



# HOW TO HIRE MY FIRST EMPLOYEE IN HONG KONG

## MAIN LEGAL STEPS TO FOLLOW TO HIRE A FIRST EMPLOYEE

Before bringing on board a first employee hire, the employer should pay attention to the following main legal issues:

### Job advertisement

It is vital that when advertising for a position, the employer does not include any requirements or statements in the advertisement which could be considered discriminatory (such as sex, race, age, marital status or asking for a photo to be provided as part of the application form).

### Interview process

Similarly, it is important that when interviewing candidates, an objective selection criteria is used to avoid any potential discriminatory claims being raised by candidates. In this regard, employers should stick to asking candidates questions relating to their work experiences and qualifications rather than personal questions which are irrelevant in determining whether a candidate is suitable for the advertised position.

### Background checks

It is prudent for an employer to obtain at least one or two reference checks from a candidate that it wishes to hire before making a formal offer. The employer should obtain a candidate's consent before conducting any background checks.

### Offer of employment

Typically, an employer will make a verbal offer to a candidate. If that candidate accepts the verbal offer, a formal employment contract will then be prepared and executed by the parties. We will discuss what is usually included in an employment contract in the next question.

### Immigration

All employees in Hong Kong must hold appropriate work visas before commencing work unless they have a right of abode. If a work visa is required, the employer will need to sponsor the new employee.

## DESIGN AND CONTENTS OF AN EMPLOYMENT CONTRACT

In preparing an employment contract, the employer should be aware of the minimum statutory requirements prescribed under the Employment Ordinance and other related legislation. We will set out some of the main terms that are typically included for an average employee who will be employed "continuously" (that is, an employee who will be employed on a continuous basis for at least four weeks and will work 18 hours or more each week):

**Term** - can be fixed or ongoing. Importantly, any contract for a duration in excess of one month must be in writing; otherwise, it will be deemed to be a contract for one month renewable from month to month.

**Wages** - an employee must be paid at least minimum wage (currently set at HK\$32.5 per hour). Wages are usually paid monthly in Hong Kong.

**Bonuses** - bonus payments are not mandatory in Hong Kong. However, employers in Hong Kong typically provide employees with an end-of-year bonus ("13-month payment" or "double pay").



**Annual Leave** - employees are entitled to a minimum of 7 to 14 days' annual leave for each 12 month period of employment depending on their length of service.

**Other Leave** - the Employment Ordinance also sets out other types of leave which must be adhered to, including statutory holidays, sick leave, maternity leave and the recently introduced paternity leave.

**Mandatory Provident Fund** - the MPF scheme was introduced in Hong Kong to assist employees with their retirement savings. Both the employer and employee are required to contribute a rate of 5% of the employee's relevant income up to a statutory limit (currently set at HK\$1,500 per month).

**Termination** - both the employer and employee may terminate the employment relationship by providing notice or payment in lieu of notice. The notice period must not be less than 7 days, except in limited circumstances. For instance, no notice or payment in lieu is required if an employer decides to summarily dismiss an employee due to serious misconduct.

**Other clauses** may include protection of confidential information, non-competition, and governing law.

### CAN SOMEBODY DO BUSINESS FOR ME AND NOT BE AN EMPLOYEE?

In Hong Kong, there are different methods in which a company can engage an individual other than in the capacity as an employee.

The most common is as an independent contractor. Independent contractors are used frequently in the construction industry, among others. Whether someone is an independent contractor can sometimes be a difficult question. Some factors which indicate that someone is an independent contractor and not an employee include the fact that they have control over their work schedule (that is, they are not subject to the employer's day-to-day control), they can use their own equipment, and they have the power to hire their own people to complete the job at hand.

Another common method is the use of agency workers. In general, the agency will provide an individual to work for you. In this type of arrangement, it is generally the agency and not you which is considered the worker's employer.