



A Guide to
the Employment Ordinance for

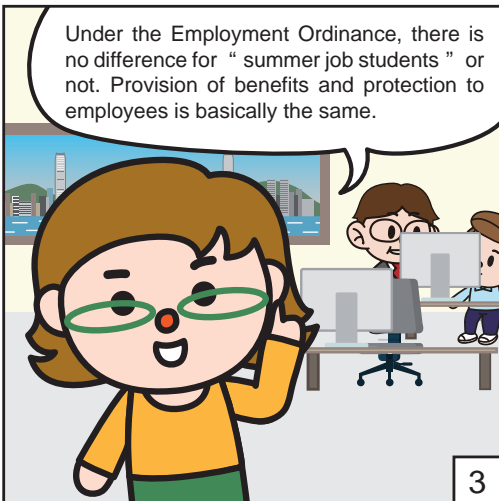
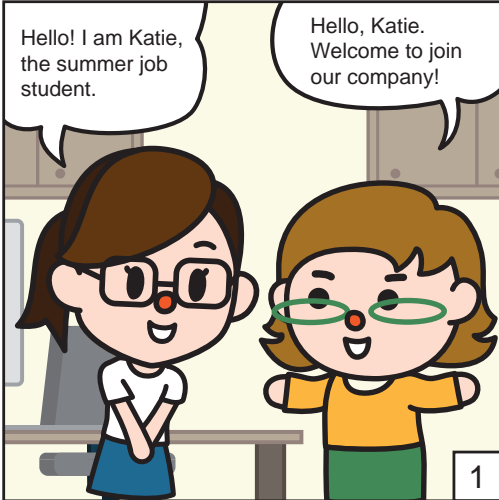
SUMMER JOB STUDENTS



Labour Department



01 Foreword and Employment Ordinance & Summer Job Students





Foreword

Many students find jobs in the summer vacation to get work experience and earn pocket money. As most of them are new entrants into the job market, they are not familiar with their rights under labour laws. This booklet is to enhance their awareness of employees' rights and responsibilities to prevent them from being owed wages or entering into disputes with employers.

This booklet outlines the major provisions of the Employment Ordinance. For further information on the Ordinance, please refer to the publication "A Concise Guide to the Employment Ordinance" published by the Labour Department. Please contact us if in doubt.

Workplace Consultation Promotion Division
Labour Department

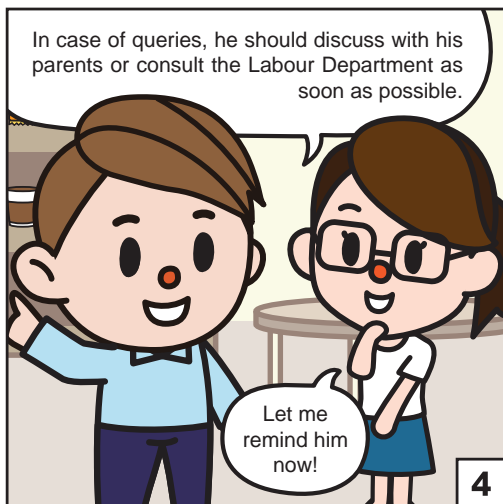


Employment Ordinance and Summer Job Students

- The Employment Ordinance ("EO"), Chapter 57 of the Laws of Hong Kong, is the major piece of legislation governing conditions of employment in Hong Kong. Apart from a few exceptions, the EO is applicable to all employees in the non-government sector.
- The EO does not differentiate between "summer job workers" and those who are not. Summer job workers who are employees are entitled to the rights and protection under the EO.
- Irrespective of their hours of work, all employees covered by the EO are entitled to basic protection, such as wage payment protection, restrictions on wage reductions and granting of statutory holidays, etc.
- An employee who has been employed continuously by the same employer for 4 weeks or more, with at least 18 hours worked in each week, is regarded as being employed under a "continuous contract". He can enjoy more rights and benefits such as rest days, paid annual leave, pay for statutory holidays and sickness allowance.



