

Chapter 13: Employers' Criminal Liability in Failing to Pay an Award of the Labour Tribunal or Minor Employment Claims Adjudication Board

An employer should pay an award of the Labour Tribunal ("LT") or the Minor Employment Claims Adjudication Board ("MECAB") without delay.

Defaulting Payment of an Award of a Tribunal is a Criminal Offence

Under the Employment Ordinance¹, if an award of a tribunal² provides for the payment by an employer of any specified entitlement (such as wages, end of year payment, maternity leave pay and severance payment, etc)³ (see the part below on Coverage of "Specified Entitlements") and the employer wilfully and without reasonable excuse fails to pay the award within 14 days after the date on which the sum is payable⁴, the employer is liable to prosecution and, upon conviction, to a fine of \$350,000 and to imprisonment for three years.

The offence applies to the default on any part of a sum payable under the award. In the case of a sum payable by instalments, it also applies to the default on any instalment or part of an instalment.

¹ The relevant provisions were set out in the Employment (Amendment) Ordinance 2010 and apply to an award of the LT or MECAB made on or after its effective date (i.e. 29 October 2010).

² "an award of a tribunal"— includes an award, an order or a settlement treated as an award of the LT under the Labour Tribunal Ordinance or that of the MECAB under the Minor Employment Claims Adjudication Board Ordinance.

³ Unless there is any contrary evidence, if an award of a tribunal provides for the payment of a sum but does not indicate whether or not that sum includes any specified entitlement, and the claim to which the award relates consists, in whole or in part, of any specified entitlement, the award is to be treated as providing for the payment of a specified entitlement.

⁴ If the award does not specify the date on which the award is payable, the sum should be paid within 14 days after the date of the award.

Directors, etc. of Body Corporates are Criminally Liable for Defaulting Payment of an Award of a Tribunal

Where a body corporate wilfully and without reasonable excuse fails to pay an award of a tribunal within 14 days after the date on which the sum is payable, and the offence 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 similar officer of the body corporate, such person commits the like offence as the body corporate and, upon conviction, is liable to the same penalty, i.e. a fine of \$350,000 and imprisonment for three years.

Coverage of “Specified Entitlements”

“Specified entitlements” include wages and statutory entitlements underpinned by criminal sanctions under the Employment Ordinance, such as wages, end of year payment, maternity leave pay, paternity leave pay, severance payment, long service payment, sickness allowance, holiday pay, annual leave pay as well as terminal payments, compensation and further sum for unreasonable and unlawful dismissal awarded under the part on “Employment Protection” of the Employment Ordinance.

Examples

How to determine the “14-day period after the award is payable”

[Example 1] When the award is payable in a lump sum :

An employer has agreed to terminate the employment of his employee by paying 1-month payment in lieu of notice of \$7,500 in place of giving one month’s notice as per the term under the employment contract. He subsequently refuses to pay the sum.

The employee lodges a claim of \$7,500 payment in lieu of notice against his employer at the Labour Relations Division of the Labour Department. After conciliation, the dispute is unresolved. The employee then files a claim for the payment in lieu of notice against the employer with the MECAB. MECAB awards in favour of the employee on 8 November 2010 and makes an award on the same day. The employer is ordered to pay the employee \$7,500 payment in lieu of notice on or before 15 November 2010.

November 2010						
SUN	MON	TUE	WED	THU	FRI	SAT
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	1 DEC	2	3	4

The date on which the sum of the award is payable

Non or late-payment

Denotes the 14-day period (i.e. 16 to 29 November 2010) after the award is payable. An employer who wilfully and without reasonable excuse fails to pay before the expiry of this period commits an offence.

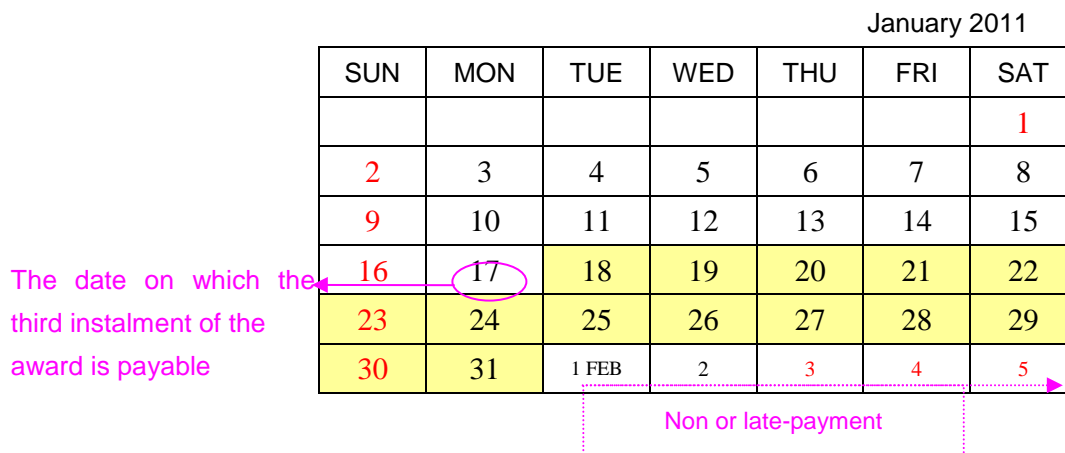
An employer who wilfully and without reasonable excuse fails to pay the award of \$7,500 within 14 days (i.e. 16 to 29 November 2010) after the date on which the sum is payable (i.e. 15 November 2010) commits an offence and is liable to prosecution. Upon conviction, the maximum penalties are a fine of \$350,000 and imprisonment for three years.

[Example 2] When the award is payable by instalments :

An employee files a claim with the LT against his employer for \$12,000 commission. The parties reach a settlement agreement at a hearing on 3 November 2010 and the employer agrees to pay the employee the claim amount by 3 instalments in full and final settlement of the dispute. LT approves the settlement agreement and makes an award on the same day. The award should be paid on or before the following dates :

No. of Instalments	Date	Payment
First Instalment	17 November 2010	\$4,000
Second Instalment	17 December 2010	\$4,000
Third Instalment	17 January 2011	\$4,000

If the employer only pays the first and second instalments in a total sum of \$8,000 on schedule but fails to pay the third instalment \$4,000 on or before 31 January 2011 (i.e. the expiry of the 14-day period after the third instalment of the award is payable), the employer commits an offence and is liable to prosecution.



Denotes the 14-day period (i.e. 18 to 31 January 2011) after the third instalment of the award is payable. An employer who wilfully and without reasonable excuse fails to pay before the expiry of this period commits an offence.

An employer who wilfully and without reasonable excuse fails to pay the sum of \$4,000 before the expiry of the 14-day period (i.e. 18 to 31 January 2011) after the third instalment of the award is payable (i.e. 17 January 2011) commits an offence and is liable to prosecution. Upon conviction, the maximum penalties are a fine of \$350,000 and imprisonment for three years.