



僱主與僱員指引一

# 如何處理減薪及裁員

Guidelines on What to do if  
Wage Reductions and  
Retrenchments are Unavoidable



勞工處  
Labour Department

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# 第一節 代替減薪和裁員的其他可行措施

- 1.1 面對業務的困難，僱主應開心見誠向僱員解釋，爭取他們的支持和合作。僱主透過適合的途徑，例如協商委員會、員工協會或機構內職工會諮詢，也是十分重要的。不要隨便摒棄或輕視僱員的建議。表面看似是粗略的建議也可能包含寶貴的意見。由前線員工提出節省人力和其他方面的建議，是最切合實際情況的。
- 1.2 本節提供一些實際可行措施以代替減薪和裁員。香港一些僱主曾採用這些措施，以增加生產力和削減開支，而無須採取減薪或裁員的行動。

## 僱主可考慮的措施

- 1.3 僱主可以考慮採取下列措施：
  - 1.3.1 人力資源管理方面的措施
    - 以自然流失、自願離職和自願退休計劃來減少薪酬開支。
    - 藉此機會訓練僱員和提升他們的技能，以提高生產力和應付新的需求。
    - 調配現有人手至新設的職位，視乎需要而提供訓練。
    - 暫停招聘員工。
  - 1.3.2 增加收入或節省成本的措施
    - 定期與員工舉行開源節流會議。
    - 審查和盡量削減機構內各單位的開支預算。
    - 與供應商磋商降低成本。
    - 從公司整體運作實行節約，減低經營成本，包括減少用電、影印和精簡辦公室程序。
    - 尋求更經濟的方法來宣傳或推廣產品。
    - 嘗試發展新產品或發掘新市場。
  - 1.3.3 此外，還可考慮下列措施：
    - 加強僱員參與改善效率的意識，並鼓勵他們提供意見。
    - 獎勵提出有效建議的員工。
    - 如公司業務逐漸放緩，鼓勵僱員放取其有薪假期，並保證他們於放假後仍可重回原來的工作崗位。
    - 如因業務的特殊需要，而必須安排僱員放取無薪假期，僱主應事先就無薪假的安排與有關的僱員進行磋商及坦誠商議，並考慮個別僱員的需要，協商有關安排，以維持良好的僱傭關係。

## 僱員可以怎樣幫忙

- 1.4 面對經濟困境，僱員應採取積極態度，與僱主互相合作，共渡時艱。你可以：
  - 體諒僱主的困難，誠懇地向僱主提出改善工作效率的建議。
  - 積極配合僱主的開源節流措施。
  - 協助僱主把握每一個商機。

## 第二節 當減薪無可避免時

### 僱主應該怎樣做

- 2.1 在無可避免要考慮減薪時，僱主最好與員工進行坦率誠懇的磋商，否則，結果往往會引致嚴重的勞資糾紛。僱主應向所有僱員作出呼籲，取得他們的信任，爭取他們的支持。此外，僱主也應對員工表示關懷，認同他們對機構的發展，起著重要的作用。
- 2.2 如機構內已設有協商委員會、員工協會或職工會，會有利與員工進行討論和協商。如沒有的話，可趁此機會設立這類機制，以便日後進行更有效的溝通。如需協助，請與勞工處勞資協商促進科聯絡。(聯絡方法見 4.3 段)
- 2.3 採取減薪行動前，你必須事先取得僱員的同意，因為：
- 2.3.1 未得到僱員的同意而單方面採取減薪措施，僱主會違反《僱傭條例》下須依時支付工資給僱員的規定；僱主亦須就尚未清付的工資支付利息。《僱傭條例》亦規定，僱員如果超過 1 個月仍未獲發已到期的工資，可當其僱傭合約已被僱主終止，僱主須支付給僱員解僱代通知金及其他解僱賠償。如僱主因業務的特殊需要安排僱員放取無薪假，必須注意《僱傭條例》下有關停工的定義，而可能須支付遣散費給合資格僱員的責任<sup>1</sup>。有關各項條文的詳情，請參閱勞工處出版的「僱傭條例簡明指南」內「工資」及「遣散費」的章節。
- 2.3.2 根據《僱傭條例》，按連續性合約受僱<sup>2</sup>的僱員，如
- (1) 僱主在未經該僱員同意的情形下更改僱傭合約條款，
  - (2) 僱傭合約並沒有明文規定僱主可以作出該項更改，以及
  - (3) 該項更改並非基於條例規定的正當理由<sup>3</sup>而作出，
- 僱員可向僱主提出補償的申索<sup>4</sup>。有關條文的詳情，請參閱「僱傭條例簡明指南」內「僱傭保障」的章節。
- 2.4 減薪措施亦不能有追溯力，否則也可能違反《僱傭條例》下有關支付工資的條款。
- 2.5 此外，未得到僱員的合作和同意而單方面減薪，會對員工士氣、生產力和服務質素造成不良的影響。

### 重要事項

- 2.6 僱主應留意：
- 2.6.1 如需減薪，請盡早計劃，諮詢人事管理專業人員的意見，亦可向區內勞資關係科徵詢意見（地址載列於附錄 I）；同時亦須留意《最低工資條例》對法定最低工資水平的規定，有關條文的詳情，請參閱勞工處出版的「法定最低工資：僱主及僱員參考指引」。如減薪行動處理不當，可能會引起誤會和糾紛。

