MAYER | BROWN

Guide to Employment Law in Hong Kong

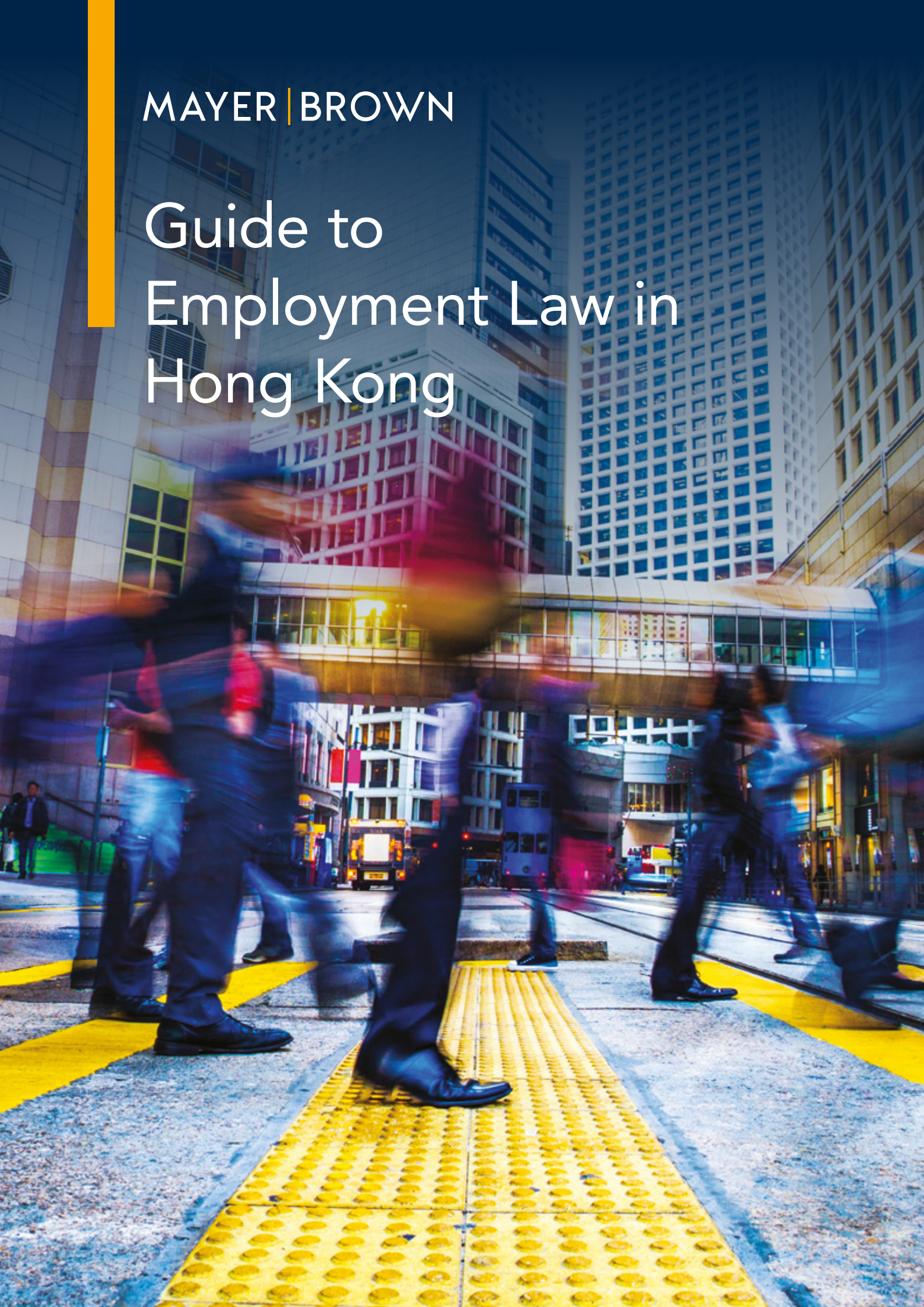

Table of Contents

Overview 2

Summary Of Minimum Statutory Entitlements 3

Form Of Contract 7

Calculation Of Amounts Payable
For Certain Statutory Entitlements 8

Annual Leave 9

Maternity Leave 10

Paternity Leave 12

Sickness Allowance 13

Termination 15

Competition 21

Third Parties' Rights 22

Discrimination Laws 23

Data Privacy Legislation 29

The Mandatory Provident Fund 33

Employee Compensation 35

Summary Of Visa Requirements 36

The information in this publication is current to February 2024.

Overview

The primary piece of legislation, the Employment Ordinance (the "**EO**"), prescribes certain basic rights and protection for most employees. The EO applies to every employee engaged under a contract of employment in Hong Kong with only a few minor exceptions[1]. The EO applies equally to locals and foreign nationals working in Hong Kong. Provided that the contractual terms of service are no less favourable than the basic protection afforded by the EO, the contract of employment will govern the relationship between employer and employee. Any term or condition of a contract of employment that seeks to reduce any right, benefit or protection conferred upon the employee by the EO will be void. So, to the extent that any contractual terms are less favourable, the EO will prevail.

The primary legislation governing trade unions in Hong Kong is the Trade Unions Ordinance (the "**TUO**"). A trade union registered under the TUO has certain rights. The majority of trade unions registered under the TUO are employee unions with a handful of employers' associations, mixed organisations of employers and employees and trade union federations. Employees have the freedom and right to become a member of a registered trade union and is protected when engaging in certain activities of the trade union at the appropriate time. There is no collective bargaining legislation in Hong Kong, e.g. a legislation that regulates the negotiation between an employer with a trade union or staff association in relation to employment issues. So, even if a deal is struck between the trade union and the employer, then the terms of that deal will not automatically be binding on the members of the trade union. Trade disputes (particularly strikes) are not common in Hong Kong.

In general, unless a person has the right of abode or right to land in the HKSAR, that person will require an appropriate visa to work in Hong Kong. The sponsor of an employment visa would typically be the employing company in Hong Kong, who is responsible for repatriation of the employee upon expiration of his or her permitted stay in Hong Kong. There is no statutory requirement that a percentage of employees must be local nationals or that a percentage of payroll be paid to local national employees. In applying for an employment visa, the Immigration Department requires an employer to confirm by way of a declaration on the relevant application form that genuine efforts have been made to recruit suitable local candidate but without success. If an employer is unable to confirm that genuine efforts have been made to recruit locally, the employer will have to provide reasons.

1 for example, in relation to family members employed in family businesses and merchant seamen.

Summary of Minimum Statutory Entitlements

Not all employees have the same entitlements under the EO. Employees who are employed under a "continuous contract" (i.e. an employee who has worked at least 18 hours a week for four or more consecutive weeks), are entitled to further benefits such as rest days, paid annual leave, sickness allowance, severance payment and long service payment etc.

WAGES

Minimum wages

The Minimum Wage Ordinance came into force on 1 May 2011. The current statutory minimum wage rate is HK$40.00 per hour in respect of the amount of wages in a wage period.

Timing of payment of wages

Wages are due on the last day of the wage period and must be paid as soon as is practicable but in any case, not later than seven days after the end of the wage period.

Deduction from wages

Deductions from wages or any other sums due to the employee are strictly regulated under the EO and are restricted to the limited circumstances set out in the EO. Even where one of those limited circumstances apply, there is a maximum amount of permitted deduction in a wage period.

WORKING HOURS

Except in relation to the employment of young persons employed in industrial undertakings where special regulations apply, there are no statutory provisions which prescribe maximum working hours.

BENEFITS

Bonuses

Employers in Hong Kong are free to determine the type of bonus they would like to award their employees. Historically it was common for employers to pay an automatic annual bonus of one month's salary at Chinese New Year, more recently most of such bonuses have been replaced by more performance related payments.

End of year payment

Part IIA of the EO regulates the payment of "end of year payment" ("**EOYP**"). An EOYP is any annual payment or bonus of a contractual nature, but does not include any annual payment or bonus which is of a gratuitous nature or which is payable only at the discretion of the employer. It is presumed that an annual bonus is not of a gratuitous nature and is not payable only at the discretion of the employer unless there is a written term or condition in the contract of employment to the contrary.

Under the EO, an EOYP is due on the day specified in the contract of employment or if a day is not specified in the contract, then it becomes due on the last day of the bonus year, and the EOYP must be paid as soon as is practicable but in any case not later than seven days after that day. If an employee completes the entire bonus year and ceases employment before the EOYP is paid, then the EOYP becomes due on the day on which the contract of employment terminates, or in the case of an EOYP that is calculated by reference to any profits of the employer, on the day on which the profits of the employer are ascertained, and must be paid as soon as is practicable but in any case not later than seven days after that day.

If an employee is entitled to an EOYP and the employer terminates the employment of the employee after three months of the bonus year other than by way of summary dismissal, then the employer must pay a pro

rata EOYP to the employee. The pro rata EOYP is due on the day on which the employment terminates or in the case of an EOYP that falls to be calculated by reference to any profits of the employer, on the day on which the profits of the employer are ascertained; and must be paid as soon as is practicable but in any case not later than seven days after that day.

Pensions/retirement schemes

The Mandatory Provident Fund ("**MPF**") Schemes Ordinance requires that every employer in Hong Kong contributes, in respect of each employee who is not exempt, for each contribution period an amount equal to at least 5% of an employee's salary (currently up to a maximum of HK$30,000 per month) to a retirement scheme that is registered as an MPF scheme. That employee will also be required to contribute for each contribution period at least 5% of his or her salary (again currently up to a maximum of HK$30,000 per month) to the scheme. There are certain exceptions to this general rule. Certain employers provide additional benefits through occupational retirement schemes. These are regulated by the Occupational Retirement Schemes Ordinance.

Employees' compensation

Employers are required to maintain insurance coverage pursuant to the Employees' Compensation Ordinance in respect of work-related injuries but otherwise, there is no statutory requirement to provide medical or dental benefits.

