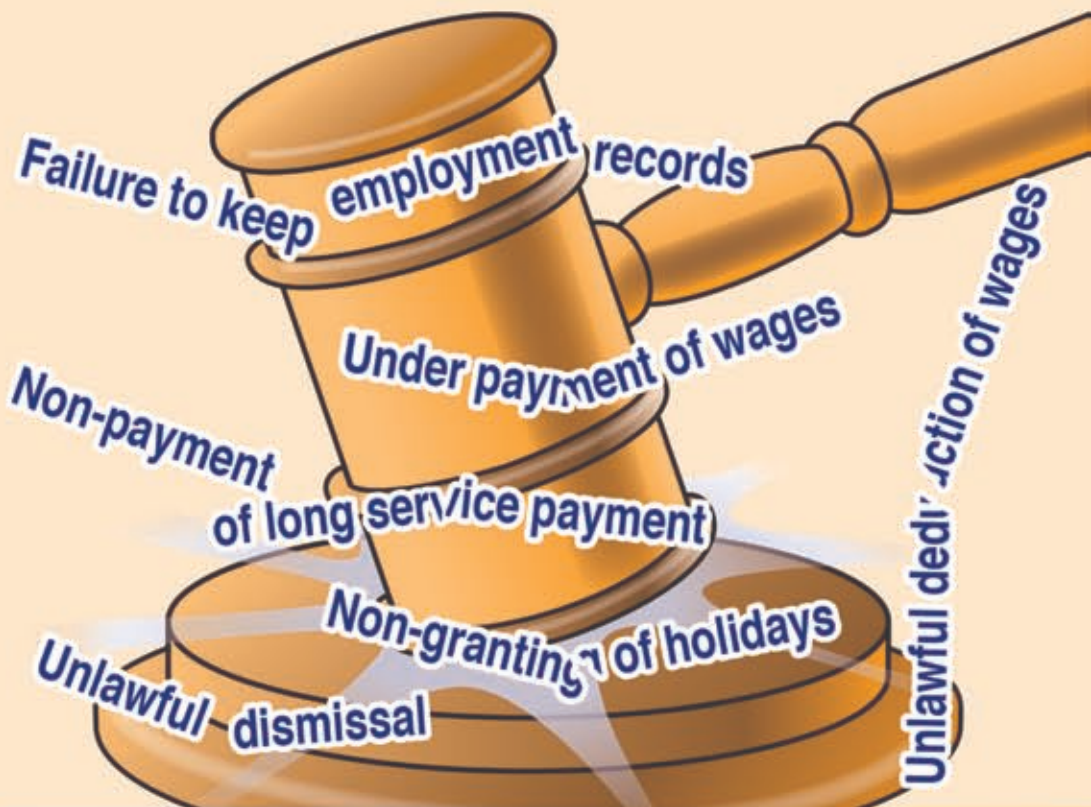


# Protect Your Interests and Come Forward as Prosecution Witness

A Guide on Civil and Criminal Proceedings  
Related to the Employment Ordinance



勞工處

Labour Department

## Introduction

This guide sets out in simple terms for employees' reference the differences in the nature and procedures of civil claims and criminal prosecution with respect to provisions under the Employment Ordinance (EO). With the help of this guide, we hope that more employees can be encouraged to report breaches of the EO and to come forward as prosecution witnesses so that we could take out prosecution against employers breaching the EO.

## Employees' Rights and Benefits under the Employment Ordinance

The EO (Chapter 57 of the Laws of Hong Kong) has specific provisions on the range of employment benefits and employment conditions, such as wage protection, rest days, holidays with pay, paid annual leave, sickness allowance, maternity protection, severance payment, long service payment and employment protection. An employer who contravenes the provisions of the EO may be subject to civil claims lodged by his employee and criminal prosecution by the Labour Department.

## Defaulting on Wage Payment is a Serious Offence

The Labour Department takes a serious view on late payment and underpayment of wages by employers. As stipulated in the EO, an employer should pay wages to his employee not later than seven days after the end of the wage period or the day of termination of employment. If the employer fails to do so, he is required to pay interest on the outstanding amount of wages to the employee. **If an employer does not pay wages to his employee within seven days after the end of the wage period or the day of termination of employment, the employee should lodge claims promptly with the branch office of the Labour Relations Division nearest to his place of work.**

According to the EO, an employer who wilfully and without reasonable excuse fails to pay wages on time, or fails to pay interest on the outstanding amount of wages, would be liable to prosecution. For wage offences, the employer would be subject to a maximum fine of \$350,000 and imprisonment for 3 years upon conviction. For non-payment of interest, he would be subject to a maximum fine of \$10,000 upon conviction.

The rights of an employee could be jeopardized if he does not lodge his wage claims promptly<sup>1</sup>. If wages are not paid to an employee within one month after they become due, he may deem his contract of employment as terminated by the employer and may claim termination payment from the employer. The employee should inform his employer when he exercises such statutory rights.

For details of statutory employment benefits and related penalties for breaches of the EO, please refer to "A Concise Guide to the Employment Ordinance" published by the Labour Department.