<sup>1</sup> 根據《僱傭條例》，如僱員在任何連續 4 個星期內，不獲僱主分配工作並不獲支付工資的日數超過正常工作日數總和的一半；或在連續 26 個星期內，不獲分配工作並不獲支付工資的日數超過正常工作日數總和的三分之一，可被視為停工。根據連續性合約受僱不少於 24 個月的僱員如遭停工，可享有遣散費。

<sup>2</sup> 即僱員已為該僱主連續受僱 4 星期或以上，而每星期最少工作 18 小時。

<sup>3</sup> 更改僱傭合約條款的正當理由包括：(1) 僱員的行為，(2) 工作所需的能力或資格，(3) 裁員或其他真正的業務運作需要，(4) 法例的規定（即如果僱員繼續在原來的職位工作，或繼續按原有的僱傭合約條款受僱，即屬違法的情況），及 (5) 其他實質理由。

<sup>4</sup> 不合理更改僱傭合約條款的補償包括復職或再次聘用、終止僱傭金及補償金。

## 第二節 當減薪無可避免時

- 2.6.2 與員工進行商討時，切勿採取「不容討價還價」的態度，而應有商有量。公司情況可能十分困難，但你應該明白，員工及家人的生計亦會同時受影響。
- 2.6.3 在諮詢高層管理和基層人員的意見後制定建議，並將建議清楚記錄，準確地向員工傳達。
- 2.6.4 向所有管理人員簡介減薪措施，使管理層的每個人都完全明白有關情況。
- 2.6.5 必須靈活變通，耐心與僱員商討，以免他們產生誤會，向他們解釋是在經濟困難下，迫不得已才考慮減薪。同時，要給予僱員充分的時間考慮你的初步建議。
- 2.6.6 聆聽僱員的意見，了解他們的反應。
- 2.6.7 向僱員提供一系列的方案或組合方案，例如減少部分福利或減低超時工作工資率，藉以減少減薪的幅度。
- 2.6.8 考慮在建議中加入正面的措施，包括一些獎勵計劃，以獎賞增加生產力或改善效率的僱員，及提出節省開支辦法的僱員。
- 2.6.9 盡量協助個別受減薪影響最大的僱員，例如那些無力支付按揭供款的僱員。

### 採取下列建議，磋商時會更為順利

- 2.7 僱主應採取下列建議，使磋商時更為順利：
  - 2.7.1 盡量避免採取劃一的減薪幅度。讓高層人員以身作則，接納較大的減幅。在可行的情況下，豁免低薪僱員的減薪。
  - 2.7.2 定期檢討機構的業務表現，例如每三至六個月檢討一次，以及在情況開始好轉時作出適當的工資調整。
  - 2.7.3 以書面方式提出減薪建議，同時給予僱員一段恰當的時間考慮是否接納該建議，考慮期長短視乎個別機構情況而定。但無論如何，僱員應有七至十四日時間考慮<sup>5</sup>。
  - 2.7.4 向僱員保證，如機構的情況繼續惡化，以致必須考慮裁員的話，遣散費會按僱員在減薪前的工資水平計算。
  - 2.7.5 為表明僱主的誠意，僱主應向僱員作出書面保證。

<sup>5</sup> 給予僱員考慮是否接受減薪的期限，不能視作終止僱傭合約所需的通知期。

## 第二節 當減薪無可避免時

### 僱員可以怎樣做

2.8 僱員務請體諒僱主的困難，尤其是正值經濟衰退的時候。如僱主在採取其他辦法後，仍無法避免減薪的話，你在理解當前情況後，可以和僱主一同面對困難。

2.9 在面對減薪建議時，你須知道僱主未經你同意，不能單方面減薪，因為：

2.9.1 如僱主未經你同意，堅持減薪，僱主會違反《僱傭條例》下有關須依時支付工資給僱員的規定；僱主亦須就尚未清付的工資支付利息。《僱傭條例》亦規定，僱員如果超過 1 個月仍未獲發已到期的工資，可當其僱傭合約已被僱主終止，僱主須支付給僱員解僱代通知金及其他解僱賠償。如僱主因業務的特殊需要安排你放取無薪假，你須注意《僱傭條例》下有關停工<sup>6</sup>的定義及僱員可獲得遣散費的資格。有關各項條文的詳情，請參閱勞工處出版的「僱傭條例簡明指南」內「工資」及「遣散費」的章節。

2.9.2 此外，根據《僱傭條例》，按連續性合約受僱<sup>7</sup>的僱員，如

- (1) 僱主在未經該僱員同意的情形下更改僱傭合約條款，
  - (2) 僱傭合約並沒有明文規定僱主可以作出該項更改，以及
  - (3) 該項更改並非基於條例規定的正當理由<sup>8</sup>而作出，
- 僱員可向僱主提出補償的申索<sup>9</sup>。有關條文的詳情，請參閱「僱傭條例簡明指南」內「僱傭保障」的章節。

