

Chapter 3: Wages

Definition

"Wages" means all remuneration, earnings, allowances, tips and service charges, however designated or calculated, payable to an employee in respect of work done or work to be done. Allowances including travelling allowances, attendance allowances, commission and overtime pay are within the definition of wages. However, it does not include:

1. the value of any accommodation, education, food, fuel, water, light or medical care provided by the employer;
2. employer's contribution to any retirement scheme;
3. commission, attendance allowance or attendance bonus which is of a gratuitous nature or is payable only at the discretion of the employer;
4. non-recurrent travelling allowance or the value of any travelling concession or travelling allowance for actual expenses incurred by the employment;
5. any sum payable to the employee to defray special expenses incurred by him by the nature of his employment;
6. end of year payment, or annual bonus which is of a gratuitous nature or is payable only at the discretion of the employer;
7. gratuity payable on completion or termination of a contract of employment.

An employee's entitlements to end of year payment, maternity leave pay, severance payment, long service payment, sickness allowance, holiday pay, annual leave pay and wages in lieu of notice are calculated according to the above definition of wages.

Overtime pay should also be included in calculating the above payments if :

- it is of a constant character; or
- its monthly average over the past 12 months is not less than 20% of the average monthly wages of the employee during the same period.

Deductions from Wages

An employer is prohibited from deducting wages from his employee, except under the following circumstances:

1. deductions for absence from work. The sum to be deducted should be proportionate to the period of time the employee is absent from work;
2. deductions for damage to or loss of the employer's goods, equipment, or property by the employee's neglect or default. In any one case, the sum to be deducted shall be equivalent to the value of the damage or loss but not exceeding \$300. The total of such deductions shall not exceed one quarter of the wages payable to the employee in that wage period;
3. deductions for the recovery of any advanced or over-paid wages to the employee. The total sum to be deducted shall not exceed one quarter of the wages payable to the employee in that wage period;
4. deductions of the value of food and accommodation the employer supplies to the employee;
5. deductions, at the written request of the employee, in respect of contributions to be paid by the employee through the employer for any medical scheme, superannuation scheme, retirement scheme or thrift scheme;
6. deductions, with the employee's written consent, for the recovery of any loan made by the employer to the employee;
7. deductions which are required or authorized under any enactment to be made from the wages of the employee;
8. deductions for outstanding maintenance payment owed by the employee pursuant to the Attachment of Income Order issued by the court.

Deductions under items (1) to (7) shall have priority over item (8).

Unless with the approval in writing of the Commissioner for Labour, the total of all deductions, except those for absence from work and outstanding maintenance payment, made in any one wage period shall not exceed one half of the wages payable in that period.

Offences and Penalties

An employer who makes illegal deduction from wages of an employee is liable to prosecution and, upon conviction, to a fine of \$100,000 and to

imprisonment for one year.

Payment of Wages

Wages shall become due on the expiry of the last day of the wage period. An employer should pay wages to an employee as soon as practicable but in any case not later than seven days after the end of the wage period. An employer is required to pay interest on the outstanding amount of wages to the employee if he fails to pay wages to the employee within seven days when it becomes due.

Offences and Penalties

An employer who willfully and without reasonable excuse fails to pay wages to an employee when it becomes due is liable to prosecution and, upon conviction, to a fine of \$350,000 and to imprisonment for three years.

An employer who willfully and without reasonable excuse fails to pay interest on the outstanding amount of wages to the employee is liable to prosecution and, upon conviction, to a fine of \$10,000.

Failure to Pay Wages

An employer who is no longer able to pay wages due should terminate the contract of employment in accordance with its terms.

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 is entitled to wages in lieu of notice in addition to other statutory and contractual termination payment. To avoid disputes, an employee should inform his employer when he exercises such rights under the Ordinance.

Liability to Pay Wages of Sub-contractor's Employees

The principal contractors, superior sub-contractors and superior nominated sub-contractors engaged in building and construction works are liable for the first two months' unpaid wages of an employee who is employed by the sub-contractor or nominated sub-contractor.

If an employee employed by a sub-contractor or nominated sub-contractor

is owed wages, he must serve a written notice to the principal contractor or the main nominated sub-contractor within 60 days (or an additional period of 90 days permitted by the Commissioner for Labour) after the wages become due. The employee should state the following in the notice:

1. the name and address of the employee;
2. the name and address of his employer;
3. the address of the place of employment of the employee;
4. the particulars of the work in respect of which the wages are due;
and
5. the amount of wages due and the period to which they relate.

The principal contractor, the superior sub-contractors and the superior nominated sub-contractors should pay wages to the employee within 30 days after receiving the notice. They may request every superior sub-contractor or superior nominated sub-contractor to the employee's employer to share out the liability.

The wages paid by the principal contractor, the superior sub-contractors and the superior nominated sub-contractors shall be a debt due by the employer of the employee to them. The debt may be recovered through civil claims proceedings.