



Labour Department (Headquarters)

勞工處 (總處)

Your reference 來函編號 :

Our reference 本處檔案編號 : LD CR/1/814 Pt. 97

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16 July 2012

Clerk to Panel on Manpower
Legislative Council
Legislative Council Complex
1 Legislative Council Road, Central
Hong Kong
(Attn.: Ms Alice LEUNG)

Dear Ms LEUNG,

Panel on Manpower
Provision of supplementary information in response to
the list of follow-up actions

I refer to the list of follow-up actions (position as at 14 June 2012) prepared by the Council Business Division 2 of the Legislative Council Secretariat (LC Paper No. CB(2)2353/11-12(01)) requiring the Administration to take follow-up actions on matters discussed at meetings of the Panel on Manpower.

Wage arrangement for non-skilled workers engaged in government service contracts

In respect of Item 8(b) and 8(c), Members requested the Administration to advise whether there was any precedent judgment by the court that the practice adopted by the Labour Department and the Labour Tribunal when calculating employees' entitlements under the Employment Ordinance (EO), such as calculating untaken annual leave/holiday pay on the basis of 30 days per month, would create an implied obligation on employers. Members also requested the Administration to provide the Panel with a copy of the revised Standard Employment Contract (SEC) for use by contractors of government service in engaging non-skilled workers to carry out the service

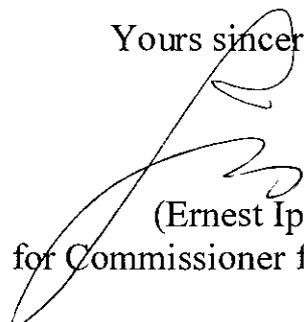
contracts. The response of the Administration is as follows.

The EO has clear stipulation on the rate of the various employees' entitlements provided under the Ordinance. For example, the rate of annual leave pay is laid down in section 41C of the EO and its calculation is not based on the number of days per month. Generally speaking, for an employee who ceases to be employed and there is untaken annual leave due to him, the daily rate of annual leave pay payable to him is a sum equivalent to the daily average of the wages earned by him during the period of 12 months immediately before the date of termination of contract. In calculating the daily average, any periods for which the employee was not paid his wages or full wages by reason of, for example, any maternity leave, rest day, sickness day, holiday or annual leave taken by the employee, and any wages paid to him for these periods, are to be disregarded. Similar provisions are provided under the EO for the calculation of other benefits like holiday pay.

The EO does not prescribe if rest days should be with pay. Whether in an employment contract rest days are paid is subject to the agreement between the employer and the employee.

In tandem with the implementation of the statutory minimum wage (SMW), the Administration has promulgated a new wage arrangement for non-skilled workers engaged in government service contracts that rely heavily on the deployment of such workers. Under the new arrangement, contractors shall pay their non-skilled workers at not less than the SMW rate plus one rest day with pay in every period of seven days. To give effect to this new arrangement, the Administration has revised the SEC for government service contractors and their non-skilled workers. A copy of the revised SEC is attached for reference.

Yours sincerely,



(Ernest Ip)
for Commissioner for Labour

Standard Employment Contract
for Employees of Contractors of Government Service Contract (Note 1)
Government Service Contract No.: _____ (Note 2)

This employment contract is made between _____
 (“the Employer”) at the address of _____
 _____ and Mr/Ms* _____
 (Hong Kong Identity Card No. _____) (“the Employee”) at the address
 of _____. The Employer and the Employee
 understand and agree to observe the terms of employment set out below. Both parties understand
 that this employment contract is governed by the laws of Hong Kong, in particular, the Employment
 Ordinance, Chapter 57, the Employees’ Compensation Ordinance, Chapter 282 and the Minimum
 Wage Ordinance, Chapter 608. Both parties acknowledge that they have read the attached
 Guidance Notes on Signing of Standard Employment Contract.

1. This employment contract shall commence on _____ (day/month/year).
2. The Employee shall be employed by the Employer as _____ (post title).
The place of work is _____ (as
specified in government service contract no.: _____ (Note
2)). If necessary, the Employer shall be allowed to deploy the Employee to work
within _____ region (Note 3) under an urgent
situation or on an ad hoc and limited basis.
3. (a) The Employee shall work _____ days a week, and his/her daily working hours shall
be: (Note 4)
 _____ a.m./p.m.* to _____ a.m./p.m.* and _____ a.m./p.m.* to _____ a.m./p.m.*
 on shift _____ a.m./p.m.* to _____ a.m./p.m.* and _____ a.m./p.m.* to _____ a.m./p.m.*;
_____ a.m./p.m.* to _____ a.m./p.m.* and _____ a.m./p.m.* to _____ a.m./p.m.*; or
_____ a.m./p.m.* to _____ a.m./p.m.* and _____ a.m./p.m.* to _____ a.m./p.m.*
(b) The meal time of the Employee shall be from _____ a.m./p.m.* to _____
a.m./p.m.* / _____ hour(s)/minutes* per day and is:
 counted as hours worked and its pay has been included in the monthly wages payable
under Clause 6(a); (Note 5)
 not counted as hours worked and shall be paid at the rate of HK\$ _____ per day on
top of the monthly wages payable under Clause 6(a)/unpaid*.

Under exceptional circumstances and at the request of the relevant procuring department, the
Employer may make appropriate adjustment to the above working hours, provided that such
adjustment should be on an ad hoc basis and it should not affect the original number of
working hours in a day of the Employee.

4. The Employee is entitled to 1 paid rest day in every period of 7 days. The paid rest day for the Employee shall be on every _____ / granted on an irregular basis* (in which case the Employer must inform the Employee in writing of the appointed paid rest days, or exhibit the Employee's roster of paid rest days in a conspicuous place in the place of employment, before the beginning of each month). The rest day pay of the Employee shall be a sum equivalent to the pay for the Employee's work on a normal working day (excluding overtime pay).
5. Contractual day-off other than paid rest days as specified in Clause 4 shall be (if applicable):
- paid at the rate of HK\$ _____ per day/a sum equivalent to the pay for the Employee's work on a normal working day* on top of the monthly wages payable under Clause 6(a).
 - unpaid.
6. If the Employee works in accordance with the working hours as specified in Clause 3(a) of this employment contract, he/she shall receive:
- (a) monthly wages (excluding any overtime pay) of HK\$ _____, which shall include wages for hours worked by the Employee on his/her normal working days and rest day pay as specified in Clause 4. (Note 5)
Irrespective of the number of days in a particular month, the Employee shall be paid monthly wages equivalent to the wages specified in this employment contract. The Employee's deductions for absence from work shall be calculated on the basis of the number of normal working days plus paid rest days in a particular month.
 - wages for working in each workplace calculated pro rata according to the monthly wages specified in the Tables under Clause 2 of the Schedule if he/she is employed to work for the Employer under different government service contracts undertaken by the Employer in the same region. (The Schedule to this employment contract must also be completed.)Any allowance shall be paid on top of the above wages.
 - (b) the overtime pay and pay for work on rest day/contractual day-off shall be _____% (the entered figure must not be less than 100) of the wage rate for the Employee's work on his/her normal working days if the Employee is required to work beyond the working hours as specified in Clause 3(a) of this employment contract or on a rest day/contractual day-off. (Note 6)
 - (c) the pay for meal time if the periods of meal time as specified in Clause 3(b) are not counted as hours worked and are payable.
 - (d) the pay for contractual day-off, if any, as specified in Clause 5.
 - (e) additional remuneration, if any, in accordance with the Minimum Wage Ordinance. (Note 7)
 - (f) any other sum payable to the Employee under the provisions of this employment contract or the laws of Hong Kong.