SOCIAL SECURITY

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

HOLIDAYS AND LEAVE

Statutory holidays/General holidays

All employees are entitled to statutory holidays as prescribed under the EO. Instead of granting an employee a holiday on the statutory holiday, an employer can unilaterally grant an "alternative holiday" or the employer and employee may agree on a day as a "substituted holiday" within relevant statutory timeframes.

There are currently 14 statutory holidays per year. The number of statutory holidays will increase from 14 to 17 between 2026 and 2030, reaching 17. The 3 new statutory holidays are:

- Easter Monday (starting from 1 January 2026);
- Good Friday (starting from 1 January 2028); and
- The day following Good Friday (starting from 1 January 2030).

An employee who has been employed under a continuous contract for a period of three months immediately preceding a statutory holiday is entitled to statutory holiday pay which must be paid no later than the day on which the employee is next paid his or her wages after the statutory holiday. An employer is not permitted to make a payment in lieu of granting a statutory holiday[2].

Any establishment that is not a bank, educational establishment, public office or Government department is not obliged to observe the 17 general holidays provided for in the General Holidays Ordinance.

2 Unless the "alternative holiday" or "substituted holiday" is granted prior to termination of the contract of employment but falling after such termination, in which the holiday pay would have to be paid within seven days of the termination date.

Statutory Rest Days

The EO provides that in addition to (paid) statutory holidays, an employee employed under a continuous contract is entitled to not less than one rest day in every period of seven days.

Annual Leave

Employees employed under a continuous contract are entitled to a minimum of between seven days and 14 days annual leave (depending on the length of continuous employment) for each period of 12 months' employment. Where an employee is granted statutory annual leave, the employer must also pay statutory annual leave pay which is based on the daily average wages of the employee (see below).

Maternity leave

Under the EO, a female employee who is employed under a continuous contract immediately before commencement of maternity leave, having given notice to her employer of her pregnancy, is entitled to the following statutory maternity leave:

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

Subject to the qualifying requirements, a female employee who has been continuously employed for a period of not less than 40 weeks immediately before the date of commencement of her maternity leave is entitled to paid maternity leave of 14 weeks or as provided by the terms of the employer, whichever is more favourable. Statutory maternity leave pay is paid at the rate of 4/5ths of the employee's daily average wages over the preceding 12-month period (see below), but there is a cap of HK$80,000 on the statutory maternity leave pay in respect of the 11th to 14th weeks of maternity leave.

Paternity leave

A male employee who is employed under a continuous contract immediately before commencement of paternity leave and satisfies the requirements under the EO is entitled to five days of paternity leave. A male employee who has been continuously employed for a period of not less than 40 weeks immediately before the date of commencement of his paternity leave is entitled to paid paternity leave or as provided by the terms of the employer, whichever is more favourable. Statutory paternity leave pay is paid at the rate of 4/5ths of the employee's daily average wages over the preceding 12-month period (see below).

Sickness allowance

Employees who are employed under a continuous contract are entitled to paid sickness allowance at the rate of 4/5ths of the employee's daily average wages over the preceding 12-month period (see below).

Entitlement to sickness allowance may be accumulated at the rate of two paid sickness days for each completed month of employment during the first 12 months of employment and at the rate of four paid sickness days for each month thereafter, up to a maximum of 120 paid sickness days. The entitlement to sickness allowance only applies to periods of absence due to sickness of not less than four consecutive days (unless the absence is pregnancy related).

SEVERANCE PAY AND LONG SERVICE PAY

Severance pay

An employee who has been employed under a continuous contract for not less than 24 months is entitled to statutory severance pay if he is dismissed by reason of redundancy or if the employee is laid off (i.e. where the remuneration of an employee depends on his being provided with a particular kind of work and he is no longer provided with a sufficient amount of such work). The amount of severance pay is 2/3rds of his or her last full month's (or monthly average over the last 12 months) pay for each year of employment or 2/3rds of HK$22,500, whichever is less, subject to a maximum payment not exceeding HK$390,000.

Long service pay

An employee who has been employed under a continuous contract for not less than five years is entitled to statutory long service pay where he/she is "dismissed", which includes termination by an employer with or without notice or payment in lieu other than by summary dismissal, the expiry of a fixed term contract which is not renewed on substantially comparable terms, and constructive dismissal where an employee is entitled to terminate his or her contract without notice by reason of the employer's conduct. The amount of long service pay is calculated by reference to the same formula as for severance pay. The maximum entitlement shall not exceed HK$390,000.

The right to severance pay and the right to long service pay are mutually exclusive.

Statutory severance pay and long service pay may be reduced by the amount of gratuities paid under the contract of employment that are based on length of service or under any relevant occupational retirement scheme or any mandatory provident fund scheme benefit held in respect of or paid to the employee (note that the offsetting arrangement will be abolished on 1 May 2025. See the section on termination for further information).

Where the contract of employment provides for a more generous entitlement than the statutory entitlements set out above, the employer will need to comply with those contractual entitlements.

Form of Contract

There is no requirement in Hong Kong for a contract of employment to be in writing. However, upon written request before commencement of employment, the employer is required to give written particulars of certain conditions of employment.

Where the contract of employment is in writing, the employer must provide a copy of it to the employee immediately after it is signed. The conditions which are required to be stated are the wages and wage period, the length of notice required to terminate the employment, and if an EOYP is payable, the amount of EOYP or the proportional entitlement and the payment period of that payment.

Calculation of Amounts Payable For Certain Statutory Entitlements

DAILY AVERAGE WAGES ("**DAW**")

Certain statutory benefits (including annual leave pay, holiday pay, sickness allowance, maternity leave pay and paternity leave pay) are calculated by reference to the "daily average wages" of an employee.

In computing the employee's DAW, the EO requires an employer to average an employee's wages over the preceding 12 months. However, the employer must disregard any period (the "**Disregarded Period**") for which the employee was not paid his wages or full wages by reason of:

- Any maternity leave, paternity leave, rest day, sickness day, holiday or annual leave taken by the employee,
- Any leave taken by the employee with the agreement of the employer,
- The employee not being provided by his or her employer with work on any normal working day, or
- The employee's absence from work due to temporary incapacity for which compensation is payable under section 10 of the Employees' Compensation Ordinance.

The determination of DAW for an employee is therefore calculated by the following formula:

DAW = (W – L Wages) ÷ (365 – L)

Where:

'**W**' is the wages earned by the employee in the preceding 12 months (or the shorter period if the employee has been employed for a period of less than 12 months). The expression "wages" is defined very broadly under the EO to mean all remuneration, earnings, allowances including travelling allowances and attendance allowances, attendance bonus, commission, overtime pay, tips and service charges, however designated or calculated, capable of being expressed in terms of money, payable to an employee in respect of work done or to be done under a contract of employment with 11 exceptions;

'**L**' is the Disregarded Period; and

'**L Wages**' is the amount of 'wages' paid on those 'L' days.

Where it is impracticable to calculate the DAW of an employee then the "amount may be calculated by reference to the wages earned by a person who was employed in the same trade or occupation and at the same work in the same district" during the relevant 12-month period.

Annual Leave

STATUTORY ENTITLEMENT

Under the EO, employees are entitled to a minimum of seven to 14 days statutory annual leave for each period of 12 months' employment, calculated on the basis of length of service as follows:

Period of employment	Number of days' annual leave
At least 1 year but less than 3 years	7
At least 3 years but less than 4 years	8
At least 4 years but less than 5 years	9
At least 5 years but less than 6 years	10
At least 6 years but less than 7 years	11
At least 7 years but less than 8 years	12
At least 8 years but less than 9 years	13
At least 9 years	14

CONTRACTUAL ENTITLEMENT

An employee's contractual entitlement (i.e. entitlement in excess of the statutory entitlement above) to annual leave varies depending on the nature of the employer and the employee's position. The EO only regulates statutory annual leave. An employer wishing to treat contractual annual leave differently to statutory annual leave should expressly distinguish the statutory from the contractual annual leave entitlement and set out its intended different treatment. Failure to do so may give the employee an argument that all of the annual leave entitlement should be treated in accordance with the requirements under the EO (if the EO provides a more favourable entitlement) or the contract (if that provides the more favourable result).

TIME OF TAKING LEAVE

Employers are entitled to determine when annual leave is to be taken and must give 14 days' notice in writing to the employee of the time that they have selected, if the time cannot be agreed upon in consultation with the employee. Annual leave must, however, be granted within 12 months of the end of the leave year (i.e. the year following its accrual). A "leave year" may either be the anniversary of the employee's commencement of employment or such other date as the employer may elect so as to use a common leave year for all employees, such as a calendar year.

PAYMENT IN LIEU OF ANNUAL LEAVE UPON CESSATION OF EMPLOYMENT

On cessation of employment an employer is obliged to make a payment in respect of all accrued but untaken annual leave as at the end of the leave year preceding that in which the termination takes effect.

In respect of the leave year in which the termination of employment takes effect an employee will only be entitled to a payment in respect of the pro rata accrual of annual leave in that leave year based on length of service if the employment is terminated at least three months into the leave year otherwise than by way of summary dismissal (e.g. for misconduct).

The statutory amount of annual leave pay and in lieu of accrued but untaken annual leave payable to an eligible employee is a sum equal to the DAW of the employee over the preceding 12-month period.

Maternity Leave

ELIGIBILITY

A female employee who is employed under a continuous contract of employment immediately before the expected date of her commencement of maternity leave, is entitled to take maternity leave in accordance with the EO. Where the contract of employment provides the employee with a more favourable entitlement than under the EO, the employer must provide that more favourable entitlement.

NOTIFICATION AND CERTIFICATION REQUIREMENTS

Before taking leave, an employee who intends to take maternity leave must notify the employer of her intention to take maternity leave after her pregnancy has been confirmed by a medical certificate. Presentation of a medical certificate confirming pregnancy is sufficient notice on behalf of the employee. If required by her employer, the employee must produce a medical certificate specifying the expected date of confinement. Where confinement takes place before notice is given, or after notice is given but before the agreed date of commencement of maternity leave, the employee must, within seven days of her confinement, give notice to her employer of the date of confinement and of her intention to take any period of maternity leave.

