



Hong Kong Employment Law 101

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Today's Presenters



Kat Weaver
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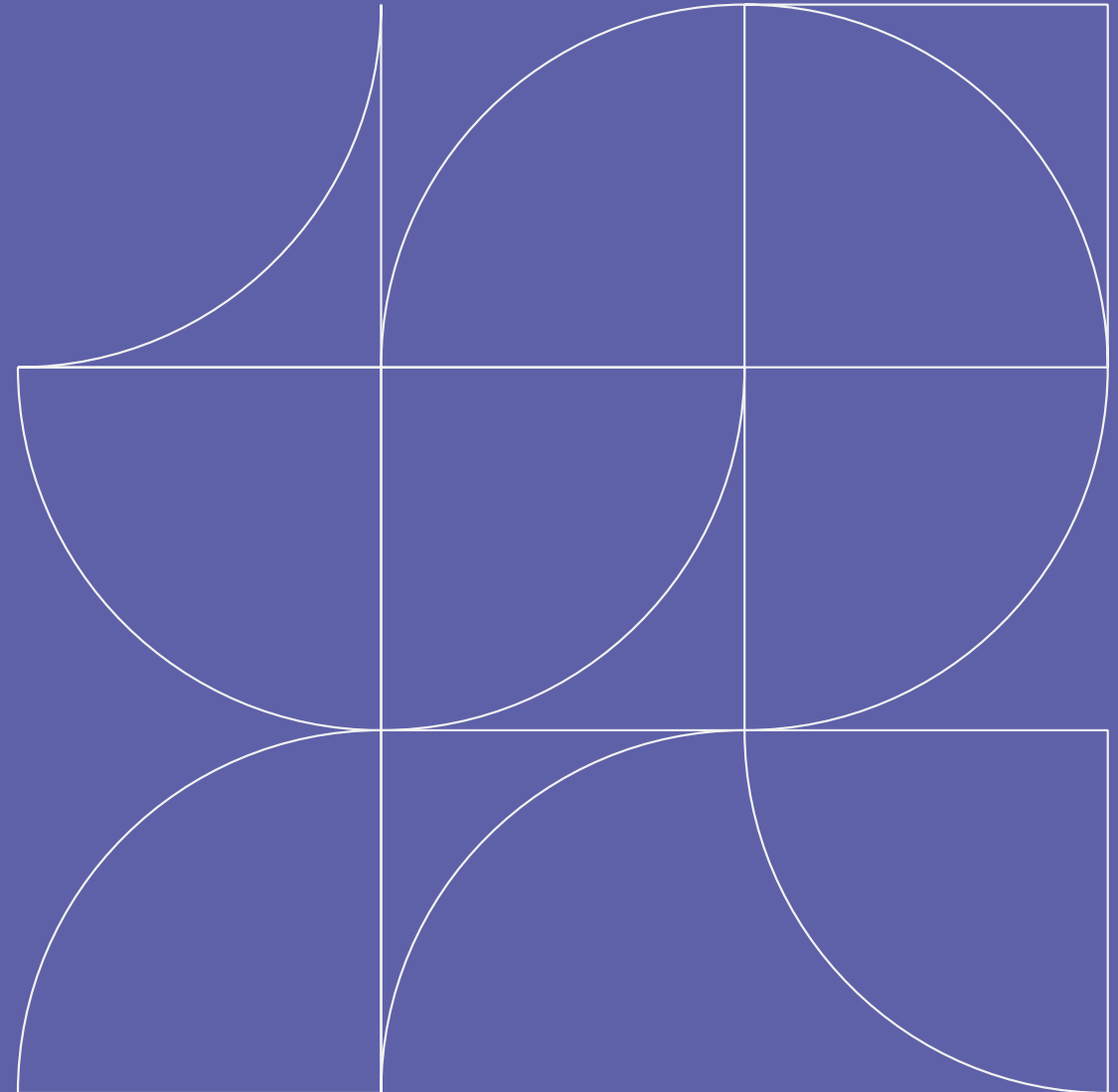
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Agenda

- 01** Framework regulating employment
- 02** Disciplinary procedures and termination of employment
- 03** Employee disputes
- 04** Audience Q&As

1

Framework regulating employment



Source of employee rights in Hong Kong



Employment arrangements

Types of employment

- Fixed term / open-ended contracts.
- Full-time / part-time.
- No requirement for an employment contract to be in writing.
- “**Continuous contract**” employees are entitled to additional statutory rights and benefits under the EO.
- No specific provisions on outsourcing or dispatch workers in Hong Kong.



Probationary period

- Generally ranges from 4 weeks to 6 months, depending on the seniority and performance of the employee.
- Employment may be terminated during probationary period.

Employment arrangements (cont.)

