

Review of employment benefits under continuous contract in Hong Kong



1. Introduction

1.1 In Hong Kong, an employee working for the same employer (a) for four weeks or more and (b) for 18 hours or more per week ("4-18") is legally classified as employment under a continuous contract. Since 1990, 4-18 employees have been entitled to more employment benefits than non-4-18 employees.¹ In response to public concerns over the 4-18 threshold for continuous contract, the subject has been discussed at the Council or the Panel of Manpower on at least seven occasions over the past 17 years.² In the most recent discussion at the meeting of the Panel on Manpower held on 31 July 2013, the Government reported that the Labour Advisory Committee ("LAB") had discussed several possible options to relax the 4-18 threshold, but needed to deliberate in greater details, "given the complexity of the subject and the considerable practical operational problems involved".³

1.2 At the work plan meeting of the Panel on Manpower held on 4 November 2016, the Research Office was requested to study the threshold of continuous contract of employment in Hong Kong. Based on very limited publicly available information, this note in broad terms (a) compares statutory employment benefits available to 4-18 employees and non-4-18 employees; (b) tracks changes in the size of non-4-18 employees over the years; (c) discusses employment benefits for employees not subject to continuous contracts in four selected places in Asia; and (d) summarizes the four possible options to relax the 4-18 threshold as presented by the Government in 2013.

¹ The concept of continuous employment was introduced when the Employment Ordinance was enacted in 1968, with a view to protecting workers who were paid on piece-rate or daily wage basis from dismissal without notice nor wages in lieu of notice. Continuous employment in 1968 originally referred to (a) employment for four consecutive weeks or more; and (b) within which the employee had worked for at least three days a week and six hours a day. This was amended to the 4-18 threshold in June 1990.

² For instance, there was a motion debate in the Council on "Effective protection of statutory rights and benefits of employees" in 2001, along with a proposal to relax the 4-18 threshold. This was further discussed at the Council meetings in November 2010 and March 2011, and at the meetings of the Panel on Manpower in June 2005, January 2008, October 2010, March 2013 and July 2013.

³ See Labour and Welfare Bureau (2013).

2. Employment benefits of local employees under continuous contract

2.1 Under the Employment Ordinance (Cap. 57) ("EO"), almost all employees⁴ regardless of length of employment or number of weekly working hours are entitled to basic labour protection. They include (a) wage payment protection⁵; (b) restriction on deduction from wage⁶; (c) statutory holiday; (d) maternity protection⁷; (e) protection against dismissal⁸; and (f) protection from anti-union discrimination. This apart, they are also entitled to benefits prescribed in other labour-related legislation, such as statutory minimum wage, employees' compensation insurance and mandatory provident fund.

2.2 Specifically, 4-18 employees are entitled to additional statutory benefits under the EO, subject to respective qualifying requirements (**Table 1**). These include:

- (a) **Rest day:** 4-18 employees are entitled to one rest day or more in every period of seven days;
- (b) **Statutory holidays with pay:** 4-18 employees working for the same employers for three months or more are entitled to 12 statutory holidays with pay each year;
- (c) **Paid annual leave:** 4-18 employees working for the same employers for 12 months or more are entitled to paid annual leave of 7-14 days depending on the length of service;
- (d) **Paid sick leave:** 4-18 employees are entitled to accumulate two days of sick leave with pay for each completed month of employment during the first 12 months, and at a rate of four days of paid sick leave per month thereafter, subject to a ceiling of 120 days;
- (e) **Paid maternity leave:** Pregnant 4-18 employees working for the same employers for 40 weeks or more are entitled to paid maternity leave for 10 weeks;

⁴ The EO does not apply to (a) family members who live in the same place as the employer; (b) employees working outside Hong Kong for overseas employers; (c) seafarers; and (d) apprentices.

⁵ An employer is required to pay wages to the employees within seven days after the end of wage period.

⁶ An employer is prohibited from deducting wages from his or her employees except certain circumstances such as absence from work, recovery of advanced or over-paid wages.

⁷ An employer is not allowed to allocate work to a pregnant employee who is unfit to handle heavy materials and/or to work in places injurious or harmful to pregnancy.

⁸ An employee may claim for remedies against an employer for unreasonable variation of the terms of the employment contract or unreasonable/unlawful dismissal.

