

# A Concise Guide to the Employment Ordinance



Labour Department

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## Foreword

This guide sets out in simple terms the main provisions of the Employment Ordinance (Cap. 57). It should be noted that the Ordinance itself remains the sole authority for the provisions of the law explained. Please refer to Appendix 3 for enquiries services.

This version is finalised in February 2025. Contents of this guide may be amended from time to time where necessary. The latest version of the guide is available at the Labour Department's web page:

[www.labour.gov.hk/eng/public/ConciseGuide.htm](http://www.labour.gov.hk/eng/public/ConciseGuide.htm)



## **Chapter 1: Application of the Employment Ordinance**

The Employment Ordinance applies to all employees with the following exceptions:

1. a family member who lives in the same dwelling as the employer;
2. an employee as defined in the Contracts for Employment Outside Hong Kong Ordinance;
3. 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; and
4. an apprentice whose contract of apprenticeship has been registered under the Apprenticeship Ordinance, other than certain provisions of the Employment Ordinance.

All employees covered by the Employment Ordinance, irrespective of their hours of work, are entitled to basic protection under the Ordinance including payment of wages, restrictions on wages deductions and the granting of statutory holidays, etc.

Employees who are employed under a continuous contract are further entitled to such benefits as rest days, paid annual leave, sickness allowance, severance payment and long service payment, etc.

### **Continuous Contract of Employment**

An employee who has been employed continuously by the same employer for four weeks or more, with at least 18 hours worked in each week is regarded as being employed under a continuous contract.

In any dispute as to whether a contract of employment is a continuous contract, the onus of proving that it is not a continuous contract shall be on the employer.

## **Chapter 2: Contract of Employment**

A contract of employment is an agreement on the employment conditions made between an employer and an employee. The agreement can be made orally or in writing and it includes both express and implied terms.

Employers and employees are free to negotiate and agree on the terms and conditions of employment provided that they do not violate the provisions of 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 this Ordinance shall be void.

### **Information on Conditions of Service**

Before employment begins, an employer must inform each employee clearly of the conditions of employment under which he is to be employed with regard to:

1. wages (including rate of wages, overtime rate and any allowances, whether calculated by piece, job, hour, day, week or otherwise);
2. wage period;
3. length of notice required to terminate the contract; and
4. if the employee is entitled to an end of year payment, the end of year payment or proportion and the payment period.

If the contract of employment is in writing, the employer shall give one copy of the written contract to the employee for retention and reference.

If the contract of employment is not in writing, the employer shall provide the employee with such information in writing if the employee, before such employment is entered into, makes a written request.

Whenever there is any change in the conditions of service, whether these have merely been proposed to an employee or are actually in force, the employer shall inform him in an intelligible manner. If such change to conditions of service is in writing or upon the written request from the employee, a copy of the written amendment must be provided to the employee.

**NOTE:** Statutory entitlements such as holiday pay, annual leave pay, sickness allowance, maternity leave pay and paternity leave pay are calculated on the basis of wages, particulars of which are established by the terms of employment contracts. Employers and employees should clearly understand the wage components (for example, commission, allowance, etc), wage rate, conditions and arrangements for payment, etc.

### **Duration of Employment Contract**

In the absence of any express agreement to the contrary, every contract of employment which is a continuous contract is deemed to be a contract for one month and renewable from month to month.

### **Wage and Employment Records**

Every employer must at all times keep a record setting out the wage and employment history of each employee covering the period of his employment during the preceding 12 months.

The record should include the following information of the employee:

1. name and identity card number;
2. date of commencement of employment;
3. job title;
4. wages paid in respect of each wage period;
5. wages paid in respect of each wage period covering the period of his employment from 1 May 2024 to 30 April 2025 (where an employee commenced employment before 1 May 2025 (i.e. the effective date of the abolition of Mandatory Provident Fund offsetting arrangement));
6. total number of hours worked in each wage period (if applicable\*);
7. wage period;
8. periods of annual leave, sick leave, maternity leave, paternity leave and holidays entitled and taken, together with details of payments made in respect of such periods;
9. amount of end of year payment and the period to which it relates (if applicable);
10. period of notice required for termination of contract;
11. date of termination of employment (if applicable).

\* For details, please refer to the “Concise Guide to Statutory Minimum Wage” published by the Labour Department. This guide book can be downloaded from the homepage of the Labour Department ([www.labour.gov.hk](http://www.labour.gov.hk)) or obtained at the offices of the Labour Relations Division of the Labour Department.

The wage and employment records must be kept at the employer's place of business or at the place where the employee is employed, and they should also be kept for a period of another six months after the employee ceases to be employed.

**NOTE:**

- Employers should keep proper records in relation to employees' attendance, leave and wages, etc for the purpose of calculating statutory entitlements.
- To safeguard their own rights and benefits, employees should also keep proper records in relation to their attendance, leave and wages, etc.

**Offences and Penalties**

An employer who fails to keep the above record is liable to prosecution and, upon conviction, to a fine of \$10,000.

Officers of the Labour Department may inspect the above record, inquire any person or seize anything which may appear to be evidence of an offence under the Employment Ordinance. Any person who fails to comply with the requirements of the officers of the Labour Department is liable to prosecution and, upon conviction, to a fine of \$100,000 and to imprisonment for one year.

## Chapter 3: Wages

### Definition

"Wages" means all remuneration, earnings, allowances, tips and service charges, however designated or calculated, payable to an employee in respect of work done or work to be done, and capable of being expressed in terms of money. Allowances including travelling allowances, attendance allowances, commission and overtime pay are within the definition of wages. However, it does not include:

1. the value of any accommodation, education, food, fuel, water, light or medical care provided by the employer;
2. employer's contribution to any retirement scheme;
3. commission, attendance allowance or attendance bonus which is of a gratuitous nature or is payable only at the discretion of the employer;
4. non-recurrent travelling allowance or the value of any travelling concession or travelling allowance for actual expenses incurred by the employment;
5. any sum payable to the employee to defray special expenses incurred by him by the nature of his employment;
6. end of year payment, or annual bonus which is of a gratuitous nature or is payable only at the discretion of the employer;
7. gratuity payable on completion or termination of a contract of employment.

An employee's entitlements to end of year payment, maternity leave pay, paternity leave pay, severance payment, long service payment, sickness allowance, holiday pay, annual leave pay and payment in lieu of notice are calculated according to the above definition of wages.

Overtime pay should also be included in calculating the above payments if:

- it is of a constant character; or
- its monthly average over the past 12 months is not less than 20% of the average monthly wages of the employee during the same period.

### **Deductions from Wages**

An employer is prohibited from deducting wages from his employee, except under the following circumstances:

1. deductions for absence from work. The sum to be deducted should be proportionate to the period of time the employee is absent from work;
2. deductions for damage to or loss of the employer's goods, equipment, or property by the employee's neglect or default. In any one case, the sum to be deducted shall be equivalent to the value of the damage or loss but not exceeding \$300. The total of such deductions shall not exceed one quarter of the wages payable to the employee in that wage period;
3. deductions for the recovery of any advanced or over-paid wages to the employee. The total sum to be deducted shall not exceed one quarter of the wages payable to the employee in that wage period;
4. deductions of the value of food and accommodation the employer supplies to the employee;
5. deductions, at the written request of the employee, in respect of contributions to be paid by the employee through the employer for any medical scheme, superannuation scheme, retirement scheme or thrift scheme;
6. deductions, with the employee's written consent, for the recovery of any loan made by the employer to the employee;
7. deductions in respect of paternity leave pay paid to the employee before the required document is provided if the employee fails to provide the employer with the required document within 3 months after the first day of paternity leave taken, or if the employee has ceased to be employed, fails to provide the required document before the cessation;
8. deductions which are required or authorized under any enactment to be made from the wages of the employee;
9. deductions for outstanding maintenance payment owed by the employee pursuant to the Attachment of Income Order issued by the court.

Deductions under items (1) to (8) shall have priority over item (9).

Unless with the approval in writing of the Commissioner for Labour, the total of all deductions, except those for absence from work and outstanding maintenance payment, made in any one wage period shall not exceed one half of the wages payable in that period.

### **Offences and Penalties**

An employer who makes illegal deduction from wages of an employee is liable to prosecution and, upon conviction, to a fine of \$100,000 and to imprisonment for one year.

### **Payment of Wages**

Wages shall become due on the expiry of the last day of the wage period. 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. An employer is required to pay interest on the outstanding amount of wages to the employee if he fails to pay wages to the employee within seven days when it becomes due.

### **Offences and Penalties**

An employer who wilfully 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.

Where a wage offence committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, such person shall be guilty of the like offence and, upon conviction, is liable to the same penalty.

An employer who wilfully and without reasonable excuse fails to pay interest on the outstanding amount of wages to the employee is liable to prosecution and, upon conviction, to a fine of \$10,000.

### **Failure to Pay Wages**

An employer who is no longer able to pay wages due should terminate the contract of employment in accordance with its terms.

If wages are not paid within one month after they become due, an employee may deem his contract of employment to be terminated by his employer without notice and is entitled to payment in lieu of notice in addition to other statutory and contractual termination payment. To avoid disputes, an employee should inform his employer when he exercises such rights under the Ordinance.

### **Liability to Pay Wages of Sub-contractor's Employees**

The principal contractors, superior sub-contractors and superior nominated sub-contractors engaged in building and construction works are liable for the first two months' unpaid wages of an employee who is employed by the sub-contractor or nominated sub-contractor.

If an employee employed by a sub-contractor or nominated sub-contractor is owed wages, he must serve a written notice to the principal contractor or the main nominated sub-contractor within 60 days (or an additional period of 90 days permitted by the Commissioner for Labour) after the wages become due. The employee should state the following in the notice:

1. the name and address of the employee;
2. the name and address of his employer;
3. the address of the place of employment of the employee;
4. the particulars of the work in respect of which the wages are due; and
5. the amount of wages due and the period to which they relate.

The principal contractors, the superior sub-contractors and the superior nominated sub-contractors should pay wages to the employee within 30 days after receiving the notice. They may request every superior sub-contractor or superior nominated sub-contractor to the employee's employer to share out the liability.

The wages paid by the principal contractor, the superior sub-contractors and the superior nominated sub-contractors shall be a debt due by the employer of the employee to them. The debt may be recovered through civil claims proceedings.

## **Chapter 4: Rest Days, Holidays and Leave**

An employee shall enjoy rest days, statutory holidays and paid annual leave during employment.

### **REST DAY**

#### **Eligibility for Rest Day**

An employee employed under a continuous contract is entitled to not less than one rest day in every period of seven days.

#### **Definition of a Rest Day**

A rest day is defined as a continuous period of not less than 24 hours during which an employee is entitled to abstain from working for his employer.

#### **Appointment of Rest Days**

Rest days shall be appointed by the employer. They may be granted on a regular or irregular basis:

- regular rest days - the employer should inform his employees of the arrangement
- irregular rest days - before the beginning of each month, the employer must inform his employees orally or in writing of the appointed rest days or by displaying a roster showing the dates of the appointed rest days for each employee

An employer may substitute some other rest day with the consent of the employee, in which case it must be within the same month before the original rest day or within 30 days after it.

#### **Compulsory Work on Rest days**

An employer must not compel an employee to work on a rest day except in the event of a breakdown of machinery or plant or in any other unforeseen emergency. For any rest day on which the employee is required to work, the employer should substitute some other rest day within 30 days after the original rest day. The employer should notify the employee of the arrangement within 48 hours after the employee is required to work.

### **Offences and Penalties**

An employer who without reasonable excuse fails to grant rest days to his employees is liable to prosecution and, upon conviction, to a fine of \$50,000.

An employer who compels his employees to work on their rest days is liable to prosecution and, upon conviction, to a fine of \$50,000.

### **Voluntary Work on Rest Days**

An employee, except young persons under the age of 18 employed in industrial undertakings, may work voluntarily on a rest day.

Any condition in a contract of employment which makes payment of any type of annual bonus or end of year payment conditional on an employee agreeing to work on rest days is void.

### **Rest Day Pay**

Whether a rest day is paid or not is to be agreed by employers and employees.

