

Guidelines on What to do if Wage Reductions and Retrenchments are Unavoidable



勞工處

Labour Department

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SECTION ONE PRACTICAL ALTERNATIVES TO WAGE REDUCTIONS OR RETRENCHMENTS

- 1.1 In face of business problems, employers must be open and frank with their employees. They should seek the understanding and cooperation of their employees. It is important to consult consultative committees, staff associations or in-house unions as part of this process. Do not dismiss out of hand or belittle employees' initial suggestions. What at first appears to be a crude suggestion may contain the germ of a valuable idea. Front-line employees are best placed to suggest labour-saving and other improvement measures.
- 1.2 This section provides some practical alternatives to wage reductions or retrenchments. Many of them have been adopted by local employers to increase productivity and cut costs without resorting to wage reductions or retrenchments.

Alternatives employers may consider

- 1.3 The following are some alternatives which employers may wish to consider:
- 1.3.1 Human resource management measures
- Reduce the payroll by natural wastage, voluntary exit and voluntary retirement schemes.
 - Take the opportunity to train and upgrade the skills of employees to enhance their productivity and to meet new needs.
 - Deploy some members of the present workforce to fill the vacancies created, and provide training if necessary.
 - Suspend recruitment of new staff.
- 1.3.2 Revenue-generating or cost-saving measures
- Organise regular cost-saving meetings involving staff.
 - Scrutinise and trim, where possible, the budget of each Division or Section of the organisation.
 - Negotiate reductions in costs with suppliers.
 - Bring down overheads by across-the-board economies on all aspects of the operations including savings on electricity, copying machines and all office procedures.
 - Look for economical ways to advertise or promote the products.

- Try to develop new products or expand into new markets.

1.3.3 In addition, may consider these measures:

- Build up employees' sense of participation in efficiency enhancement and encourage them to express their ideas.
- Offer incentives to winners of Best Idea Schemes.
- If business has tapered off, encourage employees to take their paid holidays. Reassure them that their jobs will be secure on return.
- If employees are required to take no pay leave due to special needs of the business, employers should conduct prior thorough consultation and frank dialogues with employees, taking into consideration of the needs of individual employees, so as to reach a mutually agreeable arrangement and maintain harmonious employment relations.

How employees could help

1.4 Faced by economic downturn, employees should adopt a positive attitude and cooperate with their employers to overcome the adversity. You could:

- Show sympathy to your employer's situation and sincerely suggest ways to improve efficiency at work.
- Actively cooperate with your employer on the revenue-generating and cost-saving measures.
- Help your employer capture every business opportunity.

SECTION TWO WHEN WAGE REDUCTIONS ARE UNAVOIDABLE

What employers should do

- 2.1 If wage reduction is absolutely unavoidable, employers are strongly advised to hold frank and sincere discussions with their staff. Failure to do so often causes messy labour disputes. You should make a personal appeal to all employees, take them into your confidence and call for their support. You should also adopt a caring approach to your staff and recognise that employees are important stakeholders in the organisation.

- 2.2 If your organisation has consultative committees, staff associations or in-house unions, this would facilitate discussion and consultation with your staff. If not, take the opportunity to set up such a mechanism for more effective communication. If you need help, please contact the Workplace Consultation Promotion Division of the Labour Department for advice. (Contact information is at paragraph 4.3)

- 2.3 To implement wage reductions, you must obtain the consent of your employees in advance because:
 - 2.3.1 Unilaterally reducing wages without the employee's agreement would contravene the provisions of the Employment Ordinance (EO) with respect to timely payment of wages. The employer is also required to pay interest on the outstanding amount of wages to the employee. The EO also stipulates that if wages are not paid within one month after they become due, an employee may deem his contract of employment to be terminated by his employer without notice and he will be entitled to payment in lieu of notice in addition to other statutory and contractual termination payment. If employers have to arrange no pay leave for their employees due to special needs of the business, they should pay attention to the definition of lay-off¹ under the EO for the possible liability of paying severance payment to eligible employees. For details of the relevant provisions, please refer to the chapters on "Wages" and "Severance Payment" of "A Concise

¹ According to the Employment Ordinance, an employee 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. An employee with not less than 24 months of employment under a continuous contract is eligible for severance payment when being laid off.

