



LABOUR LAW TOOL

Hong Kong

Select a topic from the following list to view details:

1. Human Trafficking Legal Framework.....	05
2. Recruitment Fees.....	05
a. Fees paid for work permits or renewal.....	05
b. Fees paid for passports (and/or passport renewals).....	05
c. Fees paid for visas and other travel documents.....	06
d. Fees paid for border crossings.....	06
e. Fees paid for travel from home to work location.....	06
f. Fees paid for work training/orientation.....	06
g. Fees paid to employer for rent.....	07
h. Fees paid for accommodation in the departure location or during transit to the work location.....	07
i. Fees paid for 'placement' 'recruitment' or 'thank you' fees.....	08
j. Fees paid for translation services.....	08
k. Fees paid for document checking and certification.....	08
l. Fees paid for health assessment.....	09
m. Fees paid for vaccinations.....	09
n. Fees paid for travel booking services.....	09
o. Fees paid for guaranteeing future work.....	09
p. Fees paid for on-the-job training.....	09
q. Knowingly charging fees to a worker to secure a job that does not exist.....	09
3. Child Labour.....	10
a. Employing a child below the legal working age.....	10
b. Employing a minor to engage in hazardous work.	10
4. Wage Deductions.....	10
a. Withholding wages as a bond.....	10
b. Withholding wages as forced savings.....	10
c. Withholding wages as punishment for being late to shift.....	11
d. Withholding wages for refusing overtime.....	11
e. Withholding wages for missing goods.....	11
f. Withholding wages for accommodation (without explicit consent).....	11
g. Withholding wages for bills such as water (without explicit consent).....	11
h. Withholding wages to pay back recruitment fees.....	11
i. Withholding wages for absence/illness (outside of legal terms in employment contract).....	11

5. Employment Contracts.....	11
a. Workers do not have necessary legal work permits.....	12
b. Employment contract is not in writing.....	12
c. Employment contract is not signed by the worker.....	12
d. Employment contract is not signed by the employer.....	12
e. Employment contract does not comply with local law.....	12
f. Employment contract is not in the worker's native language.....	13
g. Contract exclusions:.....	13
h. Illiterate workers have not been read their contract.....	14
i. Employment contract has been substituted or amended after signing.....	14
j. Workers are not provided a copy of their contract.....	14
6. Payment Issues.....	15
a. Payslips are not provided to workers.....	15
b. Payslips are not compliant with local laws, if any.....	15
c. Payslips are not legible.....	15
d. Workers are not paid the salary agreed in their contract of employment.....	15
e. Workers are paid late.....	16
f. Workers are not paid minimum wage.....	16
g. Workers are paid a piece-rate that is not equal to minimum wage.....	16
h. Workers are not provided with holiday pay.....	16
i. Workers are not provided with sick pay.....	17
j. Workers are paid 'in-kind' through other means (like 'work-for-benefits').....	17
k. Workers are not paid in legal tender.....	17
l. Workers are required to work compulsory overtime.....	17
m. Workers are not paid for overtime work.....	18
n. Overtime work is used to discipline workers.....	18
o. Overtime pay is not in line with legal minimum wage.....	18
7. Withholding of Passports and Documents.....	19
a. Workers' documents (passport, identity documents etc.) are held and they are unable to access them if they want to.....	19
b. Documents are held by employers without express consent.....	19
8. Deprivation of Liberty.....	19
a. Workers are not permitted to leave the workplace (outside of normal working practices)...	19

- b. Workers are not permitted to leave their accommodation except to attend work.....19
- c. Workers are not permitted to leave the country without permission from their employer (e.g. Kafala system).....20
- d. Workers require permission to change employer or leave their job (outside of the contractual notice period).....20
- e. Workers are assigned a minder if they wish to leave their accommodation/workplace outside of normal working hours..... 20
- f. Workers are physically locked into the workplace..... 21
- g. Military/government security guards are used to guard the workplace.....21

9. Intimidations/Threats/Violence.....21

- a. Workers experience, or are threatened with, physical abuse..... 21
- b. Workers experience, or are threatened with, psychological abuse..... 21
- c. Workers are threatened with deportation if they do not comply with demands..... 21

10. Isolation.....22

- a. Confiscation of the worker's mobile device..... 22
- b. Workers are required to ask permission to contact friends/family..... 22

11. Sexual Harassment.....23

- a. Workers experience, or are threatened with, sexual abuse.....23
- b. Workers are required to take pregnancy/sexual health tests.....23
- c. Workers are required to take contraception..... 23

12. Bonded Labour.....24

- a. Workers have debts (that are unofficial, not in writing etc.) related to their employment.... 24
- b. Workers have debt that is unethical (such as excessive or illegally high interest rates) related to their employment.....24
- c. Workers are in debt to their employer or recruiter.....24
- d. Workers are in debt due to paying recruitment fees..... 24

1. Human Trafficking Legal Framework

There is no specific legislation in Hong Kong prohibiting human trafficking or forced labour but these issues are addressed in various pieces of local legislation, including the following:

- The *immigration ordinance* prohibits arrangements for unauthorized entrants to Hong Kong and the employment of illegal workers;
- The *employment ordinance* imposes criminal liability on employers involved in non-payment, under-payment or late payment of wages; failure to grant rest days and statutory holidays to employees or other statutory benefits to employees; and
- The *crimes ordinance*, *offences against the person ordinance* and other relevant ordinances prohibit crimes related to human trafficking such as assault, forcible taking or detention of persons with intent to sell him or her, child abduction, deception and blackmail, etc.

Further, there are no specific reporting obligations if a company finds any human trafficking violations within its supply chain. However, companies should make sure that their operations comply with relevant laws and regulations set out below.

