

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 (*with reference to a company's own system of compensation and benefits*) provided that these terms do not violate the provisions of the Employment Ordinance (EO). If in doubts, they should consult their legal advisors or the Labour Relations Division of the Labour Department.
- In accordance with the EO, employers are required to provide employees with a copy of their written employment contract. In addition, employers should also consult their employees and must obtain their consent before making any subsequent change to the terms of the employment contract.
- Before preparing an employment contract, please refer to the pamphlet – **"A Concise Guide to the Employment Ordinance"** – and pay particular attention to the items set out in this booklet. Please also refer to the EO for the legal requirements stipulated in the relevant provisions under the law.
- Please note that any term of an employment contract which purports to extinguish or reduce any rights, benefits or protection conferred upon the employee by the EO is void.
- The soft copy of the sample employment contract is available on this department's web site.

Rest Days

- An employee employed under a continuous contract* is entitled to 1 rest day in every period of 7 days.

[section 17 of EO]

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/she has been employed under a continuous contract for a period of 3 months.

[section 39 & 40 of EO]

Paid Annual Leave

- Employees working under continuous contract for not less than 12 months are entitled to paid annual leave. The number of days of leave ranges from 7 to 14 depending on the employee's length of service.
- Annual leave entitlement is in addition to the rest days, holidays and maternity leave to which an employee is entitled under the EO.

[section 41AA of EO]

- Employers may choose to grant annual leave to employees according to the rules of their companies provided that the annual leave should not be less than the requirement stipulated in section 41AA of the EO. Employers should then state the number of days of annual leave to be given to individual employees in the contract.

* 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.

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

[section 41D of EO]

Maternity Leave Pay

- A female employee is entitled to maternity leave for 10 weeks if she has been employed under a continuous contract immediately before the commencement of maternity leave.

[section 12 of EO]

- A female employee is eligible for maternity leave pay if she has worked under a continuous contract for not less than 40 weeks immediately before the commencement of maternity leave.

[section 14 of EO]

Sickness Allowance

- An employee can accumulate paid sickness days at the rate of 2 paid sickness days for each completed month of employment 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 eligible for sickness allowance if —
 - the employee has accumulated the number of paid sickness days taken;
 - the sick leave taken is not less than 4 consecutive days; and
 - the sick leave is supported by an appropriate medical certificate.

- 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 EO]

Termination of Employment Contract

- For an employment contract which does not have a probation period, the agreed period of notice for termination should not be less than 7 days.

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

- If a probation period is provided, the agreed period of notice for termination after the first month of probation should not be less than 7 days.

[section 6 (3A)(b) of EO]

End of Year Payment and Bonus

- There is no legal requirement under the EO on provision of end of year payment, which includes bonus and double pay. However, an employer is contractually bound to make such payment if a clause on such payment is included in the contract.
- If an annual payment or an annual bonus 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 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/she has been employed under a continuous contract for a period of not less than 3 months in the payment period. The exception is in cases of summary dismissal due to the employee's serious misconduct or resignation by the employee 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 EO]

Mandatory Provident Fund Scheme

- For details of the Mandatory Provident Fund Scheme, please refer to the Mandatory Provident Fund Schemes Ordinance or the homepage (www.mpfahk.org) of the Mandatory Provident Fund Schemes Authority. You may also call up the enquiry hotline of the Authority at 2918 0102.

Enquiries

Enquiries can be made at —



24-hour Telephone Enquiry Service : 2717 1771



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



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5/F, Tsuen Wan Government Offices,
38 Sai Lau Kok Road,
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6/F, Kwai Hing Government Offices,
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Room 2720,
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