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Investments in Hong Kong - Labour Legislation

1. Introduction

The Employment Ordinance is the main piece of legislation governing conditions of employment in Hong Kong. It now covers a comprehensive range of employment protection and benefits for employees.

All employees **covered** by the Employment Ordinance, irrespective of their hours of work, are entitled to basic protection under the Ordinance including payment of wages, restrictions on wages deductions and the granting of statutory holidays, etc. 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.

2. Basic Labour Protection

(1) Wage Protection

The Minimum Wage Ordinance establishes a Statutory Minimum Wage (SMW) is expressed as an hourly rate. In essence, wages payable to an employee in respect of any wage period should be no less than the SMW rate on average for the total number of hours worked.

SMW has come into force since 1 May 2011. With effect from 1 May 2019, the SMW rate is raised to \$37.5 per hour. Concurrently, the monetary cap on the requirement of employers keeping records of the total number of hours worked by employees is also revised from \$14,100 per month to \$15,300 per month.

(2) Rest Days, Holidays and Leave

(a) Rest Days

An employee 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 abstain from working for his employer.

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. For any rest day on which the employee is required to work, the employer should substitute some other 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.

(b) Holidays

An employee, irrespective of his length of service, is entitled to the 12 statutory holidays in Hong Kong. Regardless of whether an employee is entitled to holiday pay, an employer should grant his employee a statutory holiday, or arrange an “alternative holiday” or “substituted holiday”. An employer must not make any form of payment to the employee in lieu of granting a holiday.

(c) Annual Leave

An employee is entitled to annual leave with pay after having been employed under a continuous contract for every 12 months. An employee may choose to accept payment in lieu of the part of his leave entitlement which exceeds 10 days.

(3) Sickness Allowance

An employee can accumulate paid sickness days after having been employed under a continuous contract. Paid sickness days are accumulated at the rate of two paid sickness days for each completed month of the employee's employment during the first 12 months, and four paid sickness days for each completed month of employment thereafter. Paid sickness days can be accumulated throughout the whole employment period but shall not exceed 120 days at any one time.

The daily rate of sickness allowance is a sum equivalent to four-fifths of the average daily wages earned by an employee in the 12-month period preceding the sickness (or first sickness) day. If an employee is employed for less than 12 months, the calculation shall be based on the shorter period.

(4) Maternity Protection and Paternity Leave

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 the employer.

A female employee employed under a continuous contract immediately before the commencement of her maternity leave and having given notice of pregnancy and her intention to take maternity leave to the employer is entitled a continuous period of 10 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. An additional period of leave for not more than four weeks on the grounds of illness or disability due to the pregnancy or confinement.

Also, A male employee is entitled to 5 days' paternity leave for each confinement of his spouse/partner if he is the father of a new-born child or a father-to-be, and has been employed under a continuous contract; as well as has given the required notification to the employer.

(5) Mandatory Provident Fund

As an employer, it is legal obligation under the MPF System to enroll employees into the MPF scheme are participating. Except for exempt persons, you should enroll both full-time and part-time employees who are at least 18 but under 65 years of age in an MPF scheme within the first 60 days of employment. And the casual employees who are employed in the construction industry or the catering industry on a day-to-day basis, or for a fixed period of less than 60 days. MPF arrangement is required for casual employees no matter how short a period they are employed, even if it is just one day.

Employers and employees are each required to make regular mandatory contributions of 5% of the employee's relevant income to an MPF scheme, subject to the minimum and maximum relevant income levels. For a monthly-paid employee, the minimum and maximum relevant income levels are \$7,100 and \$30,000 respectively. Employers must provide employees with a monthly pay-record showing the required details, including the amount of the employee's relevant income and the amounts of both employer's and employees' contributions, within seven working days after the mandatory contributions are made.

When a regular employee who is a member of an MPF scheme ceases employment, the employer should arrange for the last payment of mandatory contributions for and in respect of that employee by the next contribution day, and notify the MPF trustee of the date of termination of employment of the employee via the next remittance statement or a written notice.

3. Labour Disputes

For employers and employees who have labour-management conflicts, they may seek voluntary conciliation service from the Labour Relations Division (LRD) of the Labour Department. Conciliation service is provided free of charge, to assist employers and employees in establishments outside the government sector to resolve any employment claims or disputes arising from the Employment Ordinance, or the terms in their employment contracts.

The Ordinance enables the Commissioner for Labour to inquire into, and to authorize a conciliation officer of the LRD to conciliate in a trade dispute in order to promote settlement. Participation in all forms of conciliation is voluntary and no compulsion is exerted by the Ordinance on the parties to attend conciliation meetings.

Where a dispute is not settled by ordinary conciliation, the conciliation officer shall promptly report the matter to the Commissioner. On receipt of the report, the Commissioner may appoint a special conciliation officer to initiate or undertake special conciliation. Instead of authorizing ordinary conciliation, the Commissioner may, if the circumstances so warrant, refer a dispute directly to special conciliation.

Where a dispute is settled by conciliation or special conciliation, an agreement to cover the terms of settlement shall be drawn up and signed by both parties and a copy of which shall be delivered to the Commissioner. The parties are, of course, expected to honour such an agreement.

If you wish to obtain more information or assistance, please visit the official website of Kaizen CPA Limited at www.kaizencpa.com or contact us through the following and talk to our professionals:

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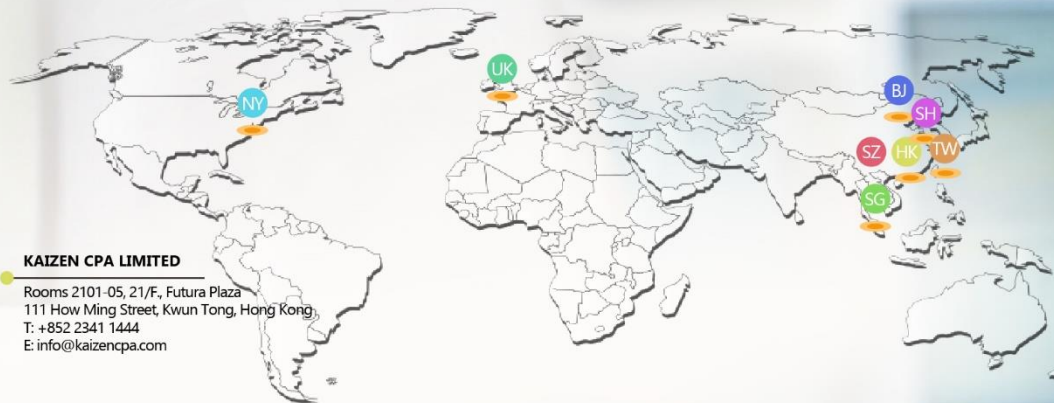
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