Wages

- Includes all remuneration, earnings, allowances, attendance bonus, commission, overtime pay, tips and service charges, however designated or calculated, capable of being expressed in terms of money, payable to an employee in respect of work done or to be done under their contract of service.
- Excludes discretionary annual bonuses, end of year payment, employer's MPF contributions, non-recurring travelling expenses, allowances to cover special expenses, and contractual overtime (unless "constant character" or on average exceeds 20% of monthly wages).
- Statutory minimum wage is currently HK\$42.10/hour.



Working hours and overtime

- Not regulated under Hong Kong law.
- Subject to contract.
- One statutory rest day should be granted every week.

Refresher Question 1

The definition of “continuous contract” will be amended to mean which of the following:

- A. employed for at least 4 weeks, with at least 18 hours worked per week
- B. employed for at least 4 weeks, with at least 17 hours worked per week
- C. employed for at least 4 weeks, with at least 17 hours worked per week or with at least 68 hours worked in total
- D. employed for at least 4 weeks, with at least 68 hours worked in total

Refresher Question 1

The definition of “continuous contract” will be amended to mean which of the following:

- A. employed for at least 4 weeks, with at least 18 hours worked per week
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- C. employed for at least 4 weeks, with at least 17 hours worked per week or with at least 68 hours worked in total
- D. employed for at least 4 weeks, with at least 68 hours worked in total

Refresher Question 2

Which of the following is included in the definition of 'wages' under the EO?

- A. Employer MPF contributions
- B. Discretionary annual bonus
- C. Attendance bonus
- D. Non-recurring travelling allowances

Refresher Question 2

Which of the following is included in the definition of 'wages' under the Employment Ordinance?

- A. Employer MPF contributions
- B. Discretionary annual bonus
- C. Attendance bonus
- D. Non-recurring travelling allowances

EO entitlements

Statutory annual leave

- An employee engaged under a continuous contract for at least 12 months is entitled to paid statutory annual leave ranging from 7 to 14 days (depending on the length of service).
- Statutory annual leave pay is based on the employee's average daily wages in the preceding 12 months.
- Statutory annual leave accrued for a leave year must be granted within 12 months thereafter.
- Statutory annual leave cannot be forfeited, but employers can require employees to take statutory leave on 14 days' prior written notice.

EO entitlements (cont.)

Statutory sickness allowance

- An employee engaged under a continuous contract accrues sick leave entitlement on a monthly basis, at the rate of 2 days per month during the first 12 months, and 4 days per month thereafter, capped at 120 days.
- An employee is only entitled to sickness allowance if:
 - they are absent for at least 4 consecutive days;
 - they have accrued sufficient sick leave; and
 - the sick leave is certified by a registered medical practitioner.
- Sickness allowance is paid at 80% of an employee's average daily wages over the preceding 12 months.

EO entitlements (cont.)

Rest day

- An employee engaged under a continuous contract is entitled to not less than one rest day every week.
- Rest days are appointed by the employer and may be granted on a regular or irregular basis.
- No compulsory work on rest days, unless in exceptional circumstances (in which case a substituted rest day should be granted within 30 days of the original rest day).

EO entitlements (cont.)

Statutory holiday

- All employees are entitled to unpaid statutory holidays.
- An employee is entitled to statutory holiday pay if they are employed under a continuous contract for at least 3 months before the relevant statutory holiday. Statutory holiday pay is based on the employee's average daily wages in the preceding 12 months.
- Statutory holidays will be increased progressively from 12 days to 17 days. One new statutory holiday is added every 2 years from 2022 onwards until 2030.
- Employers may grant an alternative holiday within 60 days before or after the statutory holiday.
- No payment in lieu of statutory holidays, except on termination of employment.

EO entitlements (cont.)

Statutory maternity leave

- 14 weeks for an employee engaged under a continuous contract. The leave period will be paid if the employee has been employed under a continuous contract for at least 40 weeks. The rate of payment is 80% of the employee's average daily wages over the preceding 12 months.
- An extra 4 weeks (unpaid) may be taken in case of illness or disability arising out of the pregnancy.
- The employee must notify the employer of the intention to take maternity leave after the confirmation of pregnancy.
- A continuous contract employee who has notified the employer of the pregnancy cannot be dismissed (except for a summary dismissal) during pregnancy or maternity leave period.

EO entitlements (cont.)

