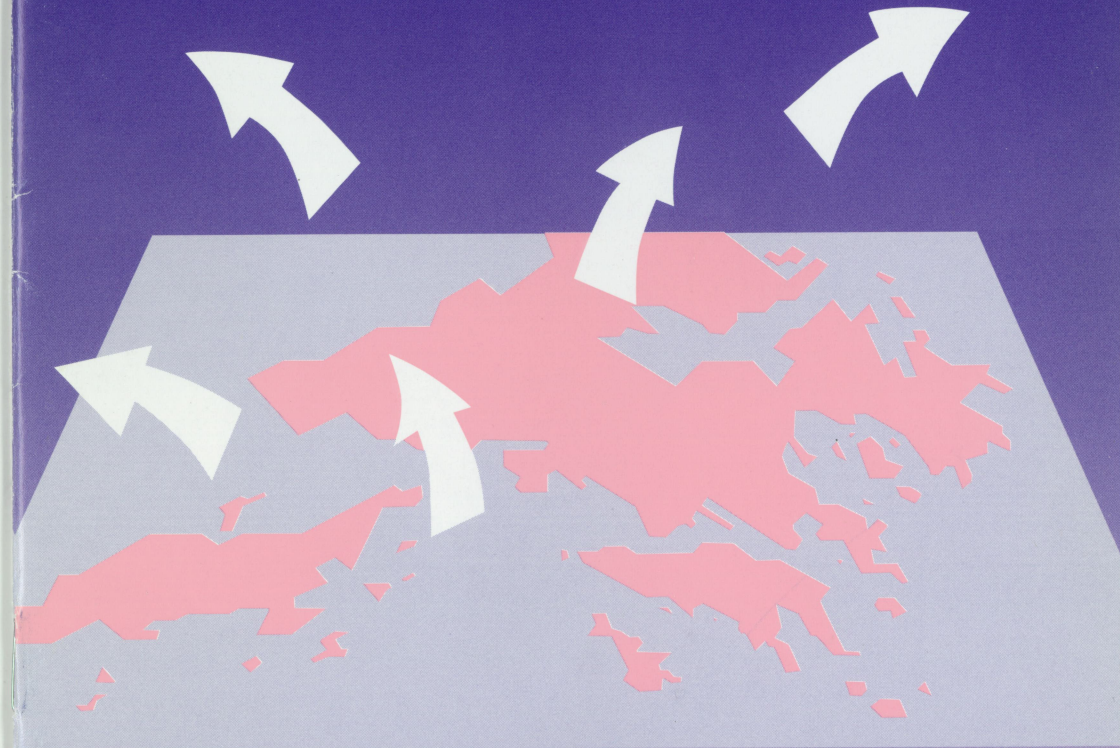


# A GUIDE TO THE CONTRACTS FOR EMPLOYMENT OUTSIDE HONG KONG ORDINANCE



LABOUR DEPARTMENT  
HONG KONG



# **A Guide to the**

# **Contracts for**

# **Employment Outside Hong Kong Ordinance**

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## PARTICULARS IN A CONTRACT FOR EMPLOYMENT OUTSIDE HONG KONG

Every contract for employment outside Hong Kong must be in writing and signed by the employee and the employer or his duly authorised representative before the departure of the employee from Hong Kong. It must contain all the particulars required by the ordinance to define the rights and obligations of both parties and shall in all cases include—

- name of the employer and the employing company;
- name and other particulars of the employee;
- the place where the contract is to be performed and the nature of employment;
- rate of wages and for overtime work, the manner and frequency of payment;
- particulars governing advances of wages and the manner of repayment;
- days and hours of work, rest days, paid holidays and annual leave, the terms of which shall not be less favourable than those laid down in the Employment Ordinance, Cap. 57;



## FOREWORD

THIS GUIDE sets out briefly the main provisions of the Contracts for Employment Outside Hong Kong Ordinance, Chapter 78. While every care has been taken in its preparation, the ordinance itself remains the sole authority for the provisions of the law explained.

The EXTERNAL EMPLOYMENT SERVICE offers advice to employers and employees about their respective rights and obligations under this ordinance. Enquiries may be made to—

The External Employment Service,  
Labour Department,  
Room 906, 9th floor,  
One Mong Kok Road Commercial Centre,  
1 Mong Kok Road, Kowloon.  
Tel: 2115 3667  
Fax: 2115 3756

## INTRODUCTION

THE CONTRACTS FOR EMPLOYMENT OUTSIDE HONG KONG ORDINANCE controls contracts entered into in Hong Kong by manual employees and those non-manual employees with monthly wages not exceeding \$20,000 employed to work outside Hong Kong by foreign employers who are not in Hong Kong and not carrying on a business in Hong Kong. This control is principally exercised by laying down that a contract must be in writing, must contain certain particulars and must be attested by the Commissioner for Labour before the departure of the employee.

### APPLICATION OF THE ORDINANCE

This ordinance applies to contracts of employment entered into in Hong Kong by Hong Kong employees and their foreign employers, where the contract is to be performed outside Hong Kong. This ordinance does not apply to—

- (a) members of the crews of ships or aircraft;
- (b) people migrating for employment;
- (c) non-manual employees with monthly wages exceeding \$20,000.