Guide to the Employment Ordinance” published by the Labour Department.

- 2.3.2 According to the EO, an employee employed under a continuous contract² may claim for remedies³ against an employer if
- (1) the contract terms are varied without the employee’s consent,
 - (2) the employment contract does not expressly allow such a variation, and
 - (3) the contract terms are varied without a valid reason⁴ as specified in the Ordinance.

For details of the relevant provisions, please refer to the chapter on “Employment Protection” of “A Concise Guide to the Employment Ordinance”.

2.4 An employer who introduces retrospective wage reductions would also contravene the provisions of the EO with respect to payment of wages.

2.5 Furthermore, the unilateral introduction of wage reductions without the cooperation and agreement of employees would adversely affect staff morale, productivity and quality of service.

Key points to note

2.6 Employers should note:

- 2.6.1 If you are contemplating a wage-reduction exercise, please plan ahead and consult the human resource professionals and the Labour Relations Division in your district as soon as possible. (Addresses are at Appendix I.) If the exercise is not handled properly, it may give rise to misunderstanding and dispute. You should also pay attention to the provisions of the Minimum Wage Ordinance (MWO) on the statutory minimum wage rate. For details of the relevant provisions, please refer to the “Statutory

² The employee should have been employed continuously for the employer for four weeks or more, with at least 18 hours worked each week.

³ Remedies for unreasonable variation of the terms of the employment contract, to be awarded by the Labour Tribunal, include an order for reinstatement or re-engagement, an award of terminal payments and an award of compensation.

⁴ Valid reasons for variation of the terms of the employment contract are: (1) the conduct of the employee, (2) the capability or qualifications of the employee for performing his work, (3) redundancy or other genuine operational requirements of the business; (4) statutory requirements (i.e. it would be contrary to the law to allow an employee to continue to work in his original position or to continue with the original terms in his employment contract), and (5) other substantial reasons.

Minimum Wage: Reference Guidelines for Employers and Employees” published by the Labour Department.

- 2.6.2 Do not enter into any discussions with your staff with a “take it or else” attitude. While the position of your organisation may be serious, you should bear in mind that the livelihood of your employees and their families are also at stake.
- 2.6.3 Draw up your proposals in consultation with senior management and operational staff. The proposals must be written clearly and communicated effectively to all staff.
- 2.6.4 Brief all managerial staff so that everyone in the management structure is fully aware of the situation.
- 2.6.5 Be flexible and conduct discussions with the utmost patience to avoid misunderstanding with employees. Explain to them that wage reduction is due to economic forces outside the organisation’s control. Be generous in giving them time to consider your initial proposals.
- 2.6.6 Be prepared to listen to the employees’ views and feedback.
- 2.6.7 Be prepared to offer employees a range of options or combined options, for example, part-reduction of fringe benefits or part-reduction of overtime rates combined with a lesser degree of reduced wages.
- 2.6.8 If possible, try to introduce a positive element to your proposals by including some incentive measures so as to reward employees who increase productivity or improve efficiency, or who suggest viable money-saving innovations.
- 2.6.9 Try to help individual employees who will be hardest hit by wage reductions, for example, those unable to meet their mortgage payments.

Consultation could be made easier by adopting some of these suggestions

- 2.7 Consultations could be made easier by adopting some of these suggestions:
 - 2.7.1 Try to avoid an across-the-board percentage of wage reduction.

Let senior staff show the way by accepting greater percentage of wage reductions than the general workforce. Where possible, also consider the possibility of exempting the low pay employees from wage reductions.

