



**Global Employment
Compass
Hong Kong**

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1. Summary of applicable rights for different categories of workers

	Employees (part-time or full-time)	Independent contractors/ service providers*	Volunteers**
Employment laws and regulations	Yes	No	No
Employees' compensation/remuneration requirements	See wages below	See payment below	See payments and reimbursement below
Minimum wage requirements	See wages below	No	No
Mandatory provident fund/retirement benefit fund contributions	Yes, see social security below	No	No
Immigration requirements including the right to work in your country	Yes	Yes	Yes
Personal Data (Privacy) laws and regulations	Yes	Yes	Yes
Anti-discrimination laws and regulations (in respect of employment activities)	Yes	Potentially, if engaged under a contractual obligation to carry out any work	No

* Assumes a genuine self-employed independent contractor/service provider arrangement and the individual not being deemed to be an employee

** Assumes a genuinely voluntary arrangement and the individual not being deemed to be an employee, or under a contractual obligation to carry out any work.



2. Legal requirements/rights/ practices for different categories of workers

a. Employees

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Definition of an employee

An “employee” is defined under the Employment Ordinance (Cap. 57 of the Laws of Hong Kong) (“EO”) as “an employee to whom, by virtue of section 4, [the EO] applies”. Section 4 of the EO provides that the EO applies to “every employee engaged under a contract of employment, to an employer of such employee and to a contract of employment between such employer and employee”, with the following exceptions:

- i. a family member who lives in the same dwelling as the employer;
- ii. an employee as defined in the Contracts for Employment Outside Hong Kong Ordinance (Cap. 78 of the Laws of Hong Kong), meaning a person in Hong Kong who has entered or is about to enter the employment of another person who is not in Hong Kong and not carrying on a business in Hong Kong where the contract is to be performed, whether wholly or partially, outside Hong Kong;
- iii. a person serving under a crew agreement under the Merchant Shipping (Seafarers) Ordinance (Cap. 478 of the Laws of Hong Kong), or on board a ship which is not registered in Hong Kong; and
- iv. an apprentice whose contract of apprenticeship has been registered under the Apprenticeship Ordinance (Cap. 47 of the Laws of Hong Kong), other than certain provisions of the EO.

A contract of employment is defined as “any agreement, whether in writing or oral, express or implied, whereby one person agrees to employ another and that other agrees to serve their employer as an employee and also a contract of apprenticeship” under Hong Kong law.





1 Contracts of Employment

What types of employment contracts are available? E.g. fixed term, part time, zero hour contracts, other? Are there any specific employment contracts available for non-profit organizations?

Fixed-term and part-time contracts are available, however zero hour contracts are not permitted.

Additionally, a range of contracts exist that achieve flexibility. These include employment contracts for work on specific days of the month; remote work, work from home; on-call work; open-ended hours work; work in shifts; part time contracts; additional employment contracts, etc.

What are the key terms of employment contracts?

Before employment commences, the employer is required to inform the employee of certain conditions of employment, such as:

- wages;
- wage period;
- end-of-year payment (if any); and
- length of notice required to terminate the employment (which must be in accordance with the EO).

As such, if a written employment contract is entered into, best practice is to include the above information. If an employment contract is not in writing, the employer must provide the employee with the above information in writing upon receipt of the employee's written request for such information.

Contracts for junior employees usually include clauses relating to the following;

- hours of work;
- location of work;
- term (i.e. duration);
- position and duties;
- remuneration;
- annual leave and sick leave;
- mandatory provident fund, medical insurance or benefits; and
- termination.

It is not unusual to have a different form of contract for senior executives. Such contracts usually include additional clauses relating to:

- post-employment restrictive covenants (such as non-competition, non-poaching);
- garden leave;
- additional benefits (such as housing allowance and bonuses); and





— confidentiality.

Is it acceptable to have a probation period for employees? If yes, for how long?

There is no legal requirement that an employer imposes a probation period on its staff. It is common, however, for employers in Hong Kong to impose a probation period.

The duration of the period often varies according to the level of the employee. There is no legal restriction on the length of a probation period. Commonly, a one-month probation is imposed on junior-level staff and a three-month probation imposed on more senior level staff.

Are fixed term employment contracts permissible? Are there any limitations on fixed term contracts? Are there any requirements to have a fixed term contract?

Fixed-term contracts are permissible. In Hong Kong, fixed-term employment contracts are not subject to any particular conditions or justifications but they must be in writing. There is no law which provides for a maximum duration for fixed-term contracts. In practice, fixed-term contracts usually last less than three years. The only exception is that the service contract of a director of a Hong Kong Stock Exchange listed company or its subsidiary cannot be for a fixed-term of more than three years without shareholders' approval in a general meeting.

There is no law which provides for a limit on successive fixed-term contracts. An employer is not legally obliged to renew a fixed-term contract unless the employment contract provides otherwise.

The EO requires that an employment contract for a period in excess of one month be in writing and signed by both parties to the contract (otherwise the contract would be deemed to be a monthly contract renewable from month to month). It is possible for the parties to agree either that the fixed-term contract: (i) cannot be terminated before the expiry or the fixed-term; or (ii) can be terminated before the expiry of the fixed-term contract subject to a specified notice period. If the parties do not wish the contract to be terminable before the expiry of the fixed-term, the contract must expressly state that it cannot be terminated early by notice.

If a party to a fixed-term contract (without an early termination clause) terminates the contract prior to the expiry of the fixed-term, the other party may claim damages equivalent to the wages and benefits which would be payable to during the unexpired portion of the fixed-term.

