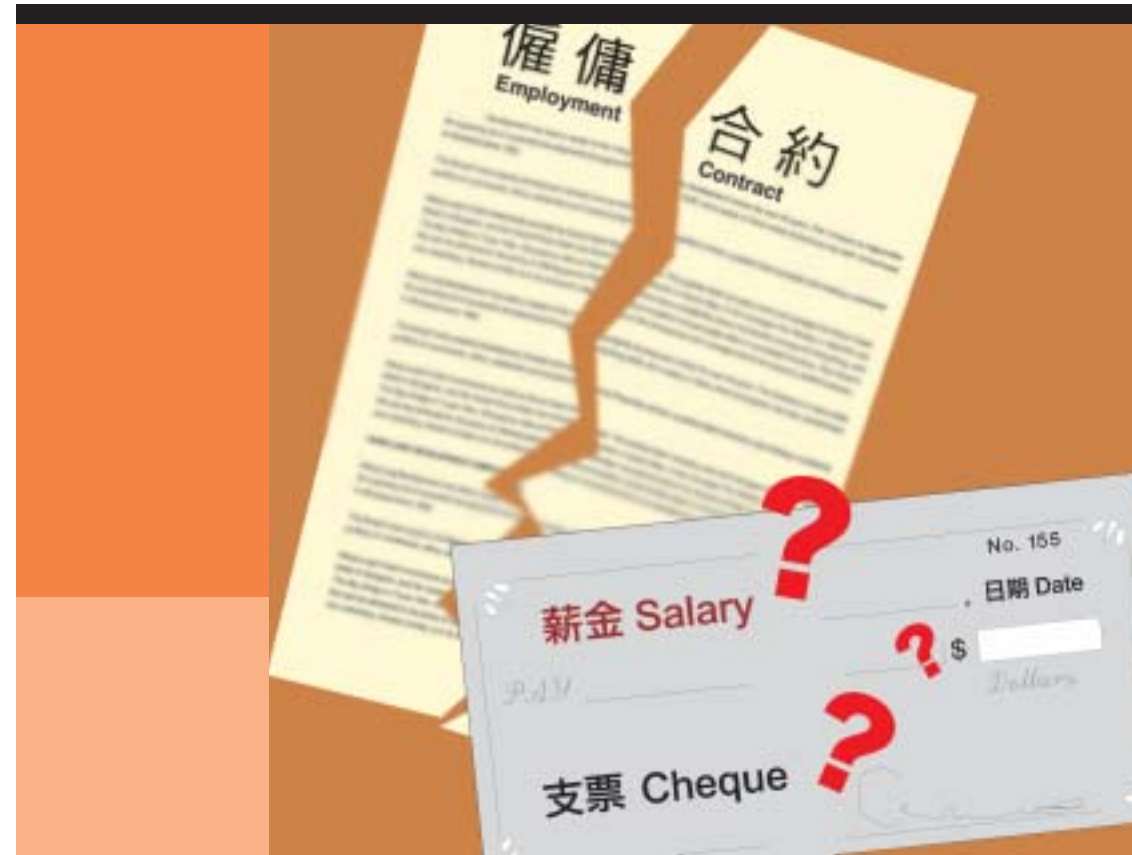


勞資審裁處

LABOUR TRIBUNAL



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The Labour Tribunal offers a quick, informal and inexpensive way of settling monetary disputes between employees and employers. There is no upper limit on the amount of claim.

The Tribunal hears claims arising from the failure of a person to comply with the provisions of the Employment Ordinance or the Apprenticeship Ordinance. It also deals with cases involving breaches of a term of a contract of employment, whether for performance in Hong Kong or under a contract to which the Contracts for Employment Outside Hong Kong Ordinance applies, and claims arising from the breach of a term of a contract of apprenticeship.

