

Notes for preparing an employment contract

General Points to Note

- Employers and employees are free to negotiate and agree on the terms and conditions of employment provided that these terms are complied with the provisions of the Employment Ordinance (EO) or the Minimum Wage Ordinance (MWO).

- Under the EO, if an employer enters into a written employment contract with an employee, he shall provide a copy of the employment contract to his employee. An employer should also consult his employee and obtain his consent before making any subsequent change to the terms of the employment contract.

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

- For details of the provisions of the EO, please refer to the Labour Department's "A Concise Guide to the Employment Ordinance". For details of the MWO, please refer to the leaflet or reference guidelines on MWO published by the Labour Department.

- When drawing up employment contracts, you are advised to refer to the Labour Department's booklet "Using Written Employment Contract" and the "Sample Employment Contract" in the booklet. They are also available on the Department's Homepage.

- This note sets out in simple terms the main provisions of the Employment Ordinance (Cap. 57) and the Minimum Wage Ordinance (Cap. 608). It should be noted that the Ordinance itself remains the sole authority for the provisions of the law explained.

Notes to the “Sample Employment Contract”

5. Working Hours

- If the statutory minimum wage (SMW) applies to an employee and the wages payable to the employee in respect of the wage period are less than the amount specified in the Ninth Schedule of the MWO, the employer must keep a record setting out the total number of hours (including any part of an hour) that are worked by the employee in that wage period.

[section 49A of the EO]

6. Meal Break

- When an employee during his meal break also falls under the circumstances of hours worked as specified in MWO, such meal break is hours worked for computing minimum wage.

7. Rest Days

- An employee employed under a continuous contract* is entitled to not less than 1 rest day in every period of 7 days.

[section 17 of the EO]

* *Under section 3 & First Schedule of the EO, a continuous contract of employment means an employment contract under which an employee works continuously for the same employer for 4 weeks or more, with at least 18 hours in each week.*

8. Wages

- Wages shall become due on the expiry of the last day of the wage period and shall be paid as soon as practicable but in any case not later than 7 days thereafter.

[section 23 of the EO]

- According to the MWO, wages payable to an employee in respect of any wage period should not be less than the amount of the total number of hours worked during the wage period multiply by the SMW.

9. Holidays

- All employees, irrespective of their length of service and hours of work, should be granted statutory holidays. An employee is entitled to paid statutory holidays after he has been employed under a continuous contract for a period of 3 months.

[section 39 & 40 of the EO]

10. Paid Annual Leave

- An employee working under continuous contract for not less than 12 months is entitled to paid annual leave. The number of days ranges from 7 to 14 days depending on the employee's length of service.
- Paid annual leave to which an employee is entitled under the EO shall be granted by his employer and be taken by the employee within the period of 12 months immediately after the expiry of the relevant leave year.
- Annual leave entitlement is in addition to the rest days, statutory holidays, maternity leave and paternity leave under the EO.

[section 41AA of the EO]

- An employee is entitled to pro rata annual leave pay upon termination of the employment contract if he has been employed under a continuous contract for a period of not less than 3 months in the leave year, other than for reason of summary dismissal due to the employee's serious misconduct.

[section 41D of the EO]

- An employer may choose to grant annual leave to his employees according to the rules of their companies provided that such leave will not be less than the requirement stipulated in section 41AA of the EO. Employers should specify the leave entitlement in the contract for each employee.

11. Maternity Leave Pay

- 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 a continuous period of 10 weeks' maternity leave.

[section 12 of the EO]

- A female employee is entitled to maternity leave pay if –
 - (a) she has been employed under a continuous contract for not less than 40 weeks immediately before the commencement of scheduled maternity leave;
 - (b) she has given notice of pregnancy and her intention to take maternity leave to her employer; and
 - (c) she has provided a medical certificate specifying the expected date of confinement if so required by her employer.