- (f) **Paid paternity leave:** Male 4-18 employees working for the same employers for 40 weeks or more are entitled to three-day paid paternity leave for each confinement of their spouse/partner;
- (g) **Severance payment:** 4-18 employees working for the same employers for 24 months or more are entitled to severance payment upon redundancy; and
- (h) **Long service payment:** 4-18 employees working for the same employers for five years or more are entitled to long service payment if (i) the contract is terminated not for redundancy, or summary dismissal due to serious misconduct; (ii) they resign due to ill or old age; or (iii) they pass away during employment.

Table 1 – Statutory employment benefits by nature of contract

Statutory protection and benefits	4-18 employees (continuous contract)	Non-4-18 employees
Wage protection		
1. Statutory minimum wage	✓	✓
2. Wage payment protection	✓	✓
3. Restriction on deduction from wage	✓	✓
Retirement and accident protection		
4. Mandatory Provident Fund/pension	✓	✓
5. Severance payment	✓	✗
6. Long service payment	✓	✗
7. Employees' compensation insurance	✓	✓
Holiday and leave		
8. Rest day	✓	✗
9. Statutory holidays	✓	✓
10. Statutory holidays with pay	✓	✗
11. Paid annual leave	✓	✗
12. Paid sick leave	✓	✗
Family-friendly benefits		
13. Maternity protection	✓	✓
14. Paid maternity	✓	✗
15. Paid paternity leave	✓	✗
Others		
16. Protection against dismissal	✓	✓
17. Protection from anti-union discrimination	✓	✓

3. Profile of non-4-18 employees in Hong Kong

3.1 According to the statistics compiled by the Census and Statistics Department ("C&SD"), the number of 4-18 employees in the private sector⁹ has increased by a total of 16% over the past 15 years to 2.86 million in 2016, while their relative proportion in private sector employees held broadly stable at 95% during 2001-2016. As to the number of non-4-18 employees, it has also gone up by 15% over the same period, amounting to some 150 000 persons in 2016 and with the respective share in private sector employees holding steady at around 5%.

3.2 Specifically for non-4-18 employees, additional breakdowns by contractual arrangement for the reference year of 2009 are available from the C&SD report published in 2011 for more in-depth analysis.¹⁰ Amongst the 148 300 non-4-18 employees (accounting for 5.2% of employees in the private sector) in 2009, they can be further grouped into the following categories (**Table 2**):

- (a) **Potential 4-18 employees:** Some 50 200 employees were employed for less than four weeks at the time of enumeration in 2009. They were likely to be job-changers who had just taken up a new job and they expected that they would work for the same employers for at least four weeks, meeting the requirement of continuous contract. They took up 1.7% of private sector employees in 2009;
- (b) **Part-time workers:** Some 56 300 persons worked for the same employers less than 18 hours per week. As for the reasons for not working for longer hours, 36% of these part-time workers expressed that they were required to take care of housework or household members, 26% were still in education and 12% could not find a job of longer working hours. As a whole, part-timers accounted for 2.0% of private sector employees in 2009;

⁹ For the purpose of this statistical exercise, employees are confined to private sector employees, excluding civil servants and employees in subvented organizations and statutory bodies, student interns and live-in domestic workers. While statistics for 2009 and before were compiled from special topic enquiry under General Household Survey conducted on an irregular basis, statistics after 2009 were obtained from an annual business establishment survey namely Annual Earnings and Hours Survey.

¹⁰ For the special topic enquiries conducted under the household surveys in 2009 and before, respondents were required to answer a series of questions on detailed arrangements of their employment contracts, facilitating compilation of detailed breakdown of statistics among non-4-18 employees. However, respondents were not required to answer such detailed questions in the business establishment survey after 2009. As such, similar breakdown is not made available.

- (c) **Short-term workers:** Some 25 600 persons were classified as short-term workers who worked for the same employers at least 18 hours per week, but less than four weeks. As regards the reasons for not expecting to work for additional weeks, the respondents attributed it to the custom of the trade (50%) and slack work in the company (26%).¹¹ In 2009, short-term workers took up 0.9% of all employees in the private sector; and
- (d) **Non-continuous workers:** Some 16 200 persons had worked for their employers for at least four weeks, but not "continuously" for 18 hours per week. A significant proportion of these non-continuous workers engaged in sectors with irregular workload such as construction (33%) and catering and distributive trades (32%). Non-continuous workers accounted for 0.6% of private sector employees in 2009.

