A. A BRIEF EXPLANATION OF A CONTRACT OF EMPLOYMENT A. A BRIEF EXPLANATION OF A CONTRACT OF EMPLOYMENT A contract of employment is an agreement on the employment conditions made between an employer and an employee. The agreement can be made orally or in writing, and it includes both expressed and implied terms. The employment terms can be implied from the Employment Ordinance (Cap. 57 of the Laws of Hong Kong) and other relevant employment or labour ordinances. Employers and employees are free to negotiate and agree on the terms and conditions of employment, provided that they do not violate the provisions of the Employment Ordinance and other relevant ordinances. Any term of an employment contract that purports to extinguish or reduce any right, benefit or protection conferred upon the employee by the ordinances will be void. To provide a reference for employers and employees when drawing up contracts, the Labour Department has prepared a sample employment contract that sets out some common terms and conditions of employment. As required by the Employment Ordinance, an employer must inform each employee clearly of the conditions of employment before that employment begins. Such information should include: wages (including wage rate, overtime rate and any allowance, and whether they are calculated by the piece, job, hour, day, week, month or otherwise); wage period; length of notice required to terminate the contract; and if the employee is entitled to an end of year payment (e.g. double-pay or bonus), the amount of this payment or the proportion and the payment period. An employer who contravenes these conditions is liable, upon conviction, to a fine of $10,000. B. PAYMENT OF WAGES B. PAYMENT OF WAGES “Wages” means all remuneration, earnings, allowances, tips and service charges however designated or calculated, which are payable to an employee for work done or work to be done. Allowances, including travel allowances, attendance allowances, commission and overtime pay are within the definition of wages. An employee’s entitlements to end of year payments, maternity leave pay, severance payments, long service payments, sickness allowance, holiday pay, annual leave pay and wages in lieu of notice are calculated according to the above definition of wages. However, wages do not include: the value of any accommodation, education, food, fuel, water, light or medical care provided by the employer; the employer’s contribution to any retirement scheme; commission or attendance allowance which is of a gratuitous nature or is payable only at the discretion of the employer; non-recurrent travel allowance or the value of any travel concession or travel allowance for actual expenses incurred by the employment; any sum payable to the employee to defray special expenses incurred by the nature of the employment; end of year payments, or annual bonuses which are of a gratuitous nature or are payable only at the discretion of the employer; and gratuity payable on completion or termination of a contract of employment. C. TERMINATION OF EMPLOYMENT AND THE RELEVANT PAYMENTS C. TERMINATION OF EMPLOYMENT AND THE RELEVANT PAYMENTS Regardless of whether you are an employer or employee, you should give either formal advance notice or wages in lieu of notice to your existing employer/ employee for the termination of an employment contract. The length of advance notice (or the amount of wages in lieu of notice) for termination of a continuous contract of employment is determined as follows. Length of notice Wages in lieu of notice With an expressed agreement As per the agreement, but not less than seven days A sum equivalent to the amount of wages for the notice period Without an expressed agreement Not less than one month A sum of not less than one month’s wages If you are in a probation period, the required length of notice or the amount of wages in lieu of notice is determined as follows. Probation Period Length of Notice Wages in lieu of Notice Within the first month of probation Not required Not required After the first month of probation With an expressed agreement As per the agreement, but not less than seven days A sum equivalent to the amount of wages for the notice period Without an expressed agreement Not less than seven days’ notice A sum of not less than seven days’ wages For a fixed term contract without an expressed agreement on the length of the termination notice period, these requirements are also applicable on the condition that such a contract is a continuous contract of employment. The items and amount of payments that are payable to an employee on termination of employment or the expiry of a employment contract depend on a number of factors such as the length of service, the terms of the employment contract and the reason for the termination of the contract. For quick

reference, termination payments usually include: outstanding wages; wages in lieu of notice, if any; payment in lieu of any untaken annual leave, and any pro rata annual leave pay for the current leave year; any outstanding sum of end of year payment, and pro rata end of year payment for the current payment period; where appropriate, long service payment or severance payment; other payments under the employment contract, such as, gratuity or provident fund payments. Time of Making Termination Payments An employer must pay all termination payments, except for severance payments, to the employee as soon as practicable and in any case not later than seven days after the date of termination or expiry of the contract. For severance payments, an employer must make payment not later than two months from the receipt of a notice from an employee who is claiming a severance payment. Offences and Penalties Employers who fail to pay termination payments when they become due are liable to prosecution and, upon conviction, to a fine of $200,000 and to imprisonment for one year. A) Dismissal or variation on employment terms B) Termination payments, severance payment and long service payment D. HOLIDAY/ANNUAL LEAVE/SICK LEAVE/MATERNITY LEAVE AND THEIR RELEVANT PAYMENTS D. HOLIDAY/ANNUAL LEAVE/SICK LEAVE/MATERNITY LEAVE AND THEIR RELEVANT PAYMENTS 1. REST DAY An employee who is employed under a continuous contract is entitled to not less than one rest day in every period of seven days. A rest day is defined as a continuous period of not less than 24 hours during which an employee is entitled to cease working. Rest days are not equivalent to statutory holidays. An employee employed under a continuous contract is entitled to have rest days AND statutory holidays. Rest days are appointed by the employer. They can be granted on a regular or irregular basis. If the rest days are on regular basis, it is sufficient for the employer to inform the employee of the arrangements. If they are on an irregular basis, then the employer must inform the employee of the appointed rest days during the month before the beginning of the particular month. An employer can substitute rest days with the consent of the employee, in which case the substitution must be within the same month before the original rest day or within 30 days after it. If a statutory holiday falls on a rest day, then it should be taken on the day following the rest day. Should employees receive salaries for their rest days? My boss ordered me to work this Sunday (which is my usual rest day). Can I reject his order? 2. STATUTORY HOLIDAYS Employees, irrespective of their length of service, are entitled to the following statutory holidays : 1. The first day of January 2. Lunar New Year's Day 3. The second day of Lunar New Year 4. the third day of Lunar New Year 5. Ching Ming Festival 6. Labour Day, being the first day of May 7. The Birthday of the Buddha 8. Tuen Ng Festival 9. Hong Kong Special Administrative Region Establishment Day, being the first day of July 10. The day following the Chinese Mid-Autumn Festival 11. Chung Yeung Festival 12. National Day, being the first day of October 13. Chinese Winter Solstice Festival or Christmas Day (at the option of the employer) If employees are required to work on a statutory holiday, then their employers must give them an alternative holiday within 60 days before or after that statutory holiday with 48 hours' advance notice. Should employees be paid for their statutory holidays? Can I order my staff to work on statutory holidays by making substitute payments? 3. ANNUAL LEAVE Employees are entitled to annual leave with pay after having been employed under continuous contracts for every 12 months. Employees' entitlement to paid annual leave increases progressively from 7 days to a maximum of 14 days according to length of service. Annual leave pay is a sum equivalent to the normal wages that employees would have earned if they had worked during the period of annual leave. For employees who are employed on piece rates or whose daily wages vary from day to day, the annual leave pay should be a sum equivalent to the average daily wages earned on the days that the employees worked during every complete wage period. The wage period should be a period of not less than 28 days and not more than 31 days immediately preceding the annual leave or the day on which the employment contract terminates. (Note: Although wages cover contractual commission, the Court of Final Appeal has held in the case of Lisbeth Enterprises Limited v Mandy Luk that no commission is to be included in the calculation of holiday pay and annual leave pay unless the relevant commission is calculated on daily basis. However, there is a possibility that the relevant ordinance provision may be amended in future.) Employers are under a statutory obligation by

virtue of section 41G of the Employment Ordinance to keep annual leave records. Offences and Penalties Employers who fail to grant annual leave or pay annual leave pay to employees are liable to prosecution and, upon conviction, to a fine of $50,000. 4. SICK LEAVE Employees can accumulate paid sickness days after having been employed under continuous contracts. Paid sickness days are accumulated at the rate of two paid sickness days for each completed month of employment during the first 12 months of employment, and four paid sickness days for each completed month of employment thereafter. Paid sickness days can be accumulated up to a maximum of 120 days. A sickness day is a day on which an employee is absent from work by reason of being unfit due to injury or sickness. A paid sickness day is a sickness day on which an employee is entitled to be paid sickness allowance. How is sickness allowance calculated? When will I be entitled to sickness allowance? My boss fired me during my sick leave for which I had a valid medical certificate. Has he violated the law? 5. MATERNITY LEAVE Female employees who are employed under continuous contracts immediately before the commencement of their maternity leave and having given a notice of pregnancy to their employers are entitled to the following periods of 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; - may enjoy an additional period of leave for not more than four weeks on the grounds of illness or disability due to the pregnancy or confinement. When an employee is absent from work to attend medical examination in relation to her pregnancy, post confinement medical treatment or miscarriage, any day on which she is absent will be counted as a sickness day. My expected date of confinement is coming soon and I have served a notice of pregnancy to my boss. When can I commence my maternity leave? Should I receive salary during my maternity leave? One week after serving the notice of pregnancy, my employer fired me. Has he violated the law? Since I notified my boss of my pregnancy, he sometimes assigns heavy work to me. I think that he wants me to resign so he can avoid paying compensation or avoid giving maternity leave. Can he do that? 6. PATERNITY LEAVE Male employees working under continuous contracts with children born on or after January 18, 2019 are entitled to 5 days of paternity leave for each confinement of their spouses/partners if they give the required notification to their employers in accordance with the Employment Ordinance. What should the male employee do to take paternity leave? Should I receive salary during my paternity leave? What legal consequences will my employer face if he fails to grant statutory paternity leave or fails to pay statutory paternity leave pay? E. END OF YEAR PAYMENTS E. END OF YEAR PAYMENTS End of year payments are any annual payments (including double pay, 13th month payment or end of year bonus) of a contractual nature. They do not include any payment that is of a gratuitous nature or that is payable at the discretion of the employer. Employees are eligible for end of year payments if they have been employed under continuous contracts for a whole payment period. The payment period is the period that is specified in the employment contract, or a lunar year if it is not specified. Employees who resign before the payment period expires are NOT entitled to pro rata end of year payments unless their contracts provide otherwise. Employees who have been employed under a continuous contract for not less than 3 months in a payment period and who are dismissed by the employer (except in cases of summary dismissal due to serious misconduct) are eligible for pro rata end of year payments. The provisions of the Employment Ordinance concerning end of year payments apply to employees who are employed under continuous contracts who, in accordance with a contractual term (including agreement made orally or in writing, in an express or an implied term), are entitled to end of year payments from their employers. F. MANDATORY PROVIDENT FUND (MPF) F. MANDATORY PROVIDENT FUND (MPF) The MPF, which is an employment-based retirement protection system, has been implemented on 1 December 2000 through the Mandatory Provident Fund Schemes Ordinance (Cap. 485 of the Laws of Hong Kong). Employees (with the exceptions of some domestic employees, hawkers or those covered by existing occupational retirement schemes with exemption certificates, etc.) between the age of 18 and 65 are required to join MPF schemes. However, it does not mean that an employee or a self-employed person who is under the

age of 18 is exempt from MPF. If an employer enters into a contract of employment with an employee who is less than 18 and the employee reaches 18 on or after 18 January 2008; and the employer continues to employ the employee after he reaches 18, the Ordinance applies as if they had entered into contract of employment on the day on which the employee reaches 18 and the employment had begun or commenced on that day. The same applies for self-employed person when he becomes self-employed before he is 18 who reaches 18 on or after 18 January 2008 and continues to be self-employed, the Ordinance applies to him as if he had become self-employed on the day on which he reaches 18. MPF is generally mandatory for employers and self-employed persons. It is the statutory obligation of employers to join the scheme to cover their employees and any self-employed persons to join the scheme to cover themselves. Failure to do so would subject them to criminal liability. For more information regarding MPF matters, please visit the website of the Mandatory Provident Fund Schemes Authority . G. EMPLOYMENT (AMENDMENT) ORDINANCE 2010 G. EMPLOYMENT (AMENDMENT) ORDINANCE 2010 The Employment (Amendment) Ordinance (“Amendment Ordinance”) came into effect on 29 October 2010. The main objective of the Amendment Ordinance is to create an offence relating to an employer’s failure to pay any sum awarded by the Labour Tribunal or Minor Employment Claims Adjudication Board (collectively called “the Tribunal”) containing any specified entitlements, such as wages, annual leave pay, end of year payment, severance payment, long service payment, etc to further safeguard the interests of employees. Under the Amendment Ordinance, an employer who willfully and without reasonable excuse fails to pay the awarded sum within 14 days after it becomes due is liable to prosecution and, upon conviction, to a fine of $350,000 and imprisonment for three years. The Labour Department has issued a bilingual booklet on the legislative changes. For details, please click here. A. WORK-RELATED INJURIES AND THE RELEVANT COMPENSATIONS A. WORK-RELATED INJURIES AND THE RELEVANT COMPENSATIONS Most of the matters that relate to work-related injuries and their respective forms of compensation are governed by the Employees’ Compensation Ordinance (Cap. 282 of the Laws of Hong Kong) ("the ECO"). The ECO applies to all full-time or part-time employees who are employed under contracts of employment or apprenticeship, including domestic helpers, agricultural employees, crewmembers of Hong Kong ships, and any persons who are employed in any capacities on board Hong Kong ships. Employers are liable to pay compensation for injuries that are sustained by their employees as a result of accidents that arise out of and in the course of employment; or of occupational diseases that are specified in the ECO. The ECO also applies to employees who are employed by local employers in Hong Kong and are injured while working outside of Hong Kong. Even if the employers are carrying on business outside Hong Kong, or the employees are the crewmembers of foreign ships, the Ordinance still applies if the employers submit to the jurisdiction of the Courts of Hong Kong. A. OCCUPATIONAL SAFETY AND HEALTH ORDINANCE A. OCCUPATIONAL SAFETY AND HEALTH ORDINANCE The Occupational Safety and Health Ordinance (Cap. 509 of the Laws of Hong Kong) provides for the safety and health protection of employees in both industrial and non-industrial workplaces. It sets out requirements in general terms with a few exceptions, namely: an aircraft or vessel in a public place; the place occupied by the driver of a land transport vehicle when it is in a public place (but other employees who are working in the vehicle are covered); domestic premises at which only domestic servants are employed; and places where only self-employed persons work. The Roles of the Duty-holders Under this ordinance, everyone has a role to play in creating a safe and healthy workplace. Employers should contribute to safety and health in their workplaces by: providing and maintaining plant and work systems that do not endanger safety or health; making arrangements to ensure safety and health in connection with the use, handling, storage or transportation of plant or substances; providing all necessary information, instruction, training, and supervision for ensuring safety and health; providing and maintaining safe access to and egress from the workplaces; and providing and maintaining a safe and healthy work environment. Employees should also contribute to safety and health in the workplaces by : taking care of the safety and health of persons in the workplace; and using any equipment or following any system or work practices that are provided by their employers. Occupiers of premises should also take responsibility

for ensuring that : the premises; the means of access to and egress from the premises; and any plant or substance kept at the premises are safe and without risk to the health of any person working on the premises, even if they do not directly employ that person on the premises. Enforcement of the Ordinance / Penalties The Commissioner for Labour is empowered to issue improvement notices and suspension notices against workplace activity that may create an imminent hazard to employees. Failure to comply with an improvement notice constitutes an offence that is punishable by a fine of $200,000 and imprisonment for up to 12 months. Failure to comply with a suspension notice constitutes an offence that is punishable by a fine of $500,000 and imprisonment for up to 12 months. For more details regarding occupational safety and health matters, please visit the Labour Department’s webpage. B. FACTORIES AND INDUSTRIAL UNDERTAKINGS ORDINANCE B. FACTORIES AND INDUSTRIAL UNDERTAKINGS ORDINANCE The Factories and Industrial Undertakings Ordinance (Cap. 59 of the Laws of Hong Kong) provides for the safety and health protection of workers in the industrial sector. This ordinance applies to industrial undertakings, i.e. factories, construction sites, catering establishments, cargo and container handling undertakings, repair workshops and other industrial workplaces. The ordinance imposes general duties on proprietors and persons who are employed in industrial undertakings to ensure safety and health at work. All proprietors must take care of the safety and health at work of all persons who are employed by them in an industrial undertaking by: providing and maintaining plant and work systems that do not endanger safety or health; making arrangements to ensure safety and health in connection with the use, handling, storage or transport of plant or substances; providing all necessary information, instruction, training, and supervision for ensuring safety and health; providing and maintaining safe access to and egress from the workplace; and providing and maintaining a safe and healthy work environment. Offences and penalties Proprietors of industrial undertakings who contravene these requirements may be liable to a fine of $500,000. If proprietors wilfully and without reasonable excuse commit such an offence, then they may be liable to a fine of $500,000 and to imprisonment for 6 months. All persons who are employed at an industrial undertaking should also contribute to safety and health at work by: taking care for the safety and health of themselves and other persons in the workplace; and using any equipment or following any system or work practices provided by the proprietor. Offences and penalties Persons who contravene these requirements may be liable to a fine of $25,000. Persons who are employed at an industrial undertaking who wilfully and without reasonable excuse do anything while at work likely to endanger themselves or other persons may be liable to a fine of $50,000 and to imprisonment for 6 months. C. STATUTORY MINIMUM WAGE C. STATUTORY MINIMUM WAGE 1. INTRODUCTION 1. INTRODUCTION The Minimum Wage Ordinance (Cap. 608) came into operation on 1 May 2011. Since then, the Statutory Minimum Wage (SMW) has become effective on 1 May 2011 and the initial Statutory Minimum Wage rate is $28 per hour. With effect from 1 May 2023, the SMW rate is revised to $40 per hour. In essence, wages payable to an employee in respect of any wage period, when averaged over the total number of hours worked in the wage period, should be no less than the SMW rate. An employee is entitled to be paid wages in respect of any wage period of not less than the minimum wage. If wages payable to the employee in respect of the wage period are less than the minimum wage, he is entitled to be paid the difference (i.e. additional remuneration). Offence Failure to pay minimum wage amounts to a breach of the wage provisions. Under the Employment Ordinance, an employer who wilfully and without reasonable excuse fails to pay wages to an employee when it becomes due is liable to prosecution and, upon conviction, to a fine of $350,000 and to imprisonment for three years. Labour Department Guidelines Statutory Minimum Wage: Reference Guidelines for Employers and Employees Concise Guide to Statutory Minimum Wage 2. COVERAGE OF THE ORDINANCE 2. COVERAGE OF THE ORDINANCE Statutory Minimum Wage (SMW) applies to all employees, whether they are monthly-rated, daily-rated, permanent, casual, full-time, part-time or other employees, and regardless of whether or not they are employed under a continuous contract* as defined in the Employment Ordinance, with the following exceptions: persons to whom the Employment Ordinance does not apply These include: (a) a family member who lives in the same dwelling as the employer; (b) an employee as defined in the Contracts of Employment

