Using Written Employment Contract

Clear Terms of Employment Contract
Protect Both Employers and Employees

Clarify
Explain Clearly
Read Carefully

Labour Department
**Foreword**

If the terms of an employment contract are clearly laid down in writing, both employers and employees will benefit. This booklet is compiled to highlight the major provisions of the Employment Ordinance (“EO”) (Chapter 57 of the Laws of Hong Kong) on the terms of an employment contract and provide a “Sample Employment Contract” for the reference of employers and employees. It is also available on the Labour Department Homepage at [http://www.labour.gov.hk/eng/public/wcp/WrittenContract.pdf](http://www.labour.gov.hk/eng/public/wcp/WrittenContract.pdf)
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I. Points-to-note When Entering into a Written Employment Contract

Employers should draw up reasonable and fair employment terms, such as mutually agreed wages and benefits, conditions of work (including working hours arrangement and overtime compensation method), holidays as well as the notice period for termination, etc. Not only will it strengthen employees’ sense of belongings to the company and help employers to attract and retain talents, it will also enhance the corporate image.

(1) Before Signing the Employment Contract

i. Know the Legal Requirements

- Employment Ordinance (“EO”)

The EO is the major piece of legislation governing employment terms and conditions in Hong Kong. The employment conditions offered by an employer to his employees can be more favourable than the provisions of the EO, but cannot be set below the minimum standards laid down in the Ordinance. For details of the provisions of the EO, please refer to “A Concise Guide to the Employment Ordinance” published by the Labour Department.

- Minimum Wage Ordinance (“MWO”)

According to the MWO, wages payable to an employee in respect of any wage period should be no less than the statutory minimum wage rate on average for the total number of hours worked. For details, please refer to the leaflet or reference guidelines on statutory minimum wage prepared by the Labour Department.

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.

ii. Explain Clearly the Employment Terms

Under section 44 of the EO, an employer must inform his employees in detail the conditions of employment under which they are to be employed, including:

- Wages (including rate of wages, overtime rate and any allowances, whether calculated by the piece, job, hour, day, week or otherwise);
- Wage period;
- Length of notice required to terminate the contract; and
- End of year payment or proportion of it and the payment period (if applicable).

Other employment conditions such as working hours, holidays arrangements, etc., should also be clearly specified.
iii. Clarify the Employment Terms

Employees should request their employers to clarify any terms that are ambiguous or unintelligible to him.

iv. Read the Employment Terms Carefully

Before entering into employment contracts with employers, employees should read the employment terms carefully, in particular the clauses involving financial liabilities. For instance, whether there are clauses requiring the employee to make a monetary compensation if he resigns before the time limit specified; or to pay a huge amount of money before commencement of employment. If the employee is in doubt, he should ask for a copy of the contract for a more detailed examination.

Employees should fully understand and agree the employment terms before signing the contract. They should not think that they can easily deny their contractual obligations by excuses such as “I don’t understand the employment terms” or “the employer requires me to sign the contract immediately”.

(2) After Signing the Employment Contract

i. Provide the Employee with a Copy of the Employment Contract

Under section 44 of the EO, if the contract of employment is in writing, the employer shall provide a copy of the contract to the employee immediately after it is signed or validated.

ii. Changes in Employment Conditions

Under section 45 of the EO:

- Whenever there is any change in the employment conditions referred to in section 44 or the conditions in force at any time, an employer must inform the employee of such change in a manner intelligible to the employee.
- Where there is any written amendment to the employment conditions, an employer must provide his employee with a copy of the written amendment immediately after the amendment is reduced to writing or validated.
• If the amendment is not in writing, upon receipt of a written request from his employee, an employer must deliver to the employee a notice in writing containing such changes in the employment terms.

In addition, an employee may claim for remedies against an employer for unreasonable variation of the terms of the employment contract if –

• the employee has been employed under a continuous contract;
• the terms of employment contract are varied without the employee’s consent;
• the employment contract does not contain an express term which allows such a variation; and
• the terms of the employment contract are varied other than for a valid reason as specified in the EO.
Case 1

Can an employer refuse to give a copy of an employment contract to his employee?

