

**Standard Employment Contract**  
**for Employees of Contractors of Government Service Contract** (Note 1)  
**Government Service Contract No.:** \_\_\_\_\_ (Note 2)

This employment contract is made between \_\_\_\_\_  
 (“the Employer”) at the address of \_\_\_\_\_  
 \_\_\_\_\_ and Mr/Ms\* \_\_\_\_\_  
 (Hong Kong Identity Card No. \_\_\_\_\_) (“the Employee”) at the address  
 of \_\_\_\_\_. The Employer and the Employee  
 understand and agree to observe the terms of employment set out below. Both parties understand  
 that this employment contract is governed by the laws of Hong Kong, in particular, the Employment  
 Ordinance, Chapter 57, and the Employees’ Compensation Ordinance, Chapter 282. Both parties  
 acknowledge that they have read the attached Guidance Notes on Signing of Standard Employment  
 Contract.

1. This employment contract shall commence on \_\_\_\_\_ (day/month/year).
2. The Employee shall be employed by the Employer as \_\_\_\_\_ (post title).  
 The place of work is \_\_\_\_\_ (as  
 specified in government service contract no.: \_\_\_\_\_ (Note  
 2)). If necessary, the Employer shall be allowed to deploy the Employee to work  
 within \_\_\_\_\_ region (Note 3) under an urgent  
 situation or on an ad hoc and limited basis.
3. The Employee shall work \_\_\_\_\_ days a week, and his/her\* daily working hours shall be:  
 (Note 4)  
 \_\_\_\_\_ a.m./p.m.\* to \_\_\_\_\_ a.m./p.m.\* and \_\_\_\_\_ a.m./p.m.\* to \_\_\_\_\_ a.m./p.m.\*  
 on shift \_\_\_\_\_ a.m./p.m.\* to \_\_\_\_\_ a.m./p.m.\* and \_\_\_\_\_ a.m./p.m.\* to \_\_\_\_\_ a.m./p.m.\*;  
 \_\_\_\_\_ a.m./p.m.\* to \_\_\_\_\_ a.m./p.m.\* and \_\_\_\_\_ a.m./p.m.\* to \_\_\_\_\_ a.m./p.m.\*; or  
 \_\_\_\_\_ a.m./p.m.\* to \_\_\_\_\_ a.m./p.m.\* and \_\_\_\_\_ a.m./p.m.\* to \_\_\_\_\_ a.m./p.m.\*

Under exceptional circumstances and at the request of the relevant procuring department, the Employer may make appropriate adjustment to the above working hours, provided that such adjustment should be on an ad hoc basis and it should not affect the original number of working hours in a day of the Employee.

4. An employee employed under a continuous contract is entitled to at least 1 rest day in every period of 7 days. The rest day for the Employee shall be on every \_\_\_\_\_ / granted on an irregular basis (in which case the Employer must inform the Employee in writing of the appointed rest days, or exhibit the Employee’s roster of rest days in a conspicuous place in the place of employment, before the beginning of each month)\*.

5. If the Employee works in accordance with the working hours as specified in Clause 3 of this employment contract, he/she\* shall receive:
- (a)  monthly wages (excluding any overtime pay) of HK\$ \_\_\_\_\_. (Note 5)
- Irrespective of the number of days in a particular month, the Employee shall be paid monthly wages equivalent to the wages specified in this employment contract. Except for overtime pay and pay for work on rest day, the Employee's deductions for absence from work shall be calculated on the basis of the number of calendar days in a particular month.
- wages for working in each workplace calculated pro rata according to the monthly wages specified in the Tables under Clause 2 of the Schedule if he/she\* is employed to work for the Employer under different government service contracts undertaken by the Employer in the same region. (The Schedule to this employment contract must also be completed.)
- Any allowance shall be paid on top of the above wages.
- (b) the overtime pay per hour shall be HK\$ \_\_\_\_\_ and pay for work on rest day shall be HK\$ \_\_\_\_\_ if the Employee is required to work beyond the working hours as specified in Clause 3 of this employment contract or on a rest day. (Note 6)
- (c) any other sum payable to the Employee under the provisions of this employment contract or the laws of Hong Kong.
6. The wage period shall be one month. Wages (including overtime pay payable, if any) shall be paid in any case not later than 7 days after the expiry of the wage period. Similarly, wages and any sum due to the Employee (including any other sums due in respect of this employment contract, if any) must be paid not later than 7 days after the termination of the employment contract.
7. The Employer and the Employee agree that all wages (including overtime pay payable but excluding any sum payable upon termination of this employment contract) shall be paid directly by way of automatic payment into a bank account in the Employee's name with a bank licensed under the Banking Ordinance, Chapter 155. The Employer shall also provide a wage record (pay slip) setting out the breakdown of wages for each wage period to the Employee for reference. If the Employee agrees, the Employer may pay the sum payable upon termination of this employment contract (including wages) by cheque not later than 7 days after the termination of the contract.
8. No deductions shall be made by the Employer from the wages of the Employee other than permitted deductions made in accordance with the Employment Ordinance and the Employee's contribution in accordance with the Mandatory Provident Fund Schemes Ordinance, Chapter 485, and the sum to be deducted shall not exceed the limit stipulated therein. Subject to the provisions of the law, any operating and administrative costs due to wear and tear of fixed assets and equipment including expenses on uniforms (clothing, shoes, socks, etc.), training fees, administrative costs, cleaning fees, tool charges, travelling expenses, deposits, etc. shall be borne by the Employer and not be charged to the Employee or recovered by deductions from the Employee's wages.
9. The Employee shall be entitled to statutory rights and benefits and the relevant protection such as rest days, statutory holidays, paid annual leave, maternity leave and sickness allowance in accordance with the Employment Ordinance.

10. The Employer shall arrange the Employee to take rest days, statutory holidays and paid annual leave on separate dates in accordance with the Employment Ordinance. These holidays must not be substituted by each other.
11. The Employer shall comply with the provisions of the Employees' Compensation Ordinance. The Employee shall be entitled to the rights, benefits and protection provided under the Employees' Compensation Ordinance.
12. The Employee is/is not\* required to obtain a security personnel permit according to the requirements of the Security and Guarding Services Ordinance, Chapter 460. (Note 7).
13. The Employer shall arrange the Employee to enrol as a member of a mandatory provident fund scheme and pay the contribution to the relevant registered scheme each month in accordance with the Mandatory Provident Fund Schemes Ordinance. The Employer shall issue to the Employee a record of mandatory provident fund contribution within 7 working days after each monthly contribution.
14. When typhoon signal no. 8 or above is hoisted,
  - the Employee is not required to work and no wages shall be deducted. The Employee is required to resume duty if typhoon signal no. 8 is lowered not less than \_\_\_\_\_ hours before close of working hours.
  - the Employee is required to work and is entitled to reimbursement of extra travelling expenses.
  - the Employee is required to work and is entitled to a typhoon allowance of HK\$\_\_\_\_\_.
15. When black rainstorm warning is hoisted,
  - the Employee is not required to work and no wages shall be deducted. The Employee is required to resume duty if the black rainstorm warning is lowered not less than \_\_\_\_\_ hours before close of working hours.
  - the Employee is required to work and is entitled to reimbursement of extra travelling expenses.
  - the Employee is required to work and is entitled to a rainstorm allowance of HK\$\_\_\_\_\_.
- 16\*. The probation period of the Employee shall be \_\_\_\_\_ day(s)/month(s) \*.
17. Either party may terminate this employment contract under the following circumstances:
  - During the first month of the probation period, both parties are not required to give notice or payment in lieu of notice. During the rest of the probation period, a notice period of \_\_\_\_\_ day(s)/month(s) \* or payment in lieu of notice is required.  
After the probation period, a notice period of \_\_\_\_\_ day(s)/month(s) \* or payment in lieu of notice is required.
  - There is no probation period, a notice period of \_\_\_\_\_ day(s)/month(s) \* or payment in lieu of notice is required.

