

## **Extracts of Provisions in the Employment Ordinance Relating to Severance Payment and Long Service Payment**

The full text of “A Concise Guide to the Employment Ordinance” is available at:

<https://www.labour.gov.hk/eng/public/ConciseGuide.htm>

For enquiries on the Employment Ordinance (“EO”) (Chapter 57 of the Laws of Hong Kong), please email [enquiry@labour.gov.hk](mailto:enquiry@labour.gov.hk), or call LD’s 24-hour enquiry hotline 2717 1771 (handled by “1823”).

### **1. Employees Not Entitled to Severance Payment (“SP”)/Long Service Payment (“LSP”)**

The following categories of employees are not entitled to SP/LSP:

- (a) employees not covered by EO:
  - (i) a family member who lives in the same dwelling as the employer during the employment;
  - (ii) an employee as defined in the Contracts for Employment Outside Hong Kong Ordinance (Chapter 78 of the Laws of Hong Kong);
  - (iii) a person serving under a crew agreement under the Merchant Shipping (Seafarers) Ordinance (Chapter 478 of the Laws of Hong Kong), or on board a ship which is not registered in Hong Kong; and
  - (iv) an apprentice whose contract of apprenticeship has been registered under the Apprenticeship Ordinance (Chapter 47 of the Laws of Hong Kong).
- (b) an employee whose employer is his/her husband or wife;
- (c) an outworker;
- (d) a person, employed by a government other than the HKSAR Government, who is a subject or citizen of the state under whose government he/she is employed; and
- (e) a person in respect of employment as a domestic servant in, or in connection with, a private household, where the employer is the father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother or half-sister of the employee.

### **2. Definition of “Wages” for Calculation of SP/LSP**

- (a) “Wages” means all remuneration, earnings, allowances including travelling allowances and attendance allowances, attendance bonus, commission, overtime pay, tips and service charges, however designated or calculated, payable to an employee in respect of work done or work to be done. However, it does not include:
  - (i) the value of any accommodation, education, food, fuel, water, light or medical care provided by the employer;
  - (ii) employer’s contribution to any retirement scheme;
  - (iii) commission, attendance allowance or attendance bonus which is of a gratuitous nature or is payable only at the discretion of the employer;
  - (iv) non-recurrent travelling allowance or the value of any travelling concession or travelling allowance for actual expenses incurred by the employment;
  - (v) any sum payable to the employee to defray special expenses incurred by him by the nature of his/her employment;
  - (vi) end of year payment, or annual bonus which is of a gratuitous nature or is payable only at the discretion of the employer;
  - (vii) gratuity payable on completion or termination of a contract of employment.
- (b) Overtime pay should also be included in calculating SP/LSP if:
  - (i) it is of a constant character; or
  - (ii) 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.

### 3. Eligibility for SP/LSP

According to EO, an employee who has been employed under a continuous contract of employment (please read “A Concise Guide to the Employment Ordinance” for the definition of “continuous contract”) is eligible for SP/LSP according to the following conditions:

Entitlement	SP	LSP
<b>Qualifying period of employment</b>	not less than 24 months ending with the relevant date of termination of employment under a continuous contract <i>(Note 1)</i>	not less than 5 years ending with the relevant date of termination of employment under a continuous contract <i>(Note 1)</i>
<b>Conditions/ Requirements</b>	<ul style="list-style-type: none"> <li>The employee is dismissed by reason of redundancy <i>(Note 2)</i></li> </ul>	<ul style="list-style-type: none"> <li>The employee is dismissed but: <ul style="list-style-type: none"> <li>✧ he/she is not summarily dismissed due to his/her serious misconduct; or</li> <li>✧ he/she is not dismissed by reason of redundancy</li> </ul> </li> </ul>
	<ul style="list-style-type: none"> <li>Employment contract of a fixed term expires without being renewed by reason of redundancy <i>(Note 1 and 2)</i></li> </ul>	<ul style="list-style-type: none"> <li>Employment contract of a fixed term expires without being renewed by reason other than redundancy <i>(Note 1 and 4)</i></li> </ul>
	<ul style="list-style-type: none"> <li>The employee is laid off <i>(Note 3)</i></li> </ul>	<ul style="list-style-type: none"> <li>The employee dies during employment</li> </ul>
		<ul style="list-style-type: none"> <li>The employee resigns on ground of ill health</li> </ul>
		<ul style="list-style-type: none"> <li>The employee, aged 65 or above, resigns on ground of old age</li> </ul>

**Note 1:** If not less than seven days before the date of dismissal in case of SP, and not less than seven days before the expiry of the fixed term contract, the employer has offered in writing to renew the contract of employment or re-engage the employee under a new contract but the employee has unreasonably refused the offer, the employee is not eligible for the entitlements.