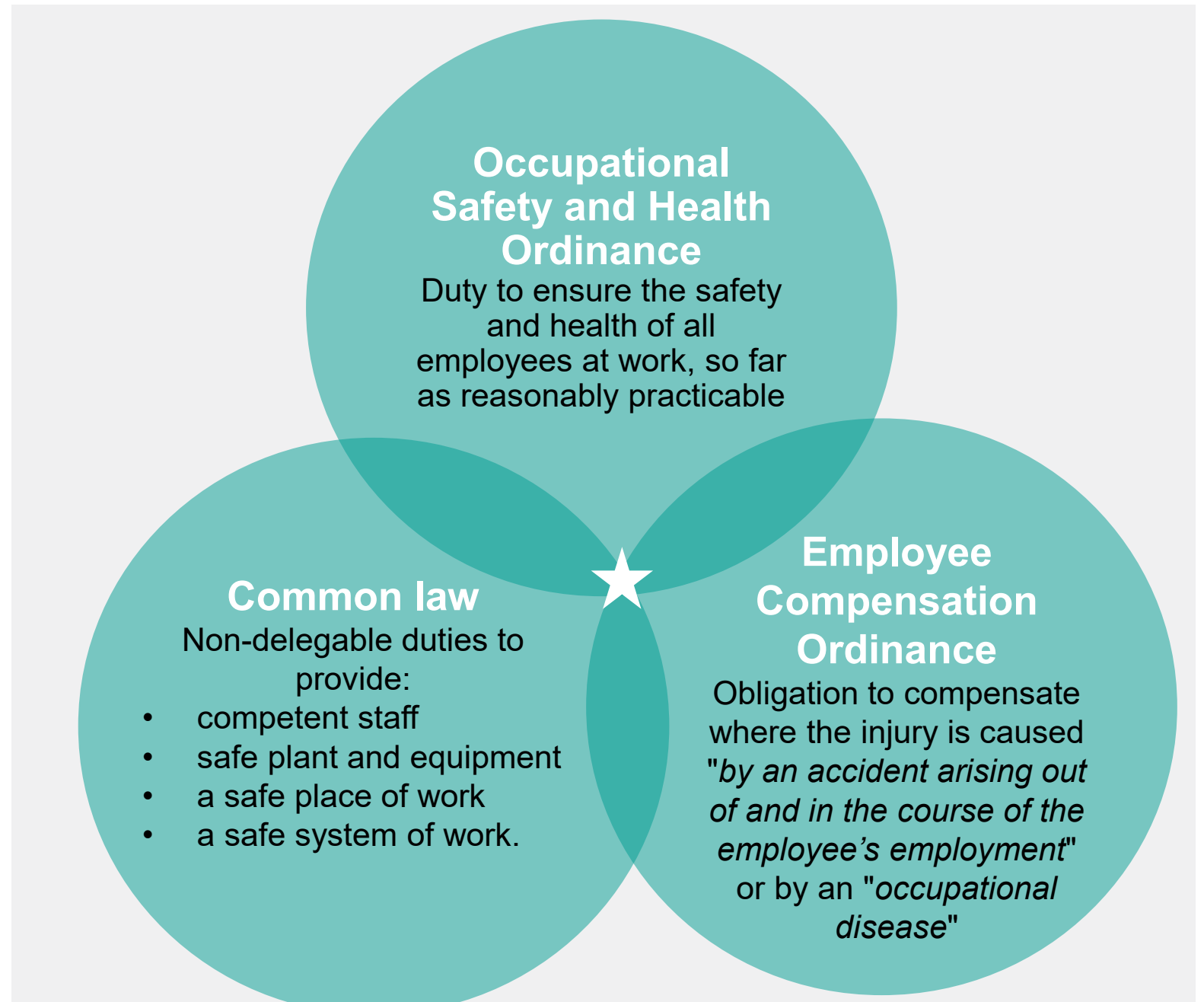
Statutory paternity leave

- 5 days for employees engaged under a continuous contract. The leave period will be paid if the employee has been employed under a continuous contract for at least 40 weeks. The rate of payment is 80% of the employee's average daily wages over the preceding 12 months.
- Can be taken as single or consecutive days.

Mandatory Provident Fund (MPF)

Governing Statute	<ul style="list-style-type: none">• Mandatory Provident Fund Schemes Ordinance.
Eligibility	<ul style="list-style-type: none">• Employees and self-employed persons.
Employer's obligations	<ul style="list-style-type: none">• Enrol employees employed for 60 days or more in a registered MPF scheme and make mandatory contributions.
Mandatory contributions	<ul style="list-style-type: none">• If the employee's relevant monthly income is at least HK\$7,100, both employee and employer are required to make monthly contributions to the employee's MPF, being the lower of 5% of the employee's relevant income and HK\$1,500.
Deduction from wages	<ul style="list-style-type: none">• The employer is required to deduct the employee's contribution from the wages and deposit into the employee's MPF account.
Offset mechanism	<ul style="list-style-type: none">• Currently, an employer can offset statutory long service payment or severance payment against the employee's accrued MPF benefits derived from the employer's mandatory and voluntary contributions.• Pursuant to the <i>Employment and Retirement Schemes Legislation (Offsetting Arrangement) (Amendment) Ordinance 2022</i> (gazetted in June 2022), the offsetting mechanism regarding employer's mandatory contributions will be abolished from 1 May 2025 onwards.
Exemptions	<ul style="list-style-type: none">• Employees under the age of 18 or 65 and those hired for less than 60 days.• Those who participate in an exempted retirement scheme.• Overseas employees with an employment visa for less than 13 months or are members of an overseas pension scheme.
Exemption from making employee contributions	<ul style="list-style-type: none">• Employees who earn less than HK\$7,100 per month.

