

For information on
19 May 2005

LegCo Panel on Manpower

Protection for employees who are not employed under a continuous contract

Purpose

This paper briefs Members on the protection under the Employment Ordinance (EO) for employees who are not employed under a continuous contract.

Protection of the rights and benefits of all employees

2. The EO applies to every employee engaged under a contract of employment by virtue of section 4. Irrespective of their hours of work, all employees are entitled to the following rights and benefits under the EO:

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

In addition, all employees, irrespective of their hours of work, are afforded full protection under the Employees' Compensation Ordinance in respect of work-related injuries and occupational diseases contracted whilst on duty.

Additional benefits for employees employed under a continuous contract

3. The First Schedule of the EO defines continuous contract as a contract of employment under which an employee has been employed for 4 weeks or more and has worked for 18 hours or more in each week. This is commonly known as the “4-18” threshold for a continuous contract. Employees engaged under a continuous contract are entitled to other employment benefits under the EO, viz, rest days, pay for statutory holidays, paid annual leave, paid maternity leave, paid sickness days, severance payment and long service payment, subject to the respective qualifying requirements. In any dispute as to whether a contract of employment is a continuous contract, section 3 of the EO provides that the onus of proving that the contract is not a continuous contract rests on the employer.

Employees not employed under a continuous contract

4. In the third quarter (Q3) of 2001, the Census and Statistics Department (C&SD) conducted a special topic enquiry through the General Household Survey to collect data on employees who were not working under a continuous contract. The findings of the survey provide useful information on the characteristics of this category of employees and the employment benefits they enjoyed.

Number

5. Specifically, in Q3 of 2001, of the 2 592 200 employees employed in the non-government sector, 128 700 (5.0%) were not employed under a continuous contract at the time of enumeration and this figure comprised:

- (a) 28 900 employees (1.1%) who worked less than 18 hours a week; and
- (b) 99 800 employees (3.9%) who worked 18 hours or more a week but had been in employment for less than 4 weeks at the time of the survey.

Characteristics

6. Of the 128 700 non “4-18” employees, about half were aged 30-49. Over half had secondary/matriculation education attainment. About one-third were engaged in the construction sector. This was followed by the wholesale, retail and import/export trades, restaurants and hotels sector, and the community, social and personal services sector. Most of the non “4-18” employees were engaged in occupations at the lower end of the occupation hierarchy. More specifically, over half of them were either workers in elementary occupations or craft and related workers. About three-fifths of them had their employment earnings being calculated on a daily or hourly basis.

7. Of the 28 900 employees who usually worked less than 18 hours a week, 49.8% indicated that they had not worked longer hours for personal reasons, including the need to take care of housework or household members at home (33.3%), educational pursuit (8.4%), and health or aging problems (8.1%). In other words, some 14 300 employees worked under non “4-18” arrangement of their own accord and voluntarily.

8. Of the 99 800 employees who had worked 18 hours or more a week but less than 4 weeks at the time of enumeration, 56 500 (56.6%) indicated that they would probably stay in the job afterwards. Accordingly, these employees would be employed under a continuous contract once they completed 4 weeks’ service. The remaining 43 300 employees (43.4%) did not expect that they would work continuously for 4 weeks or more, with the majority of them (75%) citing the reasons of “customs of trade/norm of the company/business arrangement of company”.

Employment Benefits

9. Of the 128 700 employees who were not employed under a continuous contract at the time of enumeration, 27.5% had been granted pay for statutory holidays, 28.2% enjoyed paid annual leave, and 10.7% had been granted end-of-year payment under their employment contracts. For the 28 900 employees who usually worked less than 18 hours a week, 14.2% had been granted pay for statutory holidays, 7.5% enjoyed paid annual leave, and 5.4% had been granted end-of-year payment under their employment contracts.

10. It could not be concluded from the survey findings that all these 128 700 non “4-18” employees were unable to attain a continuous contract. This is because the survey only collected data on the length of service of those employees with their employers as at the time of enumeration, but not on the total length of their employment thereafter. Indeed, of those working 18 hours or more a week but less than 4 weeks with their employers as at the time of enumeration, some would subsequently be employed by the same employer for 4 weeks or more and then be regarded as being employed under a continuous contract under the EO. What we could conclude from the survey findings was only that among the 128 700 non “4-18” employees, 28 900 (i.e. 22.5%) worked less than the threshold of 18 hours per week as stated in the definition of continuous contract.

The “4-18” threshold

11. The EO affords basic protection to all employees irrespective of their hours of work in areas such as wage payment, statutory holidays, anti-union discrimination, and protection against unreasonable and unlawful dismissals. As for employees who work a reasonable number of hours in a week and on a continuous basis (i.e. under a continuous contract), they will be entitled to additional benefits under the EO. The notion of continuous contract rests on the premise that employees who have a regular employment relationship with their employers should be entitled to the full range of employment benefits.

