



March 2025

HONG KONG EMPLOYMENT LAW UPDATE

- ABOLITION OF SET OFF, LABOUR TRIBUNAL EXPECTATIONS AND SEXUAL HARASSMENT

In this update we cover the above three topics.

ABOLITION OF SET OFF

As things have stood for the last 25 years, employers have been lawfully able to significantly reduce, if not extinguish entirely, their liability to pay an employee statutory severance pay¹ ("SP") or statutory long service pay² ("LSP") by setting off the following sums from such payments:

- (i) Contractual gratuities paid to employees based on their length of service;
- (ii) Their contributions into the employees' occupational retirement ("OR") schemes; or
- (iii) The total value of their contributions into their employees' mandatory provident fund ("MPF") schemes.

SP and LSP are both capped at HK\$390,000 (equating to a minimum of 26 years' of service using the formula from the Employment Ordinance³) therefore the setting off provisions

have allowed employers to significantly reduce their costs to the detriment of employees' finances in their retirement.

How the setting off has worked is that with respect to (i), employers account for the paid gratuities to reduce the SP or LSP and only pay the difference. Where (ii) and (iii) are concerned, the SP or LSP is paid in full and the employers then recover such amount from their contributions into the employee's OR scheme or, if an MPF scheme is concerned, the then value of their contributions into it.

1 MAY 2025

Hong Kong employment law changes on 1 May 2025. This note explains what all employers need to know about that.

The changes importantly are not retrospective and that was deliberate to avoid a mass of

¹ SP is due when an employee: (i) with not less than 24 months' service has their employment terminated because of redundancy; and (ii) has made an application for the SP within 3 months' of their termination (although market practice is for SP to be paid on their termination date without the employee needing to apply).

² LSP is due when an employee with 5 or more years' service: (i) has their employment terminated other than summarily or because of redundancy; or (ii) terminates their employment because of a permanent disability; or (iii) retires after reaching the age of 65. Unlike SP, no application is needed and employers are required to make the LSP within 7 days' after the end of employment.

³ SP and LSP are calculated in the same way which: (i) for monthly rated employees is two-thirds of the last month's wages or two-thirds of HK\$22,500 (whichever is less) x years of service (pro-rated for partial years); and (ii) for other employees is 18 days' wages based on any 18 days chosen by the employee from their last 30 normal working days or two-thirds of HK\$22,500 (whichever is less) x years of service (pro-rated for partial years). Employees have the right to elect to have their wages averaged over the 12 months preceding their termination but in any event the maximum SP or LSP is HK\$15,000 per year (i.e. two-thirds of HK\$22,500).



terminations of employees with long years of service happening just prior to 1 May 2025.

To understand the impact of these changes it is necessary to distinguish between pre and post 1 May 2025 periods of employment and also whether the employee is in an MPF or OR scheme.



POST-1 MAY EMPLOYMENT

MPF Scheme

From 1 May 2025, employers no-longer can use the accrued benefits of their mandatory contributions into their employees' MPF schemes⁴ to set off their liability for SP or LSP. This provision, for the avoidance of doubt, only applies with respect to the periods of post-1 May 2025 employment.

For those employers who, post-1 May 2025, are making voluntary contributions in excess of the mandatory requirements into their employees' MPF schemes, these voluntary contributions can continue to be used to set off their liability for SP or LSP that is attributable to any post-1 May 2025 employment.

OR Scheme

The post-1 May 2025 set off regime applies consistently to MPF and OR schemes alike. Given that there is no distinction between mandatory or voluntary payments made into OR schemes, the below formula will be applied to determine what are identified as "non-offsetable benefits" from the OR scheme after 1 May 2025:

Non-offsetable benefits = final average monthly relevant income (capped at HK\$30,000) x years of service enrolled in the OR scheme x 5% x 12

For employees in OR schemes, the "non-offsetable benefits" calculated as above cannot be used to

reduce the employer's liability for any SP or LSP for periods of post-1 May 2025 employment. However, the remainder of employer's OR scheme payments are equated to employers' voluntary contributions in an MPF scheme which can be set off from an employer's SP or LSP liability for periods of post-1 May 2025 employment.