Outside Hong Kong Ordinance; (c) a person serving under a crew agreement under the Merchant Shipping (Seafarers) Ordinance, or on board a ship which is not registered in Hong Kong; (d) an apprentice whose contract of apprenticeship has been registered under the Apprenticeship Ordinance. As for (d), while certain provisions of the Employment Ordinance apply to registered apprentices, SMW is not applicable. live-in domestic workers This refers to domestic workers (including domestic helpers, carers, chauffeurs, gardeners, boat-boys or other personal helpers) who dwell free of charge in their employing household, irrespective of their sex or race. The following persons are not live-in domestic workers and SMW applies to them: - domestic workers not dwelling free of charge in their employing household - live-in employees who are not domestic workers student interns as well as work experience students during a period of exempt student employment According to the Labour Department's Guidelines for Employers and Employees, a student intern is: - a student undergoing a period of work arranged or endorsed by a local education institution specified in Schedule 1 to the Minimum Wage Ordinance, and the work is a compulsory or elective component of the requirements of a full-time accredited programme being provided by the institution to the student; or - a student resident in Hong Kong and undergoing a period of work arranged or endorsed by an institution, and the work is a compulsory or elective component of the requirements of a full-time education programme for a nonlocal academic qualification at degree or higher level being provided by the institution to the student. A work experience student is: - a student who is enrolled in a full-time accredited programme provided by a local education institution specified in Schedule 1 to the Minimum Wage Ordinance; or - a student who is resident in Hong Kong and enrolled in a full-time education programme for a non-local academic qualification at degree or higher level and is under the age of 26 years at the beginning of employment. The work experience student may agree with the employer to have a continuous period of up to 59 days as exempt student employment if : (a) the student has not commenced another exempt student employment period within the same calendar year (whether under the employment of the same employer or not); and (b) the student has made a statutory declaration verifying the fact in (a) above and provided the declaration (or copy) to the employer. Please note that SMW also applies to employees with disabilities and able-bodied employees alike. Special arrangement is provided under the Minimum Wage Ordinance so that persons with disabilities have the right to choose to undergo a productivity assessment to determine whether they should be remunerated at not lower than the SMW level or at a rate commensurate with their productivity. For details, please refer to the webpage Productivity Assessment for Persons with Disabilities under the Statutory Minimum Wage Regime published by the Labour Department. *Remark: an employee engaged under a “continuous contract” is defined as one who has been employed under a contract of employment by the same employer for four weeks or more and has worked for 18 hours or more each week (i.e. the so-called “4-18” requirement). 3. HOW TO COUNT HOURS WORKED 3. HOW TO COUNT HOURS WORKED The minimum wage for a wage period is the amount derived by multiplying the total number of hours (including any part of an hour) worked by the employee in the wage period by the SMW rate. (Minimum wage = Total number of hours worked by the employee in the wage period X SMW rate) 4. WAGES PAYABLE TO EMPLOYEE IN RESPECT OF WAGE PERIOD 4. WAGES PAYABLE TO EMPLOYEE IN RESPECT OF WAGE PERIOD The definition of wages for SMW is aligned closely with that under the Employment Ordinance. Unless otherwise specified, the term “wages” in the Employment Ordinance means all remuneration, earnings, allowances including travelling allowances, attendance allowances, 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, subject to certain exclusions (For the exclusions, please refer to Section 2 of the Employment Ordinance). Since the calculation of minimum wage excludes the time that is not hours worked, payment made to the employee for any time that is not hours worked (e.g. rest day pay, holiday pay, annual leave pay, maternity leave pay, sickness allowance, etc) must not be counted as part of the wages payable to the employee. What is the ‘wage period’ ? The wage period will be the period in respect of which wages are payable to an employee for work done or to be done under his/her contract of employment. Unless

provided otherwise, the period must be taken to be one month. Example 1 (monthly-rated): Assuming: an employee with monthly salary of $7,500 has worked 24 days in a wage period of 30 days with the total number of hours worked being 204 hours in this wage period, payments made to the employee for time that is not hours worked include rest day pay for 4 days ($250 per day), statutory holiday pay for 1 day ($250) and annual leave pay for 1 day ($250) SMW rate: $28 Calculation: (1) Minimum wage according to the total number of hours worked for this month: 204 hours X $28= $5,712 (2) Wages payable to the employee in respect of this month: $7,500 - (4 X $250) - $250 - $250= $6,000 → Since (2) is not less than (1), his monthly salary of $7,500 has met the minimum wage requirement. Example 2 (monthly-rated): Assuming the following employment terms of the contract of employment: remuneration: $7,000 per month with paid rest days on Sundays working hours: Monday to Saturday – 9:00 a.m. to 5:00 p.m. including 1-hour paid meal break which is regarded as hours worked as agreed between the employer and the employee. The employee is entitled to an overtime pay of $35 per hour. total number of hours worked in this month: 220 hours (including 4 hours of overtime) SMW rate: $28 Calculation: (1) Minimum wage according to the total number of hours worked for this month: 220 hours X $28= $6,160 (2) Wages payable to the employee in respect of this month: (overtime work = 4 X $35) (rest day pay = $7,000 ÷ 31 days X 4 rest days = $903) $7,000 + (4 X $35) – rest day pay of $903= $6,237 → Since (2) is not less than (1), his monthly salary together with overtime pay, totalling $7,140, has met the minimum wage requirement. Example 3 (monthly-rated): Assuming the following employment terms of the contract of employment: remuneration: $6,500 per month with paid rest days on Sundays working hours: Monday to Friday – 9:00 a.m. to 5:00 p.m. excluding 1-hour meal break which is regarded as paid according to the wage calculation method all along adopted by the employer and the employee; Saturday – 9:00 a.m. to 1:00 p.m. (same daily wages for Monday to Saturday) total number of hours worked in this month: 170 hours SMW rate: $28 Calculation: (1) Minimum wage according to the total number of hours worked for this month: 170 hours X $28= $4,760 (2) Wages payable to the employee in respect of this month: (rest day pay = $6,500 ÷ 30 days X 4 days = $867) (payment for meal break = $6,500 ÷ 30 days ÷ 8 hours X 1 hour X 22 meal breaks = $596) $6,500 - rest day pay of $867- payment for meal break of $596= $5,037 → Since (2) is not less than (1), his monthly salary of $6,500 has met the minimum wage requirement. Example 4 (monthly-rated): Assuming the following employment terms of the contract of employment: remuneration: $6,000 per month with no-pay rest days on Sundays working hours: 6 days per week with 7 working hours per day, excluding a 1-hour no-pay meal break daily total number of hours worked in this month: 189 hours (27 days X 7 hours per day) SMW rate: $28 Calculation: (1) Minimum wage according to the total number of hours worked for this month: 189 hours X $28= $5,292 (2) Wages payable to the employee in respect of this month: $6,000 → Since (2) is not less than (1), his monthly salary of $6,000 has met the minimum wage requirement. Example 5 (monthly-rated): Assuming the following employment terms of the contract of employment: remuneration: $8,000 per month with 1 paid rest day per week working hours: 6 days per week with 12 working hours per day including 1-hour paid meal break which is regarded as hours worked as agreed between the employer and the employee total number of hours worked in this month: 324 hours (27 days X 12 hours per day) SMW rate: $28 Calculation: (1) Minimum wage according to the total number of hours worked for this month: 324 hours X $28= $9,072 (2) Wages payable to the employee in respect of this month: (rest day pay = $8,000 ÷ 31 days X 4 days = $1,032) $8,000 - rest day pay of $1,032= $6,968 Additional remuneration: $2,104 → Since (2) is less than (1), apart from paying monthly salary of $8,000, the employer has to pay additional remuneration of $2,104 ($9,072 - $6,968), i.e. 10,104 in total, to meet the minimum wage requirement. Example 6 (daily-rated): Assuming the following employment terms of the contract of employment: remuneration: $250 per day, wage period is a calendar month, with no-pay rest days on Sundays working hours: Monday to Saturday – 9:00 a.m. to 5:00 p.m. including 1-hour paid meal break total number of hours worked in this month: 216 hours (27 days X 8 hours) SMW rate: $28 Calculation: (1) Minimum wage according to the total number of hours worked for this month: 216 hours X $28= $6,048 (2) Wages payable to the employee in respect of this month: 27 days X $250 per day = $6,750 → Since (2) is not

less than (1), his monthly salary of $6,750 has met the minimum wage requirement. Example 7 (piece-rated): Assuming the following employment terms of the contract of employment: remuneration: piece-rated at $100 per piece, with no-pay meal break; wage period is a calendar month; total remuneration for this month is $5,500 ($100 X 55 pieces) total number of hours worked in this month: 200.5 hours SMW rate: $28 Calculation: (1) Minimum wage according to the total number of hours worked for this month: 200.5 hours X $28= $5,614 (2) Wages payable to the employee in respect of this month: $100 X 55 pieces = $5,500 Additional remuneration: $114 → Since (2) is less than (1), apart from paying wages of $5,500, the employer has to pay additional remuneration of $114 ($5,614 - $5,500), i.e. $5,614 in total, to meet the minimum wage requirement. 5. EMPLOYER TO RECORD THE TOTAL NUMBERS OF HOURS WORKED BY EMPLOYEE 5. EMPLOYER TO RECORD THE TOTAL NUMBERS OF HOURS WORKED BY EMPLOYEE The wage and employment records kept by an employer under the Employment Ordinance should include the total number of hours (including any part of an hour) worked by the employee in a wage period if: SMW applies to the employee (Please refer to Coverage of the Ordinance above); and wages payable in respect of that wage period are less than $16,300 per month (Please refer to Wages payable to employee in respect of wage period above). Example 1: Assuming the following employment terms according to the contract of employment: An employee's wage period is each calendar month and he is entitled to a monthly salary of $13,000 with paid rest days. In the wage period of May, payments made to the employee for time that is not hours worked in the wage period are rest day pay for 4 days and statutory holiday pay for 1 day. Whether the wages payable meet the monthly monetary cap is calculated as follows: Monthly salary = $13,000 Rest day pay for 4 days = $13,000÷31days X 4 = ($1,677) Statutory holiday pay for 1 day = $13,000÷31days X 1 = ($419) $10,904 → Since the amount calculated is less than the monthly monetary cap of $16,300, the employer must keep records of the total number of hours worked by the employee in that wage period. Example 2: Assuming the following employment terms according to the contract of employment: An employee's wage period is each calendar month and he is entitled to a monthly salary of $18,000 with no-pay rest days. In the wage period of May, payment made to the employee for time that is not hours worked in the wage period is statutory holiday pay for 1 day. Whether the wages payable meet the monthly monetary cap is calculated as follows: Monthly salary = $18,000 Statutory holiday pay for 1 day = $18,000÷27days X 1 = ($666.67) $17,333.33 → Since the amount calculated is not less than the monthly monetary cap of $16,300, the wage and employment records are not required to include the total number of hours worked in that wage period. A. INTRODUCTION TO THE LABOUR TRIBUNAL A. INTRODUCTION TO THE LABOUR TRIBUNAL Before bringing your case to the Court, it is always advisable to attempt to settle through conciliation. The Labour Relations Division of the Labour Department stands ready to help both parties settle quickly and amicably. The telephone hotline for the Labour Department is 27171771 and the e-mail address is enquiry@labour.gov.hk. For more details of the above litigation procedures, please consult your lawyer or contact the Labour Tribunal at 26250020. You can also visit the Labour Tribunal's website. 1. WHAT WORK DOES THE LABOUR TRIBUNAL CARRY OUT? 1. WHAT WORK DOES THE LABOUR TRIBUNAL CARRY OUT? The Labour Tribunal offers a quick, informal and inexpensive way of settling monetary disputes between employees and employers. There is no upper limit on the amount of claim. The Tribunal hears cases that involve breaches of the terms of a contract of employment or apprenticeship performed in Hong Kong as well as contracts of employment performed outside Hong Kong. 2. WHAT TYPES OF CLAIM DOES THE TRIBUNAL HEAR? 2. WHAT TYPES OF CLAIM DOES THE TRIBUNAL HEAR? In relation to employees, the Tribunal will hear the claims in respect of, for example: wages due for work done; wages in lieu of notice of termination of a contract of employment by an employer who did not give the required notice; wages deducted contrary to the Employment Ordinance; pay for statutory holidays, annual leave, rest days, sickness allowance, maternity leave, or severance; end of year payments, double pay or annual bonuses; commission; long service payments; terminal (termination) payments; compensations for unlawful dismissal; unpaid wages of up to 2 months against the principal contractor and superior sub-contractors in the building and construction industry; orders for reinstatement or re-engagement; or other benefits

conferred by law or employment contract. However, the Tribunal will not hear complains in respect of: Sex discrimination within the meaning of the Sex Discrimination Ordinance; Discrimination against persons on the ground of their or their associates' disability within the meaning of the Disability Discrimination Ordinance; Discrimination against persons on the ground of family status within the meaning of the Family Status Discrimination Ordinance; Discrimination against persons on the ground of the race of the person or his or hear near relative within the meaning of the Race Discrimination Ordinance. Employees should lodge their complaints with the Equal Opportunities Commission (EOC) or bring their cases to the District Court. (see: Anti-Discrimination) In relation to employers, the Tribunal will hear the claims in respect of, for example: wages in lieu of notice on resignation or termination of contract of employment; or wages or leave advanced to the employee The Tribunal only hears cases in which the amount of claim exceeds $15,000 for at least one of the claimants in a claim OR where the number of claimants in the claim exceeds 10 persons. Claims that are lodged by not more than 10 claimants for a sum of money not exceeding $15,000 per claimant and with a cause of action that arose within one year before the date of filing of claim are normally dealt with by the Minor Employment Claims Adjudication Board. 3. WHAT SHOULD I DO IF I DECIDE TO FILE A CLAIM? 3. WHAT SHOULD I DO IF I DECIDE TO FILE A CLAIM? You can call the 24-hour Telephone Appointment Booking System of the Labour Tribunal at 2625 0056 to make an appointment for filing of claim. On the filing date, you should report your attendance at the Registry of the Tribunal. You should also verify the name and address of the person, firm or company that you are claiming against (the Defendant). These particulars should be completely accurate so that a copy of your claim can be effectively served on the Defendant. A post office box number will not be considered as a valid address. Next, a Tribunal Officer will interview you and your witnesses to obtain statements and other relevant information. Based on the information that you provide, the Officer will generate: a Title to Claim (Form 1), bearing the names and addresses of both Claimant and Defendant; and a Form of Claim (Form 2), showing the details of your claim, including the claim items, the amount claimed, and how you have calculated the amount. You will sign Form 2 if you are acting as an individual. The sole-proprietor of a firm, or a partner of a partnership business, or a director, secretary or other authorised officer of an incorporated company bearing an authorization letter will sign the form if the claim is lodged by an employer against an employee. You can complete all of the necessary forms in Chinese or English. 4. HOW MUCH DOES IT COST TO FILE A CLAIM? 4. HOW MUCH DOES IT COST TO FILE A CLAIM? Claim Amount Filing Fee $2,000 or less $20 $2,001 - $5,000 $30 $5,001 - $10,000 $40 Over $10,000 $50 A fee of $10 per defendant address is charged for serving the required documents on the Defendant. If your claim succeeds, then you can apply for costs incurred in putting your claim forward to be added to the award. If your claim does not succeed, then you may have to pay costs to the Defendant. 5. WHAT WILL HAPPEN AFTER I HAVE FILED A CLAIM? 5. WHAT WILL HAPPEN AFTER I HAVE FILED A CLAIM? The Tribunal Registry will give you a Form 3 - Notice of Place and Day Fixed for Hearing. The hearing date will be set between 10 and 30 days from the date on which you file your claim. The Tribunal Registry will also arrange for copies of Forms 1, 2 and 3 to be served on each defendant. The Tribunal Officer will investigate the case, and will ask the Defendant to attend an interview and to prepare defence and witness statements. After gathering documentary evidence and facts from both parties, the Officer will try to assist both parties to reach an amicable settlement where possible. If conciliation fails, then the Tribunal Officer will prepare a Summary of Facts that states the issues resolved and the issues in dispute for submission to the Presiding Officer before the hearing date. 6. WHAT WILL HAPPEN IF THE TRIBUNAL CANNOT SERVE MY CLAIM ON THE DEFENDANT? 6. WHAT WILL HAPPEN IF THE TRIBUNAL CANNOT SERVE MY CLAIM ON THE DEFENDANT? You will be asked to obtain the Defendant' s correct address and, if necessary, to verify it. If your claim still cannot be served, then the Tribunal may order other means of serving the claim. 7. WHAT WILL HAPPEN IF THE DEFENDANT AGREES TO PAY THE CLAIM IN FULL? 7. WHAT WILL HAPPEN IF THE DEFENDANT AGREES TO PAY THE CLAIM IN FULL? The Defendant will have to pay the amount of the claim as soon as possible before the hearing date. The Tribunal will issue an award

