

Wage Defaults May Result in Criminal Liability, Company Responsible Persons Are Also Liable

Defaulting on Wage Payments is a Criminal Offence

The Employment Ordinance (EO) stipulates that 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. An employer who wilfully and without reasonable excuse fails to pay full wages or delays in paying wages commits an offence. Upon conviction, **an employer would be subject to a maximum penalty of \$350,000 and imprisonment for three years.** In addition, the employer has to pay interest for the outstanding wages.

Company Directors and Relevant Persons are Criminally Liable for Wage Offences

Also, section 64B of the EO stipulates that, where a wage offence committed by a limited company 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, manager, secretary or other responsible person of the company, such person shall be guilty of the like offence and subject to the same penalty as the wage offence. **Therefore, the criminal liability coverage of section 64B is very wide, and includes directors and relevant company responsible persons.**

Labour Department Steps Up Enforcement Efforts in Combating Wage Offences

The Labour Department will conduct investigation into wage offence cases, including the liability of company directors and other relevant persons. If there is sufficient evidence, the Department would take out prosecution against the employer and company responsible persons.

In the course of investigating wage offences, the Labour Department would also check if the company responsible persons might have committed other offences while operating the business and managing the finance of the company. If the Department detects that they might be involved in suspected offences such as illegal transfer of assets, theft of company money, evasion of liabilities by deception, and failure to keep proper accounting records, it would refer such cases to the Hong Kong Police Force and the Official Receiver's Office for follow-up action.

Past Conviction Cases

Case One

Two partners operating a retail shop failed to pay about \$4,000 wages to an employee in accordance with the EO requirements. The employee lodged a claim in the Minor Employment Claims Adjudication Board and was awarded the said sum. However, the partners did not effect payment in compliance with the Board's order.

The Labour Department conducted investigation into the wage offence and took out prosecution against the two partners. One partner pleaded guilty and was fined \$16,000 and ordered to clear the wages via the court. The other partner pleaded not guilty. He was convicted after trial and sentenced to 14 days' imprisonment.

Case Two

An employer in the advertising industry failed to pay wages to several former employees in accordance with the EO requirements. The amount involved is around \$20,000. After investigation, the Labour Department took out prosecution against the employer. The employer initially pleaded not guilty. However, he reverted to plead guilty to all the charges during the trial and was convicted and sentenced to two months' imprisonment.

Case Three

A restaurant failed to pay wages and other termination compensation to its employees after ceasing business. The employees later obtained an award in their favour from the Labour Tribunal but the limited company operating the restaurant did not effect payment in compliance with the order of the Tribunal.

The evidence collected by the Labour Department revealed that the wage offences were committed with the consent or connivance of the director of the said limited company. The amount involved was about \$50,000. Prosecution was therefore taken out against the director. He pleaded guilty and was sentenced to 14 days' imprisonment. He was also ordered to clear the wages via the court.

Case Four

A human resources company failed to pay wages to its employees in accordance with the EO requirements. The amount involved was around 95,000. The Labour Department took out prosecution. The company pleaded guilty and was fin
\$109,000.

The above cases clearly reflect the court's strong message to employers and company responsible persons: **they have personal responsibility to ensure that their companies pay wages on time in accordance with the requirements of the Employment Ordinance. Otherwise, heavy penalty would be imposed.**

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