**Note 2:** Meaning of redundancy

An employee is taken to be dismissed by reason of redundancy if the dismissal is due to the fact that:

- the employer closes or intends to close his/her business;
- the employer has ceased, or intends to cease, the business in the place where the employee was employed; or
- the requirement of the business for employees to carry out work of a particular kind, or for the employee to carry out work of a particular kind in the place where the employee was employed, ceases or diminishes or is expected to cease or diminish.

**Note 3: Meaning of Lay-off**

If an employee is employed on such terms and conditions that his/her remuneration depends on his/her being provided by the employer with work of the kind he/she is employed to do, he/she 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.

The days of lock-out, rest days, annual leave and statutory holidays should not be counted as normal working days during the above periods.

**Note 4:** An employee will not be simultaneously entitled to both SP and LSP.

#### 4. Calculation of SP/LSP Entitlement

According to EO, calculations of SP/LSP of an employee to whom the abolition of the MPF offsetting arrangement<sup>1</sup> applies are set out as follows:

**(a) Employees whose employment commences before 1 May 2025 and ends on or after 1 May 2025**

Employee's SP/LSP will be divided into the **pre-transition portion** and the **post-transition portion**, of which the amounts are calculated as below. The total amount of SP/LSP payable to an employee (i.e. the sum of the pre- and post-transition portions of SP/LSP) is subject to the cap on SP/LSP (i.e. \$390,000). In the event that the sum exceeds \$390,000, please refer to sub-paragraph (d) below on how to determine the pre- and post-transition portions of the SP/LSP of the employee.

Monthly-rated employee				
Pre-transition portion of SP/LSP	Last full month's wages <sup>^</sup> immediately preceding 1 May 2025*			Years of service preceding 1 May 2025
	<b>OR</b>	×	2/3	
	Average monthly wages in the 12 months <sup>^</sup> immediately preceding 1 May 2025*		×	
Post-transition portion of SP/LSP	Last full month's wages immediately preceding the termination of employment*			Years of service from 1 May 2025 onwards
	<b>OR</b>	×	2/3	
	Average monthly wages in the 12 months immediately preceding the termination of employment*		×	

\* The sum should not exceed \$22,500.

<sup>1</sup> Employees to whom the abolition of the MPF offsetting arrangement applies refer to those whose employers are obliged to enrol them in a mandatory provident fund ("MPF") scheme in accordance with the Mandatory Provident Fund Schemes Ordinance (Chapter 485 of the Laws of Hong Kong) or in an employer-funded exempt occupational retirement scheme by the operation of their employment contracts and make contributions for them. For employees who are currently not covered by the MPF System and are to whom the abolition of the MPF offsetting arrangement does not apply (including foreign and local domestic helpers, and employees aged less than 18 or aged 65 or above throughout the employment period), their SP/LSP (if applicable) will **NOT** be divided into pre- and post-transition portions and is calculated as follows: employee's last monthly wages or average monthly wages in the 12 months immediately preceding the termination of employment × 2/3 × years of service in the whole employment period.

Non-monthly rated employee		
<b>Pre-transition portion of SP/LSP</b>	18 days' wages <sup>#</sup> chosen by the employee out of his/her last 30 normal working days immediately preceding 1 May 2025 <sup>&amp;</sup> <b>OR</b> 18 times the average daily wages in the 12 months <sup>#</sup> immediately preceding 1 May 2025 <sup>&amp;</sup>	× Years of service preceding 1 May 2025
<b>Post-transition portion of SP/LSP</b>	18 days' wages chosen by the employee out of his/her last 30 normal working days immediately preceding the termination of employment <sup>&amp;</sup> <b>OR</b> 18 times the average daily wages in the 12 months immediately preceding the termination of employment <sup>&amp;</sup>	× Years of service from 1 May 2025 onwards

& The sum should not exceed \$15,000.