Do employment contracts have to be in writing? Are there any signatory requirements for employment contracts? For example, could they be signed in-person or electronically, etc.)?

A contract of employment may be written or oral. There are no specific language requirements for a contract of employment. Generally, employment contracts in Hong Kong are in English unless the employees concerned do not read or understand English (in which case, the contracts are in Chinese).

The EO, the primary legislation, also prescribes certain basic rights and protection for all employees. The EO applies to every employee engaged under a contract of employment in Hong Kong with only a few exceptions, and equally to locals and foreign nationals.

The contract of employment will govern the relationship between an employer and an employee. However, to the extent that any terms are less favorable than the basic protection afforded by the EO, the EO will prevail.

If an employment contract is in writing, the employer must give one copy of the written contract to the employee immediately after it is signed.





In addition, all employment contracts for more than one month must be evidenced in writing and signed by both parties, otherwise the contract is treated as a monthly contract, renewable from month to month. In practice, this means that all fixed-term contracts must be in writing. Under Hong Kong Law, it is possible to sign the contracts by electronic signature.

Do employees have to be issued with a written employment contract before they start work?

Please see [above](#).

Can you provide a simple template of the contracts mentioned above?

There is no universal template in Hong Kong. The contract should be prepared based on the particular circumstances of the appointment.

Is there an obligation for an employer to run a criminal record check to the extent that any individual they hire will be working with children or vulnerable people?

There is no such statutory obligation. That said, where employees are required to undertake child-related work and work relating to mentally incapacitated persons, the employers have the ability to check whether eligible applicants have any criminal conviction records against a specified list of sexual offenses pursuant to the Sexual Conviction Record Check (an administrative scheme operated by the Hong Kong Police Force).

Can employers request references from former employers for new hires?

Yes.

Is an employer required to set up any form of employee representative body? If so, what is the trigger for this?

No, employers are under no legal obligation to form employee representative bodies or enter into collective bargaining. There are also no specific consultation or notification requirements.

Is it common to have collective agreements in your jurisdiction that apply to all employers in a particular region or sector?

No. Collective bargaining is not recognized in Hong Kong and trade union membership is low. Unions relating to transportation, logistics, aircrew staff, professional teachers and construction workers do exist and are increasingly common in other industries since 2019. However, collective agreements are rare given the low levels of trade union membership.

2 Conditions of employment

What is the minimum age requirement for employment?

The legal age for employment in Hong Kong is 18 years or above. However, employers are permitted to employ children and young persons aged between 13 years and 17 years, subject to certain restrictions on the type of work that they could perform.

What type of work may a child undertake? For example, are there any specific restrictions?

Under Hong Kong law, a child means a person under the age of 15 years. The general position is that children aged under 15 are prohibited from working in all industrial undertakings.





Children aged 13 and 14 may be employed in non-industrial establishments, and also subject to whether they have completed Form III of secondary education:

- Employment of children who have attained 13 years and completed Form III is subject to the following restrictions:
 - a. a parent should produce to the prospective employer evidence that the child has completed Form III;
 - b. a parent has consented in writing to their employment; and
 - c. the child shall not be employed:
 - i. before 7 a.m. or after 7 p.m.;
 - ii. for more than 8 hours on any day;
 - iii. to work continuously for more than 5 hours without a break of not less than 1 hour for a meal or rest; and
 - iv. to carry any load exceeding 18 kg.
- Employment of children who have attained 13 years but not completed Form III is subject to the following restrictions:
 - a. conditions (b) and (c) referred to above;
 - b. a parent should produce to the prospective employer a valid school attendance certificate in respect of the child;
 - c. the child shall not be employed:
 - i. during school hours on any school day;
 - ii. during the school term for more than 2 hours on any school day, or 4 hours on any other day;
 - iii. during the summer holidays for more than 8 hours on any day; and
 - iv. in certain prohibited occupations or premises (e.g. in any premises or place where intoxicating liquor is sold and consumed, in the kitchen).

Children aged under 13 are prohibited from taking up employment. However, for the purposes of art and training, the Commissioner for Labour may grant special permission for children to be employed as entertainers, subject to certain stringent conditions as the Commissioner may specify.

Wages

What is the minimum wage requirement for employees? Are there any exceptions in minimum wages for young persons or people with disabilities?

The law on minimum wages came into force on 1 May 2011. The statutory minimum wage rate is reviewed every two years. With effect from 1 May 2023, the statutory minimum wage rate was revised from HK\$37.50 per hour to HK\$40 per hour.

In respect of young persons, the statutory minimum wage does not apply to student interns (i.e. students undergoing a period of work arranged by designated education institutions in connection with an accredited programme or non-local education programme provided by the institution), as





well as work experience students (i.e. students who are either enrolled in an accredited programme or student residents in Hong Kong who are enrolled in a non-local education programme, and engaged under employment contracts at the beginning of which they are under the age of 26) for a period of up to 59 calendar days. However, it will apply to all other young persons.

In respect of people with disabilities, the statutory minimum wage applies to both employees with and without disabilities, and hence the general position is that employees with disabilities are also entitled to wages at not lower than the statutory minimum wage rate. However, in view of the possible employment difficulties encountered by certain employees with disabilities, a special arrangement is provided under the MWO such that employees with disabilities whose productivity may be impaired by their disabilities are entitled to choose to have their productivity assessed and be remunerated at a rate commensurate with their productivity. The right to invoke such productivity assessment is entirely vested in the employees with disabilities. In other words, for employees with disabilities who do not opt to undergo productivity assessment, their employers must pay them at not lower than the statutory minimum wage rate.