(decision of the Tribunal) to both parties. The Tribunal Accounts Office will inform you, as Claimant, to collect the money when it is ready. In this case, there will be no hearing. 8. WHAT WILL HAPPEN IF THE DEFENDANT ADMITS THE CLAIM, BUT CANNOT PAY IMMEDIATELY? 8. WHAT WILL HAPPEN IF THE DEFENDANT ADMITS THE CLAIM, BUT CANNOT PAY IMMEDIATELY? The Tribunal Officer will inform you of the Defendant's proposal for payment for your consideration. If both parties agree to a specific payment date or payment by instalments, then the Officer will prepare a settlement form for both parties to sign. The Tribunal will issue an award after the settlement is approved by the Presiding Officer. No hearing will be required. If, however, both parties cannot agree on the mode or date of payment, then they will have to attend a hearing. The Defendant will have to apply for time to pay or apply to pay by instalments. The Presiding Officer will determine a fair method by which the Defendant must pay. 9. WHAT WILL HAPPEN IF THE DEFENDANT DISPUTES THE CLAIM IN PART OR IN WHOLE? 9. WHAT WILL HAPPEN IF THE DEFENDANT DISPUTES THE CLAIM IN PART OR IN WHOLE? The Tribunal Officer will investigate the claim and any counterclaim put forward by the Defendant. Both Claimant and Defendant will be requested to file statements and relevant documents in support of their allegations. 10. WHAT WILL HAPPEN IF THE DEFENDANT IGNORES THE CLAIM? 10. WHAT WILL HAPPEN IF THE DEFENDANT IGNORES THE CLAIM? The Presiding Officer can enter judgment in the Defendant' s absence if the Officer is satisfied that the claim has been served and that the claims put forward by the claimant are genuine. 11. WHAT WILL HAPPEN AT THE FIRST HEARING? 11. WHAT WILL HAPPEN AT THE FIRST HEARING? The strict rules of evidence that apply in most other courts are not rigidly adhered to in Tribunal hearings. Neither party can be legally represented. Both parties must attend the first hearing, which is conducted in a courtroom. If the Claimant is absent, then the Tribunal may strike out (decline) the claim. If the Defendant is absent, then judgment may be entered if the claim has been served and the Claimant can prove the case. The Presiding Officer will explain the issues and the relevant laws in an attempt to help the parties settle amicably. Any terms of settlement that are reached before the Tribunal Officer will be signed by both parties and submitted to the Presiding Officer for approval. If the parties cannot settle their dispute amicably, then the Presiding Officer will tell them whether they need to submit further documentary evidence. The Presiding Officer may order this evidence to be submitted to the Tribunal Officer within a specified period. If the case is ready and the issues are simple, then the Presiding Officer may conduct the trial immediately at or after the first hearing and deliver judgment the same day. 12. WHAT WILL HAPPEN AT ANY FURTHER HEARINGS? 12. WHAT WILL HAPPEN AT ANY FURTHER HEARINGS? Both parties must attend any further hearings. If the Claimant is absent, then the Tribunal may strike out the claim. If the Defendant is absent but has been served with the claim, then judgment may be entered if the Claimant can prove the case. The Presiding Officer will hear each party's case; allow the Claimant and the Defendant to question each other and their witnesses; order the parties to provide further evidence or to call further witnesses and adjourn the hearing to a later date; deliver judgment at the end of the hearing or fix a date to deliver judgment. 13. WHAT SHOULD I DO IF I FAIL TO TURN UP FOR A HEARING AND MY CLAIM IS STRUCK OUT (DECLINED)? 13. WHAT SHOULD I DO IF I FAIL TO TURN UP FOR A HEARING AND MY CLAIM IS STRUCK OUT (DECLINED)? As Claimant, you can apply within seven days after the hearing or such further period as the Tribunal may allow for the striking-out order to be set aside (ignored) and the case restored. This will be allowed only for valid reasons, and may be subject to conditions set by the Tribunal. A claimant who applies for restoration will need to complete an Application for Restoration form and to pay a prescribed fee. 14. CAN DEFENDANTS OBJECT TO THE TRIBUNAL'S JUDGMENTS IF THEY ARE ABSENT FROM THE HEARINGS? 14. CAN DEFENDANTS OBJECT TO THE TRIBUNAL'S JUDGMENTS IF THEY ARE ABSENT FROM THE HEARINGS? The Defendant can apply for the award to be set aside within seven days after the hearing or such further period as the Tribunal may allow and on any conditions that the Tribunal thinks fit. A defendant who applies to set aside an award or order will need to complete an Application to Set Aside an Award/Order form and to pay a prescribed fee. 15. IF THE PARTIES CANNOT REACH AN AMICABLE SETTLEMENT AT THE FIRST HEARING, HOW CAN I BE PREPARED FOR THE SUBSEQUENT TRIAL? 15. IF THE PARTIES CANNOT REACH AN AMICABLE SETTLEMENT AT THE

FIRST HEARING, HOW CAN I BE PREPARED FOR THE SUBSEQUENT TRIAL? Please note that you are not allowed to appoint a lawyer to represent you at the Labour Tribunal. You normally have to attend the trial on your own. Subject to the approval of the t ribunal, an office bearer of a registered trade union or an association of employers (who has obtained your written authorization) can attend the trial as your representative. You may also seek legal advice before attending the trial . Here are some general points that you should note: A) Date, time and place of the trial You can check the above information from the Judiciary webpage. You can also call the Labour Tribunal Registry at 26250020 to confirm the details. The trial will not start before the time you have been given and you may have to wait. However, you are recommended to arrive earlier for preparation. B) Language Chinese and English are the official languages in Hong Kong. If the situation requires, an interpreter will be provided by the tribunal. If you give evidence in a language other than English or Chinese (Cantonese), the tribunal will find a suitable interpreter for you. But you should inform the tribunal officer as early as possible for making the necessary arrangement. C) Addressing the judge, the witnesses and your opponent The trial at the Labour Tribunal will be heard by a "Presiding Officer". The party who brings up the claim to the tribunal is called the "Claimant", and the other party is called the "Defendant". During the trial, it is perfectly acceptable for you to address the Presiding Officer as "Sir/Madam" or "Your Honour". You should address the witnesses and your opponent as "Mr.", "Mrs." or "Miss". Always remember not to use threatening or insulting words during the trial. D) Dress Code You should dress neatly when attending the trial. If possible, avoid wearing T-shirts and jeans. E) Witness A witness is a person having personal knowledge of facts relating to the matters in dispute in a case. You may try to find as many witnesses as possible to support your case but you should make sure that they are reliable. One good witness will often be more convincing than several unreliable witnesses. If your intended witness is unwilling to attend the trial, you may request the tribunal to subpoena him/her (i.e. to order the witness to attend the trial and give evidence). You should check with the tribunal officers for the necessary arrangement. There are occasions where the evidence involves technical opinions from the experts e.g. explaining medical reports. You may get the assistance from expert witnesses. But you have to apply for leave (permission) from the tribunal to call expert witnesses at the trial. Addition costs will inevitably be incurred for calling expert witnesses. Before attending the trial, you must talk to your intended witnesses in order to assess their credibility, see what they have known about your case and what they will probably say at the trial. However, you must not try to make up the answers for them. Bad inference would be drawn by the tribunal if your witnesses are just reading out your "scripts" during the trial. If it is proved that a person has wilfully given false evidence, he/she will be liable to a fine and imprisonment. You may briefly tell your witnesses what you are going to ask at the trial and the possibility of being questioned by your opponent and the Presiding Officer. This could help reduce your witnesses' anxiety and they could have better preparations before entering the courtroom. You should also remind your witnesses not to turn to you for looks of approval when answering questions from the Presiding Officer or your opponent. F) Submitting evidence Besides the oral evidence given at the trial, you may also submit materials relating to the case (e.g. documents, photographs or audio visual recordings) to the tribunal as supporting evidence. Your witnesses (if any) may also prepare written statements before the commencement of the trial. You can download some general guidelines for preparing witness statement from the Resource Centre for Unrepresented Litigants Whether or not the evidence is admissible (accepted by the tribunal) will be decided by the Presiding Officer. Remember to prepare extra copies for your opponent. According to section 27(2) of the Labour Tribunal Ordinance, the rules of evidence shall not apply to proceedings in the tribunal and it may receive any evidence which it considers relevant . In other words, you need not worry about the strict rules and legal formalities (which must be observed by lawyers in other courts) when submitting evidence to the tribunal. The Presiding Officer will give you appropriate instructions. Nevertheless, you must not give false evidence to the tribunal. G) Procedures for the trial As you are not allowed to have legal representation, the Presiding Officer will

introduce the procedures and the law relating to your case right at the beginning of the trial. If you feel unsecured before attending the trial, you may ask the tribunal officers to provide some preliminary information about the procedures. Generally speaking, the procedures may include: Examination in chief Usually, the Claimant will give evidence first and call witnesses to give evidence (they will be questioned by the Claimant). Alternatively, the Claimant may just call his/her witnesses to give evidence. This process is called "examination in chief" by the Claimant. Cross- examination The Defendant may put questions to each of the Claimant's witnesses after he/she has given evidence. This process is called "cross-examination" by the Defendant. Re-examination After cross-examination by the Defendant, the Claimant may put questions to his/her witnesses to clarify the matters raised in the cross-examination. This process is called "re-examination" by the Claimant. After all witnesses of the Claimant have given evidence, the Defendant may give evidence and call his/her witnesses to give evidence (examination in chief by the Defendant). Then the Claimant may question the Defendant's witnesses (cross-examination by the Claimant), followed by the re-examination of the witnesses by the Defendant. Final submission After all witnesses have given evidence, the Defendant has the right to make final the submission (speech) to the tribunal. The Claimant will follow the Defendant and make the final submission. Judgment The tribunal may adjourn the case (postpone the trial) to another date if further information and/or evidence are needed. If no further information is required, the tribunal may deliver oral judgment at the end of the trial or give judgment in written form at a later date. Both parties do not call witness In case of a hearing where no witness will be called to give evidence, the Claimant will make the speech and argue the case first, followed by the Defendant. The Claimant will have the right to make reply speech to the arguments put forward by the Defendant. After hearing the submissions from both parties, the tribunal may adjourn the case (postpone the hearing) to another date if further information and/or evidence are needed. If no further information is required, the tribunal may deliver oral judgment at the end of the trial or give judgment in written form at a later date. Remarks: The above mentioned are only the usual procedures for a trial. The Presiding Officer can always give other directions which you must follow. At any stage the Presiding Officer may also ask you (or the witnesses) questions. You can remain seated when talking to the Presiding Officer and the other parties. H) Things to note when you question the witnesses and your opponent Before the commencement of the trial, prepare the questions and make relevant notes of all you want to say at the tribunal. If you have several witnesses to call, give a list of witnesses to the tribunal before the trial. Avoid using jargons or technical languages. If they must be used, explain them first. Ask short and specific question. Don't ask two things at a time, e.g. "When did you meet him and what did he tell you at the meeting?" Instead, you should ask two separate questions: "When did you meet him?" and "What did he tell you at the meeting?" When you question your own witnesses (examination in chief), avoid asking questions to which you do not know the answers. That is why you have to interview your witnesses before the trial and see what they have known about your case. Do not repeat the questions that have already been asked by your opponent (unless the previous answers were not clear). Do not quarrel with the witnesses and your opponent. Your questions should focus on seeking factual information instead of opinions (unless you are questioning an expert witness). Asking for opinions may lead to lengthy and unfavourable replies. If you do not question your opponent's witnesses (cross-examination), it may imply that you have no objection to their oral evidence. However, don't just trying to ask trivial or irrelevant questions to show that you "object" their evidence. This may irritate the Presiding Officer and cause adverse effect on your case. This principle also applies when you are cross examining your opponent. If your opponent's witness has given your desired answer, turn to the next question (or end your cross-examination) immediately. Do not allow the witness to explain more. If your questions are unclear, the Presiding Officer may interrupt and help you rephrase the questions. He/she may also stop you from asking questions which are totally irrelevant to the case. If you notice that the Presiding Officer is taking notes, slow down your speech a little bit. I) Answering questions All you need to do is to answer questions honestly and truthfully.

You should try to avoid giving long answers, and should speak clearly at all times. Make a note of what you want to say so that you can refer to it. If you do not understand or cannot hear a question, ask for it to be repeated. If you genuinely do not know the answer to a question you should say so. Do not attempt to make up an answer. If you deliberately lie in your evidence, you will commit the offence of perjury (wilfully giving false evidence) for which you may be prosecuted. 16. CAN A JUDGMENT (COURT/TRIBUNAL'S DECISION) BE REVIEWED? 16. CAN A JUDGMENT (COURT/TRIBUNAL'S DECISION) BE REVIEWED? Yes. Either party can apply to the Labour Tribunal for a review of the judgment within seven days from its date of issuance. The Presiding Officer may also review the judgment on his/her own motion within 14 days from its date of issuance. The claim or the hearing may be re-opened, or re-heard in whole or in part, and the previous award or order may be confirmed, varied or reversed. A party who applies for review will need to complete an Application for Review form and to pay a prescribed fee. 17. CAN THE CLAIMANT OR THE DEFENDANT APPEAL TO A HIGHER COURT? 17. CAN THE CLAIMANT OR THE DEFENDANT APPEAL TO A HIGHER COURT? Yes. However, an appeal can be lodged only on the grounds that the award or order is erroneous in point of law, or outside the jurisdiction of the Tribunal. Either party can apply to the Court of First Instance of the High Court for leave (i.e. permission) to appeal within seven days after the date on which the written award or order was served on them, or within such extended time as may be allowed by the Registrar of the High Court on good cause. A refusal by the Court of First Instance of High Court to grant leave to appeal is final. If leave is granted, then the Court of First Instance will hear and determine the appeal. 18. CAN A DECISION OF THE COURT OF FIRST INSTANCE OF HIGH COURT BE APPEALED? 18. CAN A DECISION OF THE COURT OF FIRST INSTANCE OF HIGH COURT BE APPEALED? Yes. Both the Claimant and the Defendant may apply to the Court of Appeal for leave to appeal within seven days after the date of the decision of the Court of First Instance. The Court of Appeal may grant leave to appeal if it considers that a question of law of general public importance is involved. 19. HOW DO I APPEAL AGAINST A DECISION OF THE TRIBUNAL OR THE COURT OF FIRST INSTANCE? 19. HOW DO I APPEAL AGAINST A DECISION OF THE TRIBUNAL OR THE COURT OF FIRST INSTANCE? Your application for leave to appeal should be lodged with the Registrar of the High Court. At your request, the staff of the Clerk of Court's Office will help you prepare the form of appeal. 20. HOW DO I GET BACK THE MONEY THAT I AM AWARDED? 20. HOW DO I GET BACK THE MONEY THAT I AM AWARDED? The Tribunal may specify how the judgment debtor is to make payment to the judgment creditor. If the judgment debtor fails to pay, then the judgment creditor may apply to the Tribunal for a Certificate of Award. This can be registered in the District Court within 12 months from the date of the award. The judgment creditor can then apply to the District Court for the court bailiff to enforce the judgment. (For example, the bailiff can seize the debtor' s goods and chattels at the debtor' s premises. The seized items will then be sold by public auction. The proceeds from the auction (after the deduction of necessary expenses) will be used to pay debts.) If the judgment cannot be enforced because the judgment debtor is insolvent or has disappeared, then you can consider applying for an ex-gratia payment from the Protection of Wages on Insolvency Fund. 21. AS A JUDGMENT CREDITOR (FOR WHICH I AM ENTITLED TO COMPENSATIONS ACCORDING TO THE COURT/TRIBUNAL' S JUDGMENT), CAN I ENFORCE THE JUDGMENT IF THE JUDGMENT DEBTOR HAS LODGED AN APPLICATION FOR LEAVE TO APPEAL? 21. AS A JUDGMENT CREDITOR (FOR WHICH I AM ENTITLED TO COMPENSATIONS ACCORDING TO THE COURT/TRIBUNAL' S JUDGMENT), CAN I ENFORCE THE JUDGMENT IF THE JUDGMENT DEBTOR HAS LODGED AN APPLICATION FOR LEAVE TO APPEAL? The fact that a judgment debtor has lodged an application for leave to appeal does not mean that the enforcement of an award or order must be withheld. However, an order that withholds the enforcement of judgment may be made by the Tribunal, Court of First Instance or Court of Appeal on such terms as the Court thinks fit. 22. WHAT WILL HAPPEN TO THE DEFENDANT WHO FAILS TO PAY THE SUM PAYABLE UNDER THE AWARD OF THE LABOUR TRIBUNAL? 22. WHAT WILL HAPPEN TO THE DEFENDANT WHO FAILS TO PAY THE SUM PAYABLE UNDER THE AWARD OF THE LABOUR TRIBUNAL? If the Defendant wilfully and without reasonable excuse fails to pay any sum payable under the award within 14 days after the date of the award, he commits an offence and is liable on conviction to a fine of $350,000 and to imprisonment for 3 years. (Sections 43N, 43O, 43P, 43Q, 43R and

