

For information on  
19 November 2009

**Legislative Council Panel on Manpower**  
**Employees vis-à-vis Self-employed Persons**

**Purpose**

This paper briefs Members on the rights and benefits of employees under the Employment Ordinance (Cap. 57) (EO) and the Employees' Compensation Ordinance (Cap. 282) (ECO), how the rights and obligations of employees and self-employed persons are determined, and the measures adopted by the Labour Department (LD) in tackling false self-employment.

**An overview of the rights and benefits of employees under the EO and the ECO**

2. The EO is the main piece of legislation governing conditions of employment in Hong Kong. It covers a comprehensive range of employment protection for every employee engaged under a contract of employment. Such benefits include wage protection, rest days, holidays with pay, paid annual leave, sickness allowance, maternity protection, severance payment, long service payment, employment protection, protection against anti-union discrimination, etc.

3. The ECO is applicable to all employees employed under a contract of service or apprenticeship. It operates on the basis of individual employer liability whereby an employer is liable to pay compensation to his employees who are injured by accidents or suffer from specified occupational diseases that arise out of and in the course of their employment.

4. The EO and the ECO are applicable only to employees both in terms of the rights conferred and the obligations imposed on them. For a person who is self-employed or who is an independent contractor, his interests and obligations are defined by the terms of the service contracts or agreements drawn up with the other party in consideration of the services to be performed.

## **Self-employment as an alternative form of participation in the labour market**

5. Self-employment forms an important part of economic activities in many countries around the world. Freelance professionals (e.g. event photographers), craftworkers (e.g. hand-knitters) and traders (e.g. antiques dealers) are the more traditional forms of self-employment. In an era of technological advancement and economic diversification, there may be various ways in which a person can actively participate in the labour market. Apart from entering into a contract of employment, some people may prefer working on their own account for greater autonomy instead of being bound by a monotonous work pattern or fixed working hours, while others may opt to develop their own business or prefer to provide services to different clients for the purpose of maximising profits. There are also those who, owing to family, health or a host of other personal reasons, may prefer or are obliged to take up freelance jobs at home or jobs that are paid on completion of projects or assignments, both of which fall outside the remit of an employment relationship.

6. As an economic reality and occupational necessity, sub-contracting and genuine self-employment exist in various sectors of the economy, though in certain sectors such as construction, logistics and insurance this form of service provision may be more prevalent in respect of certain work processes. With the advancement of information and communication technologies, particularly in a web-based environment, self-employed workers have also emerged in other occupations such as graphic design, programming and on-line trading. Genuine self-employment can be a driving force for economic development and can preserve and create job opportunities. For some, self-employment may also represent a viable alternative to unemployment before they settle down in gainful employment.

7. According to the General Household Survey conducted by the Census and Statistics Department, in Q2 2009 there were around 241 600 self-employed persons (representing about 6.9% of the total employed population in Hong Kong), a slight drop when compared with 253 900 persons (7.2% of total) in Q2 2008.

## **Protection for employees in false self-employment**

8. Recently, some Legislative Council Members and trade unionists have expressed grave concerns over the growing number of employees being labelled by their employers as “self-employed” despite the fact that they have all the characteristics of an employee. They pointed out that some job seekers, eager to look for employment, were ignorant of their status being

labelled as “self-employed”. At times, there were also claims that an employer had unilaterally changed the status of his employee to a contractor or self-employed person.

9. As a matter of fact, it is not what the parties to an engagement call their relationship, but what it is in substance, that matters. Whether an employer-employee relationship does, or does not, exist is often determined after looking at all relevant facts. Even if an employer has engaged a person as a self-employed person, he still has to fulfil his obligations under the law where the relationship between the parties is in essence one of employer-employee. In previous rulings on cases involving claims under the EO and the ECO, the Court has not simply looked at the labelling of a person to determine the employment relationship, but would apply a number of tests to examine whether a worker is an employee or a self-employed person, as set out in paragraph 15 below.

10. To avoid misunderstanding/dispute and safeguard mutual rights/benefits, LD has in its various publicity activities and service delivery promoted an important message that the contracting parties should understand clearly their mode of cooperation according to their intention and clarify whether the person concerned is engaged as an employee or a contractor/self-employed person before entering into a contract. If necessary, before the commencement of employment, the employee may make a written request to the employer for written information on conditions of employment in accordance with the EO.