- 2.7.2 Undertake to review the organisation's business performance regularly, say every three to six months and, when the situation begins to improve, to make appropriate adjustments to employees' wages.
- 2.7.3 Put forward the wage reduction proposal in writing and allow employees a reasonable period of time to consider whether to accept it or not. The period for consideration will depend on the circumstances of each organisation, but in any case, employees should have between 7 and 14 days to consider the proposal⁵.
- 2.7.4 Assure employees that if the organisation's situation further deteriorates and retrenchment has to be considered, severance payment will be calculated at an employee's wage level before wage reduction.
- 2.7.5 To underline the employers' intent and sincerity, all assurances to employees should be in writing.

What employees could do

- 2.8 Employees shall try to appreciate their employer's problems, particularly in the economic downturn. If it is unavoidable for your employer, after exhausting all alternatives, to resort to wage reductions, you could show understanding and work together with your employer to face the difficulty.
- 2.9 When faced with the proposed wage reduction, you shall know that your employer cannot unilaterally impose the reduction without your consent, because:
 - 2.9.1 If an employer insists on reducing an employee's wages without the latter's agreement, he would contravene the provisions of the EO with respect to timely payment of wages. The employer is also required to pay interest on the outstanding amount of wages to the employee. The EO also stipulates that if wages are not paid

⁵ This period for considering the proposal should not be taken as the notice period required to terminate a contract of employment.

within one month after they become due, an employee may deem his contract of employment to be terminated by his employer without notice and he will be entitled to payment in lieu of notice in addition to other statutory and contractual termination payment. If employers have to arrange no pay leave for you due to special needs of the business, you should pay attention to the definition of lay-off⁶ and employees' eligibility for the entitlements of severance payment under the EO. For details of the relevant provisions, please refer to the chapters on "Wages" and "Severance Payment" of "A Concise Guide to the Employment Ordinance" published by the Labour Department.

- 2.9.2 According to the EO, an employee employed under a continuous contract⁷ may claim for remedies⁸ against an employer if
- (1) the contract terms are varied without the employee's consent,
 - (2) the employment contract does not expressly allow such a variation, and
 - (3) the contract terms are varied without a valid reason⁹ as specified in the Ordinance.

For details of the relevant provisions, please refer to the chapter on "Employment Protection" of "A Concise Guide to the Employment Ordinance".

Key points to note

- 2.10 When you consider the proposal,
- 2.10.1 Establish precisely the details of the proposed wage reduction. If in doubt or requiring more details, clarify with your employer and

⁶ According to the Employment Ordinance, an employee 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. An employee with not less than 24 months of employment under a continuous contract is eligible for severance payment when being laid off.

⁷ The employee should have been employed continuously for the employer for four weeks or more, with at least 18 hours worked each week.

⁸ Remedies for unreasonable variation of the terms of the employment contract, to be awarded by the Labour Tribunal, include an order for reinstatement or re-engagement, an award of terminal payments and an award of compensation.

⁹ Valid reasons for variation of the terms of the employment contract are: (1) the conduct of the employee, (2) the capability or qualifications of the employee for performing his work, (3) redundancy or other genuine operational requirements of the business; (4) statutory requirements (i.e. it would be contrary to the law to allow an employee to continue to work in his original position or to continue with the original terms in his employment contract), and (5) other substantial reasons.

explain your personal difficulties.

2.10.2 If you have suggestions, put these forward either through your respective consultative committee, staff association or in-house union. If no such bodies exist in your organisation, take your ideas either to your immediate supervisor or to your employer.

2.10.3 Factors to be first considered in deciding whether to accept the proposed wage reduction include:

- your rights and protection under the EO and the MWO;
- the extent of the reduction and the effects on other benefits;
- your personal circumstances;
- your prospects of finding another job; and
- your employer's business prospect.

This is an important decision, why not discuss with those who are close to you such as your family, fellow colleagues, and trade unions. The Labour Department stands ready to provide assistance to you.

2.10.4 There are legal implications if you sign any agreement to reduce your wages. You may consider securing an assurance from your employer for the appropriate adjustments of wages when business performance improves or for the calculation of severance payment, in the event of redundancy, at an employee's wage level before the wage reduction scheme was introduced.

2.10.5 If your employer chooses to impose the proposed wage reduction without your consent, you should go to the nearby office of the Labour Relations Division of the Labour Department for assistance. (Addresses are at Appendix I.)