Table 2 – Number of 4-18 and non-4-18 employees in the private sector

	2001	2006	2009	2012	2014	2016
Total number of employees in the private sector	2 592 200 (100%) ⁽¹⁾	2 732 700 (100%)	2 873 200 (100%)	2 864 000 (100%)	2 964 400 (100%)	3 012 900 (100%)
(a) 4-18 employees	2 463 500 (95.0%)	2 591 500 (94.8%)	2 724 900 (94.8%)	2 727 600 (95.2%)	2 823 600 (95.3%)	2 863 100 (95.0%)
(b) Non-4-18 employees	128 700 (5.0%)	141 200 (5.2%)	148 300 (5.2%)	136 400 (4.8%)	140 800 (4.7%)	149 800 (5.0%)
<i>within which:</i>						
(i) Potential 4-18 employees	57 400 (2.2%)	45 900 (1.7%)	50 200 (1.7%)	Not available ⁽²⁾		
(ii) Part-time workers	28 900 (1.1%)	52 400 (1.9%)	56 300 (2.0%)			
(iii) Short-term workers	42 400 (1.6%)	42 900 (1.6%)	25 600 (0.9%)			
(iv) Non-continuous workers			16 200 (0.6%)			

Notes: (1) Figures in brackets denote percentage shares in overall employees in the private sector.

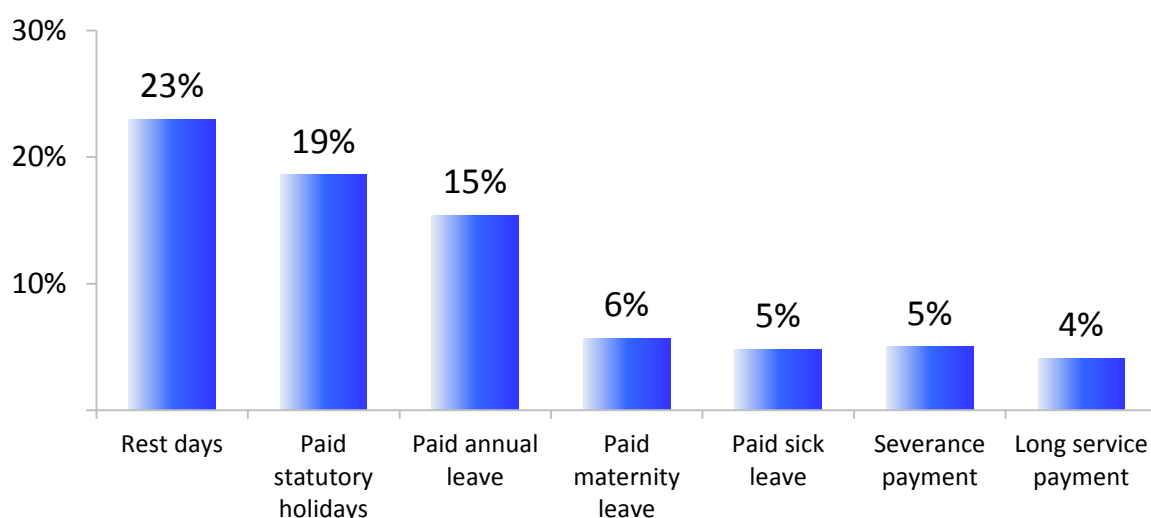
(2) Statistics in 2009 and before were based on detailed questions in special topic enquiries via General Household Survey conducted by C&SD, enabling more breakdowns. For figures after 2009, they were compiled from Annual Earnings and Hours Survey, without additional questions on their contractual arrangement. As such, further breakdowns on non-4-18 employees are not made available.

Source: C&SD.

¹¹ For the rest of the short-term workers, 7% said that they were unable to find a permanent job, another 7% said that they were working for jobs in a casual/seasonal nature.

3.3 In 2009, the average hourly wage of non-4-18 employees was HK\$39, just about 50% of 4-18 employees (HK\$78).¹² As to those EO-benefits not statutorily provided for non-4-18 employees, it is noted that some employers voluntarily provide them. For instance, among those companies employing non-4-18 employees in 2009, 23% provided rest day, 19% provided paid statutory holidays, and 15% provided paid annual leave (Figure 1).

Figure 1 – Proportion of companies with non-4-18 employees* by type of employment benefits provided to non-4-18 employees



Note: (*) Excluding those companies only employed potential 4-18 employees but did not employ part-time workers, short-term workers or non-continuous workers.

