

For Discussion on  
17 March 2005

## **LegCo Panel on Manpower**

### **Standard Employment Contract for Non-skilled Workers of Contractors of Government Service Contracts**

#### **Purpose**

This paper briefs Members on the progress of drawing up a new standard employment contract for use by contractors of government service contracts (excluding construction service contracts) that rely heavily on the deployment of non-skilled workers (hereinafter referred to “government service contracts”) in employing non-skilled workers for providing services to the Government.

#### **Background**

2. Since 2001, the Government has required all contractors of government service contracts to sign written employment contracts with their employees (except temporary relief workers<sup>(1)</sup>). Such contracts should stipulate major employment terms including wage rate, working hours, rest days, etc. so as to safeguard employees’ rights and benefits.

3. On 6 May 2004, the Government promulgated a mandatory requirement on wage rates for government service contracts for tender assessment. Under this mandatory requirement, a tender offer shall not be considered if the monthly wages offered by the tenderer are less than the average monthly wages (which relate to an average number of normal hours of work per day and an average number of standard working days per month) for the relevant industry/occupation as published in the latest Census and Statistics Department’s Quarterly Report of Wage and Payroll Statistics at the time when the tenders are invited. This mandatory requirement applies to sub-contracting arrangement and procurement of the same kind of government services under direct purchase authority. The new requirement

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<sup>(1)</sup> As a general guideline, a written employment contract is still required for a temporary relief worker if the employment period is longer than seven days.

applies to tenders invited on or after 6 May 2004. The purpose of the mandatory requirement is to ensure that the wages of non-skilled workers engaged by government service contractors are not lower than the market rates.

4. However, it has recently come to light that there are cases of individual contractors of government service contracts adopting improper and unethical practices to undermine the protection of their workers. As a result, some non-skilled workers are paid wages less than the monthly wages committed by the contractors in the tender offers. At the same time, some contractors seek to evade employer's responsibilities under the Employment Ordinance and the Mandatory Provident Fund Schemes Ordinance through various means.

5. Relevant Government departments have taken prompt actions to deal with these cases. To better protect labour rights and benefits, the Administration has drawn up a proposed standard employment contract for use by contractors of government service contracts in their employment of non-skilled workers to carry out government service contracts.

### **Standard Employment Contract**

6. The proposed contract will require the contractors to set out clearly the monthly wages, working hours, method of wage payment, etc. Its key features are as follows:

- (a) The monthly wage payable to a non-skilled worker should be no less than the amount committed by the contractor in the relevant tender offer if he/she has worked in accordance with the working hours and working days as specified in the standard employment contract. Any allowance, under whatever title, should be paid on top of the committed monthly wage.
- (b) As a control measure, with the employees' consent, all wages should be paid directly by way of autopay into the individual employee's bank account.
- (c) Contractors should be responsible for the costs of all operational and administrative expenses, as well as the depreciation of all assets and equipment. No fee or deposit, under whatever title, should be collected from their non-skilled workers.

- (d) The workplace should be specified. Where necessary, deployment of the worker to other workplaces within the same region should be on an ad hoc and limited basis or only under exceptional circumstances. This flexibility is to cater for special operational requirements of the procuring department.
- (e) Copies of the signed standard employment contract should be kept by the contractor, the worker and the relevant procuring department for reference.
- (f) Only variation of employment terms which shall not extinguish or reduce any right, benefit or protection conferred upon the employee by the contract, and has the latter's written agreement, is allowed. A copy of such variation should also be provided to the worker and the relevant procuring department for reference.

A copy of the proposed standard employment contract and the accompanying guidance notes are at Annex.

### **Administrative Sanctions**

7. Since 27 March 2004, a demerit point system has been applied to tenders for government service contracts invited thereafter. Under the demerit point system, procuring departments are required to issue a default notice to their contractors for each breach of contractual obligations in respect of wages, working hours and the requirement for signed written contracts with employees (except temporary relief workers). Each default notice will attract one demerit point. A tender offer should not be considered if during the four most recent quarters (before tender closing date) the tenderer has received from one or more departments a total of six demerit points.

8. Following the implementation of the proposed standard employment contract, any contractor of government service contracts who has failed to use the standard employment contract, distorted or altered the term of the contract to the disadvantage of the non-skilled workers, and/or is found to have breached the contractual terms not in connection with the law, wages, working hours and the requirement for signed written contracts with non-skilled workers, would be subject to administrative sanction. Individual procuring departments will in future issue default notices to contractors for breaches of these contractual terms in accordance with the service contracts. They will also take into account these default notices issued to contractors for evaluation of their future tenders.