The most popular items of claim lodged by employees include:

- wages due for work done
- wages in lieu of notice of termination of a contract of employment by an employer without giving the required notice
- pay for statutory holidays, annual leave or rest days
- severance pay, long service payment or terminal payments
- end of year payment, double pay or annual bonus

- commission
- unpaid wages of up to 3 months against the principal contractor and superior sub-contractors in the building and construction industry

Common items of claim lodged by employers include:

- wages in lieu of notice on resignation or termination of contract of employment

The Tribunal only hears cases where the amount of claim exceeds \$10,000 for at least one of the claimants in a claim or where the number of claimants in the claim exceeds 10. Claims lodged by not more than 10 claimants for a sum of money not exceeding \$100,000 per claimant are dealt with by the Minor Employment Claims Adjudication Board located at 10 Heung Sha Wan Government Offices, Heung Sha Wan Road, Kowloon. Tel: 2722 2222.

The Limitation Ordinance stipulates that actions founded on simple contract or on tort and certain other actions shall not be brought after the expiration of 6 years from the date on which the cause of action accrued.

It is always advisable to attempt to settle through conciliation. The Labour Relations Division of the Labour Department stands ready to help both parties settle quickly and amicably. The hotline number for advice on conciliation services is

If conciliation fails, intended claimants can consider bringing their claims to the Tribunal.

The procedure is quite simple. First, call the 24-hour Telephone Appointment Booking System of the Labour Tribunal at 2362 2362 or visit the Judiciary's website at www.judiciary.gov.hk to make an appointment for filing of claim.

On the filing date, claimants should report their attendance at the registry with their Hong Kong identity card and the referral number of the Labour Department, if applicable. At the registry, we would hand the claimant an Appointment Parties' List for verification of his or her name, address and Hong Kong identity card number.

The claimant should also verify the name and address of the person, firm or company he or she is claiming against, the defendant. These particulars should be completely accurate so that a copy of the claim can be effectively served on the defendant. P.O. box number will not be considered as a valid address.

- Where the defendant is a limited company, the claimant will need to provide the address of its registered office. Claimants can check this at the Companies Registry, 19th Floor, Queensway Government Offices, 260 Queensway, Hong Kong. Tel: 2362 2362 or visit the Companies Registry's Cyber Search Centre on the internet website www.icris.cr.gov.hk or through a hyperlink on the Companies Registry's website www.cr.gov.hk.

- Where the defendant is a sole proprietorship or a partnership business, the claimant will need to provide its principal place of business and/or the residential address of the proprietor or partners. Claimants can check this information at the Business Registration Office of the Inland Revenue Department, Revenue Tower, Gloucester Road, Hong Kong. Tel: 2362 2362 or apply via the website www.esd.gov.hk.

Next, a Tribunal Officer will interview the claimant to obtain statements and other relevant information. Based on the information provided by the claimant, we would generate

- a Title to Claim Form bearing the names and addresses of both the claimant and the defendant; and
- a Form of Claim Form showing the details of the claim, including the grounds for the claim, the items and amount of the claim.

The claimant has to sign on Form if he or she is acting as an individual. The sole proprietor of a firm, or a partner of a partnership business, or a director, secretary or other authorised officer of an incorporated company bearing an authorisation letter has to sign on the form if the claim is lodged by an employer against an employee.

Claimants can complete all the necessary forms in Chinese or English. Sample completed forms are on display at the notice boards of the Tribunal.

or less

Over

fee of _____ per defendant's address is charged for serving the required documents on the defendant

If the claim succeeds, the claimant can apply for costs incurred to be reimbursed by the defendant. If the claim does not succeed, the claimant may have to pay costs to the defendant.

The Tribunal may reduce, remit or defer payment of any fees specified in the Schedule under the about Tribunal fees Rules if good and valid reasons for so doing are produced in writing to the Registrar about Tribunal

The Tribunal registry will give the claimant a form – “Notice of Place and Day Fixed for Hearing”. The hearing date will be set between _____ and _____ days from the date on which the claim is filed. The Tribunal registry will also arrange for copies of forms _____ and _____ to be served on each defendant.

The Tribunal Officer will investigate the claim and will ask the defendant to attend an interview and to prepare defence and witness statements before the first hearing. Both parties need to serve a copy of their

statements and supporting documents to the other party. After gathering documentary evidence and facts from both parties, the Tribunal Officer will prepare a Summary of Facts stating the allegations of the parties, the issues resolved and the issues in dispute for submission to the Presiding Officer before the hearing date.