18. Should there be any legislative amendment to the relevant legislation subsequent to the signing of this employment contract which in effect confers more favourable terms on the Employee than what he/she\* is entitled to under this employment contract, the provision of the legislation shall prevail and the employment contract shall be taken to be varied accordingly. Should the rights and benefits conferred on the Employee after the legislative amendment is still less favourable than the terms of this employment contract, the terms of this employment contract shall prevail.
19. The Employer shall provide a copy of this employment contract signed by both parties (including the Schedule to this employment contract, if any, and the attached Guidance Notes on Signing of Standard Employment Contract) to the Employee for his/her\* retention.
20. Any variation, amendment, cancellation or addition to any terms of this employment contract (including the Schedule) must not extinguish or reduce any right, benefit or protection conferred upon the Employee by this employment contract, and must be duly signed by both parties, otherwise it shall be void. The Employer shall provide a copy of the amendments duly signed by both parties to the Employee for retention.
21. The Employee consents to the Employer providing his/her\* wage records, attendance records and other relevant information to \_\_\_\_\_ [name(s) of procuring department(s)] (Note 8) for the purpose of monitoring the Employer’s fulfillment of employment-related obligations under the government service contract.
22. The Employee consents to the Employer providing copies of this signed employment contract together with the amendments, if any, to \_\_\_\_\_ [name(s) of procuring department(s)](Note 8) for record and for the purpose of monitoring the Employer’s compliance with the government service contract. The Employee also consents to the procuring department(s) providing copies of this signed employment contract together with any amendments, and any other relevant information to other government departments and enforcement agencies for the purpose of monitoring the Employer’s compliance with the relevant legislation.

Employee’s signature

Signature of Employer or Employer’s representative

\_\_\_\_\_  
 Name: \_\_\_\_\_  
 HK Identity Card No.: \_\_\_\_\_  
 Date: \_\_\_\_\_

\_\_\_\_\_  
 Name: \_\_\_\_\_  
 Post: \_\_\_\_\_  
 Date: \_\_\_\_\_

\_\_\_\_\_  
 Company Chop

\* Delete whichever is inapplicable  
 Please mark a “✓” at the appropriate box

Notes:

- Note 1: In accordance with the relevant mandatory requirements specified in government service contracts, government service contractors are required to enter into this standard employment contract with each and every employee who is employed to work under government service contracts for more than 7 days in posts which signing of standard employment contract is specified in the relevant government service contracts.
- Note 2: If the Employee is employed by the Employer to work under more than one government service contract undertaken by the Employer in the same region, the parties must also complete the Schedule but are not required to fill in the government service contract no., Clause 2, Clause 3 and Clause 5(b).
- Note 3: "Region" refers to an area delineated under the Declaration of Geographical Constituencies (Legislative Council) Order 2003, with the exception of Islands District which is separated from New Territories West. As such, there are 6 relevant regions, namely, Hong Kong Island, Kowloon West, Kowloon East, New Territories West, New Territories East and Islands District. The parties shall state one region only in accordance with the area of the place of work specified in Clause 2.
- Note 4: The Employer has committed in the relevant government service contract that the Employee's maximum number of working hours in a day shall be \_\_\_\_\_ hours.
- Note 5: (i) The wage rate of the monthly wages specified in Clause 5(a) of this employment contract shall not be less than the wage rate of the monthly wages committed by the Employer in the relevant government service contract.
- (ii) The wage rate of the monthly wages specified in Clause 5(a) of this employment contract shall be calculated based on the average number of \_\_\_\_\_ standard working days per month and the average number of \_\_\_\_\_ normal hours of work per day.
- (iii) The wage rate of the monthly wages of HK\$ \_\_\_\_\_ committed by the Employer in the relevant government service contract is calculated based on the average number of \_\_\_\_\_ standard working days per month and the average number of \_\_\_\_\_ normal hours of work per day.
- Note 6: The wage rates of overtime pay and pay for work on rest day specified in Clause 5(b) of this employment contract shall not be less than the wage rates calculated using the monthly wages specified in Clause 5(a) of this employment contract and the average number of standard working days per month and the average number of normal hours of work per day specified in Note 5(ii).
- Note 7: All employees employed to perform security work are required to obtain a permit in accordance with the Security and Guarding Services Ordinance.
- Note 8: If the Employee is employed by the Employer to work under more than one government service contract, the names of all relevant procuring departments have to be filled in Clause 21 and Clause 22 of this employment contract.

**Standard Employment Contract**  
**for Employees of Contractors of Government Service Contracts**  
**Schedule**

(If the Employee is employed by the Employer to work under more than one government service contract, this Schedule should also be completed. Clause 2, Clause 3 and Clause 5(b) of the standard employment contract are not applicable and shall be left blank.)

1. The Employee shall be employed by the Employer as \_\_\_\_\_ (post title). The place of work is \_\_\_\_\_ (may fill in more than one location). If necessary, the Employer shall be allowed to deploy the Employee to work within \_\_\_\_\_ region (Note 9) under an urgent situation or on an ad hoc and limited basis.
2. The Employee shall work \_\_\_\_\_ days a week. The daily working hours shall accord with that specified in the relevant government service contracts awarded to the Employer. Information on relevant government service contracts is listed in the Table(s) below. The actual monthly wages to be received by the Employee shall be calculated in accordance with the monthly wages listed in the following Tables in respect of different government service contracts under which the Employee has worked during a particular month and on the basis of the number of calendar days in that particular month (if the number of government service contracts is more than three, please continue to list out after Table (3)):

Table (1)	(a)	Government Service Contract No.		Procuring Department	
		Number of working hours in a day		Maximum number of working hours in a day	
	(b)	Daily working hours	<input type="checkbox"/> ____ a.m./p.m.* to ____ a.m./p.m.* and ____ a.m./p.m.* to ____ a.m./p.m.* <input type="checkbox"/> on shift ____ a.m./p.m.* to ____ a.m./p.m.* and ____ a.m./p.m.* to ____ a.m./p.m.*; ____ a.m./p.m.* to ____ a.m./p.m.* and ____ a.m./p.m.* to ____ a.m./p.m.*; or ____ a.m./p.m.* to ____ a.m./p.m.* and ____ a.m./p.m.* to ____ a.m./p.m.*  Under exceptional circumstances and at the request of the relevant procuring department, the Employer may make appropriate adjustment to the above daily working hours, provided that such adjustment shall be on an ad hoc basis and it shall not affect the original number of working hours in a day of the Employee.		
	(c)	If the Employee works in accordance with the working hours as specified in item (b) of this Table and works _____ days a week, he/she* shall receive monthly wages (excluding any overtime pay) of HK\$ _____. (Note 10)			
	(d)	The hourly wage rate for overtime pay shall be HK\$ _____ and pay for work on rest day shall be HK\$ _____ if the Employee is required to work beyond the working hours as specified in item (b) of this Table or on a rest day. (Note 11)			

Table (2)	(a)	Government Service Contract No.		Procuring Department	
		Number of working hours in a day		Maximum number of working hours in a day	
	(b)	Daily working hours	<input type="checkbox"/> ____ a.m./p.m.* to ____ a.m./p.m.* and ____ a.m./p.m.* to ____ a.m./p.m.* <input type="checkbox"/> on shift ____ a.m./p.m.* to ____ a.m./p.m.* and ____ a.m./p.m.* to ____ a.m./p.m.*; ____ a.m./p.m.* to ____ a.m./p.m.* and ____ a.m./p.m.* to ____ a.m./p.m.*; or ____ a.m./p.m.* to ____ a.m./p.m.* and ____ a.m./p.m.* to ____ a.m./p.m.* Under exceptional circumstances and at the request of the relevant procuring department, the Employer may make appropriate adjustment to the above daily working hours, provided that such adjustment shall be on an ad hoc basis and it shall not affect the original number of working hours in a day of the Employee.		
	(c)	If the Employee works in accordance with the working hours as specified in item (b) of this Table and works _____ days a week, he/she* shall receive monthly wages (excluding any overtime pay) of HK\$ _____. (Note 10)			
	(d)	The hourly wage rate for overtime pay shall be HK\$ _____ and pay for work on rest day shall be HK\$ _____ if the Employee is required to work beyond the working hours as specified in item (b) of this Table or on a rest day. (Note 11)			