## **Implementation**

9. We will finalize the proposed standard employment contract for use by contractors in future government service contracts. This will be made a mandatory requirement on all tenders for government service contracts invited after the standard employment contract has come into force, tentatively in April 2005.

Economic Development and Labour Bureau  
Labour Department  
March 2005

**Standard Employment Contract****For Non-skilled Workers Hired by****Contractors of Government Service Contracts (note 1)****Government Service Contract No.:** \_\_\_\_\_

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 following terms of employment. Both parties understand that this employment contract is governed by the laws of Hong Kong, in particular, the Employment Ordinance, Chapter 57, and the Employees’ Compensation Ordinance, Chapter 282. Both parties acknowledged that they have read the attached Guidance Notes on Signing of Standard Employment Contract.

1. This employment contract shall commence from \_\_\_\_\_ (day/month/year).
2. The Employee shall be employed by the Employer as \_\_\_\_\_ (post title). The place of work is \_\_\_\_\_ (as specified in service contract no.: \_\_\_\_\_). If necessary, the Employer shall be allowed to deploy the Employee to work within \_\_\_\_\_ region under an urgent situation or on an ad hoc and limited basis.
3. The Employee’s daily working hours shall be:
  - normally \_\_\_\_\_ to \_\_\_\_\_,
  - \_\_\_\_\_ a.m. to \_\_\_\_\_ a.m. and \_\_\_\_\_ p.m. to \_\_\_\_\_ p.m. ,
  - on shift \_\_\_\_\_ to \_\_\_\_\_ , \_\_\_\_\_ to \_\_\_\_\_ , or \_\_\_\_\_ to \_\_\_\_\_ , including \_\_\_\_\_ net daily working hours (note 2).
4. An employee employed under a continuous contract is entitled to one rest day in every period of seven days. The rest day shall be on every \_\_\_\_\_ / granted on an irregular basis (in which case the employer must inform the employee in writing of the appointed rest days, or exhibit the employee’s roster of rest days in a conspicuous place in the place of employment, before the beginning of each month)\*.
5. The Employee shall receive:-
  - (a) wages (excluding any overtime pay) of HK\$\_\_\_\_\_ per month (note 3), if

he/she\* works in accordance with the net daily working hours as stated in Clause 3 of this employment contract;

- (b) overtime pay calculated on an hourly basis at \_\_\_\_\_% (note 4) of the wage rate in Clause 5(a) of this employment contract if he/she\* is required to work more than the net daily working hours as stated in Clause 3 of this employment contract; and
  - (c) any other sum payable to the Employee under other provisions of this employment contract or the laws of Hong Kong.
6. The wage period shall be one month/half-a-month\*. Wages (including overtime pay payable, 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 within 7 days after the day of termination of the contract.
  7. The Employer and the Employee agree that all wages (including overtime pay payable) 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 wage breakdowns of each wage period to the Employee for reference.
  8. No deductions may be made by the Employer from the wages of the Employee other than any statutory 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 administrative costs and loss relating to wear and tear of fixed assets and equipment shall be borne by the Employer and not be charged to the Employee or recovered by deductions from the Employee's wages. Such costs may include expenses on uniforms (clothing, shoes, socks, etc.), training fees, administrative costs, cleaning fees, tool charges, traveling expenses, deposits, etc.
  9. The Employee shall be entitled to 12 statutory holidays in a year in accordance with the Employment Ordinance. If an employee has been employed under a continuous contract for a period of not less than three months, he/she\* is entitled to paid statutory holidays.
  10. An employee is entitled to annual leave of not less than 7 days with pay after having been employed under a continuous contract for every 12 months. The entitlement to paid annual leave increases progressively to 14 days according to his/her\* length of service.
  11. An employer shall arrange his/her\* employee to take rest days, statutory holidays and paid annual leave on separate dates. These holidays must not substitute each other.
  12. A female employee is eligible for maternity leave and maternity leave pay if she has been

employed under a continuous contract and has met the requirements of the Employment Ordinance.