### **STATUTORY HOLIDAYS**

An employee, irrespective of his length of service, is entitled to the following statutory holidays:

1. the first day of January
2. Lunar New Year's Day
3. the second day of Lunar New Year
4. the third day of Lunar New Year
5. Ching Ming Festival
6. Labour Day, being the first day of May
7. the Birthday of the Buddha *(newly added from 2022)*
8. Tuen Ng Festival
9. Hong Kong Special Administrative Region Establishment Day, being the first day of July
10. the day following the Chinese Mid-Autumn Festival
11. National Day, being the first day of October
12. Chung Yeung Festival
13. Chinese Winter Solstice Festival or Christmas Day (at the option of the employer)
14. the first weekday after Christmas Day *(newly added from 2024)\**

*\*Effective from 1 January 2024*

The additional statutory holidays from 2026 and thereafter are tabulated as follows:

<b>Year</b>	<b>Newly added statutory holiday</b>	<b>Total number of statutory holidays</b>
Starting from 2026	Easter Monday	15
Starting from 2028	Good Friday	16
Starting from 2030	The day following Good Friday	17

(Regarding payment for statutory holiday, please see the part below on “Holiday Pay”)

### **Work on Statutory Holidays**

If the employer requires the employee to work on a statutory holiday, the employer should make the following arrangement:

<b>Alternative Holiday Arrangement</b>	<b>Prior Notice to Employee on the Date of Alternative Holiday</b>
An alternative holiday should be arranged within 60 days before the statutory holiday; or	To be given not less than 48 hours' prior notice before the alternative holiday
An alternative holiday should be arranged within 60 days after the statutory holiday	To be given not less than 48 hours' prior notice before the statutory holiday

If the employer and employee agree, any day within 30 days before or after the statutory or alternative holiday may be taken by the employee as a substituted holiday.

### **A Statutory Holiday Falling on a Rest Day**

If a statutory holiday falls on a rest day, the employee should be granted a holiday on the next day which is not a statutory holiday or an alternative holiday or a substituted holiday or a rest day.

### **Holiday Pay**

An employee having been employed under a continuous contract for not less than three months immediately preceding a statutory holiday is entitled to the holiday pay. Holiday pay should be paid to the employee not later than the day on which he is next paid his wages after that statutory holiday.

The daily rate of holiday pay is a sum equivalent to the average daily wages earned by an employee in the 12-month period preceding the following specified dates. If an employee is employed for less than 12 months, the calculation shall be based on the shorter period.

<b>Day(s) of Statutory Holiday(s)</b>	<b>Specified Dates</b>
1 day	Day of the statutory holiday
More than 1 consecutive day	First day of the statutory holidays

**NOTE:** In calculating the average daily wages, an employer has to exclude (i) the periods for which an employee is not paid his wages or full wages, including rest day, statutory holiday, annual leave, sickness day, maternity leave, paternity leave, sick leave due to work injuries or leave taken with the agreement of the employer, and any normal working day on which the employee is not provided by the employer with work; together with (ii) the sum paid to the employee for such periods. (see Appendix 1 for details)

### **Restriction on Pay in lieu of Holiday**

Regardless of whether an employee is entitled to holiday pay, an employer should grant his employee a statutory holiday, or arrange an “alternative holiday” or “substituted holiday”. An employer must not make any form of payment to the employee in lieu of granting a holiday. In other words, “buy-out” of a holiday is not allowed.

### **Offences and Penalties**

An employer who without reasonable excuse fails to grant statutory holidays, alternative holidays or substituted holidays, or fails to pay holiday pay to an employee is liable to prosecution and, upon conviction, to a fine of \$50,000.

## PAID ANNUAL LEAVE

An employee is entitled to annual leave with pay after having been employed under a continuous contract for every 12 months. An employee's entitlement to paid annual leave increases progressively from seven days to a maximum of 14 days according to his length of service:

Years of Service	Annual Leave Entitlements
1	7
2	7
3	8
4	9
5	10
6	11
7	12
8	13
9 or above	14

### Granting of Annual Leave

An employee shall take the paid annual leave to which he is entitled within the following period of 12 months.

The time of the leave should be appointed by the employer after consultation with the employee or his representative, confirmed by a written notice to the employee at least 14 days in advance, unless a shorter period has been mutually agreed.

Paid annual leave should be granted for an unbroken period. If the employee so requests, it may be granted in the following manner:

<b>Leave entitlement not exceeding 10 days</b>	up to 3 days can be granted separately; the balance should be granted consecutively
<b>Leave entitlement exceeding 10 days</b>	at least 7 days should be granted consecutively

Any rest day or statutory holiday falling within a period of annual leave will be counted as annual leave and another rest day or holiday must be appointed.

### **Annual Leave Pay**

The daily rate of annual leave pay is a sum equivalent to the average daily wages earned by an employee in the 12-month period preceding the following specified dates. If an employee is employed for less than 12 months, the calculation shall be based on the shorter period.

<b>Day(s) of Annual Leave</b>	<b>Specified Dates</b>
1 day	Day of the annual leave
More than 1 consecutive day	First day of the annual leave

**NOTE:** In calculating the average daily wages, an employer has to exclude (i) the periods for which an employee is not paid his wages or full wages, including rest day, statutory holiday, annual leave, sickness day, maternity leave, paternity leave, sick leave due to work injuries or leave taken with the agreement of the employer, and any normal working day on which the employee is not provided by the employer with work; together with (ii) the sum paid to the employee for such periods. (see Appendix 1 for details)

Annual leave pay should be paid to the employee not later than the normal pay day after the period of annual leave taken.

### **Offences and Penalties**

An employer who without reasonable excuse fails to grant annual leave to an employee is liable to prosecution and, upon conviction, to a fine of \$50,000.

An employer who fails to pay annual leave pay to an employee is liable to prosecution and, upon conviction, to a fine of \$50,000.

### **Restriction on Pay in lieu of Leave**

An employee may choose to accept payment in lieu of the part of his leave entitlement which exceeds 10 days.

### **Payment of Annual Leave Pay on Termination of Employment Contract**

A leave year means any period of 12 months commencing on the day on which his employment commenced and an anniversary of such day.

If an employee has been employed for a leave year and his employment contract is terminated, irrespective of the reasons of termination, he should be entitled to payment in lieu of any annual leave not yet taken. In calculating the daily rate of the payment, the “date of termination of contract” should be adopted as the “specified date”. (see the preceding part on “Annual Leave Pay”)

An employee with three but less than 12 months' employment in a leave year and his employment contract is terminated other than for the reason of summary dismissal due to his serious misconduct, he would be entitled to pro rata annual leave pay.

Calculation of Annual Leave Pay on Termination of Employment Contract:

Period of Employment		Annual Leave Entitlements	
Less than 12 months	less than 3 months		Nil
	3 to 12 months	summary dismissal	Nil
		resignation dismissed other than summary dismissal	$\frac{\text{annual leave entitled in the current leave year} \times \text{period of employment (days)}}{365}$
12 or more than 12 months	less than 3 months in the current leave year		annual leave not yet taken*
	3 to 12 months in the current leave year	summary dismissal	annual leave not yet taken*
		resignation dismissed other than summary dismissal	$\frac{\text{annual leave not yet taken}^* + \text{annual leave entitled in the current leave year} \times \text{period of employment in the current leave year (days)}}{365}$

\* This refers to any untaken annual leave accrued in the previous leave year.

### **Common Leave Year**

An employer may elect any period of 12 consecutive months as the common leave year for all of his employees. Should the employer wish to make this arrangement, he shall give one month's notice either to each of his employees in writing or by posting a notice in a conspicuous place in the place of employment.

If an employee has not been employed for 12 months in the common leave year, the employer should calculate his leave entitlement on a pro rata basis, and any fraction of a day resulting from the calculation should be counted as a full day's leave.

After consultation with his employer, the employee may opt to take the pro rata annual leave accrued preceding the commencement of the common leave year or carry it forward and combine it with his leave accrued in the next leave year.

[Example]

common leave year: 1.1.2022 to 31.12.2022

commencement date of employment: 1.9.2022

pro rata annual leave:  $122^* / 365 \times 7 = 2.34$  days (round up to 3 days)

(\*122 is the number of days between 1.9.2022 and 31.12.2022)

The employee may take the 3 days' leave in 2023, or combine it with his 7 days' leave accrued in 2023 and take 10 days' leave in 2024.

### **Annual Leave Shutdown**

If an employer intends to close down his business or part of his business for granting annual leave to his employees, he should inform the affected employees in writing at least one month in advance.

Where an employee is not yet entitled to paid annual leave in respect of any day during the period of shutdown but he has to stop work as a result, he should be granted paid annual leave during that whole period.

If the annual leave an employee is entitled exceeds the number of days of shutdown, he may take the remaining annual leave immediately following the shutdown.

The common leave year elected by the employer should not be affected by an annual leave shutdown as the annual leave granted shall be in respect of the leave year immediately preceding the period of the shutdown.

## Chapter 5: Sickness Allowance

### **Eligibility for Sickness Allowance**

An employee employed under a continuous contract is entitled to sickness allowance if the following conditions are fulfilled:

1. the sick leave taken is not less than four consecutive days (unless for any day off taken by a female employee for her pregnancy check-ups, post confinement medical treatment or miscarriage, any such day on which she is absent shall be counted as a sickness day and, subject to the following conditions, be paid sickness allowance);
2. the employee has accumulated sufficient number of paid sickness days (see the parts below on “Accumulation of Paid Sickness Days” and “Two Categories of Paid Sickness Days”); and
3. the sick leave is supported by:
  - (i) an appropriate medical certificate (regarding an employee’s medical examination in relation to her pregnancy, may also be supported by a certificate of attendance<sup>1</sup> apart from a medical certificate); or
  - (ii) regarding the absence from work of an employee by reason of his / her compliance with a specific anti-epidemic requirement with a movement restriction imposed under the Prevention and Control of Disease Ordinance (Cap. 599), the employee is required to produce a proof of such requirement<sup>2</sup> (see the part below on “Two Categories of Paid Sickness Days”).

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<sup>1</sup> Certificate of attendance is not applicable to an employee’s medical examination in relation to her pregnancy conducted before 11 December 2020.

<sup>2</sup> Applicable to sickness days taken by employees who are absent from work by reason of their compliance with a movement restriction on or after 17 June 2022. The specific anti-epidemic requirements with a movement restriction are those prescribed in Part 1, Schedule 12 of the Employment Ordinance. The proofs of the relevant requirements include hard copy or electronic form of document, or an electronic data issued by the Government. The relevant proof should show the name of the employee, or information that could identify the identity of employee, the type of movement restriction imposed and the commencement and expiry dates of such restriction.

An employee shall not be entitled to sickness allowance under the following circumstances:

- the employee, without reasonable excuse, refuses treatment by a company doctor of a medical scheme recognised by the Director of Health or disregards the advice of the doctor. (If the recognised scheme of medical treatment operated by an employer does not cover treatment from a certain medical discipline, the employee may choose to receive treatment from any registered medical practitioner, registered Chinese medicine practitioner or registered dentist under that particular discipline);
- the sickness day falls on a statutory holiday on which the employee is entitled to holiday pay; or
- compensation is payable under the Employees' Compensation Ordinance.

### **Sickness Allowance**

The daily rate of sickness allowance is a sum equivalent to four-fifths of the average daily wages earned by an employee in the 12-month period preceding the following specified dates. If an employee is employed for less than 12 months, the calculation shall be based on the shorter period.

<b>Day(s) of Sickness Day(s)</b>	<b>Specified Dates</b>
1 day	The sickness day
More than 1 consecutive day	The first sickness day

**NOTE:** In calculating the average daily wages, an employer has to exclude (i) the periods for which an employee is not paid his wages or full wages, including rest day, statutory holiday, annual leave, sickness day, maternity leave, paternity leave, sick leave due to work injuries or leave taken with the agreement of the employer, and any normal working day on which the employee is not provided by the employer with work; together with (ii) the sum paid to the employee for such periods. (see Appendix 1 for details)

Sickness allowance should be paid to the employee not later than the normal pay day.

### **Offences and Penalties**

An employer who without reasonable excuse fails to pay sickness allowance to an employee is liable to prosecution and, upon conviction, to a fine of \$50,000.

### **Accumulation of Paid Sickness Days**

An employee can accumulate paid sickness days after having been employed under a continuous contract. Paid sickness days are accumulated at the rate of two paid sickness days for each completed month of the employee's employment during the first 12 months, and four paid sickness days for each completed month of employment thereafter. Paid sickness days can be accumulated throughout the whole employment period, but shall not exceed 120 days at any one time.

### **Two Categories of Paid Sickness Days**

Paid sickness days are divided into two categories - paid sickness days can first be accumulated up to 36 days in Category 1 and then 84 days in Category 2.