If a claim cannot be served on the defendant, the claimant will be asked to obtain the defendant's correct address and, if necessary, verify it. If the claim still cannot be served, the Tribunal may order other means of serving the claim, such as by newspaper advertisement.

The defendant will either

- agree to pay in full
- agree to pay but ask for time to do so by instalments
- agree to the quantum of claim but allege that he or she is unable to pay
- dispute the claim in part or in whole, with or without filing a counterclaim or
- ignore the claim

After informing the Tribunal Officer of his or her intention to pay the claim in full the defendant will have to confirm his intention in writing and pay the amount of the claim as soon as possible before the hearing date

The Tribunal will issue an award to both parties. The Tribunal Accounts Office will inform the claimant to collect the money when it is ready. In this case there will be no hearing.

The Tribunal Officer will inform the claimant of the defendant's proposal for payment for the claimant's consideration. If both parties agree to a specific payment date or payment by instalments the Tribunal Officer will prepare a settlement form for both parties to sign. Generally if the judgment debtor fails to pay any of the instalments the judgment creditor can apply for execution of the award to recover the unpaid judgment sum. The Tribunal will issue an award after the settlement is approved by the Presiding Officer. No hearing will be required.

If however both parties cannot agree on the mode or date of payment they will have to attend a hearing. The defendant will have to apply for time to pay or apply to pay by instalments. The Presiding Officer will determine a fair method for the defendant to pay.

The defendant needs to inform the Tribunal in writing. Under such circumstances both parties will need to attend a hearing.

The Tribunal Officer will investigate the claim as well as any counterclaim put forward by the defendant. Both claimant and defendant will be requested to file statements and relevant documents in support of their allegations.

The Presiding Officer may enter judgment in the defendant's absence if he or she is satisfied that the claim has been served and that the claims put forward by the claimant are genuine.

The aim is to dispose of cases as quickly as possible. Either party may seek the other party's written consent and apply for a change of hearing date if he or she can give good reasons for doing so.

The strict rules of evidence that apply in most other courts are not rigidly adhered to in Tribunal hearings. Either party may be legally represented. The Tribunal may however allow an office bearer of a registered trade union or an association of employers who has been authorised in writing by a claimant or defendant to represent the party. Any party who wishes to attend hearing by a representative needs to apply for so doing in writing with reasons for the Presiding Officer's consideration.

Both parties must attend the first hearing which is conducted in a courtroom. If the claimant is absent, the Tribunal may strike out the claim. If the defendant does not turn up, judgment may be entered in his or her absence if the claim has been served and the claimant can prove the case.

The Presiding Officer will explain the issues and the relevant laws in an attempt to help the parties settle amicably. If the parties agree to explore the possibility of settlement, the Presiding Officer may direct a Settlement Tribunal Officer to assist the parties in negotiation. Any terms of settlement reached before the Settlement Tribunal Officer will be signed by both parties and will be submitted to the Presiding Officer for approval. The Presiding Officer will then make an order in court in accordance with such terms.

If the parties cannot settle, the Presiding Officer may adjourn the claim to another date for mention or trial. The Presiding Officer may order the parties to submit further documentary evidence and witness statements to the Tribunal Officer within a specified period and may order the parties to serve all the submitted documents, including witness statements, to the other party.

Both parties must attend any further hearings. If the claimant is absent, the Tribunal may strike out the claim. If the defendant does not turn up but has been served with the claim, judgment may be entered in his or her absence if the claimant can prove the case.

At trial, the Presiding Officer will

- hear each party's case
- allow the claimant and the defendant to question each other and their witnesses
- order the parties to provide further evidence or to call further witnesses and adjourn the hearing to a later date if necessary
- deliver his judgment at the end of the hearing or fix a date to deliver his judgment

The Tribunal has prepared a pamphlet called "General Guidelines for Preparation for Trial" which provides necessary information in that respect. Parties can obtain a copy of the pamphlet at the Tribunal registry or download it from the Judiciary's website at www.judiciary.gov.hk if necessary.

The claimant can apply within 14 days after the hearing or such further period as the Tribunal may allow for the striking out order to be set aside and the case restored. This will be allowed only for valid reasons and may be subject to conditions set by the Tribunal.