### 重要事項

2.10 你在考慮減薪建議時：

2.10.1 應清楚了解減薪建議的細節。如有疑問或需要更詳盡的資料，應要求僱主澄清及解釋自己的困難。

2.10.2 如你有其他建議，便應透過所屬協商委員會、員工協會或機構內的職工會提出。如公司內並無設立這些組織，你可向直屬上司或僱主反映意見。

2.10.3 在決定是否接納減薪建議時，請先考慮下列因素：

- 《僱傭條例》及《最低工資條例》下的權利與保障；
- 減薪的幅度及對其他福利的影響；
- 你的個人情況；
- 可找到另一份工作的機會；以及

<sup>6</sup> 根據《僱傭條例》，如僱員在任何連續 4 個星期內，不獲僱主分配工作並不獲支付工資的日數超過正常工作日數總和的一半；或在連續 26 個星期內，不獲分配工作並不獲支付工資的日數超過正常工作日數總和的三分之一，可被視為停工。根據連續性合約受僱不少於 24 個月的僱員如遭停工，可享有遣散費。

<sup>7</sup> 即僱員已為該僱主連續受僱 4 星期或以上，而每星期最少工作 18 小時。

<sup>8</sup> 更改僱傭合約條款的正當理由包括：(1) 僱員的行為，(2) 工作所需的能力或資格，(3) 裁員或其他真正的業務運作需要，(4) 法例的規定（即如果僱員繼續在原來的職位工作，或繼續按原有的僱傭合約條款受僱，即屬違法的情況），及 (5) 其他實質理由。

<sup>9</sup> 不合理更改僱傭合約條款的補償包括復職或再次聘用、終止僱傭金及補償金。

## 第二節 當減薪無可避免時

- 僱主的業務前景。  
這是一項重要的決定，你應和關係密切的人，如家人、同事、職工會等商量。勞工處也樂意隨時為你提供協助。

2.10.4 你簽署的任何減薪協議，都會有法律效力。你可考慮盡量要求僱主作出保證，在業務好轉時，會作出適當的工資調整，或在裁員時會以減薪前的工資水平來計算遣散費。

2.10.5 如僱主未經你同意，仍單方面執行減薪建議，你應向就近的勞工處勞資關係科辦事處尋求協助。(辦事處的地址載列於附錄 I)

## 第三節 當裁員無可避免時

### 僱主應該怎樣做

- 3.1 裁員是一件十分嚴重的事。如別無選擇，你必須仔細考慮一些極為重要的因素。首先考慮的是，一旦裁員，不但被裁員工的生計和將來的生活會成問題，靠他們供養的家人都會受到影響。
- 3.2 你除了考慮情理上的因素外，還須根據市場的情況，檢討目前和將來的人手需求。僱主應該訂下裁員目標，裁減人數，應愈少愈好，同時要考慮的是，這次裁員應該是一次過的行動，並應再三向留任的員工作出保證，在短期間內不會再裁員。
- 3.3 另一個重要的因素是，當你考慮裁員時，應該認真做好事前的準備功夫，以確定裁減某個百分比員工的費用。在計算有關費用後，你甚至可能改變初衷，而採取本指引於1.3段所建議的減低成本措施和其他辦法。
- 3.4 然而，如你經過深思熟慮後，仍認為裁員是唯一可行的措施，便須與協商委員會、員工協會或機構內職工會進行坦誠而公開的討論，充分向他們解釋公司正面臨的困境和裁員的原因。
- 3.5 你尤其須要準備與受影響的僱員及其代表作詳細商討，包括計算終止合約補償的細節等。
- 3.6 在商討這些問題時，你必須保持耐性及關懷的態度。裁員會令人情緒激動或緊張，如處理不當，可引發不愉快的事件。故此，你必須表現出諒解的態度。

### 重要事項

- 3.7 僱主應留意：
  - 3.7.1 確保裁員的準則是客觀、公平及具透明度的，同時不應帶懲罰或歧視的成分<sup>10</sup>。一般來說，你可以用工作性質、職業技能和有關因素來作為裁員的準則。
  - 3.7.2 確保終止僱傭方案所給予僱員的補償，不少於《僱傭條例》和有關僱傭合約所賦予的。
  - 3.7.3 為紓緩裁員的打擊，以及顯示對被迫轉業的僱員予以大力支持，你也應體恤僱員，發放特惠款項。
  - 3.7.4 不論最後決定發放的款額是多少，你須向每名被裁減的僱員清楚解釋各項細節和計算款額的方法。

<sup>10</sup> 確保你不會因裁員而違反僱傭條例（香港法例第57章）、僱員補償條例（香港法例第282章）、性別歧視條例（香港法例第480章）、殘疾歧視條例（香港法例第487章）、家庭崗位歧視條例（香港法例第527章）及種族歧視條例（香港法例第602章）。



## 第三節 當裁員無可避免時

- 3.7.5 同時，被裁減的僱員應該獲發一封附有公司信頭的推薦信，證明裁員是由於公司所不能控制的情況所致，與僱員的工作表現無關，以協助他們找尋新工作。
- 3.7.6 向被裁減的僱員表明，一旦機構內的情況回復正常，在將來招聘員工時，所有曾被裁減的僱員會獲得優先考慮。