2. Recruitment Fees

a. Fees paid for work permits or renewal

The current fee for an ordinary work visa or a renewal of a work visa is HK\$ 230. The fee can be paid by the employer or the employee. There is no legal obligation in Hong Kong for employers to pay the fees associated with submitting a work visa application to the Immigration Department.

If employers require employees to pay, they are not permitted to charge employees fees in excess of the actual fee for work permits/renewals. If employers dishonestly charge excessive fees, they could be guilty of fraud under the *Theft Ordinance* and could face imprisonment for up to 14 years. No fines are payable.

The situation is different for foreign domestic helpers. When employing foreign domestic helpers, employers must use the “standard employment contract” ([ID 407](#)) issued by the Director of Immigration. The terms of the standard contract require employers to pay expenses associated with the foreign domestic helper’s employment contract and entry into Hong Kong, including medical examination fees, authentication fees by the relevant consulate, visa fee, insurance fee and administration fee. In the event that the foreign domestic helper has already paid the associated costs or fees, the employer is required to fully reimburse the helper the amount paid.

See the response to 2(i) below, in relation to fees charged by employment agencies.

b. Fees paid for passports (and/or passport renewals)

Employers who pay for fees associated with an employee obtaining or renewing a passport or obtaining passport photographs, may request payment from the employee. However, they cannot charge the employee more than the cost of the actual fees. If an employer dishonestly charges excessive fees, they could be guilty of fraud under the *Theft Ordinance* and could face imprisonment for up to 14 years. No fines are payable.

See the response to 2(i) below, in relation to fees charged by employment agencies.

c. Fees paid for visas and other travel documents

See response to 2(a) above.

d. Fees paid for border crossings

See response to 2(a) above.

e. Fees paid for travel from home to work location

Employers are not required to pay for foreign employees to travel to Hong Kong to work unless this is agreed between the parties. If an employer does pay the cost of an employee's transport, and requires the employee to 'reimburse' them more than the cost of the transport, they could be guilty of fraud under the *Theft Ordinance* and could face imprisonment for up to 14 years. No fines are payable.

When employing foreign domestic helpers, employers must use the "standard employment contract" ([ID 407](#)) issued by the Director of Immigration. The standard employment contract requires employers to pay for transport from the helper's home country to Hong Kong, and on termination of employment, return transport back to the helper's home country.

If an employer of a foreign domestic helper fails to pay for the cost of the helper's transport to and from Hong Kong, they would be in breach of the standard employment contract and would be liable to pay to the foreign domestic helper the cost of the transport. The domestic helper could argue that the employer has breached their employment contract and that they have been constructively dismissed, and could leave immediately and claim their one month's payment in lieu of notice.

Further, if employers charge foreign domestic helpers any fees in relation to this travel, they could be guilty of fraud under the *Theft Ordinance* and could face imprisonment for up to 14 years. No fines are payable.

See the response to 2(i) below, in relation to fees charged by employment agencies.

f. Fees paid for work training/orientation

It is market practice for employers to pay for any necessary training for employees generally. However, employers may require employees to pay for training courses, depending on the training; whether the training is required for the employee to carry out their duties; and the terms of the employment contract/ and/or company policies. Employers are not permitted to charge fees above the cost of the training. If an employer dishonestly charges excessive fees they could be guilty of fraud under the *Theft Ordinance* and could face imprisonment for up to 14 years. No fines are payable.

As for foreign domestic helpers, employment agencies are a very common channel through which people in Hong Kong employ domestic helpers. Under the *Employment Ordinance* and the Employment Agency Regulations, employment agencies are only allowed to charge job seekers the prescribed commission, this being an amount not exceeding 10 percent of the first month salary upon successful placement. Thus, employment agencies are prohibited from charging job seekers, including foreign domestic helpers, any pre-departure training, or any other fees. Overcharging is a criminal offence and offenders are liable to a fine of up to \$350,000 and imprisonment for up to three years. Even though it is illegal, in practice, training fees are commonly charged to foreign domestic helpers.

See the response to 2(i) below, for further discussion on the fees charged by employment agencies.

g. Fees paid to employer for rent

Under the “standard employment contract” ([ID 407](#)), employers of foreign domestic helpers are obliged to provide their helper with suitable furnished accommodation and food free of charge (or a food allowance of HK\$ 1,121 per month), and foreign domestic helpers are required to live with their employers. In this regard, both the employer and employee are required to give an undertaking to the Director of Immigration to this effect in the foreign domestic helper’s visa application. (There are limited exceptions, eg: the domestic helper was employed before 2013 when the live-in requirement was introduced).

If the foreign domestic helper does not live with the employer, the employer and the foreign domestic helper could be in breach of the *Immigration Ordinance*.

- The employer could be fined up to HK\$ 150,000 and face imprisonment for up to 14 years.
- The domestic could be fined up to HK\$ 50,000 or imprisoned for up to 2 years, or more likely, be deported back to their home country and unable to obtain a visa to work in Hong Kong again.

Further, if an employer breaches the terms of the standard employment contract and charges the foreign domestic helper rent, they will be liable to pay back the amount charged to the foreign domestic helper. The domestic helper could argue they were constructively dismissed, and could leave immediately and claim one month’s payment in lieu of notice.

As for other types of employees besides foreign domestic helpers, it is not common for employers in Hong Kong to provide accommodation for employees. There is no specific legislation regulating an employee’s payment of rent to their employer, save that the Employment Ordinance allows an employer to deduct an employee’s wages for accommodation provided by the employer to the employee or their family. Any accommodation provided by the employer and the rent payable is a matter of agreement between the employer and employee in the employment contract.

