

**LegCo Panel on Manpower
(For Meeting on 27 January 2000)**

**Application of the Employment Ordinance to employees
who work less than 18 hours per week and
persons engaged under contracts for service and
government employees on non-civil service contract terms**

Application of the Employment Ordinance to employees who work less than 18 hours per week

Existing coverage of the Employment Ordinance (EO)

The EO regulates the employment standards in Hong Kong. It applies to all employees with a few exceptions as specified in section 4 of the Ordinance (i.e. family members living in the proprietor's dwelling, employees covered by the Contracts for Employment Outside Hong Kong Ordinance (Cap. 78), and persons serving under crew agreement as per the Merchant Shipping (Seafarers) Ordinance (Cap. 478) or on board a ship not registered in Hong Kong).

2. All employees covered by the EO, irrespective of their hours of work, are entitled to the following protections/benefits :

- (a) payment of wages;
- (b) restriction on deductions from wages;
- (c) liability of principal contractors and superior subcontractors to pay wages of subcontractor's employees;
- (d) granting of statutory holidays;
- (e) protection against anti-union discrimination;
- (f) employment protection in respect of unreasonable and unlawful dismissal;
- (g) prohibition of assignment of heavy, hazardous or harmful work to pregnant employees; and
- (h) employer's obligation to provide information on conditions of service.

The requirement of “continuous contract” for entitlement to certain benefits under the EO

3. Employees employed under a continuous contract are further entitled to such benefits as rest days, paid holidays and annual leave, maternity leave and pay, sickness allowance, severance and long service payments etc. subject to the satisfaction of the qualifying conditions stipulated therein. A continuous contract is defined as an employee having been employed under a contract of employment for 4 weeks or more and having worked for 18 hours or more in each week. In any dispute as to whether a contract of employment is a continuous contract, the onus of proving that it is not a continuous contract shall be on the employer.

4. It has to be stressed that employees without a continuous contract do enjoy the rights and protection conferred by the EO as set out in paragraph 2 above. In addition, they are fully protected by the Employees’ Compensation Ordinance (Cap.282).

No case for changing definition of “continuous contract”

5. We do not consider it necessary to change the definition of “continuous contract” for the following reasons:

- It appears reasonable that only employees who work a reasonable number of hours in a week and on a continuous basis for their employers should be entitled to the full benefits under the EO.
- The existing definition of “continuous contract” already covers over 99% of employees including part-time workers. According to a survey conducted by the Census and Statistics Department in early 1999, there were only 30,600 part-time employees who worked less than 18 hours a week. This was less than 1% of the total number of salaried employees and wage earners in the first quarter of 1999.
- Removing or lowering the requirement of “continuous contract” will have cost implications on employers, as they have to bear the full costs of providing the benefits under the EO. There is a need to strike a reasonable balance between the interests of employers and employees, particularly given the current local economic and business environment.

Application of the Employment Ordinance to persons engaged under contracts for service

Persons engaged under contracts for service

6. The EO is applicable to employees engaged under employment contracts. It does not apply to contracts for service as these contracts do not involve an employment relationship. In general, there is a clear distinction between employment contracts and contracts for service. If there is a dispute on whether a contract for service or an employment contract has been made, the final decision will rest with the court which will consider the facts and circumstances of individual cases.

No justification for extending EO to cover contracts for service

7. There is no justification for extending the EO to cover persons engaged under contracts for service for the following reasons :

- The objective of the EO is to accord benefits and protection to employees engaged under an employment contract with the employer.
- Persons engaged under contracts for service are essentially self-employed.
- A contract for service involves a commercial relationship between two parties and there is no employment relationship.
- A person engaged under a contract for service is not obliged to have long-term relationship with the establishment using his service and he may provide service to a number of establishments within the same period.

Application of the Employment Ordinance to government employees on non-civil service contract terms

8. On the issue of application of the Employment Ordinance to government employees on non-civil service contract terms, we have consulted the Civil Service Bureau and their views are set out at Annex 1.

Education and Manpower Bureau
January 2000

Review of the applicability of the Employment Ordinance to government employees on non-civil service contract terms

The scheme for employment of non-civil service contract staff scheme was promulgated by the Civil Service Bureau in January 1999 as a more flexible arrangement for engagement of staff to replace the previous arrangements for employment of temporary staff in place since 1991. The number of non-civil service contract staff (including those previously engaged under the temporary staff arrangements) as at 1 January 2000 with salary at different levels are as follows –

Monthly salary	No. of non-civil service contract staff
below \$15,160	3 981
\$15,160 - \$46,485	682
above \$46,485	32
Total	4 695

2. In line with the previous arrangements for temporary staff, one of the main principles for the employment of non-civil service contract staff is that their employment terms must be **no less favourable** than those provided for under the Employment Ordinance (Cap.57) and the Employees' Compensation Ordinance (Cap.282). In particular, the employment terms for these non-civil service contract staff are formulated with reference to the provisions of these ordinances and are incorporated into their employment contracts. These contractual provisions are binding on the Government. Thus notwithstanding that the Employment Ordinance does not apply to the Government, the Government as a good employer is committed to ensure that its employment terms are no less favourable than the provisions of the employment legislation.

3. There are various avenues for non-civil service contract staff to complain over employment-related issues or seek redress over breach of employment terms or contractual provisions. First of all, any government employee who wish to complain or seek redress about such breach may address his complaint to his supervisor, the personnel unit of his department, the head

of his department or to Civil Service Bureau. Both the department concerned and Civil Service Bureau will investigate to ensure that obligations under the employment contracts are being fully complied with and that the employees are treated no less favourably than provided under the employment legislation.

4. As a good employer, the Government will endeavour to resolve any complaints or disputes relating to the employment of individual staff through consultation and continued dialogue. According to the records of departments, there have been seven, four and eight cases of disputes involving employment of temporary and non-civil service contract staff in 1997, 1998 and 1999 respectively. The existing communication channels have proved to be working effectively in resolving these cases through mediation and discussion.

5. In addition, government employees may seek redress through the courts for any alleged breach of the employment contract by the Government.

6. Given that the terms of the non-civil service contract staff are ensured by their contractual provisions to be no less favourable than the Employment Ordinance, and there are plenty of channels available to these staff for complaints and redress to ensure that the contractual provisions are being complied with, we do not see a need to extend the Employment Ordinance to cover these non-civil service contract staff.