7. The wage period shall be one month. Wages (including overtime pay and other sum payable under Clause 6, if any) shall be paid in any case not later than 7 days after the expiry of the wage period. Similarly, wages and any sum due to the Employee (including any other sums due in respect of this employment contract, if any) must be paid not later than 7 days after the termination of the employment contract.
8. The Employer and the Employee agree that all wages (including overtime pay and other sum payable under Clause 6 but excluding any sum payable upon termination of this employment contract) shall be paid directly by way of automatic payment into a bank account in the Employee's name with a bank licensed under the Banking Ordinance, Chapter 155. The Employer shall also provide a wage record (pay slip) setting out the breakdown of wages for each wage period to the Employee for reference. If the Employee agrees, the Employer may pay the sum payable upon termination of this employment contract (including wages) by cheque not later than 7 days after the termination of the contract.
9. No deductions shall be made by the Employer from the wages of the Employee other than permitted deductions made in accordance with the Employment Ordinance and the Employee's contribution in accordance with the Mandatory Provident Fund Schemes Ordinance, Chapter 485, and the sum to be deducted shall not exceed the limit stipulated therein. Subject to the provisions of the law, any operating and/or administrative costs due to wear and tear of fixed assets and equipment including expenses on uniforms (clothing, shoes, socks, etc.), training fees, administrative costs, cleaning fees, tool charges, travelling expenses, deposits, etc, and any sum and/or deductions imposed on the Employer by the procuring department pursuant to the terms of the relevant government service contract shall be borne by the Employer and not be charged to the Employee or recovered by deductions from the Employee's wages.
10. The Employee shall be entitled to statutory rights and benefits and the relevant protection such as rest days, statutory holidays, paid annual leave, maternity leave and sickness allowance in accordance with the Employment Ordinance.
11. The Employer shall arrange the Employee to take rest days, statutory holidays and paid annual leave on separate dates in accordance with the Employment Ordinance. These holidays must not be substituted by each other.
12. The Employer shall comply with the provisions of the Employees' Compensation Ordinance. The Employee shall be entitled to the rights, benefits and protection provided under the Employees' Compensation Ordinance.
13. The Employee is/is not* required to obtain a security personnel permit according to the requirements of the Security and Guarding Services Ordinance, Chapter 460. (Note 8).
14. The Employer shall arrange the Employee to enrol as a member of a mandatory provident fund scheme and pay the contribution to the relevant registered scheme each month in accordance with the Mandatory Provident Fund Schemes Ordinance. The Employer shall issue to the Employee a record of mandatory provident fund contribution within 7 working days after each monthly contribution.

15. When typhoon signal no. 8 or above is hoisted,
- the Employee is not required to work and no wages shall be deducted. The Employee is required to resume duty if typhoon signal no. 8 is lowered not less than _____ hours before close of working hours.
 - the Employee is required to work and is entitled to reimbursement of extra travelling expenses.
 - the Employee is required to work and is entitled to a typhoon allowance of HK\$_____.
16. When black rainstorm warning is hoisted,
- the Employee is not required to work and no wages shall be deducted. The Employee is required to resume duty if the black rainstorm warning is lowered not less than _____ hours before close of working hours.
 - the Employee is required to work and is entitled to reimbursement of extra travelling expenses.
 - the Employee is required to work and is entitled to a rainstorm allowance of HK\$_____.
- 17*. The probation period of the Employee shall be _____ day(s)/month(s) *.
18. Either party may terminate this employment contract under the following circumstances:
- During the first month of the probation period, both parties are not required to give notice or payment in lieu of notice. During the rest of the probation period, a notice period of _____ day(s)/month(s) * or payment in lieu of notice is required.
After the probation period, a notice period of _____ day(s)/month(s) * or payment in lieu of notice is required.
 - There is no probation period, a notice period of _____ day(s)/month(s) * or payment in lieu of notice is required.
19. Should there be any legislative amendment to the relevant legislation subsequent to the signing of this employment contract which in effect confers more favourable terms on the Employee than what he/she is entitled to under this employment contract, the provision of the legislation shall prevail and the employment contract shall be taken to be varied accordingly. Should the rights and benefits conferred on the Employee after the legislative amendment is still less favourable than the terms of this employment contract, the terms of this employment contract shall prevail.
20. The Employer shall provide a copy of this employment contract signed by both parties (including the Schedule to this employment contract, if any, and the attached Guidance Notes on Signing of Standard Employment Contract) to the Employee for his/her retention.
21. Any variation, amendment, cancellation or addition to any terms of this employment contract (including the Schedule) must not extinguish or reduce any right, benefit or protection conferred upon the Employee by this employment contract, and must be duly signed by both parties, otherwise it shall be void. The Employer shall provide a copy of the amendments duly signed by both parties to the Employee for retention.

22. The Employee consents to the Employer providing his/her wage records, attendance records and other relevant information to _____ [name(s) of procuring department(s)] (Note 9) for the purpose of monitoring the Employer's fulfillment of employment-related obligations under the government service contract.
23. The Employee consents to the Employer providing copies of this signed employment contract together with the amendments, if any, to _____ [name(s) of procuring department(s)](Note 9) for record and for the purpose of monitoring the Employer's compliance with the government service contract. The Employee also consents to the procuring department(s) providing copies of this signed employment contract together with any amendments, and any other relevant information to other government departments and enforcement agencies for the purpose of monitoring the Employer's compliance with the relevant legislation.