Are there any conditions which warrant a pay raise or extra pay? If yes, what are they?

No, only if agreed as part of the contract.

When are wages due? For example, is there any obligation to pay wages weekly, or monthly?

Wages are due on the last day of the wage period and must be paid as soon as is practicable but in any case, not later than seven days after the end of the wage period. The wage period for wage payment under a contract of employment shall, unless the contrary is proved, be deemed to be 1 month. In practice, the wage period is agreed in the employment contract.

Are employers obliged to provide employees with paid leave on public holidays?

Employees are entitled to 13 statutory holidays per year. The General Holidays Ordinance (Cap. 149 of the Laws of Hong Kong) declares every Sunday and 17 other days as 'general holidays' (more commonly known as "public holidays" in Hong Kong). The 17 days general holidays include the 13 statutory holidays plus four extra days. Although there is no legal obligation to grant the four extra days of public holidays which are not statutory holidays, Government departments, banks, educational institutions and most multi-national employers grant the 17 days of public holiday instead of just statutory holidays. Where these fall on a weekend or statutory rest day there are also particular rules to bear in mind. Legislation has been passed to increase the number of statutory holidays in stages to align with public holidays by 2030.

Further, if an employee is required by their employer to work on a statutory holiday, they must be granted an alternative holiday within 60 days (before or after) the statutory holiday.

Are employers obliged to provide employees with annual leave?

The EO provides that employees are entitled to 7 to 14 days of annual leave depending on their length of service – this is in addition to the statutory holidays. However, some multi-national companies provide contractual annual leave entitlements in excess of the minimum statutory entitlements.

Are employees entitled to receive their usual salary during their annual leave?

Yes.





In addition, there is a statutory formula for determining statutory annual leave pay (which requires variable pay such as commission to be taken into account in addition to base salary). If the amount of statutory annual leave pay exceeds the daily rate of the usual salary in respect of a pro rata annual leave day, the employer is required to make up the difference.

Is there a requirement to pay overtime? How is overtime compensated?

There is no law in Hong Kong requiring overtime pay. There is also no legal obligation to pay a higher rate for overtime.

Are there any extraordinary circumstances that could be relied on to temporarily cease paying employees for the hours worked?

No, unless contractually agreed.

Are employees entitled to an end-of-year payment?

No, unless contractually agreed.

Are employees entitled to payments when their employment contract is terminated, such as notice or notice pay, accrued or untaken holiday and/or statutory severance?

A contract with an employee who is on probation may be terminated without any notice or payment in lieu of notice during the first month (regardless of whether the contract provides otherwise). After the first month, and subject to the contract, an employment contract for an employee on probation may be terminated with not less than seven days' notice or payment in lieu of such notice.

After probation, a minimum of seven days' notice of termination must be provided for under the employment contract by either side. In the absence of a contractual notice period, one month's notice will be required.

The payments payable to the employees upon termination would generally include:

- Payment in lieu of notice – if the employee is not required to serve their entire notice period and the employer will “buy out” all or part of the notice period;
- Accrued but untaken annual leave – if the employee has accrued annual leave that has not been taken as at the date of the termination;
- Statutory severance pay – if the employee has 24 months of continuous employment and the reason for termination is redundancy; and
- Statutory long service payment – if the employee has 5 years' service and is terminated by the employer other than due to redundancy or gross misconduct (i.e. they are not entitled to statutory severance pay). In effect an employee will only be entitled to either statutory severance pay or statutory long service pay (the formula for determining the amount of which is identical), but not both.

Working hours

What is considered a full-time working week? If the employee is contractually required to work less than this amount, are they considered a part time employee?

There are no statutory definitions of full-time or part-time employees. There is also no legally defined minimum number of hours an individual must work to be considered a full-time employee.





There is only a statutory distinction between employees who are employed under a 'continuous contract of employment' (who work for the same employer not less than 18 hours per week for not less than four weeks) and those who are not.

Are there fixed public/statutory holidays each year? Can employees be required to work on public/statutory holidays? Are employees entitled to any other type of leave besides public/statutory holidays?

There are fixed statutory and public holidays in Hong Kong – see [above](#) for more information. The following types of leave are also available in Hong Kong:

- Maternity leave: Since 11 December 2020, female employees employed under continuous contracts (as defined [above](#)) are entitled to 14 weeks of maternity leave (previously 10). Those who have been employed for 40 weeks or more are entitled to paid maternity leave. Those with at least four weeks under a continuous contract are entitled to the same leave period on an unpaid basis. Statutory maternity pay is four-fifths of the employee's average wages earned over the preceding 12-month period. However, some multi-national companies pay full wages as maternity pay to their employees.

The Government will reimburse the costs for the maternity leave payment for the additional 4 weeks (i.e. the 4 weeks increase to maternity leave granted in 2020) and subject to a HK\$80,000 (approx. US\$10,300) cap set by statute. Maternity pay for the remainder of the maternity leave period is for the employer's account.

- Paternity leave: Currently, all male employees are entitled to paternity leave of five days. Paternity leave is to be taken consecutively or separately for each confinement of their spouse/partner if they fulfil other requirements as stipulated in the law. Since 11 December 2020, male employees may take paternity leave at any time during the period from 4 weeks before the expected date of delivery of the child to 14 weeks after the actual date of delivery of the child. Pay for this leave is calculated as four-fifths of their average daily wage and is payable by the employer. A male employee is entitled to paternity leave pay if he (i) has been employed under a continuous contract for not less than 40 weeks immediately before the day of paternity leave and (ii) has provided the required documents to the employer within 12 months after the first day of paternity leave taken or within 6 months after cessation of employment (if he ceases to be employed).
- Parental leave: There is no equivalent to parental leave or family leave in Hong Kong.
- Adoption leave: There is no statutory regime for adoption leave in Hong Kong.