12. Removing or lowering the “4-18” threshold for continuous contract under the EO would have cost implications for employers, because they will also have to offer the full range of employment benefits to those employees who work for shorter hours. The retail, catering and entertainment businesses have a greater demand for part-time staff. Employers in these trades may need to reduce their workforce so as to contain the additional staffing cost if the “4-18” threshold is relaxed. Removing the threshold would also adversely affect the employment opportunities of those who prefer to work shorter hours. Besides, it would impact on the marginal workforce who may have difficulty competing with other job-seekers in the full-time employment market. Furthermore, it may reduce the flexibility of certain industries which would normally adjust their part-time workforce when there are fluctuations in the demand for their goods and services. Given the wide implications on employers and employees, any proposal to remove or reduce the “4-18” threshold for continuous employment should be considered carefully in this light. We need to strike a proper balance.

13. Whilst the Administration has no intention of relaxing the “4-18” threshold at present, it will review the situation from time to time to see whether any change is necessary in the light of Hong Kong’s socio-economic developments.

Publicity and Promotional Efforts

14. It is important to note that through publicity and promotional efforts, the Labour Department has taken the initiative to explain to part-time employees their rights and benefits under the EO. To this end, an explanatory leaflet on the statutory rights and benefits of part-time employees has been published for distribution to the public, in particular to trade unions and industries where part-time employment is more prominent. A copy of this is attached. This should help ensure that employees fully understand their position under the EO before they decide to take up any employment that may fall outside the scope of continuous contract. The Department also promotes the adoption of good management practices which should be applied to full-time employees and their part-time counterparts alike.

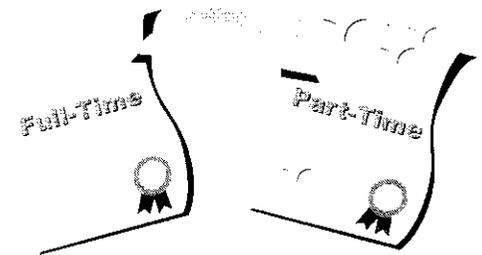
Economic Development and Labour Bureau
Labour Department
May 2005



Notes for Employees when asked to change to Part-time Employees

- An employee, when asked to switch to part-time employment, should carefully consider the new employment terms and conditions and see whether the new employment contract is still a continuous contract.
- An employer could not unilaterally change his full-time employee to a part-time employee, unless prior consent is obtained from the employee. The employee may claim for remedies against his employer under the provision of the Employment Ordinance with respect to unreasonable variation of the terms of the employment contract. Alternatively, the employee could make claim against his employer for damages/compensation on the ground of constructive dismissal under common law.

* For details, please refer to Chapter 9 - Employment Protection of "A Concise Guide to the Employment Ordinance" published by the Labour Department.



Good People Management on Recruitment of "Part-time" Staff

Good people management helps boost employees' morale, loyalty and productivity. An employer should consider adopting the following good practices on the recruitment of "part-time" staff:

- An employer should set out clear recruitment guidelines stating that suitable candidates should be recruited on genuine operational needs instead of deliberately restricting the weekly working hours of the vacancy to less than 18 hours so as to reduce costs.
- When a full-time vacancy arises, an employer should give priority to their existing pool of part-time staff.

Enquiries

I. Labour Department:
Enquiry Hotline : 2717 1771(the hotline is handled by "1823 Citizen's Easy Link")
Web site : http://www.labour.gov.hk

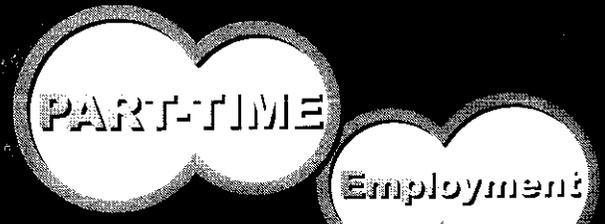
Branch Offices of Labour Relations Division

Hong Kong Island	
Hong Kong East Office 34/F, Revenue Tower, 5 Gloucester Road, Wan Chai	Hong Kong West Office 3/F, Western Magistracy Building, 2A Pok Fu Lam Road
Kowloon	
Kowloon East Office Room 1206, 12/F, Stelux House, 698 Prince Edward Road East, San Po Kong	Kowloon West Office Room 1009, 10/F, Cheung Sha Wan Government Offices, 303 Cheung Sha Wan Road
Kowloon South Office 2/F, Mongkok Government Offices, 30 Luen Wan Street, Mong Kok	Kwun Tong Office 6/F, Kowloon East Government Offices, 12 Lei Yue Mun Road, Kwun Tong
New Territories	
Tsuen Wan Office 5/F, Tsuen Wan Government Offices, 38 Sai Lau Kok Road, Tsuen Wan	Kwai Chung Office 6/F, Kwai Hing Government Offices, 166-174 Hing Fong Road, Kwai Chung
Tuen Mun Office Room 2720, 27/F, Tuen Mun Parklane Square, 2 Tuen Hi Road, Tuen Mun	Sha Tin & Tai Po Office Room 304-313, 3/F, Sha Tin Government Offices, 1 Sheung Wo Che Road, Sha Tin