The claimant applying for restoration will need to complete Form CR 1 – "Application for Restoration of a Claim" in duplicate and to pay a prescribed fee of \$1,000 at the Tribunal registry. The form is available at the Tribunal registry and the Judiciary's website at www.judiciary.gov.hk.

Yes The defendant can apply for the award to be set aside within days after the hearing or such further period as the Tribunal may allow and on any conditions the Tribunal thinks fit

defendant applying to set aside an award or order will need to complete form – “ Application to Set aside an Award Order” in duplicate and to pay a prescribed fee of at the Tribunal registry The form is available at the Tribunal registry and the judiciary’s website at www.judiciary.gov.hk

Yes but an application for review of the judgment must be filed within days from the date of the award

party applying for review will need to complete form – “ Application for Review of an Award Order by a Party” in duplicate and to pay a prescribed fee of at the Tribunal registry The form is available at the Tribunal registry and the judiciary’s website at www.judiciary.gov.hk

During a review the claim may be re opened or re heard in whole or in part and the previous award or order may be confirmed varied or reversed However under normal circumstances the Tribunal will not vary its order if the order was made in accordance with the terms of settlement agreed by the parties

The Tribunal has prepared a pamphlet called Review and Appeal which sets out the information and procedures concerning review and appeal The pamphlet is available at the Tribunal registry and the judiciary’s website at www.judiciary.gov.hk

Yes but an appeal can be lodged only on the grounds that the award or order is erroneous in point of law or outside the jurisdiction of the Tribunal

either party may apply to the court of first instance of the High Court for leave i.e. permission to appeal within days after the date on which the written award or order was served on him or within such extended time as may be allowed by the Registrar of the High Court on good cause Parties applying for leave to appeal will need to complete form – “ Application for Leave to Appeal on Point of Law” The form is available at the Tribunal registry and the Clerk of Court’s Office of the High Court The form has to be filed with payment of a prescribed fee at the Clerk of Court’s Office of the High Court located at High Court Building, Queensway, Hong Kong

refusal by the court of first instance to grant leave to appeal is final If leave is granted the court of first instance will hear and determine the appeal

Yes both claimant and defendant may apply to the court of appeal for leave to appeal within days after the date of the decision of the court of first instance The court of appeal may grant leave to appeal if it considers that a question of law of general public importance is involved

An application for leave to appeal should be lodged with the Registrar of the High Court

Unless you wish to conduct the appeal in person you will need to instruct both a solicitor and a barrister in the High Court except where leave has been granted by the High Court a body corporate such as a limited company must be legally represented in an appeal

Address: High Court Building, Queensway, Hong Kong
Telephone
Facsimile

The Tribunal may specify how the judgment debtor is to make payment to the judgment creditor. If the judgment debtor fails to pay, the judgment creditor may apply to the Tribunal for a certificate of award. This may be registered in the District Court or its service counter at the Tribunal within 3 months from the date of the award. The judgment creditor may then apply to the District Court or its service counter at the Tribunal for the court bailiff to enforce the judgment. Further information about these services is contained in a booklet available at the Information Counter or General Registry of all courts.

If the judgment cannot be enforced because the judgment debtor is penniless or has disappeared, the judgment creditor can consider applying for ex gratia payment from the Protection of Wages on Insolvency Fund. Judgment creditors may call the Labour Department at [phone number] for details concerning such application.

The fact that a judgment debtor has lodged an application for leave to appeal does not mean that enforcement of an award or order must be withheld. However, an order withholding enforcement of judgment may be made by the Tribunal, the Court of First Instance or the Court of Appeal on such terms as the court thinks fit.

The Tribunal has prepared a pamphlet called 'Execution of Awards' which provides information and procedures on how an award can be executed. The pamphlet is available at the Tribunal registry and the Judiciary's website at www.judiciary.gov.hk.