43S of the Employment Ordinance, Cap.57) B. INTRODUCTION TO THE LABOUR DEPARTMENT OF THE HKSAR GOVERNMENT B. INTRODUCTION TO THE LABOUR DEPARTMENT OF THE HKSAR GOVERNMENT In general, the Labour Department aims: to improve the utilisation of human resources by providing a range of employment services to meet changes and needs in the labour market; to ensure that risks to people's safety and health at work are properly managed by legislation, education and promotion; to foster harmonious labour relations through the promotion of good employment practices and the resolution of labour disputes; and to improve and safeguard employees' rights and benefits in an equitable manner. The main divisions in the Labour Department in relation to employment legal matters are highlighted as follows: 1) MINOR EMPLOYMENT CLAIMS ADJUDICATION BOARD The Minor Employment Claims Adjudication Board (MECAB), which was set up under the Minor Employment Claims Adjudication Board Ordinance (Cap. 453 of the Laws of Hong Kong), adjudicates minor employment claims in a quick, simple and inexpensive manner. A claim that cannot be resolved amicably through conciliation can be referred to the MECAB for adjudication. The MECAB is empowered to adjudicate employment claims involving not more than 10 claimants for a sum of money not exceeding $15,000 per claimant. Employment claims falling outside the jurisdiction of the MECAB are heard by the Labour Tribunal within the Judiciary. Hearings of minor employment claims are conducted in public, and no legal representation is allowed. An award or order made by an Adjudication Officer of the Board is legally binding. Parties who are dissatisfied with the judgement of an Adjudication Officer can apply for a review. They can also apply to the Court of First Instance for an appeal against the Adjudication Officer's decision on point of law or question of jurisdiction. 2) LABOUR RELATIONS DIVISION The Labour Relations Division is responsible for the maintenance of harmonious labour relations in the non-government sector. Its main activities include: Providing an in-person consultation service to employers and employees on matters that relate to conditions of employment and their rights and obligations under the Employment Ordinance; and Providing a voluntary conciliation service to employers and employees to help them settle their disputes and claims before going to court. 3) EMPLOYMNET CLAIMS INVESTIGATION DIVISION The Employment Claims Investigation Division investigates complicated cases that involve suspected offences under the Employment Ordinance, and pursues prosecution action against offenders. 4) EMPLOYEES' COMPENSATION DIVISION The Employees' Compensation Division: assists employees who suffer from work injuries or occupational diseases, or family members of employees who are killed in work accidents, to obtain compensation under the Employees' Compensation Ordinance; assists persons who suffer from pneumoconiosis or their family members to obtain compensation under the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360 of the Laws of Hong Kong) or to obtain ex gratia payments under the Pneumoconiosis Ex Gratia Scheme; and promotes, reviews and enforces provisions under the Employees' Compensation Ordinance and the Pneumoconiosis and Mesothelioma (Compensation) Ordinance. 5) WAGE SECURITY DIVISION The Wage Security Division: assists employees who are owed wages by insolvent employers to apply for ex-gratia payments from the Protection of Wages on Insolvency Fund; and processes and verifies applications to the Fund. The Protection of Wages on Insolvency Fund covers wages owed for services that were rendered to an employer during the four months before the last day of service, wages in lieu of notice and severance payments payable to employees under the Employment Ordinance. For further information about this fund, please go to the Labour Department's website. 6) LABOUR INSPECTION DIVISION The Labour Inspection Division: carries out inspections to enforce the following legislation: Employment of Children Regulations under the Employment Ordinance which govern the employment of children in all economic sectors; Employment of Young Persons (Industry) Regulations under the Employment Ordinance which govern the employment of young persons in the industrial sector; Part IV of the Employees' Compensation Ordinance which provides for compulsory insurance in relation to compensation for work injuries; and Part IVB of the Immigration Ordinance (Cap. 115 of the Laws of Hong Kong) which prohibits the employment of illegal immigrants in Hong Kong; carries out inspections on industrial and non-industrial establishments to check employees' statutory rights and benefits including maternity leave, rest days, sickness allowance, statutory holidays

and annual leave provided under the Employment Ordinance and the keeping and maintenance of records as required by the Ordinance, and to enforce the wage provisions; and carries out inspections on the workplaces and accommodation of imported workers to ensure that workers who enter Hong Kong for employment under the Supplementary Labour Scheme receive their statutory and contractual benefits. 7) REGISTRY OF TRADE UNIONS The Registry of Trade Unions administers the Trade Unions Ordinance (Cap. 332 of the Laws of Hong Kong) and the Trade Union Registration Regulation, which make provisions for the registration and regulation of trade unions. The Registry's principal objectives are to bring about sound trade union administration, encourage responsible trade unionism and protect the interests of trade union members. Its major responsibilities include registering trade unions and their rules, and examining their annual statements of account. 8) OCCUPATIONAL SAFETY SERVICE Occupational Safety Service is provided by Occupational Safety Officers. The key duties of this service include : enforcing the Occupational Safety and Health Ordinance, the Factories and Industrial Undertakings Ordinance and their subsidiary Regulations through inspections of workplaces to ensure that the requirements for safety, health and welfare are complied with; and carrying out accident investigations and giving advice to employers and employees on how to reduce existing workplace hazards. The Occupational Safety and Health Branch of the Labour Department has prepared a list of publication under Occupational Safety, including: Guides to Legislation; Codes of Practice; Guidance Notes; Other Guidebooks; Posters; and CD-ROM For more details on the functions of each division of the Labour Department, please visit the official website. 1. MY EMPLOYER HAS NOT MADE ANY MPF CONTRIBUTION OR CONTRIBUTION TO OTHER RETIREMENT SCHEME FOR ME SINCE THE BEGINNING OF MY EMPLOYMENT. HAS HE VIOLATED THE LAW? 1. MY EMPLOYER HAS NOT MADE ANY MPF CONTRIBUTION OR CONTRIBUTION TO OTHER RETIREMENT SCHEME FOR ME SINCE THE BEGINNING OF MY EMPLOYMENT. HAS HE VIOLATED THE LAW? According to the Mandatory Provident Fund Schemes Ordinance, employers must take all practicable steps to ensure that employees become members of registered provident fund schemes within the permitted period, and must pay contributions to the relevant schemes. This requirement does not apply to those employees employed for less than 60 days (except for causal employees). Offence and Penalties Employers who fail to comply with the above requirement are liable to: a fine at $100,000 and imprisonment for 6 months on the first occasion on which they are convicted of the offence; and a fine of $200000 and to imprisonment for 12 months on each subsequent occasion. (Note: An employer is defined as any person who has entered into a contract of employment to employ another person as his employee.) 2. CAN EMPLOYERS REDUCE THEIR EMPLOYEES' BENEFITS OR CHANGE THE TERMS OF EMPLOYMENT CONTRACTS TO EVADE LIABILITIES UNDER THE MANDATORY PROVIDENT FUND SCHEMES? 2. CAN EMPLOYERS REDUCE THEIR EMPLOYEES' BENEFITS OR CHANGE THE TERMS OF EMPLOYMENT CONTRACTS TO EVADE LIABILITIES UNDER THE MANDATORY PROVIDENT FUND SCHEMES? Under the Employment Ordinance, an employee who has been employed under a continuous contract can claim remedies for unreasonable variation of the terms of the employment contract against the employer if the employer, without the prior consent of the employee and in the absence of an express term in the contract that allows for such variation, varies the terms of the employment contract (including reducing the employee's wages or benefits) other than for a valid reason as specified in the Employment Ordinance. 3. CAN EMPLOYERS RE-ENGAGE THEIR EMPLOYEES UNDER NEW CONTRACTS AS SELF-EMPLOYED PERSONS IN FACE OF THE IMPLEMENTATION OF THE MANDATORY PROVIDENT FUND SCHEMES TO REDUCE THE EMPLOYEES' BENEFITS THAT ARE PAYABLE UNDER THE EMPLOYMENT ORDINANCE AND OTHER LABOUR LEGISLATION? 3. CAN EMPLOYERS RE-ENGAGE THEIR EMPLOYEES UNDER NEW CONTRACTS AS SELF-EMPLOYED PERSONS IN FACE OF THE IMPLEMENTATION OF THE MANDATORY PROVIDENT FUND SCHEMES TO REDUCE THE EMPLOYEES' BENEFITS THAT ARE PAYABLE UNDER THE EMPLOYMENT ORDINANCE AND OTHER LABOUR LEGISLATION? Employers should not unilaterally change the status of their employees in face of the implementation of the Mandatory Provident Fund Schemes. Under common law, if substantial and fundamental changes to the detriment of an employee have been made to the contract of employment arising from the employer's conduct without the employee's consent, that employee can claim for termination compensation from the employer on the grounds of constructive dismissal. An aggrieved employee with two years' service under a continuous contract can also claim

remedies for unreasonable dismissal against the employer under the Employment Ordinance. However, if the employer-employee relationship remains in essence, then subject to the Court's ruling on the actual circumstances of the case, the relevant employee may still be entitled to the benefits under the Employment Ordinance (and other labour legislation), though that employee has been labelled as a self-employed person. 1. WHAT IS THE DURATION OF A CONTRACT OF EMPLOYMENT? 1. WHAT IS THE DURATION OF A CONTRACT OF EMPLOYMENT? In the absence of any express agreement to the contrary, every contract of employment that is "continuous" is deemed to be a contract for one month and renewable from month to month (section 5(1) of the Employment Ordinance). 2. WHAT IS A "CONTINUOUS" CONTRACT OF EMPLOYMENT? 2. WHAT IS A "CONTINUOUS" CONTRACT OF EMPLOYMENT? According to Schedule 1 of the Employment Ordinance , an employee who has been employed continuously by the same employer for four weeks or more, with at least 18 hours worked in each week, is regarded as being employed under a continuous contract of employment. Hence, a part-time employee who fulfils the above requirements is also employed under a continuous contract. All employees who are covered by the Employment Ordinance, irrespective of their hours of work, are entitled to basic protection under the Ordinance including the payment of wages, restrictions on wage deductions and the granting of statutory holidays, etc. However, employees who are employed under a continuous contract are further entitled to such benefits as rest days, paid annual leave, sickness allowance, severance payment and long service payment, etc. If a trade or business is transferred from one person to another, the period of employment of an employee in that trade or business at the time of the transfer shall count as a period of employment with the transferee (the "new boss"). In other words, the transfer shall not break the continuity of the period of employment for that employee. In any dispute about whether a contract of employment is a continuous contract or not, the burden of proving that it is not a continuous contract will be on the employer. 3. HOW CAN A "CONTRACT OF EMPLOYMENT" AND A "CONTRACT FOR SERVICE BY INDEPENDENT CONTRACTOR (OR SELF-EMPLOYED PERSON)" BE DISTINGUISHED? 3. HOW CAN A "CONTRACT OF EMPLOYMENT" AND A "CONTRACT FOR SERVICE BY INDEPENDENT CONTRACTOR (OR SELF-EMPLOYED PERSON)" BE DISTINGUISHED? The Employment Ordinance applies to employers and their employees who are engaged under contracts of employment (with some exceptions), and only those employees are entitled to the rights and benefits that are provided under the Employment Ordinance. To avoid unnecessary disputes, it is important to delineate between the status of an employee and a contractor (or self-employed person) when both parties enter into a service contract. There is no one single conclusive test to distinguish a contract of employment from a contract for service. Some factors to be considered in identifying a contract of employment are as follows: (a) Control Who decides on the matters of recruitment and dismissal of workers? Who pays for the workers' wages and in what ways? Who determines the production process, timing and method of production? (b) Ownership and provision of factors of production Who provides the tools and equipment? Who provides the work place and materials? (c) Economic considerations Do the workers carry on business on their own account or carry on the business for their employers? Are the workers involved in any prospect of profit, or are they liable for any risk of loss? How are the worker's earnings calculated and profits derived? The relevant factors to be considered are determined by the circumstances of each case. For example, workers who bring their own tools and materials for their work are more likely to work under contracts for service by independent contractors. In contrast, those who are fully provided with tools and materials by their bosses are more likely to work under contracts of employment. In delineating an individual case, all relevant factors should be carefully weighted and an evaluation and analysis of the factual circumstances in which the work is performed should be carried out. You can also refer to the Labour Department's webpage for more information. For further reference, the Inland Revenue Department has a set of criteria for determining whether a service contract is a contract of employment. The major criteria are highlighted as follows: there is no employment-type benefit (e.g. money, annual leave, sick leave or pension) provided for the service carried out; the service is not required to be carried out personally (e.g. can hire assistants/sub-contactors); the performance of the service is not subject to

the control or supervision that may be commonly exercised by an employer in relation to the performance of an employee's duties; the remuneration is not paid or credited periodically (e.g. weekly or monthly) as is common with employment contracts; neither the service provider nor the receiver has the right to terminate the service contract before the expiry of the contract or before the job finished, by giving prior termination notice/money in lieu of notice to the other party; and neither party in the service contract has intended to lead members of the public to believe that an employment relationship exists. If all of these criteria have been satisfied, then a contract of employment is unlikely to exist. For more details on the criteria, please see the Inland Revenue Department's webpage. In cases of dispute about whether or not the subject contract is a contract of employment, the jurisdiction or judgment rests with the Court. A local case was finally heard before the UK's Judicial Committee of Privy Council in 1997 (the final appellant court for Hong Kong before 1 July 1997). The Appellant, a golf club caddie, did not have a written employment contract, and there was also no guarantee by the club that he would get any work from the players at the club. However, there was an agreed payment rate per round and he was also required to wear a uniform provided by the club. The Privy Council ruled that he was an independent contractor/self-employed person rather than an employee because there was no mutual employment obligation between the club and the Appellant. However, the Privy Council reiterated that whether or not a contract of employment existed has to be determined by investigation and evaluation of all the factual circumstances in which the work is performed. In other words, no exhaustive list of factors or strict rules governs the relative weight of each factor when making the decision. 4. I ACCEPTED A NEW JOB OFFER FROM A COMPANY WITH THE UNDERSTANDING THAT I WOULD BEGIN WORK ON A CERTAIN DATE. I GAVE ONE MONTH NOTICE TO MY CURRENT EMPLOYER TO TERMINATE MY EMPLOYMENT CONTRACT. ONE WEEK BEFORE I WAS TO BEGIN MY NEW JOB, I RECEIVED AN EMAIL FROM THE NEW COMPANY STATING THAT THEY WERE HOLDING OFF ON ANY NEW RECRUITMENT AS THEY WERE BRINGING NEW INVESTORS IN. SINCE I HAD ALREADY GIVEN NOTICE TO MY CURRENT EMPLOYER (AND NEW PERSON HIRED AND TRAINED), I WAS LEFT WITHOUT EMPLOYMENT. IS THERE ANY RECOURSE TO TAKE AGAINST THE COMPANY THAT OFFERED ME THE NEW JOB? 4. I ACCEPTED A NEW JOB OFFER FROM A COMPANY WITH THE UNDERSTANDING THAT I WOULD BEGIN WORK ON A CERTAIN DATE. I GAVE ONE MONTH NOTICE TO MY CURRENT EMPLOYER TO TERMINATE MY EMPLOYMENT CONTRACT. ONE WEEK BEFORE I WAS TO BEGIN MY NEW JOB, I RECEIVED AN EMAIL FROM THE NEW COMPANY STATING THAT THEY WERE HOLDING OFF ON ANY NEW RECRUITMENT AS THEY WERE BRINGING NEW INVESTORS IN. SINCE I HAD ALREADY GIVEN NOTICE TO MY CURRENT EMPLOYER (AND NEW PERSON HIRED AND TRAINED), I WAS LEFT WITHOUT EMPLOYMENT. IS THERE ANY RECOURSE TO TAKE AGAINST THE COMPANY THAT OFFERED ME THE NEW JOB? To begin with, the answer provided herein is based on the following assumptions: you signed a valid employment contract with the new company; that company had made it clearly and unequivocally that they did not want your service despite signing the valid contract; and there is no probation period Insofar as (ii) is concerned, you should have asked the company for a formal letter to clarify its position instead of just reading an e-mail. The starting point for you is to peruse the contract with the company. There may be an express clause that governs the right and obligation of both parties under the present situation. In the absence of such a get-out clause, which is often the case, you may treat the requirements (e.g. the length of notice, or the amount of wages in lieu of notice) in the same way as a continuous contract of employment. For details, please refer to the section on termination of employment and the relevant payments. You are also recommended to seek legal advice before commencing legal action. 1. MY SECRETARY HAS DAMAGED THE COMPUTER IN MY OFFICE AND I INTEND TO DEDUCT $3,000 FROM HER SALARY THIS MONTH FOR COMPENSATION. CAN I MAKE THIS DEDUCTION? WHEN WILL I BE ENTITLED TO DEDUCT SALARIES FROM MY EMPLOYEES? 1. MY SECRETARY HAS DAMAGED THE COMPUTER IN MY OFFICE AND I INTEND TO DEDUCT $3,000 FROM HER SALARY THIS MONTH FOR COMPENSATION. CAN I MAKE THIS DEDUCTION? WHEN WILL I BE ENTITLED TO DEDUCT SALARIES FROM MY EMPLOYEES? You probably cannot deduct $3,000 from her salary because you are prohibited from making such deductions unless you have obtained the written approval from the Commissioner for Labour, or under the following circumstances: Deductions for absence from work. The sum to be deducted should be proportionate to the period of time that the employee is absent