Employee's signature

Signature of Employer or Employer's representative

 Name: _____
 HK Identity Card No.: _____
 Date: _____

 Name: _____
 Post: _____
 Date: _____

 Company Chop

- * Delete whichever is inapplicable
 Please mark a "✓" at the appropriate box

Notes:

- Note 1: In accordance with the relevant mandatory requirements specified in government service contracts, government service contractors are required to enter into this Standard Employment Contract with each and every employee who is employed to work under government service contracts for more than 7 days in posts which signing of Standard Employment Contract is specified in the relevant government service contracts.
- Note 2: If the Employee is employed by the Employer to work under more than one government service contract undertaken by the Employer in the same region, the parties must also complete the Schedule but are not required to fill in the government service contract no., Clause 2, Clause 3 and Clause 6(b).

- Note 3: "Region" refers to an area delineated under the Declaration of Geographical Constituencies (Legislative Council) Order 2007, with the exception of Islands District which is separated from New Territories West. As such, there are 6 relevant regions, namely, Hong Kong Island, Kowloon West, Kowloon East, New Territories West, New Territories East and Islands District. The parties shall state one region only in accordance with the area of the place of work specified in Clause 2.
- Note 4: The Employer has committed in the relevant government service contract that the Employee's maximum number of working hours in a day shall be _____ hours.
- Note 5: (i) The wage rate of the monthly wages specified in Clause 6(a) of this employment contract shall not be less than the wage rate of the monthly wages committed by the Employer in the relevant government service contract.
- (ii) The wage rate of the monthly wages specified in Clause 6(a) of this employment contract shall be calculated based on the maximum number of _____ normal working days plus paid rest days per month and the average number of _____ normal hours of work per day. If the periods of meal time as specified in Clause 3(b) are counted as hours worked, such periods shall be included in the above average number of normal hours of work per day for derivation of the monthly wages.
- (iii) The wage rate of the monthly wages of HK\$ _____ committed by the Employer in the relevant government service contract is calculated on the basis of 31 days (27 normal working days plus 4 paid rest days) per month and the average number of _____ normal hours of work per day.
- Note 6: The wage rates of overtime pay and pay for work on rest day/contractual day-off specified in Clause 6(b) of this employment contract shall not be less than 100% of the wage rates calculated using the monthly wages specified in Clause 6(a) of this employment contract and the number of normal working days plus paid rest days in the month and the average number of normal hours of work per day specified in Note 5(ii).
- Note 7: Under the Minimum Wage Ordinance, the minimum wage for an employee for a wage period is the amount derived by multiplying the total number of hours (including any part of an hour) worked by the employee in the wage period by the minimum hourly wage rate for the employee provided by the Ordinance. A payment made to an employee in any wage period for any time that is not hours worked by the employee must not be counted as part of the wages payable in respect of that or any other wage period. If the wages payable to an employee in respect of any wage period are less than the minimum wage for the employee for that period, the employee is entitled to additional remuneration in respect of that period of the amount derived by subtracting from that minimum wage the amount of wages that is payable in respect of that period.
- Note 8: All employees employed to perform security work are required to obtain a permit in accordance with the Security and Guarding Services Ordinance.
- Note 9: If the Employee is employed by the Employer to work under more than one government service contract, the names of all relevant procuring departments have to be filled in Clause 22 and Clause 23 of this employment contract.

Standard Employment Contract
for Employees of Contractors of Government Service Contracts
Schedule

(If the Employee is employed by the Employer to work under more than one government service contract, this Schedule should also be completed. Clause 2, Clause 3 and Clause 6(b) of the Standard Employment Contract are not applicable and shall be left blank.)

1. The Employee shall be employed by the Employer as _____(post title). The place of work is _____(may fill in more than one location). If necessary, the Employer shall be allowed to deploy the Employee to work within _____region (Note 10) under an urgent situation or on an ad hoc and limited basis.

2. The Employee shall work _____ days a week. The daily working hours shall accord with that specified in the relevant government service contracts awarded to the Employer. Information on relevant government service contracts is listed in the Table(s) below. The actual monthly wages to be received by the Employee shall be calculated in accordance with the monthly wages listed in the following Tables in respect of different government service contracts under which the Employee has worked during a particular month and on the basis of the number of normal working days plus paid rest days in that particular month (if the number of government service contracts is more than two, please continue to list out after Table (2)):

| Table (1) | (a) | Government Service Contract No. | Procuring Department |
|-----------|--|---|--|
| | | Number of working hours in a day | Maximum number of working hours in a day |
| (b) | Daily working hours | <input type="checkbox"/> ____ a.m./p.m.* to ____ a.m./p.m.* and ____ a.m./p.m.* to ____ a.m./p.m.* <input type="checkbox"/> on shift ____ a.m./p.m.* to ____ a.m./p.m.* and ____ a.m./p.m.* to ____ a.m./p.m.*; ____ a.m./p.m.* to ____ a.m./p.m.* and ____ a.m./p.m.* to ____ a.m./p.m.*; or ____ a.m./p.m.* to ____ a.m./p.m.* and ____ a.m./p.m.* to ____ a.m./p.m.* The meal time of the Employee shall be from ____ a.m./p.m.* to ____ a.m./p.m.* / ____hour(s)/minutes* per day and is: <input type="checkbox"/> counted as hours worked and its pay has been included in the monthly wages payable under (c) of this Table; (Note 11) <input type="checkbox"/> not counted as hours worked and shall be paid at the rate of HK\$ ____ per day on top of the monthly wages payable under (c) of this Table /unpaid*. Under exceptional circumstances and at the request of the relevant procuring department, the Employer may make appropriate adjustment to the above daily working hours, provided that such adjustment shall be on an ad hoc basis and it shall not affect the original number of working hours in a day of the Employee. | |
| (c) | If the Employee works in accordance with the working hours as specified in item (b) of this Table and works _____ days a week, he/she shall receive monthly wages (excluding any overtime pay) of HK\$ _____, which shall include wages for hours worked by the Employee on his/her normal working days and rest day pay as specified in Clause 4 of the Standard Employment Contract. (Note 11) | | |
| (d) | The wage rate for overtime pay and pay for work on rest day/contractual day-off shall be ____ % (the entered figure must not be less than 100) of the pay for the Employee's work on his/her normal working days if the Employee is required to work beyond the working hours as specified in item (b) of this Table or on a rest day/contractual day-off. (Note 12) | | |