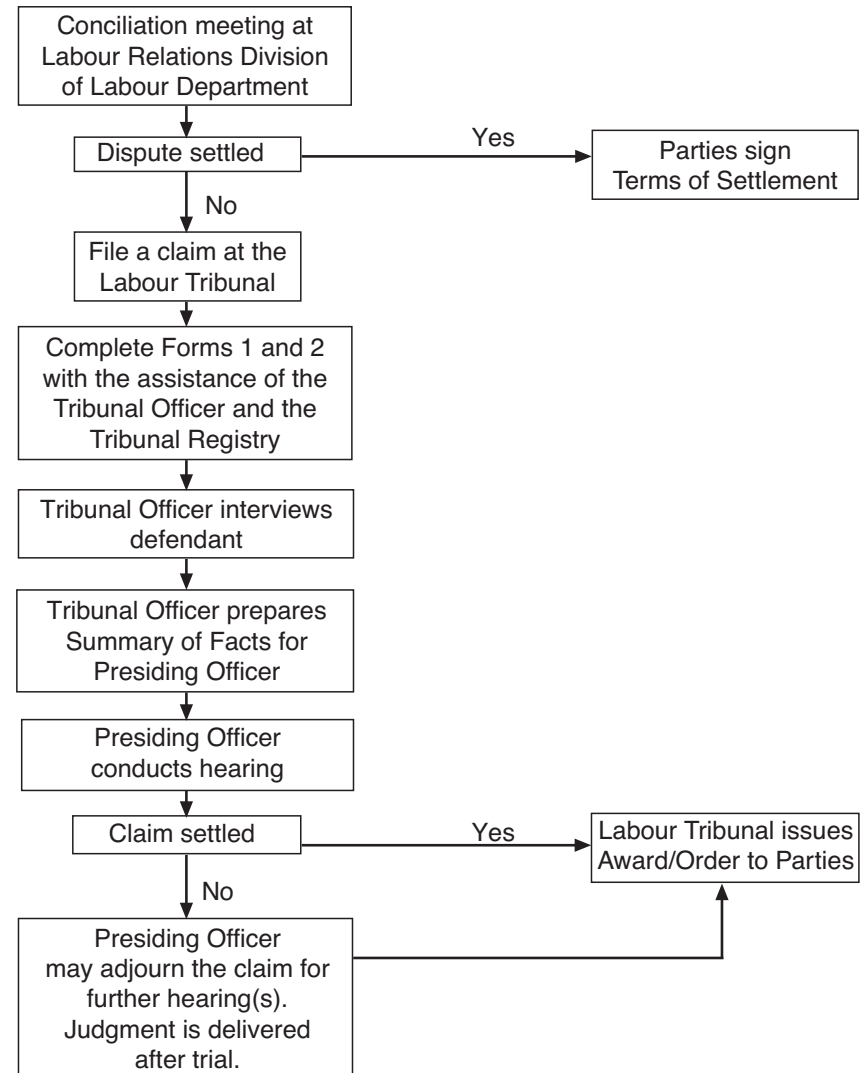
- The Tribunal will list a case for hearing not later than 30 days from the date of filing of claim.
- Wherever possible, the Judiciary will reply at once to correspondence from members of the public. In any case, we will give you an interim reply within 5 days and a full response within 15 days of receiving a letter.
- We welcome all comments and suggestions for improving our services. Please send them to the Judiciary Administrator at the High Court, Queensway, Hong Kong.

Address: Macaoign Road, Kowloon
Telephone
Facsimile
Mail: labourtribunal@judiciary.gov.hk

Procedures for Settling Monetary Disputes between Employees and Employers

Monday to Friday a m – p m
 p m – p m
 Saturday a m – noon

- The Tribunal court will adjourn and the Registry and accounts Office will close when tropical cyclone signal is issued or a black rainstorm warning signal is issued
- The court will resume and the Registry and accounts Office will open as usual if such signal is cancelled at or before 9 a m
- The court will resume and the Registry and accounts Office will open at 1 p m if such signal is cancelled between 9 a m and 1 a m or at 9 a m
- The court will remain adjourned and the Registry and accounts Office will be closed for the whole day if such signal is cancelled after 1 a m
- If the hearing of your case is affected as a result of a tropical cyclone or rainstorm signal please listen to radio and television announcements about re opening times or call the Tribunal Registry at 1372 for enquiries



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