

KEEPING PROPER EMPLOYMENT RECORDS REFERENCE FOR EMPLOYEES



Labour Department



Foreword

Under the Employment Ordinance (Cap. 57), an employer must keep the wages and employment records (hereafter ‘employment records’) of each employee. These records should set out particulars of each employee such as his name, date of commencement of employment, job title, wages, period of leave and period of notice required for termination of contract. If an employee gets into the habit of keeping employment records, it will help him safeguard his employment rights.

This booklet highlights the importance of keeping employment records by employees, introduces them various employment records and the relevant provisions of the Employment Ordinance.

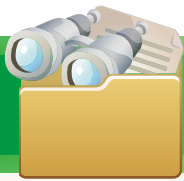


Why employees have to keep employment records?

Full and clear employment records can assist employees to:

- have a good grasp of their employment terms, rights and benefits;
- verify the amount of employment rights and benefits granted by employers, as well as the leaves taken;
- keep track of employment history and skills acquired, hence facilitate employees' future job search, continuing education and skills recognition;
- reduce labour disputes resulting from ambiguous employment terms and incomplete employment records;
- manage the “personal account” under Mandatory Provident Fund Schemes; and
- provide evidence to support their employment claims whenever necessary.





Case

The company at which Miss Lam has worked for 10 years suddenly underwent voluntary liquidation, and failed to settle all terminal payments. Miss Lam approached the Labour Relations Division of the Labour Department for assistance. She was later referred to the Department's Wage Security Division to apply for ex gratia payment from the Protection of Wages on Insolvency Fund with regard to her claims for severance payment.

As Miss Lam's reported length of employment differed from the company's records and due to insufficient supporting documents, she encountered difficulties in her application for the ex gratia payment.

Analysis

The above case demonstrates that if an employee has properly kept employment records, these records can be served as important evidence to support his/her claims for employment rights and benefits when necessary.



Common Employment Records

There are many types of employment records, which may vary among different trades and companies. The following are examples of some common types of employment records:

Types of Employment Records	Common Examples
Record of commencement of employment / promotion / transfer	Job application form, appointment letter, written employment contract, notice of confirmation of probation, notice of promotion / transfer, etc.
Wages record	Pay slip, pay packet, wages receipt, notice of wages adjustment, bank passbook, bank monthly statement, copy of cheque, record of dishonoured cheque, copy of Employer's Return of Remuneration and Pensions, copy of Tax Return–Individuals completed by an employee, cash deposit record (or pay-in slip), etc.
Commission record	Document on calculation of commission (e.g. document on commission rate, relevant transaction record, etc.), commission payment record, etc.



Types of Employment Records	Common Examples
End of year payment record	Document on calculation of end of year payment, end of year payment record, etc.
Attendance, absence and leave record	Attendance and working hours record (e.g. clock card, duty roster, sign-in/sign-out record), overtime work record (including dates and duration of overtime work), holiday/leave record, etc.
Record on Occupational Retirement Schemes and Mandatory Provident Fund Schemes	Monthly contribution record, membership certificate, annual benefit statement, etc.
Proof of entitlement to sickness allowance / maternity protection	Medical certificate, sick leave record, proof of pregnancy, medical report, etc.
Proof of entitlement to paternity leave	Birth certificate of the child, medical certificate on the delivery of the child, written statement(s) provided to the employer, etc.
Record on termination of employment	Dismissal letter, resignation letter, award/order made by the Labour Tribunal/Minor Employment Claims Adjudication Board, etc.
Others	Staff handbook, recommendation letter, notice on change of employment conditions, name card, staff identity card, entry pass, notice on company training, reference letter, relevant company notice, email correspondence or letter, etc.



Relevant Legislation

Employment Ordinance

Under section 44 of the Employment Ordinance, before an employee enters his employment, his employer must inform him of the conditions of employment, including:

1. **Wages** (including wage rate, overtime rate and any allowances);
2. **Wage period**;
3. **Length of notice required to terminate the contract**; and
4. **End of year payment or proportion of it and the payment period** (if applicable).

If the contract of employment is in writing, the employer must give a copy of the written contract to the employee.

If the contract of employment is not in writing, before the employment is entered into, an employee may issue a written request to ask his employer to deliver him a notice in writing containing the relevant conditions of employment.

Before making any change to the conditions of employment or proposing such change to the employee, an employer should clearly explain the change or proposed change to the concerned employee. Where there is



any written amendment made to the employment conditions or upon receipt of a written request from an employee, the employer must give a copy of the written amendment to the employee.

The terms of employment must not be set below the standards as laid down in the Employment Ordinance. Otherwise, such employment terms shall be void.

Minimum Wage Ordinance

The Minimum Wage Ordinance has specified that wages payable to an employee in respect of any wage period, when averaged over the total number of hours worked in the wage period, should be no less than the Statutory Minimum Wage (SMW) rate¹.

Any term of an employment contract which purports to extinguish or reduce any right, benefit or protection conferred upon the employee by the Minimum Wage Ordinance shall be void.

The use of written employment contract can help minimise unnecessary labour disputes. An employer is advised to enter into a written employment contract with his employee as far as possible. For details, please refer to the booklet “Using Written Employment Contract” published by the Labour Department.

1 For details of the statutory minimum wage rate, please refer to the booklet “Statutory Minimum Wage: Reference Guidelines for Employers and Employees” published by the Labour Department.



Points-to-Note

Before accepting an employment offer, an employee should know the identity of the employer, including name of company, registration address, name and post of the person-in-charge or company representative, etc.

If the employment contract is not in writing and the employer is not a limited company (i.e. an employer in personal capacity engaging employees), an employee should take note of the following which may help him identify the employer to safeguard his employment rights:

- ✓ Before entering into employment, an employee may issue a written request to ask his employer to deliver him a written notice containing relevant conditions of employment in accordance with the Employment Ordinance;
- ✓ An employee should take note of the particulars about the employer or the company name (i.e. trading name of the employer) as shown in employer's documents² or in the workplace/office premises;
- ✓ An employee may clarify with other third parties such as staff, clients, principal contractors (for construction and building works);
- ✓ An employee may apply for a copy of Business Registration Certificate from the Business Registration Office of the Inland Revenue Department; and
- ✓ If the employer intends to change conditions of employment or work nature, before the employee considers accepting such changes, he/she should clarify with the employer the details. Whenever in doubts, the employee can consult the Labour Department.

2 Such as job advertisement, business card showing name of the company or employer, envelope, letterhead, staff registration form, sign-in/sign-out record, receipt, business registration certificate, etc.





The Employment Ordinance

The Employment Ordinance is the major piece of labour legislation in Hong Kong, which lays down the minimum standards for various employment rights and benefits of employees. For details, please refer to the full text of the Ordinance or the booklet “A Concise Guide to the Employment Ordinance” published by the Labour Department or visit the web pages below to obtain the information:

The Employment Ordinance

Hong Kong e-Legislation (HKeL) of the
Department of Justice:

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

A Concise Guide to the Employment Ordinance

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



Enquiries

Homepage Address:

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

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

Enquiry in person to Offices of the Labour Relations Division:

<https://www.labour.gov.hk/eng/tele/lr1.htm>

Personal Data Privacy

Office of the Privacy
Commissioner for Personal
Data Privacy
Website : <http://www.pcpd.org.hk>
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Mandatory Provident Fund Schemes

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Website : <http://www.mpfa.org.hk>
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Labour Department

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