Table (3)	(a)	Government Service Contract No.		Procuring Department	
		Number of working hours in a day		Maximum number of working hours in a day	
	(b)	Daily working hours	<input type="checkbox"/> ____ a.m./p.m.* to ____ a.m./p.m.* and ____ a.m./p.m.* to ____ a.m./p.m.* <input type="checkbox"/> on shift ____ a.m./p.m.* to ____ a.m./p.m.* and ____ a.m./p.m.* to ____ a.m./p.m.*; ____ a.m./p.m.* to ____ a.m./p.m.* and ____ a.m./p.m.* to ____ a.m./p.m.*; or ____ a.m./p.m.* to ____ a.m./p.m.* and ____ a.m./p.m.* to ____ a.m./p.m.* Under exceptional circumstances and at the request of the relevant procuring department, the Employer may make appropriate adjustment to the above daily working hours, provided that such adjustment shall be on an ad hoc basis and it shall not affect the original number of working hours in a day of the Employee.		
	(c)	If the Employee works in accordance with the working hours as specified in item (b) of this Table and works _____ days a week, he/she* shall receive monthly wages (excluding any overtime pay) of HK\$ _____. (Note 10)			
	(d)	The hourly wage rate for overtime pay shall be HK\$ _____ and pay for work on rest day shall be HK\$ _____ if the Employee is required to work beyond the working hours as specified in item (b) of this Table or on a rest day. (Note 11)			

3. If the Employee works under different government service contracts awarded to the Employer:

- (a) The statutory benefits of the Employee including holiday pay, annual leave pay and sickness allowance shall be calculated in accordance with the Employment Ordinance.

If it is not possible to ascertain the amount of holiday pay, annual leave pay, sickness allowance and other statutory benefits to which the Employee is entitled, the sum shall be calculated in accordance with the highest monthly wages among those listed in the Tables under Clause 2 of this Schedule.

- (b) The rest day pay of the Employee shall be calculated in accordance with the monthly wages specified in the relevant Table under Clause 2 of this Schedule in respect of the relevant government service contract under which he/she\* has worked immediately preceding the rest day. The Employer shall pay the Employee such rest day pay not later than the day on which the Employee is next paid his wages after the rest day.

- (c) If the Employee is not provided with any work for a period, the Employee shall still receive wages equivalent to the wages which he/she\* would have earned if he/she had worked for that period during which work is not provided.

If it is not possible to ascertain the wages which the Employee would have earned for the period during which work is not provided, the sum shall be calculated in accordance with the highest monthly wages among those listed in the Tables under Clause 2 of this Schedule.

- The Employer and the Employee may choose an amount calculated at a wage rate no less than the highest wage rate of the monthly wages among those listed in the Tables under Clause 2 of this Schedule for calculating the monthly wages of the Employee. If this is the case, the Employee shall work in accordance with the number of working days as specified in Clause 2 and the working hours as specified in the relevant government service contracts, and he/she\* shall receive monthly wages (excluding any overtime pay) of HK\$ \_\_\_\_\_. The overtime pay per hour shall be HK\$ \_\_\_\_\_ and pay for work on rest day shall be HK\$ \_\_\_\_\_ if the Employee is required to work beyond the daily working hours in respect of the relevant government service contract as specified in the Tables under Clause 2 of this Schedule or on a rest day. (Note 12)

**Employee’s signature**

**Signature of Employer or Employer’s representative**

\_\_\_\_\_  
 Name: \_\_\_\_\_  
 HK Identity Card No.: \_\_\_\_\_  
 Date: \_\_\_\_\_

\_\_\_\_\_  
 Name: \_\_\_\_\_  
 Post: \_\_\_\_\_  
 Date: \_\_\_\_\_

\_\_\_\_\_  
 Company Chop

\* Delete whichever is inapplicable

Please mark a “✓” at the appropriate box



Note 9: "Region" refers to an area delineated under the Declaration of Geographical Constituencies (Legislative Council) Order 2003, with the exception of Islands District which is separated from New Territories West. As such, there are 6 relevant regions, namely, Hong Kong Island, Kowloon West, Kowloon East, New Territories West, New Territories East and Islands District. The parties shall state one region only in accordance with the area of the place of work specified in Clause 1 of this Schedule.

- Note 10: (i) The wage rates of the monthly wages listed in the Tables under Clause 2 of this Schedule shall not be less than the wage rates of the monthly wages committed by the Employer in the relevant government service contracts.
- (ii) The wage rates of the monthly wages listed in the Tables under Clause 2 of this Schedule are calculated based on the following average number of standard working days per month and average number of normal hours of work per day:

	<u>Table (1)</u>	<u>Table (2)</u>	<u>Table (3)</u>
Average number of standard working days per month	days	days	days
Average number of normal hours of work per day	hours	hours	hours

- (iii) The wage rates of the monthly wages committed by the Employer in the relevant government service contracts specified in the Tables under Clause 2 of this Schedule are calculated based on the following average number of standard working days per month and average number of normal hours of work per day:

	<u>Table (1)</u>	<u>Table (2)</u>	<u>Table (3)</u>
Monthly wages committed in government service contract	HK\$	HK\$	HK\$
Average number of standard working days per month	days	days	days
Average number of normal hours of work per day	hours	hours	hours

Note 11: The wage rates of overtime pay and pay for work on rest day specified in the Tables under Clause 2 of this Schedule shall not be less than the wage rates calculated using the monthly wages specified in item (c) of the Tables under Clause 2 of this Schedule and the relevant average number of standard working days per month and the average number of normal hours of work per day as specified in Note 10(ii).

Note 12: The wage rates of overtime pay and pay for work on rest day shall not be less than the wage rates calculated based on the chosen monthly wages specified in the second box of Clause 3 and the average number of standard working days per month and the average number of normal hours of work per day based on which the chosen monthly wages are worked out.

**Guidance Notes on Signing of Standard Employment Contract (SEC)  
for Employees of Contractors of Government Service Contracts**

The Guidance Notes given below reflect the statutory provisions in force at the time these Guidance Notes were issued. The law itself remains the sole authority for the provisions explained. Please note that the Employment Ordinance (Cap. 57) only lays down the minimum requirements of employment terms. Employers and employees may enter into employment terms more favourable than those provided in the Employment Ordinance. They may also refer to the booklet “A Concise Guide to the Employment Ordinance” published by the Labour Department for reference.

