# LW2903 Business and Law

## Rights under the Employment Ordinance

Lecture 8

# Introduction

- Employment Ordinance ("EO")(Cap. 57).
- EO applies to every employee engaged under a contract of employment in Hong Kong.
- It also applies to locals and foreign nationals working in Hong Kong (subject to immigration control and visa).

must have copy of contract

- A contract of employment governs the relationship between employer and employee.
- If the contractual terms are less favourable, the EO will prevail.

↳ some terms are missing

↳ go back to EO (∵ Law guarantee)

# Statutory Entitlements

- Wage Protection
- Rest Days
- Holidays with Pay
- Paid Annual Leave
- Sickness Allowance
- Maternity Protection
- Severance Payment
- Long Service Payment
- Employment Protection
- Protection Against Anti-Union Discrimination

∴ we need money

# Wage Protection

- Wages means all renumeration, earnings, allowance, tips and service charge.
- Allowances including travelling allowances, attendance allowances, commission and overtime pay are within the definition of wages.
- Wages should be paid not later than seven days after the end of the wage period. If wage is paid after 7 days, interests should also be paid.

make sure these include in the contract too

NOTE: The Minimum Wage Ordinance (Cap. 608) came into effect on 1 May 2011 – the rate had been revised to $37.5 per hour since 1 May 2019.

($40 - May 2023)

# Rest Days

- Rest days, statutory holidays and paid annual leave during employment.
- One day rest (not less than 24 hours) in every period of seven days.
- Employer must not compel an employee to work on a rest day except for an emergency. If so, the employer should substitute a rest day within 30 days after the original rest day.
- **Leung Ka Lau & others v The Hospital Authority** (2007), the Court of Appeal held the HA breached the statutory obligation to put doctors on call on a rest day.

165 plaintiff

must compensate doctors on daily basis (24hrs)
but not hour basis, can't pay them wages and make them must work

rest in hospital only

# Holidays with Pay

statutory holidays
public holidays

- An employee is entitled to the following statutory holidays :
  - the first day of January
  - Lunar New Year's Day
  - the second day of Lunar New Year
  - the third day of Lunar New Year

Chinese new year

  - Ching Ming Festival
  - Labour Day, being the first day of May
  - The Birthday of the Buddha (newly added from 2022)
  - Tuen Ng Festival
  - Hong Kong Special Administrative Region Establishment Day, being the first day of July
  - the day following the Chinese Mid-Autumn Festival
  - Chung Yeung Festival
  - National Day, being the first day of October
  - Chinese Winter Solstice Festival or Christmas Day (at the option of the employer)

most leave work earlier, not full day

冬至
(gather with family)

∵ many employee

# Holidays with Pay

- If an employee is required to work on a statutory holiday, an alternative holiday should be arranged within 60 days before or after the statutory holiday.
- Notice must be given 48 hours before the alternative holiday and before the statutory holiday
- Statutory holiday falling on rest day – holiday should be granted on the next day.
- Employee having been employed under a continuous contract for not less than three months immediately preceding a statutory holiday is entitled to the holiday pay.
- Pay in lieu of holiday is not permitted. See **Hui Lai Ying v Kwong Wai Tai Sports Wear Factory Ltd** [2001]

instead of

比金錢而獲取 holidays

compensate: annual leave + statutory holidays

# Paid Annual Leave

- An employee is entitled to annual leave with pay after having been employed under a continuous contract for every 12 months. An employee's entitlement to paid annual leave increases progressively from seven days to a maximum of 14 days according to his length of service.
- An employee is also entitled to paid annual leave which had not been taken before their contract of employment ends and is entitled to payment in lieu of any annual leave not taken. See **Leung Hung Cheung v Cheung Chung Wai** [2010], whether the employee was dismissed does not affect his entitlement for paid annual leave.

| Years of service | Day of annual leave |
| --- | --- |
| 1 | 7 |
| 2 | 7 |
| 3 | 8 |
| 4 | 9 |
| 5 | 10 |
| 6 | 11 |
| 7 | 12 |
| 8 | 13 |
| 9+ | 14 |