from work. Deductions for damage to or loss of the employer's goods, equipment or property by the employee's neglect or default. In any one case, the sum to be deducted cannot exceed $300. The total of such deductions must not exceed one quarter of the wages payable to the employee in that wage period. Deductions for the recovery of any wages advanced or overpaid to the employee. The total sum to be deducted must not exceed one quarter of the wages payable to the employee in that wage period. Deductions of the value of food and accommodation the employer supplies to the employee. Deductions, at the written request of the employee, in respect of contributions to be paid by the employee through the employer for any medical scheme, superannuation scheme, retirement scheme or thrift scheme. Deductions, with the employee's written consent, for the recovery of any loan made by the employer to the employee. Deductions that are required or authorised under any enactment of law to be made from the wages of the employee. Deductions for outstanding maintenance payments owed by the employee pursuant to an Attachment of Income Order that has been issued by the Court. Deductions under items (i) to (vii) have priority over item (viii). Offences and Penalties Employers who make illegal deductions from the wages of employees are liable to prosecution and, upon conviction, to a fine of $100,000 and to imprisonment for one year. Despite the abovementioned restrictions on salary deductions under the Employment Ordinance, employers may try to claim damages/compensation from the negligent employees through civil proceedings. 2. MY PREVIOUS MONTH'S SALARY IS OVERDUE BY 10 DAYS. HAS MY BOSS VIOLATED THE LAW? 2. MY PREVIOUS MONTH'S SALARY IS OVERDUE BY 10 DAYS. HAS MY BOSS VIOLATED THE LAW? Wages become due on the expiry of the last day of the wage period (e.g. for a monthly wage period, wages become due on the expiry of the last day in each month). Employers should pay wages to their employees as soon as practicable, but in any case not later than seven days after the end of the wage period. Employers are required to pay interest (at the rate fixed by the Chief Justice of the Court of Final Appeal from time to time) on the outstanding amount of wages if they fail to pay those wages within seven days from the due date. Offences and Penalties Employers who fail to pay wages to employees when they become due are liable to prosecution and, upon conviction, to a fine of $200,000 and imprisonment for one year. Employers who fail to pay interest on the outstanding amount of wages to employees are liable to prosecution and, upon conviction, to a fine of $10,000. 3. MY PREVIOUS MONTH'S SALARY IS ONE MONTH OVERDUE AND MY BOSS TOLD ME THAT HE IS UNABLE TO PAY IT. HAS HE BREACHED THE EMPLOYMENT CONTRACT? CAN I TERMINATE MY EMPLOYMENT CONTRACT IMMEDIATELY AND CLAIM COMPENSATIONS? 3. MY PREVIOUS MONTH'S SALARY IS ONE MONTH OVERDUE AND MY BOSS TOLD ME THAT HE IS UNABLE TO PAY IT. HAS HE BREACHED THE EMPLOYMENT CONTRACT? CAN I TERMINATE MY EMPLOYMENT CONTRACT IMMEDIATELY AND CLAIM COMPENSATIONS? An employer who is no longer able to pay wages should terminate the relevant contract of employment in accordance with its terms. If wages are not paid within one month after they become due, then employees can deem their contracts of employment to be terminated by their employers without notice, and are entitled to wages in lieu of notice in addition to other statutory and contractual termination payments. 4. MY PLACE OF WORK HAS SUDDENLY SHUT DOWN AND I HAVEN'T RECEIVED MY SALARY SINCE LAST MONTH. I THINK THAT THE COMPANY IS IN HUGE FINANCIAL DIFFICULTY AND IT IS LIKELY TO BECOME INSOLVENT. DO I HAVE THE CHANCE TO GET BACK MY SALARY (OR PART OF MY SALARY)? 4. MY PLACE OF WORK HAS SUDDENLY SHUT DOWN AND I HAVEN'T RECEIVED MY SALARY SINCE LAST MONTH. I THINK THAT THE COMPANY IS IN HUGE FINANCIAL DIFFICULTY AND IT IS LIKELY TO BECOME INSOLVENT. DO I HAVE THE CHANCE TO GET BACK MY SALARY (OR PART OF MY SALARY)? You can try to recover part of your salary or to get a certain amount of compensation in the following ways. i) Bankruptcy or Winding-up proceedings If an employee is owed wages, wages in lieu of notice, severance payment or other contractual sums by the employer, then the employee can (as a creditor) apply to the Court for a bankruptcy order (if the insolvent employer is not a limited company) or a winding-up order (if the insolvent employer is a limited company). Upon the making of a bankruptcy order or a winding-up order by the Court, the trustee or the provisional liquidator (who is normally the Official Receiver) takes immediate steps to recover and preserve the employer's assets. Those assets are normally sold by the trustee or liquidator, and the proceeds of sale, after the deduction of necessary expenses, are used to pay debts owed

to the employer’s creditors. If you want to know more about bankruptcy or winding-up proceedings, please go to the topic Bankruptcy and Winding-up. If you have successfully obtained a bankruptcy order or winding-up order from the Court, then you are entitled to receive payment out of your employer’s assets in preference (with priority) to most other creditors of your employer in respect of wages, wages in lieu of notice and severance payments under the statutory limit. In the preference debts, you can recover wages up to a maximum of $8,000. You can also recover wages in lieu of notice (not exceeding one month’s wages or $2,000 whichever is the lesser) and severance payments not exceeding $8,000. However, any arrears of wages, wages in lieu of notice or severance payments that exceed the statutory limit are non-preferential debts, and the employee is treated as an ordinary creditor on claiming that exceeded amount. In view of the time limit for wages to qualify for preferential payment in bankruptcy or winding-up proceedings, you should not delay taking legal action by relying on any mere promises by your employer or by some third party to pay your arrears of wages at a future date. This may result in the loss of entitlement to receive payment as a preferential creditor if the promises to pay are not kept. For more information regarding employer insolvency, please see the Labour Department’s webpage. ii) Protection of Wages on Insolvency Fund During the bankruptcy or winding-up proceedings against your employer, you can also apply for ex-gratia payment from the Protection of Wages on Insolvency Fund (“the Fund”). The Fund is administered by the Protection of Wages on Insolvency Fund Board, and covers: arrears of wages (during the four months before the last day of the employee’s service) with a maximum amount of $36,000; wages in lieu of notice (up to the equivalent of one month’s wages) with the maximum amount of $22,500; and severance payment with the maximum amount of $50,000 plus 50% of any excess entitlement. The Commissioner for Labour will NOT approve any application for these payments for: wages for service rendered more than 4 months before the last day of service; wages for which the relevant application is made more than 6 months after the last day of service; wages in lieu of notice or severance payment for which the relevant application is made more than 6 months after the date of termination of the employment contract. For more information about the Fund, please see the Labour Department’s webpage. 5. IF MY EMPLOYER IS LIKELY TO BECOME INSOLVENT, THEN WHERE CAN I SEEK ASSISTANCE? 5. IF MY EMPLOYER IS LIKELY TO BECOME INSOLVENT, THEN WHERE CAN I SEEK ASSISTANCE? If you notice symptoms of insolvency in your employer (e.g. failing to pay wages, some machines or raw materials removed or the employer suddenly disappeared), then you should immediately seek assistance from the Labour Relations Division of the Labour Department. When appropriate, the Labour Relations Division will refer your case to the Legal Aid Department, which will consider your application for legal aid for instituting winding-up or bankruptcy proceedings against your employer. You may also be referred to the Wage Security Division of the Labour Department for application for ex-gratia payment from the Protection of Wages on Insolvency Fund. You can contact the Labour Department at 27171771 or via email at enquiry@labour.gov.hk for futher details. 1. I SUSPECT THAT MY SALES EXECUTIVE HAS REPEATEDLY SENT CLIENT DETAILS TO A RIVAL COMPANY AND I WANT TO DISMISS HIM. CAN I TERMINATE HIS EMPLOYMENT CONTRACT IMMEDIATELY WITHOUT GIVING HIM ADVANCE NOTICE OR WAGES IN LIEU OF NOTICE? 1. I SUSPECT THAT MY SALES EXECUTIVE HAS REPEATEDLY SENT CLIENT DETAILS TO A RIVAL COMPANY AND I WANT TO DISMISS HIM. CAN I TERMINATE HIS EMPLOYMENT CONTRACT IMMEDIATELY WITHOUT GIVING HIM ADVANCE NOTICE OR WAGES IN LIEU OF NOTICE? With reference to section 9 of the Employment Ordinance, employers may summarily dismiss their employees without advance notice or wages in lieu of notice if their employees: a. wilfully disobey any lawful and reasonable orders; b. are guilty of misconduct; c. are guilty of fraud or dishonesty; or d. are habitually neglectful in their duties. It should be noted that taking part in a strike may not be a lawful reason for summary dismissal by the employers. NOTE: Summary dismissal is a serious disciplinary action. It only applies to cases in which employees have committed very serious misconduct or have failed to improve themselves after an employer’s repeated warnings. Example of employees’ serious misconduct or dishonesty can be found in a High Court case (Chan Kan Ip Philip v Kone Elevators International (China) Limited). In this case, a company manager had made wrongful claim to recover

personal entertainment expenses as company expenses. The Court ruled that such dishonesty could justify summary dismissal. If you have evidence to justify that your sales executive has sent client information to a rival company (which can be considered as misconduct or dishonesty), then you can summarily dismiss him without giving him advance notice or wages in lieu of notice. 2. I AM AN OFFICE CLERK AND MY BOSS ALWAYS ORDERS ME TO MOVE HEAVY GOODS INSIDE THE WAREHOUSE. I THINK THAT THIS IS NOT COMMENSURATE WITH MY JOB DUTIES BECAUSE MY BOSS DID NOT SPECIFY IT DUTY DURING THE JOB INTERVIEW. CAN I RESIGN WITHOUT GIVING HIM PRIOR NOTICE OR WAGES IN LIEU OF NOTICE? 2. I AM AN OFFICE CLERK AND MY BOSS ALWAYS ORDERS ME TO MOVE HEAVY GOODS INSIDE THE WAREHOUSE. I THINK THAT THIS IS NOT COMMENSURATE WITH MY JOB DUTIES BECAUSE MY BOSS DID NOT SPECIFY IT DUTY DURING THE JOB INTERVIEW. CAN I RESIGN WITHOUT GIVING HIM PRIOR NOTICE OR WAGES IN LIEU OF NOTICE? With reference to section 10 of the Employment Ordinance, employees can terminate their employment contracts without advance notice or payment in lieu of notice if they: reasonably fear physical danger by violence or disease when performing job duties; are subjected to ill-treatment by their employers; or have been employed for not less than five years and are certified as being permanently unfit for the type of work in their employment. There is a High Court case (William Barry Preen v Industries Polytex Ltd.) which could help explain the circumstances of ill-treatment by employer. In this case the victim, who was an assistant general manager of a company, was being asked by the company to resign. After his refusal to resign, he was ordered to work in a dyeing room instead of an office. Also, he was ordered to vacate his independent apartment provided by the company, and had to share a quarter of the same size with other staff. The Court viewed that those arrangements had caused substantial changes in the employment conditions to the detriment of employee, and they were made with bad faith and in a disrespectful manner. If you can justify that the moving of heavy goods will cause you physical danger or that such order constitutes serious ill treatment of you, then you can resign without giving advance notice or wages in lieu of notice. 3. WHAT CONSTITUTES UNREASONABLE DISMISSAL? 3. WHAT CONSTITUTES UNREASONABLE DISMISSAL? Under section 32K of the Employment Ordinance, the five valid reasons for dismissal or variation of the terms of an employment relate to: (a) the conduct of the employee; (b) the capability or qualification to perform work; (c) redundancy or other genuine operational requirements of the business; (d) statutory requirements; or (e) other substantial reasons. If an employee has been employed under a continuous contract for not less than 24 months and is dismissed by the employer without a valid reason as specified above, then the dismissal would be unreasonable. With regard to point (a) above, there are many examples of employees' misconducts which may be considered as valid reasons for dismissal. These examples include: persistent lateness, drunkenness during working hours and disclosing confidential information, etc. Reasons for summary dismissal as mentioned in Question 1 are also included. 4. I AM GOING TO DISMISS A STAFF MEMBER WITH ONE OF THE "VALID REASONS FOR DISMISSAL". AM I REQUIRED TO GIVE HIM ADVANCE NOTICE OR WAGES IN LIEU OF NOTICE? 4. I AM GOING TO DISMISS A STAFF MEMBER WITH ONE OF THE "VALID REASONS FOR DISMISSAL". AM I REQUIRED TO GIVE HIM ADVANCE NOTICE OR WAGES IN LIEU OF NOTICE? It depends on your actual circumstances. For example, if you dismiss your staff member due to redundancy, you should still give advance notice or wages in lieu of notice. However, this would not be required for summary dismissal. If you are not sure about your position, please contact the Labour Relations Division of the Labour Department at 27171771 for further information, or consult your own lawyer. 5. WHAT CONSTITUTES AN UNREASONABLE VARIATION OF THE TERMS OF AN EMPLOYMENT CONTRACT? 5. WHAT CONSTITUTES AN UNREASONABLE VARIATION OF THE TERMS OF AN EMPLOYMENT CONTRACT? It would constitute an unreasonable variation of the terms of an employment contract if: (a) the conduct of the employee; (b) the capability or qualification of the employee to perform work; (c) redundancy or other genuine operational requirements of the business; (d) statutory requirements; or (e) other substantial reasons. With regard to point (a) above, there are many examples of employees' misconducts which may be considered as valid reasons for variation of employment terms. These examples include: persistent lateness, drunkenness during working hours and disclosing confidential information, etc. Reasons for summary