Mr Cheung was a sales representative of a trading company. As the company was in urgent need of staff, on the day of interview, the person-in-charge did not explain in detail the conditions of employment to Mr Cheung. When Mr Cheung reported duty, he also failed to read carefully his written employment contract before signing. He recalled that the person-in-charge had told him his monthly commission would be calculated at a rate of 30% of his sales volume. Not until the wage payment, Mr Cheung found that the employer only paid him commission based on a rate of 20%. Mr Cheung then asked the employer for a copy of the employment contract. However, the employer refused, alleging that it was a “confidential document” and its disclosure was against the interests of the company.

Case analysis

Under section 44(3) of the EO, where an employer enters into a written employment contract with his employee, he must provide the employee with a copy of the employment contract. An employer who contravenes this provision is liable to prosecution and, upon conviction, to a fine of $10,000.

Therefore, the employer of the above case could not refuse to give a copy of the employment contract to Mr Cheung by saying that it was a “confidential document” of the company.
II. Restrictions on Contracting Out

Under section 70 of 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.

Case 2

Is the employee obliged to comply with the employment terms which are in breach of the EO?

Mr Lee applied for a post of warehouse keeper. He was offered the job and entered into a written employment contract with the employer. After reading the contract with care, Mr Lee discovered that the following terms might be in breach of the EO:

- The employee has to work on two of his rest days every month and cannot raise any objection.

- If the employee is required to work on a statutory holiday, the employer will pay the employee twice his daily wages as remuneration and will not arrange an alternative holiday.

Mr Lee was considering to seek employer’s rectification of these dubious terms.
Case analysis

The EO stipulates that:

(1) An employee employed under a continuous contract (i.e. employed continuously by the same employer for four weeks or more, with at least 18 hours worked in each week) is entitled to not less than 1 rest day in every period of 7 days.

(2) All employees are entitled to statutory holidays. An employee having been employed under a continuous contract for not less than 3 months is further entitled to holiday pay. An employer must not make any form of payment to an employee in lieu of granting him a holiday. If the employer requires the employee to work on a statutory holiday, an alternative holiday should be arranged within 60 days before or after the statutory holiday.

In the above case, the contractual terms in question purported to deprive Mr Lee of his entitlements to rest days and statutory holidays under the EO. These terms are deemed to be void even if the employer and the employee have consented to them and signed to acknowledge their acceptance.

III. Benefits of Using Written Employment Contracts

Under the EO, a contract of employment can be made orally or in writing. Employee’s rights and benefits are protected under the Ordinance, irrespective of whether the employment contract is made verbally or in writing.

Employers are advised to enter into written employment contracts with their employees as it will bring the following benefits to both parties:

- Specifying explicitly the employment terms and conditions;
- Reminding both employers and employees of their contractual obligations;
- Protecting the interests of both parties; and
- Minimising unnecessary labour disputes.
Case 3

Employment Terms on Paper
Reduce Disputes

Ms Cheung worked as a saleslady in a boutique. When she took up the job early in the year, the shop manager told her that if she remained in the post by the end of the year, she would be entitled to an end of year payment. After the Lunar New Year, Ms Cheung found that the employer had not granted her the end of year payment. She asked the person-in-charge of the shop but was told that the payment was “gratuitous” in nature - it would be granted subject to the employer’s profits and the performance of individual employees. Since the employer had not entered into a written employment contract with her, while the manager who hired Ms Cheung had already left the job, both parties stood fast on their views as to whether Ms Cheung should be entitled to the end of year payment.

Case analysis
The dispute arose because Ms Cheung and the employer only entered into a verbal employment contract and had not specified the criteria for granting the end of year payment. If the employer and the employee entered into a written employment contract and clearly spelt out the employment terms, such as the criteria for granting the end of year payment, the payment period, the time for the payment, etc., before employment, the argument could be avoided. The rights and benefits of both parties could also be safeguarded.

Note 1 End of year payment means any annual payment, including double pay, 13th 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. If the end of year payment is not of a gratuitous nature, 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). If a probation period has been explicitly agreed upon, such 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, if an employee has fulfilled the eligibility requirement of no less than three months’ employment in a payment period after excluding the probation period, then the whole employment period (including the probation period) shall be taken into account in calculating the pro rata end of year payment.
Case 4

Reasonable and Fair Notice Period

Ben was a site contractor. Other than wage rates and working hours, Ben never made clear with his employees the other employment terms, just saying that “everything should follow the trade practice”. Recently, he decided to dismiss a worker Ah Ming for reason of substandard performance. He gave Ah Ming seven days’ advance notice, which he considered to be a “trade practice”. However, Ah Ming insisted that both parties had no prior agreement on the notice period for the termination of contract and requested Ben to give him one month’s notice or payment in lieu of notice Note 2 according to the EO.