Category	Total number	Conditions for taking paid sickness day(s)
Category 1	36	<ul style="list-style-type: none"> <li>• supported by a medical certificate<sup>3</sup> issued by a registered medical practitioner, a registered Chinese medicine practitioner or a registered dentist</li> <li>• regarding an employee's medical examination in relation to her pregnancy, may also be supported by a certificate of attendance<sup>4</sup> issued by a registered medical practitioner, a registered Chinese medicine practitioner, a registered midwife or a registered nurse, apart from a medical certificate</li> <li>• regarding the absence from work of an employee for compliance with a specific anti-epidemic requirement with a movement restriction, the employee is required to produce proof of the relevant requirement (for details, please refer to footnote 2 above)</li> </ul>
Category 2	84	<ul style="list-style-type: none"> <li>• sickness days taken exceeds the number of paid sickness days remaining in Category 1</li> <li>• if required by the employer, a medical certificate<sup>3</sup> issued by a registered medical practitioner, registered Chinese medicine practitioner or registered dentist attending the employee as an out-patient or in-patient in a hospital should be produced upon the employer's request, a brief record of the investigation carried out and the treatment prescribed by the issuer of the medical certificate should also be produced</li> <li>• regarding an employee's medical examination in relation to her pregnancy, may also produce a certificate of attendance<sup>4</sup> issued by a registered medical practitioner, a registered Chinese medicine practitioner, a registered midwife or a registered nurse who conducts the examination for the employee as an out-patient or in-patient in a hospital, apart from a medical certificate</li> <li>• regarding the absence from work of an employee for compliance with a specific anti-epidemic requirement with a movement restriction, irrespective of whether the paid sickness day taken by the employee is under Category 1 or Category 2, the employee is only required to produce proof of the relevant requirement (for details, please refer to footnote 2 above)</li> </ul>

<sup>3</sup> The medical certificate should specify the number of days on which, and the nature of the sickness or injury on account of which, the employee is unfit for work.

<sup>4</sup> The certificate of attendance should state the employee's attendance for a medical examination in relation to her pregnancy and the relevant date. Certificate of attendance is not applicable to a medical examination in relation to pregnancy conducted before 11 December 2020.

### **Record of Sickness Days**

An employer should keep the following records:

1. the date of commencement and termination of employment of each employee;
2. all paid sickness days accumulated by each employee, including the number of paid sickness days accumulated in Category 1 and 2;
3. paid sickness days taken by each employee and deducted from the total number of paid sickness days in either category;
4. sickness allowance paid and the sickness days in respect of which the sickness allowance was paid.

The record should be signed by the employee within seven days of his return to work from paid sick leave, and the employee has the right to inspect the record.

### **Employment Protection**

An employer is prohibited from terminating the contract of employment of an employee on his paid sickness day, except in cases of summary dismissal due to the employee's serious misconduct.

### **Offences and Penalties**

An employer who contravenes the above provision is liable to prosecution and, upon conviction, to a fine of \$100,000. Besides, the employer is required to pay the following sum of money to the dismissed employee within 7 days after the day of termination:

1. payment in lieu of notice;
2. a further sum equivalent to seven days' wages as compensation<sup>5</sup>; and
3. any sickness allowance to which the employee is entitled.

The employee may also claim remedies for employment protection against his employer if he is dismissed other than for a valid reason as specified in the Ordinance. (see the part on "Eligibility and Remedies for Employment Protection" in Chapter 10)

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<sup>5</sup> See Appendix 1 for details of the calculation.

## Chapter 6: Maternity Protection

### Maternity Leave

A female employee employed under a continuous contract immediately before the commencement of her maternity leave and having given notice of pregnancy and her intention to take maternity leave to the employer is entitled to the following periods of leave:

- a continuous period of 14<sup>1</sup> weeks' maternity leave;
- if confinement occurs later than the expected date of confinement, a further period equal to the number of days from the day after the expected date of confinement to the actual date of confinement;
- an additional period of leave for not more than four weeks on the grounds of illness or disability due to the pregnancy or confinement.

### Taking of Maternity Leave

1. With the agreement of her employer, a pregnant employee may decide to commence her maternity leave from two to four weeks before the expected date of confinement.
2. If the employee does not decide on the date, or fails to secure her employer's agreement, the employee shall commence her maternity leave four weeks before the expected date of confinement.

Maternity leave commences on the date of confinement if it occurs before the above scheduled maternity leave. In this case, the employee should give notice of the date of confinement and her intention to take 14 weeks' maternity leave to her employer within seven days of her confinement.

**NOTE:** Confinement means the delivery of a child; miscarriage means the expulsion of the products of conception which are incapable of survival after being born before 24<sup>2</sup> weeks of pregnancy. If before 24 weeks of pregnancy an employee delivers a surviving child or the child prematurely dies after being born, it is not a case of miscarriage.

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<sup>1</sup> Eligible employees whose confinement occurs before 11 December 2020 are entitled to a continuous period of 10 weeks' maternity leave.

<sup>2</sup> Before 11 December 2020, miscarriage means the expulsion of the products of conception which are incapable of survival after being born before 28 weeks of pregnancy.

## **Payment for Maternity Leave**

An employee is eligible for maternity leave pay if:

1. she has been employed under a continuous contract for not less than 40 weeks immediately before the commencement of scheduled maternity leave<sup>3</sup>;
2. she has given notice of pregnancy and her intention to take maternity leave to her employer after the pregnancy has been confirmed. For example, the presentation of a medical certificate confirming her pregnancy to the employer; and
3. she has produced a medical certificate specifying the expected date of confinement if so required by her employer.

Maternity leave should be paid for a period of 14<sup>4</sup> weeks and it should be paid on the normal pay day of the employee.

The daily rate of maternity leave pay is a sum equivalent to four-fifths of the average daily wages earned by an employee in the 12-month period preceding the first day of the maternity leave. If an employee is employed for less than 12 months, the calculation shall be based on the shorter period. The 4-week maternity leave pay for the 11<sup>th</sup> to 14<sup>th</sup> week of the maternity leave is subject to a cap of \$80,000.

## **Reimbursement of Maternity Leave Pay**

Employers, after payment of all maternity leave pay on the normal pay day, may apply to the Government for reimbursement<sup>5</sup> of the 11<sup>th</sup> to 14<sup>th</sup> weeks' maternity leave pay payable and paid under the Employment Ordinance. Employers can submit applications through the "Reimbursement Easy Portal" ("REP"), or by email, fax, post or in person. For details, please visit "REP" at [www.rmlps.gov.hk](http://www.rmlps.gov.hk).



**NOTE:** In calculating the average daily wages, an employer has to exclude (i) the periods for which an employee is not paid his wages or full wages, including rest day, statutory holiday, annual leave, sickness day, maternity leave, sick leave due to work injuries or leave taken with the agreement of the employer, and any normal working day on which the employee is not provided by the employer with work; together with (ii) the sum paid to the employee for such periods. (see

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<sup>3</sup> For scheduled maternity leave, please refer to points 1 and 2 of the preceding item "Taking of Maternity Leave".

<sup>4</sup> Eligible employees whose confinement occurs before 11 December 2020 are entitled to 10 weeks' paid maternity leave.

<sup>5</sup> The Reimbursement of Maternity Leave Pay Scheme is an administrative scheme of the Government.

Appendix 1 for details)

### **Offences and Penalties**

An employer who fails to grant maternity leave to a pregnant employee or fails to pay maternity leave pay to an eligible pregnant employee is liable to prosecution and, upon conviction, to a fine of \$50,000.

### **Medical Examination**

When the employee's absence from work to attend medical examination in relation to her pregnancy, post confinement medical treatment or miscarriage is supported by an appropriate medical certificate<sup>6</sup>, any such day on which she is absent shall be counted as a sickness day. (see the part on "Medical Certificates/ Certificates of Attendance" in this Chapter and the part on "Two Categories of Paid Sickness Days" in Chapter 5).

### **Employment Protection**

An employer is prohibited from dismissing a pregnant employee from the date on which she is confirmed pregnant by a medical certificate to the date on which she is due to return to work upon the expiry of her maternity leave if:

1. the employee has been employed under a continuous contract, and
2. she has served a notice of pregnancy to the employer.

If a pregnant employee is dismissed by her employer before she has served a notice of pregnancy, she may serve such notice immediately after being informed of her dismissal. Under such circumstances, her employer must withdraw the dismissal or the notice of dismissal.

However, the employer is not prohibited from dismissing a pregnant employee under the following circumstances:

- the employee is summarily dismissed due to her serious misconduct; or
- where it has been expressly agreed that the employment is on probation, the employee is dismissed for reasons other than pregnancy during the probation period of not more than 12 weeks.

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<sup>6</sup> Regarding an employee's medical examination in relation to her pregnancy, may also be supported by a certificate of attendance. Certificate of attendance is not applicable to a medical examination in relation to pregnancy conducted before 11 December 2020.

### **Offences and Penalties**

Except for the circumstances provided above, it is an offence for an employer to dismiss a pregnant employee. The employer is liable to prosecution and, upon conviction, to a fine of \$100,000. Besides, the employer is required to pay the following sums of money to the dismissed employee within 7 days after the day of termination:

1. payment in lieu of notice;
2. a further sum equivalent to one month's wages as compensation<sup>7</sup>; and
3. 14<sup>8</sup> weeks' maternity leave pay if, but for the dismissal, she would have been entitled to such payment.

The employee may also claim remedies for employment protection against her employer if she is dismissed other than for a valid reason as specified in the Ordinance. (see the part on “Eligibility and Remedies for Employment Protection” in Chapter 10)

### **Prohibition of Assignment of Heavy, Hazardous or Harmful Work**

If a pregnant employee produces a medical certificate with an opinion as to her unfitness to handle heavy materials, work in places where gas injurious to pregnancy is generated, or do other work injurious to pregnancy, the employer may not allocate such work to the employee. If the employee is already performing such work, the employer shall within 14 days after receiving such request remove her from that work.

Regardless of whether the medical certificate produced by the employee was issued by a registered medical practitioner or registered Chinese medicine practitioner, an employer may, within 14 days after receiving such medical certificate, at the employer's own expense, arrange for the employee to attend another medical examination conducted by a registered medical practitioner or registered Chinese medicine practitioner named by the employer to obtain a second opinion as to the employee's fitness to undertake the work at issue.

The Employment Ordinance provides that if the earnings of the employee is affected as a result of her transfer from heavy, hazardous or harmful work, the maternity leave pay or the payment for termination of employment shall be

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<sup>7</sup> See Appendix 1 for details of the calculation.

<sup>8</sup> Eligible employees whose confinement occurs before 11 December 2020 or whose date of termination of the employment contract falls before 11 December 2020 are entitled to 10 weeks' maternity leave pay.

calculated on the basis of the average daily or monthly (as appropriate) wages earned by the employee in the 12-month period preceding the transfer. (see Appendix 1 for details of the calculation).

### **Offences and Penalties**

An employer who without reasonable excuse fails to comply with the above requirements is liable to prosecution and, upon conviction, to a fine of \$50,000.

### **Medical Certificates / Certificates of Attendance**

Employees shall submit medical certificates / certificates of attendance issued by registered medical practitioners, registered Chinese medicine practitioners, registered midwives or registered nurses, if so required by employers where applicable, to be eligible for maternity protection. Please refer to the following table for details:

<b>Certification pertaining to</b>	<b>Type of certificates</b>	<b>Issued by a registered medical practitioner</b>	<b>Issued by a registered Chinese medicine practitioner</b>	<b>Issued by a registered midwife</b>	<b>Issued by a registered nurse</b>
Pregnancy and the expected date of confinement	Medical Certificate	✓	✓	✓	✗
Actual date of confinement		✓	✗	✓	✗
An additional period of not more than 4 weeks of maternity leave on ground of illness or disability due to pregnancy or confinement		✓	✓	✗	✗
Absence from work to attend a medical examination in relation to pregnancy or post confinement medical treatment, or by reason of miscarriage		✓	✓	✗	✗
Unfitness to handle heavy, hazardous or harmful work		✓	✓	✗	✗
Absence from work to attend a medical examination in relation to pregnancy	Certificate of attendance	✓	✓	✓	✓

## Chapter 7: Paternity Leave

### Paternity Leave

A male employee is entitled to 5<sup>1</sup> days' paternity leave for each confinement of his spouse / partner if he –

1. is the father<sup>2</sup> of a new-born child or a father-to-be;
2. has been employed under a continuous contract; and
3. has given the required notification to the employer.