13. An employee is entitled to sickness allowance if he/she\* has been employed under a continuous contract and has met the requirements of the Employment Ordinance.
14. The Employer shall comply with the requirements of the Employees' Compensation Ordinance. The Employee shall be entitled to all the rights, benefits and protection provided under the Employees' Compensation Ordinance.
- 15\*. The Employee shall apply for a Security Personnel Permit according to the requirements of the Security and Guarding Services Ordinance, Chapter 460.
16. The Employer shall arrange the Employee to enroll as member of a provident fund scheme registered under the Mandatory Provident Fund Schemes Ordinance, Chapter 485. The Employer shall contribute for the Employee to the relevant registered scheme each month.
17. When typhoon signal no. 8 or above is hoisted,
  - the Employee is not required to work and no wages will be deducted during the period.
  - the Employee is required to work and is/is not\* entitled to typhoon allowance or travelling allowance of \$\_\_\_\_\_ / \_\_\_\_\_ times of normal wages.

The Employee is required to resume duty if typhoon signal no. 8 is lowered not less than \_\_\_\_\_ hours before close of working hours.

18. When black rainstorm warning is hoisted,
  - the Employee is not required to work and no wages will be deducted during the period.
  - the Employee is required to work and is/is not\* entitled to rainstorm allowance or travelling allowance of \$\_\_\_\_\_ / \_\_\_\_\_ times of normal wages.

The Employee is required to resume duty if the black rainstorm warning is lowered not less than \_\_\_\_\_ hours before close of working hours.

- 19\*. The probation period of the Employee shall be \_\_\_\_\_ day(s)/month(s)\*.
20. 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 wages in lieu of notice. During the rest of the probation period, a notice period of \_\_\_\_\_ day(s)/month(s)\* or an equivalent amount of wages in lieu is required. After the probation period, a notice period of \_\_\_\_\_ day(s)/month(s)\* or an equivalent amount of wages in lieu is required.
  - If there is no probation period, a notice period of \_\_\_\_\_ day(s)/month(s)\* or an equivalent amount of wages in lieu is required.

21. 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 will prevail and the employment contract will be taken to be varied accordingly.
22. The Employer shall provide a copy of this employment contract signed by both parties (including the attached Guidance Notes on Signing of Standard Employment Contract) to the Employee for retention.
23. Any variation, amendment, cancellation or addition to any terms of this employment contract shall be void unless such amendments to the employment contract shall not extinguish or reduce any right, benefit or protection conferred upon the Employee by this employment contract, and are made in writing duly signed by both parties. The Employer shall provide a copy of the amendments duly signed by both parties to the Employee for retention.
24. The Employee consents to the Employer providing copies of this signed employment contract together with any amendments to \_\_\_\_\_ (the procuring department) for record and monitoring of the Employer's compliance with service contract. The Employee also consents to the procuring department providing copies of this signed employment contract together with any amendments, and any other relevant information to other government departments and enforcement agencies for monitoring of the Employer's compliance with the relevant legislation.
25. The Employee consents to the Employer providing his/her\* wage and attendance records to \_\_\_\_\_ (the procuring department) for the purpose of monitoring the Employer's fulfillment of employment-related obligations under the service contract.

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: Government service contractors are required to enter into this standard employment contract with their non-skilled workers in accordance with the relevant mandatory requirements.

Note 2: The Employer committed \_\_\_\_\_ hours as the Employee’s maximum daily working hours in bidding the tender.

Note 3: According to the government service contract no.: \_\_\_\_\_, the Employer has committed that the monthly wage rate is HK\$\_\_\_\_\_. Any allowance shall be paid on top of the committed wages.

Note 4: The rate shall not be less than 100%.

## **Guidance Notes on Signing of Standard Employment Contract**

### **For Non-skilled Workers Hired by Contractors of Government Service Contracts**

The Guidance Notes given below reflect the ordinances and regulations at the time of writing. The law itself remains the sole authority for the provisions explained. Please note that the Employment Ordinance only lays down the minimum requirements of employment terms. Employers and the employees may enter into employment terms more favourable than those provided in the Ordinance. Employers and employees may also refer to the booklet “A Concise Guide to the Employment Ordinance” published by the Labour Department.

#### **Payment of wages**

2. The monthly wages specified in the employment contract shall be the wages committed by the Employer when bidding for the relevant government service contract, which shall not be less than the average monthly wage rates for the relevant industry/occupation as published in the latest Census and Statistics Department’s Quarterly Report of Wage and Payroll Statistics when tenders are invited. Irrespective of the number of days of each month, the Employee shall be paid monthly wages equivalent to the committed wages. The Employee’s statutory benefits and compensation or the wage rate applicable to absence from work shall be calculated on the basis of the actual number of days in the given month.