Gratuities

Gratuities are contractual payments paid to an employee based on an employee's length of service. They are not mandatory, so are said to be voluntary, and can therefore also be used by an employer to set off from any post-1 May 2025 SP or LSP liability.

PRE-1 MAY EMPLOYMENT

After 1 May 2025, SP and LSP for all periods of employment pre-1 May 2025 will be paid as normal.

MPF Scheme

Employers can continue to use the accrued benefits from all mandatory and voluntary contributions made into an MPF scheme pre-1 May 2025 to be set off from their liability for SP or LSP arising from an employee's pre-1 May 2025 employment.

In a pragmatic decision to reduce administrative costs and the need for multiple MPF scheme accounts, all mandatory or voluntary post-1 May 2025 contributions by an employer into an MPF scheme can also be used, should the value of their pre-1 May 2025 contributions be insufficient, to be set off from the employers' SP or LSP liabilities for pre-1 May 2025 employment.

Accordingly, employees may well end up being worse off because employers shall be able to benefit from the above if the value of their pre-1 May 2025 contributions into the MPF scheme are insufficient to meet the pre-1 May 2025 SP or LSP liabilities.

In due course the Government expects that investment returns made on all pre-1 May 2025 MPF scheme contributions will be sufficient to set off pre-1 May 2025 employment related SP or LSP.

OR Scheme

⁴ Such contributions are 5% of what's known as the employees' 'relevant income' which is the employees wages' each month subject to a maximum of HK\$30,000. The maximum monthly contribution from an employer to an MPF scheme is therefore currently HK\$1,500: 5% of HK\$30,000.



Consistent with the above, after 1 May 2025, employers when calculating SP or LSP can continue to use the OR scheme contributions made pre-1 May 2025 to be set off from their liability for SP or LSP arising from pre-1 May 2025 employment. Similar to the provisions relating to MPF schemes, if the value of these contributions is insufficient, then post-1 May 2025 contributions into an OR scheme can also be used to be set off from employer's liability for SP or LSP for periods of employment pre-1 May 2025.

CALCULATIONS OF SP/LSP

To facilitate future calculations, employers shall need to keep wages and employment records for their employees for the period from 1 May 2024 to 30 April 2025 (or for shorter periods if the employment is less).

Where an employee has worked for a long time resulting in the SP or LSP being attributable to their employment exceeding HK\$390,000, the post-1 May 2025 part of the SP or LSP will be the remainder of HK\$390,000 minus the SP or LSP amount attributable to their pre-1 May 2025 employment. This is how the calculation shall be made and the differences determined between what's due for the two periods.

Future calculations of pre-1 May 2025 SP or LSP will be based, for a monthly rated employee, on the lesser of two-thirds of their wages in the month immediately prior to 1 May 2025, to contain the employer's SP or LSP liability at the relevant amount, or two-thirds of HK\$22,500.

Employees will in the future also be able to choose to have their pre-1 May 2025 SP or LSP calculated pursuant to two-thirds of their monthly wages averaged over the 12 months prior to 1 May 2025 (or a shorter pre-1 May 2025 period of employment if applicable) or the lesser of two-thirds of HK\$22,500.

For employees who are not monthly rated, the pre-1 May 2025 SP or LSP calculations are calculated by reference to the lesser of the 18 days of wages selected by the employee from the their last 30 days of normal work prior to 1 May 2025 or two-thirds of HK\$22,500. These employees may also choose to calculate their SP or LSP based on the lesser of two-thirds of HK\$22,500 or two-

thirds of their last 12 months' average earnings subject to the monthly average not exceeding HK\$22,500.

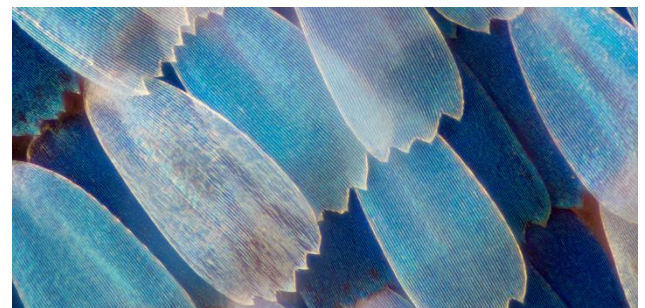
So that these calculations can if necessary be made, these are the reasons why the relevant wage records from 1 May 2024 to 30 April 2025 need to be kept until the end of employees' employment.