### Taking of Paternity Leave

- The employee must notify his employer of –
  1. his intention to take paternity leave at least 3 months before the expected date of delivery of the child (exact date of leave not required at this stage); and
  2. the date of his paternity leave before taking the leave<sup>3</sup>.
- If the employee fails to give the abovementioned 3 months' advance notice to the employer, he must notify the employer of his date of paternity leave at least 5 days before that date.
- If the employer so requests, the employee must provide his employer with a written statement signed by him stating –
  1. the name of the child's mother;
  2. the expected / actual date of delivery of the child; and
  3. that he is the child's father.

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<sup>1</sup> The number of paternity leave days is 3 days for each confinement of the spouse / partner of an eligible male employee if his child is born on or after 27 February 2015 but before 18 January 2019.

<sup>2</sup> The employee is not required to be married to the mother of the new-born child for entitlement to paternity leave under the Employment Ordinance.

<sup>3</sup> The law does not stipulate how advance such notification should be given.

### Sample Written Statement

I, (name of employee), state herewith that I am the father of the child to be delivered / delivered\* by (name of the child's mother). The expected / actual\* date of delivery of the child is \_\_\_\_\_.

(Signature of employee)

Date

\*Delete as appropriate

- The employee may take paternity leave at any time during the period from 4 weeks before the expected date of delivery of the child to 14<sup>4</sup> weeks beginning on the actual date of delivery of the child. The employee may take all 5 days of paternity leave in one go or on separate days.

### **Payment for Paternity Leave**

A male employee is entitled to paternity leave pay if he –

1. has been employed under a continuous contract for not less than 40 weeks immediately before the day of paternity leave; and
2. has provided the required document to the employer within the following period (whichever period expires first) –
  - (i) 12 months after the first day of paternity leave taken; or
  - (ii) if he ceases to be employed, within 6 months after cessation of employment.

The daily rate of paternity leave pay is a sum equivalent to four-fifths of the average daily wages earned by an employee in the 12-month period preceding the day of paternity leave. If an employee takes more than one day of paternity leave consecutively, the daily rate of paternity leave pay is a sum equivalent to four-fifths of the average daily wages earned by the employee in the 12-month period preceding the first day of paternity leave. If an employee is employed for less than 12 months, the calculation shall be based on the shorter period.

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<sup>4</sup> If the child is born before 11 December 2020, it is up to 10 weeks beginning on the actual date of delivery of the child.

**NOTE:** In calculating the average daily wages, an employer has to exclude (i) the periods for which an employee is not paid his wages or full wages, including rest day, statutory holiday, annual leave, sickness day, paternity leave, sick leave due to work injuries or leave taken with the agreement of the employer, and any normal working day on which the employee is not provided by the employer with work; together with (ii) the sum paid to the employee for such periods. (see Appendix 1 for details)

### **The Document to be Provided by the Employee**

**For birth in Hong Kong:** the birth certificate of the child on which the employee's name is entered as the child's father.

**For birth outside Hong Kong:** the birth certificate of the child issued by the authorities of the place and on which the employee's name is entered as the child's father (or, if the authorities of the place do not issue birth certificates, any other document issued by the authorities that could reasonably be taken as proof that the employee is the child's father).

**NOTE:** Samples of birth certificates issued by the authorities of some places outside Hong Kong are available on the web pages of the Labour Department.

### **If the child is born dead or dies after birth and no birth certificate has been issued in respect of the child:**

- The employee must produce a medical certificate<sup>5</sup> certifying the delivery of the child.
  
- If required by the employer, the employee must also provide a written statement signed by him stating that –
  1. he is the father of the child delivered by the woman named in the medical certificate; and
  2. the child is born dead or dies after birth, whichever is appropriate.

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<sup>5</sup> For birth outside Hong Kong, the employee must provide a medical certificate or any other document issued by the authorities of the place that could reasonably be taken as proof of the delivery of the child.

### **Sample Written Statement**

I, (name of employee), state herewith that I am the father of the child delivered by (name of child's mother as named in the medical certificate). The child is born dead / dies after birth\*.

(Signature of employee)

Date

\*Delete as appropriate

### **Time Limit for Payment of Paternity Leave**

- If an employee has provided the required document to the employer before the day on which paternity leave is taken, the employer must pay him paternity leave pay –
  1. not later than the day on which he is next paid his wages after the day of paternity leave; or
  2. if the employee has ceased to be employed, within 7 days after cessation of employment.
- If an employee provides the required document to the employer after taking paternity leave, the employer must pay him paternity leave pay –
  1. not later than the day on which he is next paid his wages after the document is provided; or
  2. if the employee has ceased to be employed, within 7 days after the document is provided.

### **Offences and Penalties**

An employer who fails to grant paternity leave or paternity leave pay to an eligible employee is liable to prosecution and, upon conviction, to a fine of \$50,000.

### **Other Points to Note**

Employers and employees are advised to observe their obligations under the Personal Data (Privacy) Ordinance (Cap. 486) in the disclosure and use of personal data of the mother of the employee's child for the purpose of granting or claiming paternity leave and paternity leave pay. Employers may wish to remind their employees to obtain the consent of the child's mother before disclosing her personal data. In case of queries, employers and employees may wish to consult the Office of the Privacy Commissioner for Personal Data.

Every employer must at all times keep a record setting out the wage and employment history of each employee covering the period of his employment during the preceding 12 months. Among others, the record must include particulars of the period(s) of paternity leave that the employee has taken together with details of payments made in respect of such period(s), if applicable.

## **Chapter 8: End of Year Payment**

### **Application**

The provisions concerning end of year payment apply to an employee employed under a continuous contract who, in accordance with a term of his contract (including agreement made orally or in writing, in express or implied term), is entitled to an end of year payment from his employer.

### **Definition**

End of year payment means any annual payment (including double pay, 13<sup>th</sup> 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.

### **Presumption**

For every employment contract made after 27 June 1997, it is presumed that an annual payment or annual bonus is not of a gratuitous nature and is not payable only at the discretion of the employer unless a written term or condition in the contract expresses intention to the contrary.

### **Eligibility for End of Year Payment**

An employee is eligible for an end of year payment if he has been employed under a continuous contract for a whole payment period. The payment period shall be the period specified in the employment contract, or a lunar year if it is not specified.

### **Amount of End of Year Payment**

- The amount as specified in the employment contract.
- If it is not specified, a sum equivalent to the average monthly wages earned by an employee in the 12-month period preceding the day on which it becomes due. If an employee is employed for less than 12 months, the calculation shall be based on the shorter period.

**NOTE:** In calculating the average monthly wages, an employer has to exclude (i) the periods for which an employee is not paid his wages or full wages, including rest day, statutory holiday, annual leave, sickness day, maternity leave, paternity leave, sick leave due to work injuries or leave taken with the agreement of the employer, and any normal working day on which the employee is not provided by the employer with work; together with (ii) the sum paid to the employee for such periods. (see Appendix 1 for details)

### **Proportion of End of Year Payment**

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).

Any probation 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, excluding the probation period, if an employee has fulfilled the eligibility requirement of no less than three months' employment in a payment period, then the whole employment period (including the probation period) shall be taken into account in calculating the pro rata end of year payment.

### **Time of Payment**

- On the day specified in the employment contract.
- If a day is not specified, payment should be made on the last day of the payment period or within seven days after that day.
- If the employment contract is terminated before the payment period expires and the employee is eligible for pro rata end of year payment, payment should be made on the day the contract is terminated or within seven days after that day.
- If the end of year payment is to be calculated by reference to any profits of the employer, payment should be made on the day the profits are ascertained or within seven days after that day.

### **Offences and Penalties**

An employer who wilfully and without reasonable excuse fails to pay an end of year payment to an eligible employee is liable to prosecution and, upon conviction, to a fine of \$50,000.

## Chapter 9: Termination of Contract of Employment

### Termination of Employment Contract by Notice or Payment in lieu of Notice

A contract of employment may be terminated by the employer or employee through giving the other party due notice or payment in lieu of notice. The length of notice or the amount of payment in lieu of notice required are:

Table 1

Employment Condition		Length of Notice	Payment in lieu of Notice	
During probation period	within the first month of probation	not required	not required	
	after the first month of probation	where contract makes provision for the required length of notice	as per agreement, but not less than 7 days	Table 2
		where contract does not make provision for the required length of notice	not less than 7 days	Table 2
For a continuous contract* with no / after probation period	where contract makes provision for the required length of notice	as per agreement, but not less than 7 days	Table 2	
	where contract does not make provision for the required length of notice	not less than 1 month	Table 2	

\* For a non-continuous contract with no / after probation period, the length of notice shall be the agreed period; please refer to Table 2 for the corresponding payment in lieu of notice.

Table 2

<b>Notice period expressed in days or weeks</b>	<p>Average daily wages earned by an employee in the 12-month period preceding the day when a notice of termination of contract is given*</p> $\times$ <p>Number of days in the notice period for which wages would normally be payable to the employee</p> $=$ <p>Payment in lieu of notice</p>
<b>Notice period expressed in months</b>	<p>Average monthly wages earned by an employee in the 12-month period preceding the day when a notice of termination of contract is given**</p> $\times$ <p>Number of months specified in the notice period</p> $=$ <p>Payment in lieu of notice</p>

\*In case a notice has not been given, one shall adopt the average daily wages of the employee in the 12-month period preceding “the day when the contract is terminated”.

\*\*In case a notice has not been given, one shall adopt the average monthly wages of the employee in the 12-month period preceding “the day when the contract is terminated”.

**NOTE:** In calculating the average daily / monthly wages, (i) the periods for which an employee is not paid his wages or full wages, including rest day, statutory holiday, annual leave, sickness day, maternity leave, paternity leave, sick leave due to work injuries or leave taken with the agreement of the employer, and any normal working day on which the employee is not provided by the employer with work; together with (ii) the sum paid to the employee for such periods, should be excluded. (see Appendix 1 for details)

## **Termination of Employment Contract Without Notice or Payment in lieu of Notice**

An employer may summarily dismiss an employee without notice or payment in lieu of notice if the employee, in relation to his employment:

1. wilfully disobeys a lawful and reasonable order;
2. misconducts himself;
3. is guilty of fraud or dishonesty; or
4. is habitually neglectful in his duties.

Taking part by an employee in a strike is not a lawful ground for an employer to terminate the employee's contract of employment without notice or payment in lieu.

**NOTE: Summary dismissal is a serious disciplinary action. It only applies to cases where an employee has committed very serious misconduct or fails to improve himself after the employer's repeated warnings.**

An employee may terminate his employment contract without notice or payment in lieu of notice if:

1. he reasonably fears physical danger by violence or disease;
2. he is subjected to ill-treatment by the employer; or
3. he has been employed for not less than five years and is certified by registered medical practitioner or a registered Chinese medicine practitioner as being permanently unfit for the type of work he is being engaged (see Chapter 11).

### **Statutory Restrictions on Termination of Employment Contract**

An employer shall not dismiss an employee under the following circumstances:

<b>Maternity protection</b>	An employer shall not dismiss a female employee who has been confirmed pregnant and has served a notice of pregnancy.
<b>Paid sick leave</b>	An employer shall not dismiss an employee whilst the employee is on paid sick leave.
<b>Giving evidence or information to the authorities</b>	An employer shall not dismiss an employee by reason of his giving of evidence or information in any proceedings or inquiry in connection with the enforcement of the Employment Ordinance, work accidents or breach of work safety legislation.
<b>Trade union activities</b>	An employer shall not dismiss an employee for trade union membership and activities.
<b>Injury at work</b>	An employer shall not dismiss an injured employee before having entered into an agreement with the employee for employee's compensation or before the issue of a certificate of assessment.

### **Offences and Penalties**

An employer dismissing an employee under the above circumstances is liable to prosecution and, upon conviction, to a fine of \$100,000.

### **Termination Payments**

The items and amount of payments payable to an employee on termination of employment or expiry of the contract depend on a number of factors such as the length of service, the terms of employment contract and the reason for termination of contract. For quick reference, termination payments usually include:

- outstanding wages;
- payment in lieu of notice, if any;
- payment in lieu of any untaken annual leave, and any pro rata annual leave pay for the current leave year;
- any outstanding sum of end of year payment, and pro rata end of year payment for the current payment period;
- where appropriate, long service payment or severance payment;
- other payments under the employment contract, such as gratuity based on the length of service, provident fund, etc.

### **Time of Making Termination Payments**

An employer shall pay all the termination payments, except for severance payment, to the employee as soon as practicable and in any case not later than seven days after the date of termination or expiry of contract.

For severance payment, an employer shall make payment not later than two months from the receipt of a notice from an employee claiming for severance payment.

### **Offences and Penalties**

An employer is required to pay interest on the outstanding wages due to the employee if he fails to pay wages to the employee within seven days after the termination or expiry of contract.