Do part time employees receive any particular protection on the basis of their part-time status?

In Hong Kong, there is no legal definition of 'part-time employment'. If a part-time employee is employed for four weeks or more with at least 18 hours in a week, they would be employed under a 'continuous contract of employment' (as defined [above](#)) and entitled to the protection and benefits under the EO. Whilst all employees covered by the EO, irrespective of their hours of work, are entitled to basic protection under the Ordinance (including payment of wages, restrictions on wages deductions and the granting of statutory holidays), employees who are employed under a continuous contract are further entitled to such benefits as rest days, paid annual leave, sickness allowance, severance payment and long service payment, etc.





Do part-time employees receive the same pro-rated terms to full time employees, e.g. in relation to pay and benefits?

See [above](#).

Social security

What social security contributions are employers obliged to pay? Presumably, pro-rated contributions are required for part time employees?

Hong Kong has a non-contributory social security system to provide a basic social safety net. No deductions are made from salaries in respect of social security contributions.

The Hong Kong Government does not provide a statutory pension either. The government has instead enacted the Mandatory Provident Fund Schemes Ordinance (Cap. 485 of the Laws of Hong Kong) ("MPFSO"), which provides the statutory framework for a system of privately-managed retirement savings schemes, called Mandatory Provident Fund ("MPF") schemes, for employees to accrue financial benefits for retirement. Under the MPFSO, an employer must make a minimum monthly contribution of 5% of an employee's relevant income (currently capped at HKD30,000 per month). Employees (except for those whose monthly relevant income is less than HKD7,100) must contribute a minimum of 5% of their monthly relevant income (currently capped at HKD30,000 per month) to the MPF scheme. The amount of contributions depends on the amount of the employee's relevant income, rather than whether an individual is full-time or part-time.

Are employers obliged to provide health insurance to their employees?

Providing health insurance is not mandatory. It is, however, compulsory for an employer to have in place a valid insurance policy to cover its liabilities in respect of work injuries sustained by its employees.

Are employees entitled to unemployment insurance/benefits following the end of employment?

There is no unemployment insurance system or an unemployment assistance system in place. However, employees might be able to claim benefits following the end of employment, for example via the Comprehensive Social Security Assistance Scheme, entitlement of which would depend on their personal and financial situation.

The Hong Kong Government also recently launched the Temporary Unemployment Relief Scheme by way of a one-off subsidy for employees who have lost their jobs due to the COVID-19 epidemic.

Are employers obliged to provide sick leave? If yes, for how long? How many days have to be paid by employers? Is it possible to have unpaid sick leave?

An employee employed under a continuous contract (as defined [above](#)) is entitled to sickness allowance for the sick leave taken by them if:

- the sick leave taken is for four consecutive days or more (this requirement does not apply to pregnant employees);
- the sick leave taken is supported by an appropriate medical certificate; and
- the employee has accumulated a sufficient number of paid sickness days.

Under the EO, an employee can accumulate two paid sickness days per completed month's service during the first year and four paid sickness days per completed month's service from the second





year onwards, up to 120 days. The daily rate of statutory sickness allowance is a sum equivalent to four-fifths of the average daily wages earned by an employee in the 12-month period preceding the sickness day or the first sickness day (where applicable). If an employee is employed for less than 12 months, the calculation shall be based on the shorter period.

Although statutory sickness allowance is payable by the employer only when sick leave is four or more consecutive days, some employers provide employees with sickness allowance at the full daily rate for days one to three of sick leave notwithstanding that it is not a legal entitlement.

Are employers obliged to provide maternity leave for employees? If yes, for how long? How many days/months have to be paid by employers? Is it possible to have unpaid maternity leave?

Please see [above](#).

Is paternity leave available to employees? If yes, for how long? How many days/months have to be paid by employers? Is it possible to have unpaid paternity leave?

Please see [above](#).

Are employers liable for absence due to work-place injuries?

Employers will be liable for sick leave and/or pay in the usual way. Employers' liability insurance is mandatory in Hong Kong and may help pay compensation if an employee is injured or becomes ill because of the work they do.

Are employees entitled to retirement benefits from the employer? If yes, what benefits?

Yes, under the MPF, which was introduced in 2000 – see further detail [above](#). Some employees may participate in a retirement scheme registered under the Occupational Retirement Schemes Ordinance (Cap. 426 of the Laws of Hong Kong) (ORSO scheme), which pre-dates the MPF. ORSO schemes are not mandatory.

MPF contributions are mandatory for full and part-time employees aged 18-65 and who have been employed under a continuous employment contract (see definition [above](#)) for at least 60 days, with only limited exceptions. The self-employed must also contribute.

Expatriates are exempt persons if they enter Hong Kong on an employment visa AND satisfy either of the following two criteria:

- They enter Hong Kong to work for less than 13 months; or
- They are covered by an overseas retirement scheme.

Benefits are paid out as a lump sum.

Are employers obliged to introduce reporting channels and legal safeguards for whistleblowers?

There is no legal obligation in Hong Kong for an employer to adopt or implement a whistleblowing policy.