PERIOD OF MATERNITY LEAVE ENTITLEMENT

Under the EO, an employee under continuous employment will be entitled to take a continuous period of 14 weeks as maternity leave from the date of commencement of maternity leave or the actual date of confinement if earlier. With the agreement of her employer, a pregnant employee may decide on the date of commencement of her maternity leave provided that such date is not less than two weeks before, and not more than four weeks before the expected date of confinement. If agreement cannot be reached, the maternity leave period will commence four weeks before the expected date of confinement.

In addition, the employee is entitled to maternity leave in respect of the period between the expected and the actual date of birth and to a maximum of four weeks maternity leave on account of pregnancy-related illness to be taken wholly or in part either before or after the birth.

PAYMENT FOR MATERNITY LEAVE

To qualify for paid maternity leave, which is applicable only to the 14-week maternity leave period, the employee must:

- have been employed under a continuous contract for a period of not less than 40 weeks immediately before the date of commencement of maternity leave;
- have given the required notice; and
- have complied with requirements for the provision of medical certificates referred to above.

The rate of statutory maternity leave pay is 4/5ths of the employee's DAW, subject to a cap of HK$80,000 in respect of the 11th to 14th weeks of maternity leave. Rest days and statutory holidays occurring during paid maternity leave are counted as part of the maternity leave entitlement. It is not permissible to make any payment in lieu of the grant of maternity leave.

PROHIBITION AGAINST TERMINATION

After a pregnant employee has served notice of pregnancy on her employer, her contract of employment cannot be terminated by the employer (other than for reasons permitting summary dismissal) from that date until the end of her maternity leave or the date of cessation of pregnancy otherwise than by reason of birth. Where an employee serves notice of her pregnancy immediately after being informed of the termination of her contract the employer must withdraw the notice of termination. Employers are, however, entitled to terminate a pregnant employee's contract during the first 12 weeks of a probation period for reasons other than pregnancy.

An employer who contravenes the EO in this respect will be guilty of an offence and subject to a fine of up to a maximum of HK$100,000. In addition, an employee would be able to make a claim of unlawful dismissal under Part VIA of the EO (dealing with employment protection) and, if successful, obtain an award of compensation from the Labour Tribunal of up to HK$150,000. The employee may also seek an order for compulsory reinstatement or re-engagement.

Separately, the dismissal (and other less favourable treatment) of an employee on the ground of pregnancy can give rise to a claim of unlawful pregnancy discrimination under the Sex Discrimination Ordinance.

Paternity Leave

ELIGIBILITY

A male employee is entitled to take paternity leave in accordance with the EO for each confinement of his spouse or partner (or as provided by the terms agreed with the employer) if he:

- is the child's father;
- has been employed under a continuous contract immediately before taking the leave; and
- has complied with the specified "notification requirements" to the employer.

Where the contract of employment provides the employee with a more favourable entitlement than under the EO, the employer must provide that more favourable entitlement.

NOTIFICATION AND CERTIFICATION REQUIREMENTS

There are two ways in which a male employee can comply with the "notification requirements" referred to above:

- the employee must notify his employer of his intention to take paternity leave at least three months before the expected date of delivery of the child. He must then tell his employer the intended date of his leave before taking leave; or
- If the three months' notice is not given, the employee must notify his employer of each intended date of his leave at least five days before that date.

The employee may also be required to provide a written statement, stating that he is the child's father, in addition to the name of the child's mother and the expected or actual date of delivery. Employers may consider requiring employees to provide this written statement as part of its leave application and verification process.

PERIOD OF PATERNITY LEAVE ENTITLEMENT

Under the EO, the employee will be entitled to take five days of paternity leave, which can be taken either consecutively or separately, anytime within the period beginning four weeks before the expected date of confinement and ending 14 weeks after the date of birth.

If a paternity leave day falls on a rest day or statutory holiday or falls within a period of annual leave, then the employee is entitled to take the paternity leave on the day immediately after the rest day, statutory holiday or annual leave period, or on such other day (within the period prescribed under the EO) as notified by the employee to the employer at least two days before that other day.

PAYMENT FOR PATERNITY LEAVE

To qualify for paid paternity leave, which is applicable only to the five days of paternity leave, the employee must:

- have been employed under a continuous contract for a period of not less than 40 weeks immediately before taking the paternity leave; and
- have provided his employer with the requisite documents. In respect of a child born in Hong Kong, the requisite document is the child's birth certificate issued under the Births and Deaths Registration Ordinance with the employee's name as the father of the child. The employee must provide the requisite document to the employer within 12 months after the first day on which the employee takes paternity leave, or if the employee has ceased employment during these 12 months, then within six months after the cessation of employment (whichever period expires first).

The rate of statutory paternity leave pay is 4/5ths of the employee's DAW. It is not permissible to make any payment in lieu of the grant of paternity leave.

Sickness Allowance

ELIGIBILITY

An employee who has been employed under a continuous contract for a period of at least one month immediately preceding a sickness day is entitled to paid sickness allowance in accordance with the EO. Where the contract of employment provides the employee with a more favourable entitlement than under EO, the employer must provide that more favourable entitlement.

There is no entitlement to take sick leave for reasons other than the employee's own sickness or injury. So, for example, an employee cannot claim sickness allowance in respect of a day where he/she has been absent from work to care for his or her sick child.

AMOUNT OF ENTITLEMENT TO SICKNESS ALLOWANCE

An employee's entitlement to sickness allowance accumulates:

- at the rate of two paid sickness days for each completed month of employment in the first 12 months of employment under the continuous contract; and
- at the rate of four paid sickness days for each month thereafter up to a maximum of 120 paid sickness days.

RATE OF SICKNESS ALLOWANCE

Sickness allowance is paid at the rate of 4/5ths of the employee's DAW. Other than in the cases of pregnancy and post-natal sickness and attendance of medical examination for a female employee's pregnancy with appropriate documentation, the entitlement to sickness allowance only applies to periods of absence due to sickness of not less than four consecutive days. In other words, payment will only be received from the fourth consecutive day of absence and then in respect of the total number of sickness days taken by the employee. Consequently, employers are, strictly speaking, entitled to withhold pay for any absence for sickness of less than four days.

Note: It is not unusual for employers to provide a contractual sickness benefit which is more beneficial than statutory sick allowance (e.g. by providing that sick leave is paid at full pay or by allowing employees an upfront entitlement to a certain number of days rather than accruing sick leave days on a month-by-month basis).

REQUIREMENT FOR MEDICAL CERTIFICATE

An employee must produce a medical certificate issued by a registered medical practitioner, registered Chinese medicine practitioner or registered dentist in respect of any sickness day for which he/she is claiming statutory sickness allowance (other than for attending medical examination in relation to the pregnancy) and if he/she fails to do so, the employer is not liable to make any payment for that particular day.

A certificate of attendance issued by a registered medical practitioner, registered Chinese medical practitioner, registered midwife or registered nurse is sufficient proof for entitling an eligible female employee to sickness allowance for any day on which she has attended medical examination in relation to her pregnancy.

RECORD KEEPING

The EO requires that records of sickness allowance are kept in a very particular manner and below is a summary of the requirements.

An employer must maintain records containing particulars of employees' entitlements to sickness allowance and of sickness days. The records must show the date of commencement and termination of employment of each employee, the sickness days accumulated, paid sickness days, total sickness allowance paid to each employee and the sickness days in respect of which sickness allowance was paid.

In addition, the employer's sick pay record for each employee must be divided into two sections:

- category 1 listing the first 36 days taken, and
- category 2 containing additional accumulated days up to a maximum of 84.

When an employee takes a paid sickness day, it must first be deducted from category 1, then from category 2. Further days accumulated are added first to category 1 until the maximum of 36 days is reached, then to category 2. Additional medical evidence may be required to support sickness days taken from category 2.

PROHIBITION AGAINST TERMINATION

There is a specific prohibition against the termination of an employee whilst he/she is entitled to statutory sickness allowance, except for reasons permitting summary dismissal.

An employer who terminates an employee on a paid sickness day will be guilty of an offence and subject to a fine of up to a maximum of HK$100,000. The employer is also liable to pay the employee a sum equivalent to payment in lieu of notice, an additional sum equivalent to seven times the DAW the employee earned during the period of 12 months immediately before the date of termination of the contract of employment, and the total amount of sickness allowance that the employee would have been entitled to receive if the contract of employment had not been terminated.

In addition, an employee (of more than two years' continuous service) would be able to make a claim of unlawful dismissal under Part VIA of the EO (dealing with employment protection) and, if successful, obtain an award of compensation from the Labour Tribunal of up to HK$150,000. The employee may also seek an order for compulsory reinstatement or re-engagement.

Separately, the dismissal (and other less favourable treatment) of an employee on the ground of disability can give rise to a claim of unlawful disability discrimination under the Disability Discrimination Ordinance.

Termination

TERMINATION BY NOTICE

Where it has been expressly agreed that an employee is on probation, the employment may be terminated by the employer or the employee without notice during the first month and during the remainder of the probation period by providing the contractually agreed notice (being not less than seven days) or if no notice period has been agreed, by providing not less than seven days' notice.

In all other cases, the employee is entitled to:

a. not less than one month's notice of termination where a continuous contract of employment is deemed to be for one month renewable from month to month under the EO (i.e. where the parties have not expressly agreed in writing that the contract be for a period in excess of one month) and does not provide for the length of notice required to terminate the contract; or
b. the agreed period but not less than seven days where the contract is deemed to be a contract for one month renewable from month to month and provides for the length of notice of termination of the contract; or
c. the agreed period, in every other case but not less than seven days in the case of a continuous contract.

The length of notice for the termination of employment contract mentioned at (c) above must not include periods of statutory annual leave and maternity leave.