## Enforcement Action of the Labour Department

The Labour Department takes vigorous enforcement action on breaches of the EO. Apart from assisting employees to pursue payments owed by their employers, the Department will take out prosecution against employers breaching the EO if there is sufficient evidence and the employees concerned agree to be prosecution witnesses. **Therefore, we strongly urge employees to come forward as prosecution witnesses, so that we can take out prosecution against the employers breaching the EO.**

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<sup>1</sup> Example: If an employer should eventually go into insolvency, his employees could apply for ex gratia payment from the Protection of Wages on Insolvency Fund. As the ceiling for ex gratia payment in respect of arrears of wages payable by the Fund is \$36,000 and that it only covers wages for services rendered during the four months prior to the last date of service, an employee who fails to take early action to pursue his claim might not be able to recover all the outstanding wages. At the same time the employee must file an application for ex gratia payment from the Fund within six months after the last day of service. The Labour Department would not accept any late application.

## Differences between Civil Claims and Criminal Prosecution

There are differences in both the nature and procedures with respect to civil claims and criminal prosecution under the EO. For civil claims, an employee can lodge claims against his employer and so can an employer against his employee. If the civil claim is handled by the court, it is usually adjudicated by the Minor Employment Claims Adjudication Board or the Labour Tribunal, which will determine whether the defendant has to make compensation to the claimant. The standard of proof for civil claims is based on the balance of probabilities.

In criminal proceedings, it is the Labour Department that would take out prosecution against the employer for contravening the employment provisions. Penalties would be imposed on the employer upon conviction. If a fine is imposed, the sum would be payable into the Government Revenue. Criminal cases involving breaches of the EO would normally be heard at the Magistrates' Courts. The standard of proof required of the prosecution is one beyond reasonable doubt.

## Civil Claims by Employees

If an employee wishes to pursue claims against his employer under the EO or his employment contract, he could seek assistance from the Labour Relations Division of the Labour Department. The Division can provide conciliation service for both the employee and his employer.

If the employee and his employer cannot reach a settlement, the conciliation officer would, on the request of the claimant, refer him to lodge a claim at the Minor Employment Claims Adjudication Board or the Labour Tribunal, depending on the amount of claims involved. The adjudication body would determine whether an award would be made in favour of the claimant and if yes, the amount of the award.

## Criminal Prosecution

If a suspected breach of the EO is detected and the employee concerned agrees to be prosecution witness, the Labour Department would invite the employee to give a witness statement and submit documentary evidence to the Employment Claims Investigation Division. The investigation officer of the Division would then arrange an interview with the employer or his representative, to inform him the details of the suspected offences, and to hear his defence. Upon conclusion of investigation, the Prosecutions Division of the Labour Department would examine whether prosecution will be instituted against the employer.

In criminal proceedings, the Labour Department must prove beyond reasonable doubt that the employer has contravened the EO. For complicated cases, the Department would seek the legal advice of the Department of Justice. Hence, whether the employer would eventually be prosecuted depends on whether there is sufficient evidence, and whether there is reasonable chance that the employer will be convicted of the offences.

If the employer pleads guilty at the fresh hearing on the offence at the Magistrates' Court, the employee will not need to attend the court hearing as prosecution witness. If however the employer pleads not guilty, the Prosecutions Division of the Labour Department will arrange for the employee to testify at subsequent hearings.

Unlawful deduction of wages

Non-granting of holidays

Unlawful dismissal

Under payment

of wages

Non-payment of long service payment

Failure to keep employment records

## Enquiries

For enquiries, please contact:



Enquiry Hotline : 27171771

(The hotline is handled by the Integrated Call Centre)



Homepage Address: <http://www.labour.gov.hk>



Enquiry in person to Offices of the Labour Relations Division :

### Hong Kong

#### Hong Kong East Office

34/F., Revenue Tower,  
5 Gloucester Road,  
Wanchai, Hong Kong

#### Hong Kong West Office

3/F., Western Magistracy Building,  
2A Pokfulam Road,  
Hong Kong

### Kowloon

#### Kowloon East Office

Room 1206,12/F., Stelux House,  
698 Prince Edward Road East,  
San Po Kong, Kowloon

#### Kowloon South Office

2/F., Mongkok Government Offices,  
30 Luen Wan Street,  
Mongkok, Kowloon

#### Kowloon West Office

Room 1009, 10/F.,  
Cheung Sha Wan Government Offices,  
303 Cheung Sha Wan Road, Kowloon

#### Kwun Tong Office

6/F., Kowloon East Government Offices,  
12 Lei Yue Mun Road,  
Kwun Tong, Kowloon

### New Territories

#### Tsuen Wan Office

5/F., Tsuen Wan Government Offices,  
38 Sai Lau Kok Road,  
Tsuen Wan, New Territories

#### Kwai Chung Office

6/F., Kwai Hing Government Offices,  
166-174 Hing Fong Road,  
Kwai Chung, New Territories

#### Tuen Mun Office

Room 2720,  
Tuen Mun Parklane Square,  
2 Tuen Hi Road, Tuen Mun,  
New Territories

#### Shatin & Tai Po Office

Rooms 304-313,  
3/F., Sha Tin Government Offices,  
1 Sheung Wo Che Road,  
Shatin, New Territories