02 Contract of Employment and Contract for Service





Contract of Employment

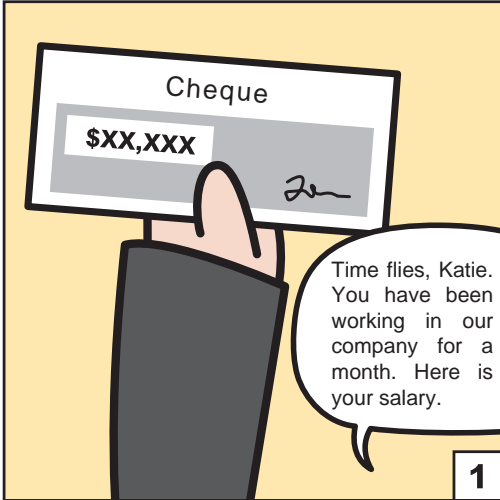
- Employers and employees are free to negotiate and agree on the terms and conditions of employment. However, according to the EO, any term of an employment contract which purports to extinguish or reduce any right, benefit or protection conferred upon the employee by the EO shall be void.
- A contract of employment can be made verbally or in writing. If it is made in writing, the employer shall give a copy of the written contract to the employee for reference and retention according to the EO.
- Even when there is no written employment contract, all employees covered by the EO are still protected by the Ordinance.
- Before entering into a contract, students should make sure that they know who are their employers and should be fully aware of the terms of their employment, including wage rate, working hours, overtime and other allowances, wage period, whether there is any probation period, rest day arrangements, wage payment arrangements and notice period required for contract termination.
- If employers propose to vary the conditions of service or work nature, students should find out details of such changes before accepting them. Whenever in doubt, students should consult their parents or the Labour Department as soon as possible.



Contract for Service

- Certain industries or establishments may request students to take up jobs in the capacity of “ self-employed persons ”. Given that self-employed persons are not covered by the EO, students should clarify whether they are engaged as employees or self-employed persons before entering into a contract to safeguard their rights and benefits. Whenever in doubt, they should consult their parents or the Labour Department as soon as possible.

03 Wage Protection





Wage Protection

- Employers have a statutory duty to effect wages to all employees on time, irrespective of whether the employees are designated as full-time, part-time, summer job, casual or substitute employees and irrespective of their hours of work.
- Wages shall become due on the expiry of the last day of the wage period or the day of termination of employment. 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 or the day of termination of employment. The wage period shall be deemed to be one month until the contrary is proved.
- If an employee is owed wages, he should approach the branch offices of the Labour Relations Division (please see the addresses in this booklet) near his workplace for assistance as soon as possible.
- 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.
- Only under the circumstances prescribed in the EO (e.g. absence from work) can an employer deduct the wages of an employee. The EO specifies the total amount of wages that may be deducted. An employer who illegally deducts wages of an employee is liable to prosecution and, upon conviction, to a fine of \$100,000 and to imprisonment for one year.



04 Rest Days, Statutory Holidays, Sickness Allowance and Paid Annual Leave

Mandy, what are the arrangements of rest days and statutory holidays for summer job students?

The company grants a day in every 7 days as the rest day for all employees employed under a continuous contract, including summer job students.

1

Irrespective of working hours and length of service, an employee enjoys 12 days of statutory holidays every year. If the employee has been in employ under a continuous contract for 3 months immediately before a statutory holiday, he will be entitled to statutory holiday pay.

Got it! How about sick leave?

2

An employee can accumulate 2 days of paid sickness days for every full month within the first 12 months of employment. If you have accumulated enough paid sickness days, and produce a medical certificate recommending sick leave of 4 or more days, you will be entitled to sickness allowance.

3

It sounds complicated!

It is simple! Keep healthy and then you do not need to take any sick leave!

4



Rest Days

- An employer is required to grant not less than one rest day in every period of seven days to an employee who is employed under a “ continuous contract ”.
- With the consent of the employee, an employer may substitute some other rest day within the same month before the original rest day or within 30 days after it.
- Except in cases of a breakdown of machinery or plant or in any other unforeseen emergency, an employer must not compel an employee to work on a rest day. For any rest day on which the employee is required to work, the employer has to substitute some other rest day within 30 days after the original rest day.



Statutory Holidays

- Irrespective of their hours of work and length of service, all employees are entitled to 12 statutory holidays every year. The statutory holidays generally fall in the period between May and October include:

■ Labour Day (the first day of May)	■ Tuen Ng Festival
■ Hong Kong Special Administrative Region Establishment Day (the first day of July)	■ The day following the Chinese Mid-Autumn Festival
■ Chung Yeung Festival	■ National Day (the first day of October)
- An employee who has been employed under a “ continuous contract ” for not less than three months immediately preceding a statutory holiday is further entitled to holiday pay.