TERMINATION BY PAYMENT IN LIEU OF NOTICE

An employment contract can be terminated without notice by either party agreeing to pay to the other wages in lieu of notice. Wages in lieu of notice is calculated by reference to the DAW or monthly average wages (depending on whether notice in the employment contract is expressed in days, weeks or months).

Where a notice period is expressed in days or weeks then the amount payable as wages in lieu of notice will be the number of days in the notice period multiplied by the DAW of the employee. Where a notice period is expressed in months then the amount payable as wages in lieu of notice will be the number of months in the notice period multiplied by the monthly average wage of the employee. "Monthly average wage" is generally calculated in the same manner as the DAW using monthly wages, not daily wages.

TERMINATION BY EXPIRY OF CONTRACT

A fixed-term employment contract terminates automatically upon the expiry of the fixed term. Neither party is required to give notice of termination for the contract to cease on expiry of the term.

EMPLOYEES' ENTITLEMENTS ON TERMINATION BY NOTICE/EXPIRY OF CONTRACT

Generally the following entitlements are payable on termination by notice or expiry of contract. Where the contract of employment provides for a more generous entitlement than the statutory entitlements set out below, the employer will need to comply with those contractual entitlements.

Accrued wages and unused annual leave

All outstanding wages up to the time of termination of employment are payable to the employee.

An employer is obliged to make a payment in respect of any accrued but untaken annual leave up to the end of the leave year prior to the year in which the employment is terminated. In addition, if an employee is terminated (other than by summary dismissal) and has completed at least three months' continuous employment in the leave year in which the termination takes effect, then the employer is obliged to pay a pro rata amount equivalent to the annual leave accrued in that leave year.

End of year payments

Where the employee is entitled to an EOYP under the EO:

a. if the employer terminates the employee's employment other than by way of summary dismissal at least three months into the relevant bonus year, then the employee will be entitled to a proportional EOYP; or

b. if the contract of employment stipulates the proportion of the EOYP to be paid on termination of employment then the amount of the proportional EOYP will be determined in accordance with the terms of the contract.

Where the employee has been employed for the whole of the payment period to which the EOYP relates, and the contract of employment is terminated after expiry of the payment period but before the EOYP becomes payable, the EOYP will, notwithstanding any contract provisions, become due on the day the contract of employment terminates, or if the EOYP is calculated by reference to any profits of the employer, on the day on which those profits are ascertained and must be paid as soon as is practicable but in any case not later than seven days after that date.

Severance payments

An employee who has been employed under a continuous contract for not less than 24 months is entitled to severance payment if dismissed because of redundancy or laid off (i.e. the remuneration of an employee depends on the employee being provided with a particular kind of work and the employee is no longer provided with a sufficient amount of that work).

"Dismissal" includes:

- termination by an employer with or without notice or payment in lieu other than by summary dismissal;
- the expiry of a fixed term contract which is not renewed on substantially comparable terms; and
- constructive dismissal where an employee is entitled to terminate his /her contract without notice by reason of the employer's conduct.

Redundancy occurs where:

- the employer has ceased, or intends to cease, to carry on the business for the purpose of which the employee was employed or in the place where the employee was employed; or
- the requirements of that business for employees to carry out a particular kind of work or to carry out such work in the place where the employee was so employed have ceased or diminished or are expected to cease or diminish.

<u>Calculation of statutory severance payment</u>

a. Statutory severance payment for a monthly rated employee is:

   = [2/3] x [A] x [years of service (and pro rata as respect an incomplete year)], or

   Where:

   "A" is:

   i. the employee's last full month's wages or HK$22,500, whichever is less; or

   ii. at the employee's election, it may be = [wages earned by the employee over preceding 12 months] ÷ [12], but not exceeding HK$22,500.

b. Where the employee is not a monthly rated employee, the statutory severance payment is:

   = [B] x [years of service (and pro rata as respect an incomplete year)]

   Where:

   "B" is:

i. 18 days' "wages" based on any 18 days chosen by the employee and occurring during his/her last 30 normal working days, or two-thirds of HK$22,500, whichever is less; or

ii. at the employee's election, the "wages" in (i) above may be = [wages earned by the employee over the preceding 12 months capped at HK$270,000] ÷ [number of days for which the employee was paid during that 12 months]

This entitlement is subject to a maximum payment of HK$390,000.

Where the employee is entitled, under an employment contract, to a gratuity based upon length of service or to a payment under a retirement scheme, then the amount of the gratuity or payment may be deducted from the severance payment to which the employee would otherwise be entitled. In the case of a retirement scheme payment, only the employer's contribution element may be deducted, not the employee's own contributions or any interest payable on them.

Long service payments

An employee with at least five years of service (other than an employee who retires) will be entitled to a long service payment if they are dismissed and his employer is not liable to pay them a severance payment. "Dismissal" has the same meaning as that under the provisions relating to severance payments described above.

The amount of the long service payment is calculated according to the same formulae used to calculate statutory severance payment. The calculation is also subject to the same restrictions on maximum payments.

As with statutory severance pay, long service pay may be reduced by the total amount of any contractual gratuities based on length of service and the employer contribution element of any retirement scheme benefits paid to the employee in respect of the years of service for which long service pay is payable.

Abolition of offsetting arrangement (Effective 1 May 2025)

The Legislative Council passed the Employment and Retirement Schemes Legislation (Offsetting Arrangement) (Amendment) Bill 2022 on 9 June 2022 to abolish the use of accrued benefits of the employer contribution element of any retirement scheme benefits paid to the employee to offset severance payment or long service payment. The abolition arrangement will take effect on 1 May 2025 (Transition Date).

<u>After the abolition of the offsetting arrangement</u>

a. Statutory severance payment/long service payment for a monthly rated employee is:

   = V + X

   Where:

   "V" is the employee's last full month's wages (or average wages in the immediate 12 months) before the Transition Date[3], or HK$22,500 whichever is less × 2/3 × years of service before the Transition Date; and

   "X" is the employee's last full month's wages (or average wages in the immediate 12 months) before termination of employment, or HK$22,500 whichever is less × 2/3 × years of service starting from the Transition Date

b. Statutory severance payment/long service payment for a non-monthly rated employee is:

   = Y + Z

   Where:

3 If the employment period is less than 1 month, the amount will be the employee's first full month's wages after commencement of employment.

"Y" is 18 days' "wages" based on any 18 days chosen by the employee and occurring during his/her last 30 normal working days immediately preceding the Transition Date, or HK$22,500, whichever is less x 2/3 x years of service before the Transition Date; and

"Z" is 18 days' "wages" based on any 18 days chosen by the employee and occurring during his/her last 30 normal working days immediately preceding the termination date, or HK$22,500, whichever is less x 2/3 x years of service starting from the Transition Date.

c. The maximum statutory severance payment and long service payment amount is HK$390,000.

d. Employers can no longer reduce severance payment or long service payment payable to an employee by drawing on its mandatory MPF contributions or "carved-out benefits" in the retirement scheme. However, employers can still reduce the amounts by gratuities, voluntary MPF contributions and vested benefits under the retirement scheme.

e. The "carved-out benefits" in the retirement scheme is:

= M x N x 5% x 12

Where:

"M" is the final average monthly relevant income in past 12 months before termination, subject to the maximum level of relevant income under the MPFSO (currently at HK$30,000); and

"N" is the years of service with retirement scheme benefits.

f. The abolition has no retrospective effect. Employers may continue to use the accrued benefits derived their MPF contributions, irrespective of when the contributions were made and the "carved-out benefits", to offset the employee's pre-transition portion of the severance payment or long service payment.

TIMING OF PAYMENTS

The EO requires that where a contract of employment is terminated, any sum due to the employee must be paid to him/her as soon as is practicable and in any case not later than seven days after the day of termination. This obligation includes any outstanding wages, payment in lieu of notice, payment in respect of accrued but untaken annual leave, statutory severance or long service pay and any other sum due to the employee in respect of his/her contract of employment.

An employer who wilfully and without reasonable excuse fails to pay within the prescribed time commits an offence and is liable to a fine of HK$350,000 and to imprisonment for three years. Where this offence is committed by a body corporate and is proved to have been committed with the consent or connivance of, or attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, then that individual will be guilty of the offence.

EMPLOYMENT PROTECTION UNDER PART VIA OF THE EO

Requirement for valid reason

The EO enables any employee who has been employed under a continuous contract for a period of not less than 24 months and who is dismissed or whose contract is varied without his or her consent to make a claim for "unreasonable dismissal" to the Labour Tribunal. An employee may also bring a claim where he or she is dismissed other than for a valid reason and in contravention of one of the prohibitions even if the employee does not have 24 months of continuous employment. Those prohibitions include termination of an employee before while she is pregnant and before her return from maternity leave, while he or she is entitled to statutory sickness allowance or while the employee is entitled to compensation under the Employees' Compensation Ordinance. Once one of the above claims is made, the employer is required to produce a valid reason for the dismissal or variation. Valid reasons include:

- the conduct of the employee;

- the capability or qualifications of the employee for performing the work of the kind which he/she was employed by the employer to do; and
- redundancy of the employee or other genuine operational requirements (section 32K of the EO)

REMEDIES

Even if an employee files a claim with the Labour Tribunal and the employee's claim is upheld, the remedies available to the employee are not significant unless the employer has terminated the employee in contravention of certain sections in the EO which prohibit the termination of an employee:

- on the ground of pregnancy including while she is on maternity leave;
- while he/she is entitled to statutory sickness allowance;
- while he/she is entitled to compensation under the Employees' Compensation Ordinance in breach of section 48 of that Ordinance; or
- for participating in trade union activities,

for which there are greater remedies.

The court or the Labour Tribunal is given the power to order compulsory reinstatement or re-engagement of an employee who is dismissed other than for a valid reason listed above and is for a prohibited ground.