An employer who wilfully and without reasonable excuse fails to pay termination payments when they become due is liable to prosecution and, upon conviction, to a fine of \$350,000 and to imprisonment for three years.

## Chapter 10: Employment Protection

The Part on Employment Protection of the Employment Ordinance aims at discouraging employers from dismissing or varying the terms of the employment contract of their employees in order to evade their liabilities under the Ordinance.

### Eligibility and Remedies for Employment Protection

An employee may claim for remedies against an employer under the following situations:

Situation	Conditions	Remedies
Unreasonable Dismissal	<ol style="list-style-type: none"> <li>1. the employee has been employed under a continuous contract for a period of not less than 24 months; and</li> <li>2. the employee is dismissed other than for a valid reason as specified in the Ordinance</li> </ol>	
Unreasonable Variation of the Terms of the Employment Contract	<ol style="list-style-type: none"> <li>1. the employee has been employed under a continuous contract;</li> <li>2. the terms of the employment contract are varied without the employee's consent;</li> <li>3. the employment contract does not contain an express term which allows such a variation; and</li> <li>4. the terms of the employment contract are varied other than for a valid reason as specified in the Ordinance</li> </ol>	<ul style="list-style-type: none"> <li>• An order for reinstatement or re-engagement; or</li> <li>• An award of terminal payments</li> </ul>
Unreasonable and Unlawful Dismissal	<ol style="list-style-type: none"> <li>1. the employee is dismissed other than for a valid reason as specified in the Ordinance; and</li> <li>2. the dismissal is in contravention of the law (see the part on “Statutory Restrictions on Termination of Employment Contract” in Chapter 9)</li> </ol>	<ul style="list-style-type: none"> <li>• An order for reinstatement or re-engagement; or</li> <li>• An award of terminal payments and / or award of compensation not exceeding \$150,000</li> </ul>

## **Valid Reasons for Dismissal or Variation of the Terms of the Employment Contract**

The five valid reasons for dismissal or variation of the terms of the employment contract are:

- 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)
- other substantial reasons

The absence from work of an employee by reason of his / her compliance with a specific anti-epidemic requirement with a movement restriction does not constitute a valid reason for a dismissal or a variation of the terms of an employee's employment contract by his/her employer. (see the part on specific anti-epidemic requirements with movement restriction in Chapter 5 "Sickness Allowance")

## **Making a Claim for Remedies for Employment Protection**

An employee who wishes to claim for remedies must serve a written notice to the employer in respect of his claim within three months from the effective date of termination of employment or variation of contract. This deadline may be extended for a further period up to six months if approved by the Commissioner for Labour. If an employee wishes to file a claim with the Labour Tribunal ("LT"), he must do so within nine months from the effective date of termination of employment or the variation of contract.

## **Remedies for Employment Protection**

Remedies for Employment Protection, to be awarded by LT, include an order of reinstatement or re-engagement, an award of terminal payments and an award of compensation.

### **Order of Reinstatement or Re-engagement**

An order for reinstatement is an order requiring the employer to treat the employee in all respects as if he had not been dismissed or as if there had been no variation of the terms of the employment contract.

An order for re-engagement is an order requiring the employer to re-engage the employee in an employment on terms comparable to his original terms of employment or in other suitable employment. An order for re-engagement may be varied by LT on application by the employee and with the agreement of the parties concerned to the effect that engagement of the employee by a successor or associated company of the original employer is to be treated as re-engagement by the original employer in compliance with the re-engagement order.

For unreasonable dismissal and unreasonable variation of the terms of the employment contract, an order for reinstatement or re-engagement will only be made if both the employer and the employee agree to it.

For unreasonable and unlawful dismissal<sup>1</sup>, if LT considers the order is appropriate and reinstatement or re-engagement of the employee by the employer is reasonably practicable, such order can be made without the need to secure the employer's agreement.

**NOTE:** If the employer eventually does not reinstate or re-engage the employee as required by the order, the employer must pay to the employee a further sum, amounting to three times the employee's average monthly wages\* and subject to a ceiling of \$72,500, on top of the monetary remedies payable to the employee as ordered by LT. (\* see Appendix 1 for details of calculation)

Where an employee is ordered to be reinstated or re-engaged, his rights and privileges, including seniority and pension rights, must be restored to him and the continuity of the period of employment shall not be treated as broken.

The employer may also be ordered to pay the employee any arrears of pay and statutory entitlements under the Employment Ordinance which the employee would have accrued if he has not been dismissed or his terms of employment contract has not been varied. Conversely, the employee may be ordered to pay

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<sup>1</sup> Where an employee has been unreasonably and unlawfully dismissed before 19 October 2018, an order for reinstatement or re-engagement will only be made if both the employer and the employee agree to it.

the employer any amount that the employer has paid him because of the dismissal or the variation of the terms of the employment contract.

### **Award of Terminal Payments**

If no order for reinstatement or re-engagement is made, LT may make an award of terminal payments to be payable by the employer to the employee as it considers fair and appropriate.

Terminal payments means: 1) the statutory entitlements under the Employment Ordinance which the employee is entitled to but has not yet been paid upon dismissal; 2) the entitlements the employee might reasonably be expected to be entitled to under the Employment Ordinance had he been allowed to continue his employment; and 3) any other payments due to the employee under his contract of employment.

An employee may be awarded terminal payments even if he has not attained the qualifying length of service required for the entitlements. In such case, the terminal payments shall be calculated according to his actual length of service.

### **Award of Compensation**

An employee may be awarded compensation up to a maximum of \$150,000 if he is unreasonably and unlawfully dismissed, and no order for reinstatement or re-engagement is made by LT.

In determining the award of compensation, LT will consider the circumstances of a claim including:

1. the circumstances of the employer and the employee;
2. the period of employment of the employee;
3. how the dismissal took place;
4. the loss sustained by the employee as a result of the dismissal;
5. possibility of the employee obtaining new employment;
6. whether the employee should bear any fault for the dismissal; and
7. any payments, including terminal payments, that the employee is entitled to receive in respect of the dismissal.

**Exclusion**

This Part of the Employment Ordinance does not apply to claims involving dismissal on the grounds of sex, disability, family status or race. If an employee is dismissed on the grounds of sex, disability, family status or race, he may claim for remedies under the Sex Discrimination Ordinance, the Disability Discrimination Ordinance, the Family Status Discrimination Ordinance or the Race Discrimination Ordinance respectively.

## Chapter 11: Severance Payment and Long Service Payment

### Eligibility for Severance Payment / Long Service Payment

An employee is eligible for severance payment or long service payment subject to the following conditions:

Entitlement	Severance Payment	Long Service Payment
Qualifying period of employment	Not less than 24 months under a continuous contract	Not less than 5 years under a continuous contract
Conditions / Requirements	<ul style="list-style-type: none"> <li>The employee is dismissed by reason of redundancy*</li> </ul>	<ul style="list-style-type: none"> <li>The employee is dismissed but:               <ul style="list-style-type: none"> <li>- he is not summarily dismissed due to his serious misconduct</li> <li>- his dismissal is not by reason of redundancy</li> </ul> </li> </ul>
	<ul style="list-style-type: none"> <li>Employment contract of a fixed term expires without being renewed by reason of redundancy*</li> </ul>	<ul style="list-style-type: none"> <li>Employment contract of a fixed term expires without being renewed*</li> </ul>
	<ul style="list-style-type: none"> <li>The employee is laid off</li> </ul>	<ul style="list-style-type: none"> <li>The employee dies</li> <li>The employee resigns on ground of ill health</li> <li>The employee, aged 65 or above, resigns</li> </ul>

\* If not less than 7 days before the date of dismissal / expiry of the fixed term contract in case of severance payment, and not less than 7 days before the expiry of the fixed term contract in case of long service payment, the employer has offered in writing to renew the contract of employment or re-engage him under a new contract but the employee has unreasonably refused the offer, the employee is not eligible for the entitlements.

**NOTE:** An employee will not be simultaneously entitled to both long service payment and severance payment.

### **Meaning of Redundancy**

An employee is taken to be dismissed by reason of redundancy if the dismissal is due to the fact that:

- the employer closes or intends to close his business;
- the employer has ceased, or intends to cease, the business in the place where the employee was employed; or
- the requirement of the business for employees to carry out work of a particular kind, or for the employee to carry out work of a particular kind in the place where the employee was employed, ceases or diminishes or is expected to cease or diminish.

### **Meaning of Lay-off**

If an employee is employed on such terms and conditions that his remuneration depends on his being provided by the employer with work of the kind he is employed to do, he shall be taken to be laid off if the total number of days on which no work is provided and no wages is paid exceeds:

- half of the total number of normal working days in any four consecutive weeks; or
- one-third of the total number of normal working days in any 26 consecutive weeks.

The days of lock-out, rest days, annual leave and statutory holidays should not be counted as normal working days during the above periods.

**Amount of Severance Payment / Long Service Payment**

Where an employee’s employment did not straddle over 1 May 2025<sup>1</sup> (i.e. the effective date of the abolition of Mandatory Provident Fund (“MPF”) offsetting arrangement) (“the transition date”) or where the employee is not covered by the MPF System or other statutory retirement schemes <sup>2</sup>, the formula below will be used for calculation of severance payment / long service payment for the whole period of employment.

<b>Monthly-paid employee</b>	(last full month’s wages* X 2/3) <sup>#</sup>	X	reckonable years of service
<b>Daily-rated / piece-rated employee</b>	(any 18 days’ wages* chosen by the employee out of his last 30 normal working days) <sup>#</sup>	X	reckonable years of service

Where an employee’s employment straddled over 1 May 2025<sup>3</sup>, his severance payment / long service payment is divided into two portions by the transition date – the pre-transition portion (for employment period before the transition date) and post-transition portion (for employment period starting from the transition date). The calculations are as follows:

	<b>Pre-transition portion</b>	<b>Post-transition portion</b>
<b>Monthly-paid employee</b>	(last full month’s wages immediately preceding the transition date <sup>^</sup> x 2/3) <sup>#</sup> x reckonable years of service before the transition date	(last full month’s wages immediately preceding the termination of employment contract* x 2/3) <sup>#</sup> x years of service starting from the transition date
<b>Daily-rated / piece-rated employee</b>	(any 18 days’ wages <sup>^</sup> chosen by the employee out of his last 30 normal working days immediately preceding the transition date) <sup>#</sup> x reckonable years of service before the transition date	(any 18 days’ wages* chosen by the employee out of his last 30 normal working days immediately preceding the termination of employment contract) <sup>#</sup> x years of service starting from the transition date

Service of an incomplete year should be calculated on a pro rata basis.

\* An employee may also elect to use his average wages in the 12 months immediately preceding the termination of employment contract for the calculation. (Where the employee's employment contract is terminated by payment in lieu of notice, the employee may elect to use his average wages in the 12 months immediately preceding the date up to which the payment in lieu of notice is calculated.)

<sup>^</sup>An employee may also elect to use his average wages in the 12 months immediately preceding the transition date for the calculation.

<sup>#</sup> The sum should not exceed 2/3 of \$22,500 (i.e. \$15,000).

(see Appendix 2 for examples of calculation of severance payment and long service payment)

<sup>1</sup> An employee’s employment did not straddle over 1 May 2025 if his employment was terminated before 1 May 2025 or commenced on or after 1 May 2025.

<sup>2</sup> For example, domestic helpers, and employees aged below 18 or employees who commenced employment at the age of 65 or above.

<sup>3</sup> An employee’s employment straddled over 1 May 2025 if his employment commenced before 1 May 2025 and terminated on or after 1 May 2025.

### **Reckonable Years of Service**

For all manual employees and non-manual employees whose average monthly wages did not exceed \$15,000 for the 12 months preceding 8 June 1990, if the relevant date of termination of employment occurs on or after 1 October 2004, the years of service should be reckoned in full.

For non-manual employees whose average monthly wages exceeded \$15,000 for the 12 months preceding 8 June 1990, their years of service can be reckoned up to 1980.

### **Maximum Amount**

The maximum amount of severance payment or long service payment is \$390,000.

Where an employee has pre- and post-transition portions of severance payment / long service payment, the sum of two portions shall not exceed \$390,000. The amount in excess should be deducted from the post-transition portion.

### **Payment of Severance Payment**

An employee who wishes to claim for severance payment should serve a written notice to his employer within three months after the dismissal / lay off takes effect. The deadline for serving such notice may be extended if approved by the Commissioner for Labour.

The employer shall make the severance payment to the employee not later than two months from the receipt of such a notice.

