

Chapter 12: Employers' Criminal Liability in Failing to Pay an Award of the Labour Tribunal or Minor Employment Claims Adjudication Board

An employer should pay the awarded sum as ordered by the Labour Tribunal ("LT") or the Minor Employment Claims Adjudication Board ("MECAB") without delay.

Defaulting Payment of an Award of a Tribunal is a Criminal Offence

Under the Employment (Amendment) Ordinance 2010 ("the Amendment Ordinance")^{Note 1}, if an award of a tribunal^{Note 2} provides for the payment by an employer of any specified entitlement defined by the Amendment Ordinance (such as wages, end of year payment, maternity leave pay and severance payment, etc)^{Note 3} (see the part below on Coverage of "Specified Entitlements") and the employer wilfully and without reasonable excuse fails to pay the awarded sum within 14 days after it becomes due^{Note 4}, the employer is liable to prosecution and, upon conviction, to a fine of \$350,000 and imprisonment for three years.

The offence applies to the default on any part of a sum payable under the award. In the case of a sum payable by instalments, it also applies to the default on any instalment or part of an instalment.

^{Note 1} The Amendment Ordinance applies to an award of the LT or MECAB made on or after the effective date (i.e. 29 October 2010).

^{Note 2} "an award of a tribunal"— includes an award, an order or a settlement treated as an award of the LT under the Labour Tribunal Ordinance or that of the MECAB under the Minor Employment Claims Adjudication Board Ordinance.

^{Note 3} Unless there is any contrary evidence, if an award of a tribunal provides for the payment of a sum but does not indicate whether or not that sum includes any specified entitlement, and the claim to which the award relates consists, in whole or in part, of any specified entitlement, the award is to be treated as providing for the payment of a specified entitlement.

^{Note 4} If the award does not specify the date on which the awarded sum is payable, the sum should be paid within 14 days after the date of the award.

Company Directors and Responsible Persons are Criminally Liable for Defaulting Payment of an Award of a Tribunal

Where a limited company wilfully and without reasonable excuse fails to pay an awarded sum within 14 days after it becomes due and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director or other responsible person, such person commits an offence and is liable to prosecution and, upon conviction, to a fine of \$350,000 and imprisonment for three years.

Coverage of “Specified Entitlements”

“Specified entitlements” include wages and statutory entitlements underpinned by criminal sanctions under the Employment Ordinance, such as wages, end of year payment, maternity leave pay, severance payment, long service payment, sickness allowance, holiday pay, annual leave pay as well as terminal payments and compensation for unreasonable and unlawful dismissal awarded under the part on “Employment Protection” of the Employment Ordinance.

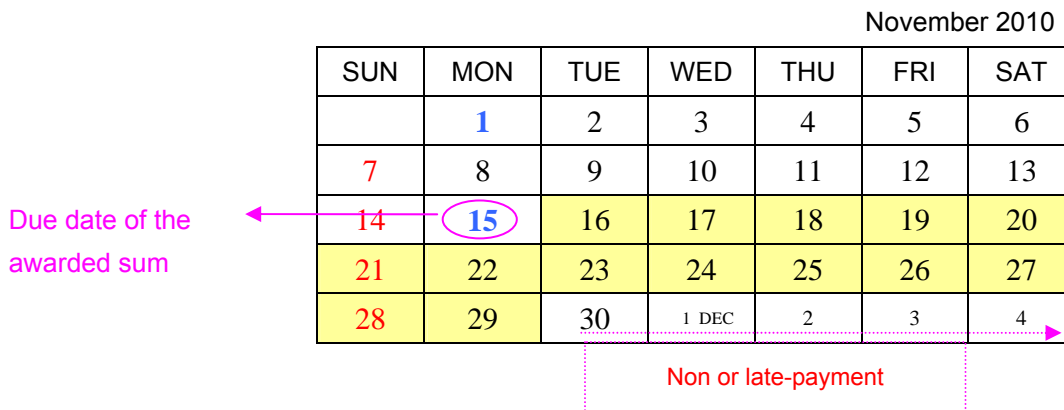
Examples

How to determine the “14-day period after the awarded sum becomes due”

[Example 1] When the awarded sum is payable in a lump sum :

An employer has agreed to terminate the employment of his employee by paying 1-month wages in lieu of notice of \$7,500 in place of giving one month’s notice as per the term under the employment contract. He subsequently refuses to pay the sum.