Case analysis

In the above case, the two parties were in dispute because Ben did not specify clearly the notice period required for the termination of contract when discussing employment terms with Ah Ming. As both parties held differing views on what constituted “trade practice”, the dispute arose. If the dispute could not be resolved, it might require the court’s adjudication in the end.

If the employer set out clearly employment terms in a written employment contract before the employee takes up the job, for example the employer and the employee mutually agreed to give the other party one month notice if either party wants to terminate the contract, the above disputes could be avoided. While the employee should clarify the employment terms with the employer if he is in doubt.

Note 2 Termination of employment contract by notice / payment in lieu of notice – it means an employer or an employee has to give the other party due notice or payment in lieu of notice if he wants to terminate the employment. Employers and employees are free to negotiate and agree on the length of notice provided that it does not violate the provisions of the Employment Ordinance. In case there is no explicit notice period in the employment contract, the employer and the employee have to follow the provisions stipulated in the Employment Ordinance. For details, please refer to the “A Concise Guide to the Employment Ordinance” published by the Labour Department.
IV. Highlights on Entering into Employment Contracts

**Employers**

- should know the requirements of labour laws.
- should draw up reasonable and fair employment terms, such as mutually agreed wages and benefits, conditions of work (including working hours arrangement and overtime compensation method), holidays as well as the notice period for termination, etc.
- should explain the terms and conditions to the employee in detail before commencement of employment.
- should list out the employment terms in written employment contract.
- should provide a copy of the employment contract to the employee after signing.

**Employees**

- should understand the employment terms and request the employer to clarify any terms that are ambiguous or unintelligible to him.
- should read all employment terms carefully, in particular the clauses involving financial liabilities, before entering into employment contracts with employers. For instance, whether there are clauses requiring the employee to make a monetary compensation if he resigns before the time limit specified; or to pay a huge amount of money before commencement of employment.
- should read the terms carefully before signing.
- should not think that they can easily deny their contractual obligations by excuses such as “I don’t understand the contract”, “the employer required me to sign the contract immediately”.
- should ask the employer for a copy after entering into an employment contract.
Appendix: Sample Employment Contract

To assist employers and employees to draw up written employment contracts, the Labour Department has prepared a sample employment contract for their reference.

The sample covers the major entitlements and protection enjoyed by employees under the EO. For details, please refer to the EO or the booklet “A Concise Guide to the Employment Ordinance” issued by the Labour Department, or visit the webpages below:

Department of Justice’s Hong Kong e-Legislation:
http://www.elegislation.gov.hk

“A Concise Guide to the Employment Ordinance”:

“Notes for preparing an employment contract”
Sample Employment Contract

This contract of employment is entered into between ____________________________ (hereinafter referred to as ‘Employer’) and _________________________________ (hereinafter referred to as ‘Employee’) on __________________________ under the terms and conditions of employment below:

1. Commencement of Employment †
   □ until either party terminates the contract.
   □ for a fixed term contract for a period of ___________* day(s) / week(s) / month(s) / year(s), ending on __________________________.

2. Probation Period †
   □ No
   □ Yes _______________* day(s) / week(s) / month(s)

3. Position and Section Employed
   __________________________

4. Place of Work
   __________________________

5. Working Hours †
   □ Fixed, at ___________ days per week, ___________ hours per day
     from ___________ *am/pm to ___________ *am/pm
     and ___________ *am/pm to ___________ *am/pm
   □ Shift work required, ___________ hours per day
     from ___________ *am/pm to ___________ *am/pm
     or ___________ *am/pm to ___________ *am/pm
   □ Shift work required, at working day(s) per *week/month, totalling ______ hour(s).
   □ Others __________________________
     (details of working hours arrangement, total working hours, etc.)

6. Meal Break †
   □ Fixed, from ___________ *am/pm to ___________ *am/pm, *with/without pay
   □ Not-fixed, at ___________ *minutes/hour(s) per day, *with/without pay
   Meal break *is/ is not counted as working hour(s).

