



Hiring Part-Time Staff in Hong Kong

在香港聘请兼职雇员的安排

Hiring Part-Time Staff is not generally a red-flag employment issue in Hong Kong, as there is no obligation to pay overtime and it is not specifically regulated under the *Employment Ordinance (Cap 57)*. However, employers should be wary of related issues such as the issue of continuous employment, statutory minimum wage, and calculation of payment for statutory entitlements.

在香港，聘请兼职雇员通常不是一个具有警示性的雇佣问题，因为雇主没有责任支付加班费，而且《雇佣条例》（第57章）也没有特别的对此做出规定。然而，雇主仍应对连续性受雇要求、法定最低工资以及法定权益支付计算方面有所警惕，以应对相关问题。

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Q:

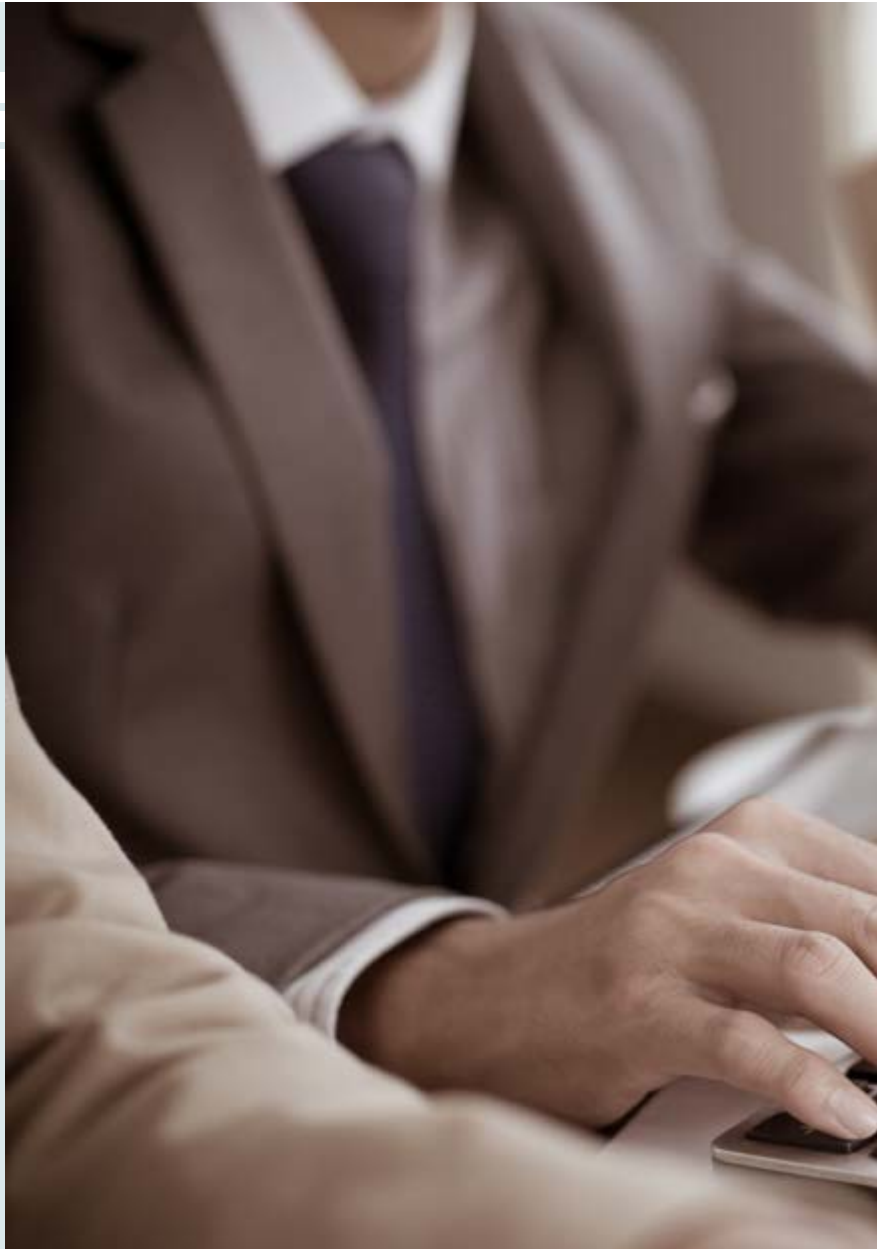
We are a travel agency in Hong Kong which hires a lot of part-time staff during the summer season. They may be required to work overtime occasionally due to the high demand of our services. Do any issues arise from the overtime arrangement and payments to these staff that we should be aware of?