**Points to note when filling in the SEC and the Schedule**

2. Before signing the SEC, the employer and the employee should read the content of the SEC and these Guidance Notes thoroughly to ensure that both parties understand all the contents.
3. The employer and the employee can make reference to the examples listed in the last part of these Guidance Notes in determining the employee’s monthly wages for calculating deductions for absence from work, overtime pay and pay for work on rest day.
4. If the employee is employed to work under a single government service contract, Clause 2, Clause 3 and Clause 5(b) of the SEC on the workplace, working hours as well as overtime pay and pay for work on rest day, have to be filled in. It is not necessary to fill in the Schedule. However, if the employee is employed by the employer to work under more than one government service contract, then the parties have to complete the Schedule, but not Clause 2, Clause 3 and Clause 5(b) of the SEC. The completed Schedule is an integral part of the SEC.
5. When filling in Clause 3 of the SEC on the working hours of the employee, the employer should also fill in Note 4 regarding the employee’s maximum number of working hours in a day. This maximum number of working hours in a day must be the same as that specified in the relevant government service contract.
6. When filling in the monthly wages of the employee in Clause 5(a) of the SEC, the wage rate of the monthly wages shall not be less than the wage rate of the monthly wages committed by the employer in the relevant government service contract. Besides, the employer should also fill in Note 5 regarding the information on the average number of standard working days per month and the average number of normal hours of work per day which form the basis for working out the monthly wages specified in Clause 5(a) of the SEC, and the information on the monthly wages committed by the employer in the relevant government service contract (such information must be the same as that specified in the relevant government service contract). When filling in Note 5, the employer should pay attention to the criteria of determining the average number of standard working days per month: if an employee works 6 days a week, the average number of standard working days per month shall be 26 days; if an employee works 5.5 days a week, the average number of standard working days per month shall be 24 days; if an employee works 5 days a week, the average number of standard working days per month shall be 22 days. (Please refer to Example 1)

7. When filling in the monthly wages, if the employee is employed to work under more than one government service contract, please mark a “✓” at the second box of Clause 5(a) of the SEC and fill in information such as the relevant government service contract numbers, workplaces, working hours and monthly wages, etc. in the Schedule. If the employee works under different government service contracts, the actual monthly wages to be received by the employee shall be calculated in accordance with the monthly wages specified in the Tables under Clause 2 of the Schedule in respect of different government service contracts under which he/she has worked on the basis of the number of calendar days in a particular month. If, in the future, there is a change in the number of government service contracts listed in the Schedule, the employer should comply with Clause 20 of the SEC and amend the Schedule.

8. The employee employed under the SEC is monthly-rated. Except for overtime pay and pay for work on rest day, deductions for absence from work shall be calculated on the basis of the number of calendar days in a particular month. (Please refer to Example 2) The statutory benefits of the employee such as holiday pay, annual leave pay, sickness allowance and maternity leave pay, shall be calculated in accordance with the provisions of the Employment Ordinance. Please refer to paragraphs 29, 31, 35 and 36 below for the methods of calculating these statutory benefits.

9. When working out the hourly wage rate for the overtime pay and pay for work on rest day in Clause 5(b) of the SEC, the relevant wage rates shall not be less than the wage rates calculated using the monthly wages specified in Clause 5(a) of the SEC and the average number of standard working days per month and the average number of normal hours of work per day specified in Note 5(ii). The wage rates here are not calculated on the basis of the number of calendar days in a particular month (please refer to Example 3). For an employee who is employed to work under more than one government service contract, the parties have to complete the Schedule, but not Clause 5(b) of the SEC.

10. When filling in the monthly wages in the Tables under Clause 2 of the Schedule for the employee working under different government service contracts, the wage rate shall not be less than the wage rates of the monthly wages committed by the employer in the relevant government service contracts. Besides, the employer should also fill in Note 10 regarding the information on the average number of standard working days per month and the average number of normal hours of work per day which form the basis for working out the monthly wages specified in the Tables under Clause 2 of the Schedule, and also information on the monthly wages committed by the employer in the relevant government service contracts (such information must be the same as that specified in the relevant government service contracts).

11. When working out the hourly wage rate for overtime pay and pay for work on rest day to be specified in the Tables under Clause 2 of the Schedule, the relevant wage rates shall not be less than the wage rates calculated based on the monthly wages specified in item (c) of the Tables and the relevant average number of standard working days per month and the average number of normal hours of work per day as specified in Note 10(ii). The wage rates here are not calculated on the basis of the number of calendar days in a particular month.

12. For the calculation of rest day pay for an employee who is employed to work under more than one government service contract as per Clause 3(b) of the Schedule, it shall be calculated in accordance with the monthly wages specified in the relevant Table under Clause 2 of the Schedule in respect of the relevant government service contract under which the employee has worked immediately preceding that rest day. (Please refer to Example 4)

13. For the calculation of the monthly wages in the second box of Clause 3 of the Schedule for an employee who is employed to work under more than one government service contract, the employer and the employee may choose an amount calculated at a wage rate no less than the highest wage rate worked out from among those monthly wages listed in the Tables under Clause 2 of the Schedule. If the employee is required to work beyond the daily working hours in respect of the relevant government service contract as specified in the Tables under Clause 2 of the Schedule or on a rest day, he/she shall be paid overtime pay or pay for work on a rest day. The relevant wage rates should not be less than the wage rates calculated based on the chosen monthly wages and the relevant average number of standard working days per month and the average number of normal hours of work per day based on which the chosen monthly wages are worked out. The wage rates here are not calculated on the basis of the number of calendar days in a particular month. (Please refer to Example 5)

### **Relevant provisions of the Employment Ordinance and the Mandatory Provident Fund Schemes Ordinance**

#### **Payment of wages**

*[Please refer to Part I and Part V of the Employment Ordinance for details]*

14. The monthly wages committed by the Employer in the government service contract shall not be less than the average monthly salaries for the relevant industry/occupation as published in the latest Census and Statistics Department's Quarterly Report of Wage and Payroll Statistics at the time when the tender is invited. Please refer to the Quarterly Report of Wage and Payroll Statistics for details.

15. According to the Employment Ordinance, "wages" means all remuneration, earnings, allowances (including travelling allowances and attendance allowances, attendance bonus, commission and 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 his/her contract of employment, but does not include:

- (1) the value of any accommodation, education, food, fuel, light, medical care or water provided by the employer;
- (2) any contribution paid by the employer on his/her own account to any retirement scheme;
- (3) any commission which is of a gratuitous nature or which is payable only at the discretion of the employer;
- (4) any attendance allowance or attendance bonus which is of a gratuitous nature or which is payable only at the discretion of the employer;
- (5) any travelling allowance which is of a non-recurrent nature;
- (6) any travelling allowance payable to the employee to defray actual expenses incurred by him/her by the nature of his/her employment;
- (7) the value of any travelling concession;
- (8) any sum payable to the employee to defray special expenses incurred by him/her by the nature of his/her employment;
- (9) any end of year payment, or any proportion thereof;
- (10) any gratuity payable on completion or termination of a contract of employment; or
- (11) any annual bonus, or any proportion thereof, which is of a gratuitous nature or which is payable only at the discretion of the employer.

The above definition of “wages” is used to calculate the employee’s statutory benefits or compensation. However, no account of overtime pay shall be taken in calculating end of year payment, maternity leave pay, severance payment, long service payment, sickness allowance, holiday pay and annual leave pay, unless:

- (1) the overtime pay is of a constant character; or
- (2) the monthly average of the overtime pay over a period of 12 months (or if not applicable, such shorter period of employment) immediately preceding the respective dates is equivalent to or exceeds 20% of his/her average monthly wages during the same period.

For the avoidance of confusion, it is herein clarified that the “monthly wages” specified in the SEC is different from the above definition of “wages” as stipulated in the Employment Ordinance. The “monthly wages” of the SEC does not include any overtime pay and allowances.

16. Except for deductions of wages made in accordance with the Employment Ordinance and the Mandatory Provident Fund Schemes Ordinance (Cap. 485), the wages provided by the employer shall not be less than the monthly wages specified in the employment contract. The monthly wages shall not be broken down into different items, but they may include other wage items on top of the monthly wages. (For example, if the monthly wages are HK\$5,000, and the employer pays an additional allowance of HK\$500, the total monthly wages of the employee shall be HK\$5,500.) The employee’s monthly wages and other income should not be labelled as housing allowance.

17. All wages (excluding any sum payable upon termination of this employment contract) shall be paid directly by the employer by way of automatic payment into a bank account in the employee’s name. Wages (including overtime pay payable, if any) shall become due on the expiry of the last day of the wage period and shall be paid as soon as is practicable but in any case not later than 7 days after the expiry of the wage period. Similarly, wages and any sum due to the employee (including any other sums due in respect of this employment contract, if any) must be paid not later than 7 days after the termination of the employment contract.