CONCLUSIONS

The Government expects the abolition of the setting off provisions concerning SP and LSP will: (i) help to preserve retirement benefits for employees, elevating MPF schemes in particular; and (ii) result in more employees applying for SP.

Employers' costs will rise to pay these increased amounts of SP and LSP. This may result in employers trying to avoid their legal obligations and therefore more disputes between employers and employees.

The changes to Hong Kong's employment law explained above will come into effect on 1 May 2025 when the Employment and Retirement Schemes Legislation (Offsetting Arrangement) (Amendment) Ordinance comes into force.



LABOUR TRIBUNAL PROCEDURE - WHAT'S EXPECTED

The case explained below shows what's expected of defendants in the early stages of a Labour Tribunal matter and what the consequences are that can follow from non-compliance. This note is therefore relevant to whoever finds that they are defending a claim in terms of showing them what to avoid doing and similarly gives claimants a tip about what they might seek if faced with delays.

In *Chu Yeut Lin & Anors v Everbright Groups Limited*⁵, Everbright unsuccessfully applied for

⁵ [2024] HKCFI 1626.



leave to appeal an order dated 28 February 2024 of the Labour Tribunal requiring it to pay security into Court of HK\$231,166 in respect of severance and long service claims made against it.

Everbright argued its need to pay security was an error in law⁶ caused by the Labour Tribunal wrongly assessing the merits of the case before it had even filed its Statement of Defence.

Decisions in the Labour Tribunal may be quashed on appeal if based on findings of fact or inferences which are perverse or irrational. That is what Everbright tried to argue.



REASONABLE

The Labour Tribunal had written to Everbright on 1 February 2024 notifying it of the claims and requesting it to send it before 15 February 2024: (i) its Statement of Defence; (ii) statements of any witnesses; (iii) contracts of employment of the claimants; (iv) copies of wages records; (v) evidence to rebut any items claimed it disagreed with; and (vi) all other documents of relevance.

With respect to the severance pay claims Everbright was told to provide: (i) its manpower table; (ii) its monthly turnover for 12 months before and 3 months after terminations; (iii) its audited reports; (iv) its recruitment advertisements for replacement workers; and (v) the replacement workers' statements. (i) to (v) is the sort of evidence which will be needed to determine whether or not a termination was because of a redundancy (and in particular items (iv) and (v)), and if not because of a redundancy, then severance pay won't be due.

NON-COMPLIANCE

Everbright failed to produce a single document to the Labour Tribunal.

At the hearing on 28 February 2024 its representative was asked to explain the basis of its defence but no details were given. The representative asked for an adjournment (repeating Everbright's earlier written request which sought an adjournment because of various holidays before the hearing which left it with insufficient time to prepare).

CONSIDERATIONS

At the leave to appeal application the Court mentioned:

- (i) The Labour Tribunal is an investigative body and Everbright's filing of the above documents in time was necessary for it to understand the defence and perform its investigatory function;
- (ii) The nature of disputes about outstanding sums under employment contracts required that these claims should be dealt with quickly;
- (iii) Concerning the adjournment request, a balance had to be struck between the diligent and responsible conduct of legal proceedings and the time needed to file documents;
- (iv) Public funds and resources would be wasted by any adjournment;
- (v) Litigants in person may not be expected to address the Labour Tribunal on the law but they were expected to inform the Labour Tribunal and the claimants what facts were relied on to oppose the claims being made; and
- (vi) Everbright had the primary responsibility to prepare its case and evidence and had assumed it would be given the adjournment and therefore had not done so.

CONSEQUENCES

With the above in mind, the Labour Tribunal took a preliminary view about the merits of the claims and having failed to provide any document or details of its defence, that meant it was just to order security be paid by Everbright. Concerning the adjournment, Everbright obtained what it wanted.

⁶ And therefore the leave to appeal application was made under section 32 of the Labour Tribunal Ordinance.