A:

1. Continuous Employment and its Implications

Under Hong Kong law, employees' entitlement to statutory benefits is dependent on whether the continuous employment requirement is satisfied. An employee will be deemed to be employed under a continuous contract if he/she has been continuously employed for a minimum duration of four consecutive weeks for at least 18 hours a week.

If the part-time employees are employed under a continuous contract, they will be entitled to statutory entitlements such as rest days, paid statutory holidays, paid annual leave, sickness allowance, maternity/paternity leave pay, severance payments and long service payments on termination if the respective length of service requirements are also satisfied.



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问:

我们是香港一家旅行社，到了夏季旅游旺季，我们会聘用大量的兼职人员。由于我们服务需求量大，可能会偶尔要求雇员加班。在加班安排及给雇员支付工资方面，我们应该注意什么事项？

答:

1. 连续受雇及其影响

根据香港法律，雇员是否有权享有相关的法定权益，取决于其是否满足连续受雇的要求。若雇员连续受雇4周或以上，且每周至少工作18小时，将被视为以连续性合约受雇。

若兼职雇员以连续性合约受雇，他们将有权享有以下法定权益：休息日、有薪法定假日、有薪年假、疾病津贴及产假/侍产假薪酬；若满足相应的服务时限要求，他们在雇佣合约终止时也享有遣散费和长期服务金。

2. 加班问题

在香港，加班通常不是一个具有警示性的雇佣问题，因为雇主没有责任支付加班费，而且《雇佣条例》（香港法例第57章）也没有对加班做出规定。

然而，当雇员需要加班时，雇主可能要考虑到法定最低工资问题。目前，工资期内每“工作时数”的法定最低工资为32.50元港币。根据《最低工资条例》（香港法例第608章）规定，雇主有责任记录雇员的总工作时数，记录的金

2. Overtime Issues

Overtime is not generally a red-flag employment issue in Hong Kong, as there is no obligation to pay overtime and it is not regulated under the Employment Ordinance (Cap 57) (EO).

Considerations in relation to statutory minimum wage may become relevant when employees are required to work overtime. Currently, the statutory minimum wage is HK\$32.50 for every "hour worked" in a wage period. Employers are obligated under the Minimum Wage Ordinance (Cap 608) (MWO) to keep records of the total hours worked by employees up till HK\$13,300 per month. Special attention should be given to employees earning fixed wages and whose average hourly wage only exceeds the statutory minimum wage rate slightly. This is because if the employees work overtime frequently, their number of "hours worked" may increase to an extent where their wages fall below the minimum wage requirements and become non-compliant with the MWO.

Employers also need to be aware that if an employee is required to work on a rest day or on a statutory holiday, the employer is required to substitute another day as a rest day or statutory holiday.

If an employee works on a rest day, an employer will need to substitute another rest day with the consent of its employees. The substituted rest day must fall within the

same month before the original rest day, or within 30 days after the original rest day.

If an employee is required to work on a statutory holiday, the employer should give 48 hours' prior notice to the employee, and must arrange an alternative holiday within 60 days before or after the statutory holiday. If both parties agree, the employee may take any day within 30 days of the statutory or alternative holiday as a substituted holiday.

An employer is prohibited from making any payment in lieu of granting a statutory holiday.

3. Issues with Calculation of Statutory Entitlements

In relation to legal red flags for pay issues, one of the queries that employers tend to have is what constitutes "wages", and the use of average daily wages for the purposes of calculating relevant statutory entitlements.