| | | | | | |
|--------------|-----|--|---|--|--|
| Table (2) | (a) | Government Service Contract No. | | Procuring Department | |
| | | Number of working hours in a day | | Maximum number of working hours in a day | |
| | (b) | Daily working hours | <input type="checkbox"/> ____ a.m./p.m.* to ____ a.m./p.m.* and ____ a.m./p.m.* to ____ a.m./p.m.* <input type="checkbox"/> on shift ____ a.m./p.m.* to ____ a.m./p.m.* and ____ a.m./p.m.* to ____ a.m./p.m.*; ____ a.m./p.m.* to ____ a.m./p.m.* and ____ a.m./p.m.* to ____ a.m./p.m.*; or ____ a.m./p.m.* to ____ a.m./p.m.* and ____ a.m./p.m.* to ____ a.m./p.m.* The meal time of the Employee shall be from ____ a.m./p.m.* to ____ a.m./p.m.* /____hour(s)/minutes* per day and is: <input type="checkbox"/> counted as hours worked and its pay has been included in the monthly wages payable under (c) of this Table; (Note 11) <input type="checkbox"/> not counted as hours worked and shall be paid at the rate of HK\$ ____ per day on top of the monthly wages payable under (c) of this Table /unpaid*. Under exceptional circumstances and at the request of the relevant procuring department, the Employer may make appropriate adjustment to the above daily working hours, provided that such adjustment shall be on an ad hoc basis and it shall not affect the original number of working hours in a day of the Employee. | | |
| | (c) | If the Employee works in accordance with the working hours as specified in item (b) of this Table and works _____ days a week, he/she shall receive monthly wages (excluding any overtime pay) of HK\$ _____, which shall include wages for hours worked by the Employee on his/her normal working days and rest day pay as specified in Clause 4 of the Standard Employment Contract. (Note 11) | | | |
| | (d) | The wage rate for overtime pay and pay for work on rest day/contractual day-off shall be ____ % (the entered figure must not be less than 100) of the pay for the Employee's work on his/her normal working days if the Employee is required to work beyond the working hours as specified in item (b) of this Table or on a rest day/contractual day-off. (Note 12) | | | |

3. If the Employee works under different government service contracts awarded to the Employer:

- (a) The statutory benefits of the Employee including holiday pay, annual leave pay and sickness allowance shall be calculated in accordance with the Employment Ordinance.

If it is not possible to ascertain the amount of holiday pay, annual leave pay, sickness allowance and other statutory benefits to which the Employee is entitled, the sum shall be calculated in accordance with the highest monthly wages among those listed in the Tables under Clause 2 of this Schedule.

- (b) The rest day pay of the Employee shall be the average daily wage of the Employee for work on a normal working day (excluding overtime pay) in the month. The Employer shall pay the Employee such rest day pay not later than the day on which the Employee is next paid his wages after the rest day.
- (c) If the Employee is not provided with any work for a period, the Employee shall still receive wages equivalent to the wages which he/she would have earned if he/she had worked for that period during which work is not provided.

If it is not possible to ascertain the wages which the Employee would have earned for the period during which work is not provided, the sum shall be calculated in accordance with the highest monthly wages among those listed in the Tables under Clause 2 of this Schedule.

- The Employer and the Employee may choose an amount calculated at a wage rate no less than the highest wage rate of the monthly wages among those listed in the Tables under Clause 2 of this Schedule for calculating the monthly wages of the Employee. If this is the case, the Employee shall work in accordance with the number of working days as specified in Clause 2 and the working hours as specified in the relevant government service contracts, and he/she shall receive monthly wages (excluding any overtime pay) of HK\$ _____, which shall include wages for hours worked by the Employee on his/her normal working days and rest day pay as specified in Clause 4 of the Standard Employment Contract. The overtime pay and pay for work on rest day/contractual day-off shall be _____% (the entered figure must not be less than 100) of the wage rate for the Employee's work on his/her normal working days if the Employee is required to work beyond the daily working hours in respect of the relevant government service contract as specified in the Tables under Clause 2 of this Schedule or on a rest day/contractual day-off. (Note 13)

Employee's signature

Signature of Employer or Employer's representative

 Name: _____
 HK Identity Card No.: _____
 Date: _____

 Name: _____
 Post: _____
 Date: _____

 Company Chop

- * Delete whichever is inapplicable
 Please mark a "✓" at the appropriate box

Notes:

Note10: "Region" refers to an area delineated under the Declaration of Geographical Constituencies (Legislative Council) Order 2007, with the exception of Islands District which is separated from New Territories West. As such, there are 6 relevant regions, namely, Hong Kong Island, Kowloon West, Kowloon East, New Territories West, New Territories East and Islands District. The parties shall state one region only in accordance with the area of the place of work specified in Clause 1 of this Schedule.

- Note 11: (i) The wage rates of the monthly wages listed in the Tables under Clause 2 of this Schedule shall not be less than the wage rates of the monthly wages committed by the Employer in the relevant government service contracts.
- (ii) The wage rates of the monthly wages listed in the Tables under Clause 2 of this Schedule are calculated based on the following maximum number of normal working days plus paid rest days per month and average number of normal hours of work per day. If the periods of meal time as specified in the Tables under Clause 2 are counted as hours worked, such periods shall be included in the average number of normal hours of work per day for derivation of the monthly wages.

| | <u>Table (1)</u> | <u>Table (2)</u> |
|---|------------------|------------------|
| Maximum number of normal working days plus paid rest days per month | days | days |
| Average number of normal hours of work per day | hours | hours |

- (iii) The wage rates of the monthly wages committed by the Employer in the relevant government service contracts specified in the Tables under Clause 2 of this Schedule are calculated on the basis of 31 days (27 normal working days plus 4 paid rest days) per month and the following average number of normal hours of work per day:

| | <u>Table (1)</u> | <u>Table (2)</u> |
|--|------------------|------------------|
| Monthly wages committed in government service contract | HK\$ | HK\$ |
| Average number of normal hours of work per day | hours | hours |

Note 12: The wage rates of overtime pay and pay for work on rest day/contractual day-off specified in the Tables under Clause 2 of this Schedule shall not be less than 100% of the wage rates calculated using the monthly wages specified in item (c) of the Tables under Clause 2 of this Schedule and the relevant number of normal working days plus paid rest days in the month and the average number of normal hours of work per day as specified in Note 11(ii).

Note 13: The wage rates of overtime pay and pay for work on rest day/contractual day-off shall not be less than 100% of the wage rates calculated based on the chosen monthly wages specified in the second box of Clause 3, the number of normal working days plus paid rest days in the month and the average number of normal hours of work per day.