Before making such an order, both the employer and the employee must be given an opportunity to present each of their cases in respect of the making of the order. The court or the Labour Tribunal must take into account the circumstances of the claim before making such order, including:

- the circumstances of the employer and the employee;
- the circumstances surrounding the dismissal;
- any difficulty that the employer might face in the reinstatement or re-engagement of the employee; and
- the relationship between the employer and the employee, and between the employee and other persons with whom the employee has connection in relation to the employment.

It is possible to vary a re-engagement order such that the employer's successor or associated company (an "alternative employer") is to engage the employee instead (for example, if the original employer's business had been sold or transferred to the alternative employer).

If reinstated or re-engaged, the continuity of the period of employment between the date of the employee's absence from work and the date of re-engagement is not broken and the employee's existing and future entitlements under the EO and the employment contract will continue to be recognised.

If the employee is not reinstated on the terms specified in the order, the employer is required to, on top of the usual terminal payments and compensation, pay the employee a further sum set at three times the employee's average monthly wages subject to a maximum of $72,500. Furthermore, if termination of employment is for a prohibited ground, then the Labour Tribunal may order the payment of compensation currently capped at $150,000 in addition to the terminal payments discussed below.

If termination of the employment is not for a prohibited ground, the court or Labour Tribunal can only make an order for reinstatement of conditions and/or re-engagement if the parties, including the employer, agree. Otherwise, the Labour Tribunal may only award terminal payments.

Terminal payments are, in effect, as yet unpaid statutory and contractual entitlements which the employer should have paid upon termination of the employee's contract.

Although the Labour Tribunal may also award pro rata entitlements where the employee has not attained the qualifying length of service, this may largely be confined to severance and long service pay. Severance and long service pay awarded by the Labour Tribunal can be set off by the amount of any contractual gratuity based on length of service or the employer's contribution element of any retirement scheme payment.

The above claims are separate to any unlawful discrimination claim that the employee may bring.

SUMMARY DISMISSAL IN EXCEPTIONAL CIRCUMSTANCES

An employer may summarily dismiss an employee by terminating the employment contract without notice or payment in lieu of notice:

a. if the employee:
   - wilfully disobeys a lawful and reasonable order;
   - misconducts himself (the conduct being inconsistent with the due and faithful discharge of his duties);
   - is guilty of fraud or dishonesty; or
   - habitually neglects his duties;

b. on any other ground which the employer would be entitled to terminate the contract without notice at common law.

Summary dismissal is a very serious step to take against an employee. If the dismissal is justified, the employee will be deprived of all the protection provided by the EO. There will be no wages in lieu of notice, no pro rata annual leave pay for statutory leave accrued in the year in which the employee was dismissed, no severance payment, no EOYP and no long service payment no matter how long the employee has been in employment.

The ground relied upon by the employer has to be valid at the time of dismissal. Misconduct is the usual ground for summary dismissal. It typically involves some form of positive or intentional wrongdoing but there is no clear definition or rule of what constitutes misconduct nor the degree of misconduct which will justify dismissal. The question of whether misconduct justifies summary dismissal is a question of fact and degree.

That said, some examples of misconduct which the courts have found to justify summary dismissal include:

- unjustified assaults on fellow workers
- taking a secret commission
- breaching confidence in disclosing trade or other secrets
- conduct of an employee outside the hours of employment

On summary dismissal, the employee will be entitled to wages owing up until the time of dismissal and any accrued but untaken annual leave. However, where an employer has a right to summarily dismiss an employee but waives by election that right by giving notice of termination or making a payment of wages in lieu of notice, the employer will be required to make payment to the employee as if the termination of the contract of employment was on notice.

Competition

The Competition Ordinance, which came into force on 14 December 2015, prohibits, among other things, an undertaking from making or giving effect to an agreement where the object or effect of the agreement is to prevent, restrict or distort competition in Hong Kong. An undertaking may also not engage in a concerted practice with the same object or effect. So, it is unlawful to make or give effect to any arrangement with a competitor which would amount to fixing wages, preventing solicitation of employees, or boycotting of competitors.

The Competition Commission has issued an advisory bulletin which indicates that it considers the following practices between undertakings are at risk of contravening the First Conduct Rule of the Competition Ordinance:

- Wage-fixing agreements: Undertakings that reach an agreement between themselves on any element of compensation are in effect fixing the price of labour. Compensation includes salaries and other allowances such as insurance benefits, housing allowances, relocation support, severance payments or long service payments.
- Non-poaching agreements: Undertakings that reach an agreement or exchange information for the purposes of solicitation, recruitment or hiring of each other's employees.
- Exchange of sensitive information: Sharing of competitively sensitive information between undertakings about their intentions in employees' compensation or hiring, whether done directly or through a third party.

Employers should avoid disclosing competitively sensitive information to their competitors. Terms of engagement with intermediaries such as organisations carrying out salary surveys, recruiters and salary consultants should also be reviewed to ensure employers' interests are appropriately safeguarded.

Third Parties' Rights

The Contracts (Rights of Third Parties) Ordinance ("**CRTPO**") applies to all contracts, including employment-related contracts, that are entered into on or after 1 January 2016 with a limited number of exceptions.

Under the CRTPO, a third party may enforce a term of a contract if (i) the contract expressly provides that the third party may do so, or (ii) the contract term purports to confer a benefit on the third party. However (ii) will not apply if, on a proper construction of the contract, the term is not intended to be enforceable by the third party. For the third party to have the right to sue, the contract must expressly identify the third party by name, as a member of a class or as answering a particular description. The CRTPO will apply to a third party even if the third party was not in existence when the contract was entered into or if the third party did not provide any legal consideration.

Under certain circumstances, the parties to the contract may not, without the third party's consent (i) by agreement, rescind the contract, or (ii) by agreement, vary the contract so that the third party's right under the term is altered or extinguished.

On the other hand the parties to the contract can opt out of the application of the CRTPO, including the right of the third party to enforce the contract and whether or not the consent of third parties is required before making any changes to the contract.

The CRTPO, however, does not extend to conferring a right on a third party to enforce a term of an employment contract against an employee, but a third party may under the CRTPO enforce a term under a contract of employment against the employer. For example, if the contract of employment provides that the employer will provide say medical benefits to the spouse of an employee, the spouse is a third party and he/she may enforce the contract against the employer in the event of breach. As such, employers may wish to consider expressly contracting out of CRTPO in a contract of employment.

Discrimination Laws

GENERALLY

Discrimination on the grounds of sex, pregnancy, marital status, disability, family status, race and breastfeeding is prohibited under the anti-discrimination ordinances in Hong Kong, namely the Sex Discrimination Ordinance ("**SDO**"), Disability Discrimination Ordinance ("**DDO**"), Family Status Discrimination Ordinance ("**FSDO**") and Race Discrimination Ordinance ("**RDO**") (together the "**Ordinances**"). There is no specific protection against discrimination on the basis of age or sexual orientation nor is there any equal pay legislation in Hong Kong.

Each of the anti-discrimination Ordinances prohibits "direct" and "indirect" discrimination.

Direct discrimination occurs where a person is treated less favourably than another in the same or not materially different circumstances on the ground of one or more of the protected attributes.

Indirect discrimination occurs when a condition or requirement is applied to everyone equally but the proportion of persons which a particular protected attribute who can comply with the condition or requirement is considerably smaller than the proportion of persons not having the protected attribute. However, it would not be indirect discrimination if the condition or requirement is justified.

Employers should note that for the purposes of the four Ordinances, if an act is done for two or more reasons and one of the reasons is the prohibited ground (whether or not it is the dominant or substantial reason for doing the act), the act shall be taken to be done for the prohibited ground. Therefore, generally an employer should ensure that the prohibited ground played no part in the decision which is unfavourable to the employee with the relevant protected attribute.

It is unlawful for an employers to discriminate against an employee on a prohibited ground:

- in the way they afford that person access to opportunities for promotion, transfer or training, or to any other benefits, services or facilities;
- by refusing or deliberately omitting to afford that person access to them by the terms of employment they afford that person; or
- by dismissing that person, or subjecting them to any other detriment.

All four Ordinances also prohibit victimisation – which is treating a person less favourably on the ground that the person has made allegations of unlawful discrimination or harassment, has given evidence, or has taken steps to enforce one of the four Ordinances.

Vilification on the ground of disability and/or race is unlawful. It occurs when a person engages in an activity in public to incite hatred towards, serious contempt for, or severe ridicule of a person or persons with disabilities or on the ground of race, colour, descent, national or ethnic origins. An act of vilification done with intent or involves threat of physical harm to people with disability or people of the targeted race, colour, descent, national or ethnic origins or their property is a criminal offence.

Each Ordinance provides that an employer will normally be held vicariously liable for an unlawful act of an employee in the course of employment regardless of whether the act was done with the employer's consent or knowledge. In addition, the SDO, DDO and RDO contain express provisions imposing vicarious liability on employers for the actions of their "workplace participants". "Workplace participants" include employees, job applicants, contract workers, partners of a firm, commission agents, interns and volunteers who work in the same workplace.

An employer will have to demonstrate that it took such steps as were reasonably practicable to prevent its employees committing a particular discriminatory act or committing such acts in general to defend a claim of vicarious liability. The burden of proof is on the employer to show that it has taken these steps, for example, that there was an equal opportunities policy which the employer actively brought to the attention of all employees and consistently enforced.

SEX DISCRIMINATION

The SDO prohibits direct discrimination which is the less favourable treatment of an employee on the grounds of sex, marital status, pregnancy and breastfeeding. The SDO also prohibits indirect discrimination. Indirect sex discrimination occurs where a condition or requirement is applied equally to, say, a man, but the proportion of women who can comply with it is considerably smaller than the proportion of men, women suffer a detriment because they cannot comply with it and the condition or requirement is unjustifiable. This applies equally to a condition or requirement where a smaller proportion of men can comply with it.