Employees' Compensation Division

Hong Kong Offices (Hong Kong and Outlying Islands cases)	16/F, Southern Centre, 130 Hennessy Road, Wai Chai
Kowloon Offices (Kowloon and Government Employees cases)	Room 1007, 10/F, Cheung Sha Wan Government Offices, 303 Cheung Sha Wan Road
Tsuen Wan and Kwai Chung Offices (Cases in Tsuen Wan, Kwai Chung and New Territories West)	6/F, Tsuen Wan Government Offices, 38 Sai Lau Kok Road, Tsuen Wan
Sha Tin Office (Cases in Sha Tin and Northern New Territories)	Room 239, 2/F, Sha Tin Government Offices, 1 Sheung Wo Che Road, Sha Tin
Fatal Cases Office	Room 601, 6/F, Harbour Building, 38 Pier Road, Central

II. Mandatory Provident Fund Schemes Authority:
Address : 21/F & 22/F, One International Finance Centre,
 1 Harbour View Street, Central, Hong Kong
Hotline : 2918 0102
Fax Number : 2259 8806
Website : www.mpfahk.org



GUIDE TO PART-TIME EMPLOYMENT



Labour Department

Introduction

Due to operational needs, some employers such as those in retail, catering or hotel sectors have engaged "part-time" employees. In fact, for job seekers who are unable to work full-time for reasons such as family commitments and the need to study, "part-time" employment can better serve their needs.



However, many people have the misconception that "part-time" employees are not protected by labour legislation. This is not correct. The Employment Ordinance has laid down the definition of employment under "a continuous contract", but it does not differentiate "part-time" employees from full-time ones. In other words, all employees, irrespective of whether they are working "full-time" or "part-time", would enjoy basic protection under the Ordinance. For those employees who are employed under "a continuous contract", they are entitled to further rights and benefits provided by the Ordinance.

Basic Protection under the Employment Ordinance

All employees, be they full-time employees, part-time employees, casual workers or substitute workers, are entitled to the following basic protection and benefits conferred by the Employment Ordinance irrespective of their hours of work :

- Payment of wages
- Restriction on deductions from wages
- Granting of statutory holidays
- Maternity protection (prohibition of assignment of heavy, hazardous or harmful work)
- Employment protection (unreasonable and unlawful dismissal)
- Protection against anti-union discrimination
- Employers' obligation to provide information on conditions of service.

* For details, please refer to "A Concise Guide to the Employment Ordinance" published by the Labour Department

Employees Employed under Continuous Contract

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

An employee who is employed under a continuous contract and meets qualifying conditions stipulated in the Employment Ordinance is further entitled to the following benefits including:

- rest days
- paid statutory holidays
- paid annual leave
- sickness allowance
- maternity protection (maternity leave, payment for maternity leave, protection of a pregnant employee against termination of employment)
- severance payment
- long service payment
- employment protection

* For details, please refer to "A Concise Guide to the Employment Ordinance" published by the Labour Department.

Protection under the Employees' Compensation Ordinance

• Under the Employees' Compensation Ordinance, employers shall be liable to pay compensation, including periodical payments, medical expenses and compensation for permanent total or partial incapacity to all employees who sustain injuries as a result of an accident arising out of and in the course of employment, irrespective of their hours of work, or whether they work full-time or part-time.

• If an employee dies as a result of an accident arising out of and in the course of employment, his employer shall be liable to pay compensation for death to his surviving members of the family and reimburse reasonable funeral and medical attendance expenses on the deceased employee under the Employees' Compensation Ordinance.

• All employers (including contractors and sub-contractors) are required to take out insurance policies to cover their liabilities both under the Employees' Compensation Ordinance and at common law for injuries at work in respect of all employees (including full-time and part-time employees).

* For details, please refer to "A Concise Guide to the Employees' Compensation Ordinance" published by the Labour Department.

Coverage of the Mandatory Provident Fund Schemes Ordinance

The Mandatory Provident Fund Schemes Ordinance stipulates that any full-time and part-time employees, irrespective of his weekly hours of work, employed under a written or oral employment contract for a period of not less than 60 days, must be enrolled in a Mandatory Provident Fund scheme. Meanwhile, in the construction and catering industries, casual employees (short-term employees employed on a day-to-day basis or for a period of less than 60 days) must also be enrolled in Mandatory Provident Fund schemes within 10 days of commencement of employment.

Following the implementation of Mandatory Provident Fund Scheme, employees who are not employed under a continuous contract and who are not entitled to severance payment or long service payment will also enjoy retirement protection.

* For details, please refer to 積金錦囊 published by the Mandatory Provident Fund Schemes Authority.

Notes for Job Seekers

Before accepting an offer of employment, job seekers should consider its conditions of employment, remuneration package and training opportunities. An employment contract can be made either orally or in writing, but a written employment contract specifying the conditions of employment could avoid unnecessary labour disputes in future. Therefore, job seekers should, as far as possible, request their employers to enter into written employment contracts with them.