See the response to 2(i) below, in relation to fees charged by employment agencies.

h. Fees paid for accommodation in the departure location or during transit to the work location

See the response to 2(e) above

See the response to 2(i) below, in relation to fees charged by employment agencies.

i. Fees paid for ‘placement’ ‘recruitment’ or ‘thank you’ fees

As explained in the response to 2(f) above, the only type of fees that employment agencies are permitted to charge in Hong Kong is the prescribed commission. Under the Employment Ordinance and the *Employment Agency Regulations*, the maximum commission a Hong Kong employment agency can charge a job-seeker must not exceed 10% of their first month’s wages. Pursuant to the *Employment (Amendment) Ordinance 2018*, employment agents can be fined up to HK\$ 350,000 and/or be imprisoned for three years for overcharging job seekers.

When employing foreign domestic helpers, employers must use the “standard employment contract” ([ID 407](#)) issued by the Director of Immigration. In these circumstances, employers may agree to pay any Hong Kong employment agency fees and are required to pay other expenses associated with the foreign domestic helper’s employment contract and entry into Hong Kong, such as medical examination fees², authentication fees by the relevant consulate, visa fees³ and insurance fees.

If an employer passes on the cost of any of the fees to a foreign domestic helper, the employer is liable to pay back the cost of these fees to the domestic helper, and the domestic helper could argue they were constructively dismissed, and could leave immediately and claim their one month’s payment in lieu of notice.

j. Fees paid for translation services

Employers may ask employees to reimburse them for certain translation fees, but this will depend on the circumstances, such as if the translation is requested by the employee for personal use. Employers cannot charge the employee more than the cost of the translation fee itself. If an employer dishonestly charges excessive fees they could be guilty of fraud under the *Theft Ordinance* and could face imprisonment for up to 14 years. The general position, as stated in 2(a), is that there is no legal obligation on the employer to pay for an employee’s visa fees. Employers and employees are free to agree who will bear such fees (although, in practice, the visa fees are usually paid by the employer). In the case of foreign domestic helper, the employer will bear the burden to pay for the visa fees because this is an obligation imposed on the employer under the “standard employment contract”. No fines are payable.

See the response to 2(i) above, in relation to fees charged by employment agencies.

k. Fees paid for document checking and certification

In practice, employers usually cover the cost of certification or administration fees. Employers may ask employees to reimburse them, but this will depend on the circumstances, such as if the document checking and certification is requested by the employee for personal use. They cannot charge the employee more than the cost of the certification/ administration fee itself. If an employer dishonestly charges excessive fees they could be guilty of fraud under the *Theft Ordinance* and could face imprisonment for up to 14 years. No fines are payable.

See the response to 2(i) above, in relation to fees charged by employment agencies.

2 This reference to medical examination fees relates to clause 17 of the “standard employment contract”, which states that the helper has been medically examined as to their fitness for employment as a domestic helper. This is consistent with the general position as stated below that employers can request employees to complete health assessments.

3 The general position, as stated in 2(a), is that there is no legal obligation on the employer to pay for an employee’s visa fees. Employers and employees are free to agree who will bear such fees (although, in practice, the visa fees are usually paid by the employer). In the case of foreign domestic helper, the employer will bear the burden to pay for the visa fees because this is an obligation imposed on the employer under the “standard employment contract”.

l. Fees paid for health assessment

Employers may request employees to complete a health assessment or other assessment. In practice, employers usually cover the cost of these assessments. Employers may ask employees to pay them for the cost, but they cannot charge the employee more than the cost of the assessment test. If an employer dishonestly charges excessive fees they could be guilty of fraud under the *Theft Ordinance* and could face imprisonment for up to 14 years. No fines are payable.

See the response to 2(i) above, in relation to fees charged by employment agencies.

m. Fees paid for vaccinations

The terms of the standard employment contract, require employers of foreign domestic helpers to cover medical and vaccination fees. An employer of a foreign domestic helper who fails to do so, will be liable to pay back the costs of any medical and vaccination fees to the domestic helper. The domestic helper could argue they were constructively dismissed, and could leave immediately and claim their one month's payment in lieu of notice. If an employer dishonestly charges excessive fees they could be guilty of fraud under the *Theft Ordinance* and could face imprisonment for up to 14 years. No fines are payable.

Employers of other types of employees usually provide some level of medical insurance to employees so that it is not necessary for them to ask employees to pay these fees. If an employer dishonestly charges excessive fees they could be guilty of fraud under the *Theft Ordinance* and could face imprisonment for up to 14 years. No fines are payable.

See the response to 2(i) above, in relation to fees charged by employment agencies.

n. Fees paid for travel booking services

See the response to 2(e) above, in relation to fees charged by employers.

See the response to 2(i) above, in relation to fees charged by employment agencies.

o. Fees paid for guaranteeing future work

There is no specific legislation regulating fees paid to employers for guaranteeing future work. In practice, it is highly uncommon for employers to charge such fees in Hong Kong. An employer who dishonestly charges such a fee where there is no guaranteed future work could be guilty of fraud under the *Theft Ordinance* and could face imprisonment for up to 14 years.

See the response to 2(i) above, in relation to fees charged by employment agencies.

p. Fees paid for on-the-job training

See the response to 2(f) above, in relation to employers and training fees.

See the response to 2(i) above, in relation to fees charged by employment agencies.

q. Knowingly charging fees to a worker to secure a job that does not exist

This conduct breaches local laws. Under the Crimes Ordinance and the *Theft Ordinance*, charging fees to a worker to secure a job that does not exist may constitute fraud and conspiracy to commit fraud, which are criminal offences. Any person, including employers and employment agents, found guilty of fraud or conspiracy to commit fraud can be imprisoned for up to 14 years. No fines are payable.

See the response to 2(i) above, in relation to fees charged by employment agencies.

