

## **WOMEN'S COMMISSION**

### **Protection for employees** **who are not employed under a continuous contract**

#### **Purpose**

This paper sets out the protection under the Employment Ordinance (EO) (Cap. 57) for employees who are not employed under a continuous contract.

#### **Protection of the rights and benefits of all employees**

2. As the main piece of labour legislation governing employment conditions in Hong Kong, the EO applies with a few exceptions to every employee engaged under a contract of employment<sup>1</sup>. Irrespective of their weekly hours of work or duration of employment, all employees covered by the EO are entitled to the following rights and benefits:

- payment of wages;
- restriction on deduction 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.

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<sup>1</sup> Section 4 of the EO sets out, among others, the persons to whom the Ordinance does not apply. Examples of such persons are family members who live in the same dwelling as the employer and persons serving on board a ship not registered in Hong Kong etc.

### **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. Employees engaged under a “continuous contract” are further entitled to other employment benefits under the EO such as rest days, paid statutory holidays and annual leave, sickness allowance, paid maternity leave, severance payment and long service payment, etc, subject to their fulfilling the respective qualifying requirements as specified in the Ordinance. 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 rests on the employer.

### **Review of the definition of continuous employment under the EO in the light of recent developments in the labour market**

4. In recent years, there have been concerns about the growing number of employees who are not engaged under a continuous contract and hence not eligible for the benefits that are otherwise available. To take forward the review of the definition of continuous contract under the EO, the Labour Department (LD) has commissioned the Census and Statistics Department to conduct a special topic enquiry in 2006 for the purpose of obtaining updated information on the profile of employees who are not working under a continuous contract. The LD will brief the Labour Advisory Board<sup>2</sup> when the survey results are available.

### **Publicity and Promotional Efforts**

5. The LD is committed to maintaining harmonious labour relations in the non-government sector. In pursuing this goal, we have been actively promoting the adoption of good people management practices which are equally applicable to full-time and part-time employees. In addition, through publicity and promotional efforts, the LD has taken the initiative to explain to part-time employees their rights and benefits under the EO. To this end, an explanatory leaflet entitled “Part-time Employment – Know More About Labour Legislation” has been published for distribution to the public, in particular to trade unions and industries where part-time employment is more prominent. The leaflet succinctly sets out the basic protection and benefits conferred by the EO, the Employees’ Compensation Ordinance (Cap. 282)

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<sup>2</sup> The Labour Advisory Board is the most representative consultation body on labour matters in Hong Kong and is comprised of an equal number of employee and employer representatives.

(ECO)<sup>3</sup> and the Mandatory Provident Fund Schemes Ordinance (Cap. 485) (MPFSO)<sup>4</sup> on employees irrespective of their weekly working hours and the additional benefits under the EO for employees employed under a continuous contract. 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. A copy of the leaflet is enclosed.

**Labour Department**  
**November 2007**

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<sup>3</sup> Under the ECO, all employees, irrespective of their weekly hours of work, are accorded full protection in respect of work-related injuries and prescribed occupational diseases.

<sup>4</sup> The MPFSO provides that for an employee employed under an employment contract for a period of not less than 60 days (except for those categories of employees exempted under the MPFSO), his/her employer has to arrange to have him/her enrolled in a mandatory provident fund scheme irrespective of his/her weekly hours of work. As for a casual employee employed in the construction or catering industry for a period of less than 60 days, his/her employer is obliged to enroll him/her in a mandatory provident fund scheme within 10 days upon commencement of the employment.

# Part-time Employment

## Know More About Labour Legislation



### Introduction

Some employers engage "part-time" employees to meet operational needs. A number of families also employ "part-time" local domestic helpers to help them with housework.

On the other hand, due to personal reasons such as further study and family commitments, some job-seekers prefer "part-time" work with fewer working hours.

"Part-time" employment offers an alternative mode of employment to both employers and employees.

This leaflet provides useful information to them on "part-time" employment.

### Protection under Labour Legislation

Many people may think that "part-time" employees are not protected by labour legislation. This is a misconception.

In fact, labour legislation does not differentiate between part-time and full-time employees. Employees, no matter whether they are designated as "full-time" or "part-time", are protected by labour legislation.

This leaflet briefly introduces the rights and protection enjoyed by "part-time" employees under the Employment Ordinance, Employees' Compensation Ordinance and Mandatory Provident Fund Schemes Ordinance.

For further information, please refer to the relevant publicity leaflets, provisions of the law or contact the Labour Department or Mandatory Provident Fund Schemes Authority.

### Protection under the Employment Ordinance

The Employment Ordinance is the main piece of legislation governing employment conditions in Hong Kong. The employment terms offered to employees must not be set below the minimum standards laid down in the Employment Ordinance.

The Employment Ordinance does not provide a definition of "part-time" employment.