11. We have also emphasised that an employer should carefully assess the risks involved if he enters into a contract to engage someone as a contractor or self-employed person. If in essence there exists an employer-employee relationship, the employer is still required to fulfil his responsibilities under the relevant legislation even though his worker is called or described as a contractor or self-employed person in the contract. This is of utmost importance as the employer will have to pay back statutory benefits retroactively to employees who are falsely labelled as “self-employed”. The employer may also have to bear the legal consequences for having committed an offence under the EO or the ECO, as the case may be.

12. Besides, an employer is not allowed to unilaterally change the status of his employee to a contractor or self-employed person. In such cases, the employee may lodge a claim for remedies against his employer on the ground of unreasonable variation of the terms of the employment contract under the EO. He may also make a claim for termination compensation against his employer on the ground of constructive dismissal under common law.

13. If an employee intends to change his status to a contractor or self-employed person, he must carefully weigh the pros and cons involved, including the employment rights and benefits that he may lose in such a change. Moreover, to protect himself against injuries sustained at work, it is advisable for a self-employed person to make his own insurance arrangements like taking out personal accident insurance policy.

14. In cases of winding-up/bankruptcy, employees are protected by the Protection of Wages on Insolvency Ordinance (Cap. 380) (PWIO). A flexible approach is adopted in considering the applications from so-called “self-employed” persons who may not necessarily be self-employed in every sense of the word. All relevant factors are taken into account when investigating the essence of the relationship. Where an employer-employee relationship does exist, ex-gratia payment from the Protection of Wages on Insolvency Fund will be effected in accordance with the PWIO.

### **Differentiating between employees and self-employed persons**

15. There is no single conclusive test to distinguish an “employee” from a “self-employed person”/ “contractor”. While all relevant factors of the case should be taken into account in differentiating these two identities, there is no hard and fast rule as to how important a particular factor should be.<sup>1</sup> Over the years, a series of tests has been developed through case law to enable the Court to determine whether a worker has been engaged as a self-employed person/contractor or as an employee. Such tests include, but are not limited to:

- whether there is any mutual obligation between the two parties to provide and accept work;
- the parties’ own view of their relationship;
- the degree of control exercised by the party alleged to be the employer over the work of the person alleged to be self-employed;
- the traditional structure of the trade or profession concerned and the arrangements within it;
- whether the person alleged to be self-employed -

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<sup>1</sup> As stated by Cook J in *Market Investigations v Minister of Social Security* [1969] 2 QB 173 and applied in *Lee Ting-sang v Chung Chi-keung* [1990] ICR 409 Privy Council, no exhaustive list has been compiled and perhaps no exhaustive list can be compiled of the considerations which are relevant in determining whether a worker is an employee or a sub-contractor, nor can strict rules be laid down as to the relative weight which the various considerations should carry in particular cases.

- is carrying on business on his own account or carrying on the business of the other party to the contract;
- has invested any capital to the business for the purpose of generating revenue and profit;
- has undertaken any entrepreneurial activities;
- is exposed to financial risk by having to bear the cost of faulty or substandard work carried out under the contract, and the nature and extent of the risk;
- has control over the job he does, how he does it, when and where he does it and whether he does it himself;
- controls his own working hours in fulfilling the job obligations;
- provides the required material to complete the job;
- provides equipment and machinery necessary for the job, other than the small tools of the trade;
- is free to hire other people, on terms of his own choice, to do the work that he has agreed to undertake; and
- is properly regarded as part of the organisation of the party alleged to be the employer.

On the basis of the tests applied, the Court of Hong Kong has in many cases come to the conclusion that the person who was labelled or treated as a self-employed or independent contractor by his employer was an employee. These cases have vindicated that the law is concerned with the facts, and will ignore any mechanism an employer might use to conceal the true employment status of an employee.