3 Safe and supportive work environment

Broadly what measures have to be in place to ensure employers uphold health and safety? (such as fire or earthquake drills)





Employers are responsible for ensuring the safety and health at work of all employees so far as reasonably practicable. Employers' duties include:

- Providing and maintaining plant and systems of work that are safe and without risks to health;
- Making arrangements for ensuring the safety and absence of risks to health in connection with the use, handling, storage or transportation of plant or substances;
- Providing information, instruction, training and supervision as may be necessary to ensure the safety and health at work;
- Maintaining the workplace (including the means of access to and egress from the workplace) in a condition that is safe and without risks to health; and
- Providing and maintaining a workplace and a working environment that are safe and without risks to health.

Is there a requirement for an employer to issue any form of non-discrimination policies? (such as gender equality policies, equal employment opportunities, diversity, and inclusion policies, etc.)

Employers are generally not required by law to have a written anti-discrimination policy. However, it is considered best practice to do so in view of the potential liability of employers for the acts of their employees as well as the increasing number of claims being brought under the anti-discrimination ordinances since their passing in Hong Kong.

Further, the Sex Discrimination Ordinance (Cap. 480 of the Laws of Hong Kong), Disability Discrimination Ordinance (Cap. 487 of the Laws of Hong Kong) and Race Discrimination Ordinance (Cap. 602 of the Laws of Hong Kong) contain express provisions imposing vicarious liability on employers for the actions of their "workplace participants" which include employees, contract workers and volunteers engaged by them. However, there is a defense available to an employer if it can show that it took all reasonably practicable steps to prevent the employee, contract worker or volunteer from committing the discriminatory act or from doing anything of that description. Having an anti-discrimination policy (and enforcing it in a consistent and transparent manner) is generally one of these steps.

Is there a requirement to provide employees with training designed to combat discrimination and harassment?

There is no such legal requirement, but see [above](#) – training would be considered one of the reasonably practicable steps taken by an employer to prevent discriminatory acts.

Is there a requirement to have a data protection policy?

There is no legal requirement for a written data protection policy, although it is advisable, especially in larger organizations, and having a policy will help employers comply with the principle of openness and transparency.

Is it mandatory for employers to have a Child Protection Policy (CPP)? Are employees obliged to provide training on CPP to its employees?

There is no such legal requirement.





4 Tax

Which taxes are mandatory for employers to pay and deduct on behalf of their employees?

Employers in Hong Kong are not required to withhold tax for employees. However, where an employee intends to leave Hong Kong for more than one month, the employer is required to notify the Inland Revenue Department (“**IRD**”) of the impending departure of the employee at least 1 month prior to the departure, during when the employer must also temporarily withhold payments of salaries and all other monies to that employee until a “letter of release” is issued by the IRD.

Are all employee taxes deducted from the salary that the employer pays or is there a requirement for employees to pay certain taxes directly?

Employers in Hong Kong are not required to withhold tax for employees.

Most employees in Hong Kong who receive income from an office, employment or pension are charged salaries tax. If an employee taxpayer receives a tax return from the IRD, he or she must complete and submit it by the due date for filing, and pay the tax directly at the specified time upon receipt of the notice of assessment.

5 Remote work

Are employers required to have a registered legal entity in the jurisdiction in order to employ employees in the jurisdiction?

No, employers are not required to have a registered legal entity in Hong Kong to employ employees. However, most businesses in Hong Kong will be set up as a sole proprietorship, limited company or partnership.

Are employers required to provide any form of physical working space for employees working in your country?

Employees may work from the company location and/or from a remote location. It must be ensured that, whatever the work location, employers ensure the health and safety of their employees and those that are affected by their activities so far as reasonably practicable.

Please provide general instructions for employers on what to check if the employer has remote employees, including concerning employee tax liabilities.

Under the Minimum Wage Ordinance (Cap. 608 of the Laws of Hong Kong) (“**MWO**”), the monthly monetary cap on the requirement of employers to record the total number of hours worked by employees is currently HK\$16,300. If there are employees who earn less than HK\$16,300 per month, an employer will need to consider how to track the working hours of these employees to comply with the MWO.

Employers must also update their data protection policy to address areas related to remote working, which may include enhanced measures that employees should take to avoid leakage of confidential information. Employers should also ensure that all of its employees are aware of such revised policy (e.g. by providing appropriate training).

Note [above](#) regarding the employer’s notification obligation where an employee leaves Hong Kong. Regardless of whether employees are working remotely or not, there is no obligation on employers in Hong Kong to withhold tax from an employee’s pay.





In the event that employees are working remotely from another jurisdiction, an employer will need to assess the tax obligations that will arise in the country in which the employee is working. Whilst each jurisdiction will have different obligations in terms of the payment and deduction of taxes, the following factors are likely to be relevant: where is the employee living and working, does the employee split their time working in different jurisdictions? What nationality is the employee? Where do they have tax residence? Where is the company for which they are working based?

6 What to do when things go wrong

Dispute resolution

Do employees (including volunteers) need to go through any form of dispute resolution before bringing a claim to a court or tribunal?

No, unless there is a contractual obligation to do so. That said, typically an employee will make a complaint to the Labour Tribunal before he files a claim in the Labour Tribunal. The Labour Department will invite both the employee and the employer to meet at the Labour Department and attempt to conciliate the matter, despite the fact that it is not compulsory for an employer to attend this conciliation. The Labour Department, in any event, does not have power to enter judgment or make any award against the employer. If conciliation fails, the Labour Department will assist the employee to prepare a claim to be filed in the Labour Tribunal.

Resignation

What grounds do employees have for resignation?

There are no legally specified grounds for resignation. An employee can resign for any reason at any time, but must give the contractually agreed notice period in order to terminate the employment. The only exceptions are (a) where the employee is within the first month of the probation, during which either party may terminate the employment without notice or (b) where the employee is terminating the employment immediately due to being constructively dismissed (e.g. on the basis of a repudiatory breach by the employer).