General employer safety and health obligations



Equal opportunity legislation

Main Legislation	<ul style="list-style-type: none">• Sex Discrimination Ordinance• Family Status Discrimination Ordinance• Race Discrimination Ordinance• Disability Discrimination Ordinance
Key grounds	<ul style="list-style-type: none">• Sex (includes pregnancy, breastfeeding and marital status)• Disability• Family status (i.e. taking care of an immediate family member)• Race, color, descent and national or ethnic origin
Prohibited conduct	<ul style="list-style-type: none">• Direct discrimination• Indirect discrimination• Harassment (does not apply to family status)• Victimisation• Vilification (only applicable to race and disability)

Refresher Question 3

Under the EO, statutory annual leave can be forfeited if employees do not take them within the specified period. True or false?

- A. True
- B. False

Refresher Question 3

Under the Employment Ordinance, statutory annual leave can be forfeited if employees do not take them within the specified period. True or false?

A. True

B. False

Refresher Question 4

An employee is entitled to sickness allowance provided that they: (1) have accrued sufficient days to cover the sickness period; (2) have obtained a certificate from a registered medical practitioner; and (3) they are absent due to sickness for...

- A. at least four consecutive days
- B. at least four consecutive business/working days
- C. at least four non-consecutive days

Refresher Question 4

An employee is entitled to sickness allowance provided that they: (1) have accrued sufficient days to cover the sickness period; (2) have obtained a certificate from a registered medical practitioner; and (3) they are absent due to sickness for...

- A. at least four consecutive days
- B. at least four consecutive business/working days
- C. at least four days

Refresher Question 5

An employer is exempted from making employer's MPF contributions if the employee's income is less than HK\$7,100 per month. True or false?

- A. True
- B. False

Refresher Question 5

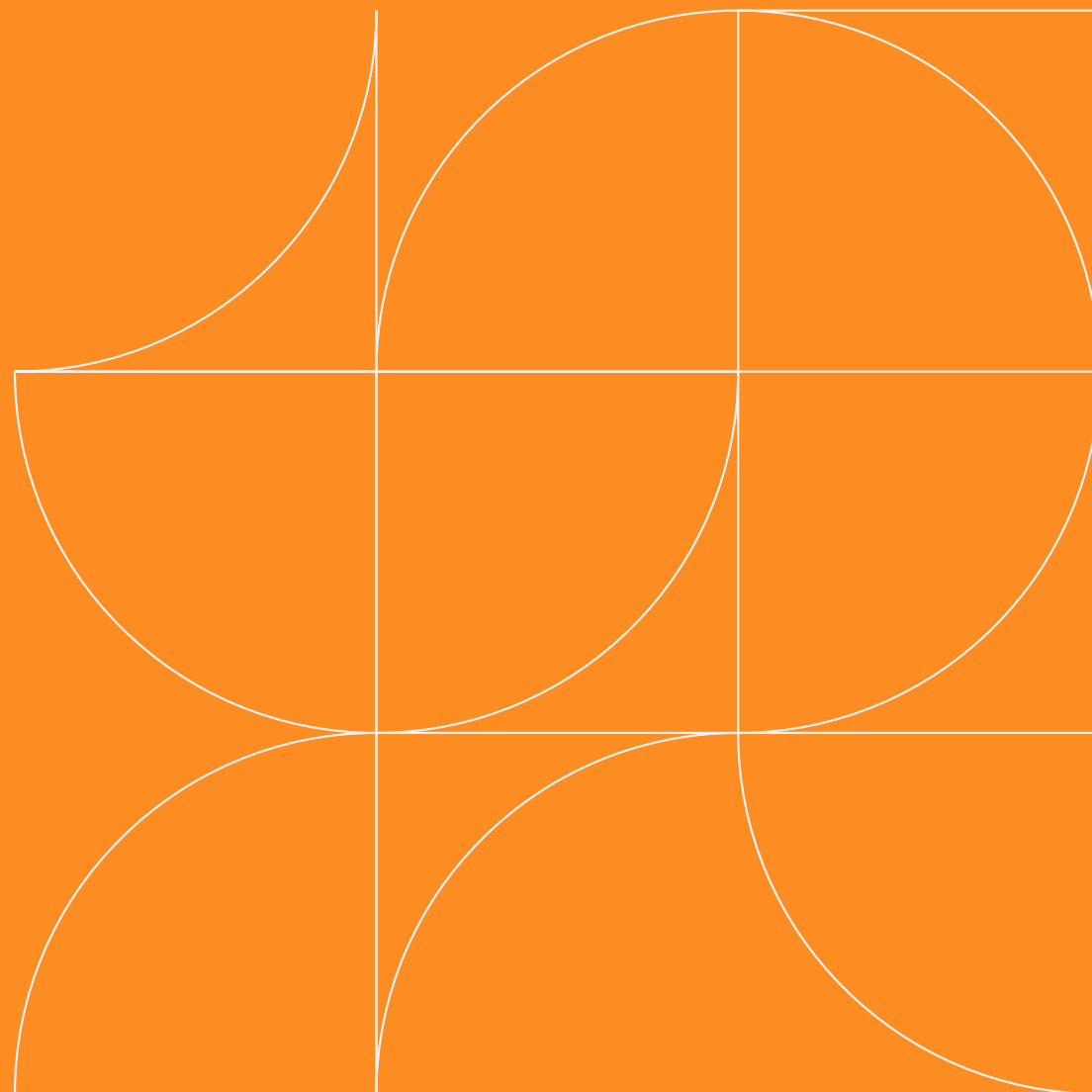
An employer is exempted from making employer's MPF contributions if the employee's income is less than HK\$7,100 per month. True or false?