3. Child Labour

a. Employing a child below the legal working age

This conduct breaches local law.

Under the *Employment Ordinance* and the *Employment of Children Regulations*, “children” are defined as being under the age of 15. Children aged under 15 are prohibited from working in all industrial undertakings, including but not limited to factories, construction sites, cargo and container handling undertakings, repair workshops, etc.. Children aged 13 or over may be employed in non-industrial establishments, subject to the condition that they attend full-time schooling if they have not yet completed secondary education. Children aged under 13 are generally prohibited from taking up employment in all economic sectors. An employer who breaches the *Employment of Children Regulations* commits an offence and is liable to a fine of up to HK\$ 50,000.

b. Employing a minor to engage in hazardous work

This conduct breaches local law.

Under the *Employment Ordinance* and the *Employment of Young Persons (Industry) Regulations*, “young people” are defined as aged 15 or over but under the age of 18. Young people are prohibited from being employed in dangerous trades (boiler chipping, manufacture of glass, manufacturing processes involving the use of arsenic, lead, manganese, mercury and phosphorus, manufacturing hydrochloric, nitric or sulphuric acids, etc.); any underground work (e.g. mines or quarries); or carrying any unreasonably heavy load. An employer who breaches the *Employment of Young Persons (Industry) Regulations* commits an offence and is liable to a fine up to HK\$ 50,000.

See 3(a) above regarding children under 15 years.

4. Wage Deductions

a. Withholding wages as a bond

This conduct breaches local law.

Under the *Employment Ordinance*, employers can only make deductions from employees’ wages with their consent except in limited circumstances (e.g. absence from work, damage to goods). In addition to the monetary limits imposed on each category of deductions in the *Employment Ordinance*, the total amount of deductions shall not exceed one half of the wages payable to the employee in respect of the wage period, unless the deductions are approved by the Labour Commissioner. Employers who make illegal deductions from wages, are liable for a fine of HK\$ 100,000 and imprisonment up to one year.

b. Withholding wages as forced savings

See response to 4(a) above.

c. Withholding wages as punishment for being late to shift

See response to 4(a) above.

d. Withholding wages for refusing overtime

See response to 4(a) above.

e. Withholding wages for missing goods

Under the *Employment Ordinance*, employers are permitted to make deductions from employees' wages without their consent for damage or loss to the employer's goods or equipment. In any one case of damage or loss, the employer may deduct a sum equivalent to the value of the damage or loss or HK\$ 300, whichever is less. However, where there are multiple cases of damage or loss, the total of such deductions shall not exceed one quarter of the wages payable to the employee in respect of the wage period, unless the deductions are approved by the Labour Commissioner.

Employers who make illegal deductions from wages, are liable for a fine of HK\$ 100,000 and imprisonment for up to one year.

f. Withholding wages for accommodation (without explicit consent)

See response to 4(a) above.

g. Withholding wages for bills such as water (without explicit consent)

See response to 4(a) above.

h. Withholding wages to pay back recruitment fees

See response to 4(a) above.

i. Withholding wages for absence/illness (outside of legal terms in employment contract)

Under the *Employment Ordinance*, employers are permitted to make deductions from employees' wages without their consent for absence from work (but not for statutory holiday or sick leave). The sum of such deductions shall be proportionate to the period of time the employee is absent from work.

Employers who make illegal deductions from wages, are liable for a fine of HK\$ 100,000 and imprisonment up to one year.

5. Employment Contracts

For each of the following circumstances, please indicate:

- i. Whether it involves a potential breach of local law;
- ii. If so, what the local law says in relation to the potential violation; and
- iii. Any other notable considerations.

a. Workers do not have necessary legal work permits

This conduct breaches local law.

Under the Immigration Ordinance, an employer of an employee who is a prohibited employee and not lawfully employable commits an offence. The penalty is a fine up to HK\$ 500,000 and imprisonment for up to 10 years.

b. Employment contract is not in writing

In Hong Kong there is no requirement that employment contracts are in writing. However, the *Employment Ordinance* provides that before employment begins, employers must inform employees of the conditions of their employment with regard to:

- Wages (including rate of wages, overtime rate and allowances, whether calculated by piece, job, hour, day, week or otherwise);
- Wage period;
- Length of notice required to terminate the contract; and
- If the employee is entitled to an end of year payment, the end of year payment or proportion and the payment period.

If the contract of employment is not in writing, the employer is required to provide the employee with such information in writing if the employee, before such employment is entered into, makes a written request.

An employer which contravenes these conditions is liable to a fine of up to HK\$ 10,000.

For completeness, if the contract is an oral contract only, it may be more difficult for the employer or employee to rely on it, as they will need to prove the terms of the contract if there is a dispute.

c. Employment contract is not signed by the worker

In Hong Kong there is no requirement that employment contracts are in writing. If an employment contract is in writing, but not signed by both parties, it cannot be binding. An employee will not be bound by the terms of the contract, unless the employer argues there was an oral agreement and can prove its terms.

d. Employment contract is not signed by the employer

See response to 5(c) above.

e. Employment contract does not comply with local law

This conduct breaches local law.

Under the *Employment Ordinance*, any terms of the employment contract which reduce or extinguish any right, benefit or protection conferred on the employee by the Employment Ordinance is void. Therefore, even if the employment contract (written or oral) does not comply with the requirements as set out in the Employment Ordinance (e.g. no rest days, no minimum wage etc), the employee is still entitled to those statutory benefits.

Penalties may also apply depending on the relevant breach. For example, under the *Employment Ordinance*, if no rest day is provided, the employer can be fined up to HK\$ 50,000.

f. Employment contract is not in the worker's native language

There is no statutory obligation to provide employees with an employment contract in their native language. However, if an employee cannot read the employment contract because it is not in their native language, it is open for the employee to argue that they are not bound by the provisions in the contract because they do not understand them.

g. Contract excludes:

i. Wages estimates

No breach of local law. Employers are not required to provide wages estimate but, as per section 5(b) above, should inform employees of their wages before employment begins.

ii. Early termination with notice

No breach of local law.

