

Chapter 11: Severance Payment and Long Service Payment

Eligibility for Severance Payment / Long Service Payment

An employee is eligible for severance payment or long service payment subject to the following conditions:

Entitlement	Severance Payment	Long Service Payment
Qualifying period of employment	Not less than 24 months under a continuous contract	Not less than 5 years under a continuous contract
Conditions / Requirements	<ul style="list-style-type: none"> The employee is dismissed by reason of redundancy* 	<ul style="list-style-type: none"> The employee is dismissed but: <ul style="list-style-type: none"> - he is not summarily dismissed due to his serious misconduct - his dismissal is not by reason of redundancy
	<ul style="list-style-type: none"> Employment contract of a fixed term expires without being renewed by reason of redundancy* 	<ul style="list-style-type: none"> Employment contract of a fixed term expires without being renewed*
	<ul style="list-style-type: none"> The employee is laid off 	<ul style="list-style-type: none"> The employee dies The employee resigns on ground of ill health The employee, aged 65 or above, resigns

* If not less than 7 days before the date of dismissal / expiry of the fixed term contract in case of severance payment, and not less than 7 days before the expiry of the fixed term contract in case of long service payment, the employer has offered in writing to renew the contract of employment or re-engage him under a new contract but the employee has unreasonably refused the offer, the employee is not eligible for the entitlements.

NOTE: An employee will not be simultaneously entitled to both long service payment and severance payment.

Meaning of Redundancy

An employee is taken to be dismissed by reason of redundancy if the dismissal is due to the fact that:

- the employer closes or intends to close his business;
- the employer has ceased, or intends to cease, the business in the place where the employee was employed; or
- the requirement of the business for employees to carry out work of a particular kind, or for the employee to carry out work of a particular kind in the place where the employee was employed, ceases or diminishes or is expected to cease or diminish.

Meaning of Lay-off

If an employee is employed on such terms and conditions that his remuneration depends on his being provided by the employer with work of the kind he is employed to do, he 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.

The days of lock-out, rest days, annual leave and statutory holidays should not be counted as normal working days during the above periods.

Amount of Severance Payment / Long Service Payment

The following formula applies to the calculation of both severance payment and long service payment:

Monthly-paid employee	$(\text{last full month's wages}^* \times 2/3)^{\#}$	X	reckonable years of service
Daily-rated / piece-rated employee	(any 18 days' wages* chosen by the employee out of his last 30 normal working days) [#]	X	reckonable years of service

Service of an incomplete year should be calculated on a pro rata basis.

* An employee may also elect to use his average wages in the 12 months immediately preceding the termination of employment contract for the calculation. (Where the employee's employment contract is terminated by payment in lieu of notice, the employee may elect to use his average wages in the 12 months immediately preceding the date up to which the payment in lieu of notice is calculated.)

The sum should not exceed 2/3 of \$22,500 (i.e. \$15,000).

Reckonable Years of Service

For all manual employees and non-manual employees whose average monthly wages did not exceed \$15,000 for the 12 months preceding 8 June 1990, if the relevant date of termination of employment occurs on or after 1 October 2004, the years of service should be reckoned in full.

For non-manual employees whose average monthly wages exceeded \$15,000 for the 12 months preceding 8 June 1990, their years of service can be reckoned up to 1980.

Maximum Amount

If the relevant date of termination of employment occurs on or after 1 October 2003, the maximum amount of severance payment or long service payment is \$390,000.

Payment of Severance Payment

An employee who wishes to claim for severance payment should serve a written notice to his employer within three months after the dismissal / lay off takes effect. The deadline for serving such notice may be extended if approved by the

Commissioner for Labour.

The employer shall make the severance payment to the employee not later than two months from the receipt of such a notice.

Offences and Penalties

An employer who without reasonable excuse fails to pay severance payment to an employee is liable to prosecution and, upon conviction, to a fine of \$50,000.

Payment of Long Service Payment

Long service payment should be paid to an employee within seven days after the date of termination of employment contract.

Offences and Penalties

An employer who wilfully and without reasonable excuse fails to pay long service payment to an employee is liable to prosecution and, upon conviction, to a fine of \$350,000 and to imprisonment for three years.

Offsetting of Severance Payment / Long Service Payment against Mandatory Provident Fund Scheme benefit, Occupational Retirement Scheme benefit or Gratuity based on length of service

If an employee becomes entitled to severance payment or long service payment and:

- gratuities based on length of service or occupational retirement scheme benefits (excluding any part attributable to employee's contributions) have been paid to the employee; or
- accrued benefit (excluding any part attributable to employee's contributions) is being held in a mandatory provident fund scheme in respect of the employee, or has been paid to the employee,

the severance payment / long service payment is to be offset against the aforementioned amount of gratuities and benefits to the extent that they relate to the employees' years of service for which the severance payment / long service payment is payable.

(For enquiries on application for payment of an amount from the occupational retirement scheme benefits or accrued benefit in the mandatory provident fund scheme due to severance payment / long service payment paid / payable to an employee, please contact the trustees concerned for details.)

Claiming Long Service Payment on the ground of Ill Health

An employee claiming for long service payment on ground of ill health should forward to the employer a certificate in a specified form issued by a registered medical practitioner or a registered Chinese medicine practitioner, certifying that he is permanently unfit for his present job.

Regardless of whether the certificate produced by the employee was issued by a registered medical practitioner or registered Chinese medicine practitioner, an employer may, within 14 days after receiving such certificate, at the employer's own expense, arrange for the employee to attend another medical examination conducted by a registered medical practitioner or registered Chinese medicine practitioner named by the employer to obtain a second opinion as to the employee's permanent unfitness to undertake the work at issue. The employer should notify the employee in writing details of the appointment not later than 48 hours before the examination is to take place.

Claiming Long Service Payment in the event of the Death of an Employee

Priority in claiming long service payment

- 1st the spouse of the deceased employee
- 2nd children of the deceased employee (if two or more persons apply, the long service payment should be divided equally between them)
- 3rd parents of the deceased employee (if two or more persons apply, the long service payment should be divided equally between them)
- 4th the personal representative of the deceased employee

Application Procedures

The person who wishes to claim for long service payment must serve an application in a specified form to the employer within 30 days after the death of the employee. Where necessary, the Commissioner for Labour may extend the deadline. The form can be obtained at any branch office of the Labour Relations Division of the Labour Department or downloaded from the web page of the Labour Department.

The employer shall make the payment of Long Service Payment to:

The spouse of the employee	within 7 days after receiving the application
Other applicants	within 7 days after the application period expires

Offences and Penalties

An employer who without reasonable excuse fails to pay long service payment to the beneficiaries of a deceased employee is liable to prosecution and, upon conviction, to a fine of \$50,000.