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Hong Kong Employer Guide

2024

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INTRODUCTION

With the pandemic in the rearview mirror and the scrapping of almost all its COVID-19 rules in December 2022, Hong Kong has reopened for business. Hong Kong's gross domestic product growth forecast is expected to hit 4% to 5% for 2023, and its jobless rate has dropped to 3.1% for the 12th straight decline—all strong indicators that Hong Kong's post-COVID-19 economic recovery is well underway.

Yet, the challenges resulting from the pandemic have changed the workforce in Hong Kong. The pandemic saw a surge in people leaving Hong Kong, tightening the city's talent pool. The government has introduced measures, such as the Top Talent Pass Scheme and relaunching of a new Capital Investment Entrant Scheme, to address the talent shortage. Generally, employees are taking a more transactional work approach. Salary remains the top motivator for employees considering a job move, but other considerations, such as flexible work arrangements, have become increasingly important. Employers who better understand and cater to this shift in the workforce by offering a well-defined employee value proposition that extends beyond mere salary and flexibility will have a significant advantage when it comes to attracting new talent and retaining employees.

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EMPLOYMENT RELATIONSHIPS

I. PRE-EMPLOYMENT

Immigration/Visa Requirements

Employers must ensure their employees are lawfully allowed to work in Hong Kong. Foreign workers must possess the necessary work permit.

Visas to live and work in Hong Kong can be either temporary or permanent. There are a number of different types of visas administered by the Hong Kong Immigration Department depending on whether the worker is a professional (university graduate or above), imported worker (technician level or lower), domestic helper, or from mainland China.

The Employment Ordinance requires that, prior to employing a person, employers must inspect the person's Hong Kong identity card or, if the person does not have one, his or her passport.

Reference/Background Checks

An employer requires consent from the applicant before it may contact a prospective employee's references and previous employers to gather and verify information.

Police and Other Checks

Police checks on a prospective employee are not permitted.

Employers of persons undertaking child-related work and work relating to mentally incapacitated persons can ask prospective employees to undergo a sexual convictions record check to determine the suitability of the prospective employee for that employment.

Medical Examinations

Medical examinations are permitted with the applicant's consent if it is necessary to determine his or her fitness for a particular job. Obligations exist regarding obtaining and handling personal data by employers (or prospective employers).

Minimum Qualifications

Businesses may ask for minimum qualifications to ascertain an applicant's suitability for a role.

II. TYPES OF RELATIONSHIPS

Employee

Individuals can be employed on a full-time or part-time basis, on a fixed-term or ongoing contract, or on a casual basis. Employees garner different entitlements depending on the basis on which they are employed.

Independent Contractor

Businesses often engage independent contractors on a fee-for-service basis. A business will usually engage the independent contractor by means of a service agreement with the individual or with the individual's business.

Labor Hire

Labor hire workers are often engaged for short periods and are common in certain industries, such as building and construction and information technology. Such workers may be employees or contractors of the labor hire firm.

III. INSTRUMENTS OF EMPLOYMENT

Contracts

Employment contracts can be oral or in writing. However, if the contract is not of the type that renews from month to month, then under Section 5(2) of the Employment Ordinance, it must be in writing and signed by both parties.

While it is customary for the terms of employment to be expressly set out in a formal contract or offer letter and agreed on between the parties, they may also be implied by law and by application of the Employment Ordinance.

Codes of Rules

Not applicable in Hong Kong.

Registered Agreements

Not applicable in Hong Kong.

Policies

Policies are not mandatory, but they are strongly advised. Policies that should exist include those relating to discrimination, harassment, victimization, and work health and safety.

IV. ENTITLEMENTS

Minimum Employment Rights

Wages

Effective from 1 May 2023, the statutory minimum wage is HK\$40 per hour.

Unless otherwise agreed, there is a presumption in the Employment Ordinance that the wage period is one month. Wages must be paid as soon as practicable, but not later than seven days after that time.

If the employee's contract contains a contractual right to an end-of-year bonus payment but the employee has only completed part of the year, the employee is entitled to a pro rata payment provided the period of employment during the relevant year has been at least three months.

Leave Entitlements

Employees in Hong Kong are entitled to a minimum of 13 statutory holidays (to be progressively increased to 17 by 2030) per year or public holidays (which consist of every Sunday, statutory holidays, plus four extra public holidays). Employers may require employees to work on a statutory/public holiday if an alternative or substituted day is granted in lieu.

All employees who are continuously employed (i.e., at least 18 hours per week for four consecutive weeks) are entitled to one rest day in every seven-day period.

All employees who are continuously employed (see above) are entitled to be paid a statutory sickness allowance. Under the Employment Ordinance, the employee accumulates a certain number of leave

days per month of service up to a maximum allowance. Employers are prohibited from terminating employees while they are absent from work and receiving paid sickness allowance.