dismissal as mentioned in Question 1 are also included. the employee has been employed under a continuous contract; the terms of the employment contract are varied without the employee's consent and the employment contract does not contain an express term that allows such a variation; and the employer has not shown any valid reason for the variation as specified in section 32K of the Employment Ordinance, with such reasons including: 6. IF I (AS AN EMPLOYEE) AM FACING UNREASONABLE DISMISSAL OR UNREASONABLE VARIATION OF THE TERMS OF MY EMPLOYMENT CONTRACT, THEN WHAT CAN I DO TO PROTECT MY RIGHTS? 6. IF I (AS AN EMPLOYEE) AM FACING UNREASONABLE DISMISSAL OR UNREASONABLE VARIATION OF THE TERMS OF MY EMPLOYMENT CONTRACT, THEN WHAT CAN I DO TO PROTECT MY RIGHTS? Before bringing the dispute to Court, you can try to seek assistance from the Labour Relations Division of the Labour Department (telephone hotline: 27171771 or email: enquiry@labour.gov.hk). The staff of this Division provide a preliminary conciliation service to help in settling disputes and claims. If you fail to settle your dispute amicably outside the court, then you can bring your case to the Labour Tribunal. The Labour Tribunal, in considering the case, may order: reinstatement or re-engagement ; or an award of terminal payments against the employer. Please note an order for reinstatement or re-engagement will only be made if BOTH the employer and the employee agree to the making of the order. For more details about the proceedings in the Labour Tribunal, please go to "Introduction to the Labour Tribunal". 7. WHAT CONSTITUTES UNREASONABLE AND UNLAWFUL DISMISSAL? 7. WHAT CONSTITUTES UNREASONABLE AND UNLAWFUL DISMISSAL? Dismissal in the following circumstances contravenes the law: dismissal of a pregnant employee; dismissal while the employee is on paid sick leave; dismissal because an employee has given evidence or information in any proceedings or inquiry in connection with the enforcement of labour legislation, industrial accidents or breach of work safety regulations; dismissal for trade union membership and activities; or dismissal of an injured employee before the parties concerned have entered into an agreement for employee's compensation or before the issue of a certificate of assessment for the injury. If the employee is dismissed other than by a valid reason as specified in the Employment Ordinance AND the dismissal is in contravention of the law as specified in (1) to (5) above, it would result in an unreasonable and unlawful dismissal. 8. IF I AM UNREASONABLY AND UNLAWFULLY DISMISSED BY MY BOSS, THEN WHAT CAN I DO TO PROTECT MY RIGHTS? 8. IF I AM UNREASONABLY AND UNLAWFULLY DISMISSED BY MY BOSS, THEN WHAT CAN I DO TO PROTECT MY RIGHTS? Before bringing the dispute to Court, you can try to seek assistance from the Labour Relations Division of the Labour Department (telephone hotline: 27171771 or email: enquiry@labour.gov.hk). The staff of this Division will provide a preliminary conciliation service to help in settling disputes and claims. If you fail to settle your dispute amicably outside the court, then you can bring your case to the Labour Tribunal. The Labour Tribunal, in considering the case, may order: reinstatement or re-engagement of the dismissed employee; or an award of terminal payments against the employer. Where no order for reinstatement or re-engagement is made, the Labour Tribunal may also award, in appropriate cases, compensation to the employee not exceeding $150,000 irrespective of any award of terminal payments. Please note an order for reinstatement or re-engagement will only be made if BOTH the employer and the employee agree to the making of the order. For more details about the proceedings in the Labour Tribunal, please go to "Introduction to the Labour Tribunal". 9. WHEN IS AN EMPLOYER REQUIRED TO PAY A SEVERANCE PAYMENT TO AN EMPLOYEE? 9. WHEN IS AN EMPLOYER REQUIRED TO PAY A SEVERANCE PAYMENT TO AN EMPLOYEE? An employer should pay a severance payment when an employee, who has been employed under a continuous contract for not less than 24 months, is dismissed due to redundancy or is laid off. (Note: A series of short contracts of employment of less than 24 months may still be treated as a single contract. More details are stated on the last two paragraphs.) Meaning of Redundancy An employee is considered to be dismissed due to redundancy if the dismissal is due to the fact that: - the employer closes or intends to close the business; - the employer has ceased, or intends to cease, the business in the place where the employee was employed; or - the requirement of the business for employees to carry out work of a particular kind, or for the employee to carry out work of a particular kind in the place where the employee was employed, ceases or diminishes

or is expected to cease or diminish. Meaning of Lay-off If an employee is employed on such terms and conditions that the remuneration depends on the amount of work provided by the employer, the employee will be considered to be laid off if the total number of days on which no work is provided or no wage is paid exceeds: - half of the total number of normal working days in any four consecutive weeks; or - one-third of the total number of normal working days in any 26 consecutive weeks. Rest days, annual leave and statutory holidays should not be counted as normal working days during the above periods. Employees who wish to claim for severance payments should serve written notice to their employers within three months after the dismissal/lay off takes effect. The deadline for serving such notice may be extended if approved by the Commissioner for Labour. The employers must make the severance payments to their employees not later than two months from the receipt of such notice. Amount of payment The following formula applies to the calculation of both severance payments and long service payments: Monthly-paid employee: (Last month of wages x 2/3)* X Reckonable years of service Daily-rated/piece-rated employee (Any 18 days' wages* chosen by the employee out of the last 30 normal working days) X Reckonable years of service Service for an incomplete year should be calculated on a pro rata basis. * The sum should not exceed 2/3 of $22,500. Employees may also elect to use their average wages in the last 12 months for the calculation. Reckonable Years of Services For (i) all manual employees and (ii) those non-manual employees whose average monthly wages did not exceed $15,000 for the 12 months preceding 8 June 1990, the years of service should be reckoned in accordance with Table 1. If the years of service exceed the fully reckonable years of service, 50% of such years of service should be reckoned. For non-manual employees whose average monthly wages exceeded $15,000 for the 12 months preceding 8 June 1990, their years of service can be reckoned up to 1980. Table 1 Relevant Date of Termination of Employment Fully Reckonable Years of Service Maximum Amount 20.1.1995 to 30.9.1995 25 $210,000 1.10.1995 to 30.9.1996 27 $230,000 1.10.1996 to 30.9.1997 29 $250,000 1.10.1997 to 30.9.1998 31 $270,000 1.10.1998 to 30.9.1999 33 $290,000 1.10.1999 to 30.9.2000 35 $310,000 1.10.2000 to 30.9.2001 37 $330,000 1.10.2001 to 30.9.2002 39 $350,000 1.10.2002 to 30.9.2003 41 $370,000 1.10.2003 to 30.9.2004 43 $390,000 1.10.2004 and after All $390,000 Example: Date of dismissal: 1.10.2002 Monthly wages before dismissal: $15,000 Years of service: 43 years Amount of Severance Payment/ Long Service Payment : $15,000 x 2/3 x [41 +(43 - 41)/2)]* = $420,000 (=$370,000)** * The reckonable years of service for an employee dismissed on 1.10.2002 are 41 years plus 50% of the years of service exceeding 41 years. ** As the maximum amount of severance payment/ long service payment for an employee dismissed on 1.10.2002 is $370,000, the subject employee is only entitled to $370,000. NOTE : An employee will not be simultaneously entitled to both long service payment and severance payment. For details of the calculation, please visit the Labour Department's webpage or call the Labour Department's hotline at 27171771. Offences and Penalties Employers who fail to pay severance payment to employees are liable to prosecution and, upon conviction, to a fine of $50,000. In order to avoid paying the severance payment, many industries in Hong Kong have adopted a method which precludes the operation of the Ordinance's protection. It is by way of a series of contracts of employment of less than 24 months. The employee is required to take a short break before taking up a new contract. An example can be found in a Court of Appeal case (Wong Man Sum v Wonderland Sea Food Restaurant O/B Long Yield Co. Ltd.). With reference to the judgment of the above case, if the employer has said or done something such as to show that the parties regarded the employment relationship as continuing despite the termination of the contract of employment, then a series of "less than 24 months" contracts can be treated as a single contract. However, an expectation that the employee would return to his old job after a short break is insufficient. There must be evidence of mutual arrangement between the employer and the employee. This will involve complex legal argument and legal advice must be sought. 10. WHEN IS AN EMPLOYER REQUIRED TO PAY A LONG SERVICE PAYMENT TO AN EMPLOYEE? 10. WHEN IS AN EMPLOYER REQUIRED TO PAY A LONG SERVICE PAYMENT TO AN EMPLOYEE? An employer should pay a long service payment to an employee who has been employed under a continuous contract for not less than 5 years if the employee: - - is dismissed for a reason other than serious misconduct or redundancy; - is

certified by a registered medical practitioner as permanently unfit for the present job and has resigned on such grounds; - is aged 65 or above and has resigned on such grounds; or - dies during service. A long service payment should be paid to an employee within seven days after the date of termination of the employment contract. Amount of payment The following formula applies to the calculation of both severance payments and long service payments: Monthly-paid employee: (Last month of wages x 2/3)* X Reckonable years of service Daily-rated/piece-rated employee (Any 18 days' wages* chosen by the employee out of the last 30 normal working days) X Reckonable years of service Service for an incomplete year should be calculated on a pro rata basis. * The sum should not exceed 2/3 of $22,500. Employees may also elect to use their average wages in the last 12 months for the calculation. Reckonable Years of Services For (i) all manual employees and (ii) those non-manual employees whose average monthly wages did not exceed $15,000 for the 12 months preceding 8 June 1990, the years of service should be reckoned in accordance with Table 1. If the years of service exceed the fully reckonable years of service, 50% of such years of service should be reckoned. For non-manual employees whose average monthly wages exceeded $15,000 for the 12 months preceding 8 June 1990, their years of service can be reckoned up to 1980. Table 1 Relevant Date of Termination of Employment Fully Reckonable Years of Service Maximum Amount 20.1.1995 to 30.9.1995 25 $210,000 1.10.1995 to 30.9.1996 27 $230,000 1.10.1996 to 30.9.1997 29 $250,000 1.10.1997 to 30.9.1998 31 $270,000 1.10.1998 to 30.9.1999 33 $290,000 1.10.1999 to 30.9.2000 35 $310,000 1.10.2000 to 30.9.2001 37 $330,000 1.10.2001 to 30.9.2002 39 $350,000 1.10.2002 to 30.9.2003 41 $370,000 1.10.2003 to 30.9.2004 43 $390,000 1.10.2004 and after All $390,000 Example: Date of termination of employment: 1.10.2002 Monthly wages before termination: $15,000 Years of service: 43 years Amount of Severance Payment/ Long Service Payment : $15,000 x 2/3 x [41 +(43 - 41)/2)]* = $420,000 (=$370,000)** * The reckonable years of service for an employee whose employment terminated on 1.10.2002 are 41 years plus 50% of the years of service exceeding 41 years. ** As the maximum amount of severance payment/ long service payment for an employee whose employment terminated on 1.10.2002 is $370,000, the subject employee is only entitled to $370,000. NOTE : An employee will not be simultaneously entitled to both long service payment and severance payment. For details of the calculation, please visit the Labour Department's webpage or call the Labour Department's hotline at 27171771. Offences and Penalties Employers who fail to pay long service payment to employees are liable to prosecution and, upon conviction, to a fine of $200,000 and to imprisonment for one year. 11. I AM GOING TO TERMINATE THE EMPLOYMENT CONTRACT OF ONE OF MY STAFF MEMBERS. CAN I USE MY PREVIOUS CONTRIBUTION TO HIS MANDATORY PROVIDENT FUND (MPF) TO OFFSET PART OF THE SEVERANCE PAYMENT/LONG SERVICE PAYMENT PAYABLE TO HIM? 11. I AM GOING TO TERMINATE THE EMPLOYMENT CONTRACT OF ONE OF MY STAFF MEMBERS. CAN I USE MY PREVIOUS CONTRIBUTION TO HIS MANDATORY PROVIDENT FUND (MPF) TO OFFSET PART OF THE SEVERANCE PAYMENT/LONG SERVICE PAYMENT PAYABLE TO HIM? If an employee is entitled to severance payment or long service payment and gratuities based on length of service or occupational retirement scheme benefits (excluding any part attributable to employee contributions) have been paid to the employee or an accrued benefit (excluding any part attributable to employee contributions) is being held in a MPF scheme for the employee, or has been paid to the employee, then the severance payment/long service payment that is payable can be reduced by the amount of MPF contribution (employer's share) to the extent that it relates to the employee's years of service for which the severance payment/long service payment is payable. 12. MY EMPLOYEE HAS TENDERED HIS RESIGNATION AND HIS LAST DAY OF EMPLOYMENT IS THE 30 SEPTEMBER. HE HAS 10 DAYS OF UNTAKEN ANNUAL LEAVE. IF HE TAKES ALL THE ANNUAL LEAVE CONTINUOUSLY FROM THE 21 TO THE 30 SEPTEMBER AS FINAL LEAVE, WHEN SHOULD I MAKE THE TERMINATION PAYMENTS? 12. MY EMPLOYEE HAS TENDERED HIS RESIGNATION AND HIS LAST DAY OF EMPLOYMENT IS THE 30 SEPTEMBER. HE HAS 10 DAYS OF UNTAKEN ANNUAL LEAVE. IF HE TAKES ALL THE ANNUAL LEAVE CONTINUOUSLY FROM THE 21 TO THE 30 SEPTEMBER AS FINAL LEAVE, WHEN SHOULD I MAKE THE TERMINATION PAYMENTS? An employer must pay all termination payments, except for severance payments, to the employee as soon as practicable and in any case not later than seven days after the date of termination or expiry of the contract. Your employee may argue that his last working day is the 20 September, therefore, the

termination payments should be made not later than the 27 September. However, the correct view is that the contract of employment ends only on the 30 September. You should make the termination payments to your employee not later than the 7 October. 1. SHOULD EMPLOYEES RECEIVE SALARIES FOR THEIR REST DAYS? 1. SHOULD EMPLOYEES RECEIVE SALARIES FOR THEIR REST DAYS? Whether rest days are paid or not is to be agreed by employers and employees. 2. MY BOSS ORDERED ME TO WORK THIS SUNDAY (WHICH IS MY USUAL REST DAY). CAN I REJECT HIS ORDER? 2. MY BOSS ORDERED ME TO WORK THIS SUNDAY (WHICH IS MY USUAL REST DAY). CAN I REJECT HIS ORDER? You may reject such an order because an employer must not compel an employee to work on a rest day except in the event of a breakdown of machinery or plant or in any other unforeseen emergency. However, employees (except young persons under the age of 18 who are employed in the industrial field) may work voluntarily on a rest day. For any rest day on which the employee is required to work, the employer should substitute another rest day within 30 days after the original rest day. The employer should notify the employee of the arrangement within 48 hours after the employee is required to work. Offences and Penalties Employers who fail to grant rest days to employees or compel employees to work on their rest days are liable to prosecution and, upon conviction, to a fine of $50,000. 3. SHOULD EMPLOYEES BE PAID FOR THEIR STATUTORY HOLIDAYS? 3. SHOULD EMPLOYEES BE PAID FOR THEIR STATUTORY HOLIDAYS? Employees who have been employed under continuous contracts for not less than three months immediately preceding a statutory holiday are entitled to holiday pay. Holiday pay is a sum equivalent to the normal wages that employees would have earned if they had worked on a full working day. The daily rate of holiday pay is a sum equivalent to the average daily wages earned by an employee in the 12-month period immediately before the holiday or first day of the holidays. If an employee is employed for less than 12 months, the calculation shall be based on the shorter period. Employees who, in normal circumstances, only work half a day on Saturdays and receive half a day’s pay are entitled to a full working day’s pay as holiday pay if a statutory holiday falls on Saturday. 4. CAN I ORDER MY STAFF TO WORK ON STATUTORY HOLIDAYS BY MAKING SUBSTITUTE PAYMENTS? 4. CAN I ORDER MY STAFF TO WORK ON STATUTORY HOLIDAYS BY MAKING SUBSTITUTE PAYMENTS? No, because an employer must NOT make any form of payment to an employee to replace a statutory holiday (or an alternative holiday). Offences and Penalties Employers who fail to grant statutory holidays, alternative holidays or substituted holidays, or fail to pay holiday pay to employees are liable to prosecution and, upon conviction, to a fine of $50,000. 5. HOW IS SICKNESS ALLOWANCE CALCULATED? WHEN WILL I BE ENTITLED TO SICKNESS ALLOWANCE? 5. HOW IS SICKNESS ALLOWANCE CALCULATED? WHEN WILL I BE ENTITLED TO SICKNESS ALLOWANCE? Sickness allowance is a sum equivalent to four-fifths of the normal wages that employees would have earned if they had worked. For employees who are employed on piece rates or whose daily wages vary from day to day, the sickness allowance should be a sum that is equivalent to the average daily wages earned on the days of a complete wage period. The wage period should be a period of not less than 28 days and not more than 31 days immediately preceding or expiring on the first sickness day. Sickness allowance should be paid to the employee not later than the normal pay day. In general, employees are entitled to sickness allowance if: the sick leave taken is not less than four consecutive days (unless for any day off taken by a female employee for pregnancy check-ups, post confinement medical treatment or miscarriage); the sick leave is supported by an appropriate medical certificate; and they have accumulated sufficient number of paid sickness days. (Note: Paid sickness days can be accumulated up to a maximum of 120 days. It is accumulated at the rate of 2 paid sickness days for each completed month of employment under a continuous contract during the first 12 months of employment, and 4 paid sickness days per month thereafter.) Employees are NOT be entitled to sickness allowance under the following circumstances: the employee, without reasonable excuse, refuses treatment by a company doctor of a medical scheme that is recognised by the Director of Health or disregards the advice of that doctor; the sickness day falls on a statutory holiday on which the employee is entitled to holiday pay; or compensation is payable under the Employees’ Compensation Ordinance. Offences and Penalties Employers who fail to pay sickness allowance to employees are liable to prosecution and, upon conviction, to a fine of $50,000. 6. MY