Sickness Allowance

- An employee who is employed under a “ continuous contract ” is entitled to sickness allowance on sickness days at the rate of four-fifths of his average daily wages if he has accumulated sufficient number of paid sickness days, the sick leave taken is not less than four consecutive days and supported by an appropriate medical certificate.
- The employee can accumulate two paid sickness days for each completed month of his employment during the first 12 months of employment, 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.
- Except in cases of a summary dismissal due to the employee’s serious misconduct, an employer is prohibited from terminating the contract of employment of an employee on his paid sickness day.

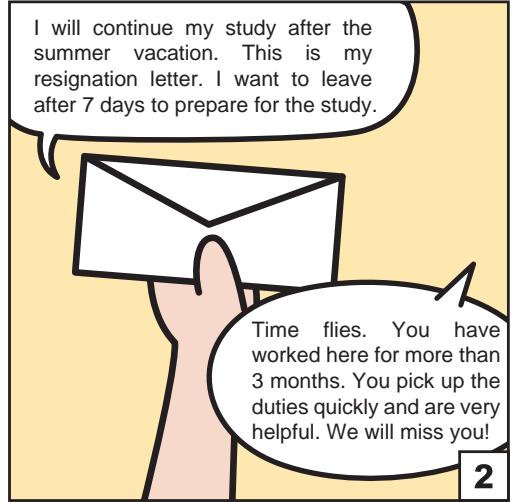
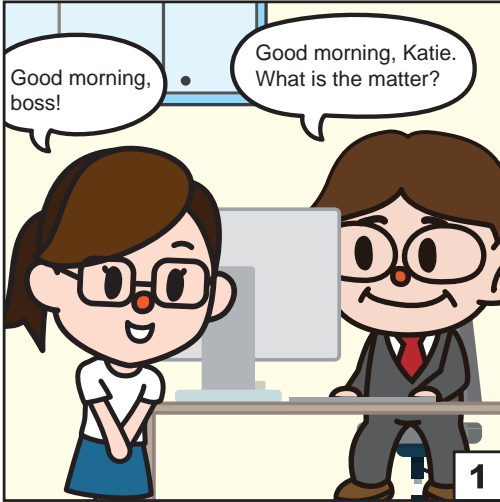


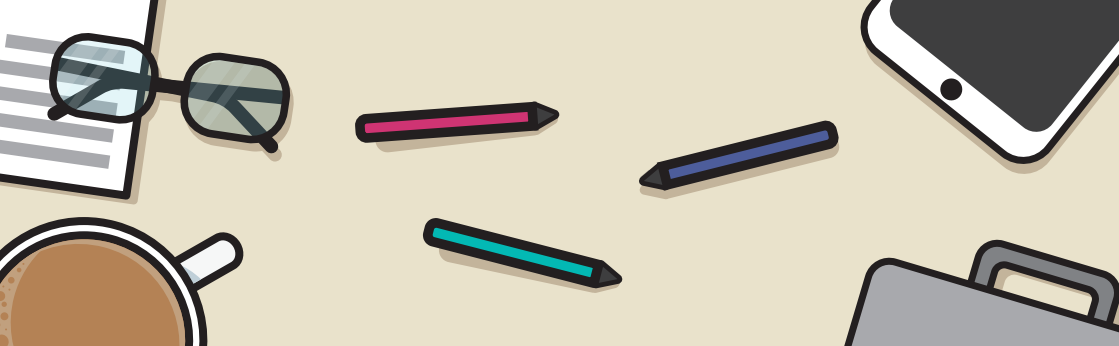
Paid Annual Leave

- Under the EO, an employee is entitled to annual leave with pay after having been employed under a “ continuous contract ” for every 12 months. The entitlement to paid annual leave increases progressively from seven days to a maximum of 14 days according to his length of service.
- If an employee has three but less than 12 months of employment under a “ continuous contract ” and his employment contract is terminated other than for reason of a summary dismissal due to his serious misconduct, he would be entitled to pro rata annual leave pay.



