



## Termination of Employment Contracts

### Termination of Employment by Notice

#### Employment Ordinance (Cap. 57)

The law allows either party to terminate an employment contract at any time by giving the other party notice of termination.

Generally, if employees work not less than 18 hours each week, continuously for 4 weeks or more for the same employer, unless they are in their first month of probation, they are entitled to: (1) the period of notice stipulated in the employment contract, provided that such period is not less than 7 days; or (2) if the employment contract is silent on the period of notice, a period of not less than one month.

#### Termination by Payment in lieu of Notice

The Employment Ordinance allows either party to terminate employment by agreeing to pay the other party payment in lieu of the required period of notice. Payment in lieu of notice is calculated by reference to the daily average or monthly average wage earned by the employee during the 12-month period immediately preceding the date of termination (or the shorter period, if the employee has been employed for less than 12 months).

#### Probationary Period

During any probationary period, employment may be terminated by either party during the first month without notice or payment in lieu of notice period stated in the employment contract. During the remainder of the probationary period, employment may be terminated by either party giving not less than 7 days' notice or the length of notice stipulated in the employment contract, whichever is longer.

### Can the employer dismiss an employee without giving notice or payment in lieu?

Under certain circumstances, the employer is entitled to dismiss an employee without giving notice or payment in lieu, for example where an employee:

- willfully disobeys the employer's lawful and reasonable order;
- misconducts himself or herself, such conduct being inconsistent with the due and faithful discharge of his or her duties;
- is guilty of fraud or dishonesty; or
- is habitually neglectful in his or her duties.

If there is insufficient justification to support such dismissal, the employer's action could amount to wrongful termination, in which case the employer may be liable for damages.

### Can an employer suspend an employment?

Under the Employment Ordinance, an employer can suspend employment under the following circumstances:

- as a disciplinary measure (for up to 14 days) instead of summary dismissal;
- pending consideration (for up to 14 days) of whether to effect a summary dismissal; or
- pending the outcome of any criminal proceedings against the employee arising out of, or connected with, the employment.

*The information contained in this leaflet is for reference only.  
It should not be regarded as legal advice for any individual cases. If you have any queries, please consult a solicitor.*

Copyright © The Law Society of Hong Kong – All rights reserved  
(April 2020)

**THE LAW SOCIETY OF HONG KONG**

3/F., Wing On House, 71 Des Voeux Road, Central, Hong Kong

Telephone: (852) 2846 0500

Facsimile: (852) 2845 0387

E-mail: [sg@hklawsoc.org.hk](mailto:sg@hklawsoc.org.hk)

Website: <http://www.hklawsoc.org.hk>



## Termination of Employment Contracts

### Can an employee terminate the employment contract without giving notice or payment in lieu?

An employee can terminate the employment contract without notice or payment in lieu, such as when the employee:

- has a reasonable belief that he or she may face physical danger by violence or disease which was not contemplated in the contract of employment;
- has been employed for not less than five years and is certified by registered medical practitioner or a registered Chinese medicine practitioner as being permanently unfit for the type of work he or she is being engaged; or
- is ill-treated by the employer.

If an employee terminates the contract without notice or payment in lieu and without sufficient justification, this would amount to wrongful termination, in which case the employee may be liable for damages, often limited in value to the sum the employer would have received if notice had been given or a payment in lieu of notice had been made.

### Termination by operation of law

An employment contract may be terminated by the operation of law, such as

- change of ownership of business;
- winding-up of a corporate employer;
- dissolution of partnership; and
- death or incapacity of an employer or employee.

### Discrimination / Unlawful termination

During the recruitment process and throughout the employment, employers should not treat employees less favourably because of their sex, disability, pregnancy, sickness, family status, marital status or race. If the employee is treated less favourably or an employment contract is terminated on such grounds, the employee has legal protection and may be entitled to seek compensation and other remedies from the former employer.

### Payments Due On Termination

An employer is required to make any payments due to an employee on termination of employment (such as payment in lieu of notice, in lieu of untaken holiday, or any accrued and unpaid bonuses) within 7 days of termination. In addition, an employee who is terminated by reason of redundancy after 2 years or more of service may be entitled to a severance payment and an employee who is terminated after 5 years or more of service will be entitled to a long service payment. However, an employee will not be entitled to both a severance and long service payment: in case of redundancy the entitlement would be to a severance payment only.

The following organizations can be contacted for advice:

#### Labour Relations Office of the Labour Department

[www.labour.gov.hk/eng/tele/lr1.htm](http://www.labour.gov.hk/eng/tele/lr1.htm)

Contact number: 2717 1771

#### The Equal Opportunities Commission

[www.eoc.org.hk](http://www.eoc.org.hk)

Contact number: 2511 8211

#### The Law Society of Hong Kong

Up to 45 minutes of free legal consultation from a solicitor listed on [choosehklawyer.org](http://choosehklawyer.org)

*The information contained in this leaflet is for reference only.  
It should not be regarded as legal advice for any individual cases. If you have any queries, please consult a solicitor.*

Copyright © The Law Society of Hong Kong – All rights reserved  
(April 2020)

#### THE LAW SOCIETY OF HONG KONG

3/F., Wing On House, 71 Des Voeux Road, Central, Hong Kong

Telephone: (852) 2846 0500

Facsimile: (852) 2845 0387

E-mail: [sg@hklawsoc.org.hk](mailto:sg@hklawsoc.org.hk)

Website: <http://www.hklawsoc.org.hk>