Under the Employment Ordinance, an employee who has completed 12 months of continuous service is entitled to seven days' paid annual leave (up to a maximum of 14 days for nine years of service). However, in practice, employers frequently agree to a contractual annual leave entitlement in excess of the statutory minimum.

Maternity Protection and Benefits

Female employees who are employed under a continuous contract (see above) are entitled to 14 weeks of statutory maternity leave. The amount of maternity leave pay is calculated at four-fifths of the employee's daily average wage, although in practice many employers choose to make no deduction as a benefit to the employee. The maternity leave pay for the additional four weeks is subject to a cap of HK\$80,000. The Hong Kong government will reimburse employers in respect to the extended period of maternity leave. Once a pregnant employee has given notice of pregnancy, the employer is prohibited from terminating her employment until the date of her return from maternity leave. The definition of "miscarriage" under the Employment Ordinance has also been updated from "before 28 weeks of pregnancy" to "before 24 weeks of pregnancy" to entitle a female employee, whose child is incapable of survival after being born at or after 24 weeks of pregnancy, to maternity leave if other conditions are met.

In addition to the protections under the Employment Ordinance, Hong Kong's anti-discrimination legislation prohibits discrimination against employees on the grounds of sex, race, pregnancy, and family status.

Paternity Leave

Male employees are entitled to five days' paid paternity leave for each child born on or after 18 January 2019. To qualify, the male employee must (i) have been employed under a continuous contract for not less than 40 weeks immediately prior to the intended commencement of the leave, (ii) have given the required notification of the intention to take leave to his employer, and (iii) provide evidence that he is the father of the child. Paternity leave can be taken separately or consecutively, but it must be taken within the period of four weeks prior to the expected date of delivery and 14 weeks following the birth of the child.

Discretionary Benefits (Bonuses)

It is common for employers in Hong Kong to pay employees an end-of-year payment. It is sometimes referred to as "double pay," "13th month bonus," or "end-of-year payment" and is usually paid prior to the Chinese New Year holiday. The amount is typically equal to a full month's wages.

TERMINATION OF EMPLOYMENT

I. GROUNDS

Termination can be brought about by mutual agreement, upon expiry of a fixed-term contract, termination by the employer with or without notice, or termination (or resignation) by the employee. There is no concept of “unfair dismissal” in Hong Kong. The contract may also come to an end by operation of the law (e.g., in the case of frustration, death, dissolution, or winding up of the business).

II. MINIMUM ENTITLEMENTS

Payments and Notice

The length of notice required to terminate a contract will depend on the type of contract involved. Where the contract is deemed to renew from month to month but does not specify the length of notice, the notice period is not less than one month. Where the contract specifies a notice period, then the length of notice will be the agreed period, but it cannot be less than seven days.

Both the employer and employee may terminate the employment by making payment in lieu of notice. It is also permissible to have a combination of part notice and part payment.

In the case of serious misconduct, disobedience, or incompetence warranting summary dismissal, the employer may terminate the contract immediately without notice to the employee.

The following payments may be payable to the employee upon termination:

- Payment in lieu of notice.
- Accrued wages.
- Accrued annual leave.
- Outstanding holiday pay.
- Accrued end-of-year payment (and pro rata portion).
- Severance pay, if applicable.
- Long service pay, if applicable.
- Any other contractual entitlements.

Employers are required to pay the employee’s final entitlement as soon as practicable, but not later than seven days after the date of termination.

III. REDUNDANCY

Genuine Redundancy

Eligible employees who have been made redundant or subjected to a layoff are entitled to a statutory severance payment. To be eligible, the employee must have been employed under a continuous contract for not less than two years.

Consultation

Not applicable in Hong Kong.

Payment

The payment is calculated on the basis of either two-thirds of the employee’s monthly average wage or HK\$15,000, whichever is the lesser, for each year of service (pro rata for an incomplete year). The amount is subject to a maximum cap of HK\$390,000.

IV. REMEDIES

Dismissal Action

Constructive Dismissal

A constructive dismissal occurs when an employer has acted or engaged in conduct that amounts to a significant breach of the employment contract or shows that the employer no longer intends to be bound by the contract. In such situations, the employer is said to have repudiated the contract. The employee ceases to have any further obligations under the contract (including any post-employment restraints) and is entitled to leave the employment with or without notice.

As noted above, there is no concept of unfair dismissal in Hong Kong. However, the employee may be able to bring a claim against the employer on the basis of breach of the implied duties of good faith, mutual trust, and confidence.

BUSINESS TRANSFER AND RESTRUCTURING

I. LEGAL REQUIREMENTS

Transfer of Business

There is no law providing for an automatic transfer of the employment relationship upon a transfer of business. The employment relationship with the former employer must be lawfully terminated and a new contract entered into with the new employer. An employer may avoid the obligation to make severance payments if it reemploys or reengages an employee on equal terms or the employee unreasonably refuses the offer.