### 支持和關懷被裁僱員的其他方法

3.8 支持和關懷被裁僱員的其他方法包括：

- 3.8.1 在一段合理期間繼續發放各項津貼，如房屋津貼 / 貸款、教育津貼等。
  - 3.8.2 如被裁的僱員現正居於公司宿舍，僱主應顧及僱員在失去工作後，還須放棄宿舍，而要面對的雙重打擊和困難。僱主應給予僱員一段合理的寬限期，讓他有機會喘息，然後才收回宿舍。
  - 3.8.3 向被裁的僱員提供輔導和其他形式的援助，或轉介他們前往勞工處的就業中心及行業性招聘中心尋求就業協助，以便他們早日覓得新職。
  - 3.8.4 由於事出突然，僱員未必能立即明瞭各項安排的詳情，你應該為他們設立電話熱線，並安排資深人員耐心解答裁員補償或其他款項的計算方法的問題，及告知他們如何取得其他協助。
  - 3.8.5 切勿把純因工作表現欠佳而公司擬辭退的員工列入是次裁員名單內；這些員工應該循其他途徑處理。
- 3.9 裁員行動完結後，各人的難受心情也不會馬上消失。不單遭裁退的員工會感到難過，就是留任的員工也同樣會在情緒上受影響。
- 3.10 你應小心處理公司與僱員的關係，在裁員行動後，當你接觸員工、員工協會和機構內職工會時，必須更小心謹慎，關懷體諒。你不但需要保持員工的士氣，還應盡量消除他們的不滿和沮喪，以免影響公司的生產力和服務質素。
- 3.11 當業務開始好轉時，你應該盡量重新聘用曾被裁退的員工。

### 被裁僱員應該怎樣做

3.12 如果你獲悉會被裁退，你應該採取下列步驟來保障自己的利益：

- 3.12.1 清楚確定你在《僱傭條例》和僱傭合約下的權利和保障。終止合約補償通常包括薪金、代通知金（如果並無預先通知）、按比例計算的有薪年假、法定假日薪酬和按比例計算的年終酬金；如果你受僱已達兩年以上，還可享有遣散費。

## 第三節 當裁員無可避免時

- 3.12.2 如果你對自己的權益有任何疑問，特別是僱主如削減或甚至拒絕付給終止合約補償時，你應該前往區內的勞工處勞資關係科辦事處求助，或索取有關應得補償的金額和計算方法的資料。(各區辦事處的地址載列於附錄 I) 你也可以諮詢所屬職工會的意見。
- 3.12.3 前往勞工處就業科設立的就業中心及行業性招聘中心，登記求職。(各中心的地址及電話載列於附錄 II)
- 3.12.4 趁此機會積極裝備自己，達致自我增值，例如，參加由僱員再培訓局、職業訓練局和公開大學等機構舉辦的課程，藉以提高你的技術水平和資格。
- 3.13 在經濟欠佳的情況下，你在找尋新工作時，應針對就業市場的需求，從而調節自己的要求。例如，考慮較低的薪酬，或到較遠的地點工作。同時，你亦要嘗試適應新的工作模式，才能接受新的挑戰。
- 3.14 請緊記，即使面對經濟不景氣，你都不可輕言氣餒，勞工處會盡力提供適當的協助，助你解決離職時的問題及尋找新的工作。

## 第四節 勞工處為僱主和僱員提供的服務

4.1 勞工處為僱主和僱員提供下列服務：

### 勞資關係科

4.2 勞資關係科為非政府機構的僱主和僱員提供自願性的調停服務，以協助他們解決勞資糾紛。除此以外，該科也就僱傭條件和《僱傭條例》的條文等事宜提供意見。僱主和僱員如欲尋求協助，請與該科的分區辦事處聯絡，有關地址載列於附錄 I。

### 勞資協商促進科

4.3 勞資協商促進科負責推廣《僱傭條例》及良好人事管理措施，促進勞資雙方進行有效溝通、協商及自願性的談判。該科地址為九龍旺角聯運街 30 號旺角政府合署 5 樓；  
電話：2121 8690； 傳真：2121 8695。

### 就業科

4.4 就業科透過轄下的 13 所就業中心、三所為飲食業、零售業及建造業設立的招聘中心、「互動就業服務」網站 ([www.jobs.gov.hk](http://www.jobs.gov.hk)) 及其流動應用程式等，為求職人士和僱主提供全面及免費的就業和招聘服務。就業中心及行業性招聘中心的地址和電話載列於本指引的附錄 II。

### 勞工處的 24 小時電話諮詢服務

4.5 如對《僱傭條例》的條文、就業服務和其他有關勞工的事宜有任何查詢，請致電 2717 1771（此熱線由「1823」接聽）。

# 附錄 I

24 小時電話查詢熱線：2717 1771 (此熱線由「1823」接聽)

勞工處網址：[www.labour.gov.hk](http://www.labour.gov.hk)

勞資關係科分區辦事處：  
[www.labour.gov.hk/tc/tele/lr1.htm](http://www.labour.gov.hk/tc/tele/lr1.htm)



## 附錄 II

勞工處就業科就業中心及行業性招聘中心：  
[www.labour.gov.hk/tc/tele/es3.htm](http://www.labour.gov.hk/tc/tele/es3.htm)



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## SECTION ONE PRACTICAL ALTERNATIVES TO WAGE REDUCTIONS OR RETRENCHMENTS

- 1.1 In face of business problems, employers must be open and frank with their employees. They should seek the understanding and cooperation of their employees. It is important to consult consultative committees, staff associations or in-house unions as part of this process. Do not dismiss out of hand or belittle employees' initial suggestions. What at first appears to be a crude suggestion may contain the germ of a valuable idea. Front-line employees are best placed to suggest labour-saving and other improvement measures.
- 1.2 This section provides some practical alternatives to wage reductions or retrenchments. Many of them have been adopted by local employers to increase productivity and cut costs without resorting to wage reductions or retrenchments.