CONCLUSIONS

All defendants in Labour Tribunal matters should take note of what happened in this case.

When faced with a claim, all defendants need to immediately take steps to provide the information sought by the Labour Tribunal, and by the deadlines imposed (which are always tight), and to identify what its defence and the related facts are going to be so that these can be raised in the first hearing.

Failing to do the foregoing will likely be viewed as delaying tactics and contrary to the policy of resolving employment disputes without delay. This behaviour may result in security being ordered against a defendant. Any claimant facing delays can, relying on this case, also ask for this.

INAPPROPRIATE BEHAVIOUR HITS THE HEADLINES AGAIN

In early March, the result of the most recent survey of sexual harassment in Hong Kong workplaces⁷ was published. Of the 311 women surveyed a third stated they'd encountered sexual harassment at work in the previous 3 years.

It was reported: (i) 20% of the wrongdoing comprised text or picture based harassment in the form of dirty pictures or jokes; (ii) 18% involved bodily contact; and (iii) 60% of victims did not report the matters for fear of inaction or reprisals.

Only 47 of the 104 companies surveyed had policies against harassment.

Only 11 companies of those surveyed trained staff about workplace sexual harassment.

These results are very disappointing but in line with previous research.

In general terms, employers have a duty to ensure that their workplaces are safe environments.

The survey shows that employers are not doing enough and at a significant risk as a result

Employers can be legally responsible for the actions of their employees which are done in the course of their employment, whether or not these

acts are done with their knowledge or approval. That is Hong Kong anti-discrimination law, but is not widely known.

Where an employee does an act which is in breach of Hong Kong's anti-discrimination laws⁸ not only will the employee be liable for their acts (that they are responsible for what they have done is uncontentious) the employer is also potentially liable and the only defence they have is that they have taken reasonably practicable steps to prevent the employee from perpetrating the wrongdoing in the first place⁹.

The steps required are: (i) to have an anti-discrimination policy; (ii) implementing the policy; (iii) training staff about discrimination; and (iv) enforcing the policy when there is a complaint.

Positive action in the form of (i) to (iv) is therefore needed but it appears that many of the companies in the survey (and throughout Hong Kong) will fail to satisfy the defence.

Finally, in the District Court case *周露娜 v 中旅貨運物流中心有限公司* (*Luna Zhou v China Travel (Cargo) Logistics Centre Company Limited*) [2023] HKDC 1115 (which we wrote a Briefing Note about in 2023 see: [here](#)), we have seen one of the largest claim payouts ever awarded by the Hong Kong Courts for pregnancy discrimination.



⁷ The survey was carried out on-line in February 2025 by the: (i) Democratic Alliance for the Betterment and Progress of Hong Kong; (ii) Equal Opportunities Commission; (iii) Hong Kong Small and Medium Enterprises Association; (iv) Greater Bay Area Hong Kong Women Entrepreneurs Association; and (v) Hong Kong Island Women's Association.

⁸ Sex Discrimination Ordinance, Disability Discrimination Ordinance, Family Status Discrimination Ordinance and Race Discrimination Ordinance.

⁹ See section 46(3) of the Sex Discrimination Ordinance.



Getting discrimination issues wrong can lead to: (i) significant damages awards; (ii) low morale; (iii) staff turnover; and (iv) problems with the businesses' reputation. The costs that (ii) to (iv) may pose to a business are not quantifiable.

This update was written by Ian Childs, Practice Group Leader of the Hong Kong office's dispute resolution team and head of the office's employment team.

If you need any assistance with respect to the above, or any employment related matters please do not hesitate to contact any of the office's employment law specialists whose details follow.

Thank you.

CONTACT US



IAN CHILDS

Partner

+ 852 2533 2884
ian.childs
@stephensonharwood.com



DOROTHY SIRON

Partner

+852 2533 2807
dorothy.siron
@stephensonharwood.com



JANE NG

Partner

+852 2533 2828
jane.ng
@stephensonharwood.com



KATHERINE LIU

Partner

+852 2533 2717
katherine.liu
@stephensonharwood.com



TRACY CHAN

Of Counsel

+852 2533 2852
tracy.chanpm
@stephensonharwood.com