視乎company比你九日

· √第一年就有26日A.L

# Sickness Allowance

- An employee employed under a continuous contract is entitled to sickness allowance if the following conditions are fulfilled:
  - the sick leave taken is not less than four consecutive days (unless for any day off taken by a female employee for her pregnancy check-ups, post confinement medical treatment or miscarriage, any such day on which she is absent shall be counted as a sickness day and, subject to the following conditions, be paid sickness allowance);
  - the sick leave is supported by an appropriate medical certificate (see next slide on "Two Categories of Paid Sickness Days"); and
  - the employee has accumulated sufficient number of paid sickness days (see next slide on "Two Categories of Paid Sickness Days").

# Sickness Allowance

- Category 1: (36 Days)
  - supported by a medical certificate issued by a registered medical practitioner, a registered Chinese medicine practitioner or a registered dentist
- Category 2: (84 Days) up to 84 Days
  - sickness days taken exceeds the number of paid sickness days remaining in Category 1
  - if required by the employer, a medical certificate issued by a registered medical practitioner, registered Chinese medicine practitioner or registered dentist attending the employee as an out-patient or in-patient in a hospital should be produced ; upon the employer's request, a brief record of the investigation carried out and the treatment prescribed by the issuer of the medical certificate should also be produced.

if exceed 84 Days, √ ask whether unpaid leave

Paternity: 5 days

# Maternity Protection

4/5 paid entirely

A female employee employed under a continuous contract for not less than 40 weeks immediately before the commencement of her maternity leave and having given notice of pregnancy and her intention to take maternity leave to the employer is entitled to the following periods of leave:

14 weeks + 4 weeks ← ✓ add not more than 4 weeks (when needed)

- a continuous period of 14 weeks' maternity leave;
- if confinement occurs later than the expected date of confinement, a further period equal to the number of days from the day after the expected date of confinement to the actual date of confinement;

✓ i.e. see what actual needed for employee to take maternity leave

- the employee may enjoy an additional period of leave for not more than four weeks on the grounds of illness or disability due to the pregnancy or confinement.

- contract wont tell maximum no. of working hour

if employer no money, sell their assets to employees.

# End of Year Payment

- End of year payment means any annual payment (including double pay, 13th month payment, end of year bonus) of a contractual nature. It does not include any payment which is of a gratuitous nature or which is payable at the discretion of the employer.

# Severance Payment

xresign voluntary

- Employed for not less than 24 months under a continuous contract
- The employee is dismissed by reason of redundancy
- Redundancy means:
  - the employer closes or intends to close his business;
  - the employer has ceased, or intends to cease, the business in the place where the employee was employed; or move placement
  - the requirement of the business for employees to carry out work of a particular kind, or for the employee to carry out work in the place where the employee was employed, ceases or diminishes or is expected to cease or diminish.

The employee is no longer needed (task/role/service...) maybe bcs machine replaces human work

# Long Service Payment

- Employed for not less than 5 years under a continuous contract
- The employee is dismissed but :
  - he is not summarily dismissed due to his serious misconduct;
  - his dismissal is not by reason of redundancy

    ↳ other reasons, not redundancy not misconduct
  - employment contract of a fixed term expires without being renewed
  - the employee dies
  - the employee resigns on ground of ill health
  - the employee, aged 65 or above, resigns on ground of old age

# Employment Protection

- EO aims at discouraging employers from dismissing or varying the terms of the employment contract of their employees in order to evade their liabilities under the Ordinance.
- Include:
  - Unreasonable Dismissal
  - Unreasonable Variation of the Terms of the Employment Contract
  - Unlawful Dismissal

# Unreasonable and Unlawful Dismissal

- Every employee shall have the following rights:
  - to be a member or an officer of a trade union
  - to take part in the activities of the trade union at any appropriate time, if the
  - employee is a member or an officer of a trade union
    (Appropriate time means:-
    - outside working hours; or
    - during working hours by arrangement and with the consent of the employer.)
  - to associate with other persons for the purpose of forming or applying for the registration of a trade union.

eg. protest, strike

setting up a trade union

registrate 先可以 set up trade union