Termination

What grounds do employers have for the termination of employment contracts?

An employer can terminate an employment contract by notice or payment made in lieu of notice. However, for employees being in continuous employment for more than 24 months, a valid reason must be given for termination and additional compensation is payable if there is none. The valid reasons for termination under the EO are in relation to (i) conduct, (ii) capability or qualifications, (iii) redundancy or other genuine operational requirements, (iv) contravention of the law (i.e. illegality) or (v) any other reason of substance, which, in the opinion of the Court or the Labour Tribunal, was sufficient cause to warrant the dismissal of the employee.

An employer may summarily dismiss an employee without notice or payment in lieu of notice if the employee, in relation to their employment: 1. wilfully disobeys a lawful and reasonable order; 2. engages in misconducts; 3. is guilty of fraud or dishonesty; or 4. is habitually neglectful in their duties. Note that summary dismissal is a serious disciplinary action. It only applies to cases where an employee has committed very serious misconduct or fails to improve after the employer's repeated warnings (there is no specified number of warnings that can lead an employee being summarily dismissed, as each case will depend on its own facts). In practice, employees in Hong Kong are usually terminated by notice or payment in lieu of notice rather than for misconduct.

How do employers have to document the termination of an employment contract?





There is no specific statutory procedure to be followed where the termination is triggered by notice or payment in lieu of notice, subject to the following:

- Where an employee is dismissed for misconduct, and the employer has disciplinary procedures in place that have been incorporated into the employee's employment contract, the employer must adhere to those disciplinary procedures before the termination.
- Where an employee is entitled to either a severance payment or a long service payment, an employer must provide a written statement of how the employee's severance or long service payment is calculated.
- Employers must notify the IRD of the termination one month prior to the termination. The IRD may accept late notification when the reason for the delay is reasonable. If the employee will leave Hong Kong for a period that is longer than one month immediately after the employment ends, all payments to the employee must be withheld after the filing of the IRD notification for one month or until tax clearance is issued by the IRD (whichever is sooner).
- Employers must also notify the trustee of the employee's MPF within 10 days after the last day of the calendar month in which the employee ceased to be employed by the employer.
- If an employee is working under an employment visa which is sponsored by the employer, the employer must notify the Immigration Department of the termination.

What is the responsibility of employers for damages incurred by an employee's actions within their work?

Employers can be held vicariously liable for acts (such as negligence) carried out by an employee in the course of their employment.





b. Independent contractors/consultants*

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Definition of an independent contractor/consultant

There is no legal definition of an independent contractor/consultant in the Employment Ordinance. The approach that the Courts use to distinguish between an employee and an independent contractor/consultant is to look at all features of the relationship to develop an “overall impression” in arriving at the decision.

**The term consultant will be used to also refer to independent contractors, or any other term that would mean a natural person that provides goods or services under a written contract or a verbal agreement but does not work to meet the definition of employee.*

1 Contracts

What types of independent contractor/consultant agreements are available? Are there any specific agreements available to NGOs?

There is no legal requirement for any particular form of agreements when engaging independent contractors /consultants, and no legally required agreement format for NGOs.

What are the main elements of consultant agreements?

Consultancy agreements will typically cover provisions in relation to:

- Terms and scope of services, including duties and obligations;
- Service fee and expenses;
- Termination;
- Intellectual property;
- Confidentiality;
- Insurance and liability;
- Notices;
- Third party rights;
- Governing law; and





— Jurisdiction.

Is it possible to have probation periods for independent contractors/consultants? If yes, for how long?

It is legally possible to have probation periods for independent contractors/ consultants. However, this is not recommended as it could be considered to be inconsistent with the nature of an independent contractor/consultant relationship, particularly since such provision would indicate a level of control of the employee or mutuality of obligation. The risk is that it could be seen as a sign that the independent contractor/ consultant is actually an employee and should have the employment rights detailed [above](#).

Is it possible to have a fixed term consultation/independent contractor agreement? Are there any restrictions around fixed term consultant/independent contractor agreements?

Yes, it is possible to have a fixed-term consultation/independent contractor agreement. Although there are no restrictions around the length of the term, most usually this would be for the term of a particular project, as the nature of a consultant/independent contractor arrangement is often that the arrangement ends when the work is completed.

Do independent contractor/consultant agreements have to be in writing? Are there any signatory requirements? For example, could they be signed in-person or electronically, etc.)?

There is generally no legal requirement for the consultant/independent contractor agreement to be in writing, although this is often considered best practice. The agreement can be signed in person or electronically.

Do all types of independent contractors/consultants have to be under contract in order to be able to work?

The contract will set out the terms on which the work will be carried out, but there is no legal obligation for this to be in any particular format, and it can be a verbal or written agreement.

Can you provide a simple template of the agreements mentioned above?

There is no universal template in Hong Kong. The agreement should be prepared based on the particular circumstances of the appointment.

Is there an obligation to run a criminal record check to the extent that any independent contractor will be working with children or vulnerable people?

There is no such statutory obligation. That said, where independent contractors are required to undertake child-related work and work relating to mentally incapacitated persons, the end user engager has the ability to check whether eligible applicants have any criminal conviction records against a specified list of sexual offenses pursuant to the Sexual Conviction Record Check (an administrative scheme operated by the Hong Kong Police Force).

2 Conditions of work for consultants

Are there any minimum age requirements for an individual to work under a consultant/independent contractor agreement?

There is no such legal requirement under Hong Kong law.





Does a consultant/independent contractor need to obtain a license or any other permission in order to work?