[section 14 of the EO]

12. Paternity Leave Pay

- A male employee is entitled to 3 days' paternity leave for each confinement of his spouse/partner if –
 - (a) he is the father of a new-born child or a father-to-be;
 - (b) he has been employed under a continuous contract ; and
 - (c) he has given the required notification to the employer.

[section 15E of the EO]

- A male employee is entitled to paternity leave pay if he has been employed under a continuous contract for not less than 40 weeks immediately before the day of paternity leave and has provided the required document to the employer.

[section 15H of the EO]

13. Sickness Allowance

- An employee can accumulate paid sickness days at the rate of 2 paid sickness days for each completed month under a continuous contract during the first 12 months of employment, and 4 paid sickness days thereafter. Paid sickness days can be accumulated up to a maximum of 120 days.

- An employee is entitled to sickness allowance if –
 - (a) the sick leave taken is not less than 4 consecutive days;
 - (b) the sick leave is supported by an appropriate medical certificate; and
 - (c) the employee has accumulated sufficient number of paid sickness days.

- If a female employee is absent from work to attend medical examination in relation to her pregnancy, post confinement medical treatment, or due to miscarriage, any day on which she is absent shall be counted as sick leave. She will be entitled to sickness allowance for each day of the sick leave provided that she has accumulated paid sickness days and can produce an appropriate medical certificate.

[section 33 of the EO]

14. Termination of Employment Contract

- For a continuous contract with no probation period or after probation period, the agreed length of notice for termination should not be less than 7 days. If an employment contract does not make provision for the required length of notice for its termination, the length of notice should not be less than 1 month.

[section 6(2)(a), (b) & (c) of the EO]

- If a probation period is provided, the contract of employment can be terminated without notice within the first month of probation. After the first month of probation, if the contract makes provision for the required length of notice, it should be as per the agreement, but not less than 7 days. If the contract does not make provision for the required length of notice, it should be not less than 7 days.

[section 6 (3)(a), (b) & 6(3A) (a), (b) of the EO]

15. End of Year Payment

- There is no requirement under the EO on provision of end of year payment, including bonus and double pay. However, if an employee employed under a continuous contract who, in accordance with a term of his contract, is entitled to an end of year payment from his employer.
- If the end of year payment is of a gratuitous nature or is payable at the discretion of the employer, it must be clearly specified in the employment contract.

[section 11AA & 11B of the EO]

- If the employment contract has provided for end of year payment, an employee is entitled to have pro rata end of year payment if he has been employed under a continuous contract for a period of not less than 3 months in the payment period. Except for cases where the employee is summary dismissed due to serious misconduct or is resigned in the payment period.

- Any probation period, subject to a maximum of 3 months, is excluded from the calculation of the qualifying service for pro rata end of year payment.

[section 11F of the EO]

16. Mandatory Provident Fund Schemes

- For details of the Mandatory Provident Fund Schemes, please refer to the Mandatory Provident Fund Schemes Ordinance or the homepage (<http://www.mpfa.org.hk>) of the Mandatory Provident Fund Schemes Authority. You may also call the Authority's hotline at 2918 0102.

17. & 18. Work Arrangements during Typhoon Signals & Black Rainstorm Warnings

- An employer should work out prior work arrangements and contingency measures during typhoons and rainstorms, and state clearly the arrangements to his employees. He is advised to make reference to the "Code of Practice in Times of Typhoons and Rainstorms" published by the Labour Department.
- An employer should require only the absolutely essential staff to report for duty in adverse weather conditions. If at all possible, the employer should provide transport service for employees who are required to travel to and from workplaces when Typhoon Warning Signal No. 8 or above or Black Rainstorm Warning is in force. If such service is not available, the employer may give a special travelling allowance to the employees who are required to work as encouragement.

Enquiries

Enquiry Hotline:

2717 1771 (the hotline is handled by 1823”)

Homepage Address:

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

Enquiry in person to Offices of the Labour Relations Division:

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