7. Rest Days †
   □ On every ___________ , *with / without pay
   □ On rotation, ___________ day(s) per *week/month, *with / without pay
   (The employee is entitled to not less than 1 rest day in every period of 7 days)

8. Wages
   (a) wage rate †
   Basic wages of $ ___________ per * hour / day / week / month;
   plus the following allowance(s) :
   □ Meal allowance of $ ___________ per * day / week / month
   □ Travelling allowance of $ ___________ per * day / week / month
   □ Attendance allowance of $ ___________ (amount)
   __________________________
   (details of payment criteria, calculation method, etc.)
   □ Others (e.g. commission, tips) $ ___________ (amount)
   __________________________
   (details of payment criteria, calculation method, date of payment, etc.)

† Please put a “ ✓ ” in the clause(s) as appropriate
* Please delete the word(s) as inappropriate

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(b) payment of wages & wage period(s) †

☐ Every month, on ________________ day of the month
for wage period from _____ day of the month to _____ day of *the month/ the following month.

☐ Twice monthly, payable on
(i) ________ day of *the month / the following month
for wage period from _____ day of the month to _____ day of *the month/ the following month.

(ii) ________ day of *the month / the following month
for wage period from _____ day of the month to _____ day of *the month/ the following month.

☐ Once for every ___ *day(s)/week(s)
for wage period from ____________ to______________

9. Overtime Compensation †

☐ Compensated by overtime pay:
☐ At the rate of $___________ per hour
☐ At the rate according to *normal wages / __________% of normal wages
☐ Others ______________________________________

☐ Compensated by time-off in lieu: __________________________

☐ (details of payment criteria, calculation method, etc.)

☐ (details of granting criteria, calculation method, etc.)

10. Holidays †

The Employee is entitled to:

☐ statutory holidays as specified in the Employment Ordinance
☐ public holidays
☐ plus other holidays (please specify)

11. Paid Annual Leave †

☐ The Employee is entitled to paid annual leave according to the provisions of the Employment Ordinance (ranging from 7 to 14 days depending on the Employee’s length of service).

☐ The Employee is entitled to the following paid annual leave according to the rules of the employer (please specify) __________________________

12. Maternity Benefits †

☐ The Employee is entitled to maternity leave and maternity leave pay according to the provisions of the Employment Ordinance.

☐ The Employee is entitled to the following maternity leave and maternity leave pay according to the rules of the employer (please specify) __________________________

13. Paternity Benefits †

☐ The Employee is entitled to paternity leave and paternity leave pay according to the provisions of the Employment Ordinance.

☐ The Employee is entitled to the following paternity leave and paternity leave pay according to the rules of the employer (please specify) __________________________
14. Sickness Allowance †

☐ The Employee is entitled to sickness allowance according to the provisions of the Employment Ordinance.

☐ The Employee is entitled to sickness allowance according to the rules of the employer under the following circumstances:

- If the number of sickness days taken is ______day(s) or below, an appropriate medical certificate in support of the sick leave *is/is not required.
- If the number of sickness days taken is ______day(s) or more, an appropriate medical certificate in support of the sick leave is required

☐ Others (please specify) ____________________________________________________________

15. Termination of Employment Contract

A notice period of _________________ * day(s)/week(s)/ month(s) or an equivalent amount of payment in lieu of notice (notice period not less than 7 days).

During the probation period (if applicable):
- within the first month : without notice or payment in lieu of notice
- after the first month : a notice period of _________________ * day(s)/week(s)/ month(s)
or an equivalent amount of payment in lieu of notice (notice period not less than 7 days).

16. End of Year Payment †

An amount of * $ _________________ or equivalent to ___________ month’s basic/ normal wages upon completion of each specified period:

☐ *calendar / lunar year

Payment is to be made within ___________ days before commencement of the following * calendar /lunar year.

17. Mandatory Provident Fund Scheme †

The Employer and the Employee are to make contributions towards the Mandatory Provident Fund Scheme in accordance with the requirements specified in the Mandatory Provident Fund Schemes Ordinance.

☐ In addition to the mandatory contribution, the Employer provides monthly voluntary contribution to the Mandatory Provident Fund Scheme * in the amount of $ / at a rate of % of the Employee’s monthly wages.

☐ In addition to the mandatory contribution, the Employee provides monthly voluntary contribution to the Mandatory Provident Fund Scheme * in the amount of $ / at a rate of % of the Employee’s monthly wages.