A. True

B. False

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Disciplinary procedures and termination of employment



Disciplinary procedures and suspension

Disciplinary procedures

- No legal framework.
- Subject to employment contract and policies.



Statutory suspension

- Only in limited circumstances:
 - As a disciplinary measure for any reasons for which the employer could have summarily dismissed the employee;
 - When a decision regarding summary dismissal is pending; or
 - Pending the outcome of any criminal proceedings.
- Can be paid or unpaid
- For up to 14 days (unless where the suspension is a result of pending criminal proceedings)

Termination of employment

During probation

- During the first month, at any time without notice; and
- Thereafter, by giving at least 7 days' notice (or any longer period provided for in the employment contract) or by payment in lieu of notice.



After probation

- By giving notice in accordance with the employment contract (must be at least 7 days) or by payment in lieu of notice.
- If there is no notice specified in the employment contract, by giving at least 1 month's notice or by payment in lieu of notice.
- Garden leave is commonly used for senior/executive employees.

Summary dismissal

An employer may immediately terminate an employment without notice or payment in lieu on the following grounds:

The employee wilfully disobeys a lawful and reasonable order

The employee acts inconsistently with the discharge of their duties

The employee is guilty of fraud or dishonesty

The employee is habitually neglectful in their duties

Other common law grounds



Summary dismissal is a serious step and should only be used in extreme cases.

Constructive dismissal

An employee may immediately terminate their employment without notice or payment in lieu on the following grounds:

Fear of danger or violence in the course of employment

Poor treatment by the employer

Having been employed for not less than 5 years and being medically certified as permanently unfit for the type of work required under the contract

Other common law grounds



If an employee wishes to rely on the ground of constructive dismissal to end the employment relationship, they must do so promptly; otherwise, they will risk being regarded as having waived the employer's breach by conduct.

Recourse under the EO

Unreasonable variation claim

- For continuous contract employees.
- Employer varies contract without employee's consent and without contractual discretion.
- The variation is not for a valid reason specified in the EO.
- Remedies include reinstatement/re-engagement or terminal payments.

Unreasonable dismissal claim

- For continuous contract employees employed for not less than 24 months.
- The dismissal is not for a valid reason specified in the EO.
- Remedies include reinstatement/re-engagement or terminal payments.

Unlawful dismissal

- The employee is pregnant, on statutory maternity leave or on statutory sick leave.
- The employee is dismissed for giving evidence in any proceedings on labour or safety matters or for being a member of a trade union or participating in trade union activities.
- An employee compensation claim is pending at the time of the dismissal.
- Employer could face prosecution.

Unreasonable and unlawful dismissal

- The dismissal is unlawful and not for a valid reason specified in the EO.
- Remedies include reinstatement/re-engagement or terminal payments.
- The Labour Tribunal can order an additional compensation award of up to HK\$150,000.

Refresher Question 6

An employment contract provides that either party may terminate the contract by giving one month's notice.

The employee resigns with one month's notice.

Three days later, the Company makes payment in lieu of the remainder of the notice period so that the employee's employment comes to an end immediately.

Is the Company's action legally permitted?

- A. Yes
- B. No

Refresher Question 6

An employment contract provides that either party may terminate the contract by giving one month's notice.

The employee resigns with one month's notice.

Three days later, the Company makes payment in lieu of the remainder of the notice period so that the employee's employment comes to an end immediately.

Is the Company's action legally permitted?