Genuine occupational qualifications operate as a (limited) exemption to sex discrimination (but not pregnancy or marital status discrimination) in the field of employment. Under the SDO, genuine occupational qualifications include:

- where the essential nature of the job requires a person of a given sex for reasons of physiology or reasons of authenticity in dramatic performances;
- where the job needs to be held by a person of a given sex to preserve decency or privacy;
- where the job is likely to involve people doing the work or living in a private home and objection may reasonably be taken to a person of a given sex because of the degree of physical or social contact with that person in the private home; or
- where the holder of the job provides individuals with personal services promoting their welfare or education, or similar personal services, and such services can be best provided by a person of a given sex.

Separate exemptions exist under the SDO for affirmative action programmes and the withholding of housing, education and similar benefits to a married employee on the basis that his or her spouse receives the same benefit.

SEXUAL HARASSMENT

Sexual harassment in the workplace is specifically prohibited by the SDO. Acts of sexual harassment may be done towards an individual of the opposite sex or the same sex, and may be direct or indirect, physical or verbal. It may consist of repeated actions and could arise from a single incident. There are two types of behaviour that can amount to sexual harassment.

The first and more obvious form of sexual harassment arises from the conduct of a workplace participant (the harasser) towards another workplace participant (the victim). Sexual harassment occurs where:

- the harasser makes a sexual advance or request for sexual favours, or engages in other conduct of a sexual nature towards the victim in circumstances where the victim does not welcome such conduct; and
- the harasser should reasonably have anticipated that the victim would be offended, humiliated or intimidated.

The second form of sexual harassment occurs where one or more workplace participants engage in conduct of a sexual nature which creates a sexually hostile or intimidating work environment.

It is also unlawful to sexually harass a provider of goods, facilities or services.

Where a sexual harassment claim is made by a workplace participant against one or more other workplace participants, to defend itself against vicarious liability an employer will have to demonstrate that it took all steps which were reasonably practicable to prevent the sexual harassment occurring.

BREASTFEEDING HARASSMENT

Harassment of a breastfeeding woman will be prohibited under the SDO.

A woman will be treated as breastfeeding if she is engaged in the act of breastfeeding a child or

expressing breast milk, or is a person who feeds a child with her breast milk. Breastfeeding harassment occurs where:

- a harasser engages in unwelcome conduct to a breastfeeding woman, which a reasonable person, having regard to all circumstances, would anticipate that the woman would be offended, humiliated or intimidated.
- a person, alone or with others, engages in conduct that creates a hostile or intimidating environment for the breastfeeding woman.

DISABILITY DISCRIMINATION

The definition of "disability" will include most if not all of the reasons for which sickness leave is taken including the common cold or stress. "Disability" is defined broadly in the DDO to include:

- total or partial loss of bodily or mental functions;
- total or partial loss of a part of the body;
- the presence in the body of organisms causing, and/or capable of disease or illness;
- the malfunction, malformation or disfigurement of a part of the person's body;
- a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction; or
- a disorder or illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour.

The DDO covers a current disability, previous disability, future disability and imputed disability. The DDO also protects those who are "associates"[4] of persons with disabilities where he/she is discriminated against or harassed because of his/her particular relationship with a person with a disability.

The DDO prohibits direct discrimination which is differential and less favourable treatment accorded to a job applicant or an employee because of his or her disability. The DDO also prohibits indirect discrimination, i.e. if a seemingly neutral condition is applied to everyone, but such condition has a disproportionate adverse effect on persons with a disability compared to persons who do not have a disability and the application of the condition cannot be justified in the relevant circumstances, then such condition would be discriminatory and prohibited under the DDO.

Discriminatory treatment (such as demotion or change of duties by reason of the employee's disability) is not unlawful if the employer can demonstrate that person's disability

- prevents them from carrying out the inherent requirements of the particular job taking into account all relevant factors (which include the person's training, qualification and experience relevant to the employment) or
- would, in order to carry out those requirements, require services or facilities which would impose unjustifiable hardship on the employer. Unjustifiable hardship is considered by reference to all the relevant circumstances including the reasonableness of any accommodation sought, the nature of the benefit and the financial circumstances of the employer (e.g. to bear the expenditure required in order to provide the necessary facilities).

The DDO recognises that in some situations, a person because of his/her disability would not be able to carry out the inherent requirements of a job (even with reasonable accommodation), although identification of those inherent requirements is a matter of objective fact and to be determined in all circumstances of a particular case.

4 Associates in relation to persons with disabilities include a spouse of the person with a disability, a person who is living with the person with a disability on a genuine domestic basis, a relative of the person with a disability, a carer of the person and a person who is in a business, sporting or recreational relationship with the person with a disability.

Genuine occupational qualifications operate as a (limited) exemption to disability discrimination in the field of employment. Under the DDO, genuine occupational qualifications include:

- where the essential nature of the job requires a person without a disability for reasons of physiology or reasons of authenticity in dramatic performances; or
- where the nature or location of the employment establishment requires the holder of the job to live in premises provided by the employer, which premises are lived in, or normally lived in, by persons without a disability, and are not equipped with accommodation and facilities for persons with a disability and it would impose an unjustifiable hardship on the employer to so equip them.

Other than the circumstances mentioned above, any other discriminatory conduct towards a disabled employee would be unlawful. Therefore, employers must be careful to ensure that the ways in which they afford employees access to promotion, transfer, training, benefits and so forth do not amount to discrimination against employees with a disability.

In relation to the terms of employment afforded, employers need to ensure that they do not explicitly offer different terms of employment on the basis of an employee's disability. In respect of general conditions of service, this should be a relatively simple exercise. Obviously, if the actual application of certain benefits differs, the employer's conduct will amount to direct discrimination against an employee with a disability regarding access to promotion and benefits.

DISABILITY HARASSMENT

Disability harassment in the workplace is prohibited under the DDO. It occurs where the harasser engages in unwelcome conduct on the ground of the disability of the victim or on account of the disability of an associate of the victim where a reasonable person would have anticipated that such person would be offended, humiliated or intimidated by that conduct.

FAMILY STATUS DISCRIMINATION

Family status in relation to a person means that person has responsibility for the care of an immediate family member. An immediate family member is a person who is related by blood[5], marriage, adoption or affinity[6]. The definition of family status also refers to the status of having responsibility for the care of a particular person who is an immediate family member.

The FSDO prohibits discrimination in employment on the ground of family status. This includes, for example, treating a job applicant or employee less favourably, discriminating against a person seeking or undergoing training which would help the person to fit for that employment, or discriminating against a person who is a contract worker or commission agent.

The FSDO provides for certain exceptions in relation to the restriction of employment on the ground of family status. Where the person concerned is an immediate family member of an employee of the employer (or another employer) and there is a significant likelihood of collusion between the person and that employee and the collusion would result in damage to the business of the employer concerned, that restriction would be allowed provided that the employer can demonstrate such collusion and damage in result of the collusion.

RACE DISCRIMINATION

The RDO prohibits direct discrimination which is less favourable treatment of employees on ground of race. The RDO also prohibits indirect discrimination, i.e. if the same requirement or condition is applied to everyone of all racial groups, but such condition or requirement has a disproportionate adverse effect on

5 E.g. mother, father, brother, sister, son, daughter, grandmother, grandfather, grandchild, aunt, uncle, cousin, nephew and niece

6 E.g. relationships created by marriage, which may include mother-in-law and father-in-law.

persons from a particular racial group compared to the proportion of people not from that racial group and the person applying the requirement or condition cannot show the requirement or condition to be justified on non-racial grounds, then that requirement or condition would also be discriminatory and prohibited under the RDO.

The RDO also prohibits discrimination on the ground of the race of a person's associate. "Associate" has the same definition under the DDO.

The term "race" means "race, colour, descent or national or ethnic origin of the person" and includes a race or racial group that is imputed to a person. The following grounds (among others) are excluded from the definition of "race" for the purposes of the RDO :

- whether the person is an indigenous inhabitant of the New Territories;
- whether or not a person is a Hong Kong permanent resident;
- whether or not a person has the right of abode or the right to land in Hong Kong;
- whether or not a person is subject to any restriction or condition of stay imposed under the Immigration Ordinance;
- whether or not a person has been given the permission to land or remain in Hong Kong under the Immigration Ordinance;
- the length of residence in Hong Kong of a person; or
- the nationality, citizenship or resident status of a person under the law of any country or place concerning nationality, citizenship, resident status or naturalisation of or in that country or place.

Genuine occupational qualifications operate as a (limited) exemption to race discrimination in the field of employment. Under the RDO, genuine occupational qualifications apply only in five specified circumstances. These are:

- the job involves participation in a dramatic performance or other entertainment in a capacity for which a person of a particular racial group is required for reason of authenticity;
- the job involves participation as an artist's or photographic model in the production of a work of art, visual images or sequence of visual images for which a person of a particular racial group is required for reason of authenticity;
- the job involves working in a place where food or drink is provided to and consumed by the public in a particular setting for which, in that job, a person of that racial group is required for reasons of authenticity;
- the holder of the job provides persons of a particular racial group with personal services promoting their welfare, and those services can most effectively be provided by a person of that racial group; or
- the job involves providing persons of a particular racial group with personal services of such nature or in such circumstances as to require familiarity with the language, culture and customs of and sensitivity to the needs of that racial group, and those services can most effectively be provided by a person of that racial group.

RACIAL HARASSMENT

Racial harassment in employment is prohibited under the RDO. It occurs where the harasser engages in unwelcome conduct on the ground of the race of the victim or on account of the race of an associate of the victim where a reasonable person would have anticipated that such person would be offended, humiliated or intimidated by that conduct, and includes one or more persons engaging in conduct that renders hostile or intimidating in the environment in which the victim works or carries out related activities.

Calling employees derogatory names based on their ethnic group is likely to amount to harassment. Also, inappropriate racial jokes or pictures making fun of a particular ethnic group in the workplace may amount to unlawful harassment.