### *Alternatives employers may consider*

- 1.3 The following are some alternatives which employers may wish to consider:
- 1.3.1 Human resource management measures
- Reduce the payroll by natural wastage, voluntary exit and voluntary retirement schemes.
  - Take the opportunity to train and upgrade the skills of employees to enhance their productivity and to meet new needs.
  - Deploy some members of the present workforce to fill the vacancies created, and provide training if necessary.
  - Suspend recruitment of new staff.
- 1.3.2 Revenue-generating or cost-saving measures
- Organise regular cost-saving meetings involving staff.
  - Scrutinise and trim, where possible, the budget of each Division or Section of the organisation.
  - Negotiate reductions in costs with suppliers.
  - Bring down overheads by across-the-board economies on all aspects of the operations including savings on electricity, copying machines and all office procedures.
  - Look for economical ways to advertise or promote the products.
  - Try to develop new products or expand into new markets.
- 1.3.3 In addition, may consider these measures:
- Build up employees' sense of participation in efficiency enhancement and encourage them to express their ideas.
  - Offer incentives to winners of Best Idea Schemes.
  - If business has tapered off, encourage employees to take their paid holidays. Reassure them that their jobs will be secure on return.
  - If employees are required to take no pay leave due to special needs of the business, employers should conduct prior thorough consultation and frank dialogues with employees, taking into consideration of the needs of individual employees, so as to reach a mutually agreeable arrangement and maintain harmonious employment relations.

### *How employees could help*

- 1.4 Faced by economic downturn, employees should adopt a positive attitude and cooperate with their employers to overcome the adversity. You could:
- Show sympathy to your employer's situation and sincerely suggest ways to improve efficiency at work.
  - Actively cooperate with your employer on the revenue-generating and cost-saving measures.
  - Help your employer capture every business opportunity.

## SECTION TWO WHEN WAGE REDUCTIONS ARE UNAVOIDABLE

### What employers should do

- 2.1 If wage reduction is absolutely unavoidable, employers are strongly advised to hold frank and sincere discussions with their staff. Failure to do so often causes messy labour disputes. You should make a personal appeal to all employees, take them into your confidence and call for their support. You should also adopt a caring approach to your staff and recognise that employees are important stakeholders in the organisation.
- 2.2 If your organisation has consultative committees, staff associations or in-house unions, this would facilitate discussion and consultation with your staff. If not, take the opportunity to set up such a mechanism for more effective communication. If you need help, please contact the Workplace Consultation Promotion Division of the Labour Department for advice. (Contact information is at paragraph 4.3)
- 2.3 To implement wage reductions, you must obtain the consent of your employees in advance because:
  - 2.3.1 Unilaterally reducing wages without the employee's agreement would contravene the provisions of the Employment Ordinance (EO) with respect to timely payment of wages. The employer is also required to pay interest on the outstanding amount of wages to the employee. The EO also stipulates that if wages are not paid within one month after they become due, an employee may deem his contract of employment to be terminated by his employer without notice and he will be entitled to payment in lieu of notice in addition to other statutory and contractual termination payment. If employers have to arrange no pay leave for their employees due to special needs of the business, they should pay attention to the definition of lay-off<sup>1</sup> under the EO for the possible liability of paying severance payment to eligible employees. For details of the relevant provisions, please refer to the chapters on "Wages" and "Severance Payment" of "A Concise Guide to the Employment Ordinance" published by the Labour Department.
  - 2.3.2 According to the EO, an employee employed under a continuous contract<sup>2</sup> may claim for remedies<sup>3</sup> against an employer if
    - (1) the contract terms are varied without the employee's consent,
    - (2) the employment contract does not expressly allow such a variation, and
    - (3) the contract terms are varied without a valid reason<sup>4</sup> as specified in the Ordinance.For details of the relevant provisions, please refer to the chapter on "Employment Protection" of "A Concise Guide to the Employment Ordinance".
- 2.4 An employer who introduces retrospective wage reductions would also contravene the provisions of the EO with respect to payment of wages.
- 2.5 Furthermore, the unilateral introduction of wage reductions without the cooperation and agreement of employees would adversely affect staff morale, productivity and quality of service.

<sup>1</sup> According to the Employment Ordinance, an employee shall be taken to be laid off if the total number of days on which no work is provided and no wages is paid exceeds half of the total number of normal working days in any four consecutive weeks or one-third of the total number of normal working days in any 26 consecutive weeks. An employee with not less than 24 months of employment under a continuous contract is eligible for severance payment when being laid off.

<sup>2</sup> The employee should have been employed continuously for the employer for four weeks or more, with at least 18 hours worked each week.

<sup>3</sup> Remedies for unreasonable variation of the terms of the employment contract, to be awarded by the Labour Tribunal, include an order for reinstatement or re-engagement, an award of terminal payments and an award of compensation.