**Guidance Notes on Signing of Standard Employment Contract (SEC)
for Employees of Contractors of Government Service Contracts**

The Guidance Notes explain the points to note when filling in the SEC and the Schedule. Before signing the SEC, the employer and the employee should read the contents of the SEC and these Guidance Notes thoroughly to ensure that both parties understand all the contents. The employer and the employee should refer to the Employment Ordinance (Cap. 57) for statutory provisions on employees' rights and benefits. Please note that the Employment Ordinance only lays down the minimum requirements of employment terms. Employers and employees may enter into employment terms more favourable than those provided in the Employment Ordinance. They may also refer to the booklet "A Concise Guide to the Employment Ordinance" published by the Labour Department for reference.

Points to note when filling in the SEC and the Schedule

2. The monthly wages committed by the employer in the government service contract shall not be less than the amount derived by multiplying the maximum number of normal working days plus paid rest days per month (i.e. 27 normal working days plus 4 paid rest days) and the average number of normal hours of work per day of the employee by the prescribed minimum hourly wage rate under the Minimum Wage Ordinance ("statutory minimum wage plus rest day pay rate"). However, if the wage rate of the average monthly wages for a particular industry/occupation as published in the Census and Statistics Department's Quarterly Report of Wage and Payroll Statistics (December 2010 edition) ("C&SD rate") is higher than the "statutory minimum wage plus rest day pay rate", the "C&SD rate" should be adopted. Besides, the employee's wages shall not be less than any adjusted wage level brought about by future revisions of the prescribed minimum hourly wage rate under the Minimum Wage Ordinance. Employees with disabilities are entitled to the same monthly wage rate committed by the employer in the relevant government service contract. Please refer to Schedule 3 of the Minimum Wage Ordinance and the Quarterly Report of Wage and Payroll Statistics (December 2010 edition) for details of the prescribed minimum hourly wage rate and the average monthly wages for the relevant industry/occupation.

3. The employer and the employee can make reference to the examples listed in the last part of these Guidance Notes in determining the employee's monthly wages and calculating deductions for absence from work, overtime pay, pay for work on rest day/contractual day-off and statutory benefits.

4. If the employee is employed to work under a single government service contract, Clause 2, Clause 3 and Clause 6(b) of the SEC on the workplace, working hours as well as overtime pay and pay for work on rest day/contractual day-off, have to be filled in. It is not necessary to fill in the Schedule. However, if the employee is employed by the employer to work under more than one government service contract, then the parties have to complete the Schedule, but not Clause 2, Clause 3 and Clause 6(b) of the SEC. The completed Schedule is an integral part of the SEC.

5. When filling in Clause 3 of the SEC on the working hours of the employee, the employer should also fill in Note 4 regarding the employee's maximum number of working hours in a day. This maximum number of working hours in a day must be the same as that specified in the relevant government service contract.

6. When filling in the monthly wages of the employee in Clause 6(a) of the SEC, the wage rate of the monthly wages shall not be less than the wage rate of the monthly wages committed by the employer in the relevant government service contract. Besides, the employer should also fill in Note 5(ii) regarding the information on the maximum number of normal working days plus paid rest days per month and the average number of normal hours of work per day of the employee which form the basis for working out the monthly

wages specified in Clause 6(a) of the SEC, and in Note 5(iii) the information on the monthly wages committed by the employer in the relevant government service contract (such information must be the same as that specified in the relevant government service contract). When filling in Note 5(ii), the employer should derive the maximum number of normal working days plus a paid rest day for every 7 days in a month of 31 days as follows: (number of normal working days per week + 1 paid rest day) x 4 (weeks) + maximum number of working days/paid rest day for the remaining week. The maximum number of working days/paid rest day for the remaining week shall be equal to the number of normal working days per week of the employee + 1 paid rest day or 3 days, whichever is lower. (Please refer to Example 1.)

7. When filling in the monthly wages, if the employee is employed to work under more than one government service contract, please mark a “✓” at the second box of Clause 6(a) of the SEC and fill in information such as the relevant government service contract numbers, workplaces, working hours and monthly wages in the Schedule. The monthly wages of the employee should be derived with reference to paragraph 6 above. If the employee works under different government service contracts, the actual monthly wages to be received by the employee shall be calculated in accordance with the monthly wages specified in the Tables under Clause 2 of the Schedule in respect of different government service contracts under which he/she has worked on the basis of the number of normal working days plus paid rest days in a particular month. If, in the future, there is a change in the number of government service contracts listed in the Schedule, the employer should comply with Clause 21 of the SEC and amend the Schedule.

8. To avoid confusion, the “monthly wages” under SEC do not include any overtime pay and allowances. Except for deductions of wages made in accordance with the Employment Ordinance and the Mandatory Provident Fund Schemes Ordinance (Cap. 485), the wages provided by the employer shall not be less than the monthly wages specified in the employment contract. The monthly wages shall not be broken down into different items, but they may include other wage items on top of the monthly wages. (For example, if the monthly wages are HK\$7,000, and the employer pays an additional allowance of HK\$500, the total monthly wages of the employee shall be HK\$7,500.) The employee’s monthly wages and other income should not be labelled as housing allowance.

9. The employee employed under the SEC is monthly-rated. Deductions for absence from work and the wage rate for overtime pay and pay for work on rest day/contractual day-off shall be calculated on the basis of the number of normal working days plus paid rest days in a particular month. (Please refer to Examples 2 and 3.) The statutory benefits of the employee such as holiday pay, annual leave pay, sickness allowance and maternity leave pay, shall be calculated in accordance with the provisions of the Employment Ordinance. (Please refer to Examples 6 – 10.)

10. When filling in the monthly wages in the Tables under Clause 2 of the Schedule for the employee working under different government service contracts, the wage rate shall not be less than the wage rates of the monthly wages committed by the employer in the relevant government service contracts. Besides, the employer should also fill in Note 11 regarding the information on the maximum number of normal working days plus paid rest days per month and the average number of normal hours of work per day which form the basis for working out the monthly wages specified in the Tables under Clause 2 of the Schedule, and also information on the monthly wages committed by the employer in the relevant government service contracts (such information must be the same as that specified in the relevant government service contracts).

11. The rest day pay for an employee who is employed to work under more than one government service contract shall be the average daily wages of the employee for work on a normal working day (excluding overtime pay). (Please refer to Example 4.)