### **Problems of amending the EO and the ECO to cover people on self-employment and/or employees falsely labelled as “self-employed”**

16. The purpose of the EO and the ECO is to protect employees. If the scope of these ordinances were extended to cover all self-employed persons, it would be a major departure from the legislative intent of protecting employees only and would take on a new dimension in protecting all persons who are engaged under a contract for service. The amendment would inevitably bring about serious economic and financial implications if every person or company who hires the service of another person were required to confer on him the

rights and benefits under the EO and take out compulsory accident insurance cover under the ECO. There is also the practical problem of law enforcement given the diverse nature of service contracts, particularly if the service contracts are one-off or very short-term in nature.

17. There has also been suggestion that the law should be amended to clearly distinguish an employee from those self-employed. Despite its good intention, an exhaustive list of criteria to define those on false self-employment may be counterproductive as unscrupulous employers may translate them into convenient clues to circumvent the law. An authoritative and legally-prescribed list of indicia to define people on genuine employment or false self-employment may fail to account for possible specific features in individual occupational groups and sectors.<sup>2</sup> This may, in addition, inadvertently hinder the development of entrepreneurship, innovation and contractual freedom.

### **Three-pronged approach adopted by LD to tackle false self-employment**

18. In response to the concerns of the public over the alleged proliferation of false self-employment, LD adopts a three-pronged approach to tackling the problem, as set out below.

#### *(I) Strengthening promotion and publicity work in enhancing public awareness*

19. LD has published leaflets to enhance the understanding of the public on how to distinguish an employee from a contractor or self-employed person. The leaflets, at Appendices I and II, set out the differences in the rights and benefits between the two under the EO and the ECO respectively with important points to note for employers and employees, and highlight the factors or criteria commonly adopted by the Court in determining the employment status of workers by citing relevant court cases. Apart from being uploaded to LD's homepage for easy public access, the leaflets have

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<sup>2</sup> It was stated by Mummery J in *Hall v Lorimer* as quoted in *Poon Chau-nam v Yim Siu Cheung trading as Yat Cheung Airconditioning & Electric Co.* [FACV No. 14 of 2006] that –  
“In order to decide whether a person carries on business on his own account it is necessary to consider many different aspects of that person's work activity. This is not a mechanical exercise of running through items on a checklist to see whether they are present in, or absent from, a given situation. The object of the exercise is to paint a picture from the accumulation of detail. The overall effect can only be appreciated by standing back from the detailed picture which has been painted, by viewing it from a distance and by making an informed, considered, qualitative appreciation of the whole. It is a matter of evaluation of the overall effect of the detail, which is not necessarily the same as the sum total of the individual details. Not all details are of equal weight or importance in any given situation. The details may also vary in importance from one situation to another.”

been widely distributed through different channels. Furthermore, feature articles have been published in newspapers and the relevant messages highlighted on panels for display in territory-wide roving exhibitions on the EO to enhance public understanding on this subject. This topic and related court cases have also been discussed and shared with human resources practitioners regularly at meetings of the 18 Human Resources Managers Clubs and at talks on EO delivered by staff of LD to forestall any misunderstanding and possible disputes.

20. In addition to the existing channels and activities to promote public awareness of the subject, LD will step up its promotional efforts targeting in particular employers of small and medium enterprises to enhance their awareness of the possible legal consequences of false self-employment. Specifically, LD will:

- produce specially designed posters to drive home the message to employers and employees of the importance of clarifying the type of engagement before entering into a contract, highlighting the message that employment rights and protection would not be forfeited even though a worker is called or labelled as a contractor or self-employed person in a contract if in essence there exists an employer-employee relationship;
- display the poster at targeted locations and channels with a view to reaching out to those whose occupations are commonly considered to be self-employed; and
- forge closer collaboration with trade unions and employer associations of relevant trades in promoting the awareness of the relevant parties of the distinction between an employee and a self-employed person/contractor.

*(II) Providing a more user-friendly consultation and conciliation service to employees in false self-employment in case of disputes*

21. LD always advises employees to be vigilant and clarify their employment status before entering into contract. They are welcome to approach its Labour Relations Offices for advice in case of doubt. LD officers will explain to them the rights and benefits enjoyed by employees vis-à-vis the self-employed. An information kit has been produced to help enquirers differentiate employees from self-employed persons. If two parties dispute the employer-employee relationship and thus entitlements of the person concerned under the EO, LD will provide conciliation service to help

resolve such disputes in the light of previous court rulings. Should the dispute remain unresolved after conciliation, it would be referred to the Labour Tribunal or the Minor Employment Claims Adjudication Board for adjudication.