A. Yes

B. No

Refresher Question 7

An employee decided to travel abroad during the Covid Pandemic. The employee was subject to lockdown in a country overseas. The employer issued several return to work orders over a nine month period, which the employee did not comply with.

Are there sufficient grounds for summary dismissal?

- A. Yes, likely.
- B. No

Refresher Question 7

An employee decided to travel abroad during the Covid Pandemic. The employee was subject to lockdown in a country overseas. The employer issued several return to work orders over a nine month period, which the employee did not comply with.

Are there sufficient grounds for summary dismissal?

A. Yes, likely.

B. No

Refresher Question 8

In the case of an unreasonable and unlawful dismissal, employer consent is not required for a reinstatement order. True or false?

- A. True
- B. False

Refresher Question 8

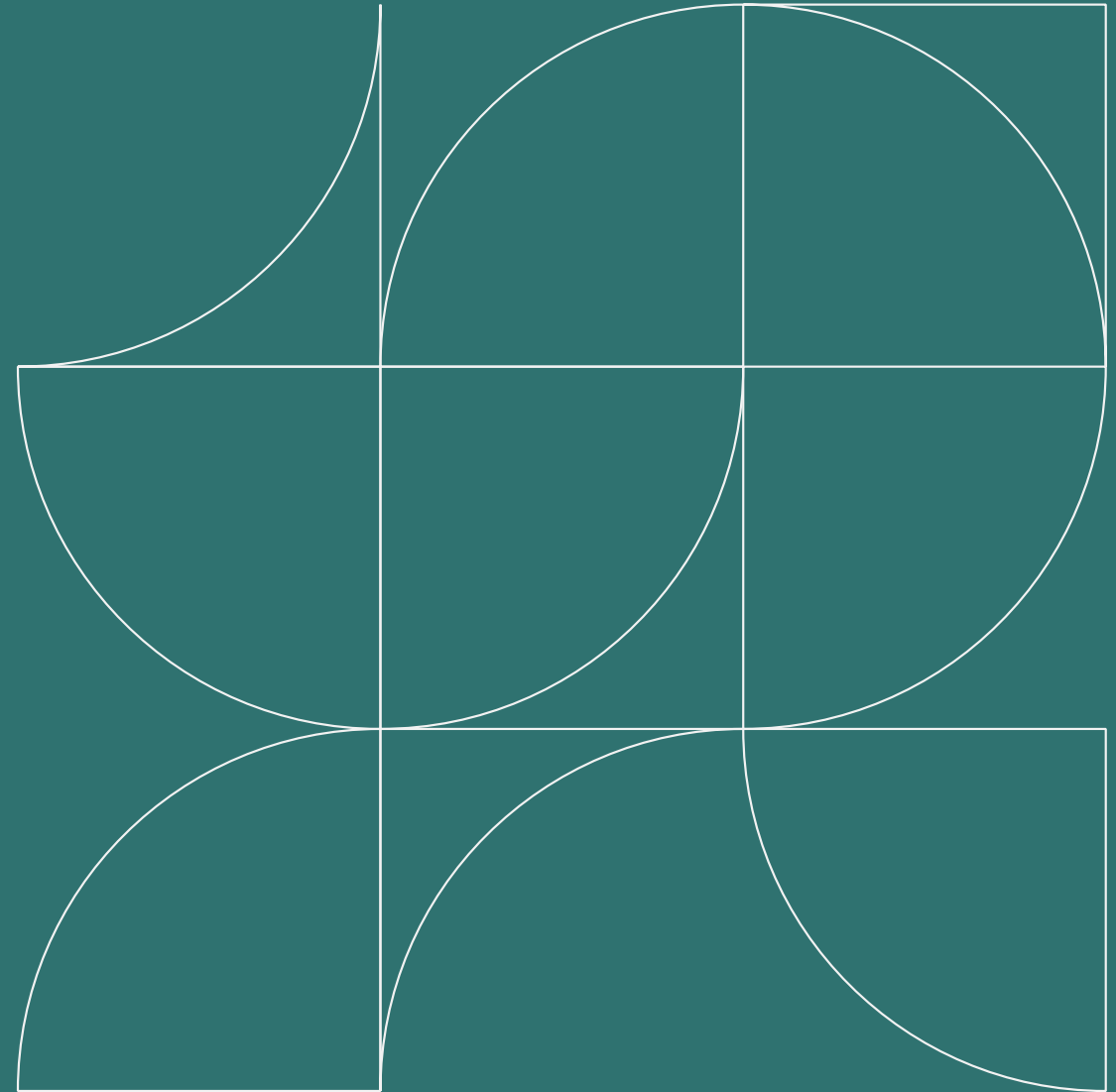
In the case of an unreasonable and unlawful dismissal, employer consent is not required for a reinstatement order. True or false?

A. True

B. False

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Employee disputes



Employee disputes

Labour Department

- Operates a voluntary conciliation service.
- The Investigation Division investigates and handles prosecution of criminal offences.

