

***LegCo Panel on Manpower
Follow-up to meeting on 4 July 2001***

Terminal Payments for Unreasonable Dismissal

Purpose

At the LegCo Panel on Manpower meeting on 4 July, Members requested the Administration to:

- (a) provide in writing the response on the amount of terminal payments an employee would receive in case of unreasonable dismissal having regard to the offsetting arrangement with Mandatory Provident Fund (MPF) entitlement;
- (b) request the Judiciary to provide information on whether claimants of cases settled by mutual agreement received their statutory entitlements; and
- (c) provide information on cases of unreasonable dismissal heard by the Labour Tribunal, including the terminal payments awarded.

This paper sets out the Administration's response to Members' requests.

Administration's response

2. On (a), we wish to reiterate that existing provisions in the Employment Ordinance (EO) presume the employer to have the intention to deprive the employee of his statutory benefit if the employer cannot provide a valid reason for the employee's dismissal after two years of service. Section 32O(4) of the EO provides that the LT may, depending on the actual length of time that the employee has been employed, make an award of terminal payments, which may include, inter alia, long service payment or severance payment, if it considers just and appropriate in the circumstances.

3. Pursuant to the current section 31IA and section 31 YAA of the EO, if an employee has **received** severance payment or long service payment, then the part of his accrued MPF benefit that is attributable to his employer's contributions is to be reduced by the whole amount of severance payment or long service payment. If an employee becomes **entitled to** payment of a severance payment or a long service payment, then pursuant to section 31I and section 31Y of the EO, the severance payment or long service payment payable to him is to be reduced by the part of his accrued MPF benefit that is attributable to his employer's contributions.

4. Under the above statutory provisions, an employee is **not** required to make any payment to the employer in the offsetting process, irrespective of whether the severance payment/long service payment payable or awarded to him is more or less than the part of his accrued MPF benefits that is attributable to his employer's contributions.

5. As regards (b) and (c), the Judiciary advised that they do not maintain statistics on the amount of terminal payments awarded or the amount of settlements as mutually agreed between the employer and the employee. It is considered that any statistics on the correlation of the case result with the length of service claimed by employees alone could be misleading. The Labour Tribunal decides a case taking into consideration all circumstances of the case in accordance with the law.

6. Section 32L(2) of the EO stipulates that "the circumstances of a claim include the length of time that the employee has been employed under that contract of employment with the employer as compared to the length of qualifying service required for the right, benefit or protection conferred or to be conferred upon the employee by the Ordinance which is capable of being extinguished or reduced by means of the dismissal or the variation of the terms of the contract of employment." It is therefore not surprising that employees having a longer length of service have a higher success rate than those with a shorter length of service.

7. However, the employee's length of service is only one of the many factors the Labour Tribunal has to take into account in deciding a case. The Tribunal looks at all the circumstances to adjudge what is just and appropriate. To correlate the case result with only one particular aspect of the employment, that is , the length of service, would at best present a partial picture, at worst result in a very misleading conclusion.

8. Furthermore, upon further submission of information by the employers and employees, employees may during adjudication adjust their expectations from the initial claims they filed. As a result, relationship between the amount initially claimed and the final settlement sum either awarded by the Tribunal or mutually agreed upon by both employers and employees may not be indicative of the success rate of employees. In any event, should any party feel aggrieved by the Tribunal's decision on a point of law, he or she can seek redress in the higher court on appeal, as provided for in the Labour Tribunal Ordinance.

Education and Manpower Bureau
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