There is no such legal requirement under Hong Kong law.

Payment

Are there any minimum pay requirements for consultants/independent contractors?

No, assuming that the consultant/independent contractor is not deemed to be an employee, they will not be entitled to receive the statutory minimum wage.

Are there any exceptions in minimum wages for young persons or people with disabilities?

Assuming that the consultant/independent contractor is not deemed to be an employee, they will not be entitled to receive the statutory minimum wage.

Is there any requirement to provide statutory/paid leave to consultants for statutory holidays?

No, assuming that the consultant/independent contractor is not deemed to be an employee, they will not be entitled to receive statutory/paid leave.

Is there any requirement to pay annual leave to consultant/independent contractors? If so, how is this compensated, if at all?

No, assuming that the consultant/independent contractor is not deemed to be an employee, they will not be entitled to receive paid annual leave.

Is there an obligation to provide consultant/independent contractors with overtime? How is this compensated if required?

There is no legal right to overtime, unless provided for under the terms of the contract.

Are consultants entitled to an end-of-year payment?

There is no legal right to an end-of-year payment, unless provided for under the terms of the contract.

Are consultants entitled to a final payment when the contract is terminated?

There is no legal right to a final payment on termination, unless provided for under the terms of the contract.

Working hours

Are consultants entitled to any type of leave, whether paid or unpaid?

There is no legal right to any type of leave, unless provided for under the terms of the contract.

Social security

Does the end user engager need to make any social security contributions on behalf of a consultant/independent contractor? Are independent contractors entitled to health insurance from the end user engager?





There is no legal right to health insurance from the end user engager, unless provided for under the terms of the contract. The end user engager does not need to make any MPF contributions in respect of a consultant/ independent contractor.

Are independent contractors/consultants entitled to unemployment insurance/benefits after termination of their independent contractor/consultancy agreement from the end user engager?

There is no legal right to unemployment insurance/benefits from the end user engager, unless provided for under the terms of the contract.

Are independent contractors/consultants entitled to sick leave from the end user engager? If yes, for how long? How many days have to be paid?

There is no legal right to sick leave from the end user engager, unless provided for under the terms of the contract.

Are independent contractors/consultants entitled to maternity leave from the end user engager? If yes, for how long? How many days/months have to be paid?

There is no legal right to maternity leave from the end user engager, unless provided for under the terms of the contract.

Are independent contractors/consultants entitled to paternity leave from the end user engager? If yes, for how long? How many days/months should be paid?

There is no legal right to paternity leave from the end user engager, unless provided for under the terms of the contract.

Are employers obliged to cover work-place injuries for independent contractors/consultants?

There is no legal right to sick leave/pay from the end user engager, unless provided for under the terms of the contract.

Are independent contractors/consultants entitled to retirement benefits from the end user? If yes, what benefits?

There is no legal right to retirement benefits from the end user engager, unless provided for under the terms of the contract.

3 Safe and supportive work environment

Are there any differences in terms of the regime that applies to employees?

Employers shall ensure the health and safety of their employees, as well as those that are affected by their activities (which would include independent contractors/consultants), so far as reasonably practicable. As such, the obligation is equivalent to that which applies in relation to employees.

4 Remote work

Are end user engagers required to have a registered legal entity in the jurisdiction in order to hire independent contractors/consultants there?

There is no such legal requirement under Hong Kong law.





Independent contractors/consultants may work remotely from another jurisdiction. As long as they do not enter Hong Kong for the entire period of the engagement, they will not require a Hong Kong work visa.

5 What to do when things go wrong

Resignation

Do consultants/independent contractors need a reason to terminate the contract or can they terminate it for any reason in accordance with the terms of the contract?

There are no legally specified grounds for resignation, although the reasons for termination (and the impact of that reason on other terms such as notice and severance payments or benefits) will often be set out in the contract.

Termination of agreement

What grounds do end user engagers have for the termination of consultant agreements?

There are no legally specified grounds for the termination of consultant agreements. Termination grounds will depend on the terms of the contract.

What is the responsibility of the end user engagers for damages incurred by a consultant's actions within their work?

Currently in Hong Kong, the requirement of an employer-employee affiliation in respect of a vicarious liability claim remains and the principle does not apply to independent contractors engaged by an employer. However, there is case law in the UK where the Court restated the latest legal position by suggesting that vicarious liability may accommodate modern-day employer-employee relationships. It is unclear whether Hong Kong will adopt the expanded scope as set out in the UK rulings going forward.

In any event, the Sex Discrimination Ordinance, Disability Discrimination Ordinance and Race Discrimination Ordinance contain express provisions imposing vicarious liability on employers for the actions of their "workplace participants" which include employees, contract workers and volunteers engaged by them. However, there is a defense available to an employer if it can show that it took all reasonably practicable steps to prevent the employee, contractor, intern or volunteer from committing the discriminatory act or from doing anything of that description.





c. Volunteers

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Definition of a volunteer

There is no legal definition of a volunteer under Hong Kong employment law. The legal status of volunteers will depend on the nature of the relationship in practice, and will not be determined solely based on the terms of any written document or contract. Generally, volunteers will not usually be considered to be employees, as a genuinely voluntary arrangement will lack the necessary mutuality of obligation between the volunteer and the organization they are volunteering for, and there will often be no (verbal or written) contract between the volunteer and the organization. The information in the remainder of this section assumes a genuinely voluntary arrangement, with the volunteer not being an employee.

1 Contracts

Are organizations required to sign any form of agreement with volunteers?

There is no legal requirement to enter into a written agreement with volunteers.