The employee lodges a claim of \$7,500 wages in lieu of notice against his employer at the Labour Relations Division of the Labour Department. After conciliation, the dispute is unresolved. The employee then files a claim for the wages in lieu of notice against the employer with the MECAB. MECAB awards in favour of the employee on 8 November 2010 and makes an award on the same day. The employer is ordered to pay the employee \$7,500 wages in lieu of notice on or before 15 November 2010.



Denotes the 14-day period (i.e. 16 to 29 November 2010) after the awarded sum becomes due. An employer who wilfully and without reasonable excuse fails to pay before the expiry of this period commits an offence.

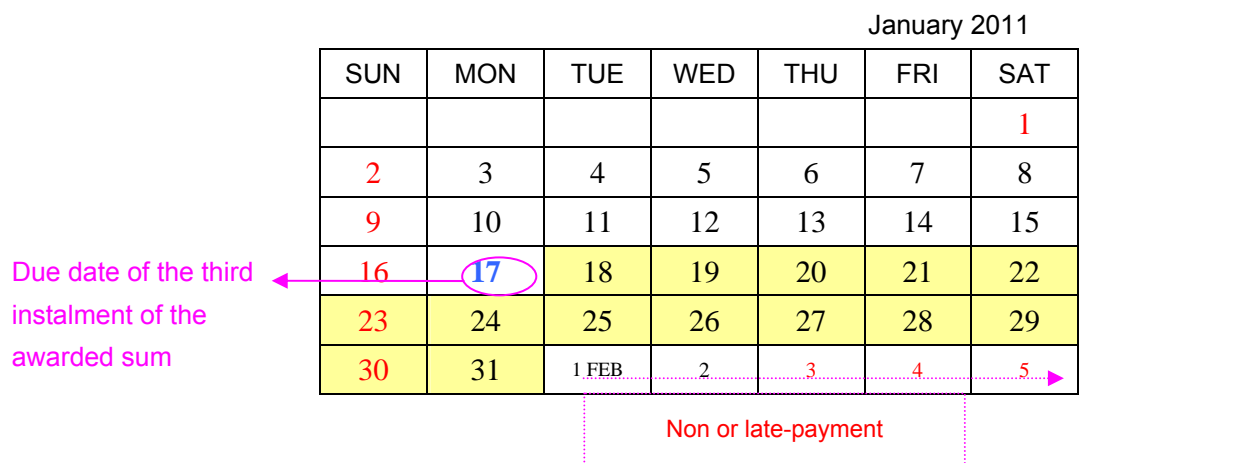
An employer who wilfully and without reasonable excuse fails to pay the awarded sum of \$7,500 within 14 days (i.e. 16 to 29 November 2010) after it becomes due (i.e. the due date 15 November 2010) commits an offence and is liable to prosecution. Upon conviction, the maximum penalties are a fine of \$350,000 and imprisonment for three years.

[Example 2] When the awarded sum is payable by instalments :

An employee files a claim with the LT against his employer for \$12,000 commission. The parties reach a settlement agreement at a hearing on 3 November 2010 and the employer agrees to pay the employee the claim amount by 3 instalments in full and final settlement of the dispute. LT approves the settlement agreement and makes an award on the same day. The awarded sum should be paid on or before the following dates :

No. of Instalments	Date	Payment
First Instalment	17 November 2010	\$4,000
Second Instalment	17 December 2010	\$4,000
Third Instalment	17 January 2011	\$4,000

If the employer only pays the first and second instalments in a total sum of \$8,000 on schedule but fails to pay the third instalment \$4,000 on or before 31 January 2011 (i.e. the expiry of the 14-day period after the third instalment of the awarded sum becomes due), the employer commits an offence and is liable to prosecution.



Denotes the 14-day period (i.e. 18 to 31 January 2011) after the third instalment of the awarded sum becomes due. An employer who wilfully and without reasonable excuse fails to pay before the expiry of this period commits an offence.

An employer who wilfully and without reasonable excuse fails to pay the sum of \$4,000 before the expiry of the 14-day period (i.e. 18 to 31 January 2011) after the third instalment of the awarded sum becomes due (i.e. the due date 17 January 2011) commits an offence and is liable to prosecution. Upon conviction, the maximum penalties are a fine of \$350,000 and imprisonment for three years.