If there are no termination provisions in the employment contract, the following termination provisions set out in the Employment Ordinance will apply.

- The length of notice required depends on whether the employee is employed under a continuous contract. Under the Employment Ordinance, an employee who has continuously worked for more than 18 hours a week for more than 4 weeks is regarded as being employed under a continuous contract ("**Continuous Contract**").
- For an employee employed under a Continuous Contract, the notice period should not be less than 7 days, except that in case of any probation period, no notice is required within the first month of probation.
- For an employment contract which does not meet the conditions of a Continuous Contract, the length of notice shall be the period agreed by the employer and employee.

Notwithstanding the above, there is no fine or punishment for the employer for not including the notice or termination provisions in the employment contract.

iii. Early termination without notice

See response to 5(g)(ii) above.

iv. Details of mandatory recruitment fees

No breach of local law. However, employers who omit such fees in the employment contract and subsequently deduct such fees from an employee's wages may commit an offence for unlawful deduction from wages, and may be liable to a fine of up to HK\$ 100,000 and imprisonment for up to 1 year.

v. Transportation terms (including repatriation costs at end of contract)

No breach of local law

vi. Accommodation terms (if relevant);

See response to 2(g) above

vii. Discipline terms (lateness, illness etc.)

No breach of local law.

viii. Standard holiday entitlements

There is no legal requirement that the employment contract must set out an employee's standard holiday entitlements. If the employment contract does not provide for holiday entitlements, employees are still entitled to all statutory holiday entitlements as conferred by the *Employment Ordinance*.

If an employer fails to grant the statutory holiday allowances, they are in breach of the *Employment Ordinance* and can be fined up to HK\$ 50,000. The employee will still be entitled to these benefits under the *Employment Ordinance*.

ix. Illness entitlements

Under the Employment Ordinance, there is no requirement that employment contracts must set out employees' sickness entitlements. If the employment contract does not provide for illness entitlements, employees are still entitled to all such benefits as conferred by the Employment Ordinance, and any terms in the employment contract which reduce or extinguish the employee's statutory entitlements are void.

If an employer fails to grant the statutory sickness allowance, they are in breach of the Employment Ordinance and can be fined up to HK\$ 50,000.

h. Illiterate workers have not been read their contract

No breach of local law.

There is no statutory obligation for employers to read employment contracts to illiterate employees. However, if an employee cannot read the employment contract, then it is open for the employee to argue that they are not bound by the provisions in the contract because they do not understand them.

i. Employment contract has been substituted or amended after signing

Usually an amendment to an employment contract is only valid if both parties agree and there is consideration for the change (e.g. a pay rise).

An employer may include a provision in the employment contract which allows them to make a unilateral change in the future (i.e. without the employee's consent), however this must be exercised reasonably. Any unreasonable change without an employee's consent could amount to a breach of the contract which could mean the employee is constructively dismissed and/or they could seek damages for breach of contract.

If an employer substitutes an original signed contract with a new contract, the new contract will not be binding on the employee unless it is signed by both parties.

j. Workers are not provided a copy of their contract

See response to 5(b) above.

If the contract is in writing, the employer is required to provide a copy to the employee pursuant to the *Employment Ordinance*.

If the contract of employment is not in writing, the employer is required to provide the employee with certain information in writing (see 5(b) above) if the employee, before such employment is entered into, makes a written request.

An employer which contravenes any of the above requirements is liable to a fine of up to \$10,000.

6. Payment Issues

a. Payslips are not provided to workers

No breach of local law. There is no provision in the Employment Ordinance which requires employers to provide employees with payslips.

However, employers have such an obligation in relation to the employee's Mandatory Provident Fund (**MPF**), which is the retirement protection framework in Hong Kong established under the Mandatory Provide Fund Schemes Ordinance (**MPFSO**). Under the MPFSO, employers are required to make monthly contributions to employees' MPF accounts. With each monthly contribution, employers are required to provide each employee with a monthly pay-record within seven working days. The pay-record should include the following information:

- The amount of the employee's relevant income;
- The amounts of both the employer's and employee's mandatory contributions;
- The amounts of both the employer's and employee's voluntary contributions, if any; and
- The date on which contributions were paid to the mpf trustee

Failure to provide a monthly pay-record is a non-compliance with the MPFSO, for which the Mandatory Provide Fund Schemes Authority, which regulates and supervises the operations of MPF Schemes, can impose a financial penalty of up to HK\$ 50,000.

b. Payslips are not compliant with local laws, if any

This conduct breaches local law.

Under the Employment Ordinance, employers are required to keep wage and payment records, including the wages paid to each employee in each wage period. The penalty for breach is a fine of up to HK\$ 10,000.

See also response to 6(a) above.

c. Payslips are not legible

There is no legislative requirement for payslips to be legible.

See response to 6(a) above.

d. Workers are not paid the salary agreed in their contract of employment

This conduct breaches local law.

Under the *Employment Ordinance*, wages are due on the expiry of 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 thereafter. Employers are required to pay interest to employees on the outstanding amount of wages after those seven days.

An employer who fails to pay wages to an employee when they become due can be fined up to HK\$ 350,000 and imprisoned for three years. An employer who fails to pay interest on outstanding wages, can be fined up to HK\$ 10,000. Employers who fail to pay wages when due will also be liable to pay the outstanding wages to the employee.

e. Workers are paid late

This conduct breaches local law.