II. RESTRUCTURING

Notification

There is no requirement of notification in Hong Kong unless the restructuring involves the termination of employees. Notification to employees must be made in accordance with the terms of their employment contracts.

Consultation

Not applicable in Hong Kong.

PROTECTION OF ASSETS

I. CONFIDENTIAL INFORMATION

Most contracts of employment include provisions protecting the confidentiality of an employer's confidential information, including intellectual property, clients, and the business' employees.

II. CONTRACTUAL RESTRAINTS AND NON-COMPETES

Confidentiality provisions restrict employees from using confidential information for anything other than their work duties. These provisions restrain employees from using confidential information during and for a reasonable period of time after termination of employment.

Most executive employment contracts contain non-compete provisions that protect an employer's legitimate business interests, which can be enforced if reasonable under the circumstances. These provisions usually prevent an employee from competing with his or her former employer for a period of up to 12 months.

III. PRIVACY OBLIGATIONS

In Hong Kong, the collection and use of personal data is governed by the Personal Data (Privacy) Ordinance. Personal data is information about a living person that would allow the individual to be identified. This ordinance sets out requirements relating to the collection, use, storage, and handling of personal data.

IV. WORKPLACE SURVEILLANCE

Under Hong Kong law, there is no general prohibition against an employer undertaking surveillance of its employees. The Monitoring Guidelines issued by the Privacy Commissioner set out various factors for employers to consider when assessing the appropriateness of implementing employee monitoring and its potential impact on the collection of personal data and privacy issues.

V. WORKPLACE INVESTIGATIONS

Employers use workplace investigations as a management and conflict-resolution tool to determine policy breaches, misconduct, or misuse of confidential information. The conduct of these investigations is determined by policy.

Outcomes of workplace investigations are often used to manage employees or to determine whether to terminate an employee's employment.

WORKPLACE BEHAVIOR

I. MANAGING PERFORMANCE AND CONDUCT

Employment contracts, policies, and agreements provide for management of employee performance and conduct.

While the concept of unfair dismissal does not exist in Hong Kong, it is generally considered to be good practice for an employer to warn an employee and document grounds for dismissal before terminating for poor performance. This may help to protect the employer against claims made by employees and to avoid payments, such as statutory severance.

II. BULLYING AND HARASSMENT

Bullying

There is no law against bullying in Hong Kong. However, an employee may be able to rely on breaches of the relevant anti-discrimination ordinances or the common law duty of the employer to provide a safe place and a safe system of work to the employee.

Harassment

Harassment is unwanted behavior that is aimed at offending, humiliating, or intimidating another person. Harassment in employment for an unlawful reason, such as sexual harassment, is prohibited under the Sex Discrimination Ordinance.

III. DISCRIMINATION

Hong Kong's anti-discrimination legislation prohibits discrimination in the workplace and elsewhere based on sex, race, disability, or marital status. The legislation comprises:

- The Sex Discrimination Ordinance
- The Race Discrimination Ordinance
- The Disability Discrimination Ordinance
- The Family Status Discrimination Ordinance

At present, the law does not prohibit discriminatory behavior based on age, religion, or sexual preference.

IV. UNIONS

Representation

Individuals in Hong Kong have the right and freedom to form and join trade unions. However, the level of participation is relatively low compared to many other jurisdictions. These rights are set out in Hong Kong's Basic Law.

The Employment Ordinance also provides protection against anti-union discrimination. Other relevant legislation includes the Trade Unions Ordinance, the Trade Union Registration Regulations, and the Labor Relations Ordinance. Employers should also be familiar with the Code of Labor Relations Practice issued by the Labor Department.

Right of Entry

No person is permitted to be a member of a registered trade union unless they ordinarily reside in Hong Kong and are engaged or employed in a trade, industry, or occupation with which the trade union is directly concerned.

The trade union is not allowed to refuse membership on the basis that an individual is only casually or seasonally engaged or employed in the trade, industry, or occupation.

Industrial Disputation

A union officer has a right of audience before an arbitration tribunal between an employee and employer.

V. REMOTE/HYBRID WORK

Work From Home

Employees do not have a statutory right to work from home, unless such right is provided for in the employment contract. The employer and the employee are free to agree on the arrangement and policies applicable to any work-from-home arrangement.

Employers are required to take out an insurance policy to cover employers' liabilities for an employee's death or injuries from work under the Employees Compensation Ordinance, and employers shall ensure the coverage of such policy extends to the remote working arrangement.

Employees will access the employer's data through their own network and devices during the work-from-home arrangement. Employers should adopt appropriate measures to maintain data security, especially where personal data is involved, to safeguard against any data loss or unauthorized disclosure.

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