SECTION THREE WHEN RETRENCHMENTS ARE UNAVOIDABLE

What employers should do

- 3.1 Retrenchment is an extremely serious step. If there is absolutely no other choice, you must carefully weigh a number of highly important factors, foremost of which is that human beings are not statistics, and what is at stake is the livelihood and future security not only of those to be laid off, but their dependants, too.

- 3.2 Apart from the humanitarian factor, you must review existing and future manpower needs in relation to the market situation. Your goal should be to lay off as few members of your workforce as possible while taking account of the fact that this must virtually be a one-off exercise so that you can reassure all your remaining staff that their jobs are secure, at least within a certain timeframe.

- 3.3 Another most important factor is that when you contemplate such a severe step, you should do your groundwork very carefully to establish just how much it is going to cost to lay off a certain percentage of your workforce. You may even change your mind completely and turn to the cost-cutting and other alternative methods proposed in paragraph 1.3 of this booklet.

- 3.4 Nevertheless, if you have done your sums properly and remain convinced that retrenchment is the only course for your organisation, you must hold frank and open discussions with consultative committees, staff associations or in-house unions to explain to them fully the gravity of your organisation's problems and reasons for retrenchment.

- 3.5 In particular, you must be prepared to discuss with affected employees and their representatives everything from the simplest to the most detailed points involved in calculating termination compensation.

- 3.6 You must be patient and sympathetic in such discussions, and you need to show understanding and compassion. It is because retrenchment will surely create emotional or stressful sentiments. Remember, sentiments improperly handled could lead to unfortunate incidents.

Key points to note

- 3.7 Employers should note:
 - 3.7.1 Ensure that the retrenchment criteria are objective, fair, non-

punitive and non-discriminatory¹⁰. In general, you may wish to use, as a yardstick, nature of work, job skills and related factors.

- 3.7.2 Ensure that the termination package is no less favourable than that provided in the EO and the employment contract.
- 3.7.3 To soften the blow of retrenchment, and to demonstrate additional support for people being forced to change jobs, you should also try to be as generous as possible with ex-gratia payments.
- 3.7.4 Whatever the final payment decided upon, clearly explain all the details, and the methods of calculation, to each retrenched employee.
- 3.7.5 At the same time, each employee should be given a reference on an organisation letterhead certifying that the retrenchment had to be made because of circumstances beyond the organisation's control and was unrelated to his performance. This could facilitate his seeking a new job.
- 3.7.6 Make clear to retrenched employees that once the organisation's situation returns to normal, all retrenched employees would be given priority in future recruitment.

Other ways to demonstrate further support and compassion towards retrenched employees

- 3.8 Other ways to demonstrate further support and compassion towards retrenched employees include:
 - 3.8.1 Continue to provide perks such as housing allowances/loans, education allowances, etc. for a reasonable period.
 - 3.8.2 If a redundant employee is occupying company quarters, allow him a reasonable breathing period before insisting on regaining the premises. Take into account the double jeopardy faced by such an employee who, having lost his job, must also give up the accommodation occupied by himself and his family.

¹⁰ Make sure that you do not breach the provisions of the Employment Ordinance (Cap.57), the Employees' Compensation Ordinance (Cap.282), the Sex Discrimination Ordinance (Cap.480), the Disability Discrimination Ordinance (Cap.487), the Family Status Discrimination Ordinance (Cap. 527) and the Race Discrimination Ordinance (Cap. 602).

