask for a copy of the contract for a more detailed examination.

Employees should fully understand and agree the employment terms before signing the contract. They should not think that they can easily deny their contractual obligations by excuses such as “I don’t understand the employment terms” or “the employer requires me to sign the contract immediately”.

(2) After Signing the Employment Contract

i. Provide the Employee with a Copy of the Employment Contract

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.



ii. Changes in 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.
- If the amendment is not in writing, 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.

In addition, an employee may claim for remedies against an employer for unreasonable variation of the terms of the employment contract if –

- the employee has been employed under a continuous contract;
- the terms of employment contract are varied without the employee's consent;
- the employment contract does not contain an express term which allows such a variation; and
- the terms of the employment contract are varied other than for a valid reason as specified in the EO.

Case 1 Can an employer refuse to give a copy of an employment contract to his employee?

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. 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. Not until the wage payment, Mr Cheung found that the employer only paid him commission based on a rate of 20%. Mr Cheung then asked the employer for a copy of the employment contract. However, the employer refused, alleging that it was a “confidential document” 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. An employer who contravenes this provision is liable to prosecution and, upon conviction, to a fine of \$10,000.

Therefore, the employer of the above case 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.

II. Restrictions on Contracting Out

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

Case 2 Is the employee obliged to comply with the employment terms which are in breach of the EO?

Mr Lee applied for a post of warehouse keeper. He was offered the job and entered into a written employment contract with the employer. After reading the contract with care, Mr Lee discovered that the following terms might be in breach of the EO:

- The employee has to work on two of his rest days every month and cannot raise any objection.
- If the employee is required to work on a statutory holiday, the employer will pay the employee twice his daily wages as remuneration and will not arrange an alternative holiday.

Mr Lee was considering to seek employer's rectification of 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.

III. Benefits of Using Written Employment Contracts

Under the EO, a contract of employment can be made orally or in writing. Employee's rights and benefits are protected under the Ordinance, irrespective of whether the employment contract is made verbally or in writing.

Employers are advised to enter into written employment contracts with their employees as it will bring the following benefits to both parties:

- **Specifying explicitly the employment terms and conditions;**
- **Reminding both employers and employees of their contractual obligations;**
- **Protecting the interests of both parties; and**
- **Minimising unnecessary labour disputes.**



Case 3 Employment Terms on Paper Reduce Disputes

Ms Cheung 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 ^{Note 1}. After the Lunar New Year, Ms Cheung found that the employer 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 employer’s profits and the performance of individual employees. Since the employer had not entered into a written employment contract with her, while the manager who hired Ms Cheung had already left the job, both parties stood fast on their views as to whether Ms Cheung should be entitled to the end of year payment.

Case analysis

The dispute arose because Ms Cheung and the employer only entered into a verbal employment contract and had not specified the criteria for granting the end of year payment. If the employer and the employee entered into a written employment contract and clearly spelt out the employment terms, such as the criteria for granting the end of year payment, the payment period, the time for the payment, etc., before employment, the argument could be avoided. The rights and benefits of both parties could also be safeguarded.

Note 1

End of year payment means any annual payment, including double pay, 13th month payment, end of year bonus, of a contractual nature. It does not include any payment which is of a gratuitous nature or which is payable at the discretion of the employer. If the end of year payment is not of a gratuitous nature, an employee is eligible for a pro rata end of year payment if he has been employed under a continuous contract for not less than three months in a payment period and continues to be employed after the expiry of the payment period; or is dismissed by the employer (except in cases of summary dismissal due to the employee’s serious misconduct). If a probation period has been explicitly agreed upon, such period, subject to a maximum of three months, is excluded from the calculation of the qualifying service for pro rata end of year payment. However, if an employee has fulfilled the eligibility requirement of no less than three months’ employment in a payment period after excluding the probation period, then the whole employment period (including the probation period) shall be taken into account in calculating the pro rata end of year payment.

Case 4 Reasonable and Fair Notice Period

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 a worker 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 payment in lieu of notice ^{Note 2} according to 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, it might require the court’s adjudication in the end.

The above dispute could be avoided if Ben and Ah Ming had entered into a written employment contract specifying the employment terms, in particular a reasonable and fair notice period upon termination of employment by either party, say seven days’ notice period.

Before commencing a job, an employee should agree with the employer on the employment terms to be set out in a written employment contract including the notice period for termination, be it seven days, one month or others. In case of doubt, employee should clarify the employment terms with the employer.