Source: C&SD.

4. Employment benefits of part-time workers in selected places in Asia

4.1 Four places in Asia (namely Singapore, South Korea, Taiwan and Japan) are selected for a fact check of the relationship between continuous contract and employment benefits.¹³ Similar to Hong Kong, all employees in these four selected places, irrespective of their duration of work or weekly working hours, are statutorily entitled to basic employment protection and benefits, such as (a) wage payment protection; (b) restriction on deduction from wage; (c) statutory minimum wage; (d) labour insurance; (f) retirement provident fund; (g) protection against dismissal; and (h) protection from anti-union discrimination.

¹² Hourly wages of 4-18 and non-4-18 employees could be attributable to difference in their occupational categories. Breakdowns are not available for further analysis, however.

¹³ These four places are selected because their economic developments are broadly comparable to that in Hong Kong.

4.2 However, it appears that none of the four selected places in Asia has a comparable definition of "continuous contracts under employment" in their labour legislation, despite qualifying requirements specified on the "duration of work" for certain employment benefits. While they mostly have a distinction between full-time and part-time workers, part-timers are still largely entitled to the seven employment benefits statutorily offered only to employees under a continuous contract in Hong Kong as specified in paragraph 2.2.¹⁴ Here is a brief summary (**Table 3**):

- (a) In **Singapore**, an employee working for less than 35 hours a week is considered as a part-time employee. Part-time employees in Singapore are still entitled to all seven types of employment benefits on a pro-rata basis, with entitlement calculated as a ratio of the number of hours worked relative to full-time employees with similar duties;¹⁵
- (b) In **South Korea**, those workers with shorter weekly working hours relative to full-time workers are classified as part-time workers.¹⁶ Similar to Singapore, part-time workers are entitled to most of the statutory employment benefits, which are determined "on the basis of the relative ratio of their working hours" relative to full-time workers¹⁷, except that the entitlement of rest day and paid annual leave are not applicable to those worked less than 15 hours per week;¹⁸
- (c) In **Taiwan**, although its labour legislation makes a distinction between "non-fixed term employment contracts" and "fixed term employment contracts", employment benefits under both types of contract are broadly the same;¹⁹ and

¹⁴ According to a study conducted by the International Labour Organization, among the 95 countries studied, Switzerland and Indonesia were the only countries with statutory long service payment. As most of other places around the place do not have statutory provision on long service payment, this note would concentrate on the rest of seven employment benefits. See International Labour Organization (2015).

¹⁵ See Ministry of Manpower of Singapore (2017b).

¹⁶ See Article 2 of Labor Standards Act.

¹⁷ See Article 18(1) of Labor Standards Act.

¹⁸ See Articles 18(3), 55 and 60 of Labor Standards Act.

¹⁹ According to Article 6 of Enforcement Rules of the Labor Standards Act, non-fixed term contract is commonly known as continuous contract, under which an employee can enjoy full employment benefits. Fixed term contracts comprise employees engaged in (a) temporary work for no more than six months; (b) short-term work for no more than six months; (c) seasonal work for no more than nine months; and (d) specified work for no more than one year.

(d) In **Japan**, workers with prescribed weekly working hours shorter than ordinary workers at the same place are regarded as part-time worker.²⁰ In principle, employers are required to provide benefits to part-time workers on par with that of ordinary workers, but it stops short of providing operation details.²¹

Table 3 – Entitlement of statutory employment benefits of part-time employees in selected places in Asia

Employment benefits ⁽¹⁾	Hong Kong (Non 4-18 employees)	Singapore	Japan	South Korea	Taiwan
(a) Rest day	✗	✓	✓	✓ ⁽³⁾	✓
(b) Paid statutory holiday	✗	✓	✗ ⁽²⁾	✓	✓
(c) Paid annual leave	✗	✓	✓	✓ ⁽³⁾	✓
(d) Paid sick leave	✗	✓	✗ ⁽²⁾	✗ ⁽³⁾	✓
(e) Paid maternity leave	✗	✓	✓	✓	✓
(f) Paid paternity leave	✗	✓	✗ ⁽²⁾	✓	✓
(g) Severance payment	✗	✓	✓	✓	✓

Notes: (1) Employment benefits may be subject to qualifying requirements. For example, an employee in Singapore is entitled to severance payment if he or she has worked for the same employer for two years or more.

