

CLIENTALERT

Employment Support Scheme – making the application



As stated in our client alert of 17 April 2020, the Employment Support Scheme (“**ESS**”) has been introduced to try and save jobs in Hong Kong as well as relieve the financial burden on employers on a short term basis.

Employers can now apply for a wage subsidy under the ESS and have until 14 June 2020 to make an online application by visiting the website <https://www.ess.gov.hk/en/>.

Wage subsidies will be distributed in two tranches. The first tranche will cover the period from June to August 2020 whereas the second tranche will cover the period from September to November 2020. The second tranche of subsidies will be disbursed in September 2020 and the application deadline for the next tranche is yet to be announced.

Employers can nominate any one month between December 2019 and March 2020 as the “Specified Month”. The amount of wage subsidy is calculated by the number of employees and their respective wages in the Specified Month:

1. For “regular employees” aged between 18 and 64
 - The amount of subsidy will be calculated based on 50% of the actual wages paid to that employee in the Specified Month (with a wage cap at HK\$18,000 per month and a maximum subsidy of HK\$9,000 per employee per month).
2. For employees aged 65 or above
 - If an employer has provided information on the basic salary of the employee when making MPF voluntary contributions, the amount of subsidy will be calculated based on 50% of the basic salary actually paid to that employee in the Specified Month (with a wage cap at HK\$18,000 per month and maximum subsidy per employee of HK\$9,000 per month).
 - If an employer has not provided information on the basic salary of the employee when making MPF voluntary contributions, the amount of subsidy will be calculated by multiplying the amount of the employer’s voluntary contributions for the relevant employee in the Specified Month by 10 times (capped at HK\$9,000 per month per employee).

Information/documents required for online applications

1. For employers with Mandatory Provident Fund (“**MPF**”) Schemes
 - Business Registration Number;
 - Name of the MPF Trustee;
 - Name of the MPF Scheme (including all MPF Schemes participated from 1 December 2019 to 31 March 2020) with Scheme Registration/Participation Number;
 - Number of eligible employees in March 2020; and
 - Bank account number of the employer and a scanned copy of its bank statement.
2. For employers with MPF-exempted ORSO Schemes
 - Business Registration Number;
 - Name of the MPF-exempted ORSO Scheme, MPF Exemption Number and ORSO Registration/Exemption Number;
 - Number of eligible employees in March 2020;
 - Scanned copy of the exemption certificate issued by the MPF Schemes Authority;
 - Bank account number of the employer and a scanned copy of its bank statement; and
 - The completed designated form.

What Undertakings are the employers required to provide?

Every employer applying for a wage subsidy must provide the following undertakings:

- 1) not to implement any redundancy during the months of June, July and August 2020 (the "**Subsidy Period**"). Therefore, the number of employees on the payroll during the Subsidy Period cannot be less than the number of employees in March 2020 (including employees who were in March on unpaid leave); and
- 2) all wage subsidies received must be used to pay wages of the employees.

What are the consequences of breaching the undertakings?

Employers who join the ESS but fail to observe either undertaking will be penalised.

1. Penalty

- If the number of employees on the payroll in any one month of the Subsidy Period is less than the number of employees in March 2020, the employer will need to pay a penalty to the Government. The calculation of the penalty is as follows:

Subsidies received for a particular month x Headcount Reduction Percentage x Penalty Percentage

- Headcount Reduction Percentage = (Total number of paid and unpaid staff (as of March 2020) minus total number of paid staff in June/July/August 2020) / total number of paid and unpaid staff (as of March 2020) x 100%
- Penalty Percentage varies according to the total number of the employer's employees (whether paid or unpaid) in March 2020 and set out as follows:

Total number of employees	Applicable Penalty Percentage
Less than 10	10%
10 to 49	20%
50 to 99	40%
100 to 499	60%
Equal or more than 500	80%

- The number of employees in a particular month is based on the information shown in the MPF record certificates.
- By way of example:

No. of employees in March 2020: 100
No. of employees in June 2020: 95

The calculation of the penalty in June 2020 would be:

Subsidies Received in June 2020 = 95 x HK\$9,000 = HK\$855,000

Headcount Reduction Percentage = (100-95)/100 x 100% = 5%

Penalty Percentage: 60%

Amount of Penalty = HK\$855,000 x 5% x 60% = HK\$25,650

2. Claw back

If the employer fails to use all the wage subsidies for a particular month during the Subsidy Period to pay for the wages of employees in the same month the Government will claw back the unspent balance of the subsidy.

For most employers which operate MPF schemes for their employees, they will receive the subsidy in 3 to 4 weeks after the application is made. Those employers which operate MPF-exempted ORSO Schemes will likely have to wait longer to receive the subsidy. The ESS has been designed so that there is very little administration to be done on the part of the employer and MPF records will be used to ascertain whether an employer has complied with the requirements of the scheme.

Please do get in touch with Karis Yip, Jezamine Fewins or your usual Stephenson Harwood contact if you require advice on the issues arising out of this client alert.

Get in touch



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