See response to 6(d) above.

f. Workers are not paid minimum wage

This conduct breaches local law.

Employers are required to pay employees the statutory minimum wage set out in the *Employment Ordinance* and the *Minimum Wage Ordinance* (currently HK\$ 37.50 per hour). Employers of foreign domestic helpers are required to pay the Minimum Allowable Wage (MAW) for foreign domestic helpers, which is currently set at HK\$ 4,630 per month.

Employers who fail to pay the minimum wage to employees, may be guilty of withholding or delaying wages and will face the same penalties set out above (i.e. fined up to HK\$ 350,000 and face imprisonment for up to three years). If an employer fails to pay interest on outstanding wages, the employer can be fined up to HK\$ 10,000. Employers who fail to pay wages when due will also be liable to pay the outstanding wages to the employee.

g. Workers are paid a piece-rate that is not equal to minimum wage

This conduct breaches local law.

See response to 6(f) above.

h. Workers are not provided with holiday pay

This conduct breaches local law.

In general, employees' entitlements to holiday pay differs depending on whether they are employed under a Continuous Contract. In terms of entitlement to holiday pay:

- All employees (as opposed to independent contractors) are covered by the *Employment Ordinance*, and irrespective of their length of service, are currently entitled to 12 unpaid statutory holidays. On 7 July 2021, the Hong Kong Legislative Council passed the *Employment (Amendment) Bill 2021*, which will increase the number of statutory holidays from 12 days to 17 days progressively from 2022 to 2030.
- Employees who have been under a Continuous Contract for 3 months are entitled to statutory holiday pay.
- In addition to statutory holiday entitlements, employees who have been employed under a Continuous Contract for 12 months are entitled to paid annual leave. An employee's entitlement to paid annual leave increases progressively from 7 days to a maximum of 14 days according to their length of service.

The penalty for failing to pay holiday pay varies depending upon the employee's entitlements. For example, employers who do not provide a statutory holiday allowance can be fined up to HK\$ 50,000.

i. Workers are not provided with sick pay

This conduct breaches local law.

Employees who are employed under a Continuous Contract (i.e. not less than 18 hours per week for 4 weeks) are entitled to paid sick leave.

Under the *Employment Ordinance*, employers who do not provide sick pay can be fined up to HK\$ 50,000.

j. Workers are paid 'in-kind' through other means (like 'work-for-benefits')

This conduct breaches local law.

Under the *Employment Ordinance*, employers must pay employees in "legal tender". Employers may provide food, accommodation or other allowances or privileges *in addition* to wages as remuneration for services, but are prohibited from providing alcohol, drugs, or lottery tickets.

An employer who fails to pay wages to an employee when they become due can be fined up to HK\$ 350,000 and be imprisoned for 3 years. If an employer fails to pay interest on outstanding wages, the employer can be fined up to HK\$ 10,000. They will also be liable to pay the outstanding wages to the employee.

k. Workers are not paid in legal tender

See response to 6(j) above.

l. Workers are required to work compulsory overtime

Working hours are not regulated in Hong Kong. "Overtime" is not defined in the *Employment Ordinance* but the courts have determined that overtime "refers to the period of working over and above or additional to the period of normal or regular working time of the employee". There is no statutory obligation to provide overtime pay.

However, employees are entitled to one rest day every seven days under the *Employment Ordinance*. Employers who, without reasonable excuse, fail to grant rest days to their employees are liable to prosecution and a fine of HK\$ 50,000. There is a Hong Kong case where damages were awarded to an employee being required to be on standby duty on rest days.⁴

Provisions to require an employee to work overtime at the request of the employer or to properly perform the employee's duties. This overtime may be paid or unpaid, and the employee may be entitled to challenge the overtime or refuse to perform it. It will depend on the facts and the circumstances. An employee, except young persons under the age of 18 employed in industrial undertakings, may work voluntarily on a rest day. Any condition in a contract of employment which makes payment of any type of annual bonus or end of year payment conditional on an employee agreeing to work on rest days is void.

4 The case referred to is *Breton Jean v HK Bellawings Jet Limited* [2021] HKDC 46, in which the court allowed a pilot employee's claim for rest day pay, holding that by putting the employee on standby duty where he had to reply to the employer's call and work on demand, the employer had deprived the employee's rest days and thereby breached its obligation to provide rest days to the employee.

m. Workers are not paid for overtime work

See response to 6(l) above.

An employee does not have a statutory right to receive overtime pay under the *Employment Ordinance*. An employee's entitlement to overtime pay is based on the terms of their contract of employment. If an employee is entitled to paid overtime under their employment contract and their employer fails to provide overtime payment, they are in breach of the employment contract and liable to pay the money owed. Further, the employee could argue that the employer's breach of employment contract means they have been constructively dismissed and bring a claim for wrongful/unreasonable dismissal.

n. Overtime work is used to discipline workers

See response to 6(l) above.

Any disciplinary measures for failure to meet quotas should be made by reference to any disciplinary policy the employer has, and must be carried out reasonably, without breaching the employment contract or the employer's duty of trust and confidence. In case of any breach, employees may claim that they have been constructively dismissed and may claim damages (if any) against the employer.

o. Overtime pay is not in line with legal minimum wage

See response to 6(l) above.

If the employee is contractually entitled to be paid overtime (there is no statutory requirement for them to be paid overtime), the amount of overtime pay may be included in their employment contract. Any failure to pay the agreed overtime rate will be a breach of the employment contract. If the overall hourly rate (taking into account all wage items including any overtime pay) is less than the statutory minimum wage (currently HK\$ 37.5 per hour) including any overtime hours worked, then the employer may be in breach of the *Employment Ordinance* and the *Minimum Wage Ordinance*.

