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“EMPLOYEE”

AND

“CONTRACTOR/  
SELF-EMPLOYED PERSON”



勞工處  
Labour Department

勞資協商促進科

Workplace Consultation Promotion Division

## DIFFERENCE IN THE RIGHTS AND BENEFITS ENJOYED BY “EMPLOYEE” AND “CONTRACTOR/SELF-EMPLOYED PERSON”

Under the law, an “employee” and a “self-employed person” or “contractor” engaged under a contract for service has different rights and benefits:

- Only an “employee” would be entitled to the rights and benefits provided by the Employment Ordinance and the Employees’ Compensation Ordinance including, among others, statutory holidays, paid sickness days, severance payment/long service payment, employees’ compensation, etc.
- A “contractor/self-employed person”, however, is not entitled to such benefits. If necessary, he should consider insuring himself against personal accident.
- “Employer”, “employee” and “self-employed person” have different responsibilities/rights under the Mandatory Provident Fund Schemes Ordinance.

## “EMPLOYEE” OR “CONTRACTOR/SELF-EMPLOYED PERSON”

To avoid unnecessary dispute, it is important for the relevant parties to clarify their relationship before they enter into a contract. There is no one single conclusive test to distinguish “employee” from “contractor/self-employed person”. In determining the type of relationship exist in each case, all relevant factors as well as circumstances of the case would have to be taken into account. Some general factors to be considered include control, ownership and provision of essential factors of production, economic considerations, etc. Where there is a dispute, the final decision will rest with the court.

## POINTS TO NOTE - EMPLOYERS

- Employers should not unilaterally change the status of their employees to contractors / self-employed persons. This may amount to constructive dismissal and aggrieved employees may claim termination compensation against their employers.
- If there exists in essence employer-employee relationship, employers are still required to fulfill their responsibilities under the law, even though their workers are labelled as contractors or self-employed persons.

## POINTS TO NOTE - EMPLOYEES

- Employees should identify who their employer is before commencing employment. If necessary, employees may make a written request to the employer for providing written information on conditions of service.
- Employees should be very cautious if they are asked to become a contractor/self-employed person. They should seriously assess the risks involved as they might lose their rights and benefits as employees.
- Employees should also note that employers could not unilaterally change the status of their employees to contractors or self-employed persons. This may amount to constructive dismissal and aggrieved employees may claim termination compensation against their employers.

*This leaflet outlines the rights and benefits of "employee" and "contractor/self-employed person" under various ordinances. It should be noted that the respective ordinances themselves remain the sole authority for the provisions of the law mentioned.*

## ENQUIRIES

24-hour Telephone Enquiry Service : 2717 1771

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

Enquiry in person to Offices of the Labour Relations Division of the Labour Department :

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#### **Hong Kong East Office**

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#### **Kwai Chung Office**

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