### **Offences and Penalties**

An employer who without reasonable excuse fails to pay severance payment to an employee is liable to prosecution and, upon conviction, to a fine of \$50,000.

### **Payment of Long Service Payment**

Long service payment should be paid to an employee within seven days after the date of termination of employment contract.

### **Offences and Penalties**

An employer who wilfully and without reasonable excuse fails to pay long service payment to an employee is liable to prosecution and, upon conviction, to a fine of \$350,000 and to imprisonment for three years.

**Offsetting of Severance Payment / Long Service Payment against Mandatory Provident Fund Scheme benefit, Occupational Retirement Scheme benefit or Gratuity based on length of service**

If an employee becomes entitled to severance payment or long service payment and:

- gratuities based on length of service are payable or have been paid to the employee; or
- occupational retirement scheme (“ORS”) benefits attributable to employer’s contributions are payable or have been paid to the employee; or
- accrued benefit attributable to employer’s contributions is being held in an MPF scheme in respect of the employee, or has been paid to the employee,

and if the employee’s employment is terminated before 1 May 2025, the severance payment / long service payment is to be offset against the aforementioned amount of gratuities and benefits to the extent that they relate to the employees’ years of service for which the severance payment / long service payment is payable.

The abolition of the offsetting arrangement applies to cases where the contract of employment is terminated on or after 1 May 2025. After the abolition of offsetting arrangement, an employer cannot use the accrued benefits derived from employer’s MPF mandatory contributions to offset an employee’s severance payment / long service payment, but can continue to use the accrued benefits derived from employer’s MPF voluntary contributions and gratuities based on length of service to offset an employee’s severance payment / long service payment.

The abolition has no retrospective effect. If an employee commenced employment before 1 May 2025, an employer can continue to use the accrued benefits derived from employer’s MPF mandatory contributions to offset an employee’s pre-transition portion of severance payment / long service payment (but not the post-transition portion of severance payment / long service payment). The accrued benefits derived from employer’s MPF voluntary contributions and gratuities based on length of service can continue to be used to offset pre- and/or post-transition portion of severance payment / long service payment.

(see Appendix 2 for details of the abolition of MPF offsetting arrangement)

Starting from 1 May 2025, eligible employers, after payment of severance payment / long service payment to employees according to the Employment Ordinance, may apply to the Government for subsidy<sup>4</sup> in respect of expenses on post-transition portion of severance payment and long service payment. For details, please visit the thematic website at [www.op.labour.gov.hk](http://www.op.labour.gov.hk).



(For enquiries on application for payment of an amount from the ORS benefits or accrued benefit in the MPF scheme due to severance payment / long service payment paid / payable to an employee, please contact the trustees concerned for details.)

### **Claiming Long Service Payment on the ground of Ill Health**

An employee claiming for long service payment on ground of ill health should forward to the employer a certificate in a specified form issued by a registered medical practitioner or a registered Chinese medicine practitioner, certifying that he is permanently unfit for his present job.

Regardless of whether the certificate produced by the employee was issued by a registered medical practitioner or registered Chinese medicine practitioner, an employer may, within 14 days after receiving such certificate, at the employer's own expense, arrange for the employee to attend another medical examination conducted by a registered medical practitioner or registered Chinese medicine practitioner named by the employer to obtain a second opinion as to the employee's permanent unfitness to undertake the work at issue. The employer should notify the employee in writing details of the appointment not later than 48 hours before the examination is to take place.

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<sup>4</sup> The Subsidy Scheme for Abolition of MPF Offsetting Arrangement is a 25-year administrative scheme of the Government.

## **Claiming Long Service Payment in the event of the Death of an Employee**

### **Priority in claiming long service payment**

- 1<sup>st</sup> the spouse of the deceased employee
- 2<sup>nd</sup> children of the deceased employee (if two or more persons apply, the long service payment should be divided equally between them)
- 3<sup>rd</sup> parents of the deceased employee (if two or more persons apply, the long service payment should be divided equally between them)
- 4<sup>th</sup> the personal representative of the deceased employee

### **Application Procedures**

The person who wishes to claim for long service payment must serve an application in a specified form to the employer within 30 days after the death of the employee. Where necessary, the Commissioner for Labour may extend the deadline. The form can be obtained at any branch office of the Labour Relations Division of the Labour Department or downloaded from the web page of the Labour Department.

The employer shall make the payment of Long Service Payment to:

<b>The spouse of the employee</b>	within 7 days after receiving the application
<b>Other applicants</b>	within 7 days after the application period expires

### **Offences and Penalties**

An employer who without reasonable excuse fails to pay long service payment to the beneficiaries of a deceased employee is liable to prosecution and, upon conviction, to a fine of \$50,000.

## **Chapter 12: Protection against Anti-union Discrimination**

### **Right of an Employee in Participating in Trade Unions**

Every employee shall have the following rights:

1. to be a member or an officer of a trade union
2. to take part in the activities of the trade union at any appropriate time, if the employee is a member or an officer of a trade union  
(Appropriate time means:-
  - outside working hours; or
  - during working hours by arrangement and with the consent of the employer.)
3. to associate with other persons for the purpose of forming or applying for the registration of a trade union.

### **Statutory Requirements of the Employer**

An employer shall not:-

1. prevent or deter an employee from exercising any of the above rights;
2. dismiss, penalise or discriminate against an employee for exercising the above rights;
3. make it a condition of employment that an employee must not exercise the above rights.

### **Offences and Penalties**

Any employer who contravenes the above shall be liable to prosecution and, upon conviction, to a fine of \$100,000.

## **Chapter 13: Employers' Criminal Liability in Failing to Pay an Award of the Labour Tribunal or Minor Employment Claims Adjudication Board**

An employer should pay an award of the Labour Tribunal ("LT") or the Minor Employment Claims Adjudication Board<sup>1</sup> ("MECAB") without delay.

### **Defaulting Payment of an Award of a Tribunal is a Criminal Offence**

Under the Employment Ordinance<sup>2</sup>, if an award of a tribunal<sup>3</sup> provides for the payment by an employer of any specified entitlement (such as wages, end of year payment, maternity leave pay and severance payment, etc)<sup>4</sup> (see the part below on Coverage of "Specified Entitlements") and the employer wilfully and without reasonable excuse fails to pay the award within 14 days after the date on which the sum is payable<sup>5</sup>, the employer is liable to prosecution and, upon conviction, to a fine of \$350,000 and to imprisonment for three years.

The offence applies to the default on any part of a sum payable under the award. In the case of a sum payable by instalments, it also applies to the default on any instalment or part of an instalment.

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<sup>1</sup> In accordance with the Minor Employment Claims Adjudication Board Ordinance (Amendment of Schedule) Notice 2021, with effect from 17 September 2021, the jurisdiction of MECAB is increased from a claim amount not exceeding \$8,000 per claimant to not exceeding \$15,000 per claimant.

<sup>2</sup> The relevant provisions were set out in the Employment (Amendment) Ordinance 2010 and apply to an award of the LT or MECAB made on or after its effective date (i.e. 29 October 2010).

<sup>3</sup> "an award of a tribunal"— includes an award, an order or a settlement treated as an award of the LT under the Labour Tribunal Ordinance or that of the MECAB under the Minor Employment Claims Adjudication Board Ordinance.

<sup>4</sup> Unless there is any contrary evidence, if an award of a tribunal provides for the payment of a sum but does not indicate whether or not that sum includes any specified entitlement, and the claim to which the award relates consists, in whole or in part, of any specified entitlement, the award is to be treated as providing for the payment of a specified entitlement.

<sup>5</sup> If the award does not specify the date on which the award is payable, the sum should be paid within 14 days after the date of the award.

### **Directors, etc. of Body Corporates are Criminally Liable for Defaulting Payment of an Award of a Tribunal**

Where a body corporate wilfully and without reasonable excuse fails to pay an award of a tribunal within 14 days after the date on which the sum is payable, and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, such person commits the like offence as the body corporate and, upon conviction, is liable to the same penalty, i.e. a fine of \$350,000 and imprisonment for three years.

### **Coverage of “Specified Entitlements”**

“Specified entitlements” include wages and statutory entitlements underpinned by criminal sanctions under the Employment Ordinance, such as wages, end of year payment, maternity leave pay, paternity leave pay, severance payment, long service payment, sickness allowance, holiday pay, annual leave pay as well as terminal payments, compensation and further sum for unreasonable and unlawful dismissal awarded under the part on “Employment Protection” of the Employment Ordinance.

## Examples

*How to determine the “14-day period after the award is payable”*

### **[Example 1]      When the award is payable in a lump sum:**

An employer terminated the employment of his employee on 17 September 2021 by initially agreeing to pay 1-month payment in lieu of notice of \$14,500 in place of giving one month’s notice as per the term under the employment contract. The employer subsequently refuses to pay the sum.

The employee lodges a claim for \$14,500 as payment in lieu of notice against his employer at the Labour Relations Division of the Labour Department. After conciliation, the dispute is unresolved. The employee then files a claim with MECAB for the payment in lieu of notice against the employer. MECAB awards in favour of the employee on 8 November 2021 and makes an award on the same day. The employer is ordered to pay the employee \$14,500 on or before 15 November 2021 as payment in lieu of notice.

November 2021

SUN	MON	TUE	WED	THU	FRI	SAT
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	1 DEC	2	3	4

The date by which the award sum is payable →

Non or late-payment

Denotes the 14-day period (i.e. 16 to 29 November 2021) after the date by which the award sum is payable. An employer who wilfully and without reasonable excuse fails to pay before expiry of this period commits an offence.

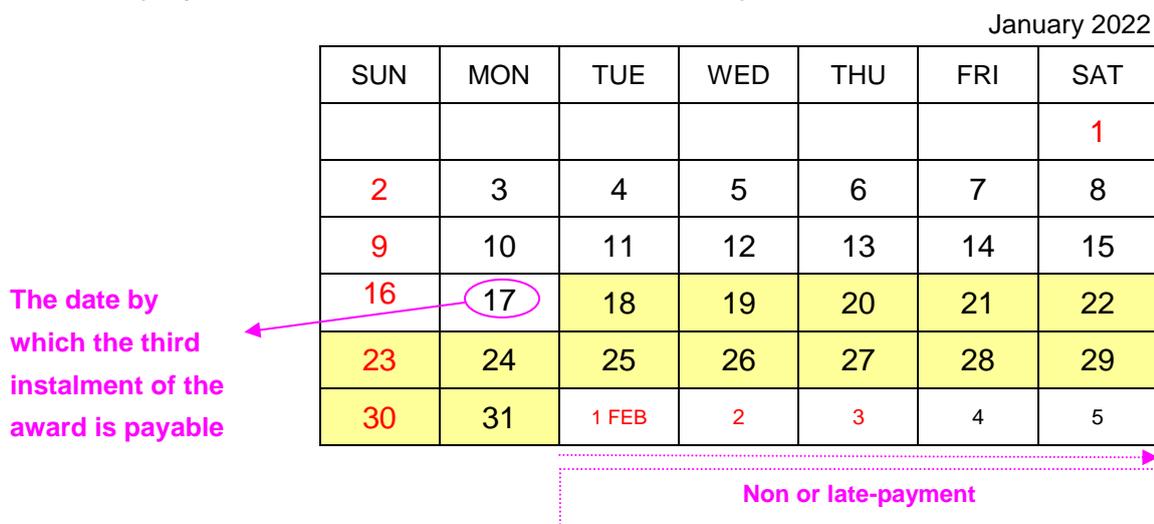
An employer who wilfully and without reasonable excuse fails to pay the award of \$14,500 within 14 days (i.e. 16 to 29 November 2021) after the date by which the sum is payable (i.e. 15 November 2021) commits an offence and is liable to prosecution. Upon conviction, the maximum penalties are a fine of \$350,000 and imprisonment for three years.

**[Example 2]      When the award is payable by instalments:**

An employee files a claim with LT against his employer for \$27,000 as commission. The parties reach a settlement agreement at a hearing on 3 November 2021 and the employer agrees to pay the employee the claim amount by 3 instalments in full and final settlement of the dispute. LT approves the settlement agreement and makes an award on the same day. The award should be paid on or before the following dates:

No. of Instalments	Date	Payment
First Instalment	17 November 2021	\$9,000
Second Instalment	17 December 2021	\$9,000
Third Instalment	17 January 2022	\$9,000

If the employer only pays the first and second instalments on schedule in a total sum of \$18,000 but fails to pay the third instalment \$9,000 by 31 January 2022 (i.e. expiry of the 14-day period after the date by which the third instalment is payable), the employer commits an offence and is liable to prosecution.