An employer who fails to pay wages to an employee when they become due can be fined up to HK\$ 350,000 and to imprisonment for three years. If an employer fails to pay interest on outstanding wages, the employer can be fined up to HK\$ 10,000. They will also be liable to pay the outstanding wages to the employee. The employee could also argue that the employer's breach of employment contract means they have been constructively dismissed and bring a claim for wrongful/unfair dismissal.

7. Withholding of Passports and Documents

a. Workers' documents (passport, identity documents etc.) are held and they are unable to access them if they want to

This conduct breaches local law.

Under the *Immigration Ordinance*, failure to produce proof of identity is unlawful, and any person who aids, abets, counsels or procures the commission by another person of this offence shall also be found guilty of the offence. The penalty is a fine of up to HK\$ 5,000.

Under the *Registration of Persons Ordinance*, any person who without lawful or reasonable excuse uses or has in their custody or possession an identity card or another person's travel documents (e.g. passport) commits an offence. The penalty is a fine up to HK\$ 100,000 and imprisonment of up to 14 years.

b. Documents are held by employers without express consent

See response to 7(a) above.

If other documents are taken from an individual without their consent, this could be theft which is unlawful under the *Theft Ordinance*. The penalty is imprisonment for up to 10 years.

8. Deprivation of Liberty

a. Workers are not permitted to leave the workplace (outside of normal working practices)

This conduct breaches local law.

Employees' employment contracts may require them to be at their workplace during their prescribed work hours. For example, domestic foreign helpers are required to live with their employers and are likely to spend most of their time carrying out duties in and around the workplace as set out in the standard employment contract.

However, if an employer never allows an employee to leave the workplace or take rest days or holidays, they will breach the *Employment Ordinance*. They may also be guilty of false imprisonment (a common law offence which is committed if a person unlawfully and intentionally or recklessly restrains another's freedom of movement) which attracts a penalty of imprisonment for up to 7 years and a fine under the *Criminal Procedure Ordinance*. Employers who without reasonable excuse fail to grant rest days or statutory holidays to their employees are also liable to a fine of up to HK\$ 50,000 under the *Employment Ordinance*.

As for foreign domestic helpers, it is often difficult to identify when a helper is having their movements restricted or their privacy infringed, as they live with their employer and therefore the line between workplace, accommodation and private space or free time is blurred.

b. Workers are not permitted to leave their accommodation except to attend work

See response to 8(a) above.

c. Workers are not permitted to leave the country without permission from their employer (e.g. Kafala system)

This conduct breaches local law.

Employees are not required to obtain their employers' permission to change employers and can serve notice, or provide payment in lieu of notice, to leave their employment pursuant to the *Employment Ordinance* and their employment contract.

Employers who restrict employees' leaving the country may be found guilty of false imprisonment or in a case where the employee's travel documents are withheld, employers may be in breach of the *Immigration Ordinance*. The penalty is a fine of up to HK\$ 100,000 and imprisonment for up to 14 years. See responses to 7(a) and 8(a) above.

Foreign domestic helpers are able to leave employment by serving out a one month notice period or making a payment in lieu of notice to their employer equivalent to one month's wages. They can leave immediately if their employer subjects them to ill treatment or they reasonably fear physical danger.⁵

d. Workers require permission to change employer or leave their job (outside of the contractual notice period)

See response to 8(c) above.

If foreign employees who have their work visa sponsored by their employer change employers, their new employer will be required to sponsor the employee and will have to submit an application to the Immigration Department. The employee will not be able to work for their new employer until this is complete.

e. Workers are assigned a minder if they wish to leave their accommodation/workplace outside of normal working hours

This conduct breaches local law

Employers who assign minders that unlawfully prevent workers from leaving any place, could be found guilty of false imprisonment. Under the *Criminal Procedure Ordinance*, the penalty for false imprisonment is a fine (the amount varies depending upon the circumstances) and imprisonment for up to 7 years.

5 As background, foreign domestic helpers are employed on a 2 year contract (the standard employment contract), after the 2 years has expired, if their contract is not renewed they are required to return to their home country and their employer is required to cover the cost of the return journey (see above). If a domestic foreign helper's contract is terminated prematurely (less than 2 years) the domestic helper will be permitted to stay in Hong Kong for 14 days following the date of termination of their employment contract. It is often difficult for a foreign domestic helper to bring any claims against their employer, or recuperate any outstanding wages, statutory payments etc. owed to them as they only have 14 days in which to settle any claims against their employer. There is also a danger that domestic helpers will not be permitted to stay for the full 14 days by their employer, who may insist they fly back to their home country immediately to avoid having to pay them their statutory entitlements. If the helper is involved in a dispute with their employer, he/she can apply to the Immigration Department for an extension of stay in Hong Kong. The Immigration Department may allow the helper to stay until the dispute has been resolved in the Labour Tribunal, extensions can be for a few weeks or up to two months in special circumstances. However, during this time the helper will have no accommodation or income, which can often discourage a helper from requesting an extension. Recent surveys of foreign domestic workers reveal that there are several factors which may lead the domestic worker to feel their movement is restricted - they feel that it will "look bad" if they leave their employer before their contract expires, or they worry they will not be able to find another employer within the 14 day time frame if they were to terminate their employment prematurely. The fact that once the employment has been terminated, the domestic helper will no longer have any income or accommodation may further restrict their movement as they feel they have little choice but to remain with their employer.

f. Workers are physically locked into the workplace

This conduct breaches local law

Employers that physically lock employees into the workplace so that they cannot leave, could be found guilty of false imprisonment. Under the Criminal Procedure Ordinance, the penalty is a fine (the amount varies depending upon the circumstances) and imprisonment for up to 7 years.