18. If an employer fails to pay wages to the employee within 7 days after the expiry of the wage period or termination of the employment contract, he/she is required to pay interest on the outstanding amount of wages to the employee in accordance with the Employment Ordinance.

19. Under the Employment Ordinance, an employer who wilfully and without reasonable excuse fails to pay wages to an employee when they become due commits an offence, and he/she is liable, upon conviction, to a fine of HK\$350,000 and to imprisonment for three years. Any person who makes illegal deduction from wages of an employee commits an offence, and he/she is liable, upon conviction, to a fine of HK\$100,000 and to imprisonment for one year.

### **Contributions to Mandatory Provident Fund**

*[Please refer to Part I and Part III of the Mandatory Provident Fund Schemes Ordinance for details]*

20. In accordance with the provisions of the Mandatory Provident Fund Schemes Ordinance, an employer is obliged to enrol his/her employee aged between 18 and 65 in a Mandatory Provident Fund scheme if the employee is employed for 60 days or more. The employer shall make the monthly contribution for the employee to the relevant registered scheme from his/her own funds. The employer’s contribution is 5% of the employee’s monthly income. The employer shall also deduct 5% of the monthly income of the employee as employee’s contribution (subject to the maximum income level of HK\$20,000) to the registered scheme. An employee earning less than HK\$5,000 a month does not need to contribute but his/her employer still has to contribute a sum equivalent to 5% of the employee’s income out of the employer’s own funds. Some employers arrange their employees to enter into a series of contracts each lasting less than 60 days and with a break in between, in order to avoid the statutory obligation of enrolling the employees in the

Mandatory Provident Fund schemes and making employer's contributions. However, these employees may still be regarded as employed under continuous employment, and employers are not able to shirk the responsibilities under the law for enrolling their employees in the Mandatory Provident Fund schemes and making contributions.

21. If employers offer Mandatory Provident Fund schemes and Occupational Retirement schemes for their employees to choose at the same time, it is necessary to explain clearly the details of the two schemes to the employees so that they can choose a suitable scheme for themselves.

### **Deductions from wages**

*[Please refer to Part VI of the Employment Ordinance for details]*

22. No deductions shall be made by an employer from the wages of his/her employee other than:-

- (1) deductions for the employee's absence from work not exceeding a sum proportionate to the period of time during which the employee was absent from work;
- (2) deductions for damage to or loss of the employer's goods, equipment, property or money directly attributable to the employee's neglect or default. In any one case, the sum to be deducted shall not exceed the equivalent in value of the damage or loss suffered by the employer and shall not exceed HK\$300. The total of such deductions shall not exceed one quarter of the wages payable to the employee in any one wage period;
- (3) deductions in respect of meals supplied by the employer at the employee's request and accommodation provided by the employer;
- (4) deductions for the recovery of any advance or overpayment of wages to the employee. The total sum to be deducted shall not exceed one quarter of the wages payable to the employee in any one wage period;
- (5) deductions, with the employee's written consent, for the recovery of any loan made by the employer to the employee;
- (6) deductions, at the written request of the employee, in respect of contributions to be paid by the employee through the employer for any medical benefit scheme, superannuation scheme, retirement scheme or thrift scheme;
- (7) deductions which are required or authorized under any enactment to be made from the wages of the employee, including deductions of the employee's contributions after he/she is enrolled in a registered Mandatory Provident Fund scheme;
- (8) deductions for maintenance payment pursuant to an attachment order made by the court.

23. Except with the approval in writing of the Commissioner for Labour, the total of all deductions made in paragraph 22 above, excluding those for absence from work or pursuant to an attachment order made by the court, must not exceed one half of the wages payable in any one wage period.

### **Continuous contract**

*[Please refer to Part I of the Employment Ordinance for details]*

24. An employee who has been employed for 4 weeks or more by the same employer, with at least 18 hours worked in each week, is regarded as an employee employed under a continuous contract.

**Rest day**

*[Please refer to Part IV of the Employment Ordinance for details]*

25. An employee employed under a continuous contract is entitled to not less than 1 rest day in every period of 7 days. A rest day is a continuous period of not less than 24 hours. The dates of the weekly rest days shall be appointed by the employer who must, unless the rest days are on a regular basis, notify the employee of the dates before the beginning of each month. An employer may, with the consent of the employee, substitute some other rest day for any appointed rest day, within the same month and before the rest day so appointed or within the period of 30 days next following the rest day so appointed.

26. An employer may require an employee to work on a rest day if it is necessary to do so by reason of a breakdown of machinery or plant or other unforeseen emergency of any nature, but the employer shall substitute for any rest day on which an employee is required to work some other rest day within the period of 30 days next following, notice of which shall be given to the employee within 48 hours after the employee is so required to work.

27. An employer may not require an employee to work on any of his/her rest days except under the circumstances referred to in paragraph 26 above. However, an employee may, at his/her request and if the employer agrees, work for his/her employer on a rest day. An employee may also work for the employer on a rest day at the request of the employer.

**Statutory holidays**

*[Please refer to Part VIII of the Employment Ordinance for details]*

28. In accordance with the Employment Ordinance, an employee, irrespective of his/her length of service or working hours, is entitled to 12 statutory holidays in a year as follows:

- (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) Tuen Ng Festival;
- (8) the day following the Chinese Mid-Autumn Festival;
- (9) Chung Yeung Festival;
- (10) Chinese Winter Solstice Festival or Christmas Day (at the option of the employer);
- (11) Hong Kong Special Administrative Region Establishment Day, being the first day of July; and
- (12) National Day, being the first day of October.

29. An employee having been employed under a continuous contract for not less than 3 months preceding any of these holidays is entitled to the holiday pay for that statutory holiday. According to the Employment Ordinance:

- (1) holiday pay shall be a sum equivalent to the daily average of the wages earned by an employee in the 12-month period immediately preceding the holiday. If an employee has been employed for less than 12 months, the calculation shall be based on the shorter period.
- (2) In calculating the daily average of the wages earned by an employee, an employer should exclude (i) the periods for which an employee was not paid wages or full wages by reason of any rest day, statutory holiday, annual leave, sickness day, maternity leave, sick leave due to work injuries, leave taken with the agreement of the employer, or any normal working day on which the employee was not provided by the employer with work; and (ii) the sum paid to the

employee for such periods. (Please refer to Example 6)

### **Paid annual leave**

*[Please refer to Part VIII A of the Employment Ordinance for details]*

30. An employee is entitled to annual leave with pay after having been employed under a continuous contract for every 12 months. An employee's entitlement to paid annual leave increases progressively according to his/her length of service:

Years of service	Annual leave entitlements
1	7
2	7
3	8
4	9
5	10
6	11
7	12
8	13
9 or above	14

31. According to the Employment Ordinance:

- (1) the daily rate of annual leave pay shall be a sum equivalent to the daily average of the wages earned by an employee in the 12-month period immediately preceding the annual leave. If an employee has been employed for less than 12 months, the calculation shall be based on the shorter period.
- (2) In calculating the daily average of the wages earned by an employee, an employer should exclude (i) the periods for which an employee was not paid wages or full wages by reason of any rest day, statutory holiday, annual leave, sickness day, maternity leave, sick leave due to work injuries, leave taken with the agreement of the employer, or any normal working day on which the employee was not provided by the employer with work; and (ii) the sum paid to the employee for such periods. (Please refer to Examples 7 and 8)

32. If the employment contract of an employee employed under a continuous contract is terminated for whatever reason, including resignation but excluding summary dismissal in circumstances described in paragraph 40 below, after 3 but less than 12 months of employment in a leave year, the employee shall be paid a pro-rata sum in lieu of the annual leave.