^ If a monthly-rated employee's employment period preceding 1 May 2025 is **less than 12 months**, please refer to the following table:

Employment period preceding 1 May 2025	Wages for calculating pre-transition portion of SP/LSP
Less than 12 months but not less than one month	(a) Last full month's wages immediately preceding 1 May 2025; or (b) Average monthly wages for the employment period preceding 1 May 2025
Less than one month	First full month's wages after commencement of employment

# If a non-monthly rated employee's employment period preceding 1 May 2025 is **less than 12 months**, please refer to the following table:

Employment period preceding 1 May 2025	Wages for calculating pre-transition portion of SP/LSP
Less than 12 months but not less than 30 normal working days	(a) 18 days' wages chosen by the employee out of his/her last 30 normal working days immediately preceding 1 May 2025; or (b) 18 times the average daily wages for the employment period preceding 1 May 2025
Less than 30 normal working days	18 days' wages chosen by the employee out of his/her first 30 normal working days after the commencement of employment

**(b) Employees whose employment commences on or after 1 May 2025**

The total amount of SP/LSP payable to an employee is subject to the cap on SP/LSP (i.e. \$390,000).

SP/LSP of monthly-rated employee			
Last full month's wages immediately preceding the termination of employment*			
<b>OR</b>	×	2/3	×
Average monthly wages in the 12 months immediately preceding the termination of employment*			Years of service
SP/LSP of non-monthly rated employee			
18 days' wages chosen by the employee out of his/her last 30 normal working days immediately preceding the termination of employment <sup>&amp;</sup>			
<b>OR</b>		×	Years of service
18 times the average daily wages in the 12 months immediately preceding the termination of employment <sup>&amp;</sup>			

\* The sum should not exceed \$22,500.

& The sum should not exceed \$15,000.

**(c) Reckonable Years of Service**

For non-manual employees who started employment before 1980 and whose average monthly wages exceeded \$15,000 for the 12 months immediately preceding 8 June 1990, their years of service can only be reckoned up to 1980.

**(d) In the circumstance when the total SP/LSP of an employee exceeds \$390,000**

The maximum amount of SP/LSP payable to an employee under EO is \$390,000. For an employee whose employment commences before 1 May 2025 and ends on or after 1 May 2025, if the sum of the pre- and post-transition portions of SP/LSP exceeds \$390,000, the amount in excess will be deducted from the post-transition portion (i.e. the amount of post-transition portion of SP/LSP is equal to the remainder of \$390,000 after deducting the amount of pre-transition portion of SP/LSP).

		\$390,000
Pre-transition portion of SP/LSP	Post-transition portion of SP/LSP	
↑	↑	↑
The amount remains unchanged but capped at \$390,000	The amount is equal to the remainder of \$390,000 after deducting the amount of pre-transition portion of SP/LSP	The portion of total SP/LSP exceeding \$390,000 shall be deducted
For example		
← \$150,000 →	← \$300,000 →	→
\$150,000	\$240,000 (i.e. \$390,000 - \$150,000)	\$60,000
Amount of SP/LSP entitled = \$390,000 (pre-transition portion \$150,000 + post-transition portion \$240,000; \$60,000 excess deducted)		

## 5. Payment of SP/LSP

- (a) If an employer dismisses an employee due to redundancy and the employment has met the qualifying period of SP, EO requires the employer to make SP to the employee not later than two months from the receipt of a written notice for claiming such payment from the employee.
- (b) If an employee is entitled to LSP, LSP should be paid to the employee within seven days after the date of termination of employment contract, except as otherwise specified in the case of payment to the LSP beneficiaries of a deceased employee.

## 6. Payment of LSP in the Event of the Death of an Employee

- (a) Where an employee dies and had been at the time of his/her death employed under a continuous contract for not less than five years on the date of his/her death, the person(s) in the priority listed below is/are entitled to claim the deceased employee's LSP from the employer:

1 <sup>st</sup>	the spouse of the deceased employee
2 <sup>nd</sup>	the child of the deceased employee (if more than one person apply, the LSP should be divided equally between them)
3 <sup>rd</sup>	parents of the deceased employee (if more than one person apply, the LSP should be divided equally between them)
4 <sup>th</sup>	the personal representative of the deceased employee

- (b) Person who wishes to claim for the deceased employee's LSP must serve an application in a specified form to the employer within 30 days after the death of the employee. Where necessary, the Commissioner for Labour may extend the deadline. The form can be obtained at any branch office of the Labour Relations Division of LD or downloaded from LD's web page (<https://www.labour.gov.hk/common/form/lrd/LD425S.pdf?formcatid=3401&formcatlang=en&formcatformat=pdf>).
- (c) The employer shall make LSP to:

The employee's spouse	within seven days after receiving the application
Other persons	within seven days after the application period expires