

Guide to the **Protection of Wages on Insolvency Ordinance**

and
Points to note for making application to the
Protection of Wages on Insolvency Fund

- 
- ✓ Arrears of Wages
 - ✓ Wages in lieu of Notice
 - ✓ Severance Payment
 - ✓ Pay for Untaken Annual Leave
 - ✓ Pay for Untaken Statutory Holidays



勞工處

Labour Department

Table of Contents

Introduction	2
Ex gratia Payment.....	3
Persons Who are Eligible to Apply for Ex gratia Payment	6
Application Deadlines	6
Making an Application.....	7
Conditions for Payment	8
Arrangement for Payment	9
Review by Fund Board	9
Company Directors	10
Points to Note	10
Appendix	11

Introduction

An employer may become insolvent. In order to recover debts owed by an insolvent employer such as arrears of wages, pay for untaken annual leave, pay for untaken statutory holidays, wages in lieu of notice and/or severance payment, employees may need to present a winding-up or bankruptcy petition against their insolvent employer. At the same time, employees may also apply for ex gratia payment from the Protection of Wages on Insolvency Fund (the Fund) in respect of arrears of wages, pay for untaken annual leave, pay for untaken statutory holidays, wages in lieu of notice and/or severance payment owed by their employer. Once a winding-up or bankruptcy order is made, the employees may also file their proof of debts with the Official Receiver's Office regarding their dividend payment as soon as possible.

The Fund is administered by the Protection of Wages on Insolvency Fund Board (the Fund Board). The Wage Security Division of the Labour Department is responsible for processing and verifying applications for ex gratia payment from the Fund.

Ex gratia Payment

According to the Protection of Wages on Insolvency Ordinance, the ex gratia payment that may be made out of the Fund covers:

- (1) arrears of wages
 - ◆ wages owed to an applicant in respect of services rendered to his insolvent employer during the period of 4 months prior to the last day of service
 - ◆ outstanding payment of pay for annual leave taken, pay for statutory holidays taken, maternity leave pay, paternity leave pay and sickness allowance
 - ◆ end of year payment
- (2) wages in lieu of notice
 - ◆ up to the equivalent of 1 month's wages
- (3) severance payment (see Note)
- (4) pay for untaken annual leave and pay for untaken statutory holidays
 - ◆ pay for untaken annual leave payable to an employee upon termination of employment contract under the Employment Ordinance including (a) pay for any annual leave earned in the employee's last full leave year and not yet taken; and (b) 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

- ◆ pay for statutory holidays entitled but not yet taken by an employee within 4 months before his last day of service

Note: If an employee's wages are reduced during the period of 12 months before termination of employment contract and the employer has undertaken to calculate severance payment on the basis of the employee's wage level before wage reduction or a wage level in between the employee's reduced wages and his pre-reduction wages, the amount of ex gratia payment on severance payment will be calculated based on the respective wage level. An applicant is required to produce evidence to prove that his employer had undertaken to pay severance payment on the basis of the agreed wage level.



The Maximum Amount of Ex gratia Payment

	Maximum Amount of Ex gratia Payment	
	The Liability for Payment Arose <u>On or Before 16 June 2022</u>	The Liability for Payment Arose <u>On or After 17 June 2022</u>
Arrears of Wages	\$36,000	\$80,000
Wages in lieu of Notice	\$22,500	\$45,000
Severance Payment	\$50,000 plus 50% of any excess entitlement	\$100,000 plus 50% of any excess entitlement
Pay for Untaken Annual Leave and Pay for Untaken Statutory Holidays	\$10,500	\$26,000

Persons Who are Eligible to Apply for Ex gratia Payment

All employees whose employer has become insolvent and who are owed wages, pay for untaken annual leave, pay for untaken statutory holidays, wages in lieu of notice and/or severance payment are eligible to apply.

If a person whose employer is an individual, and who is a member of the family of that employer, and who dwells in the same dwelling as that employer is not eligible to apply.