22. Where there is a dispute on whether there exists an employer-employee relationship in an employees' compensation case, LD will provide assistance and advice, having regard to the facts of the case and the factors commonly adopted by the Court in determining the employment status of workers and the provisions of the ECO. If the dispute remains unresolved in spite of our assistance, the case shall be adjudicated by the Court and we would refer the employee to the Legal Aid Department for assistance, where appropriate.

*(III) Stepping up enforcement action to safeguard employees' statutory rights*

23. LD has been sparing no effort in safeguarding the statutory rights and benefits of employees through rigorous enforcement of the law. Labour inspectors conduct active inspections to workplaces to check employers' compliance with the law and to educate employees on the protection accorded to them under labour laws. Suspected breaches, when detected, will be thoroughly investigated and prosecution will be instituted against the offending employers wherever there is sufficient evidence. We encourage employees who suspect that they are deprived of statutory rights and benefits to come forward to lodge complaints and to provide us with the details of their employment terms for our investigation. A Complaint Hotline (2815 2200) is in place to facilitate the reporting of such cases. Employees may rest assured that provision of information to enable LD to conduct surprise inspections will not jeopardise their employment opportunity as LD is obliged under the law to observe strict confidentiality of the identity of those who provide intelligence to facilitate enforcement.

24. If a claimant complains that an employer has committed offences by failing to pay wages or statutory benefits under the EO, and the latter defends that the complainant is a self-employed person rather than its/his employee, LD would conduct investigation by examining the "substance" of relationship between both parties, rather than just focusing on the "form" of relationship. Where there is sufficient evidence that the claimant should be regarded as an employee and his employer has breached the EO, LD will take out prosecution against the latter.



## **Consultation with the Labour Advisory Board**

25. The Labour Advisory Board was consulted on the subject on 4 November 2009. Both the employer and employee members shared LD's views regarding the problems of amending the EO and the ECO to cover people on self-employment and/or employees falsely labelled as "self-employed" (regarding paragraphs 16 and 17 above). Employee members indicated that while they would not rule out the option of pursuing legislative change in the future, they agreed with LD and the employer members that, in the present circumstances, the three-pronged approach as proposed by LD would be a more pragmatic and fruitful way forward. Specifically, the Board asked LD to step up promotional efforts with a view to encouraging employees to provide LD with intelligence to facilitate enforcement (paragraph 23). They also asked LD to launch publicity drives targeting SMEs especially those in sectors where false self-employment was a more common practice. Employers must be made aware that false self-employment is costly and counterproductive (paragraphs 11 and 12). At the request of members, LD has also undertaken to keep relevant statistics on cases relating to claims of false self-employment to facilitate better understanding of the problem.

## **Way Forward**

26. Genuine self-employment contributes to economic development and allows individuals greater flexibility in procuring and rendering services taking into account their particular circumstances. False self-employment should be discouraged as it would detract from employees' rights and benefits as well as resulting in legal breaches on the part of the employers. Attempts to set out categorically in the law what constitutes self-employment may be counterproductive since it would provide inadvertently guidance for those who intend to exploit. Despite their apparent imprecision, the present general provisions in the EO and ECO should, on balance, be a more preferred approach given its catch-all capacity. Irrespective of how the law is crafted, the key to tackling the issue is education and promotion, including encouragement of those who may feel aggrieved by suspected false self-employment to report to LD, as well as rigorous enforcement.

Know Your  
**Identity**  
and **Rights**

“Employee” and “Contractor  
or Self-employed Person”



勞工處  
Labour Department

# Know Your Identity and Rights



## **“Employee” and “Contractor or Self-employed Person”**

- ◆ To avoid misunderstanding or dispute, the relevant persons should understand clearly their mode of cooperation according to their intention and clarify their identities, whether the person is engaged as an employee or a contractor/self-employed person, before entering into a contract. This will help safeguard mutual rights and benefits.