(2) In Japan, paid statutory holiday, paid sick leave and paid paternity leave are not statutory employment benefits regardless of type of employment contract.

(3) In South Korea, part-time employees are required to work for at least 15 hours per week in order to enjoy rest day and paid annual leave. This apart, paid sick leave is not statutory employment benefits regardless of type of employment contract.

5. Possible options to relax the threshold of continuous contract

5.1 In May and July 2013, LAB discussed four possible options to relax the threshold under continuous contract put forward by the Labour Department, on top of the option of "maintaining status quo". However, LAB members were unable to reach a consensus by then. For ease of reference, these four possible options are recapitulated below (**Table 4**).

²⁰ See Article 2 of Act on Improvement, etc. of Employment Management for Part-Time Workers.

²¹ Article 8 of Act on Improvement in Management of Employment of Part-Time Workers provides that a business operator "shall not engage in discriminatory treatment in terms of the decision of wages, the implementation of education and training, the utilization of welfare facilities and other treatments for workers by reason of being a Part-Time Worker".

- (a) **Removing entirely the "continuous contract" requirement:** Had this option been taken, it would benefit up to almost all of the non-4-18 employees amounting to 148 300 workers or 5% of private sector employees. Yet non-4-18 employees especially the short-term workers failing to meet additional minimum employment period as the qualifying condition might still be unable to enjoy statutory employment benefits set out in paragraph 2.2. At the same time, there is an equity issue if the level of benefits of part-timers were the same as that of full-time employees;²²
- (b) **Calculating employment benefits on a pro-rata basis:** Similar to the practice of Singapore and South Korea, employment benefits to workers without continuous contract would be calculated on a pro-rata basis, with reference to working hours of full-time employees. This option can benefit all of the 148 300 non-4-18 employees. While it seems to be a straight-forward option, there is no consensus on standard working hours of full-time employees which could range widely between 18 hours and 48 hours per week. This apart, a pro-rata approach may lead to significant reduction in benefits for some employees, especially for those working for slightly more than 18 hours per week;²³
- (c) **Calculating working hours on a four-weekly basis (e.g. "4-72"):** Under this option, the requirement of 4-18 would be changed to "working for 72 hours or more within four weeks", enabling those employees working longer hours intermittently to meet the revised threshold of continuous contract. While this option keeps the concept of continuous contract as the threshold of entitlement to employment benefits, there is a concern that some employers may then set the working hours of their part-time employees to less than 72 hours in four weeks, resulting in shorter or more intermittent hours of work; and
- (d) **Changing the threshold from "4-18" to "4-16":** This option keeps the concept of continuous contract, but would lower its threshold from 18 hours to 16 hours per week. It is considered

²² For example, if an employee works for an employer every Saturday and hence 52 days a year, he or she would be entitled to enjoy seven days of paid annual leave and 12 days of paid statutory holidays, which is equal to 37% of his or her total number of working days in a year.

²³ If a full-time employee is defined as a person working for 44 hours per week, an employee who is working for 18 hours every week will only enjoy 41% of full benefits (18 hours/44 hours = 41%) in contrast to his or her entitlement to full benefits at present, as he or she is considered under a continuous contract of employment.

to be a simple approach with minimal changes to the existing legislation. Based on the survey results in 2009, it is estimated that some 27 200 workers or 1% of overall employees would be benefited by then. Yet there were concerns that some employers might reduce the weekly working hours of part-time employees under this threshold, cutting short their hours of work.

Table 4 – Estimated number of employees benefited from the four possible options in relaxing threshold of continuous contract

Option	2001 (No. of employees)	2006 (No. of employees)	2009 (No. of employees)
(a) Removing continuous contract requirement	Up to 128 700	Up to 141 200	Up to 148 300
(b) Calculating employment benefits on a pro-rata basis	128 700	141 200	148 300
(c) Considering working hours on a four-weekly basis (i.e. "4-72")	Information not available.		
(d) Changing "4-18" to "4-16"	6 800	7 900	27 200
(e) Preserving the status quo	Not applicable.		

Data source: C&SD.

6. Concluding remarks

6.1 Over the past two decades or so, the ratio of non-4-18 employees in private sector held broadly stable at around 5%, within which about one-third were job-changers who expected that they could be qualified as 4-18 employees after working for four weeks. Those non-4-18 employees were mostly part-timers or casual workers without certain statutory employment benefits, though some employers may voluntarily provide so.

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25 May 2017
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