

Do not abuse the Protection of Wages on Insolvency Fund

Providing false information is a criminal offence

Purpose for establishing the Protection of Wages on Insolvency Fund

When an employer becomes insolvent and has a bankruptcy/winding-up petition presented against him, affected employees who are owed wages, wages in lieu of notice (WILON), severance payment, pay for untaken annual leave and untaken statutory holidays can apply to the Protection of Wages on Insolvency Fund (PWIF) for ex-gratia payment. The PWIF is set up to provide timely economic relief to these employees, so as to alleviate their financial difficulties.

The PWIF is mainly financed by a levy on each business registration certificate issued. To prevent possible abuse of the PWIF, the Labour Department has put in place stringent mechanisms for vetting all PWIF applications and prosecution will take out against any person for providing false information in connection with his application.

For details of eligibility criteria, statutory time limit and application procedures, please refer to the “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.

Provisions of the “Protection of Wages on Insolvency Ordinance” and related penalty clauses

Under section 19 of the Protection of Wages on Insolvency Ordinance (PWIO), officers of the Labour Department may make inquiries for the purpose of verifying a PWIF application by:

- (a) requiring the applicant, his employer, the employer’s representative, or any other employee, to attend interviews; and
- (b) requiring the applicant, the employer or any other parties in possession of relevant wage or employment records to produce such records for inspection.

Any person who, without reasonable excuse, fails to comply with any of the above requirements, commits an offence and is liable to a maximum penalty with **a fine of \$5,000 and to imprisonment for one month** upon conviction.

Under sections 25 and 26 of the PWIO, any person who, in providing information in respect of a PWIF application, makes any statement which he knows to be false, or recklessly makes a false statement, or produces any false documents or records with the intent to deceive, commits a prosecutable offence. The person committing the offence would be liable to a maximum penalty with **a fine of \$50,000**

and imprisonment for 3 months upon conviction. The Protection of Wages on Insolvency Fund Board would also take action to recover the ex-gratia payment already advanced to the employee in respect of the PWIF application.

In addition, if the person has committed a more serious criminal offence such as fraud, he could be subject to a maximum penalty of **imprisonment for 14 years** upon conviction.

Information provided must be truthful

Important points to note

For employees

In completing an application form for ex-gratia payment from the PWIF, an employee is required to make a statutory declaration before an officer of the Labour Department under the Oaths and Declarations Ordinance as to the truthfulness and correctness of the information provided. Upon the request of an officer of the Labour Department, the employee is also obliged to provide all the required documents and records, to submit supplementary written statements, or to attend interviews in connection with his application. The employee should ensure the provision of truthful and accurate information on all such occasions.

For employers and their representatives

For the purpose of verifying PWIF applications, the Labour Department would require an insolvent employer, or its company directors, or any persons as authorised by the employer, to provide oral or written information, or to submit relevant records such as statement of inability to pay and outstanding payment schedule on wages, WILON, severance payment, pay for untaken annual leave and untaken statutory holidays due to the employees. All the aforementioned parties should ensure that truthful and accurate information are provided on all such occasions.

Providing false information is a criminal offence

If the Labour Department detects that an employee, an employer, or any other person, has provided false information in respect of a PWIF application, the department would definitely take out prosecution. Hence, attempts to abuse the PWIF will not pay. Separately, the Protection of Wages on Insolvency Fund Board would take action to recover any ex-gratia payment made or would not grant ex-gratia payment. If suspected offences relating to fraud or conspiracy to defraud are also detected, the Labour Department would refer the cases to the Hong Kong Police Force or any other relevant departments for investigation.

If you wish to report suspected cases of abuse of the PWIF or have any queries concerning the contents of this leaflet, please contact the Wage Security Division of the Labour Department at 2923 5299. To facilitate follow-up action to be taken by the Division, you are required to provide details of the suspected abuse as well as your name and means of contact.