### **How to distinguish an “employee” from a “contractor or self-employed person”**

- ◆ There is no one single conclusive test to distinguish an “employee” from a “contractor or self-employed person”. In differentiating these two identities, all relevant factors of the case should be taken into account. Moreover, there is no hard and fast rule as to how important a particular factor should be. The common important factors include:
  - calculation of remuneration and scope of work
  - control over work procedures
  - ownership and provision of production tools and materials
  - whether the person can hire other helpers
  - bearing of financial risk over business (e.g. any prospect of profit or risk of loss)
  - responsibilities in insurance and tax
  - traditional structure and practices of the trade or profession concerned
- ◆ **Since the actual circumstances in each case are different, the final interpretation will rest with the court in case of a dispute.**

## Important Points to Note for Employees

- ◆ An employee should identify who his employer is before entering into an employment contract. If necessary, before the commencement of employment, the employee may make a written request to the employer for written information on conditions of employment in accordance with the Employment Ordinance.
- ◆ An employer should not unilaterally change the status of his employee to a contractor or self-employed person. Otherwise, the employee may lodge a claim for remedies against his employer on the ground of unreasonable variation of the terms of the employment contract under the Employment Ordinance. Moreover, the employee may also make a claim for termination compensation against his employer on the ground of constructive dismissal under common law.
- ◆ **If an employee intends to change his status to a contractor or self-employed person, he must cautiously assess the pros and cons involved, including the employment rights and benefits that he may lose in such a change.**

### Some differences in the rights and benefits enjoyed by an “employee” and a “contractor or self-employed person”

Rights and benefits	Employee	Contractor or Self-employed person
Entitled to basic protection under the Employment Ordinance. If engaged under a “continuous contract” <sup>Note1</sup> , also entitled to benefits such as paid annual leave, statutory holiday pay, sickness allowance, severance payment or long service payment etc.	✓	X
Entitled to protection under the Employees’ Compensation Ordinance, including sick leave and compensation arising from work injuries	✓	X <sup>Note2</sup>
Entitled to protection under the Mandatory Provident Fund Schemes Ordinance, including <b>employer’s contribution</b>	✓	X <sup>Note3</sup>

Note1 An employee who has been employed continuously by the same employer for four weeks or more, with at least 18 hours worked in each week is regarded as being employed under a continuous contract.

Note2 A contractor or self-employed person should consider insuring himself against personal accidents at work.

Note3 A contractor or self-employed person should enrol in a Mandatory Provident Fund scheme and make contributions on his own.

## Important Points to Note for Employers

- ◆ An employer should not unilaterally change the status of his employee to a contractor or self-employed person. Otherwise, the employee may lodge a claim for remedies against his employer on the ground of unreasonable variation of the terms of the employment contract under the Employment Ordinance. Moreover, the employee may also make a claim for termination compensation against his employer on the ground of constructive dismissal under common law.
- ◆ **An employer should cautiously assess the risks involved if he enters into a contract to engage someone as a contractor or self-employed person. If in essence there exists an employer-employee relationship, the employer is still required to fulfil his responsibilities under the relevant legislation even though his worker is called or has labelled himself as a contractor or self-employed person in the contract.** Appended below are two court cases for reference:-

### Court Case 1

The Plaintiff alleged that the Defendant Company employed him as a woodworker. As the Defendant Company had not paid him wages for four months, the Plaintiff lodged claims against the Defendant Company for wage arrears and severance payment or long service payment upon termination of contract. The Defendant Company, however, alleged that the Plaintiff was an independent contractor rather than its employee. It only admitted that money was due to the Plaintiff for work done and refused to pay severance payment or long service payment.

The High Court ruled that the Plaintiff was an employee of the Defendant Company on the following grounds: The Defendant Company exercised control over the work quality of the Plaintiff; the Plaintiff could not control the cost or set the price based on considerations of profit or loss; the Plaintiff had never hired workers on his own, nor had he ever been told that he could do so; all materials and equipment were provided by the Defendant Company; and the Defendant Company filed tax returns in respect of the Plaintiff on numerous occasions. Moreover, the Judge did not accept non-payment of sickness allowance, statutory holiday pay and annual leave pay as grounds of defence. Hence, the Defendant Company was ordered to pay arrears of wages and severance payment to the Plaintiff.