- 3.8.3 Provide counselling and other forms of assistance to retrenched employees to help them to find other jobs or refer them to the job centres and the industry-based recruitment centres of the Labour Department to seek employment services.
 - 3.8.4 Set up a hotline for employees who may not immediately comprehend all the details of such an abrupt development, and assign experienced officers to patiently answer questions about how retrenchment compensation or other financial aspects were calculated, or just to advise on other means of assistance.
 - 3.8.5 Do not include in the retrenchment exercise employees singled out for dismissal solely on the grounds of poor performance. That should be done separately.
- 3.9 The bad feeling of a retrenchment exercise does not disappear instantly when it has been completed. It will be felt not only by those employees laid off but those who survived the retrenchment and kept their jobs.
- 3.10 As a result, in post-redundancy relations with the remaining employees you must be even more sensitive and caring in your dealings with them, their staff associations and in-house unions. Not only will you need to keep up morale but also to counteract ill feeling and despondency that could affect productivity and quality of service.
- 3.11 Once business begins to improve, re-employ as many of your retrenched employees as you can afford.

What retrenched employees should do

- 3.12 If you are told that you are to be retrenched, you should take the following steps to protect your own interests:
- 3.12.1 Establish exactly what your statutory and contractual entitlements are under the EO and your employment contract. Normally, the termination compensation includes wages, payment in lieu of notice if no notice is given, pro-rata annual pay leave, statutory holiday pay, and pro-rata end of year payment. You are also entitled to severance payment if you have been employed for two years or more.

- 3.12.2 In case of doubt on your entitlements, particularly if your employer reduces or even refuses to pay termination compensation, seek assistance from the Labour Department's Labour Relations Division in your district or get more information about the amount and method of calculation of your entitlements. (Addresses of these offices are at Appendix I.) You may also wish to consult your trade union(s).
 - 3.12.3 Go to the job centres and the industry-based recruitment centres of the Labour Department's Employment Services Division and register for alternative employment. (Addresses and telephone numbers of these centres are at Appendix II)
 - 3.12.4 Take the opportunity to equip yourselves and upgrade your skills and qualifications by attending courses organised by institutions such as the Employees' Retraining Board, the Vocational Training Council and the Open University, etc.
- 3.13 In the times of adverse economic situations, when searching for a new job, you should try to understand more about the market situation and be prepared to make some adjustments, like accepting for the meantime a lower salary, or be more ready to travel longer distance to the new workplace. It is only when you are prepared to adjust to a new working pattern can you face other new challenges ahead.
- 3.14 Please remember, even faced with economic downturn, do not give in easily and lose your confidence. Labour Department will try its utmost best to provide all the assistance you need in resolving problems relating to your termination and helping you to find a new job.

**SECTION FOUR SERVICES PROVIDED BY THE LABOUR
DEPARTMENT TO EMPLOYERS AND EMPLOYEES**

- 4.1 The Labour Department provides the following services to employers and employees:

Labour Relations Division

- 4.2 The Labour Relations Division provides voluntary conciliation service to help employers and employees in the non-government sector settle labour disputes. It also gives advice on matters relating to conditions of employment and provisions of the EO. For assistance, please approach its branch offices at Appendix I.

Workplace Consultation Promotion Division

- 4.3 Workplace Consultation Promotion Division promotes the EO and good human resource management practices, as well as to encourage effective communication, consultation and voluntary negotiation between employers and employees, address at

5/F, Mongkok Government Offices, 30 Luen Wan Street, Mong kok, Kowloon.

Tel. 2121 8690; Fax. 2121 8695.

Employment Services Division

- 4.4 The Employment Services Division provides comprehensive and free employment and recruitment services to job seekers and employers through its 13 job centres, three recruitment centres for the catering, retail and construction industries, Interactive Employment Service website (www.jobs.gov.hk) and its mobile application, etc. Addresses and telephone numbers of the job centres and the industry-based recruitment centres are at Appendix II.

Labour Department's 24-hour Telephone Enquiry Service

- 4.5 For general enquiry on the provisions of the EO, employment services and other related labour matters, please call 2717 1771 (the hotline is handled by "1823").

APPENDIX I

Enquiry Hotline : 2717 1771 (the hotline is handled by “1823”)

Labour Department’s Homepage Address: www.labour.gov.hk

Offices of the Labour Relations Division: www.labour.gov.hk/eng/tele/lr1.htm

APPENDIX II

Job Centres and Industry-based Recruitment Centres of the Employment Services
Division of the Labour Department: www.labour.gov.hk/eng/tele/es3.htm