Note 2

Termination of employment contract by notice / payment in lieu of notice – it means an employer or an employee has to give the other party due notice or payment in lieu of notice if he wants to terminate the employment. Employers and employees are free to negotiate and agree on the length of notice provided that it does not violate the provisions of the Employment Ordinance. In case there is no explicit notice period in the employment contract, the employer and the employee have to follow the provisions stipulated in the Employment Ordinance. For details, please refer to the “A Concise Guide to the Employment Ordinance” published by the Labour Department.

IV. Highlights on Entering into Employment Contracts

Employers

- should know the requirements of labour laws.
- should draw up reasonable and fair employment terms, such as mutually agreed wages and benefits, conditions of work (including working hours and overtime compensation arrangements), holidays as well as the notice period for termination, etc.
- should explain the terms and conditions to the employee in detail before commencement of employment.
- should list out the employment terms in written employment contract.
- should provide a copy of the employment contract to the employee after signing.

Employees

- should understand the employment terms and request the employer to clarify any terms that are ambiguous or unintelligible to him.
- should read all employment terms carefully, in particular the clauses involving financial liabilities, before entering into employment contracts with employers. For instance, whether there are clauses requiring the employee to make a monetary compensation if he resigns before the time limit specified; or to pay a huge amount of money before commencement of employment.
- should read the terms carefully before signing.
- should not think that they can easily deny their contractual obligations by excuses such as “I don’t understand the contract”, “the employer required me to sign the contract immediately”
- should ask the employer for a copy after entering into an employment contract.

Appendix : 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. For details, 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 Hong Kong e-Legislation:
www.elegislation.gov.hk



“A Concise Guide to the Employment Ordinance”:
www.labour.gov.hk/eng/public/ConciseGuide.htm



“Notes for preparing an employment contract”
www.labour.gov.hk/eng/public/pdf/wcp/Notes_for_preparing_an_employment_contract_eng.pdf



Sample Employment Contract

This contract of employment is entered into between _____ (hereinafter referred to as "Employer") and _____ (hereinafter referred to as "Employee") on _____ (date) 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 and _____ *am / pm to _____ *am / pm
☐ Shift work required, at _____ working day(s) per *week/ month, totalling _____ hour(s)
☐ Others _____
(please specify details of working hours arrangement, total working hours, etc.)
- 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
☐ Attendance allowance of \$ _____
(please specify details of payment criteria, calculation method, etc.)
☐ Others (e.g. commission, tips) \$ _____
(please specify details of payment criteria, calculation method, date of payment, etc.)

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

* Please delete the word(s) as inappropriate

(b) 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
- _____ day of **the month / the following month*
for wage period from _____ day of the month to _____ day of **the month / the following month*; and
- _____ day of **the month / the 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. Overtime Compensation [†]

☐ Compensated by overtime pay:
☐ At the rate of \$ _____ per hour
☐ At the rate according to **normal wages / _____ % of normal wages*
☐ Others _____
(please specify details of payment criteria, calculation method, etc.)
☐ Compensated by time-off in lieu: _____
(please specify details of granting criteria, calculation method, etc.)

10. Holidays [†]

The Employee is entitled to:
☐ statutory holidays as specified in the Employment Ordinance
☐ public holidays
☐ plus other holidays (please specify) _____

11. 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 Employer (please specify) _____

12. 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 Employer (please specify) _____

13. Paternity Benefits [†]

☐ The Employee is entitled to paternity leave and paternity leave pay according to the provisions of the Employment Ordinance.
☐ The Employee is entitled to the following paternity leave and paternity leave pay according to the rules of the Employer (please specify) _____

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

* Please delete the word(s) as inappropriate

- 14. 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 Employer (please specify) _____
- 15. Termination of Employment Contract**
- A notice period of _____ *day(s) / week(s) / month(s) or an equivalent amount of payment in lieu of notice (notice period not less than 7 days)
- During the probation period (if applicable):
- within the first month: without notice or payment in lieu of notice
 - after the first month: a notice period of _____ *day(s) / week(s) / month(s) or an equivalent amount of payment in lieu of notice (notice period not less than 7 days)
- 16. 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.
- 17. 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.
- 18. Work Arrangements in Times of Adverse Weather and "Extreme Conditions"**
- A. Work Arrangements in Times of Tropical Cyclone Warning** [†]
- ☐ The Employee is required to work when Tropical Cyclone Warning Signal No.8 (T8) or higher is in force. **In addition to normal wages**, the Employee is entitled to a duty allowance of *\$ _____ or _____ % of normal wages for each hour worked.
- In case staff on the next shift are unable to report for duty at workplaces when T8 or higher is in force, or due to practical difficulties and the Employer requests the Employee of the preceding shift to continue to work due to operational requirements, **in addition to normal wages**, the Employee is entitled to a special allowance of *\$ _____ or _____ % of normal wages for each hour of the extended service.
- [The Employer *provides / does not provide transport services to the Employee when T8 or higher is in force, the Employee is entitled to a travelling allowance of \$ _____ per trip or the actual cost of transport, whichever is higher.]