(For details, please refer to HCA 1418/96)

## Court Case 2

The Claimant was a saleslady selling the products of the Defendant Company in the specific department stores arranged. In the beginning, both parties did not enter into any written contract. Later on, the Claimant signed a contract identifying herself as a self-employed person. Her remuneration was \$300 per day plus a commission based on daily sales. Each month, the Defendant Company would also make payment at 2.5% of the Claimant's earnings for her contributions to a Mandatory Provident Fund scheme (MPF scheme). Upon termination of contract, the Claimant lodged claims against the Defendant Company for wages in lieu of notice, annual leave pay, statutory holiday pay and severance payment. However, the Defendant Company denied any employment relationship with the Claimant.

The Labour Tribunal ruled in favour of the Claimant on a number of grounds, including: The Defendant Company paid the Claimant \$300 per day as basic salary; the Defendant Company was responsible for arranging the sale venues and providing the products, and it supervised the Claimant's attendance and work performance through the department stores concerned; the Claimant had to sell the products in accordance with the guidelines of the Defendant Company; and the Claimant did not have to make investment or bear any financial risks, nor was she allowed to hire helpers.

The Defendant Company appealed against the decision to the High Court but the appeal was dismissed. The Judge pointed out that although the Claimant refused to work at the location arranged by the Defendant Company, it was only an isolated incident which was not sufficient to override the Defendant Company's control over the Claimant as the employer. Besides, if the Defendant Company was not the employer, it was unreasonable that it would make an extra monthly payment at 2.5% of the Claimant's commission for her MPF contributions. Furthermore, even though the Claimant signed a contract identifying herself as a self-employed person and kept customers' records and information in her custody, these arguments were not sufficient to reverse the verdict that both parties were bound by an employer-employee relationship when other factors were taken into consideration.

(For details, please refer to HCLA 11/2006)

Know Your  
**Identity** ?  
and **Rights**

This leaflet aims to highlight the differences between an “employee” and a “contractor or self-employed person”. It should be noted that the relevant ordinances and court judgements remain the sole authority for the interpretation of provisions of the law and the court cases mentioned.

## Enquiry



**2717 1771** (the hotline is handled by the 1823 Call Centre)



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



Enquiry in person to offices of the Labour Relations Division of the Labour Department

### Offices of the Labour Relations Division of the Labour Department

<b>HONG KONG</b>	
Hong Kong East 34/F., Revenue Tower, 5 Gloucester Road, Wan Chai, Hong Kong	Hong Kong West 3/F., Western Magistracy Building, 2A Pokfulam Road, Hong Kong
<b>KOWLOON</b>	
Kowloon South 2/F., Mongkok Government Offices, 30 Luen Wan Street, Mongkok, Kowloon	Kowloon West Room 1009, 10/F., Cheung Sha Wan Government Offices, 303 Cheung Sha Wan Road, Kowloon
Kowloon East Room 1206, 12/F., Stelux House, 698 Prince Edward Road East, San Po Kong, Kowloon	Kwun Tong 6/F., Kowloon East Government Offices, 12 Lei Yue Mun Road, Kwun Tong, Kowloon
<b>NEW TERRITORIES</b>	
Kwai Chung 6/F., Kwai Hing Government Offices, 166-174 Hing Fong Road, Kwai Chung, New Territories	Tuen Mun Room 2720, Tuen Mun Parklane Square, 2 Tuen Hi Road, Tuen Mun, New Territories
Shatin & Tai Po Rooms 304-313, 3/F., Sha Tin Government Offices, 1 Sheung Wo Che Road, Sha Tin, New Territories	Tsuen Wan 5/F., Tsuen Wan Government Offices, 38 Sai Lau Kok Road, Tsuen Wan, New Territories

October 2009

## Work Injury Compensation

### Points to Note for *“Employees” and “Self-employed Persons”*





**I**f an employee sustains an injury or dies as a result of an accident arising out of and in the course of his employment, his employer is in general liable to pay compensation under the Employees' Compensation Ordinance (ECO).

