



A Concise Guide to the Protection of Wages on Insolvency (Amendment) Ordinance 2012



Broaden the protection of the
Protection of Wages on Insolvency Fund
to cover pay for untaken annual leave and
untaken statutory holidays

Foreword

This leaflet sets out in simple terms major changes to the Protection of Wages on Insolvency Ordinance (“the PWIO”) made by the Protection of Wages on Insolvency (Amendment) Ordinance 2012 (“the Amendment Ordinance”). For more details of the PWIO, please refer to “Guide to the Protection of Wages on Insolvency Ordinance and points to note for making application to the Protection of Wages on Insolvency Fund” published by the Labour Department.

This leaflet mentions requirements under the Employment Ordinance (“the EO”). Please also refer to “A Concise Guide to the Employment Ordinance” published by the Labour Department.

This leaflet, “Guide to the Protection of Wages on Insolvency Ordinance and points to note for making application to the Protection of Wages on Insolvency Fund” and “A Concise Guide to the Employment Ordinance” can be downloaded from:

<http://www.labour.gov.hk/eng/erb/content4.htm>

<http://www.labour.gov.hk/eng/public/eo.htm>

Note: The information provided in this leaflet is for reference only. The Amendment Ordinance, the PWIO and the EO remain the sole authority for the provisions of the law explained. You may visit the following Labour Department webpages to obtain further details:

The Amendment Ordinance:

http://www.labour.gov.hk/eng/news/PWI_Amendment_Ordinance_2012.htm

The PWIO and the EO:

<http://www.labour.gov.hk/eng/legislat/contentB.htm>

The Amendment Ordinance

The Protection of Wages on Insolvency Fund (the Fund) provides ex gratia payment to affected employees in the event of business cessation of insolvent employers, covering arrears of wages, wages in lieu of notice and severance payment. The objective of the Amendment Ordinance is to extend the scope of the Fund to cover:

(A) Pay for untaken annual leave

Pay for untaken annual leave payable to an employee upon termination of employment contract under the EO, including:

- ♦ pay for any annual leave earned in the employee's last full leave year and not yet taken; and
- ♦ pro rata annual leave pay for the last leave year where the employee has at least 3 but less than 12 months' service entitled upon termination of employment contract.

(B) Pay for untaken statutory holidays

Pay for statutory holidays under the EO not yet taken by an employee within 4 months before the last day of service:

- ♦ the relevant statutory holiday falls within the 4 months and the employee has not in any way taken that statutory holiday (including on the day or alternative/substituted holiday); and
- ♦ the employee has been employed under a continuous contract for 3 months immediately prior to the statutory holiday and eligible for statutory holiday pay under the EO.

Neither the amount of pay for untaken annual leave nor the amount of pay for untaken statutory holidays, nor the total amount of the two, may exceed \$10,500.

Commencement date

The Amendment Ordinance becomes effective on 29 June 2012, and applies to pay for untaken annual leave and pay for untaken statutory holidays arising from employment contracts terminated on or after 29 June 2012.

Time limit for making an application

Regarding pay for untaken annual leave, an employee has to make an application not later than 6 months after the termination of the contract. For pay for untaken statutory holidays, an application has to be made not later than 6 months after the last day of service.

Examples

(A) Pay for untaken annual leave:

The EO stipulates that an employee is entitled to annual leave with pay after having been employed under a continuous contract for every 12 months. An employee's entitlement to paid annual leave increases progressively from 7 days in each of the first two years of employment to a maximum of 14 days from the ninth year or above.

Example 1

The employee's employment commences on 16 July 2010 and is terminated on 13 July 2012 upon company's cessation. The employee has not taken any annual leave accumulated in the last two leave years (7 days in the first year and pro rata of 7 days in the second year).

Ex gratia payment on pay for untaken annual leave payable to the applicant is 13.96 days, including:

- ♦ Last complete leave year (i.e. 16 July 2010 to 15 July 2011): 7 days
- ♦ Last leave year where the employee has at least 3 but less than 12 months' service (i.e. 16 July 2011 to 13 July 2012): 6.96 days (7 days x 364/366)

Example 2

The employee's employment commences on 16 December 2007 and is terminated on 15 July 2012 upon company's cessation. The employee has taken 3 days' annual leave accumulated in the previous complete leave year.

Ex gratia payment on pay for untaken annual leave payable to the applicant is 11.82 days, including:

- ♦ Last complete leave year (i.e. 16 December 2010 to 15 December 2011): 6 days (i.e. 9 - 3 days)
- ♦ Last leave year where the employee has at least 3 but less than 12 months' service (i.e. 16 December 2011 to 15 July 2012): 5.82 days (10 days x 213/366)

(B) Pay for untaken statutory holidays:

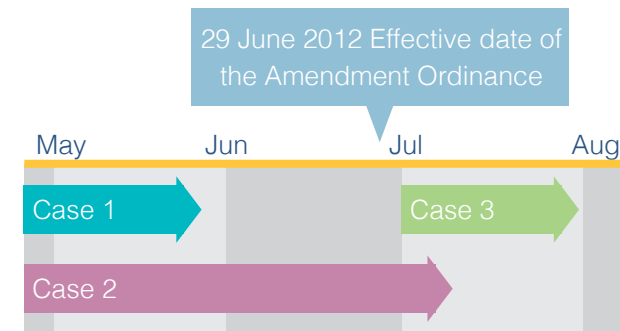
The EO also stipulates that an employee is entitled to 12 days' statutory holidays per year.

Example 3

The employee's employment commences on 1 October 2011 and is terminated on 30 June 2012 upon company's cessation. There are 3 days' statutory holidays (i.e. 4 April (Ching Ming Festival); 1 May (Labour Day) and 23 June (Tuen Ng Festival)) falling within the 4 months prior to his last day of service (i.e. 1 March to 30 June 2012). The employee is not arranged to take leave on such statutory holidays or to take alternative/ substituted holidays. The employee has been employed for 3 months immediately prior to the statutory holidays.

Ex gratia payment on pay for untaken statutory holidays payable by the Fund is 3 days.

(C) Applicability of the Amendment Ordinance:



Case 1

Employment contract is terminated **before 29 June 2012** and employee makes the application also **before the date**.

→ The Amendment Ordinance is not applicable.

Case 2

Employment contract is terminated **before 29 June 2012** and employee makes the application **after the date**.

→ The Amendment Ordinance is not applicable.

Case 3

Employment contract is terminated **after 29 June 2012** and employee makes the application **after the date**.

→ The Amendment Ordinance is applicable.

Enquiries can be made at:

- ☎ 24-hour Telephone Enquiry Service:
2717 1771 (the hotline is handled by the "1823")
- 🌐 Homepage address: <http://www.labour.gov.hk>
- 👤 Enquiry in person to Offices of the Labour Relations Division