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

* Please delete the word(s) as inappropriate

- ☐ The Employee is not required to work when T8 or higher is in force and wages will not be affected during the period. If the Government has not made an “extreme conditions” announcement ^{note}, the Employee is required to resume duty within _____ hours as far as practicable if T8 is cancelled not less than _____ hours before the end of working hours.

B. Work Arrangements in Times of “Extreme Conditions” [†]

- ☐ The Employee is required to work when “extreme conditions” is in force upon the “extreme conditions” announcement by the Government ^{note}. **In addition to normal wages**, the Employee is entitled to a duty allowance of *\$ _____ *or* _____ % of *normal wages* for each hour worked.

In case staff on the next shift are unable to report for duty at workplaces when “extreme conditions” is in force, or due to practical difficulties and the Employer requests the Employee of the preceding shift to continue to work due to operational requirements, **in addition to normal wages**, the Employee is entitled to a special allowance of *\$ _____ *or* _____ % of *normal wages* for each hour of the extended service.

[The Employer **provides / does not provide* transport services to the Employee when “extreme conditions” is in force, the Employee is entitled to a travelling allowance of \$ _____ per trip or the actual cost of transport, whichever is higher.]

- ☐ The Employee is not required to work when “extreme conditions” is in force upon the “extreme conditions” announcement by the Government ^{note}, and wages will not be affected during the period. The Employee is required to resume duty within _____ hours as far as practicable if the “extreme conditions” ended not less than _____ hours before the end of working hours.

(Note: For details, please refer to the “Code of Practice in Times of Adverse Weather and ‘Extreme Conditions’” issued by the Labour Department.)

C. Work Arrangements in Times of Black Rainstorm Warning Signal [†]

- ☐ In case the Employee is required to take up extra duty when Black Rainstorm Warning Signal is in force, **in addition to normal wages**, the Employee is entitled to a duty allowance of *\$ _____ *or* _____ % of *normal wages* for each hour worked

In case staff on the next shift are unable to report for duty at workplaces when Black Rainstorm Warning Signal is in force, or due to practical difficulties and the Employer requests the Employee of the preceding shift to continue to work due to operational requirements, **in addition to normal wages**, the Employee is entitled to a special allowance of *\$ _____ *or* _____ % of *normal wages* for each hour of the extended service.

[The Employer **provides / does not provide* transport services to the Employee when Black Rainstorm Warning Signal is in force, the Employee is entitled to travelling allowance of \$ _____ per trip or the actual cost of transport, whichever is higher.]

- ☐ The Employee is not required to work when Black Rainstorm Warning Signal is in force and wages will not be affected during the period. The Employee is required to resume duty within _____ hours as far as practicable if the Black Rainstorm Warning Signal is cancelled not less than _____ hours before the end of working hours.

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

* Please delete the word(s) as inappropriate

19. 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 applicable) Additional rules and regulations, rights, benefits or protection promulgated under the **Company Handbook* / _____ also form part of this contract.

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.

<i>Signature of Employee</i>	<i>Signature of Employer or Employer’s Representative</i>
_____	_____
Name in full: _____	Name in full: _____
Hong Kong I.D. No.: _____	Position held: _____
Date: _____	Date: _____

Chop of the Company

Enquiries

Homepage Address: www.labour.gov.hk

Enquiry Hotline: 2717 1771(handled by “1823”)



Enquiry in person to Offices of the Labour Relations Division:

Hong Kong	Hong Kong East	12/F, 14 Taikoo Wan Road, Taikoo Shing, Hong Kong
	Hong Kong West	3/F, Western Magistracy Buliding, 2A Pok Fu Lam Road, Hong Kong
Kowloon	Kowloon East	UGF, Trade and Industry Tower, 3 Concorde Road, 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, Sham Sui Po, Kowloon
	Kwun Tong	Units 801-806, 8/F, Tower 1, Millennium City 1, 388 Kwun Tong 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	Unit 2, East Wing, 22/F, Tuen Mun Central Square, 22 Hoi Wing Road, Tuen Mun, New Territories
	Sha Tin & Tai Po	Rooms 304-313, 3/F, Sha Tin Government Offices, 1 Sheung Wo Che Rod, Sha Tin, New Territories

This list was finalised in July 2021 and the addresses of the relevant offices are subject to changes. For latest details, please visit the Labour Department's Homepage: www.labour.gov.hk/eng/tele/lr1.htm or call the 24-hour enquiry hotline.