12. For the calculation of the monthly wages in the second box of Clause 3 of the Schedule for an employee who is employed to work under more than one government service contract, the employer and the employee may choose an amount calculated at a wage rate no less than the highest wage rate worked out

from among those monthly wages listed in the Tables under Clause 2 of the Schedule. If the employee is required to work beyond the daily working hours in respect of the relevant government service contract as specified in the Tables under Clause 2 of the Schedule or on a rest day/contractual day-off, he/she shall be paid overtime pay or pay for work on a rest day/contractual day-off. The relevant wage rates should not be less than 100% of the wage rates calculated based on the chosen monthly wages and the number of normal working days plus paid rest days in the month and the average number of normal hours of work per day based on which the chosen monthly wages are worked out. (Please refer to Example 5.)

13. If an employee is on leave or absent from work, whatever the circumstances may be, the employer shall make staffing arrangements as appropriate and pay wages to the substitute worker. The employer shall not ask the employee to hire his/her own substitute or pay wages to the substitute.

14. For details of the employment terms, employers and employees are advised to refer to the employment contract and the Employment Ordinance. Any term of an employment contract which purports to extinguish or reduce any right, benefit or protection conferred upon an employee by the Employment Ordinance shall be void.

Contributions to Mandatory Provident Fund

15. An employer is obliged to enrol his/her employee aged between 18 and 65 in a Mandatory Provident Fund scheme if the employee is employed for 60 days or more. The employer shall make the monthly contribution for the employee to the relevant registered scheme from his/her own funds. For details, please refer to the Mandatory Provident Fund Schemes Ordinance.

Examples for illustration

16. Examples listed below are for employers' reference for calculating employees' monthly wages, deductions for absence from work, overtime pay, pay for work on rest day/contractual day off and statutory benefits.

Determining the monthly wages

Example 1

According to the relevant government service contract, the committed monthly wages for a cleaner are \$6,944.0 (calculated based on the normal working days plus paid rest days per month of 31 days and the average number of normal hours of work per day of 8). As per Clause 3 of SEC, if the cleaner:

- works 6 days per week and 8 hours per day, his/her maximum number of normal working days plus paid rest days per month shall be **31 days**
[6 (days) + 1 (day)] x 4 + 3 normal working days/paid rest day = 31 days
and his/her monthly wages shall not be less than **\$6,944.0**;
- works 5.5 days per week and 8 hours per day, his/her maximum number of normal working days plus paid rest days per month shall be **29 days**
[5.5 (days) + 1 (day)] x 4 + 3 normal working days/paid rest day = 29 days
and his/her monthly wages shall not be less than **\$6,496.0**
[\$6,944.0 ÷ 31(days) x 29(days) = \$6,496.0];
- works 5 days per week and 8 hours per day, his/her maximum number of normal working days plus paid rest days per month shall be **27 days**
[5 (days) + 1 (day)] x 4 + 3 normal working days/paid rest day = 27 days
his/her monthly wages shall not be less than **\$6,048.0**
[\$6,944.0 ÷ 31(days) x 27(days) = \$6,048.0];

- works 6 days per week and 6 hours per day, his/her monthly wages shall not be less than **\$5,208.0** [$\$6,944.0 \div 8(\text{hours}) \times 6(\text{hours}) = \$5,208.0$]; or
- works 6 days per week, 8 hours per day plus 1-hour paid meal time which is counted as hours worked, his/her monthly wages shall not be less than **\$7,812.0** [$\$6,944.0 \div 8(\text{hours}) \times 9(\text{hours}) = \$7,812.0$].

Calculating deductions for absence from work

Example 2

An employee's deductions for absence from work shall be calculated on the basis of the number of normal working days plus paid rest days in a particular month:

- (1) If an employee works 6 days per week, he/she has no contractual day-off and his/her monthly wages as per Clause 6(a) of the SEC are \$6,944.0, and he/she:
 - is absent from work on any one day in February, and there are 28 calendar days in February, the deduction for absence from work shall be **\$248.0** [$\$6,944.0 \div 28(\text{days}) = \248.0];
 - is absent from work on any one day in March, the deduction for absence from work shall be **\$224.0** [$\$6,944.0 \div 31(\text{days}) = \224.0]; or
 - is absent from work on any one day in April, the deduction for absence from work shall be **\$231.5** [$\$6,944.0 \div 30(\text{days}) = \231.5].
- (2) If an employee works 5 days per week, he has one contractual day-off per week and his/her monthly wages as per Clause 6(a) of the SEC are \$6,048.0, and he/she:
 - is absent from work on any one day in February and there are 28 calendar days in February, and there are 4 contractual day-off in the month, the deduction for absence from work shall be **\$252.0** [$\$6,048.0 \div (28-4(\text{days})) = \252.0];
 - is absent from work on any one day in March and there are 4 contractual day-off in the month, the deduction for absence from work shall be **\$224.0** [$\$6,048.0 \div (31-4(\text{days})) = \224.0]; or
 - is absent from work on any one day in April and there are 4 contractual day-off in the month, the deduction for absence from work shall be **\$232.6** [$\$6,048.0 \div (30-4(\text{days})) = \232.6].
- (3) If an employee works 6 days per week, he/she has no contractual day-off and his/her monthly wages as per Clause 6(a) of the SEC are \$6,944.0, and if he/she has taken 5 days of annual leave in March, the deduction for absence from work for any one day in March shall be **\$224.0** [$\$6,944.0 \div 31(\text{days})^{\#} = \224.0]

([#]In calculating the deduction for absence from work in March, the number of the employee's normal working days (which includes the 5 days of annual leave falling on his/her normal working days) plus paid rest days shall remain as 31 days.)

Calculating overtime pay and pay for work on rest day/contractual day-off

Example 3

- (1) If an employee works 6 days per week and 8 hours per day, he/she has no contractual day-off and his/her monthly wages as per Clause 6(a) of the SEC are \$6,944.0,
 - the wage rates of his/her overtime pay and pay for work on rest day/contractual day-off in February (there are 28 calendar days in February) shall not be less than:
 - daily: **\$248.0** [$\$6,944.0 \div 28(\text{days}) = \248.0]; and
 - hourly: **\$31.0** [$\$6,944.0 \div 28(\text{days}) \div 8(\text{hours}) = \31.0]

