

A Concise Guide to the Employment (Amendment) Ordinance 2010 -



Labour Department

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Foreword

This booklet sets out in simple terms major changes to the Employment Ordinance (“the EO”) made by the Employment (Amendment) Ordinance 2010 (“the Amendment Ordinance”). For more details of the EO, please refer to “A Concise Guide to the Employment Ordinance” published by the Labour Department.

This booklet and “A Concise Guide to the Employment Ordinance” can be downloaded from http://www.labour.gov.hk/eng/public/content2_3.htm.

Note : The information provided in this booklet is for reference only. The Amendment Ordinance 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 Employment (Amendment) Ordinance 2010:-
<http://www.labour.gov.hk/eng/news/EAO2010.htm>

The Employment Ordinance :-
<http://www.labour.gov.hk/eng/legislat/contentB2.htm>

Summary of Amendments made under the Amendment Ordinance

The main objective of the Amendment Ordinance is to create an offence relating to an employer's failure to pay any sum awarded by the Labour Tribunal ("LT") or Minor Employment Claims Adjudication Board ("MECAB") comprising wages and statutory entitlements under the Employment Ordinance (see the following part on Coverage of "Specified Entitlements") to further safeguard the interests of employees.

An employer should pay the awarded sum as ordered by LT or MECAB without delay. Under the Amendment Ordinance, an employer who wilfully and without reasonable excuse fails to pay the awarded sum within 14 days after it becomes due (see Examples 1 & 2 in Appendix 1) is liable to prosecution and, upon conviction, to **a fine of \$350,000 and imprisonment for three years**.

Commencement Date

The Amendment Ordinance becomes effective on 29 October 2010, and applies to an award of the LT or MECAB (hereinafter as "an award of a tribunal")^(Note 1) made on or after the effective date (see Example 3 in Appendix 1).

(Note 1) "an award of a tribunal" — includes an award, an order or a settlement treated as an award of the Labour Tribunal under the Labour Tribunal Ordinance or that of the Minor Employment Claims Adjudication Board under the Minor Employment Claims Adjudication Board Ordinance.

Highlights of the Major Provisions

The Amendment Ordinance is applicable to the default on payment of an award of a tribunal on the part of an employer when the awarded sum concerned contains any specified entitlement defined by the Amendment Ordinance.

I. Coverage of "Specified Entitlements" :

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

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

If an award of a tribunal provides for the payment by an employer of any specified entitlement defined by the Amendment Ordinance (such as wages, end of year payment, maternity leave pay and severance payment, etc) ^(Note 2) and the employer wilfully and without reasonable excuse fails to pay the awarded sum within 14 days after it becomes due ^(Note 3), the employer is liable to prosecution and, upon conviction, to a fine of \$350,000 and imprisonment for three years.

The new 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.

(Examples on 【How to determine the “14-day period after the awarded sum becomes due”】 are in Appendix 1 for reference.)

(Note 2) 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.

(Note 3) If the award does not specify the date on which the awarded sum is payable, the sum should be paid within 14 days after the date of the award.

III. Criminal Liability of Directors of Body Corporate, Partners, etc. under the Amendment Ordinance

Where a body corporate wilfully and without reasonable excuse fails to pay an awarded sum within 14 days after it becomes due 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 or other responsible person, such person commits the like offence. **The maximum penalties are a fine of \$350,000 and imprisonment for three years.**

Where a partner of a firm wilfully and without reasonable excuse fails to pay an awarded sum within 14 days after it becomes due 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 other partner or person concerned in the management of the firm, such person commits the like offence. **The maximum penalties are a fine of \$350,000 and imprisonment for three years.**

Examples

(A) How to determine the “14-day period after the awarded sum becomes due”

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

An employer has agreed to terminate the employment of his employee by paying 1-month wages 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 wages 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 wages in lieu of notice against the employer with the Minor Employment Claims Adjudication Board (“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 wages 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

Due date of the awarded sum ←

Non or late-payment

Denotes the 14-day period (i.e. 16 to 29 November 2010) after the awarded sum becomes due. 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 awarded sum of \$7,500 within 14 days (i.e. 16 to 29 November 2010) after it becomes due (i.e. the due date 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 awarded sum is payable by instalments:

An employee files a claim with the Labour Tribunal (“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 awarded sum 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 awarded sum becomes due), the employer commits an offence and is liable to prosecution.