<sup>4</sup> Valid reasons for variation of the terms of the employment contract are: (1) the conduct of the employee, (2) the capability or qualifications of the employee for performing his work, (3) redundancy or other genuine operational requirements of the business; (4) statutory requirements (i.e. it would be contrary to the law to allow an employee to continue to work in his original position or to continue with the original terms in his employment contract), and (5) other substantial reasons.



## SECTION TWO WHEN WAGE REDUCTIONS ARE UNAVOIDABLE

### *Key points to note*

2.6 Employers should note:

- 2.6.1 If you are contemplating a wage-reduction exercise, please plan ahead and consult the human resource professionals and the Labour Relations Division in your district as soon as possible. (Addresses are at Appendix I.) If the exercise is not handled properly, it may give rise to misunderstanding and dispute. You should also pay attention to the provisions of the Minimum Wage Ordinance (MWO) on the statutory minimum wage rate. For details of the relevant provisions, please refer to the “Statutory Minimum Wage: Reference Guidelines for Employers and Employees” published by the Labour Department.
- 2.6.2 Do not enter into any discussions with your staff with a “take it or else” attitude. While the position of your organisation may be serious, you should bear in mind that the livelihood of your employees and their families are also at stake.
- 2.6.3 Draw up your proposals in consultation with senior management and operational staff. The proposals must be written clearly and communicated effectively to all staff.
- 2.6.4 Brief all managerial staff so that everyone in the management structure is fully aware of the situation.
- 2.6.5 Be flexible and conduct discussions with the utmost patience to avoid misunderstanding with employees. Explain to them that wage reduction is due to economic forces outside the organisation’s control. Be generous in giving them time to consider your initial proposals.
- 2.6.6 Be prepared to listen to the employees’ views and feedback.
- 2.6.7 Be prepared to offer employees a range of options or combined options, for example, part-reduction of fringe benefits or part-reduction of overtime rates combined with a lesser degree of reduced wages.
- 2.6.8 If possible, try to introduce a positive element to your proposals by including some incentive measures so as to reward employees who increase productivity or improve efficiency, or who suggest viable money-saving innovations.
- 2.6.9 Try to help individual employees who will be hardest hit by wage reductions, for example, those unable to meet their mortgage payments.

### *Consultation could be made easier by adopting some of these suggestions*

2.7 Consultations could be made easier by adopting some of these suggestions:

- 2.7.1 Try to avoid an across-the-board percentage of wage reduction. Let senior staff show the way by accepting greater percentage of wage reductions than the general workforce. Where possible, also consider the possibility of exempting the low pay employees from wage reductions.
- 2.7.2 Undertake to review the organisation’s business performance regularly, say every three to six months and, when the situation begins to improve, to make appropriate adjustments to employees’ wages.
- 2.7.3 Put forward the wage reduction proposal in writing and allow employees a reasonable period of time to consider whether to accept it or not. The period for consideration will depend on the circumstances of each organisation, but in any case, employees should have between 7 and 14 days to consider the proposal<sup>5</sup>.

<sup>5</sup> This period for considering the proposal should not be taken as the notice period required to terminate a contract of employment.

## SECTION TWO WHEN WAGE REDUCTIONS ARE UNAVOIDABLE

- 2.7.4 Assure employees that if the organisation's situation further deteriorates and retrenchment has to be considered, severance payment will be calculated at an employee's wage level before wage reduction.
- 2.7.5 To underline the employers' intent and sincerity, all assurances to employees should be in writing.

### *What employees could do*

- 2.8 Employees shall try to appreciate their employer's problems, particularly in the economic downturn. If it is unavoidable for your employer, after exhausting all alternatives, to resort to wage reductions, you could show understanding and work together with your employer to face the difficulty.
- 2.9 When faced with the proposed wage reduction, you shall know that your employer cannot unilaterally impose the reduction without your consent, because:
  - 2.9.1 If an employer insists on reducing an employee's wages without the latter's agreement, he would contravene the provisions of the EO with respect to timely payment of wages. The employer is also required to pay interest on the outstanding amount of wages to the employee. The EO also stipulates that if wages are not paid within one month after they become due, an employee may deem his contract of employment to be terminated by his employer without notice and he will be entitled to payment in lieu of notice in addition to other statutory and contractual termination payment. If employers have to arrange no pay leave for you due to special needs of the business, you should pay attention to the definition of lay-off<sup>6</sup> and employees' eligibility for the entitlements of severance payment under the EO. For details of the relevant provisions, please refer to the chapters on "Wages" and "Severance Payment" of "A Concise Guide to the Employment Ordinance" published by the Labour Department.
  - 2.9.2 According to the EO, an employee employed under a continuous contract<sup>7</sup> may claim for remedies<sup>8</sup> against an employer if
    - (1) the contract terms are varied without the employee's consent,
    - (2) the employment contract does not expressly allow such a variation, and
    - (3) the contract terms are varied without a valid reason<sup>9</sup> as specified in the Ordinance.For details of the relevant provisions, please refer to the chapter on "Employment Protection" of "A Concise Guide to the Employment Ordinance".

### *Key points to note*

- 2.10 When you consider the proposal,
  - 2.10.1 Establish precisely the details of the proposed wage reduction. If in doubt or requiring more details, clarify with your employer and explain your personal difficulties.
  - 2.10.2 If you have suggestions, put these forward either through your respective consultative committee, staff association or in-house union. If no such bodies exist in your organisation, take your ideas either to your immediate supervisor or to your employer.