3. Except for deductions of wages made in accordance with the Employment Ordinance, 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 committed monthly wages. (For example, if the committed monthly wages are \$5,000, and the Employer pays an additional allowance of \$500, the total monthly wages of the Employee shall be \$5,500.) The Employee’s monthly wages and other income should not be labeled as housing allowance.

4. All wages shall be paid directly by the Employer by way of automatic payment into a bank account in the Employee’s name. Wages (including overtime pay payable, if any) shall become due on the expiry of the last day of the wage period and shall be paid as soon as is practicable but in any case not later than 7 days after the end 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 within 7 days after the day of termination of the employment contract.

5. If an employer fails to pay wages to the employee after the expiry of the wage period, he/she is required to pay interest on the outstanding amount of wages to the employee in accordance with the Employment Ordinance.

6. Under the Employment Ordinance, an employer who fails to pay wages to an employee when they become due commits an offence, and he/she is liable, upon conviction, to a fine of \$200,000 and to imprisonment for one year. Any person who makes illegal deduction from wages of an employee commits an offence, and he/she is liable, upon conviction, to a fine of \$100,000 and to imprisonment for one year.

### **Contributions to Mandatory Provident Fund**

7. Under the provisions of the Mandatory Provident Fund Schemes Ordinance, an employer is obliged to enroll his/her employee aged between 18 and 65 in the Mandatory Provident Fund schemes if he/she works 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. The Employer's contribution is 5% of the Employee's monthly income. The Employer shall also deduct 5% of the monthly income of the Employee as employee's contribution (subject to the maximum income level of \$20,000). Employees earning less than \$5,000 a month do not need to contribute but their employers still have to contribute 5% of the employees' income. Some employers arrange their employees to enter into a series of contracts each lasting less than 60 days and with a break in between, with a view to evading the responsibility of enrolling the employees in the Mandatory Provident Fund schemes and making contributions. However, these employees may still be regarded as under continuous employment, and employers shall not be able to shirk the responsibilities under the law for enrolling employees in the Mandatory Provident Fund schemes and making contributions.

### **Deductions from wages**

8. No deductions may be made by an employer from the wages of his/her employee other than:-

- (a) deductions for the employee's absence from work not exceeding a sum proportionate to the period of absence;
- (b) deductions for damage to or loss of the employer's goods, equipment, property or money by the employee's neglect or default. In any one case, the sum to be deducted shall be equivalent to the value of the damage or loss but not exceeding \$300. The total of such deductions shall not exceed one quarter of the wages payable to the

- employee in that wage period;
- (c) deductions of the value of meals supplied by the employer at the employee's request and accommodation provided by the employer;
  - (d) deductions for the recovery of any advanced or over-paid wages to the employee. The total sum to be deducted shall not exceed one quarter of the wages payable to the employee in that wage period;
  - (e) deductions, with the employee's written consent, for the recovery of any loan made by the employer to the employee;
  - (f) deductions, at the written request of the employee, in respect of contributions to be paid by the employee through the employer for any medical benefit scheme, superannuation scheme, retirement scheme or thrift scheme;
  - (g) deductions which are required or authorized under any enactment to be made from the wages of the employee, including the deduction of the employee's contribution after being enrolled to the relevant registered scheme;
  - (h) deductions for outstanding maintenance payment owed by the employee pursuant to the Attachment of Income Order issued by the court.

9. Except with the approval in writing of the Commissioner for Labour, the total of all deductions made in paragraph 8 above, excluding those for absence from work and outstanding maintenance payment, must not exceed one half of the wages payable for the given wage period.

### **Continuous contract**

10. An employee who works continuously for 4 weeks or more with the same employer, with at least 18 hours in each week is regarded as an employee employed under a continuous contract.

### **Rest day**

11. An employee employed under a continuous contract is entitled to not less than one rest day in every period of seven days. A rest day is a continuous period of not less than 24 hours. The dates of the weekly rest days shall be appointed by the employer who must, unless the rest days are on a regular basis, notify the employee of the dates before the beginning of each month.