Denotes the 14-day period (i.e. 18 to 31 January 2022) after the date by which the third instalment of the award is payable. An employer who wilfully and without reasonable excuse fails to pay before expiry of this period commits an offence.

An employer who wilfully and without reasonable excuse fails to pay the sum of \$9,000 before expiry of the 14-day period (i.e. 18 to 31 January 2022) after the date by which the third instalment of the award is payable (i.e. 17 January 2022) commits an offence and is liable to prosecution. Upon conviction, the maximum penalties are a fine of \$350,000 and imprisonment for three years.

## Appendix 1

### **A Guide to the Calculation of Relevant Statutory Entitlements on the Basis of the 12-Month Average Wages with Examples**

#### **Introduction**

Provisions under the Employment (Amendment) Ordinance 2007 (“the E(A)O 2007”) relating to the calculation of statutory entitlements became effective on 13 July 2007<sup>1</sup>.

The main objective of the E(A)O 2007 is to ensure that all components of wages<sup>2</sup> as defined under the Employment Ordinance (including commission and allowance, etc) are included in the calculation of relevant statutory entitlements.

Upon commencement of the E(A)O 2007, regardless of whether an employee is monthly, daily or piece rated, his relevant statutory entitlements shall be **calculated on the basis of his 12-month average wages; and in computing his average wages, any periods and wages that fall under the “disregarding provisions” shall be excluded.**

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<sup>1</sup> Application of the E(A)O 2007:

- Applicable to employment contracts entered into on or after 13 July 2007.
- For employment contracts entered into before the commencement date, the E(A)O 2007 is applicable under the following situations:
  - If maternity leave pay, paternity leave pay, sickness allowance, holiday pay or annual leave pay is payable by an employer to an employee in respect of a wage period, and the last day of the wage period falls on or after the commencement date.
  - If the due date of the end of year payment (or proportion of it) payable by an employer to an employee falls on or after the commencement date.
  - If the relevant statutory entitlements are payable upon termination of contract and the date of termination falls on or after the commencement date.

<sup>2</sup> See the part on definition of wages in Chapter 3.

**(I) Relevant Statutory Entitlements:**

1. Holiday pay
2. Annual leave pay
3. Sickness allowance and related provisions<sup>3</sup>
4. Maternity leave pay and related provisions<sup>4</sup>
5. Paternity leave pay
6. End of year payment
7. Payment in lieu of notice
8. Further sum for non-compliance of an order of reinstatement or re-engagement for unreasonable and unlawful dismissal<sup>5</sup>

**(II) The Revised Mode of Calculation:**

**Calculating relevant statutory entitlements on the basis of the 12-month average wages**

The relevant statutory entitlements shall be calculated on the basis of the average daily (or monthly) wages earned by an employee in the 12-month<sup>6</sup> period preceding the specified dates as stipulated by the E(A)O 2007. If an employee is employed for less than 12 months, the calculation shall be based on the shorter period<sup>7</sup>.

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<sup>3</sup> Including the compensation payable by an employer for wrongfully dismissing an employee on sick leave.

<sup>4</sup> Including the compensation payable by an employer for wrongfully dismissing a pregnant employee.

<sup>5</sup> If the employer eventually does not reinstate or re-engage the employee as required by the order, the employer shall pay to the employee a further sum, amounting to three times the employee's average monthly wages and subject to a ceiling of \$72,500, on top of the monetary remedies payable to the employee as ordered by the Labour Tribunal.

<sup>6</sup> "Month" refers to "calendar month".

<sup>7</sup> Suppose an employee commenced employment on 5 July 2007, his period of employment will be less than 12 calendar months before 4 April 2008 (i.e. Ching Ming Festival). His holiday pay for 4 April 2008 shall therefore be calculated on the basis of his average daily wages earned in the period 5 July 2007 and 31 March 2008.

The specified dates of the relevant statutory entitlements are:

<b>Statutory Entitlements</b>	<b>Day(s) of Leave</b>	<b>Specified Dates</b>
Holiday Pay	1 day	Day of the statutory holiday
	More than 1 consecutive day	First day of the statutory holidays
Annual Leave Pay	1 day	Day of the annual leave
	More than 1 consecutive day	First day of the annual leave
	Day(s) of untaken leave upon termination of contract	Date of termination of contract
Sickness Allowance <sup>8</sup>	1 day	The sickness day
	More than 1 consecutive day	The first sickness day
Maternity Leave Pay <sup>9</sup>	More than 1 consecutive day	First day of the maternity leave
Paternity Leave Pay	1 day	Day of the paternity leave
	More than 1 consecutive day	First day of the paternity leave
End of Year Payment <sup>10</sup>	-	Due day of the payment
Payment in lieu of Notice	-	The day when a notice of termination of contract is given (in case a notice has not been given, the day when the contract is terminated)
Further Sum	-	Date of termination of contract

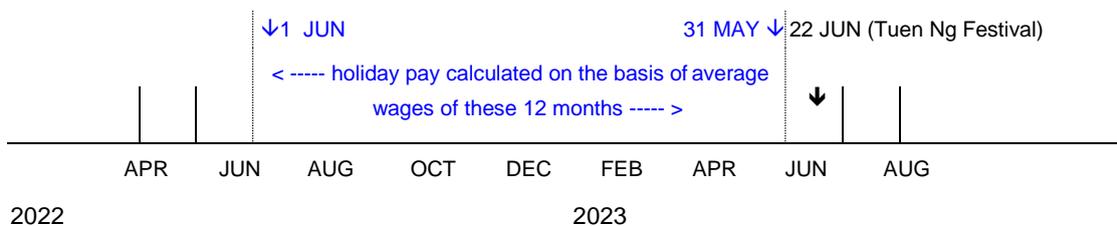
<sup>8</sup> In calculating the 7 days' wages as compensation payable to an employee wrongfully dismissed on a sickness day, the employer shall adopt the date of termination of contract as the specified date.

<sup>9</sup> In calculating the 1 month's wages as compensation payable to a pregnant employee wrongfully dismissed, the employer shall adopt the date of termination of contract as the specified date.

<sup>10</sup> Applicable to situation in which the amount of end of year payment has not been specified in the contract.

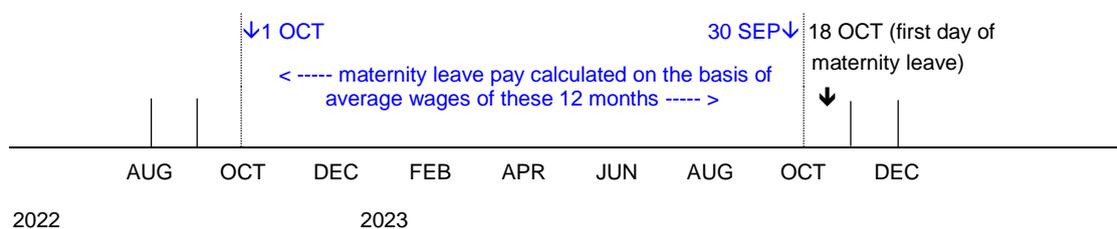
**Example 1: How to determine the specified date and the 12-month period for calculating holiday pay – in the case of “Tuen Ng Festival” in 2023**

- The specified date is the day of the statutory holiday, i.e. 22 June 2023
- The 12-month average wages is calculated on the basis of the wages earned in the period 1 June 2022 and 31 May 2023.



**Example 2: How to determine the specified date and the 12-month period for calculating maternity leave pay – in the case of 14-week maternity leave commencing 18 October 2023**

- The specified date is the first day of the maternity leave, i.e. 18 October 2023
- The 12-month average wages is calculated on the basis of the wages earned in the period 1 October 2022 and 30 September 2023.



**Periods and Wages to be Disregarded**

To avoid deflating the average wages and hence reducing the amount of statutory entitlements, in calculating the 12-month average daily (or monthly) wages, one has to identify the following situations as stipulated by the E(A)O 2007 under which an employee is not paid his wages or full wages and then exclude the periods together with the wages paid to the employee for such periods<sup>11</sup>:

<sup>11</sup> To simplify the administrative work involved in calculating average wages, the E(A)O 2007 has made a technical amendment to presume the sum payable for the periods under (i) and (ii) as wages. By doing so, an employer does not have to exclude his employee’s full-paid leave (be it statutory holiday, annual leave, maternity leave, paternity leave or any other leave taken with agreement of the employer) as well as the sum paid correspondingly when calculating average wages. It is noteworthy that the definition of wages under the Employment Ordinance has not been changed as a result of this amendment.

- (i) **The employee’s taking any of the following leave:**
  - leave provided under the Employment Ordinance (i.e. rest day, statutory holiday, annual leave, maternity leave, paternity leave or sickness day);
  - sick leave due to work injuries as provided under the Employees’ Compensation Ordinance; or
  - leave taken with the agreement of the employer;
- (ii) **The employee not being provided by the employer with work on any normal working day.**

**Example 3: How to exclude the periods and wages that fall under the “disregarding provisions” – in the case of 7-day annual leave commencing 6 December 2023**

- Assuming the employee is monthly rated and she has taken 14-week maternity leave commencing 9 August 2023 with maternity leave pay at four-fifths of her wages.
- The 7-day annual leave pay shall be calculated on the basis of her average daily wages in the past 12 months (i.e. from 1 December 2022 to 30 November 2023).
- **Periods** and **wages** to be excluded in calculating the average daily wages:
  - Excluding the period of 14-week maternity leave from the 12-month period (i.e. 365 days minus 98 days)
  - Excluding the 14-week maternity leave pay from the total wages earned in the 12-month period

$$\text{Average daily wages} = \frac{\text{Total wages in the 12-month period} - \text{14-week maternity leave pay (\$)}}{365 - 98 \text{ (days)}}$$

## **Examples on Calculation**

*(Note: The hypothetical examples below illustrate how relevant statutory entitlements should be calculated.)*

### **Example 1**

#### **Calculating holiday pay for 1 January 2023**

##### **Assumptions**

- An employee was employed on 1 January 2022
- Remuneration: Daily-rated at \$500 with no-pay rest days
- 12-month wages earned in 2022: \$154,500 including –
  - wages of \$150,000 for working 300 days (i.e. 365 days – 52 rest days – 13 statutory holidays)
  - payments of \$4,500 for 9 statutory holidays
- Leave taken with less than full wages in 2022:
  - 52 rest days without pay
  - 4 statutory holidays without pay (falling within the first 3 months of employment)

##### **Periods and wages to be disregarded**

- 52 days of no-pay rest days
- 4 days of no-pay statutory holidays

(Note: as the above 56 days are no-pay leave, the amount to be excluded will be \$0)

##### **Calculating holiday pay on the basis of the 12-month average**

- Calculating the average daily wages earned in 2022

$$\frac{154,500 - 0 (\$)}{365 - 52 - 4 (\text{days})} = \$500$$

- Holiday pay for 1 January 2023: \$500

## Example 2

### Calculating sickness allowance for 4 sickness days taken in October 2023

#### Assumptions

- Remuneration: Monthly-rated at \$15,000 with paid rest days
- 12-month wages earned before the first sickness day: \$180,000 including wages for services rendered and payments for leave
- Leave taken in the 12-month period: 72 days of full pay leave comprising –
  - 52 rest days
  - 13 statutory holidays
  - 7 days of annual leave

#### Periods and wages to be disregarded

- No period and sum have to be excluded because the employee is not paid less than his full wages for the leave taken in the 12-month period

#### Calculating sickness allowance on the basis of the 12-month average

- Calculating the average daily wages earned in the 12-month period:

$$\frac{180,000 - 0 (\$)}{365 - 0 (\text{days})} = \$493$$

- 4-day sickness allowance:  $\$493 \times 4/5 \times 4 = \$1,578$

### Example 3

#### Calculating annual leave pay for 7 days of paid annual leave taken in August 2023

##### Assumptions

- Remuneration: Monthly-rated at \$15,000 with paid rest days
- 12-month wages earned before the first day of annual leave: \$180,000 including wages for services rendered and payments for leave
- Leave taken in the 12-month period: 72 days of full pay leave comprising –
  - 52 rest days
  - 13 statutory holidays
  - 7 days of annual leave

##### Periods and wages to be disregarded

- No period and sum have to be excluded because the employee is not paid less than his full wages for the leave taken in the 12-month period

##### Calculating annual leave pay on the basis of the 12-month average

- Calculating the average daily wages earned in the 12-month period:

$$\frac{180,000 - 0 (\$)}{365 - 0 (\text{days})} = \$493$$

- 7-day annual leave pay:  $\$493 \times 7 = \$3,451$

## Example 4

### Calculating 1-month payment in lieu of notice

#### Assumptions

- Remuneration:
  - Basic pay at \$6,000 per month
  - Contractual commission accrued and calculated on a monthly basis according to a sliding scale
- 12-month wages earned before the date on which notice of termination is given: \$600,000 including basic pay and commission
- Leave taken with less than full wages in the 12-month period: 15 days of half-pay study leave (i.e. 50% of basic pay) at \$1,500

#### Periods and wages to be disregarded

- 15 days of study leave with half pay at \$1,500

#### Calculating 1-month payment in lieu of notice on the basis of the 12-month average

- Calculating the average monthly wages earned in the 12-month period:

(a) No. of months included in the calculation:

$$\frac{365 - 15 \text{ (days)}}{365 \text{ (days)}} \times 12 = 11.5 \text{ months}$$

(b) The average monthly wages:

$$\frac{600,000 - 1,500 \text{ ($)}}{11.5 \text{ (months)}} = \$52,043$$

- 1-month payment in lieu of notice: \$52,043

## Appendix 2

### A Guide to the Abolition of Mandatory Provident Fund Offsetting Arrangement with Examples

If an employee becomes entitled to severance payment or long service payment and is also entitled to accrued benefits derived from employer’s Mandatory Provident Fund (“MPF”) contributions, vested benefits of occupational retirement scheme (“ORS”) attributable to employer’s contributions or gratuities based on length of service, the offsetting arrangement is as follows:

- (i) If an employee’s employment was terminated before 1 May 2025, his severance payment or long service payment can be offset against the aforementioned amount of gratuities and benefits.
  