According to the ECO, an injured employee of a sub-contractor can make a claim against the principal contractor for employees' compensation if his employer has failed to pay him his entitled compensation. In such circumstances, the injured employee may issue a written request to his employer for the supply of the name and address of the principal contractor in order that he could make a claim against the principal contractor.

In employees' compensation cases, notwithstanding the production of a contract by the "employer" indicating that the worker is a self-employed sub-contractor, the court could still make adjudication on whether there exists an "employer-employee" relationship between the parties concerned, based on the facts of the case. Should an "employer-employee" relationship be established between the two parties, the employer is liable to pay compensation to the injured employee in accordance with the ECO.

### **A Court case for reference:**

In a civil case adjudicated by the Court of Appeal of the High Court of the HKSAR (CACV 273/98), the family members of a scaffold worker who died as a result of falling from height were awarded compensation under the ECO. In the case, the employer alleged that the work was sub-contracted to the scaffold worker who was an independent self-employed person. On a detailed analysis of the relevant evidence and facts of the case, the Court eventually ruled that the scaffold worker was an employee, and not an independent sub-contractor, and the employer was obliged to pay the employees' compensation.

**The following are factors considered by the Court for verifying whether there exists an employer-employee relationship in the case:**

**1. Any agreement on lump-sum remuneration for completion of the work and any confinement on the work scope**

It is to be noted that even in case of an "employer-employee" relationship, the parties involved might sometimes agree on piece-rate for computing the employee's wages.

**2. Degree of control over the work**

Generally, the more the control the employer has over the procedures, the pace and the manner adopted for the production, the more the likelihood that both parties are bound by an "employer-employee" relationship.

**3. Provision of work equipment**

Generally, an employee is provided with equipment and tools by his employer. However, it is not uncommon in some trades that the employees would carry with them their frequently-used tools when attending work.

**4. Recruitment and dismissal of other helping hands**

If the employer also hires some other employees to assist a worker in completing his work, there is a higher likelihood that the worker in question is just another employee of the employer.

**5. Bearing of financial risks**

In general, employees do not have to bear any financial risks, even if he is a piece-rated worker.

**6. Responsibility for investment and management**

Generally, an ordinary employee does not have to input capital for investment or assume a management role.

**7. Profit making through effective work management**

Generally, an employee does not have such an opportunity.

**8. Other relevant factors**

Including the intention of both parties.

## Self-employed person should consider taking out personal accident insurance

The Employees' Compensation Ordinance does not cover self-employed persons. A self-employed person should carefully assess the possible risk at work and take out a personal accident insurance policy of appropriate amount for safeguarding the interest of himself and his family members. It is to be noted that persons taking out personal accident insurance policy may not necessarily be self-employed as employees could also take out personal accident insurance policy for securing a better insurance protection.

## Notes for employees

An employee should ascertain that his employer has taken out an employees' compensation insurance policy with adequate amount of insurance cover. An insured employer (with the exception of employers of domestic helpers) is required to display, at a conspicuous place of the work place, a notice of a valid employees' compensation insurance policy. An employee should notify the Labour Department immediately if he discovers that his employer has not taken out an employees' compensation insurance policy for him (Tel:2815 2200).

## Addresses of Employees' Compensation Division offices:

Hong Kong Offices (cases on Hong Kong Island and Outlying Islands)	16/F, Southorn Centre, 130 Hennessy Road, Hong Kong
Kowloon Offices (cases in Kowloon and cases involving government employees)	10/F, Cheung Sha Wan Government Offices, Cheung Sha Wan Road, Kowloon
Tsuen Wan and Kwai Chung Offices (cases in Tsuen Wan, Kwai Chung and Western New Territories)	6/F, Tsuen Wan Government Offices, 38 Sai Lau Kok Road, Tsuen Wan, New Territories
Shatin Office (cases in Shatin and Northern New Territories)	2/F, Shatin Government Offices, 1 Sheung Wo Che Road, Shatin, New Territories
Fatal Cases Office	6/F, Harbour Building, 38 Pier Road, Central, Hong Kong

Labour Department's Homepage: <http://www.labour.gov.hk>

Enquiry Phone number: 2717 1771  
(Handled by "1823 Citizen's Easy Link")

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