BOSS FIRED ME DURING MY SICK LEAVE FOR WHICH I HAD A VALID MEDICAL CERTIFICATE. HAS HE VIOLATED THE LAW? 6. MY BOSS FIRED ME DURING MY SICK LEAVE FOR WHICH I HAD A VALID MEDICAL CERTIFICATE. HAS HE VIOLATED THE LAW? Employers are prohibited from terminating contracts of employment of employees during paid sickness leave, except in cases of summary dismissal due to serious misconduct. Offences and Penalties Employers who contravene the above provision are liable to prosecution and, upon conviction, to a fine of $100,000. Employers are also required to pay the following sum of money to dismissed employees within seven days after the day of termination: wages in lieu of notice; a further sum equivalent to seven days' wages; and any sickness allowance to which the employee is entitled. You can also claim remedies/compensations against your employer if you were dismissed other than for a valid reason as specified in the Employment Ordinance (please refer to the Q&A; for "unreasonable and unlawful dismissal"). 7. MY EXPECTED DATE OF CONFINEMENT IS COMING SOON AND I HAVE SERVED A NOTICE OF PREGNANCY TO MY BOSS. WHEN CAN I COMMENCE MY MATERNITY LEAVE? 7. MY EXPECTED DATE OF CONFINEMENT IS COMING SOON AND I HAVE SERVED A NOTICE OF PREGNANCY TO MY BOSS. WHEN CAN I COMMENCE MY MATERNITY LEAVE? With the agreement of your employer, you can decide to commence your maternity leave from two to four weeks before the expected date of confinement. However, maternity leave can also be commenced on the date of confinement if it occurs before the scheduled maternity leave. In this case, the employee should give notice of the date of confinement and her intention to take 10 weeks' maternity leave to her employer within seven days of her confinement. 8. SHOULD I RECEIVE SALARY DURING MY MATERNITY LEAVE? 8. SHOULD I RECEIVE SALARY DURING MY MATERNITY LEAVE? You are eligible for maternity leave pay if you: have been employed under a continuous contract for not less than 40 weeks immediately before the commencement of scheduled maternity leave; have given notice of pregnancy and your intention to take maternity leave to your employer after the pregnancy has been confirmed such as by the presentation of a medical certificate confirming your pregnancy to the employer; and have produced a medical certificate that specifies the expected date of confinement if so required by your employer. Maternity leave pay is equivalent to four-fifths of the employee's normal wages. For an employee who is employed on piece rates or whose daily wages vary from day to day, the maternity leave pay should be a sum that is equivalent to the average daily wages earned on the days that she has worked during every complete wage period. The wage period should be a period of not less than 28 days and not more than 31 days immediately preceding or expiring on the commencement of her maternity leave. Offences and Penalties Employers who fail to grant maternity leave to pregnant employees or fail to pay maternity leave pay to eligible pregnant employees are liable to prosecution and, upon conviction, to a fine of $50,000. 9. ONE WEEK AFTER SERVING THE NOTICE OF PREGNANCY, MY EMPLOYER FIRED ME. HAS HE VIOLATED THE LAW? 9. ONE WEEK AFTER SERVING THE NOTICE OF PREGNANCY, MY EMPLOYER FIRED ME. HAS HE VIOLATED THE LAW? An employer is prohibited from dismissing a pregnant employee from the date on which she is confirmed pregnant by a medical certificate to the date on which she is due to return to work upon the expiry of her maternity leave if: the employee has been employed under a continuous contract, and she has served a notice of pregnancy to her employer. If a pregnant employee is dismissed by her employer before she has served a notice of pregnancy, then she may serve such notice immediately after being informed of her dismissal. Under such circumstances, her employer must withdraw the dismissal or the notice of dismissal. However, employers are not prohibited from dismissing pregnant employees under the following circumstances: the employee is summarily dismissed due to serious misconduct; or where it has been expressly agreed that the employment is on probation, the employee is dismissed for reasons other than pregnancy during the probation period of not more than 12 weeks. The judgment from the Court of Final Appeal in the case of Hong Kong Ming Wah Shipping Company Ltd v Sun Min also mentioned that a pregnant employee has the right to remain in her employment and, subject to certain conditions, to receive the prescribed payments during the period of protection. The judgment further explained that there is no basis for cutting down this protection by pointing to an offer of an alternative employment under a new contract with some other entity (company/business organisation), albeit an entity which is a member of the same group of companies. Offences and Penalties Except

for the circumstances provided above, it is an offence for employers to dismiss pregnant employees. Employers who do so are liable to prosecution and, on conviction, to a fine of $100,000. Employers are also required to pay the following sums of money to the dismissed employee within seven days after the day of termination: wages in lieu of notice; a further sum equivalent to one month's wages; and 10 weeks' maternity leave pay if, but for the dismissal, she would have been entitled to such a payment. You can also claim remedies/compensations against your employer if you were dismissed other than for a valid reason as specified in the Employment Ordinance (please refer to the Q&A; for "unreasonable and unlawful dismissal"). 10. SINCE I NOTIFIED MY BOSS OF MY PREGNANCY, HE SOMETIMES ASSIGNS HEAVY WORK TO ME. I THINK THAT HE WANTS ME TO RESIGN SO HE CAN AVOID PAYING COMPENSATION OR AVOID GIVING MATERNITY LEAVE. CAN HE DO THAT? 10. SINCE I NOTIFIED MY BOSS OF MY PREGNANCY, HE SOMETIMES ASSIGNS HEAVY WORK TO ME. I THINK THAT HE WANTS ME TO RESIGN SO HE CAN AVOID PAYING COMPENSATION OR AVOID GIVING MATERNITY LEAVE. CAN HE DO THAT? If a pregnant employee produces a medical certificate with an opinion of her unfitness to handle heavy materials, work in places where gas that is injurious to pregnancy is generated, or do other work that is injurious to pregnancy, then the employer may not allocate such work to the employee. If the employee is already performing such work, then the employer must within 14 days remove her from that work. Offences and Penalties Employers who fail to comply with the above requirements are liable to prosecution and, on conviction, to a fine of $50,000. 11. WHAT SHOULD THE MALE EMPLOYEE DO TO TAKE PATERNITY LEAVE? 11. WHAT SHOULD THE MALE EMPLOYEE DO TO TAKE PATERNITY LEAVE? The employee must notify his employer of - his intention to take paternity leave at least 3 months before the expected date of delivery of the child, but the exact date of leave is not required at this stage; and the date of his paternity leave before taking the leave, but the law does not stipulate how long in advance such notification should be given. If the employee does not notify the employer 3 months in advance, he must notify the employer of his date of paternity leave at least 5 days before that date. 12. SHOULD I RECEIVE SALARY DURING MY PATERNITY LEAVE? 12. SHOULD I RECEIVE SALARY DURING MY PATERNITY LEAVE? A male employee is entitled to paternity leave pay if he - has been employed under a continuous contract for not less than 40 weeks immediately before taking the paternity leave; and provides the birth certificate of the child on which the employee' s name is entered as the child' s father to the employer. The daily rate of paternity leave pay is a sum equivalent to four-¬fifths of the average daily wages of the employee in the 12-month period immediately before taking the paternity leave. If the employee is employed for less than 12 months, the calculation shall be based on the shorter period. 13. WHAT LEGAL CONSEQUENCES WILL MY EMPLOYER FACE IF HE FAILS TO GRANT STATUTORY PATERNITY LEAVE OR FAILS TO PAY STATUTORY PATERNITY LEAVE PAY? 13. WHAT LEGAL CONSEQUENCES WILL MY EMPLOYER FACE IF HE FAILS TO GRANT STATUTORY PATERNITY LEAVE OR FAILS TO PAY STATUTORY PATERNITY LEAVE PAY? An employer who without reasonable excuse fails to grant paternity leave or paternity leave pay to an eligible employee is liable to prosecution and, upon conviction, to a fine of $50,000. 1. ARE EMPLOYERS REQUIRED TO PAY YEAR-END DOUBLE PAY OR BONUSES TO EMPLOYEES? 1. ARE EMPLOYERS REQUIRED TO PAY YEAR-END DOUBLE PAY OR BONUSES TO EMPLOYEES? There is no legal requirement under the Employment Ordinance for employers to pay end of year payments, including bonuses and double pay. End of year payments should be agreed upon between an employer and an employee. If such a payment is included in the terms of employment, then the employer is contractually bound to pay an end of year payment. End of year payments do not include payments that are of a gratuitous nature or are payable at the discretion of the employer. 2. HOW DO I CALCULATE MY END OF YEAR PAYMENTS? WHEN WILL I RECEIVE THE MONEY? 2. HOW DO I CALCULATE MY END OF YEAR PAYMENTS? WHEN WILL I RECEIVE THE MONEY? It should be the amount that is specified in your employment contract. If the amount is not specified, then it should be equivalent to a full month' s wages (for monthly rated employees) or in any other case, 26 days' wages based on the average daily wages earned during every complete wage period of not less than 28 days and not more than 31 days, immediately preceding or expiring on the day on which the end of year payment becomes due. The end of year payment should be paid: on the day specified in the employment contract; or on the last day of the payment period or within seven days after that day

(if a day is not specified); or on the day that the contract is terminated or within seven days after that day (if the employment contract is terminated before the payment period expires and the employee is eligible for pro rata end of year payment); or on the day that the profits are ascertained or within seven days after that day (if the end of year payments are calculated by reference to any profits of the employer). Offence and Penalties Employers who fail to pay end of year payments to eligible employees are liable to prosecution and, upon conviction, to a fine of $50,000. 1. WHAT IS MEANT BY "AN ACCIDENT ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT"? 1. WHAT IS MEANT BY "AN ACCIDENT ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT"? According to section 5(4)(b) of the Employees' Compensation Ordinance, an accident to an employee is deemed to arise out of and in the course of employment, notwithstanding that the employee was at the time of the accident acting in contravention of any statutory or other regulation applicable to the relevant employment, or of any orders given by or on behalf of the employer, or that the employee was acting without instructions from the employer, if the act was committed by the employee for the purposes of and in connection with the employer's trade or business. A Court of Final Appeal judgment (LKK Trans Ltd v Wong Hoi Chung) has also pointed out that an employee's entitlement to compensation, in an accident arising out of and in the course of employment, is not affected by the employee's pre-existing disease. The question which arises for decision in the appeal of the above case is as follows: Where an employee is injured in an accident at work resulting in permanent incapacity which is caused both by that injury and by a pre-existing disease, should the court limit the entitlement to Employees' Compensation by apportioning the incapacity attributable solely to the injury as distinct from the disease? The 5 judges in the Court of Final Appeal unanimously held that the answer to the above question should be NO. 2. UNDER WHAT CIRCUMSTANCES IS THE EMPLOYER NOT LIABLE TO PAY COMPENSATION FOR WORK INJURIES? 2. UNDER WHAT CIRCUMSTANCES IS THE EMPLOYER NOT LIABLE TO PAY COMPENSATION FOR WORK INJURIES? Employers are NOT liable to pay compensation in the following circumstances: the injury neither results in permanent incapacity nor incapacitates the employee from earning full wages at normal work; the injury is self-inflicted; the death or incapacity results from the injury (including all occupational diseases which are specified in the ECO) that the employee has falsely claimed to be free of to the employer; or the injury is caused by an accident that is directly attributable to the employee's addiction to drugs or alcohol and does not result in death or serious and permanent incapacity. In addition, in any proceedings under the Employees' Compensation Ordinance in which it is proved that the injury is attributable to the serious and wilful misconduct of the employee, or that an injury by accident arising out of and in the course of employment is deliberately aggravated by the employee, any compensation claimed will be disallowed. The exception is that when the injury results in death or serious incapacity, on consideration of all of the circumstances the Court may award the compensation provided by the Ordinance or such part thereof as it thinks fit. 3. ARE THERE ANY CIRCUMSTANCES IN WHICH EMPLOYERS ARE ALSO LIABLE TO PAY COMPENSATION FOR INJURIES THAT ARE SUFFERED OUTSIDE OF THE WORKPLACE (OR OUTSIDE OF HONG KONG)? 3. ARE THERE ANY CIRCUMSTANCES IN WHICH EMPLOYERS ARE ALSO LIABLE TO PAY COMPENSATION FOR INJURIES THAT ARE SUFFERED OUTSIDE OF THE WORKPLACE (OR OUTSIDE OF HONG KONG)? If an employee sustains an injury in the following circumstances, then that employee is deemed to have been injured in an accident arising out of and in the course of employment, and the employer is liable to pay compensation: while travelling as a passenger to or from the employee's place of work by means of transport that is operated or arranged by the employer (except as part of a public transport service); while travelling by a direct route between the employee's residence and the place of work for the purpose of and in connection with employment by driving or operating a means of transport arranged or provided by the employer; when typhoon signal No. 8 or above or a red/black rainstorm warning is in force, while travelling from the employee's place of residence to the place of work by a direct route within four hours before the commencement of working hours for that day, or from the place of work to the place of residence within four hours after the time of cessation of the working hours for that day; or while travelling, for the purpose of and in connection with the

employee's employment by any means of transport permitted by the employer, between Hong Kong and any place outside of Hong Kong or between any places outside of Hong Kong. The ECO also applies where personal injury by accident arising out of and in the course of employment is caused to an employee outside of Hong Kong where the employee's contract of employment is entered into in Hong Kong with an employer who is a person carrying on business in Hong Kong. 4. WHAT IS A "COMPENSABLE OCCUPATIONAL DISEASE"? 4. WHAT IS A "COMPENSABLE OCCUPATIONAL DISEASE"? A disease that arises due to the nature of any occupation in which an employee was employed at any time within the prescribed period is regarded as a compensable occupational disease. Forty-six occupational diseases are covered by the ECO. If you want more information on the diseases covered, please go to Schedule 2 (Occupational Diseases) of the ECO. An employee who suffers incapacity arising from a specified occupational disease is entitled to receive the same compensation in the same way as an employee who is injured in an occupational accident. 5. MY HUSBAND DIED OF AN ACCIDENT THAT HAPPENED DURING HIS WORK. WHAT COMPENSATION IS PAYABLE TO ME OR MY FAMILY MEMBERS? 5. MY HUSBAND DIED OF AN ACCIDENT THAT HAPPENED DURING HIS WORK. WHAT COMPENSATION IS PAYABLE TO ME OR MY FAMILY MEMBERS? If an employee dies as a result of an accident (or an occupational disease specified in the ECO) arising out of and in the course of employment, then the employer is liable to pay compensation for death to the surviving members of the family. Compensation for death is calculated with reference to the age and monthly earnings of the deceased employee as follows (section 6 of the Employees' Compensation Ordinance) . Age of deceased employee Amount of compensation Under 40 84 months' earnings* or $375,950, whichever is higher 40 to under 56 60 months' earnings* or $375,950, whichever is higher 56 or above 36 months' earnings* or $375,950, whichever is higher * Monthly earnings are subject to a maximum of $26,070 for calculating compensation in fatal cases. The compensation shall be apportioned among the eligible members of the family of the deceased employee. In addition, the employer is liable to reimburse funeral and medical attendance expenses to the person who has paid such expenses, up to a maximum of $76,200. For more details on the calculation of all relevant compensations, please contact the Employees' Compensation Division of the Labour Department (telephone hotline: 27171771; e-mail: enquiry@labour.gov.hk). 6. I WAS INJURED AND DISABLED DUE TO AN ACCIDENT THAT HAPPENED DURING MY WORK. WHAT COMPENSATION IS PAYABLE TO ME OR MY FAMILY MEMBERS? 6. I WAS INJURED AND DISABLED DUE TO AN ACCIDENT THAT HAPPENED DURING MY WORK. WHAT COMPENSATION IS PAYABLE TO ME OR MY FAMILY MEMBERS? This depends on the nature of the disability you are suffering. In general, the nature of the disability is classified into permanent incapacity or temporary incapacity. a) Permanent Incapacity This is sub-divided into two categories: i) permanent total incapacity; and ii) permanent partial incapacity Compensation in cases of permanent total incapacity is as follows (section 7 of the Employees' Compensation Ordinance) : Age of injured employee Amount of compensation Under 40 96 months' earnings* or $426,880, whichever is higher 40 to under 56 72 months' earnings* or $426,880, whichever is higher 56 or above 48 months' earnings* or $426,880, whichever is higher * Monthly earnings are subject to a maximum of $26,070 for calculating compensation for permanent incapacity. For permanent partial incapacity, the amount of compensation is as follows (section 9 of the Employees' Compensation Ordinance) : (Amount of compensation due to permanent total incapacity) X (Percentage of loss of earning capacity)* * The percentage of loss of earning capacity is assessed by the Employees' Compensation Assessment Board according to the ECO. b) Temporary Incapacity An employee is entitled to receive periodical payments during the period of temporary incapacity up to 24 months. When the employee's temporary incapacity lasts more than 24 months or a further period that the Court may allow (that further period must not exceed 12 months), the employee will no longer be entitled to periodical payments, and will be regarded as having suffered permanent (total or partial) incapacity with compensation assessed accordingly. The periodical payments should be calculated as follows (section 10 of the Employees' Compensation Ordinance) : (Monthly earnings at the time of the accident - monthly earnings after the accident) X 4/5 For more details on the calculation of all relevant compensations, please contact the Employees' Compensation Division of the Labour Department (telephone hotline: 27171771;