- (ii) If an employee’s employment commenced on or after 1 May 2025:

	<b>Severance Payment / Long Service Payment</b>	
	<b>Offsettable</b>	<b>Non-offsettable</b>
Accrued benefits derived from employer’s MPF mandatory contributions <sup>1</sup>		✓
Accrued benefits derived from employer’s MPF voluntary contributions <sup>2</sup>	✓	
Vested benefits of MPF exempted ORS attributable to employer’s contributions – “carved-out benefits” <sup>3</sup>		✓
Vested benefits of MPF exempted ORS attributable to employer’s contributions – “remaining benefits” <sup>4</sup>	✓	
Vested benefits of non-MPF exempted ORS attributable to employer’s contributions <sup>5</sup>	✓	
Gratuities based on length of service	✓	

- (iii) If an employee's employment commenced before 1 May 2025 and terminated on or after 1 May 2025:

	Pre-transition Portion of Severance Payment / Long Service Payment		Post-transition Portion of Severance Payment / Long Service Payment	
	Offsettable	Non-offsettable	Offsettable	Non-offsettable
Accrued benefits derived from employer's MPF mandatory contributions <sup>1</sup>	✓			✓
Accrued benefits derived from employer's MPF voluntary contributions <sup>2</sup>	✓		✓	
Vested benefits of MPF exempted ORS attributable to employer's contributions – "carved-out benefits" <sup>3</sup>	✓			✓
Vested benefits of MPF exempted ORS attributable to employer's contributions – "remaining benefits" <sup>4</sup>	✓		✓	
Vested benefits of non-MPF exempted ORS attributable to employer's contributions <sup>5</sup>	✓		✓	
Gratuities based on length of service	✓		✓	

The severance payment / long service payment is to be offset against the aforementioned amount of gratuities and benefits to the extent that they relate to the employees' years of service for which the severance payment / long service payment is payable.

<sup>1</sup> It refers to "employer-funded (mandatory) MPFS benefit" under the Employment Ordinance ("EO").

<sup>2</sup> It refers to "employer-funded (voluntary) MPFS benefit" under EO.

<sup>3</sup> It refers to "employer-funded (basic portion) exempt ORS benefit" under EO.

<sup>4</sup> It refers to "employer-funded (prescribed portion) exempt ORS benefit" under EO.

<sup>5</sup> It refers to "employer-funded non-exempt ORS benefit" under EO.

### “Carved-out benefits” and “Remaining benefits”

- Since ORS contributions are not differentiated into mandatory and voluntary portions, a portion of benefits akin to employer’s MPF mandatory contributions will be carved out (“carved-out benefits”) from the vested benefits of employer’s contributions. The remainder of vested benefits after carving out the “carved-out benefits” (“remaining benefits”) will be akin to employer’s MPF voluntary contributions.
- Calculation of “carved-out benefits” and “remaining benefits” of vested benefits of MPF exempted ORS attributable to employer’s contributions are as follows:

Carved-out benefits <sup>^</sup>	Final average monthly relevant income* X 5% X 12 X Years of service with MPF exempted ORS benefits <sup>#</sup>
Remaining benefits	Vested benefits of MPF exempted ORS attributable to employer’s contributions - “Carved-out benefits”

\* It means the employee’s average monthly relevant income in the 12 months immediately preceding the termination of employment contract, subject to the maximum level of relevant income under the Mandatory Provident Fund Schemes Ordinance (Cap. 485).

# Only years of service on or after 1 December 2000 will count.

<sup>^</sup>If the amount of the vested benefits of MPF exempted ORS attributable to employer’s contributions is less than or equal to the amount calculated using the above formula, the whole amount of vested benefits of MPF exempted ORS attributable to employer’s contributions should be “carved-out benefits”.

### Example 1

**Calculating severance payment / long service payment of an employee whose employment commences on or after 1 May 2025 (i.e. the transition date) and the offsetting arrangement of an employee who joins an MPF scheme**

#### Assumptions

- Employment commencement date: 1 May 2025
- Date of termination of employment contract: 30 April 2030
- Years of service: 5 years
- Last full month's wages: \$18,000
- Accrued benefits derived from employer's MPF mandatory contributions: \$50,000 (comprising employer's contributions for the whole employment period and the returns derived therefrom)
- No employer's MPF voluntary contributions, employer's ORS contributions or gratuities based on length of service

#### Calculation of severance payment / long service payment and the offsetting arrangement

(a)	Severance payment / long service payment	$\$18,000 \times 2/3 \times 5 \text{ years} = \$60,000$
(b)	Accrued benefits derived from employer's MPF mandatory contributions <i>(cannot be used to offset severance payment / long service payment)</i>	\$50,000
(c)	Accrued benefits derived from employer's MPF mandatory contributions for offsetting severance payment / long service payment	\$0 [Not applicable]
(d)	Accrued benefits derived from employer's MPF mandatory contributions to be retained in employee's MPF account [= (b) – (c)]	$\$50,000 - \$0 = \$50,000$
(e)	Employee's aggregate benefits [= (a) + (d)]	$\$60,000 + \$50,000 = \$110,000$

## Example 2

**Calculating severance payment / long service payment of an employee who commenced employment before 1 May 2025 (i.e. the transition date) and the offsetting arrangement of an employee who joins an MPF scheme**

### Assumptions

- Employment commencement date: 1 May 2022
- Date of termination of employment contract: 30 April 2030
- Years of service: 8 years
- Last full month's wages immediately preceding the transition date: \$15,000
- Last full month's wages immediately preceding the termination of employment contract: \$18,000
- Accrued benefits derived from employer's MPF mandatory contributions: \$80,000 (comprising employer's contributions for the whole employment period and the returns derived therefrom)
- No employer's MPF voluntary contributions, employer's ORS contributions or gratuities based on length of service

### Calculation of severance payment / long service payment and the offsetting arrangement

	Severance payment / long service payment	
(a)	Pre-transition portion	$\$15,000 \times 2/3 \times 3 \text{ years} = \$30,000$
(b)	Post-transition portion	$\$18,000 \times 2/3 \times 5 \text{ years} = \$60,000$
(c)	Total:	\$90,000
(d)	Accrued benefits derived from employer's MPF mandatory contributions <i>(can only be used to offset pre-transition portion of severance payment / long service payment)</i>	\$80,000
(e)	Accrued benefits derived from employer's MPF mandatory contributions for offsetting pre-transition portion of severance payment / long service payment	\$30,000
(f)	Accrued benefits derived from employer's MPF mandatory contributions to be retained in employee's MPF account after offsetting pre-transition portion of severance payment / long service payment [= (d) – (e)]	$\$80,000 - \$30,000 = \$50,000$
(g)	Employee's aggregate benefits [= (c) + (f)]	$\$90,000 + \$50,000 = \$140,000$

### Example 3

**Calculating severance payment / long service payment of an employee who commenced employment on or after 1 May 2025 (i.e. the transition date) and the offsetting arrangement of an employee who joins an MPF exempted ORS**

#### Assumptions

- Employment commencement date: 1 May 2025
- Date of termination of employment contract: 30 April 2030
- Years of service: 5 years
- Last full month's wages: \$18,000
- Final average monthly relevant income: \$18,000
- Vested ORS benefits attributable to employer's contributions: \$90,000 (comprising employer's contributions for the whole employment period and the returns derived therefrom)
- No employer's MPF contributions, other ORS contributions or gratuities based on length of service

#### Calculation of severance payment / long service payment and the offsetting arrangement

(a)	Severance payment / long service payment	$\$18,000 \times 2/3 \times 5 \text{ years} = \$60,000$
(b)	Vested ORS benefits attributable to employer's contributions	\$90,000
(c)	"Carved-out benefits" <i>(cannot be used to offset severance payment / long service payment)</i>	$\$18,000 \times 5\% \times 12 \times 5 \text{ years} = \$54,000$
(d)	"Remaining benefits" <i>(can be used to offset severance payment / long service payment)</i>	$\$90,000 - \$54,000 = \$36,000$
(e)	Vested ORS benefits attributable to employer's contributions for offsetting severance payment / long service payment	\$36,000
(f)	Vested ORS benefits attributable to employer's contributions to be retained by the employee after offsetting severance payment / long service payment [= (b) – (e)]	$\$90,000 - \$36,000 = \$54,000$
(g)	Employee's aggregate benefits [= (a) + (f)]	$\$60,000 + \$54,000 = \$114,000$

#### Example 4

**Calculating severance payment / long service payment of an employee who commenced employment before 1 May 2025 (i.e. the transition date) and the offsetting arrangement of an employee who joins an MPF exempted ORS**

#### Assumptions

- Employment commencement date: 1 May 2021
- Date of termination of employment contract: 30 April 2028
- Years of service: 7 years
- Last full month's wages immediately preceding the transition date: \$15,000
- Last full month's wages immediately preceding the termination of employment contract: \$18,000
- Final average monthly relevant income: \$18,000
- Vested ORS benefits attributable to employer's contributions: \$100,000 (comprising employer's contributions for the whole employment period and the returns derived therefrom)
- No employer's MPF contributions, other ORS contributions or gratuities based on length of service

#### Calculation of severance payment / long service payment and the offsetting arrangement

	Severance payment / long service payment	
(a)	Pre-transition portion	$\$15,000 \times 2/3 \times 4 \text{ years} = \$40,000$
(b)	Post-transition portion	$\$18,000 \times 2/3 \times 3 \text{ years} = \$36,000$
(c)	Total:	\$76,000
(d)	Vested ORS benefits attributable to employer's contributions	\$100,000
(e)	"Carved-out benefits" <i>(can only be used to offset pre-transition portion of severance payment / long service payment)</i>	$\$18,000 \times 5\% \times 12 \times 7 \text{ years} = \$75,600$
(f)	"Remaining benefits" <i>(can be used to offset pre- and post-transition portions of severance payment / long service payment)</i>	$\$100,000 - \$75,600 = \$24,400$
(g)	Vested ORS benefits attributable to employer's contributions for offsetting pre-transition portion of severance payment / long service payment <i>(can be offset by both "carved-out benefits" and "remaining benefits")</i>	\$40,000

(h)	Vested ORS benefits attributable to employer's contributions for offsetting post-transition portion of severance payment / long service payment <i>(can only be offset by "remaining benefits")</i>	\$24,400
(i)	Vested ORS benefits attributable to employer's contributions to be retained by the employee after offsetting severance payment / long service payment [= (d) – (g) – (h)]	\$100,000 – \$40,000 – \$24,400 = \$35,600
(j)	Employee's aggregate benefits [= (c) + (i)]	\$76,000 + \$35,600 = \$111,600

## Appendix 3

### Enquiries

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

Hotline for reporting breaches of the Employment Ordinance: 2815 2200

Labour Department website:

[www.labour.gov.hk](http://www.labour.gov.hk)



Enquiry in person to Offices of the Labour Relations Division:

[www.labour.gov.hk/eng/tele/lr1.htm](http://www.labour.gov.hk/eng/tele/lr1.htm)