- the wage rates of his/her overtime pay and pay for work on rest day/contractual day-off in March shall not be less than:
 - daily: **\$224.0** [$\$6,944.0 \div 31(\text{days}) = \224.0]; and
 - hourly: **\$28.0** [$\$6,944.0 \div 31(\text{days}) \div 8 (\text{hours}) = \28.0]
 - the wage rates of his/her overtime pay and pay for work on rest day/contractual day-off in April shall not be less than:
 - daily: **\$231.5** [$\$6,944.0 \div 30(\text{days}) = \231.5]; and
 - hourly: **\$28.9** [$\$6,944.0 \div 30(\text{days}) \div 8 (\text{hours}) = \28.9]
- (2) If an employee works 5 days per week, he/she has one contractual day off per week and his/her monthly wages as per Clause 6(a) of the SEC are \$6,048.0,
- the wage rates of his/her overtime pay and pay for work on rest day/contractual day-off in February (there are 28 calendar days in February and 4 contractual day-off in the month) shall not be less than:
 - daily: **\$252.0** [$\$6,048.0 \div [28 - 4 (\text{days})] = \252.0]; and
 - hourly: **\$31.5** [$\$6,048.0 \div [28 - 4 (\text{days})] \div 8(\text{hours}) = \31.5]
 - the wage rates of his/her overtime pay and pay for work on rest day/contractual day-off in March (there are 4 contractual day-off in the month) shall not be less than:
 - daily: **\$224.0** [$\$6,048.0 \div [31 - 4 (\text{days})] = \224.0]; and
 - hourly: **\$28.0** [$\$6,048.0 \div (31 - 4 (\text{days})) \div 8 (\text{hours}) = \28.0]
 - the wage rates of his/her overtime pay and pay for work on rest day/contractual day-off in April (there are 4 contractual day-off in the month) shall not be less than:
 - daily: **\$232.6** [$\$6,048.0 \div [(30 - 4 (\text{days}))] = \232.6]; and
 - hourly: **\$29.1** [$\$6,048.0 \div [(30 - 4 (\text{days}))] \div 8 (\text{hours}) = \29.1]
- (3) If an employee works 6 days per week and 8 hour per day, he/she has no contractual day-off and his/her monthly wages as per Clause 6(a) of the SEC are \$6,944.0, and if he/she has taken one statutory holiday in January, the wage rates of his/her overtime pay and pay for work on rest day/contractual day-off in January shall not be less than:
- daily: **\$224.0** [$\$6,944.0 \div 31(\text{days})^{\#} = \224.0]; and
 - hourly: **\$28.0** [$\$6,944.0 \div 31(\text{days})^{\#} \div 8 (\text{hours}) = \28.0]

([#]In calculating the overtime pay and pay for work on rest day/contractual day-off in January, the number of the employee's normal working days (which includes the statutory holiday falling on his/her normal working day) plus paid rest days shall remain as 31 days.)

Calculating rest day pay and monthly wages for the employee who is employed to work for more than one government service contract

Example 4

- (1) An employee is employed to work for two government service contracts, and the monthly wages in the Tables under Clause 2 of the Schedule are \$6,944.0 [Table (1)] and \$7,192.0 [Table (2)] respectively. The employee is required to work 6 days per week with 1 paid rest day every 7 days.
- If the employee has 4 paid rest days in a month of 30 days, the employee works 10 days for the contract in Table (1) and 16 days for the contract in Table (2),
 - his/her wages for the 26 days' work is: **\$6,150.4**
 $[\$6,944.0 \div 30(\text{days}) \times 10(\text{days}) + \$7,192.0 \div 30(\text{days}) \times 16(\text{days}) = \$6,150.4]$
 - his/her rest day pay shall not be less than **\$236.6**
 $[\$6,150.4 \div 26(\text{days}) = \$236.6]$
 - his/her monthly wages for the month shall not be less than **\$7,096.8**
 $[\$6,150.4 + \$236.6 \times 4(\text{days}) = \$7,096.8]$

- If the employee has 5 paid rest days in a month of 31 days, the employee works 14 days for the contract in Table (1) and 12 days for the contract in Table (2),
 - his/her wages for the 26 days' work is: \$5,920.0
 $[\$6,944.0 \div 31(\text{days}) \times 14(\text{days}) + \$7,192.0 \div 31(\text{days}) \times 12(\text{days}) = \$5,920.0]$
 - his/her rest day pay shall not be less than **\$227.7**
 $[\$5,920.0 \div 26(\text{days}) = \$227.7]$
 - his/her monthly wage for the month shall not be less than **\$7,058.5**
 $[\$5,920.0 + \$227.7 \times 5(\text{days}) = \$7,058.5]$

(2) An employee is employed to work for two government service contracts, and the monthly wages in the Tables under Clause 2 of the Schedule are \$6,048.0 [Table (1)] and \$6,264.0 [Table (2)] respectively. The employee is required to work 5 days per week with 1 paid rest day every 7 days.

- If the employee has 4 paid rest days and 4 contractual day-off in a month of 30 days, the employee works 10 days for the contract in Table (1) and 12 days for the contract in Table (2),
 - his/her wages for the 22 days' work: \$5,217.3
 $\{\$6,048.0 \div [30 - 4(\text{days})] \times 10(\text{days}) + \$6,264.0 \div [30 - 4(\text{days})] \times 12(\text{days}) = \$5,217.3\}$
 - his/her rest day pay shall not be less than **\$237.2**
 $[\$5,217.3 \div 22(\text{days}) = \$237.2]$
 - his/her monthly wages for the month shall not be less than **\$6,166.1**
 $\{\$5,217.3 + [\$237.2 \times 4(\text{days})] = \$6,166.1\}$
- If the employee has 5 paid rest days and 4 contractual day-off in a month of 31 days, the employee works 11 days for the contract in Table (1) and 11 days for the contract in Table (2),
 - his/her wages for the 22 days' work: \$5,016.0
 $\{\$6,048.0 \div [31 - 4(\text{days})] \times 11(\text{days}) + \$6,264.0 \div [31 - 4(\text{days})] \times 11(\text{days}) = \$5,016.0\}$
 - his/her rest day pay shall not be less than **\$228.0**
 $[\$5,016.0 \div 22(\text{days}) = \$228.0]$
 - his/her monthly wages for the month shall not be less than **\$6,156.0**
 $\{\$5,016.0 + [\$228.0 \times 5(\text{days})] = \$6,156.0\}$

Calculating the highest monthly wages chosen for the employee who is employed to work for more than one government service contract and the employee's overtime pay and pay for work on rest day/contractual day-off

Example 5

An employee is employed to work for two government service contracts and he/she agrees with his/her employer to choose an amount calculated at a wage rate no less than the highest wage rate of the monthly wages among those listed in the Tables under Clause 2 of the Schedule for calculating his/her monthly wages, overtime pay and pay for work on rest day/contractual day-off. If the employee is required to work 6 days a week and:

- (1) if the monthly wages specified in the Tables under Clause 2 of the Schedule are:
 - \$6,944.0 [working 6 days a week and 8 hours a day in Table (1)]; and
 - \$7,192.0 [working 6 days a week and 8 hours a day in Table (2)],
 the monthly wages chosen shall not be less than **\$7,192.0**. The wage rates of the employee's overtime pay and pay for work on rest day/contractual day-off shall be calculated on the basis of the monthly wages of \$7,192.0.