January 2011						
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	31	1 FEB	2	3	4	5

Due date of the third instalment of the awarded sum ←

Non or late-payment

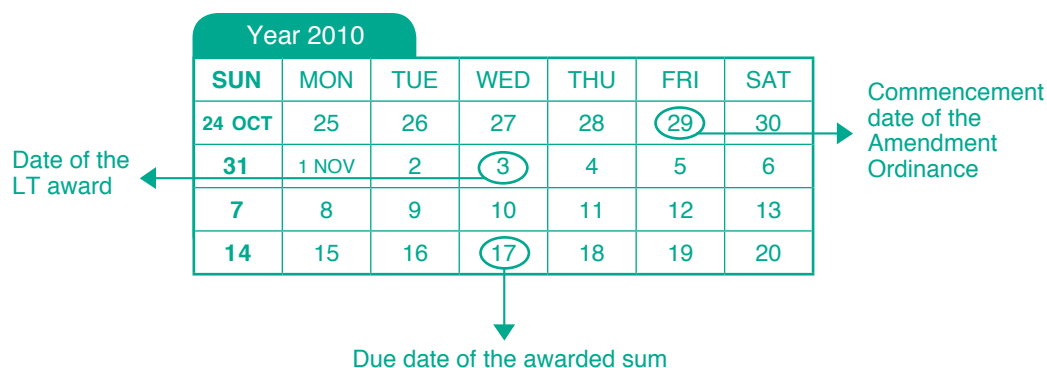
Denotes the 14-day period (i.e. 18 to 31 January 2011) after the third instalment of the awarded sum becomes due. An employer who wilfully and without reasonable excuse fails to pay before the expiry of this period commits an offence.

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 awarded sum becomes due (i.e. the due date 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.

(B) How to apply the Commencement Date of the Amendment Ordinance

[Example 3] Application of the Amendment Ordinance:

An employee files a claim with the Labour Tribunal (“LT”) against his employer for \$35,000 long service payment and obtains an award in favour of him on 3 November 2010. The employer is ordered to pay the employee \$35,000 long service payment on or before 17 November 2010.



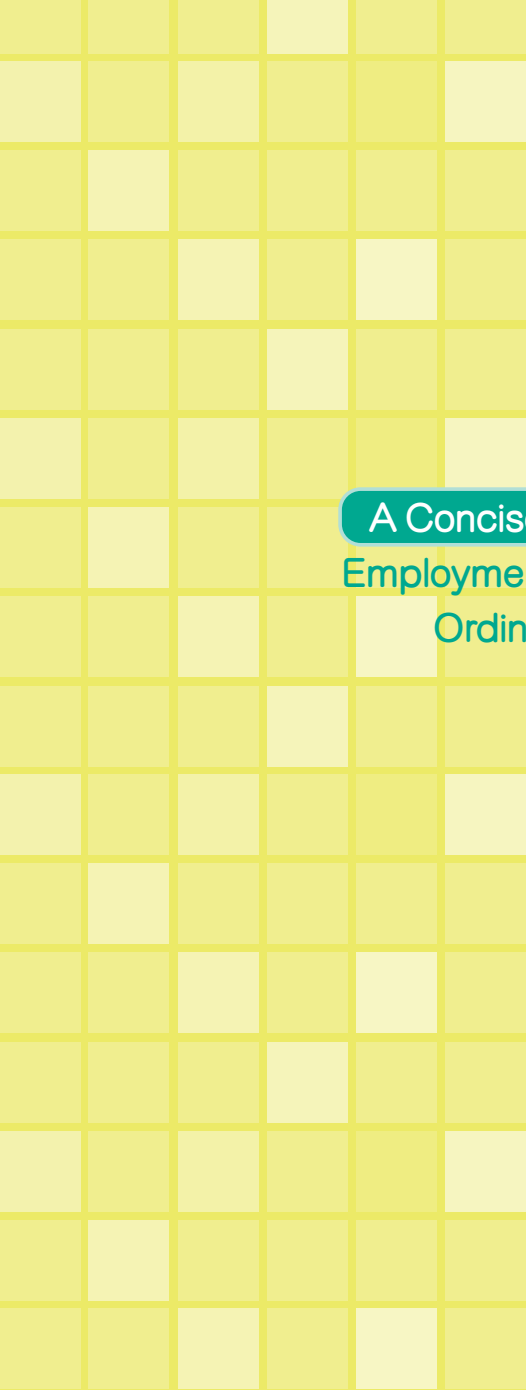
Since the award of the Labour Tribunal is made after the effective date of the Amendment Ordinance (i.e. 29 October 2010), the Amendment Ordinance is applicable to this case. An employer who wilfully and without reasonable excuse fails to pay the awarded sum of \$35,000 within 14 days after it becomes due (i.e. the due date 17 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.

NOTE:

Although the Amendment Ordinance is not applicable to an award of a tribunal made before 29 October 2010, if an employer is suspected to have committed other offence under the Employment Ordinance (such as defaulting wages or long service payment), the Labour Department will take out prosecution against the employer for the relevant offence if there is sufficient evidence.

Enquiries

- Enquiry Hotline: 2717 1771 (the hotline is handled by “1823”)
- Homepage Address: <http://www.labour.gov.hk>
- Enquiry in person to Offices of the Labour Relations Division: <http://www.labour.gov.hk/eng/tele/lr1.htm>

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