Minor Employment Claims Adjudication Board

- Handles minor employment claims not exceeding HK\$15,000 per claimant.

Labour Tribunal

- Exclusive jurisdiction to hear most monetary employment claims, including those for:
 - ❖ breach of the EO or an express or implied term of employment;
 - ❖ unreasonable dismissal or unlawful dismissal; and
 - ❖ statutory severance payment.

Equal Opportunities Commission or the District Court

- Handles discrimination complaints or claims.

Privacy Commissioner or the District Court

- Handles personal data-related complaints or claims.

Mandatory Provident Fund Schemes Authority

- Handles MPF-related complaints or claims.

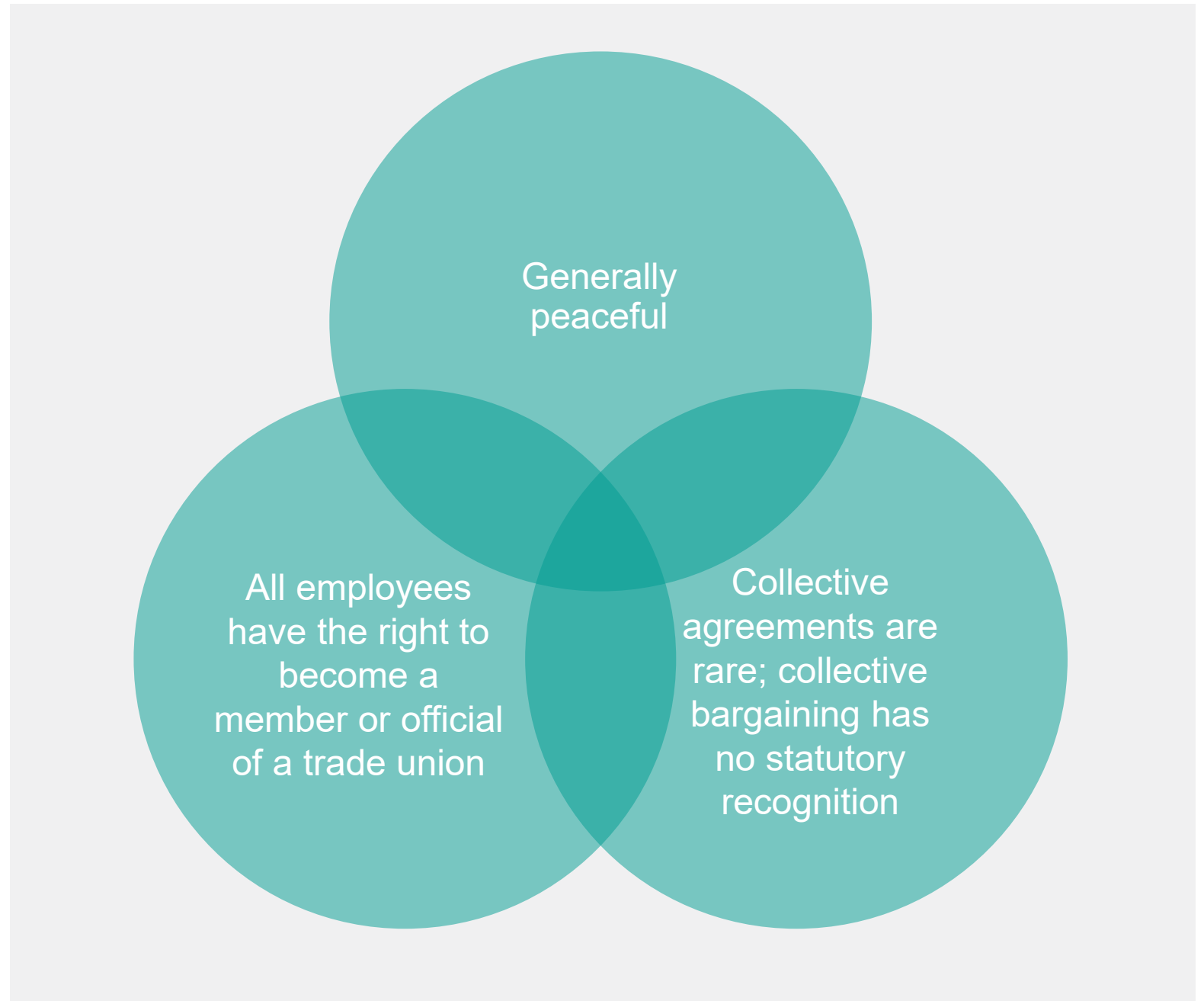
District Court

- Handles other claims (exceeding HK\$75,000 but not more than HK\$3 million).

High Court

- Handles injunctions.
- Handles other claims (exceeding HK\$3 million).

