

DO NOT PAY YOUR EMPLOYEES LATE, OR YOU MIGHT PAY EVEN MORE!



According to press releases from the Labour Department in the first half of 2023, seven Hong Kong registered companies have been prosecuted for failing to meet the requirements of the Employment Ordinance (EO). These companies were convicted at District Magistrates' Courts and fined for their offences – in one case, a company director was also sentenced to over two months in prison. The contraventions all involved employers failing to pay wages to employees within seven days of the end of the wage period set out in the EO. The details that have been published about the seven cases are summarised in Table 1.

A Labour Department spokesperson said: "These rulings help send a strong message to all employers that they have to pay wages to employees within the statutory time limit stipulated in the EO as well as the sum awarded by the Labour Tribunal. The Labour Department will not tolerate these offences and will spare no effort in enforcing the law and safeguarding employees' statutory rights."

In accordance with the EO, wages become due at the end of the last day of the wage period. An employer should pay wages to an employee as soon as practical, but never later than seven days from the end of the wage period. If the employer fails to pay the employee in that time, the employer must pay interest on the wages they owe.

An employer who deliberately, and without a reasonable excuse, fails to pay wages to an employee when they become due can be prosecuted. If convicted, the employer can be fined up to HK\$350,000 and sentenced to up to three years in prison.

Table 1: Summary of prosecutions

Nature of business	Date of court judgment (2023)	Offence committed	Total wages involved (and sum awarded to employee, if any)	Number of employees involved	Financial penalty	Prison sentence
Industrial group	6 January	Failed to pay wages within seven days of the end of the wage period	HK\$430,000 (HK\$880,000 awarded)	1	HK\$28,000	Over two months
Holding company of a restaurant chain	6 February	As above	HK\$310,000	5	HK\$105,600	None
Company operating a restaurant chain owned by the above holding company	27 February	As above	HK\$349,000	8	HK\$192,000	None
Construction and decoration company	17 March	As above	HK\$79,200	1	HK\$50,000	None
Trading company	30 March	As above	HK\$260,000	6	HK\$72,000	None
IT services company	17 April	As above	HK\$420,000	2	HK\$52,000	None
Investment company	18 May	As above	HK\$690,000	11	HK\$145,000	None

If a wage offence is committed by a corporate body and it is proved that the offence was committed with the consent or connivance of, or resulting from neglect on the part of, a director, manager, secretary or a person with a similar role, that person will be considered guilty of the same offence and, if convicted, could receive the same penalty.

An employer who deliberately, and without a reasonable excuse, fails to pay interest on outstanding wages can also be prosecuted and, if convicted, fined up to HK\$10,000.

In the first six months of 2023, the above court judgements revealed that employers' failure to pay wages within the time limit is a common mistake that can lead to a labour dispute.

Over the past few years, labour disputes have touched upon various contraventions of the EO by employers. These include errors in calculating an employee's daily average wages (DAW), which are used as the basis for calculating eight relevant statutory entitlements: holiday pay, annual leave pay, sickness allowance, maternity pay, paternity pay, end-of-year payments, payment in lieu of notice, and further sums for failing to comply with an order to reinstate or re-engage an employee after unreasonable or unlawful dismissal.



According to the Labour Department's annual report for 2021, they handled 11,064 labour dispute claims in 2021 (the number of claims per year from 2017 to 2021 is shown in Table 2). Over 70% of these claims were settled through conciliation services provided by the Labour Department's Labour Relations Division, without the need for a Labour Tribunal or a decision from the Minor Employment Claims Adjudication Board.

Table 2: Labour dispute claims (2017-2021)

Year	Number of labour dispute claims handled by the Labour Department	Percentage of labour dispute claims resolved through conciliation
2017	14,666	71.7%
2018	13,691	74.1%
2019	13,755	75.9%
2020	10,991	74.7%
2021	11,064	74.6%

Source: Data obtained from the Labour Department's Annual Reports, 2017-2021

Statistics from the Labour Department show that over 80% of claims in 2021 were about the termination of contracts, wage disputes, or disputes about statutory entitlements (such as holiday pay, annual leave pay, rest day pay or sickness allowance). The relevant data is shown in Table 3.

Table 3: Labour dispute claims handled by the Labour Relations Division in 2021, by cause

Cause	Number of cases	Percentage
Termination of contract	5,425	49%
Wages	3,289	29.7%
Holiday pay/annual leave pay/rest day pay/sickness allowance	1,048	9.5%
Retrenchment/lay-off	165	1.5%
Variation of terms of employment contract	123	1.1%
Cessation of business/insolvency	90	0.8%
Other	924	8.4%
Total	11,064	

Source: Data obtained from the Labour Department's Annual Report 2021

Labour disputes can be time-consuming and costly for a company. They can also damage the company's reputation – especially in the age of social media, when information is spread quickly and widely.

It is imperative that employers strictly adhere to the EO requirements for paying wages to their employees and calculating the DAW that applies to the eight relevant statutory entitlements. This will minimise the potential for labour disputes, penalties or prosecution. Full compliance with the law offers the best protection to employers and employees alike for the duration of a person's employment.

We believe that for every business, nothing is more important to success than hiring good people. Once an employer has found and hired the right talent, they should do their best to retain them - including paying them accurately and on time and adhering to all employment law. An employer who habitually pays employees late, doesn't pay them accurately and fails to comply with the relevant employment law will erode their employees' trust and put the directors of the business at risk of being held liable.

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Feel free to get in touch to find out how we can help you with a tailored payroll and HR outsourcing solution.

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