<sup>6</sup> According to the Employment Ordinance, an employee shall be taken to be laid off if the total number of days on which no work is provided and no wages is paid exceeds half of the total number of normal working days in any four consecutive weeks or one-third of the total number of normal working days in any 26 consecutive weeks. An employee with not less than 24 months of employment under a continuous contract is eligible for severance payment when being laid off.

<sup>7</sup> The employee should have been employed continuously for the employer for four weeks or more, with at least 18 hours worked each week.

<sup>8</sup> Remedies for unreasonable variation of the terms of the employment contract, to be awarded by the Labour Tribunal, include an order for reinstatement or re-engagement, an award of terminal payments and an award of compensation.

<sup>9</sup> Valid reasons for variation of the terms of the employment contract are: (1) the conduct of the employee, (2) the capability or qualifications of the employee for performing his work, (3) redundancy or other genuine operational requirements of the business; (4) statutory requirements (i.e. it would be contrary to the law to allow an employee to continue to work in his original position or to continue with the original terms in his employment contract), and (5) other substantial reasons.

## SECTION TWO WHEN WAGE REDUCTIONS ARE UNAVOIDABLE

2.10.3 Factors to be first considered in deciding whether to accept the proposed wage reduction include:

- your rights and protection under the EO and the MWO;
- the extent of the reduction and the effects on other benefits;
- your personal circumstances;
- your prospects of finding another job; and
- your employer's business prospect.

This is an important decision, why not discuss with those who are close to you such as your family, fellow colleagues, and trade unions. The Labour Department stands ready to provide assistance to you.

2.10.4 There are legal implications if you sign any agreement to reduce your wages. You may consider securing an assurance from your employer for the appropriate adjustments of wages when business performance improves or for the calculation of severance payment, in the event of redundancy, at an employee's wage level before the wage reduction scheme was introduced.

2.10.5 If your employer chooses to impose the proposed wage reduction without your consent, you should go to the nearby office of the Labour Relations Division of the Labour Department for assistance. (Addresses are at Appendix I.)

## SECTION THREE WHEN RETRENCHMENTS ARE UNAVOIDABLE

### *What employers should do*

- 3.1 Retrenchment is an extremely serious step. If there is absolutely no other choice, you must carefully weigh a number of highly important factors, foremost of which is that human beings are not statistics, and what is at stake is the livelihood and future security not only of those to be laid off, but their dependants, too.
- 3.2 Apart from the humanitarian factor, you must review existing and future manpower needs in relation to the market situation. Your goal should be to lay off as few members of your workforce as possible while taking account of the fact that this must virtually be a one-off exercise so that you can reassure all your remaining staff that their jobs are secure, at least within a certain timeframe.
- 3.3 Another most important factor is that when you contemplate such a severe step, you should do your groundwork very carefully to establish just how much it is going to cost to lay off a certain percentage of your workforce. You may even change your mind completely and turn to the cost-cutting and other alternative methods proposed in paragraph 1.3 of this booklet.
- 3.4 Nevertheless, if you have done your sums properly and remain convinced that retrenchment is the only course for your organisation, you must hold frank and open discussions with consultative committees, staff associations or in-house unions to explain to them fully the gravity of your organisation's problems and reasons for retrenchment.
- 3.5 In particular, you must be prepared to discuss with affected employees and their representatives everything from the simplest to the most detailed points involved in calculating termination compensation.
- 3.6 You must be patient and sympathetic in such discussions, and you need to show understanding and compassion. It is because retrenchment will surely create emotional or stressful sentiments. Remember, sentiments improperly handled could lead to unfortunate incidents.

### *Key points to note*

- 3.7 Employers should note:
  - 3.7.1 Ensure that the retrenchment criteria are objective, fair, non-punitive and non-discriminatory<sup>10</sup>. In general, you may wish to use, as a yardstick, nature of work, job skills and related factors.
  - 3.7.2 Ensure that the termination package is no less favourable than that provided in the EO and the employment contract.
  - 3.7.3 To soften the blow of retrenchment, and to demonstrate additional support for people being forced to change jobs, you should also try to be as generous as possible with ex-gratia payments.
  - 3.7.4 Whatever the final payment decided upon, clearly explain all the details, and the methods of calculation, to each retrenched employee.
  - 3.7.5 At the same time, each employee should be given a reference on an organisation letterhead certifying that the retrenchment had to be made because of circumstances beyond the organisation's control and was unrelated to his performance. This could facilitate his seeking a new job.
  - 3.7.6 Make clear to retrenched employees that once the organisation's situation returns to normal, all retrenched employees would be given priority in future recruitment.

<sup>10</sup> Make sure that you do not breach the provisions of the Employment Ordinance (Cap.57), the Employees' Compensation Ordinance (Cap.282), the Sex Discrimination Ordinance (Cap.480), the Disability Discrimination Ordinance (Cap.487), the Family Status Discrimination Ordinance (Cap. 527) and the Race Discrimination Ordinance (Cap. 602).