In Hong Kong, payment for statutory entitlements (e.g. statutory holiday pay, annual leave pay, sickness allowance, maternity/paternity leave pay, payment in lieu of notice, etc.) must be calculated using the average daily wages formula. This is:

Total Wages payable in the previous 12 calendar months prior to the termination date / 365 (presuming

额上限为每月13,300元港币。雇主应特别注意那些领取固定工资，而平均时薪只是略微超出法定最低工资水平的雇员。这是因为如果那些雇员频繁加班，那么其“工作小时数”可能会增加至一个导致其工资低于最低工资要求的程度，造成不符合《最低工资条例》的规定。

雇主也需要注意，若要求雇员在休息日或法定假日工作，必须安排雇员享有另定休息日或另定假日。

若雇员在休息日工作，雇主需要在征得雇员的同意下安排雇员享有另定休息日。另定休息日可以安排在同一个月内的原定休息日之前，也可以安排在原定休息日后的30天内。

若要求雇员在法定假日工作，雇主应提前48小时通知雇

员，而且必须安排另定假日，另定假日应安排在原法定假日前后60天内。若雇主雇员双方同意，雇员可以在法定假日或另定假日的30天内享有代替假日。

雇主不得以任何形式的款项代替雇员所享有的法定假日。

3. 法定权益计算问题

有关薪酬可能带来的法律问题，雇主常见的疑问之一是“工资”的构成，以及如何使用每日平均工资来计算相关的法定权益。

在香港，法定权益（如法定假日薪酬、年假薪酬、疾病津贴、产假/待产假薪酬、代通知金等）项目必须使用每日平均工资公式进行计算。公式如下：


the employer treats all days in the month as fully paid as is customary in Hong Kong)

"Wages" is broadly defined under the EO to include all earnings, contractual commissions, allowances paid in cash and certain overtime payments. There are some exclusions from wages which include annual bonuses (whether discretionary or contractual) and discretionary commission payments.^W

A lot of employers are unaware that at a minimum, they must follow the above formula to calculate these statutory entitlements. They often assume that the employees' base pay is equivalent to "wages" for the purpose of calculating average daily wages. This will particularly be an issue if employees work on a variable pay/commission basis (especially sales employees), as their "wages" will vary over a 12 month period and the average daily wages calculation does not just take into account base pay. If an employer only uses the base salary as the basis of calculating the statutory entitlements (e.g. statutory sick leave and statutory annual leave pay), an employee may

argue that he has been paid less than he is entitled to for these statutory entitlements.

Further, many companies calculate payment in terms of payment for working days only (i.e. 260 days a year). This is an enhancement to Hong Kong's general position, but as a result, some employers are not aware that they will need to pay for statutory holidays that land on a Saturday (e.g. the Tuen Ng Festival this year which is a statutory holiday) at the average daily wages rate.

There are often arguments around whether certain payments constitute "wages", especially when it comes to bonuses vs. commission payments, contractual vs. discretionary, which also affect the calculation of average daily wages. It is therefore important for employers to understand whether the benefits they intend to offer to employees are categorised as "wages" to ensure that the calculation of average daily wages is done correctly to reduce the risk of employees bringing claims for a shortfall in the payment for their statutory entitlements. 

“若雇员在休息日工作，雇主需要在征得雇员的同意下安排雇员享有另定休息日。”

在合约终止日期前12个月支付的工资总额 / 365（假定雇主按照香港惯例，将一个月内的所有日子都视为全数受薪）。

在《雇佣条例》中，“工资”的定义广泛，包括所有收入、合约性佣金、现金津贴和某些加班费。有些项目则不包括在工资范围内，如年度花红（无论是酌情性花红还是合约性花红）以及酌情性的佣金。

很多雇主都没有意识到，他们必须按照以上公式来计算这些法定权益。他们经常假定雇员的基本底薪等同于“工资”，并以此用作计算每日平均工资。若雇员的收入基础牵涉到浮动薪酬/佣金的计算（特别是销售人员），这尤其会是一个问题，因为他们的“工资”在12个月的时期内都会有所不同，而计算每日平均工资不仅仅参照基本底薪。

若雇主只以基本底薪作为计算法定权益的基础（如法定病假和法定年假薪酬），雇员可能会争议他在这些权益方面得到的款项比其应得的要少。

此外，许多企业仅以工作日（即一年260天）计算薪酬。这是香港的基本情况的提升。但是，这情况导致一些雇主不会意识到，他们需要为适逢是周六的法定假日（如今年的法定节日端午节）以每日平均工资率对员工支付薪酬。

有些项目是否构成“工资”是经常会有争论的议题，特别是当涉及到花红与佣金，合约性或酌情性佣金的分类的时候。这也会影响到每日平均工资的计算。因此，重要的是雇主需要明白其为雇员提供的福利是否构成“工资”的一部分，以确保每日平均工资的计算正确，减少雇员就其法定权益支付不足而进行索赔的风险。 