- (2) if the monthly wages specified in the Tables under Clause 2 of the Schedule are:
- \$6,048.0 [working 5 days a week and 8 hours a day in Table (1)], if the employee is required to work 6 days a week and 8 hours a day, then the monthly wages shall be \$6,944.0 [$\$6,048.0 \div 27(\text{days}) \times 31(\text{days}) = \$6,944.0$]; and
 - \$6,728.0 [working 5.5 days a week and 8 hours a day in Table (2)], if the employee is required to work 6 days a week and 8 hours a day, then the monthly wages shall be \$7,192.0 [$\$6,728.0 \div 29(\text{days}) \times 31(\text{days}) = \$7,192.0$],

the monthly wages chosen shall not be less than **\$7,192.0**. The wage rates of the employee's overtime pay and pay for work on rest day/contractual day-off shall be calculated on the basis of the monthly wages of \$7,192.0.

- (3) if the monthly wages specified in the Tables under Clause 2 of the Schedule are:
- \$6,048.0 [working 5 days a week and 8 hours a day in Table (1)], if the employee is required to work 6 days a week and 8 hours a day, then the monthly wages shall be \$6,944.0 [$\$6,048.0 \div 27(\text{days}) \times 31(\text{days}) = \$6,944.0$]; and
 - \$4,698.0 [working 5 days a week and 6 hours a day in Table (2)], if the employee is required to work 6 days a week and 8 hours a day, then the monthly wages shall be \$7,192.0 [$\$4,698.0 \div 27(\text{days}) \times 31(\text{days}) \div 6(\text{hours}) \times 8(\text{hours}) = \$7,192.0$],

the monthly wages chosen shall not be less than **\$7,192.0**. The wage rates of the employee's overtime pay and pay for work on rest day/contractual day-off shall be calculated on the basis of the monthly wages of \$7,192.0.

Calculating holiday pay

Example 6

According to Clause 6(a) of the SEC, the monthly wages of an employee are \$6,944.0 (working 6 days per week and 8 hours per day). The holiday pay (according to the Employment Ordinance) shall be:

- 12-month wages earned immediately preceding the holiday: \$82,360.0, including wages of 301 days of work, 52 paid rest days and 8 paid statutory holidays. No overtime work is performed during the period.
- Leave taken with less than full wages in the 12-month period: 4 statutory holidays without pay (statutory holidays falling within the first 3 months of employment are without pay)
- Periods and the sum to be disregarded: 4 days of statutory holidays without pay (as the 4 days are statutory holidays without pay, the amount to be disregarded will be \$0)
- Holiday pay : [$(\$82,360.0 - 0) \div (365 - 4) (\text{days}) = \228.1]

Calculating annual leave pay

Example 7

According to Clause 6(a) of the SEC, the monthly wages of an employee are \$6,496.0 (working 5.5 days per week and 8 hours per day). 5 days of annual leave pay (according to the Employment Ordinance) shall be:

- 12-month wages earned immediately preceding the annual leave: \$77,952.0, including wages for 275 days of work and the following leaves (no overtime work is performed during the period):
 - 52 paid rest days
 - 12 paid statutory holidays
 - 26 unpaid contractual day-off
- Periods and the sum to be disregarded: 26 unpaid contractual day-off (as the 26 contractual day-off are unpaid, the amount to be disregarded will be \$0)
- 5-day annual leave pay: [$(\$77,952.0 - 0) \div (365 - 26) (\text{days}) \times 5(\text{days}) = \$1,149.7$]

Example 8

According to Clause 6(a) of the SEC, the monthly wages of an employee are \$6,944.0 (working 6 days per week and 8 hours per day). 5 days of annual leave pay (according to the Employment Ordinance) shall be:

- 12-month wages earned immediately preceding the annual leave : \$100,128.0, including
 - \$83,328.0 for 301 days of work, 52 paid rest days and 12 paid statutory holidays
 - Overtime pay of \$16,800.0 (where the monthly average over the past 12 months is not less than 20% of the average monthly wages of the employee during the same period)
- Periods and the sum to be disregarded: No period and sum have to be disregarded because the employee is not paid less than his full wages for the leave taken in the 12-month period
- 5-day annual leave pay : $[(\$100,128.0 - 0) \div (365 - 0) \text{ (days)}] \times 5 \text{ (days)} = \$1,371.6$

Calculating sickness allowance

Example 9

According to Clause 6(a) of the SEC, the monthly wages of an employee are \$6,048.0 (working 5 days per week and 8 hours per day). If the employee is granted 4 consecutive days of sick leave, the sickness allowance of the 4 days (according to the Employment Ordinance) shall be:

- 12-month wages earned immediately preceding the first sickness day: \$72,128.0, including wages of 240 days of work and the following leaves (no overtime work is performed during the period):
 - 52 paid rest days
 - 12 paid statutory holidays
 - 7 days of paid annual leave
 - 52 unpaid contractual day-off
 - 1 day no-pay leave in May (leave taken with the agreement of the Employer)
 - 1 day no-pay leave in July (leave taken with the agreement of the Employer)
- Periods and the sum to be disregarded: 52 unpaid contractual day-off and 2 days of no-pay leave (as the 54 days are no-pay leave, the amount to be disregarded will be \$0)
- 4-day sickness allowance :

$$[(\$72,128.0 - 0) \div (365 - 54) \text{ (days)}] \times 4 \text{ (days)} \times 4/5 = \$231.9 \times 4 \text{ (days)} \times 4/5 = \$742.1$$

Calculating wages in lieu of notice

Example 10

According to Clause 6(a) of the SEC, the monthly wages of an employee are \$6,944.0 (working 6 days per week and 8 hours per day). Clause 17 of the SEC specifies that there is no probation period, and a notice period of 7 days or payment in lieu of notice is required. If the employer terminates the employment on 3 January 2012, the employee's wages in lieu of notice shall be:

- 12-month wages earned (i.e. 2011) immediately preceding the date of notification: \$83,328.0, including wages of 301 days of work, 52 paid rest days and 12 paid statutory holidays. No overtime work is performed during the period.
- Periods and the sum to be disregarded: No period and sum have to be disregarded because the employee is not paid less than his full wages for the leave taken in the 12-month period
- Amount of 7 days' wages in lieu of notice:

$$[(\$83,328.0 - 0) \div (365 - 0) \text{ (days)}] \times 7 \text{ (days)} = \$1,598.1$$

April 2011