e-mail: enquiry@labour.gov.hk). 7. BESIDES THE ABOVE-MENTIONED COMPENSATIONS, AM I ENTITLED TO OTHER PAYMENTS (E.G. MEDICAL EXPENSES) FOR MY WORK INJURY? 7. BESIDES THE ABOVE-MENTIONED COMPENSATIONS, AM I ENTITLED TO OTHER PAYMENTS (E.G. MEDICAL EXPENSES) FOR MY WORK INJURY? Medical Expenses Unless your employer has provided adequate free medical treatment to you, your employer is liable to pay medical expenses for the period during which you receive medical treatment from a registered medical practitioner or registered dentist until the attending medical practitioner or dentist certifies that no further treatment is required. Your employer must also reimburse the medical expenses to you within 21 days upon receiving the medical fee receipts. The daily maximum amount of medical expenses payable is as follows: either in-patient treatment or out-patient treatment: $200; or both in-patient and out-patient treatment on the same day: $280. Prostheses and Surgical Appliances (if any) If you require a prosthesis or surgical appliance due to a work injury, then your employer is also liable to pay: the initial costs of supplying and fitting the prosthesis or surgical appliance, subject to a maximum amount of $36,430; and the probable costs of repair and renewal of such an item for the 10 years after the initial fitting of the item, subject to a maximum amount of $110,390. 8. WHAT IS THE TIME LIMIT FOR EMPLOYERS TO REPORT WORK-RELATED ACCIDENTS TO THE LABOUR DEPARTMENT? 8. WHAT IS THE TIME LIMIT FOR EMPLOYERS TO REPORT WORK-RELATED ACCIDENTS TO THE LABOUR DEPARTMENT? For fatal work-related accidents, employers are required to report to the Labour Department within seven days after the accident. For occupational diseases that result in fatality, employers are required to report within seven days after the date of death. For non-fatal work-related accidents, employers are required to report to the Labour Department within 14 days after the accident. If employers are not aware of the accidents that happened within the specified period, they must notify the Labour Department on appropriate form within seven days for fatal cases and 14 days for non-fatal cases, after the accidents come to their attention. Any work-related accident must be reported by the employer irrespective of whether the accident gives rise to any liability to pay compensation. For more details on the reporting matters, please call the Labour Department's hotline at 27171771. Employers who fail to report to the Labour Department are liable to prosecution and, on conviction, a fine of $50,000. 9. CAN EMPLOYEES REPORT WORK-RELATED ACCIDENTS TO THE LABOUR DEPARTMENT? 9. CAN EMPLOYEES REPORT WORK-RELATED ACCIDENTS TO THE LABOUR DEPARTMENT? Employees can approach the Employees' Compensation Division of the Labour Department (Tel. hotline: 27171771) to complete a Notification of Accident if they know that their employer has not reported the work-related accident to Labour Department. The Labour Department will then follow up the case. 10. WHAT ARE THE ARRANGEMENTS FOR PAYING COMPENSATION? 10. WHAT ARE THE ARRANGEMENTS FOR PAYING COMPENSATION? In general, there are four ways to pay the compensation to an employee (or a deceased employee's family members): i) Direct Payment If the accident incapacitates the employee for not more than three days and does not result in permanent incapacity, the employer should make compensation for temporary incapacity on the employee's normal pay day. ii) Direct Settlement For injuries that involve only temporary incapacity for a period exceeding three days but not more than seven days, the employer may directly agree with the employee about the compensation payable and make such payment on or before the employee's normal pay day. iii) Settlement by Certificate For other cases, the Employees' Compensation Division of the Labour Department will issue to the employer and the employee a Certificate of Compensation Assessment (Form 5) stating the amount of compensation payable. The employer should pay the employee, within 21 days from the date of issue of the certificate, the amount of compensation, or any outstanding amount, that is stated in the certificate. Employers who fail to pay the compensation are liable to a fine of $100,000. iv) Settlement by Court For cases that should be settled by direct payment (i.e. those involving temporary incapacity for a period not exceeding three days) but remain unsettled, the injured employee can recover the compensation from the employer in the Small Claims Tribunal. Other compensation claims that cannot be settled in the above ways will be determined by the District Court. 11. IF I CANNOT SETTLE THE WORK INJURY COMPENSATION MATTERS WITH MY EMPLOYER AMICABLY, THEN WHAT IS THE TIME LIMIT FOR BRINGING MY CASE TO THE COURT? 11. IF I CANNOT SETTLE THE WORK INJURY COMPENSATION

MATTERS WITH MY EMPLOYER AMICABLY, THEN WHAT IS THE TIME LIMIT FOR BRINGING MY CASE TO THE COURT? Section 14(1) of the ECO stipulates that an application to the Court for employees' compensation must be made within 24 months from the date of the accident that causes the injury. Therefore, if a case cannot be settled between the employer and the employee within a certain period, the employee concerned should contact the Employees' Compensation Division of the Labour Department (telephone hotline: 27171771; e-mail: enquiry@labour.gov.hk) as soon as possible. Staff of the Division will either refer the employee to the Legal Aid Department for further assistance, or assist the employee in registering a claim with the District Court or the Small Claims Tribunal. 12. ARE EMPLOYERS OBLIGED TO TAKE OUT COMPENSATION INSURANCE POLICIES FOR ALL EMPLOYEES? 12. ARE EMPLOYERS OBLIGED TO TAKE OUT COMPENSATION INSURANCE POLICIES FOR ALL EMPLOYEES? Regardless of whether the employees are working full-time or part-time (including part-time domestic helpers and summer job workers, etc.), employers are required, under section 40 of the ECO, to have valid insurance policies taken out to cover employers' liabilities under the Ordinance and at common law for injuries at work in respect of every employee. Offences and Penalties Employers who fail to have valid insurance cover are liable to prosecution and, on conviction, a maximum fine of $100,000 and imprisonment for two years. Employers must also not make any deduction from the earnings of employees to defray the costs of insuring against their liabilities to pay compensation. Otherwise, they are liable to a fine of $10,000 and imprisonment for 6 months. 13. IF I AM NOT SATISFIED WITH THE AMOUNT OF COMPENSATION GRANTED ACCORDING TO THE ECO, OR I THINK THAT MY EMPLOYER HAS WRONGFULLY NEGLECTED THE SAFETY MEASURES, THEN CAN I CLAIM MORE? 13. IF I AM NOT SATISFIED WITH THE AMOUNT OF COMPENSATION GRANTED ACCORDING TO THE ECO, OR I THINK THAT MY EMPLOYER HAS WRONGFULLY NEGLECTED THE SAFETY MEASURES, THEN CAN I CLAIM MORE? Under section 26 of the Employees' Compensation Ordinance, the Ordinance shall not limit or in any way affect any civil liability of the employer, where the injury is caused to an employee by the negligence, breach of statutory duty or other wrongful act or omission of the employer, or of any person for whose act or default the employer is responsible. Put in another way, in the above circumstances, the relevant employees can start a civil claim against their employer under common law for damages (compensation), in addition to their right under the Ordinance. As explained in the case of Cathay Pacific Airways Ltd v Wong Sau Lai, employers are duty-bound at common law to take reasonable care for their employees' safety. This common law duty retains its importance despite the existence of a large body of work safety legislation. The duty of care owed by employers to employees at common law is a single duty to take reasonable care for their employees' safety, including but not limited to the provision of the followings: a safe place of work, including a safe means of access; a safe system of work; safe equipment; safe and competent co-workers; proper instructions and supervision; and (where called for) adequate training. You are strongly advised to consult your lawyers before taking any legal action. 1. HOW ARE ‘HOURS WORKED’ CALCULATED? 1. HOW ARE ‘HOURS WORKED’ CALCULATED? Section 4 of the Minimum Wage Ordinance states that hours worked include any time when the employee is, in accordance with the contract of employment or with the agreement or at the direction of the employer: in attendance at a place of employment, irrespective of whether he is provided with work or training at that time; or travelling in connection with his employment, excluding travelling (in either direction) between his place of residence and his place of employment, other than a place of employment that is outside Hong Kong and is not his usual place of employment. A place of employment means any place at which the employee is, in accordance with the contract of employment or with the agreement or at the direction of the employer, in attendance for the purpose of doing work or receiving training. Apart form the Minimum Wage Ordinance, if the time in question is regarded as hours worked by the employee under the employment contract or agreement with the employer, such time should be included in computing minimum wage. Example 1 An employee works in the office from 9:00 a.m. to 1:00 p.m. and from 2:00 p.m. to 6:00 p.m. in accordance with the contract of employment. He also works overtime from 6:00 p.m. to 7:00 p.m. with the agreement or at the direction of the employer. The time from 9:00 a.m. to 1:00 p.m. and from 2:00 p.m. to 7:00 p.m. is hours

worked for computing minimum wage. Example 2 An employee works in a company in Hong Kong. The travelling time between his place of residence and the company is not hours worked for computing minimum wage. One day, this employee delivers some documents from the company to a client's office, and then returns to the company. With regard to the travelling time between his company and the client's office when he is, in accordance with the contract of employment or with the agreement or at the direction of the employer, travelling in connection with his employment, the time is hours worked for computing minimum wage. Example 3 If an employee arrives to work early to avoid busy traffic, or stays late for personal reasons, then this would not be 'hours worked' as he/she is not, in accordance with the contract of employment or with the agreement or at the direction of the employer, in attendance for the purpose of doing work or receiving training. Example 4 At the direction of the employer, an employee works outside Hong Kong (for instance, at the company's factory in the Mainland). The employer provides free accommodation and/or meals for the employee during the period of stay. If the employee in a certain period of time during the stay is not in attendance at a place of employment for the purpose of doing work or receiving training in accordance with the contract of employment or with the agreement or at the direction of the employer - such as his sleeping time, personal recreation time - such time is not hours worked for computing minimum wage. 2. SHOULD MEAL BREAK AND REST DAYS BE PAID? 2. SHOULD MEAL BREAK AND REST DAYS BE PAID? Neither the Minimum Wage Ordinance nor the Employment Ordinance prescribes that meal break and rest days should be paid. Whether meal break and rest days are with pay or otherwise are matters to be agreed between employers and employees. Example 1: An employee has his meal break from 1:00 p.m. to 2:00 p.m. At the same time, he remains in attendance at his post for the purpose of doing work in accordance with the contract of employment or with the agreement or at the direction of the employer. Such meal break is hours worked for computing minimum wage. Example 2: An employee has his meal break from 1:00 p.m. to 2:00 p.m. Owing to personal reasons, he takes his meal in the workshop. Although he is in the workshop during the period from 1:00 p.m. to 2:00 p.m., he is not, in accordance with the contract of employment or with the agreement or at the direction of the employer, in attendance in the workshop for the purpose of doing work or receiving training. And the hours worked for computing minimum wage shall not count such meal break. 3. SHOULD ON-CALL OR STANDBY TIME BE COUNTED AS 'HOURS WORKED'? 3. SHOULD ON-CALL OR STANDBY TIME BE COUNTED AS 'HOURS WORKED'? If an employee while being on-call or standby is in attendance at a place of employment in accordance with the contract of employment or with the agreement or at the direction of the employer, such on-call or standby time is hours worked for computing minimum wage. On the other hand, if he is not in attendance at a place of employment during the on-call or standby time, such time is not hours worked for computing minimum wage. A place of employment means any place at which the employee is, in accordance with the contract of employment or with the agreement or at the direction of the employer, in attendance for the purpose of doing work or receiving training. Example 1: An employee's working hours are from 9:00 a.m. to 6:00 p.m. According to the contract of employment, he and his colleagues are required to take turns for attendance at the workplace from 7:00 p.m. to 10:00 p.m. for on-call duties once a week in order to provide emergency services upon clients' calls. During the on-call time, he is not allowed to leave the workplace without permission. Since the employee in this example is, in accordance with the contract of employment, in attendance at the place of employment while being on-call, the on-call time from 7:00 p.m. to 10:00 p.m. is hours worked for computing minimum wage. 4. HOW DO WE DEAL WITH COMMISSION? 4. HOW DO WE DEAL WITH COMMISSION? According to the Employment Ordinance, the definition of wages includes commission (except commission which is of a gratuitous nature or which is payable only at the discretion of the employer). Hence, other than commission which is gratuitous or payable only at the discretion of the employer, commission is wages and must be paid in accordance with the provisions of the Employment Ordinance. Subject to the provisions of other legislation, employers and employees may agree on how commission is calculated and payable in their employment contracts. According to Section 6(5) of the Minimum Wage Ordinance, any commission paid: with the prior agreement of the employee at any time after the first 7 days of a wage

period but before the end of the 7th day immediately after that wage period must be counted as part of the wages payable in respect of that wage period irrespective of when the work is done or the commission is otherwise payable under the contract of employment. Hence, in determining whether the wages of an employee meet the minimum wage requirement, if there is prior agreement of the employee, commission can be counted as part of the wages payable in respect of a wage period according to the timing when the commission is paid. Without the prior agreement of the employee, the above provision is not applicable. Example 1: An employee is entitled to a basic salary plus commission according to the contract of employment. His wage period is each calendar month. According to the contract of employment, commission is payable in respect of a number of wage periods. → In determining whether the wages of this employee meet the minimum wage requirement, wages payable in respect of each month include the basic salary as well as the commission payable in respect of the corresponding month, no matter whether the employer has paid it or not. Example 2: An employer pays an employee commission of $1,000 (which is originally payable in respect of the wage period of March) on 31 January with the prior agreement of the employee. → In determining whether the wages of this employee meet the minimum wage requirement, this commission of $1,000 is counted as wages payable in respect of January, not as wages payable in respect of March. Being paid in the period from 8 January to 7 February, the commission is counted as wages payable in respect of January. Example 3: An employer pays an employee commission of $2,000 and $3,000 on 8 April and 7 June respectively with the prior agreement of the employee. The commission is originally payable in respect of the wage period of July. → In determining whether the wages of this employee meet the minimum wage requirement, the commission of $2,000 is counted as wages payable in respect of April and the commission of $3,000 is counted as wages payable in respect of May, both not being counted as wages payable in respect of July. Being paid in the period from 8 April to 7 May, the commission of $2000 is counted as wages payable in respect of April. Being paid in the period from 8 May to 7 June, the commission of $3000 is counted as wages payable in respect of May. 1. WHAT IS THE MONETARY CAP IF THE WAGE PERIOD IS NOT A CALENDAR MONTH? 1. WHAT IS THE MONETARY CAP IF THE WAGE PERIOD IS NOT A CALENDAR MONTH? If the wage period of an employee is not a calendar month, the monetary cap of $11,500 per month on keeping records of the total number of hours worked is calculated on a proportional basis. Example 1: The wage period of an employee is half-monthly, lasting from the 1st day to the 15th day and from the 16th day to the last day of a month. Taking the two wage periods in August as an example, the monetary cap applicable to this employee for the records of the total number of hours worked is calculated proportionally as follows:- (a) Wage period from 1 to 15 August: $11,500 X 15 days ÷ 31 days (i.e. the ratio that the period 1 to 15 August bears to August) = $5,564.52 → If wages payable in respect of the above wage period is at $5,564.52 or above, the wage and employment records are not required to include the total number of hours worked in that wage period. (b) Wage period from 16 to 31 August: $11,500 X 16 days ÷ 31 days (i.e. the ratio that the period 16 to 31 August bears to August) = $5,935.48 → If wages payable in respect of the above wage period is at $5,935.48 or above, the wage and employment records are not required to include the total number of hours worked in that wage period. Example 2: The wage period of an employee runs from the 16th day of each month to the 15th day of the following month. Taking the wage period of 16 August to 15 September as an example, the monetary cap applicable to this employee for the records of the total number of hours worked is calculated proportionally as follows:- $11,500 X 16 days ÷ 31 days (i.e. the ratio that the period 16 to 31 August bears to August) + $11,500 X 15 days ÷ 30 days (i.e. the ratio that the period 1 to 15 September bears to September) = $11,685.48 → If wages payable in respect of the above wage period is at $11,685.48 or above, the wage and employment records are not required to include the total number of hours worked in that wage period. 2. WHAT IS THE FORMAT REQUIRED FOR THE RECORD OF THE TOTAL NUMBER OF HOURS WORKED? 2. WHAT IS THE FORMAT REQUIRED FOR THE RECORD OF THE TOTAL NUMBER OF HOURS WORKED? Neither the Employment Ordinance nor the Minimum Wage Ordinance specifies the form of recording the total number of hours worked. Officers of the Labour Department may inspect the wage and employment records and

require the total number of hours worked and the following particulars in the wage and employment records (which are currently set out in the Employment Ordinance) to be produced in a single document: name and identity card number of the employee wage period wages paid in respect of each wage period periods of annual leave, sick leave, maternity leave and holidays entitled and taken, together with details of payments made in respect of such periods While the employer is not required to keep the records of the total number of hours worked by the employee when wages payable in respect of a wage period are at $11,500 or above per month, it is pertinent to note that the employee is still entitled to be paid wages in respect of that wage period of not less than the minimum wage. MATTERS RELATED TO THE EMPLOYMENT ORDINANCE I. MATTERS RELATED TO THE EMPLOYMENT ORDINANCE MATTERS RELATED TO THE EMPLOYEES' COMPENSATION ORDINANCE II. MATTERS RELATED TO THE EMPLOYEES' COMPENSATION ORDINANCE OTHER MAJOR EMPLOYMENT AND LABOUR LEGISLATION III. OTHER MAJOR EMPLOYMENT AND LABOUR LEGISLATION THE LABOUR TRIBUNAL AND THE LABOUR DEPARTMENT IV. THE LABOUR TRIBUNAL AND THE LABOUR DEPARTMENT 1. LIABILITIES ON COMPENSATIONS 1. LIABILITIES ON COMPENSATIONS 2. COMPENSATION ITEMS 2. COMPENSATION ITEMS 3. REPORT ON WORK INJURIES OR RELATED ACCIDENTS 3. REPORT ON WORK INJURIES OR RELATED ACCIDENTS 4. OTHER MATTERS ON WORK INJURIES 4. OTHER MATTERS ON WORK INJURIES BEFORE HEARINGS BEFORE HEARINGS DURING HEARINGS DURING HEARINGS PREPARATION FOR THE HEARING OR TRIAL PREPARATION FOR THE HEARING OR TRIAL AFTER HEARINGS AFTER HEARINGS