2 Conditions of employment

Is there a minimum age requirement for volunteers?

There is no such legal requirement under Hong Kong law.

What type of volunteering work may a child undertake? Are there any restrictions around this?

There is no such legal requirement under Hong Kong law. Given the potential risk of deemed employment, please also see restrictions referred to [above](#).

Payments and reimbursement

Are organizations allowed to pay stipends to volunteers?

Yes, there is no legal restriction on the payment of stipends to volunteers. It should be noted however that any payments that go beyond out-of-pocket expenses could risk the arrangement being deemed to be an employment relationship, with consequent entitlement to certain employment rights, including the payment of the statutory minimum wage for all hours worked.

Are organizations allowed to reimburse volunteers? If yes, for what expenses (such as transportation, food, etc.).





Yes, there is no legal restriction on the payment of reimbursement of reasonable expenses arising from the volunteering activities or benefits in kind in the form of subsistence to volunteers. This would include, for example, volunteers being placed by a charity or similar body with another charity or similar body and the volunteer receiving reasonable expenses for subsistence or living expenses.

It should be noted however that any payments that go beyond reasonable expenses actually incurred arising from the volunteering activities could risk the arrangement being deemed to be an employment relationship, with consequent entitlement to certain employment rights, including the payment of the statutory minimum wage for all hours worked.

Working hours

Are there any obligations around how many hours volunteers can work?

No, working time limits do not apply to volunteers.

Are volunteers entitled to any type of leave?

No.

Social security

Are organizations obliged to pay any social security contributions on behalf of their volunteers?

No.

Are organizations obliged to provide health insurance to volunteers?

No.

Are organizations liable for absences of volunteers due to work-place injuries?

No.

3 Safe and supportive work environment

Are there any differences in terms of the regime that applies to employees?

Health and safety must be considered for volunteers as well as for employees. Reasonable steps shall be taken to reduce the likelihood of injury to volunteers. Best practice would be to carry out risk assessments to identify risks and put appropriate measures in place.

4 Tax

Are organizations obliged to pay taxes if they pay their volunteers stipends? If yes, what types of taxes are mandatory to pay?

The general position is that stipends paid to volunteers are not subject to tax assessment unless they exceed out-of-pocket expenses which may reasonably be considered as wages in respect of work done or work to be done as deemed employees instead of volunteers.





5 What to do when things go wrong

What grounds do organizations have for the termination of volunteer agreements/arrangements?

There are no legally specified grounds for the termination of volunteer arrangements.

What is the responsibility of organizations for damages incurred by a volunteer's actions within his/her work?

There is a risk that an organization could be held vicariously liable for the actions of its volunteers.

The Sex Discrimination Ordinance, Disability Discrimination Ordinance and Race Discrimination Ordinance contain express provisions imposing vicarious liability on employers for the actions of their "workplace participants" which include employees, contract workers and volunteers engaged by them. However, there is a defense available to an employer if it can show that it took all reasonably practicable steps to prevent the employee, intern or volunteer from committing the discriminatory act or from doing anything of that description.





d. Non-citizen employees and consultants, including refugees and others forcibly displaced

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1 Status and the right to work

Are employers obliged to secure legal status for their employees or consultants if they are non-citizens? (such as refugee status, humanitarian visas, visas for trafficking survivors, other recognized protection statuses, etc.)

If the employer would like to employ a foreign employee, it shall apply for a work visa on their behalf before the employee could commence working in Hong Kong. Employers are obliged to ensure that their employees have the right to work in Hong Kong. Employers are liable to a maximum fine of HK\$350,000 and 3 years' imprisonment if they employ persons who are not lawfully employable.

Are employers obliged to secure work permits for their employees or consultants?

If the employer would like to employ a foreign employee, it shall apply for a work visa on their behalf before the employee could commence working in Hong Kong. Employers are obliged to ensure that their employees have the right to work in Hong Kong. Employers are liable to a maximum fine of HK\$350,000 and 3 years' imprisonment if they employ persons who are not lawfully employable.

Is it always necessary to obtain a work permit?

Persons having, prima facie, no right of abode or right to land in Hong Kong, must obtain an entry permit or employment visa before coming to Hong Kong for the purpose of employment.

Can asylum-seekers and other persons forcibly displaced access the right to work if they do not have refugee status or other recognized protection statuses?

Under the current system, only successful non-refoulement claimants can apply for permission from the Director of Immigration in Hong Kong to take up employment, which is granted on a discretionary basis.





2 Contracts

Are employment contracts or consultant agreements for non-citizens different to those for citizens?

No.

3 Conditions of employment

Does national law regulate the quotas for the number of non-citizens within one organization?

No.

Are employers obliged to report about employed non-citizens?

No.

Are there any other differences in conditions of employment for non-citizens and citizens?

No.

Are there any specific employment terms that apply to citizens but not apply to non-citizens?

No.

4 Safe and supportive work environment

Are there any differences in a safe and supportive work environment approach for non-citizens? If yes, please elaborate here.

No.

Does the employer have additional obligations for non-citizens?

No.

5 What to do when things go wrong?

Is the process of termination of an employment contract for non-citizens different than for citizens? If yes, please explain here.

No, but if an employee is working under an employment visa which is sponsored by the employer, the employer must notify the Immigration Department of the termination.

Is the process of resignation for non-citizens different than for citizens? If yes, please explain here.

No, but if an employee is working under an employment visa which is sponsored by the employer, the employer must notify the Immigration Department of the termination.

Are non-citizens entitled to the equal protection of employment laws in the event of employment-related disputes?





Yes.





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