REMEDIES UNDER THE ANTI-DISCRIMINATION ORDINANCES

Proceedings under the anti-discrimination Ordinances in Hong Kong are commenced either by lodging a complaint with the Equal Opportunities Commission (the "**EOC**") and/or in the District Court. Prior conciliation by the EOC is not a pre-requisite to lodging proceedings in the District Court.

If proceedings are commenced in the EOC it will investigate and attempt to conciliate the complaint and may direct the parties to attend a conciliation conference. The EOC may require either party to provide such information as it requests, although the parties may opt for early conciliation rather than continuing with the investigation.

Employers should be aware that, in the event of a successful prosecution under the anti-discrimination Ordinances, there is no limit to the amount of damages a Court may award (if proceedings are brought in the District Court). In an employment context, compensatory damages will be assessed largely by reference to loss of earnings and injury to feelings caused by the act of discrimination. In particular, damages for injury to feelings can be substantial. For example, in one case, awards for injury to feelings ranged from HK$100,000 to HK$150,000 for each of the three plaintiffs with each plaintiff receiving an average of HK$800,000 in overall damages. However, claims may be settled out of court for multiples of the highest award made by the Court in a discrimination case to date. It should also be noted that the Court may award damages to successful claimant even if the less favourable treatment is unintentional.

COSTS

Employers should be aware that unless proceedings were brought maliciously or vexatiously or there are special circumstances which warrant an award of costs, each party bears their own costs in any Court proceedings brought under the anti-discrimination Ordinances.

The Court, in determining whether there are special circumstances, will take into account the overall circumstances including the nature of the conduct being complained of and the pre and post-proceedings conducts.

Data Privacy Legislation

GENERALLY

The collection, use and handling of personal data of employees in Hong Kong is governed by the Personal Data (Privacy) Ordinance ("**PDPO**"). With certain exemptions, the requirements of the PDPO are principally contained in six data protection principles set out in Schedule 1 of the PDPO. Section 4 of the PDPO states that "a data user shall not do an act or engage in a practice that contravenes a data protection principle unless the act or practice as the case may be, is required or permitted under this Ordinance".

"Personal data" is any data:

- relating directly or indirectly to a living individual (e.g. an employee);
- from which it is practicable for the identity of the individual to be directly or indirectly ascertained; and
- in a form in which access to or processing of the data is practicable.

A "data user" is a person who "either alone or jointly or in common with other persons, controls the collection, holding, processing or use of the personal data" (e.g. an employer).

"Data subject" is "the individual who is the subject of the data" (e.g. a job applicant or an employee).

THE DATA PROTECTION PRINCIPLES ("**DPP**")

Principle 1 - Purpose and manner of collection of personal data

Personal data shall not be collected unless:

- the data are collected for a lawful purpose directly related to a function or activity of the data user who is to use the data;
- subject to DPP3, the collection of the data is necessary for or directly related to that purpose; and
- the data are adequate but not excessive in relation to that purpose.

Personal data shall be collected by means which are:

- lawful; and
- fair in the circumstances of the case.

Where the person from whom personal data are or are to be collected is the data subject, all practicable steps shall be taken to ensure that:

- he is explicitly or implicitly informed, on or before collecting the data, of:
  - » whether it is obligatory or voluntary for him to supply the data; and
  - » where it is obligatory for him to supply the data, the consequences for him if he fails to supply the data and
- he is explicitly informed:
  - » on or before collecting the data of:
    - the purpose (in general or specific terms) for which the data are to be used; and
    - the classes of persons to whom the data may be transferred and
  - » on or before first use of the data for the purpose for which they were collected of:
    - his rights to request access to and to request the correction of the data; and
    - the name or job title, and address, of the individual to whom any such request may be made

unless to comply with the provisions of this subsection would be likely to prejudice the purpose for which the data were collected and that purpose if specified in Part VIII of the PDPO as a purpose in relation to which personal data are exempt from the provisions of DPP6.

Principle 2 - Accuracy and duration of retention of personal data

All practicable steps shall be taken to ensure that:

- personal data are accurate with regard to the purpose (including any directly related purpose) for which the personal data are or are to be used;
- where there are reasonable grounds for believing that personal data are inaccurate with regard to the purpose (including any directly related purpose) for which the data are or are to be used, the data are not used for that purpose unless and until those grounds cease to be applicable to the data, whether by rectification of the data or otherwise or the data are erased;
- where it is practicable in all the circumstances of the case to know that:
  - » personal data disclosed on or after the appointed day to a third party are materially inaccurate having regard to the purpose (including any directly related purpose) for which the data are or are to be used by the third party; and
  - » that data were inaccurate at the time of such disclosure, that the third party:
    - is informed that the data are inaccurate; and
    - is provided with such particulars as will enable the third party to rectify the data having regard to that purpose.

Personal data shall not be kept longer than is necessary for the fulfilment of the purpose (including any directly related purpose) for which the data are or are to be used.

If a data user engages a data processor, whether within or outside Hong Kong, to process personal data on the data user's behalf, the data user must adopt contractual or other means to prevent any personal data transferred to the data processor from being kept longer than is necessary for processing of the data.

A "data processor" is a person who processes personal data on behalf of another person and does not process the data for any of the person's own purposes. For example, if the employer i.e. data user, engages an external company to process the payroll of the employees, then the payroll company, for the purpose of the PDPO, is a data processor.

Principle 3 - Use of personal data

Personal data shall not, without the prescribed consent of the data subject, be used for a "new purpose", which is any purpose other than:

- the purpose for which the data were to be used at the time of the collection of the data; or
- a purpose directly related to the above purpose.

A relevant person in relation to a data subject may, on his or her behalf, give the prescribed consent required for using his or her personal data for a new purpose subject to criteria prescribed under the PDPO.

A data user must not use the personal data of a data subject for a new purpose even if the prescribed consent for so using that data has been given under paragraph (b) by a relevant person, unless the data user has reasonable grounds for believing that the use of that data for the new purpose is clearly in the interest of the data subject.

Principle 4 - Security of personal data

All practicable steps shall be taken to ensure that personal data (including data in a form in which access to or processing of the data is not practicable) held by a data user are protected against unauthorised or accidental access, processing, erasure or other use with particular regard to:

- the kind of data and the harm that could result if any of those things should occur;
- the physical location where the data are stored;

- any security measures incorporated (whether by automated means or otherwise) into any equipment in which the data are stored;
- any measures taken for ensuring the integrity, prudence and competence of persons having access to the data; and
- any measures taken for ensuring the secure transmission of the data.

This includes adopting contractual or other necessary means to safeguard the security of personal data held by a data processor.

Principle 5 - Information to be generally available

All practicable steps shall be taken to ensure that a person can:

- ascertain a data user's policies and practices in relation to personal data;
- be informed of the kind of personal data held by a data user; and
- be informed of the main purpose for which personal data held by a data user are or are to be used.

Principle 6 - Access to personal data

A data subject shall be entitled to:

- ascertain whether a data user holds personal data of which he is the data subject;
- request access to personal data:
  - within a reasonable time;
  - at a fee, if any, that is not excessive;
  - in a reasonable manner; and
  - in a form that is intelligible;
- be given reasons if an access request is refused;
- object to a refusal to access personal data;
- request the correction of personal data;
- be given reasons if a correction request is refused; and
- object to a refusal to correct personal data.

OTHER REQUIREMENTS

Other principal requirements under the PDPO which affect data users include:

- data access requests;
- data correction requests;
- recording and retention requirements;
- use of personal data for matching procedures or direct marketing; and
- transfer of personal data outside of Hong Kong

There are also codes of practice/guidelines published by the Privacy Commissioner for the purpose of providing practical guidance in respect of the PDPO.

While the codes of practice/guidelines are not binding, the Privacy Commissioner and/or the Court may take into account the fact that the employer (being the data user) has failed to observe these codes of practice/guidelines in deciding whether there has been a contravention of the PDPO. These codes of practice/guidelines include:

- "Code of Practice on Human Resource Management"
- "Compliance Guide for Employers and Human Resource Management Practitioners"

- "Privacy Guidelines: Monitoring and Personal Data Privacy at Work"
- "Proper Handling of Data Correction Request by Data Users"
- "Proper Handling of Data Access Request and Charging of Data Access Request Fee by Data Users"
- "Guidance on Preparing Personal Information Collection Statement and Privacy Policy Statement"
- "Guidance on Personal Data Protection in Cross-border Data Transfer".

LIABILITY

Contravention of certain requirements under PDPO constitutes an offence (e.g. failing to respond to a data access request or data correction request, providing false information to the Privacy Commissioner, direct marketing in breach of the data subject's objection).

In addition, an individual who suffers damage by reason of a contravention of a requirement under the PDPO could be entitled to compensation from the data user for that damage, including injury to feelings.

The individual might also make a complaint with the Privacy Commissioner alleging that the data user has not complied with the PDPO. The Privacy Commissioner would then determine whether a prima facie case can be established and either resolve the dispute through conciliation, carry out a formal investigation or instigate prosecution.

Non-compliance with the DPPs does not constitute a criminal offence directly. The Privacy Commissioner may after investigation serve an enforcement notice to direct the data user to remedy the contravention. Failure to comply with an enforcement notice would then be an offence.

An employer may be liable in civil proceedings for any act or practice relating to personal data that is undertaken by its employees in the course of their employment that is contrary to the provisions of the PDPO, even if the employees undertook the act or engaged in the practice without the employer's knowledge or approval. The employer may have a defence if the employer is able to prove that it took such steps as were reasonably practicable to prevent the wrongful acts undertaken or practices engaged in by its employee who acted on its behalf.

The Mandatory Provident Fund

OBLIGATION TO CONTRIBUTE

Under the Mandatory Provident Fund Schemes Ordinance ("**MPFSO**"), every employer in Hong Kong must contribute an amount equal to at least 5% of an employee's relevant income each month (the maximum monthly relevant income is currently set at HK$30,000) to a retirement scheme that is registered as an MPF scheme. Every employee will also be required to contribute at least 5% of their relevant income to the scheme. There are certain exceptions to this general rule.