### **Sickness allowance**

*[Please refer to Part VII of the Employment Ordinance for details]*

33. In accordance with the Employment Ordinance, an employee employed under a continuous contract can accumulate 2 paid sickness days for each completed month of employment during the first 12 months of employment and 4 paid sickness days for each month of service thereafter. Paid sickness days may be accumulated up to a maximum of 120 days.



34. An employee shall be entitled to sickness allowance if:
- (1) the sick leave taken is not less than 4 consecutive days (except for any day of absence by a female employee for medical examination in relation to her pregnancy, post confinement medical treatment or by reason of a miscarriage, in which case the employee shall be entitled to sickness allowance for each day of sick leave);
  - (2) the sick leave is supported by an appropriate medical certificate; and
  - (3) the employee has accumulated sufficient number of paid sickness days.
35. According to the Employment Ordinance:
- (1) the daily rate of sickness allowance shall be a sum equivalent to four-fifths of the daily average of the wages earned by an employee in the 12-month period immediately preceding the sickness day. If an employee has been employed for less than 12 months, the calculation shall be based on the shorter period.
  - (2) In calculating the daily average of the wages earned by an employee, an employer should exclude (i) the periods for which an employee was not paid wages or full wages by reason of any rest day, statutory holiday, annual leave, sickness day, maternity leave, sick leave due to work injuries, leave taken with the agreement of the employer, or any normal working day on which the employee was not provided by the employer with work; and (ii) the sum paid to the employee for such periods. (Please refer to Example 9)

#### **Payment for maternity leave**

*[Please refer to Part III of the Employment Ordinance for details]*

36. In accordance with the Employment Ordinance, a female employee employed under a continuous contract immediately before the commencement of her maternity leave and having given notice of pregnancy to the employer is entitled to a period of 10 weeks' maternity leave. An employee is eligible for maternity leave pay if she has been employed under a continuous contract for not less than 40 weeks immediately before the commencement of the scheduled maternity leave. According to the Employment Ordinance:
- (1) the daily rate of the maternity leave pay shall be a sum equivalent to four-fifths of the daily average of the wages earned by an employee in the 12-month period immediately preceding the first day of the maternity leave. If an employee has been employed for less than 12 months, the calculation shall be based on the shorter period.
  - (2) In calculating the daily average of the wages earned by an employee, an employer should exclude (i) the periods for which an employee was not paid wages or full wages by reason of any rest day, statutory holiday, annual leave, sickness day, maternity leave, sick leave due to work injuries, leave taken with the agreement of the employer, or any normal working day on which the employee was not provided by the employer with work; and (ii) the sum paid to the employee for such periods.

#### **Making arrangements for a substitute worker**

37. If an employee is on leave or absent from work, whatever the circumstances may be, the employer shall make staffing arrangements as appropriate and pay wages to the substitute worker. The employer shall not ask the employee to hire his/her own substitute or pay wages to the substitute.

**Termination of employment contract by notice**

*[Please refer to Part II of the Employment Ordinance for details]*

38. If a probation period is stated in the employment contract, notice is not required within the first month of probation. For the rest of the probation period, the length of notice shall be set as per agreement but not less than 7 days. If there is no probation period or after probation period, the length of notice shall be set as per agreement. In the case of a continuous contract, the agreed notice period shall not be less than 7 days.

**Termination of employment by wages in lieu of notice**

*[Please refer to Part II of the Employment Ordinance for details]*

39. According to the Employment Ordinance:

- (i) If the length of notice required to terminate the contract of employment is a period expressed in days or weeks, the wages in lieu of notice shall be a sum equivalent to the daily average of the wages earned by an employee in the 12-month period immediately preceding the date on which a notice of termination of contract (“date of notification”) is given multiplied by the number of days in the notice period for which wages would normally be payable to the employee.
- (ii) If the length of notice is a period expressed in months, the wages in lieu of notice shall be a sum equivalent to the monthly average of the wages earned by an employee in the 12-month period immediately preceding the date of notification multiplied by the number of month(s) required.
- (iii) If an employee has been employed for less than 12 months, the calculation shall be based on the shorter period.
- (iv) In calculating the daily/monthly average of the wages earned by an employee, an employer should exclude (i) the periods for which an employee was not paid wages or full wages by reason of any rest day, statutory holiday, annual leave, sickness day, maternity leave, sick leave due to work injuries, leave taken with the agreement of the employer, or any normal working day on which the employee was not provided by the employer with work; and (ii) the sum paid to the employee for such periods. (Please refer to Example 10)

**Termination of employment contract without notice by employer**

*[Please refer to Part II of the Employment Ordinance for details]*

40. Under the Employment Ordinance, an employer may terminate the employment contract without notice or payment in lieu of notice under the following circumstances:

- (1) If the employee, in relation to his/her employment:
  - (a) willfully disobeys a lawful and reasonable order;
  - (b) misconducts himself/herself, such conduct being inconsistent with the due and faithful discharge of his/her duties;
  - (c) is guilty of fraud or dishonesty;
  - (d) is habitually neglectful in his/her duties; or
- (2) on any other ground on which the employer would be entitled to terminate the employment contract without notice at common law.

**Termination of employment contract without notice by employee**

*[Please refer to Part II of the Employment Ordinance for details]*

41. Under the Employment Ordinance, an employee may terminate his/her contract of employment without notice or payment in lieu of notice:

- (1) if he/she reasonably fears physical danger by violence or disease such as was not contemplated by his/her contract of employment expressly or by necessary implication;
- (2) if he/she is subjected to ill-treatment by the employer;
- (3) if he/she has been employed by the employer for not less than 5 years and is certified to be permanently unfit for the type of work specified in the employment contract; or
- (4) on any other ground on which he/she would be entitled to terminate the employment contract without notice at common law.

**Deemed termination of employment contract by employer**

*[Please refer to Part II of the Employment Ordinance for details]*

42. If wages are not paid within one month after they become due under the Employment Ordinance, the employee may terminate his/her contract of employment without notice or payment in lieu of notice. Under such circumstances, the contract of employment may be deemed to be terminated by his/her employer. The employer is required to make payment in lieu of notice and other statutory and contractual termination payment to the employee.

**Severance payment**

*[Please refer to Part VA of the Employment Ordinance for details]*

43. In accordance with the Employment Ordinance, if an employee, who has been employed under a continuous contract for not less than 24 months, is dismissed by reason of redundancy, is laid off or his/her employment contract for a fixed term expires without being renewed by reason of redundancy and he/she is not re-engaged by the employer, the employer is required to pay severance payment to the employee. An employee is taken to be dismissed by reason of redundancy if the dismissal is attributable to the fact that:

- (1) the employer has ceased, or intends to cease, to carry on the business for the purposes of which the employee was employed by the employer;
- (2) the employer has ceased, or intends to cease, the business in the place where the employee was so employed; or
- (3) the requirements of the business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where the employee was so employed, have ceased or diminished or are expected to cease or diminish.

**Long service payment**

*[Please refer to Part VB of the Employment Ordinance for details]*

44. In accordance with the Employment Ordinance, if an employee has been employed under a continuous contract for not less than 5 years, the employer shall pay long service payment under the following circumstances:

- (1) the employee is dismissed but not by reason of redundancy or in circumstances described in paragraph 40 above;
- (2) employment contract for a fixed term expires without being renewed and the employee is not re-engaged by the employer;

- (3) the employee, aged 65 or above, resigns;
- (4) the employee resigns on the ground that he/she is certified to be permanently unfit for the type of work specified in the employment contract; or
- (5) the employee dies whilst being employed under that continuous contract.