18. Work Arrangements in Times of Adverse Weather Conditions

A. Work Arrangements in Times of Typhoons †

☐ The Employee is required to work when Typhoon Warning Signal No.8 or above is in force. In addition to normal wages, the Employee is entitled to * typhoon duty allowance of

$ __________ or __________ % of normal wages for each hour worked.

In case staff on the next shift are unable to report for duty when Typhoon Warning Signal No.8 or above is in force, or due to practical difficulties and the Employer requests the Employee continue to work due to operational requirements, in addition to normal wages, the Employee is entitled to a special allowance of

$ __________ or __________ % of normal wages for each hour of the extended service.

† Please put a “✓” in the clause(s) as appropriate
* Please delete the word(s) as inappropriate

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**The Employer provides / does not provide** transport services to the Employee when Typhoon Warning Signal No.8 or above is in force, the Employee is entitled to travelling allowance of $ __________ per trip or the actual cost of transport, whichever is higher.

☐ The Employee is not required to work when Typhoon Warning Signal No.8 or above is in force and wages will not be affected during the period. If the Government has not announced “extreme conditions” note, the Employee is required to resume duty within __________ hours as far as practicable if the Typhoon Warning Signal No.8 is cancelled not less than __________ hours before the end of working hours.

**B. Work Arrangements in Times of “Extreme Conditions” after super typhoons as announced by the Government †**

☐ The Employee is required to work when “extreme conditions” after super typhoons as announced by the Government are in force note. In addition to normal wages, the Employee is entitled to *duty allowance of

$ __________ or __________ % of normal wages for each hour worked.

In case staff on the next shift are unable to report for duty when “extreme conditions” after super typhoons as announced by the Government are in force or extended, or due to practical difficulties and the Employer requests the Employee continue to work due to operational requirements, in addition to normal wages, the Employee is entitled to a special allowance of

$ __________ or __________ % of normal wages for each hour of the extended service.

**The Employer provides / does not provide** transport services to the Employee when “extreme conditions” after super typhoons as announced by the Government are in force, the Employee is entitled to travelling allowance of $ __________ per trip or the actual cost of transport, whichever is higher.

☐ The Employee is not required to work when “extreme conditions” after super typhoons as announced by the Government are in force note, and wages will not be affected during the period. The Employee is required to resume duty within __________ hours as far as practicable if the “extreme conditions” are cancelled not less than __________ hours before the end of working hours.  
(Note: For details, please refer to the “Code of Practice in Times of Typhoons and Rainstorms” issued by the Labour Department.)

**C. Work Arrangements in Times of Black Rainstorm Warning †**

☐ In case the Employee is required to take up extra duty when Black Rainstorm Warning is in force, in addition to normal wages, the Employee is entitled to *rainstorm allowance of

$ __________ or __________ % of normal wages for each hour worked.

In case staff on the next shift are unable to report for duty when Black Rainstorm Warning is in force, or due to practical difficulties and the Employer requests the Employee continue to work due to operational requirements, in addition to normal wages, the Employee is entitled to a special allowance of

$ __________ or __________ % of normal wages for each hour of the extended service.

† Please put a “✓” in the clause(s) as appropriate

* Please delete the word(s) as inappropriate
*The Employer provides / does not provide transport services to the Employee when Black Rainstorm Warning is in force, the Employee is entitled to travelling allowance of $ ______________ per trip or the actual cost of transport, whichever is higher.

☐ The Employee is not required to work when Black Rainstorm Warning is in force and wages will not be affected during the period. The Employee is required to resume duty within _____ hours as far as practicable if the Black Rainstorm Warning is cancelled not less than ______ hours before the end of working hours.

19. Others

The Employee is entitled to all other rights, benefits or protection under the Employment Ordinance, the Minimum Wage Ordinance, the Employees’ Compensation Ordinance and any other relevant Ordinances.

(If appropriate) Additional rules and regulations, rights, benefits or protection promulgated under the * Company Handbook / ________________________________ also form part of this contract.

The Employer and the Employee hereby declare that they understand thoroughly the above provisions and agree to sign to abide by such provisions. They shall each retain a copy of this contract for future reference.

Signature of Employee

Name in full: ________________________________
HK I.D. No.: ________________________________
Date: ________________________________

Signature of Employer or Employer’s Representative

Name in full: ________________________________
Position held: ________________________________
Date: ________________________________

__________________________________________

Chop of the Company

† Please put a “✓” in the clause(s) as appropriate
* Please delete the word(s) as inappropriate

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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