7. Military/government security guards are used to guard the workplace

If an employer was using military or other public security forces to guard the premises in which the employee was staying so that the employee could not leave (which would be a rare occurrence), the employer could be found guilty of false imprisonment. A person guilty of false imprisonment can be imprisoned for up to 7 years and fined (fine would depend on the circumstances).

9. Intimidations/Threats/Violence

a. Workers experience, or are threatened with, physical abuse

This conduct breaches local law.

Under the *Offences Against The Person Ordinance*, a person who commits any physical abuse or violence may be found guilty of:

- Assault occasioning actual bodily harm - punishable with up to 3 years imprisonment;
- Assault with intent to cause certain acts to be done or not be done - punishable with up to 5 years imprisonment;
- Wounding or inflicting grievous bodily harm - punishable with up to 3 years imprisonment; or
- Wounding with intent to cause grievous bodily harm - maximum penalty of life imprisonment.

An employee who is physically abused by their employer may also be entitled to damages from their employer for any pain, suffering or injury, loss of earnings, medical expenses etc.

Under the *Crimes Ordinance*, a person who threatens another person with injury to the person, reputation or property with the intent to alarm, or to make the second person do something which they are not legally bound to do, or stop them from doing anything they are legally entitled to do, is guilty of criminal intimidation which is punishable with up to 5 years imprisonment.

b. Workers experience, or are threatened with, psychological abuse

See response to 9(a) above.

c. Workers are threatened with deportation if they do not comply with demands

See response to 9(a) above, in relation to criminal intimidation, which is punishable with up to 5 years imprisonment.

10. Isolation

1. Confiscation of the worker's mobile device

Whether this conduct breaches local laws, depends upon the circumstances.

Employers may control device usage if they have policy that they have made clear to employees, especially if it is reasonable in protecting the employer's interest e.g. confidential or personal information.

However, an employer who takes a mobile device from an individual without their consent or retains the device for an unreasonable period, could be guilty of theft under the *Theft Ordinance* which attracts a maximum penalty of imprisonment for 10 years.

2. Workers are required to ask permission to contact friends/family

An employer's requirement for employees to ask permission to contact friends or family is not unlawful per se. Employees are generally not obliged to comply with such requests. However, if such request is made by threat to injure the workers, an employer may be guilty of criminal intimidation under the *Crimes Ordinance* and may be liable to a fine of up to HK\$ 2,000 and imprisonment of up to 2 years.

11. Sexual Harassment

a. Workers experience, or are threatened with, sexual abuse

This conduct breaches local laws.

The *Crimes Ordinance* criminalises a number of sexual offences including:

- Rape - attracts a maximum penalty of imprisonment for life;
- Procurement of an unlawful sexual act by threats - punishable with up to 14 years imprisonment;
- Procurement of an unlawful sexual act by false pretences - punishable with up to 5 years imprisonment; and
- Indecent assault - punishable with up to 10 years imprisonment.

Any person who threatens another person with any injury or illegal act, such as sexual abuse, to the person with the intent to alarm, or to make the second person do something which they are not legally bound to do, or stop them doing anything they are legally entitled to do, will be guilty of criminal intimidation. Criminal intimidation is punishable with up to 5 years imprisonment.

b. Workers are required to take pregnancy/sexual health tests

This conduct breaches local laws.

Requiring employees to take pregnancy tests or other sexual health tests is likely to be in breach of the anti-discrimination ordinances. If the employer is in breach of anti-discrimination legislation, the employee may be entitled to damages from the employer for loss of income, injury to feelings and punitive damages.

Under the *Employment Ordinance*, employers are prohibited from terminating employees due to illness or pregnancy. If an employer terminates a pregnant employee, they may be fined up to HK\$ 100,000 and will also be obliged to make a payment in lieu of notice (ie: one month's average wages). If the employee is (or would have been) entitled to maternity leave pay, the employer will also be obliged to pay maternity leave for 14 weeks.

In a recent Hong Kong case, a foreign domestic helper who was forced to take a pregnancy test was successful in claiming sex discrimination against her employer.⁶ The court held that the employer, by asking the helper to take a pregnancy test, had subjected her to less favourable treatment based on her sex.

c. Workers are required to take contraception

See 11(b) above regarding discrimination.

6 *Waliyah v Yip Hoi Sun Terence and Chan Man Hong* DCEO 1/2015 & DCCJ 1041/2015.

12. Bonded Labour

For each of the following circumstances, please indicate:

- i. Whether it involves a potential breach of local law;
- ii. If so, what the local law says in relation to the potential violation; and
- iii. Any other notable considerations.

a. Workers have debts (that are unofficial, not in writing etc.) related to their employment

Under the *Money Lenders Ordinance*, a loan agreement will be unenforceable if it is not recorded in writing within 7 days of the agreement being made. The loan is likely to be void and no debt will be due.

See also 2 (recruitment fees) and 4 (wage deductions) above.

b. Workers have debt that is unethical (such as excessive or illegally high interest rates) related to their employment

The *Money Lenders Ordinance*, requires lenders to provide borrowers with information about loans including the amount of interest due; the amount of money outstanding; and when the payments are due etc. Failure to do so means that the loan is likely to be void and no debt will be due.

The *Money Lenders Ordinance* also prohibits making loans with excessive interest rates (ie: an interest rate that exceeds 60% per annum). The offence is punishable with a fine of between HK\$ 500,000 - HK\$ 5,000,000 and imprisonment between 2 to 10 years.

See also 2 (recruitment fees) and 4 (wage deductions) above.

c. Workers are in debt to their employer or recruiter

See 12(a), 12(b), 2 (recruitment fees) and 4 (wage deductions) above.

d. Workers are in debt due to paying recruitment fees

See 12(a), 12(b), 2 (recruitment fees) and 4 (wage deductions) above.



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)