

Statutory holidays increase from 12 to 17 by 2030

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On 7 July 2021, more than one million workers will enjoy more days off starting from next year because the Legislative Council of Hong Kong passed the Employment (Amendment) Bill 2021 which increases the number of statutory holidays from 12 to 17 by 2030 under the Employment Ordinance.

Under the Employment Ordinance, an employee shall enjoy rest days, statutory holidays and paid annual leave during employment. Let us first briefly explain the differences among these three types of leave days.

Rest days

Any employee under a continuous contract is entitled to not less than one rest day in each seven-day period. Rest days may be regular (e.g., a designated day in each week) or irregular (e.g., a roster of reporting duties).

Statutory holidays

Currently, Hong Kong law stipulates that all employees are entitled to enjoy 12 statutory holidays in each calendar year. Statutory holidays are not equal to public holidays because there are 17 public holidays in 2021 and only 12 out of the 17 public holidays are statutory holidays. Therefore, if the employment contract provides that the employee may only enjoy the statutory holidays rather than the public holidays, the

employer may require the employee to work on public holidays which are not statutory holidays without salary compensation. However, most white-collar employees in Hong Kong are allowed to enjoy the public holidays. Statutory holidays (which are less than public holidays currently) are traditionally applied to blue-collar jobs.

As said above, the number of statutory holidays will be increased from 12 to 17 by 2030 in the following schedule:

- a) the Birthday of the Buddha, being the eighth day of the fourth lunar month (starting from 2022);
- b) the first weekday after Christmas Day (starting from 2024);
- c) Easter Monday (starting from 2026);
- d) Good Friday (starting from 2028); and
- e) the day following Good Friday (starting from 2030).

Paid annual leave

An employee under continuous contract for more than 12 months is entitled to paid annual leave which must be taken within the following 12 months. The number of annual leave days rises from 7 to 14 following the increase in length of service. As in the case of statutory holidays, the employer may not offer compensation in lieu of annual leave.

If the employer requires the employee to work on a statutory holiday, the employer should make the following alternative holiday arrangement:

Alternative Holiday Arrangement	Prior Notice to Employee on the Date of Alternative Holiday
An alternative holiday should be arranged within 60 days before the statutory holiday; or	To be given not less than 48 hours' prior notice before the alternative holiday
An alternative holiday should be arranged within 60 days after the statutory holiday	To be given not less than 48 hours' prior notice before the statutory holiday

If the employer and employee agree, any day within 30 days before or after the statutory or alternative holiday may be taken by the employee as a "substituted holiday".

Further, if the statutory holiday falls on a rest day, an employer must grant a holiday on the next day that is not a statutory, alternative or substituted holiday or a rest day.

What should employers be aware of in respect of statutory holidays?

The employer may not make payment to buy out the statutory holidays. The entitlement to statutory holidays is not dependent on the length of service. An employee who has been employed under a continuous contract for not less than three months by the employer is entitled to statutory holiday pay.

Key takeaway for employers

Employers should update their (i) work rosters or arrangements to reflect the increase in statutory holidays and (ii) payment systems to ensure that they are not paying less than the prescribed statutory holiday pay in respect of the additional statutory holidays to its employees.

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