### PARTICULARS IN A CONTRACT FOR EMPLOYMENT OUTSIDE HONG KONG

Every contract for employment outside Hong Kong must be in writing and signed by the employee and the employer or his duly authorised representative before the departure of the employee from Hong Kong. It must contain all the particulars required by the ordinance to define the rights and obligations of both parties and shall in all cases include—

- (a) name of the employer and the employing company;
- (b) name and other particulars of the employee;
- (c) the place where the contract is to be performed and the nature of employment;
- (d) rate of wages and for overtime work, the manner and frequency of payment;
- (e) particulars governing advances of wages and the manner of repayment;
- (f) days and hours of work, rest days, paid holidays and annual leave, the terms of which shall not be less favourable than those laid down in the Employment Ordinance, Cap. 57;



- (g) duration of the contract and provisions for varying or terminating the contract and for re-engaging the employee and a stipulation that the employer shall give the employee at least one month's notice or wages in lieu of notice to terminate the contract;
- (h) a stipulation that the contract must not be transferred to another employer without the freely given consent of the employee and the endorsement of the authority dealing with employment matters in the place in which the contract is to be performed;
- (i) particulars relating to food, lodging, medical care and employees' compensation for the employee and the dependants accompanying him;
- (j) a stipulation that in case that the employee suffers personal injury by accident or occupational disease arising out of and in the course of employment, the employer shall pay compensation according to the law of the place of employment or, if no law on compensation exists, compensation not less favourable than that laid down in the Employees' Compensation Ordinance, Cap. 282;
- (k) an undertaking that in the event of illness or incapacity not attributable to the employee's employment, the employer shall pay the employee, as a minimum, full wages for the first month of incapacity and half wages for at least 3 months thereafter;
- (l) a stipulation that the employer must provide passage to and from the place of work for the employee and his dependants, if they accompany him, and must obtain for them free of charge all necessary documents such as employment permit and travel documents;
- (m) a stipulation that if it is necessary to break the journey for the night, the employer shall provide suitable accommodation for the employee and his dependants;
- (n) an undertaking that the employer or his agent shall take adequate measures to ensure the safe arrival of the employee and his dependants at the place of employment;
- (o) an undertaking by the employer that under normal circumstances he shall, at the employee's request, within three months of the termination of the contract, repatriate the employee and his dependants to Hong Kong;

- (p) an undertaking by the employer that he, in the event of the death of the employee, shall at the request of the employee's dependants and within three months of the death, repatriate the dependants who were brought by the employer to the place of work. If the dependants were not brought to the place of employment at the employer's expense, they have no right to repatriation;
- (q) a stipulation that the employer shall provide free facilities for the employee to make remittances to his family in Hong Kong; and
- (r) an undertaking by the employer that if on the expiry of the contract, he has been separated from all his dependants for more than 18 months, the employee shall not be required to enter into a re-engagement contract until he has had the opportunity of returning home at the employer's expense for a reunion with his family. The employee, however, is at liberty to waive this right.

### ATTESTATION OF A CONTRACT

Every contract for employment outside Hong Kong must be presented to the Commissioner for Labour for attestation before the departure of the employee from Hong Kong. Before attesting a contract, the Commissioner must satisfy himself that—

- (a) the employee has freely consented to the contract and that his consent has not been obtained by threat, deceit or undue influence;
- (b) the employee has fully understood the terms of the contract;
- (c) the contract is in accordance with the requirements of this ordinance;
- (d) the employee has not been recruited through an agency not registered with the Commissioner;
- (e) the employee has been medically examined at the employer's expense and found fit to perform the work contemplated by the contract;
- (f) a guarantee has been signed or a bond has been furnished by a person approved by the Commissioner for Labour and permanently resident in Hong Kong, generally for the performance of the contract by the employer, and, in particular, for repatriation of the employee and any dependants; and
- (g) the employee has declared himself not bound by a previous engagement.

### DURATION OF A CONTRACT

The maximum duration of a contract for employment outside Hong Kong must not exceed whichever is the less of the following—



- (a) two years, if the employee is not accompanied by any dependants, or three years if he is accompanied by a dependant; or
- (b) the maximum period prescribed by the law of the place in which the contract is to be performed.

### **MINIMUM AGE FOR ENTERING INTO A CONTRACT**

No one below 18 years of age or below the minimum age allowed by the law of the place in which the contract is to be performed shall enter into a contract for employment outside Hong Kong.

### **REFUSAL TO ATTEST A CONTRACT**

The Commissioner for Labour may refuse to attest a contract for employment outside Hong Kong if the contract contravenes any of the matters set out in the paragraph of this guide entitled "Attestation of a Contract", or if in his opinion the terms of the contract are unfair to the employee or do not adequately protect the employee's interest. Any contract which the Commissioner has refused to attest has no further validity.

### **OFFENCES**

An employer or his agent will commit an offence and is liable to a fine of \$50,000 on conviction if he—

- (a) fails to obtain a written contract under Section 5(1) of the Ordinance or fails to present a contract for attestation by the Commissioner under Section 11 before the employee departs from Hong Kong; or
- (b) induces an employee to enter into a contract which does not comply with the Ordinance; or
- (c) induces an employee to depart from Hong Kong to take up employment before the contract is attested.

### **DEFENCE**

An employer or his agent will not commit an offence under Sections 14 and 15 of the Ordinance in the case where the employee concerned migrates for employment and where admission to the place of immigration would be granted on a permanent basis.