Application Deadlines

As stipulated in the Protection of Wages on Insolvency Ordinance, no ex gratia payment would be made by the Commissioner for Labour to any of the following applications —

- (1) in respect of wages for services rendered and pay for untaken statutory holidays more than 4 months prior to an applicant's last day of service;
- (2) in respect of wages and pay for untaken statutory holidays which are made more than 6 months after the last day of service;
- (3) in respect of pay for untaken annual leave, wages in lieu of notice and severance payment which are made more than 6 months after the date of termination of contract.

Making an Application

Employees should seek advice and assistance from the Labour Relations Division of the Labour Department as soon as possible if they suspect that their employer has become insolvent. Symptoms of insolvency may include the following:

- ◆ employer fails to pay his debts including wages when they become due;
- ◆ plant and machinery or raw materials are removed from the workplace without apparent warning or good reason;
- ◆ place of work is shut down without prior notice;
- ◆ employer suddenly disappears and cannot be located either at his usual place of residence or of business;
- ◆ employer's assets or goods are suddenly seized by court bailiffs.

In case employees are owed wages, pay for untaken annual leave, pay for untaken statutory holidays, wages in lieu of notice and/or severance payment, where appropriate, officers of the Labour Relations Division will contact the Wage Security Division and assist employees to apply for ex gratia payment from the Fund and refer them to commence legal proceedings of filing a winding-up or bankruptcy petition against their employer. An applicant has to make a statutory declaration of the information provided in the application form. He is also required to produce documents such as employment contract, wage receipts and attendance records, etc. to support his application to the Fund.

Conditions for Payment

Under the Protection of Wages on Insolvency Ordinance, the Commissioner for Labour, subject to verification of applications, may make an ex gratia payment on condition that —

- ◆ a winding-up petition has been presented against the employer who is a company; or
- ◆ a bankruptcy petition has been presented against the employer who is an individual.

If the employer employs less than 20 employees and sufficient evidence exists to support the presentation of a winding-up or bankruptcy petition while it is unreasonable or uneconomic to present a petition in that case, the Commissioner for Labour may waive the above requirements. The Commissioner for Labour may also make an ex gratia payment to an applicant who, because of a restriction imposed by section 6(2)(a) of the Bankruptcy Ordinance, cannot present a bankruptcy petition against his employer as the aggregate amount of wages and other benefits owed to him is below \$10,000.

The Commissioner for Labour will verify the relevant applications, taking into consideration all relevant employment and related documents submitted by employers and applicants.

Arrangement for Payment

The major functions of the Wage Security Division of the Labour Department include verification of applications and calculation and release of ex gratia payments. The amount of payments admitted by the Fund is usually effected via crossed cheques addressed to the applicants concerned.

Where an ex gratia payment has been made from the Fund to an applicant, his rights and remedies in respect of the payment will be transferred and vested in the Fund Board. The subrogation right of the Fund Board will not affect the rights or remedies of the applicant in respect of other debts, including the balance of wages in lieu of notice, the balance of severance payment, and other accrued holiday remuneration.

Review by Fund Board

An applicant disagreed with the decision of the Commissioner for Labour may request the Wage Security Division to reconsider his application. If he still disagrees with the result of reconsideration, the Wage Security Division can assist the applicant to forward his request for review to the Fund Board for further consideration.

Company Directors

In accordance with the existing policy, if an applicant is or has been a registered director of a company, his application to the Fund will generally be refused.

Points to Note

Under the Protection of Wages on Insolvency Ordinance, any applicant who provides false information or document commits an offence and is liable to a fine of \$50,000 and to imprisonment for 3 months.

***While every care has been taken in the preparation of this guide,
the Ordinance itself remains the sole authority for
the provisions of the law explained.***

Appendix

Enquiries

Enquiries can be made at –

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

Offices of the Labour Relations Division of the Labour Department:

-  <https://www.labour.gov.hk/eng/tele/lr1.htm>

Wage Security Division of the Labour Department

16/F, OTB Building, 160 Gloucester Road, Wan Chai, Hong Kong

-  2923 5299

Legal Aid Department

9/F, Queensway Government Offices, 66 Queensway, Hong Kong

-  2867 4909

Official Receiver's Office

10/F, Queensway Government Offices, 66 Queensway, Hong Kong

-  2867 2448



勞工處

Labour Department