TAX TREATMENT OF MANDATORY CONTRIBUTIONS

The first HK$18,000 per annum of an employee's mandatory contributions to an MPF scheme is deductible for salaries tax purposes.

WHEN DO CONTRIBUTIONS NEED TO BE MADE?

An employer must pay contributions to an MPF scheme for each contribution period (generally meaning the period for which the employer pays income to the employee) in respect of a relevant employee.

Employer's contributions shall count from the first day of employment, while the employee is not required to make contributions for the first 30 days of employment and the first incomplete payroll cycle immediately following the 30-day "contribution holiday" (this is not applicable to casual employees).

In addition, no contribution shall be made either by the employer or employee in respect of an employee who is employed for less than 60 days, except a casual employee.

The total effect of the above requirements can be summarised as follows:

- if an employee (who is not a "casual employee") is in employment for less than 60 days, then no contributions are payable either by the employer or the employee; and
- if an employee is still in employment after 60 days, then:
  - » the employer must pay contributions for the full 60-day period of employment; and
  - » the employee must pay contributions, but only commencing on the first day of the first complete payroll cycle immediately following the 30-day "contribution holiday".

VOLUNTARY CONTRIBUTIONS

The MPFSO enables both employees and employers to make "voluntary contributions" to an MPF scheme. These are contributions made in excess of the minimum contributions (i.e. 5% on the first HK$30,000 per month). An employee may also elect to pay contributions where his relevant income is below HK$7,100 per month.

Those parts of the MPFSO which impose limitations on the circumstances in which benefits may be paid, the vesting of benefits, the preservation of benefits and the portability of benefits do not, in general, apply to that part of an employee's benefits derived from these voluntary contributions.

EXCEPTIONS

Certain employees are exempt from the MPF system. These include:

- a non-Hong Kong permanent identity card holder who:
  - » is entering Hong Kong for the purposes of employment for a period of 13 months or less; or
  - » is a member of a retirement scheme (or equivalent) in some other jurisdiction; and
- a member of an MPF-exempt occupational retirement scheme (being a voluntary retirement scheme established by an employer prior to the introduction of the MPF).

MPF SCHEMES

Types of MPF schemes

MPF schemes can be of three types. These are:

- an employer-sponsored scheme;
- an industry scheme; or
- a master trust scheme.

An employer-sponsored scheme is a scheme which is only available for employees of companies which are associated.

An industry scheme is a scheme established specifically for employees who are engaged in a particular industry or classes of industries. They will primarily be set up to cater for casual employees.

A master trust scheme is the MPF equivalent of a pooled provident fund. Employers participate in master trust schemes for the benefit of their employees.

Regulatory requirements

In order to become an MPF scheme, numerous conditions need to be satisfied. All MPF schemes need to obtain registration from the MPF Authority and the approval of the Securities and Futures Commission.

Structure of MPF schemes

The fundamental structure of an MPF scheme is that it is constituted under a Hong Kong trust and provides defined contribution benefits.

The vast majority of MPF schemes offer a choice of investment products and employees are given the option to elect how their money is invested (as in 401K plans in the US). One of the investment options offered must always be a very conservative "capital preservation fund".

Assets invested in a "capital preservation fund" must be invested in a particular manner set out in section 37(2) of the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485A) (basically just bank deposits and government backed debt securities). Administrative expenses can only be taken from the capital preservation fund if the returns on such fund in any month exceed the returns which would have been earned had the assets in the fund "been placed on deposit in a Hong Kong Dollar savings account at the prescribed savings rate" (as determined by the MPF Authority), and then only the excess can be taken as administrative expenses. This is softened somewhat by the ability to "rollover" outstanding administrative expenses for a period of up to 12 months.

Default Investment Strategy

The Default Investment Strategy was launched on 1 April 2017.

Every MPF scheme is required to provide a Default Investment Strategy, which is a standardized, fee-controlled investment option for MPF members. It aims to address public concerns about high fees and the difficulty in selecting MPF funds as well as to provide better retirement protection.

Employers should take note that the Default Investment Strategy is a default option. If an employee does not make any choices for his/her MPF investments, his/her MPF contributions will be invested according to the Default Investment Strategy. Employees may also actively select the Default Investment Strategy if they wish to.

Employee Compensation

The Employees' Compensation Ordinance ("**ECO**") obliges every employer to obtain a policy of insurance for a specified minimum amount in respect of its liability to compensate employees for "injury by accident" or "death" arising "out of and in the course of employment".

The amount of the liability which must be insured is determined by reference to the total number of the employer's employees:

- if not more than 200 employees, the employer must take out a policy of insurance which provides a minimum coverage of HK$100 million per event;
- if more than 200 employees, the minimum cover required is HK$200 million per event.

Once insured, the employer will be able to claim against its insurer in respect of any liability on its part to compensate employees for work-related injuries. The types of compensation paid to an employee will depend on the nature of the work-related injuries and include:

- compensation for fatal cases;
- compensation for permanent total incapacity;
- compensation where employees require the attention of another person to perform the essential actions of life;
- compensation for permanent partial incapacity; and
- compensation for temporary incapacity and medical expenses.

Other than medical expenses, compensation for work-related injuries is assessed by reference to the employee's previous month's earnings or is averaged over the previous 12 months, whichever calculation is more favourable.

The ECO sets out a number of procedural steps to be followed with respect to the notification of any accident and the assessment of compensation. In particular, the employee must notify the employer of any accident as soon as practicable and in any event before the employee voluntarily leaves employment. The application for compensation must be made within 24 months of the occurrence of the accident which caused the injury.

The ECO also preserves common law remedies against employers whose negligence, breach of statutory duty (such as the Occupational Safety and Health Ordinance) or other wrongful act or omission has caused injury to the employee although the amount of damages awarded to an employee who has brought a common law action will be reduced by the amount of any compensation payable under the ECO.

Summary of Visa Requirements

GENERALLY

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

THE APPLICATION

General Employment Policy (GEP)

Applications should be made through the sponsor (usually the employer company in Hong Kong) prior to the employee's arrival in Hong Kong.

The general practice is that the employing company in Hong Kong submits the employee's application to the Hong Kong Immigration Department. The Hong Kong employing company is required to assume responsibility for repatriation of the employee at the expiration of his or her permitted stay in Hong Kong.

The applicant must complete Form ID 990A and the sponsor must complete Form ID 990B.

Top Talent Pass Scheme (TTPS)

In order to apply for an employment visa under the TTPS, the applicant must fall under one of the three eligible categories:

Category A – Persons with annual income reaching HK$2.5 million or above in the year immediately preceding the date of application.

Category B – Degree graduates of the world's top universities with at least 3 years of work experience over the 5 years immediately preceding the date of application.

Category C – Degree graduates of the world's top universities who graduated in the past 5 years immediately preceding the date of application with less than 3 years of work experience, subject to an annual quota to be allotted on a first-come, first-served basis.

The applicant should complete the application online via the Immigration Department website.

SUPPORTING DOCUMENTS

For both GEP and TTPS applications, the applicant is required to submit:

- A recent photograph to be affixed to the application form;
- A copy of the valid travel document containing personal particulars, date of issue, date of expiry and/or details of any re-entry visa held (if applicable); and
- Copies of the applicant's academic qualification e.g. (degree certificate, diploma, etc.) and relevant work experience.
- Additional documents depending on which category the applicant fall into (applicable to TTPS only)

For GEP applications, which the local sponsor is required to submit:

- A copy of the sponsor's Business Registration Certificate;
- Information about the sponsoring company's financial standing (e.g. latest company audited report; income tax return, trading profit and loss account, profit tax return);
- Documents with details of company background such as business activities, mode of operation, background/connection of company, product ranges, sources and markets, membership of chamber of commerce (if any) etc. (supported with catalogues, brochures, etc.);

- Number of employees hired locally and from overseas;
- Relevant details of the employees who have been granted an employment visa recently;
- A copy of the applicant's service contract or letter of appointment with details of post, salaries and benefits;
- Full job description of the post filled by applicant;
- A letter, with supporting proof from the employer (if possible), stating the reason why the post cannot be filled locally; and
- For companies newly set-up within the last 12 months, detailed business plan (e.g. information on source of funds, estimated capital injection, nature/mode of business activities, expected turnover, sales volume, gross and net profit in the coming years, and proposed creation of local job posts, etc.).

The compilation of this bundle is a straight forward procedure but care should be taken in meeting all the requirements as the Immigration Department will not hesitate in calling for extra documents which can considerably increase the time taken to process the application. Of particular note is the supporting letter from the sponsor explaining why the position that the applicant will take up cannot be taken up by a local resident.

FACTORS TAKEN INTO ACCOUNT BY THE IMMIGRATION DEPARTMENT

An application may be favourably considered if:

- the applicant possesses a special skill, knowledge or experience of value to and not readily available in Hong Kong; or
- the applicant is in a position to make substantial contribution to the economy of Hong Kong.

Criteria to be considered include:

- whether there is a genuine vacancy for an employee in Hong Kong;
- what skills, knowledge and experience are needed for the job;
- whether the terms and conditions of employment are comparable to those in the local market;
- whether the applicant is suitably qualified and experienced relevant to the job; and
- whether the job can be filled locally.

DEPENDANTS OF THE APPLICANT

Successful applicants may apply to bring in their spouse and unmarried dependent children under the age of 18 to Hong Kong under the prevailing dependant policy.

TIME FOR PROCESSING

The time required for processing the application is usually four weeks on receipt by the Immigration Department of all necessary documents.

FEES

The application fee is HK$230.

Payment should be made by the sponsor in Hong Kong at the time of collection of the visa/entry permit (not applicable to TTPS applicants).

Mayer Brown is a leading international law firm positioned to represent the world's major corporations, funds, and financial institutions in their most important and complex transactions and disputes.

Please visit mayerbrown.com for comprehensive contact information for all our offices.