Industrial relations



Refresher question 9

What role does the Labour Department play in employee disputes in Hong Kong?

- A. It provides legal representation to employees
- B. It conciliates disputes between employers and employees and handles breaches of the EO
- C. It serves as the enforcement body for all employment contracts
- D. It makes a binding decision on employee disputes

Refresher question 9

Question 5

What role does the Labour Department play in employee disputes in Hong Kong?

- A. It provides legal representation to employees
- B. It conciliates disputes between employers and employees and handles breaches of the EO
- C. It serves as the enforcement body for all employment contracts
- D. It makes a binding decision on employee disputes

Refresher Question 10

You are permitted to have legal presentation in the Labour Tribunal.

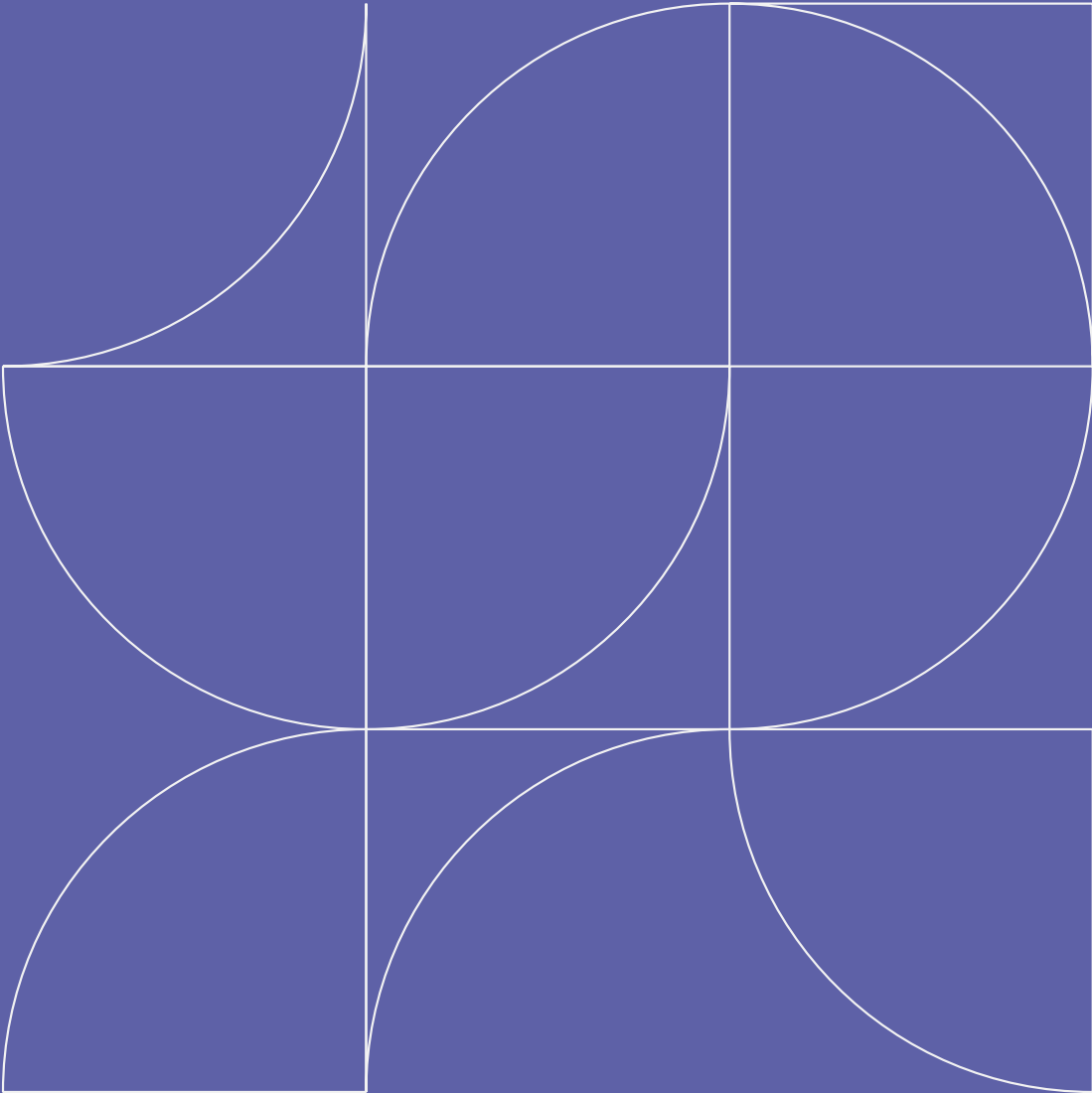
- A. True
- B. False

Refresher Question 10

You are permitted to have legal presentation in the Labour Tribunal.

- A. True
- B. False

Q&A



**thank
you**

For more information, please contact:

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