## SECTION THREE WHEN RETRENCHMENTS ARE UNAVOIDABLE

### *Other ways to demonstrate further support and compassion towards retrenched employees*

- 3.8 Other ways to demonstrate further support and compassion towards retrenched employees include:
- 3.8.1 Continue to provide perks such as housing allowances/loans, education allowances, etc. for a reasonable period.
  - 3.8.2 If a redundant employee is occupying company quarters, allow him a reasonable breathing period before insisting on regaining the premises. Take into account the double jeopardy faced by such an employee who, having lost his job, must also give up the accommodation occupied by himself and his family.
  - 3.8.3 Provide counselling and other forms of assistance to retrenched employees to help them to find other jobs or refer them to the job centres and the industry-based recruitment centres of the Labour Department to seek employment services.
  - 3.8.4 Set up a hotline for employees who may not immediately comprehend all the details of such an abrupt development, and assign experienced officers to patiently answer questions about how retrenchment compensation or other financial aspects were calculated, or just to advise on other means of assistance.
  - 3.8.5 Do not include in the retrenchment exercise employees singled out for dismissal solely on the grounds of poor performance. That should be done separately.
- 3.9 The bad feeling of a retrenchment exercise does not disappear instantly when it has been completed. It will be felt not only by those employees laid off but those who survived the retrenchment and kept their jobs.
- 3.10 As a result, in post-redundancy relations with the remaining employees you must be even more sensitive and caring in your dealings with them, their staff associations and in-house unions. Not only will you need to keep up morale but also to counteract ill feeling and despondency that could affect productivity and quality of service.
- 3.11 Once business begins to improve, re-employ as many of your retrenched employees as you can afford.

### *What retrenched employees should do*

- 3.12 If you are told that you are to be retrenched, you should take the following steps to protect your own interests:
- 3.12.1 Establish exactly what your statutory and contractual entitlements are under the EO and your employment contract. Normally, the termination compensation includes wages, payment in lieu of notice if no notice is given, pro-rata annual pay leave, statutory holiday pay, and pro-rata end-of-year payment. You are also entitled to severance payment if you have been employed for two years or more.
  - 3.12.2 In case of doubt on your entitlements, particularly if your employer reduces or even refuses to pay termination compensation, seek assistance from the Labour Department's Labour Relations Division in your district or get more information about the amount and method of calculation of your entitlements. (Addresses of these offices are at Appendix I.) You may also wish to consult your trade union(s).

## SECTION THREE WHEN RETRENCHMENTS ARE UNAVOIDABLE

- 3.12.3 Go to the job centres and the industry-based recruitment centres of the Labour Department's Employment Services Division and register for alternative employment. (Addresses and telephone numbers of these centres are at Appendix II.)
- 3.12.4 Take the opportunity to equip yourselves and upgrade your skills and qualifications by attending courses organised by institutions such as the Employees' Retraining Board, the Vocational Training Council and the Open University, etc.
- 3.13 In the times of adverse economic situations, when searching for a new job, you should try to understand more about the market situation and be prepared to make some adjustments, like accepting for the meantime a lower salary, or be more ready to travel longer distance to the new workplace. It is only when you are prepared to adjust to a new working pattern can you face other new challenges ahead.
- 3.14 Please remember, even faced with economic downturn, do not give in easily and lose your confidence. Labour Department will try its utmost best to provide all the assistance you need in resolving problems relating to your termination and helping you to find a new job.

## SECTION FOUR SERVICES PROVIDED BY THE LABOUR DEPARTMENT TO EMPLOYERS AND EMPLOYEES

4.1 The Labour Department provides the following services to employers and employees:

### ***Labour Relations Division***

4.2 The Labour Relations Division provides voluntary conciliation service to help employers and employees in the non-government sector settle labour disputes. It also gives advice on matters relating to conditions of employment and provisions of the EO. For assistance, please approach its branch offices at Appendix I.

### ***Workplace Consultation Promotion Division***

4.3 Workplace Consultation Promotion Division promotes the EO and good human resource management practices, as well as to encourage effective communication, consultation and voluntary negotiation between employers and employees, address at  
5/F, Mongkok Government Offices, 30 Luen Wan Street, Mong kok, Kowloon.  
(Tel. 2121 8690; Fax. 2121 8695).

### ***Employment Services Division***

4.4 The Employment Services Division provides comprehensive and free employment and recruitment services to job seekers and employers through its 13 job centres, three recruitment centres for the catering, retail and construction industries, Interactive Employment Service website ([www.jobs.gov.hk](http://www.jobs.gov.hk)) and its mobile application, etc. Addresses and telephone numbers of the job centres and the industry-based recruitment centres are at Appendix II.

### ***Labour Department's 24-hour Telephone Enquiry Service***

4.5 For general enquiry on the provisions of the EO, employment services and other related labour matters, please call 2717 1771 (the hotline is handled by "1823").

## APPENDIX I

**Enquiry Hotline : 2717 1771 (the hotline is handled by “1823”)**

**Labour Department’s Homepage Address: [www.labour.gov.hk](http://www.labour.gov.hk)**

**Offices of the Labour Relations Division:  
[www.labour.gov.hk/eng/tele/lr1.htm](http://www.labour.gov.hk/eng/tele/lr1.htm)**





**Job Centres and Industry-based Recruitment Centres of  
the Employment Services Division of the Labour Department:  
[www.labour.gov.hk/eng/tele/es3.htm](http://www.labour.gov.hk/eng/tele/es3.htm)**