Termination of Contract of Employment





Termination of Contract of Employment

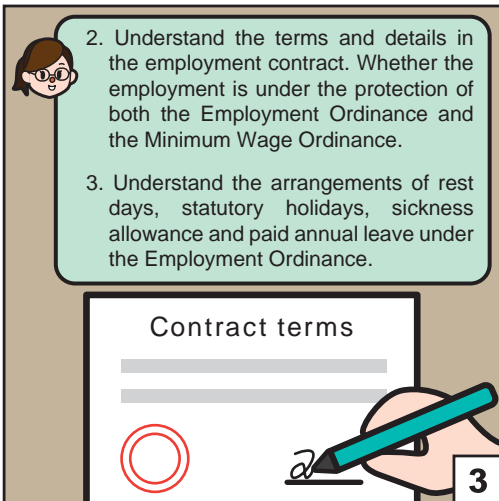
- A contract of employment may be terminated by the employer or employee through giving the other party due notice or payment in lieu of notice. The length of notice is:

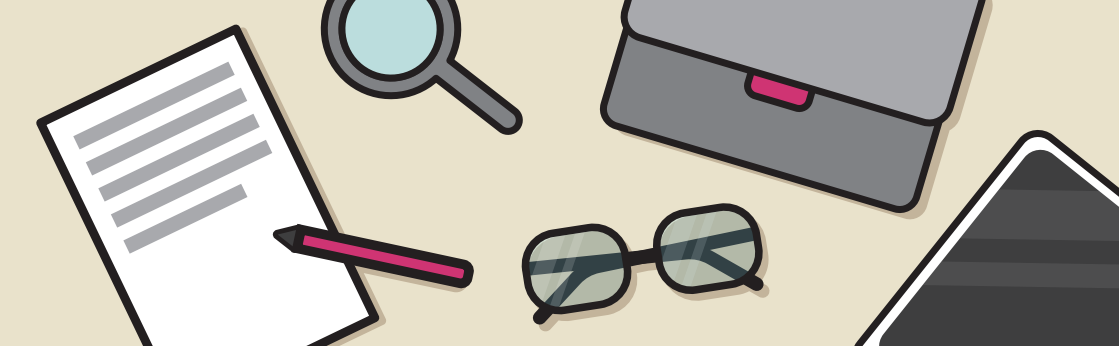
Employment Condition		Length of notice	
During Probation Period	within the first month of probation	not required	
	after the first month of probation	where contract makes provision for the required length of notice	as per agreement, but not less than 7 days
		where contract does not make provision for the required length of notice	not less than 7 days
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	
	where contract does not make provision for the required length of notice	not less than 1 month	

* For a non-continuous contract with no/ after probation period, the length of notice shall be the agreed period.

- Payment in lieu of notice – Instead of giving notice, either party may pay an amount of wages commensurate with the length of the notice period as required under the EO to terminate the contract of employment.
- Under special circumstances prescribed in law, such as the employee has committed serious misconduct or the employee reasonably fears physical danger by violence or disease, an employer or an employee may terminate a contract of employment without giving any notice or payment in lieu of notice.
- Students should note that except under special circumstances prescribed in law, if they want to terminate their employment contracts, they should give prior notice to their employers according to the employment contract and the EO. Otherwise, they should compensate their employers with payment in lieu of notice.

06 Points-to-note





Points-to-Note

- Students should clarify whether there is any employment relationship between themselves and the employing persons or the establishments before commencement of work.
- Before entering into a contract of employment, students should fully understand terms and details of the employment contract, such as wages and benefits as well as the length of notice period required if either party wants to terminate the employment. Whenever in doubt, they should consult their parents or the Labour Department.
- Employment contracts can be made either verbally or in writing. Even when there is no written employment contract, an employee applicable under the EO is still covered by the Ordinance.
- The EO does not differentiate between “summer job workers” and those who are not. Summer job workers who are employees enjoy the benefits and protection under the EO.
- If employers propose to vary the conditions of service or work nature, in considering whether to accept the changes or not, students should find out more details of such changes from the employer. Whenever in doubt, they should consult their parents or the Labour Department as soon as possible.
- Students should clarify whether their contracts of employment are protected by the “Minimum Wage Ordinance”. For details, please refer to the booklet “Statutory Minimum Wage: Reference Guidelines for Employers and Employees” published by the Labour Department.



Enquiries

Enquiry Hotline:

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

Homepage Address:

www.labour.gov.hk

Enquiry in person to Offices of the Labour Relations Division:

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

This booklet sets out in simple terms the major provisions of the Employment Ordinance that are relevant to summer job students. It should be noted that the Ordinance itself remains the sole authority for the provisions of the law explained. For further information on the Ordinance, please refer to the publication “ A Concise Guide to the Employment Ordinance ” published by the Labour Department or make use of the enquiry service of the Department.





Labour Department



Enquiry Hotline
2717 1771
Homepage Address
www.labour.gov.hk

04/2020