



Child Labour Legal Guide - Hong Kong

- Cap 57 Employment Ordinance
- Cap 57B Employment of Children Regulations
- Cap 47 Apprenticeship Ordinance
- The Convention on the Rights of the Child (ratified by the UK in 1994 extending to Hong Kong, continue to be applicable after 1997)

Summary

Definitions

Term	Definitions under different laws
Child / Children	<p>The Convention on the Rights of the Child - every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.</p> <p>Employment Ordinance - a person under the age of 15 years.</p>
Young person	<p>Employment Ordinance - a person who has attained the age of 15 years but not the age of 18 years.</p> <p>Apprenticeship Ordinance - a person of or over the age of 14 years and under the age of 19 years.</p>
Minor	Under the age of 18 years.

Employment Ordinance

- This legislation regulates general employment relationship in Hong Kong and provide the basic protection of labour rights.
- Section 2 of the Ordinance provides “child means a person under the age of 15 years”, which is a definition that covers across all sub-legislation under the Employment Ordinance. This Ordinance governs employment contracts between employers and children, to the extent permissible under the Employment of Children Regulations.

Employment of Children Regulations

- In summary, there is a blanket prohibition of any employment of a child under 13 years old in Hong Kong. For a child who is 13 years old or above, he / she cannot be employed in an industrial undertaking, except as separately provides under the Apprenticeship Ordinance (which is detailed below).
- There is a general prohibition of employment of children under 13 years old. Overall speaking, s4(1) of the Regulations prohibits anyone from employing a child (or helping a child to obtain employment) who is under 13 years old or in any industrial undertaking. As such, any child who is older than the age of 13 years may be employed in a non-industrial undertaking.
 - For children between 13 and 15 years old who has completed Form 3 of secondary education (equivalent to Grade 9), s5 provides that they can be employed as long as their parents can produce evidence that the children have completed Form 3 and the parents have consented to the employment. The consent should be made in writing. Their employment is subject to certain statutory restrictions. (s5 of the Regulations).
 - For children between 13 and 15 years old who has NOT completed Form 3 of secondary education, their parents will have to produce a valid school attendance certificate to the employer and give consent to the employment in writing. (s6 of the Regulations).
- In addition to the above limitations, the Regulations also specifies other restrictions on the type of work a child can undertake e.g. working hours should not be earlier than 7am or later than 7pm, the number of working hours per day should not exceed 8 hours, a child should not lift or carry any load exceeding 18 kg in the course of or in connection with the employment, etc. The full list of restrictions can be found under s5 and s6 of the Regulations.

Apprenticeship Ordinance and Apprenticeship Regulations

- This legislation regulates a specific form of employment of young persons i.e. apprenticeship.
- The Ordinance permits an employer to hire a young person in designated trade (the list of designated trade can be viewed here) as an apprentice under a valid apprenticeship contract in writing or who has completed an apprenticeship. (s6 of the Ordinance)
- If the employer decides to hire an apprentice, the apprenticeship agreement shall be subject to the Apprenticeship Regulations, of which provides specific content to be contained in the apprenticeship agreement, e.g. working hours, probationary period, payment of wages and overtime payment, etc.
- If the apprentice has not attained the age of 18 years old when he / she takes up the apprenticeship, the apprenticeship agreement will be entered into by his / her guardian or parents with the employer.

The Convention on the Rights of the Child

(ratified by the UK in 1994 extending to Hong Kong, continue to be applicable after 1997)

- Labour-related protection for a child has been set out in the various legislations mentioned above.

How is business affected?

In general, there has been a significant decline in the number of businesses that engage in local manufacturing operations compared to 30 years ago. Most of the manufacturing lines have been moved to mainland China or other parts of Southeast Asia. As far as we are aware, there are not a lot of major retailers and manufacturers that directly source from Hong Kong. However, for completeness purposes, we provide the following advice for your reference:

- As expounded above, there are several local laws that are related to the regulation of child labor. Companies should be mindful of **NOT** hiring any person below the age of 13 years **under all circumstances**. It is also vital for companies to not allow / turn a blind eye on / acquiescing the employment of children under the age of 13 years in their downstream manufacturers / supply chain lest the company may be indirectly liable for the contravention of the Employment of Children Regulations.
- Although companies are allowed to hire children above the age of 13, they must comply with various restrictions that apply to such employment as provided under the Employment of Children Regulations. Employers are expected to check their prospective employees' identity card to ascertain their age before entering into any employment contract.
- Companies should also be aware that they cannot enter into an employment contract with a person under the age of 18. The employment contract will have to be formed with their parents or legal guardian in order for it to be effective. Failure to comply with the Regulations will result in a fine, and more importantly, reputational damage.
- Companies could also choose to hire young persons above the age of 13 but below the age of 19 as an apprentice. Companies should check whether they are in the designated trade/ industry to provide such apprenticeship under the Apprenticeship Ordinance. Over the course of the apprenticeship, the company has to provide specific skill-based trainings to the young person for their professional / career development.
- Many apprenticeships are physically demanding. To better protect apprentices and their employers, apprentices are required by law to be medically examined with respect to his/her fitness to be employed in the trade. The employer should arrange and pay for the medical examination of the apprentice before the registration of the contract of apprenticeship.

Expectations

Generally speaking, an employer is expected to keep a record of its employee's identity card (i.e. a photocopy for internal reference) as part of ongoing payroll records (see full list of employers obligation here) for the inspection by the Inland Revenue Department. The identity card record shows the date of birth of the employee. In addition, the employer is obliged to inform the Inland Revenue Department of the employee's Hong Kong Identity Card number, which reveals the date of birth of the employee.

As such, if an employer employs a child (as defined under the Employment Ordinance), the employer shall keep records in relation to that child / each of such child. The record should contain the content stated above.

There is no legal requirement for Hong Kong companies to ensure their overseas corporate partners/ upstream retailers / downstream manufacturers / businesses involved in the supply chain to be compliant with the Hong Kong child labour law.

Penalties

Any person who employs a child under the age of 13, or employs a child between the age of 13 and 15 without complying with the Regulations stated above, or fails to keep record of the child for his/her employment, is liable for a fine of HK\$50,000.

Most of the offences under the Apprenticeship Ordinance and Apprenticeship Regulations involve fine as a form of penalty. Whilst the legal fine is not severe, employers should keep in mind the potential reputational risks involved in the contravention of the employment of children and young persons.

Notable prosecutions

Most of the notable prosecutions in this area of law were made in the 1980s, when Hong Kong was still heavily reliant on manufacturing industry. Below are two cases that are relevant for your understanding:

1. *A-G v DEMAND ENTERPRISES LTD* – the offences under the Employment of Children Regulations are strict liability, meaning an employer will be convicted once it is found that they are employing children, regardless whether they have taken reasonable precaution to prevent such employment.
2. *AG v Ho Yuk Chun* – the Court interpreted s3(3) of the Employment of Children Regulations to be very wide in nature “A child who works in an industrial undertaking or other place of employment, whether for wages or not, either in a process, trade or business or in cleaning any part of the industrial undertaking or other place of employment used for any process, trade or business or in any other kind of work whatsoever incidental to or connected with the process, trade or business shall be deemed to be employed therein for the purposes of these regulations or of any proceedings thereunder.”





Contact us at:



info@themekongclub.org



www.themekongclub.org

Follow us on:



[@themekongclub](https://www.facebook.com/themekongclub)



[@themekongclub](https://twitter.com/themekongclub)



[@themekongclub](https://www.linkedin.com/company/themekongclub)