Employees, be they designated as full-time, "part-time", casual or substitute employees, and irrespective of their working hours, are entitled to the following rights and benefits under the Employment Ordinance:

- Wage payment protection
- 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)
- Provision of information on conditions of service by employers
- Protection against anti-union discrimination

Under the Employment Ordinance, an employee who has been employed continuously by the same employer for 4 weeks or more, with at least 18 hours worked in each week, is regarded as being employed under a "continuous contract". An employee, who is employed under a "continuous contract" and meets the qualifying conditions stated in the Employment Ordinance, is also entitled to the following rights and benefits in addition to those mentioned in the preceding paragraph:

- Rest days
- Pay for statutory holidays
- Annual leave with pay
- 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, etc

For further information on the rights and benefits enjoyed by employees under the Employment Ordinance, please refer to the Labour Department's publication "A Concise Guide to the Employment Ordinance".

### Points-to-note On Switch from "full-time" to "Part-time" Employment

Unless an employee has given prior consent, his employer cannot unilaterally change his employment from full-time to "part-time". Otherwise, the employee may lodge a claim for remedies against his employer on the ground of unreasonable variation of the terms of the employment contract under the Employment Ordinance. The employee may also make a claim for damages on the ground of constructive dismissal under common law.

When being asked to switch to "part-time" employment, an employee must carefully consider the new employment terms, including whether the new employment contract is still regarded as a "continuous contract" under the Employment Ordinance.

### Enquiry

#### Labour Department

Website :  
<http://www.labour.gov.hk>

Hotline : 2717 1771  
(handled by \*1823  
Citizen's Easy Link\*)



## Protection under the Employees' Compensation Ordinance

Under the Employees' Compensation Ordinance, all employers (including contractors and sub-contractors) are required to take out employees' compensation insurance to cover their liabilities both under the Ordinance and at common law for injuries at work in respect of all their employees (be they designated as full-time, "part-time", casual or substitute employees, and irrespective of their hours of work).

As required by the Employees' Compensation Ordinance, an employer must notify the Commissioner for Labour of an accident met by his employee (whether full-time or "part-time") arising out of and in the course of employment within 14 days (7 days in respect of fatal cases), and pay compensation to the employee.

Major items of compensation under the Employees' Compensation Ordinance include: periodical payments, medical expenses and compensation for permanent total or partial incapacity, etc. 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 the eligible family members of the deceased employee and reimburse reasonable funeral and medical attendance expenses to persons who have paid such expenses.

For further information on the Employees' Compensation Ordinance, please refer to the Labour Department's publication "A Concise Guide to the Employees' Compensation Ordinance".

## Enquiry Mandatory Provident Fund Schemes Authority

Website : <http://www.mprfank.org>

Holline : 2918 0102

## Protection under the Mandatory Provident Fund Schemes Ordinance

The Mandatory Provident Fund Schemes Ordinance provides that for any employee employed under a written or verbal employment contract for a period of not less than 60 days irrespective of whether he is employed as a full-time or "part-time" employee and irrespective of his weekly working hours, his employer must enrol him in a mandatory provident fund scheme.

As for a casual employee (i.e. a short-term employee employed on a day-to-day basis or for a period of less than 60 days) in the construction and catering industries, his employer must enrol him in a mandatory provident fund scheme within 10 days upon commencement of the employment.

Although an employee not employed under a "continuous contract" is not entitled to severance payment or long service payment, upon the implementation of the Mandatory Provident Fund System, he also enjoys retirement protection.

For further information on Mandatory Provident Fund Schemes, please refer to the publication "What Employees Should Know about MPrF- of the Mandatory Provident Fund Schemes Authority."

## Good People Management Practices

Full-time and "part-time" employees alike are valuable assets of a company. Good people management practices help boost the morale, commitment and productivity of both full-time or "part-time" employees.

Apart from meeting legal requirements, employers are advised to adopt good employment practices to care for their "part-time" employees.

Ineffective human resource management policies and practices will result in high turnover, unnecessary labour disputes and increase in operational costs. In the end, the employers will suffer.

If employers show concerns over the needs of "part-time" employees, these employees will definitely contribute their best to the company in return.

## Recruitment

Although an employment contract can be made verbally or in writing, employers should, as far as possible, enter into written employment contracts with their "part-time" employees. This will help avoid labour disputes. (Employers may refer to the Labour Department's publication "Using Written Employment Contract and Keeping Proper Wage and Employment Records" for information on how a written employment contract should be drawn up.)

The Employment Ordinance provides minimum standards on employment rights and benefits. To attract the most suitable candidates, many employers offer better and more competitive employment terms.

The Human Resources Department of some companies has delegated the power of recruiting "part-time" employees to branch managers or frontline supervisors. In these circumstances, the companies should devise clear guidelines on how to recruit and manage "part-time" employees for reference of these managers and supervisors.

## Training and Promotion

In a rapidly changing labour market, "part-time" employees, like their full-time counterparts, have to equip themselves with necessary job skills to cope with challenges at work. In this regard, employers should, as far as possible, provide adequate training opportunities to both full-time and "part-time" employees.

A person who has taken up a "part-time" job does not mean that he does not accept new challenges. Employers should provide "part-time" employees with suitable promotion opportunities to boost their morale and productivity.

An employer should only take account of the company's operational needs in recruiting "part-time" employees. He should not limit the working hours of the employees, or by other means, to evade his liabilities under labour legislation.

If additional full-time employees are needed, an employer should give priority to "part-time" employees performing similar duties in their companies. Not only can this practice help reduce the recruitment and training costs, it can also help the employer to recruit the most suitable persons.