**Employment protection**

*[Please refer to Part VIA of the Employment Ordinance for details]*

45. An employee may claim for remedies under the Part on Employment Protection of the Employment Ordinance against his/her employer under the following circumstances:

- (1) where an employee has been employed under a continuous contract for a period of not less than 24 months ending with the relevant date and he/she is dismissed by the employer other than for a valid reason within the meaning of the Employment Ordinance because the employer intends to extinguish or reduce any right, benefit or protection conferred or to be conferred upon the employee by the Employment Ordinance;
- (2) where an employee is employed under a continuous contract and the employer, without the consent of the employee, in the absence of an express term in his/her contract of employment which so permits and, other than for a valid reason within the meaning of the Employment Ordinance, varies the terms of the employee's contract of employment because the employer intends to extinguish or reduce any right, benefit or protection conferred or to be conferred upon the employee by the Employment Ordinance; or
- (3) where an employee is dismissed by the employer other than for a valid reason within the meaning of the Employment Ordinance and in contravention of the relevant provisions:
  - (a) a pregnant employee employed under a continuous contract and has served notice of pregnancy to the employer is dismissed otherwise than in circumstances referred to in paragraph 40 above;
  - (b) an employee is dismissed by reason of the employee's exercising his/her right to be or to become a member or an officer of a trade union, or to take part in the trade union's activities, or his/her right to form or apply for registration of a trade union;
  - (c) an employee employed under a continuous contract is dismissed whilst on his/her paid sickness day otherwise than in circumstances referred to in paragraph 40 above;
  - (d) an employee is dismissed by the employer for the reason referred to in paragraph 46 below;
  - (e) an employee is dismissed by the employer by reason of the fact that the employee has given evidence, or agreed to give evidence, in any proceeding for the enforcement of any of the provisions of the Factories and Industrial Undertakings Ordinance (Cap. 59); or has given information to a public officer in any inquiry made by such officer for the purposes of or in connection with the enforcement of any of the provisions of that Ordinance; or
  - (f) an employee, who has sustained an injury at work and has suffered incapacity in circumstances which entitle him/her to compensation under the Employees' Compensation Ordinance (Cap. 282), is dismissed by the employer before compensation has been assessed or without the consent of the Commissioner for Labour.

46. Under the Employment Ordinance, no employer shall terminate, or threaten to terminate, the employment of, or discriminate against an employee by reason of the fact that the employee has given evidence or agreed to give evidence in any proceedings or has given information to a public officer in any inquiry in connection with the enforcement of the Employment Ordinance, any proceedings or inquiry relating to an accident to an employee arising out of and in the course of the employment or for the breach of a statutory duty in relation to the safety of persons at work. An employer who contravenes these provisions is liable to prosecution and, upon conviction, to a fine of HK\$100,000 and to pay compensation to that employee. Moreover, if an employee is dismissed under the above circumstances, he/she may claim for remedies against the employer under the Part on Employment Protection of the Employment Ordinance.

### **Other provisions of the Employment Ordinance**

47. For details of the employment terms, employers and employees are advised to refer to the employment contract and the Employment Ordinance which sets out the law summarized in these Guidance Notes.

48. Any term of an employment contract which purports to extinguish or reduce any right, benefit or protection conferred upon an employee by the Employment Ordinance shall be void.

### **Examples for illustration**

49. Examples listed below are for employers' reference for calculating employees' monthly wages, deductions for absence from work, overtime pay, pay for work on rest day and statutory benefits.

### **Determining the monthly wages**

#### **Example 1**

According to the relevant government service contract, the committed monthly wages for a cleaner are \$5,051 (calculated based on the average standard working days per month of 26 days and the average normal hours of work per day of 8 hours). As per Clause 3 of SEC, if the cleaner:

- works 6 days per week and 8 hours per day, his/her monthly wages shall not be less than **\$5,051**;
- works 5.5 days per week and 8 hours per day, his/her monthly wages shall not be less than **\$4,662.5** [ $\$5,051 \div 26(\text{days}) \times 24(\text{days}) = \$4,662.46$ ];
- works 5 days per week and 8 hours per day, his/her monthly wages shall not be less than **\$4,273.9** [ $\$5,051 \div 26(\text{days}) \times 22(\text{days}) = \$4,273.92$ ]; or
- works 6 days per week and 6 hours per day, his/her monthly wages shall not be less than **\$3,788.3** [ $\$5,051 \div 8(\text{hours}) \times 6(\text{hours}) = \$3,788.25$ ].

### **Calculating deductions for absence from work**

#### **Example 2**

An employee's deductions for absence from work shall be calculated on the basis of the number of calendar days in a particular month:

- (1) If an employee works 6 days per week, his/her monthly wages as per Clause 5(a) of the SEC are \$5,051, and he/she:
  - is absent from work on any one day in February, and there are 28 calendar days in February, the deduction for absence from work shall be **\$180.4** [ $\$5,051 \div 28(\text{days}) = \$180.39$ ];
  - is absent from work on any one day in March, the deduction for absence from work shall be **\$162.9** [ $\$5,051 \div 31(\text{days}) = \$162.94$ ]; or
  - is absent from work on any one day in April, the deduction for absence from work shall be **\$168.4** [ $\$5,051 \div 30(\text{days}) = \$168.37$ ].
- (2) If an employee works 5 days per week, his/her monthly wages as per Clause 5(a) of the SEC are \$4,273.9, and he/she:
  - is absent from work on any one day in February and there are 28 calendar days in February, the deduction for absence from work shall be **\$152.6** [ $\$4,273.9 \div 28(\text{days}) = \$152.64$ ];
  - is absent from work on any one day in March, the deduction for absence from work shall be **\$137.9** [ $\$4,273.9 \div 31(\text{days}) = \$137.87$ ]; or
  - is absent from work on any one day in April, the deduction for absence from work shall be **\$142.5** [ $\$4,273.9 \div 30(\text{days}) = \$142.46$ ].

### Calculating overtime pay and pay for work on rest day

#### Example 3

- (1) If a cleaner's monthly wages are \$5,051 as per Clause 5(a) of SEC, the average number of standard working days per month is 26 days and the average number of normal hours of work per day is 8 hours, the wage rates of his/her overtime pay and pay for work on rest day shall not be less than:
- daily: **\$194.3** [ $\$5,051 \div 26(\text{days}) = \$194.27$ ]; and
  - hourly: **\$24.3** [ $\$5,051 \div 26(\text{days}) \div 8 (\text{hours}) = \$24.28$ ]
- (2) If a cleaner's monthly wages are \$4,273.9 as per Clause 5(a) of SEC, the average number of standard working days per month is 22 days and the average number of normal hours of work per day is 8 hours, the wage rates of his/her overtime pay and pay for work on rest day shall not be less than:
- daily: **\$194.3** [ $\$4,273.9 \div 22(\text{days}) = \$194.27$ ]; and
  - hourly: **\$24.3** [ $\$4,273.9 \div 22(\text{days}) \div 8 (\text{hours}) = \$24.28$ ]

### Calculating rest day pay for the employee who is employed to work for more than one government service contract

#### Example 4

An employee is employed to work for two government service contracts, and the monthly wages in the Tables under Clause 2 of the Schedule are \$5,051 [Table (1)] and \$5,126 [Table (2)] respectively. The employee is required to work 6 days per week with rest day on Friday. His/Her rest day pay in May shall be:

- if the employee works for the contract in Table (1) up to Thursday, his/her rest day pay for Friday shall not be less than **\$162.9** { $\$5,051 [\text{monthly wages in Table (1)}] \div 31(\text{days}) = \$162.94$ }
- if the employee works for the contract of Table (1) up to Wednesday and then works for the contract in Table (2) starting from Thursday, his/her rest day pay for Friday shall not be less than **\$165.4** { $\$5,126 [\text{monthly wages in Table (2)}] \div 31(\text{days}) = \$165.35$ }

### Calculating the highest monthly wages chosen for the employee who is employed to work for more than one government service contract and the employee's overtime pay and pay for work on rest day