### **Statutory holidays**

12. An employee, irrespective of his/her length of service or working hours, is entitled to 12 statutory holidays in a year in accordance with the Employment Ordinance:

- (i) the first day of January;

- (ii) Lunar New Year's Day;
- (iii) the second day of Lunar New Year;
- (iv) the third day of Lunar New Year;
- (v) Ching Ming Festival;
- (vi) Labour Day, being the first day of May;
- (vii) Tuen Ng Festival;
- (viii) the day following the Chinese Mid-Autumn Festival;
- (ix) Chung Yeung Festival;
- (x) Chinese Winter Solstice Festival or Christmas Day (at the option of the Employer);
- (xi) Hong Kong Special Administrative Region Establishment Day, being the first day of July; and
- (xii) National Day, being the first day of October.

13. An employee having been employed under a continuous contract for not less than 3 months preceding any of these holidays is entitled to the holiday pay for that statutory holiday.

**Paid annual leave**

14. An employee is entitled to annual leave with pay after having been employed under a continuous contract for every 12 months. An employee's entitlement to paid annual leave increases progressively according to his/her length of service:

Years of service	Annual leave entitlements
1	7
2	7
3	8
4	9
5	10
6	11
7	12
8	13
9 or above	14

15. If the employment contract of an employee employed under a continuous contract is terminated for whatever reason, including resignation but excluding summary dismissal after 3 but less than 12 months of employment, the employee shall be paid a pro-rata sum in lieu of annual leave.

### **Sickness allowance**

16. An employee employed under a continuous contract can accumulate 2 paid sickness days for each completed month of employment during the first 12 months of employment and 4 paid sickness days for each month of service thereafter. Paid sickness days may be accumulated up to a maximum of 120 days.

17. The daily rate of sickness allowance is equal to four-fifths of the normal wages for that day. An employee shall be entitled to sickness allowance if:-

- (a) the sick leave taken is not less than 4 consecutive days (unless for any day off taken by a female employee for her pregnancy check-ups, post confinement medical treatment or miscarriage, in which case the employee shall be entitled to sickness allowance for each day of sick leave);
- (b) the sick leave is supported by an appropriate medical certificate; and
- (c) the employee has accumulated sufficient number of paid sickness days.

### **Payment for maternity leave**

18. A female employee employed under a continuous contract immediately before the commencement of her maternity leave and having given notice of pregnancy to the employer is entitled to a period of 10 weeks' maternity leave. An employee is eligible for maternity leave pay if she has been employed under a continuous contract for not less than 40 weeks immediately before the commencement of scheduled maternity leave. Maternity leave pay shall be equivalent to four-fifths of the employee's normal wages for the period of maternity leave.

### **Making arrangements for a substitute worker**

19. 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.

### **Termination of employment contract by notice**

20. In the case of a continuous contract where there is express agreement as to the length of notice, the agreed period of notice must not be less than 7 days.

### **Termination of employment contract without notice by employer**

21. An employer may terminate the employment contract without notice or payment in lieu under the following circumstances:

- (a) If the employee, in relation to his/her employment:
  - (i) willfully disobeys a lawful and reasonable order;
  - (ii) misconducts himself/herself, such conduct being inconsistent with the due and faithful discharge of his/her duties;
  - (iii) is guilty of fraud or dishonesty; or
  - (iv) is habitually neglectful in his/her duties; or
- (b) on any other ground on which he/she would be entitled to terminate the employment contract without notice at common law.

### **Termination of employment contract without notice by employee**

22. An employee may terminate his contract of employment without notice or payment in lieu:
- (a) if he/she reasonably fears physical danger by violence or disease such as was not contemplated by his/her contract of employment expressly or by necessary implication;
  - (b) if he/she is subjected to ill-treatment by the employer;
  - (c) if he/she has been employed by the employer for not less than 5 years and is certified to be permanently unfit for the type of work specified in the employment contract; or
  - (d) on any other ground on which he/she would be entitled to terminate the employment contract without notice at common law.

### **Deemed termination of employment contract by employer**

23. If wages are not paid within one month after they become due, the employee may terminate his/her contract of employment without notice or payment in lieu. Under such circumstances, the employee may deem the contract of employment to be terminated by his/her employer. The employer is required to pay wages in lieu of notice in addition to other statutory and contractual termination payment to the employee.

### **Other major provisions of the Employment Ordinance**

24. (a) Severance payment; and  
(b) Long service payment.
25. For details of employment terms, employers and employees are advised to refer to the employment contract and the Employment Ordinance which sets out the law summarized in these Guidance Notes.
26. 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.