#### Example 5

An employee is employed to work for two government service contracts and he/she agrees with his/her employer to choose an amount calculated at a wage rate no less than the highest wage rate of the monthly wages among those listed in the Tables under Clause 2 of the Schedule for calculating his/her monthly wages, overtime pay and pay for work on rest day. If the employee is required to work 6 days a week and:

- (1) if the monthly wages specified in the Tables under Clause 2 of the Schedule are:
- \$5,051 [working 6 days a week and 8 hours a day in Table (1)]; and
  - \$5,126 [working 6 days a week and 8 hours a day in Table (2)],
- the monthly wages chosen shall not be less than **\$5,126**. The wage rates of the employee's overtime pay and pay for work on rest day shall not be less than:
- daily: **\$197.2** [ $\$5,126 (\text{chosen monthly wages}) \div 26(\text{days}) = \$197.15$ ]; and
  - hourly: **\$24.6** [ $\$5,126 (\text{chosen monthly wages}) \div 26(\text{days}) \div 8 (\text{hours}) = \$24.64$ ]
- (2) if the monthly wages specified in the Tables under Clause 2 of the Schedule are:
- \$4,273.9 [working 5 days a week and 8 hours a day in Table (1)], if the employee is required to work 6 days a week and 8 hours a day, then the monthly wages shall be **\$5,051** [ $\$4,273.9 \div 22(\text{days}) \times 26(\text{days}) = \$5,051$ ]; and
  - \$4,731.7 [working 5.5 days a week and 8 hours a day in Table (2)], if the employee is required to work 6 days a week and 8 hours a day, then the monthly wages shall be **\$5,126** [ $\$4,731.7 \div 24(\text{days}) \times 26(\text{days}) = \$5,126$ ],
- the monthly wages chosen shall not be less than **\$5,126**. The wage rates of the employee's overtime pay and pay for work on rest day shall not be less than:
- daily: **\$197.2** [ $\$5,126 (\text{chosen monthly wages}) \div 26(\text{days}) = \$197.15$ ]; and
  - hourly: **\$24.6** [ $\$5,126 (\text{chosen monthly wages}) \div 26(\text{days}) \div 8 (\text{hours}) = \$24.64$ ]

(3) if the monthly wages specified in the Tables under Clause 2 of the Schedule are:

- \$4,273.9 [working 5 days a week and 8 hours a day in Table (1)], if the employee is required to work 6 days a week and 8 hours a day, then the monthly wages shall be **\$5,051** [ $\$4,273.9 \div 22(\text{days}) \times 26(\text{days}) = \$5,051$ ]; and
- \$3,253.0 [working 5 days a week and 6 hours a day in Table (2)], if the employee is required to work 6 days a week and 8 hours a day, then the monthly wages shall be **\$5,126** [ $\$3,253.0 \div 22(\text{days}) \times 26(\text{days}) \div 6(\text{hours}) \times 8(\text{hours}) = \$5,126$ ],

the monthly wages chosen shall not be less than **\$5,126**. The wage rates of the employee's overtime pay and pay for work on rest day shall not be less than:

- daily: **\$197.2** [ $\$5,126 (\text{chosen monthly wages}) \div 26(\text{days}) = \$197.15$ ]; and
- hourly: **\$24.6** [ $\$5,126 (\text{chosen monthly wages}) \div 26(\text{days}) \div 8 (\text{hours}) = \$24.64$ ]

### Calculating holiday pay

#### Example 6

According to Clause 5(a) of the SEC, the monthly wages of an employee are \$5,051 (working 6 days per week and 8 hours per day). The holiday pay (according to the Employment Ordinance) shall be:

- 12-month wages earned immediately preceding the holiday: \$59,907.9, including wages of 301 days of work, 52 paid rest days and 8 paid statutory holidays. No overtime work is performed during the period
- Leave taken with less than full wages in the 12-month period: 4 statutory holidays without pay (statutory holidays falling within the first 3 months of employment are without pay)
- Periods and the sum to be disregarded: 4 days of statutory holidays without pay (as the 4 days are statutory holidays without pay, the amount to be disregarded will be \$0)
- Holiday pay : [ $(\$59,907.9 - 0) \div (365 - 4) (\text{days})$ ] = \$165.9

### Calculating annual leave pay

#### Example 7

According to Clause 5(a) of the SEC, the monthly wages of an employee are \$4,273.9 (working 5 days per week and 8 hours per day). 5 days of annual leave pay (according to the Employment Ordinance) shall be:

- 12-month wages earned immediately preceding the annual leave: \$51,286.8, including wages for 249 days of work, 104 paid rest days and 12 paid statutory holidays. No overtime work is performed during the period
- Periods and the sum to be disregarded: No period and sum have to be disregarded because the employer is not paid less than his full wages for the leave taken in the 12-month period
- 5-day annual leave pay : [ $(\$51,286.8 - 0) \div (365 - 0) (\text{days}) \times 5(\text{days})$ ] = \$702.6

#### Example 8

According to Clause 5(a) of the SEC, the monthly wages of an employee are \$4,273.9 (working 5 days per week and 8 hours per day). 5 days of annual leave pay (according to the Employment Ordinance) shall be:

- 12-month wages earned immediately preceding the annual leave : \$64,165.8, including
  - \$51,286.8 for 249 days of work, 104 paid rest days and 12 paid statutory holidays
  - Overtime pay of \$12,879 (where the monthly average over the past 12 months is not less than 20% of the average monthly wages of the employee during the same period. The employee had worked a total of 530 hours of irregular overtime work with an overtime rate at \$24.3 per hour [ $\$24.3 \times 530$ ])
- Periods and the sum to be disregarded: No period and sum have to be disregarded because the employer is not paid less than his full wages for the leave taken in the 12-month period
- 5-day annual leave pay : [ $(\$64,165.8 - 0) \div (365 - 0) (\text{days}) \times 5(\text{days})$ ] = \$879

### Calculating sickness allowance

#### Example 9

According to Clause 5(a) of the SEC, the monthly wages of an employee are \$4,662.5 (working 5.5 days per week and 8 hours per day). If the employee is granted 4 consecutive days of sick leave, the sickness allowance of the 4 days (according to the Employment Ordinance) shall be:

- 12-month wages earned immediately preceding the first sickness day: \$55,644.2, including wages of 292 days of work and the following leave (no overtime work is performed during the period):
  - 52 paid rest days
  - 12 paid statutory holidays
  - 7 days of paid annual leave
  - 1 day no-pay leave in June (leave taken with the agreement of the employer)
  - 1 day no-pay leave in July (leave taken with the agreement of the employer)
- Periods and the sum to be disregarded: 2 days of no pay leave (as the 2 days are no pay leave, the amount to be disregarded will be \$0)
- 4-day sickness allowance :  $[(\$55,644.2 - 0) \div (365 - 2) \text{ (days)}] \times 4 \text{ (days)} \times 4/5 = \$153.3 \times 4 \text{ (days)} \times 4/5 = \$490.6$

### Calculating wages in lieu of notice

#### Example 10

According to Clause 5(a) of the SEC, the monthly wages of an employee are \$5,051 (working 6 days per week and 8 hours per day). Clause 17 of the SEC specifies that there is no probation period, and a notice period of 7 days or payment in lieu of notice is required. If the employer terminated the employment on 3 January 2008, the employee's wages in lieu of notice shall be:

- 12-month wages earned (i.e. 2007) immediately preceding the date of notification: \$60,612, including wages of 301 days of work, 52 paid rest days and 12 paid statutory holidays. No overtime work is performed during the period
- Periods and the sum to be disregarded: No period and sum have to be disregarded because the employee is not paid less than his full wages for the leave taken in the 12-month period
- Amount of 7 days' wages in lieu of notice:  $[(\$60,612 - 0) \div (365 - 0) \text{ (days)}] \times 7 \text{ (days)} = \$1,162.4$

January 2008