

# Alerts & Publications



## The Hong Kong Government's Employment Support Scheme — Cash Subsidies for Hong Kong Employers

June 5, 2020

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The Hong Kong Government is now receiving applications for its Employment Support Scheme (“ESS”), which aims to subsidise eligible employers up to HK\$9,000 per month for each employee. Employers must apply online by 14 June 2020 to participate in the ESS.

This alert provides a summary of the ESS and addresses some of the common questions raised by employers regarding the ESS.

### Key Details of the ESS

The ESS aims to encourage Hong Kong employers to maintain the number of full-time or part-time employees by:

- providing wage subsidies to eligible employers on the condition that they undertake not to implement redundancies (i.e. reduce the number of employees on the payroll) during the period when employers will receive the wage subsidies; and
- providing a one-off subsidy of HK\$7,500 to each self-employed person with a Mandatory Provident Fund (“MPF”) account.

Employers are allowed to replace employees without breaching the undertaking not to implement redundancies. That is, employers must ensure that the total number of employees is no less than in March 2020. However, employers will be unable to receive the first tranche of subsidies for newly hired employees (i.e. replacements) whose MPF account or membership of an Occupational Retirement Scheme (“ORSO Scheme”) was set up after 31 March 2020. This incentivises employers to retain existing staff rather than replacing them with new staff on lower wages.

The amount of the wage subsidy is calculated on the basis of 50% of the monthly wages (actual income as set out in the MPF record certificates which includes subsidies, allowances, double payments, retrospective wage adjustments, commissions, bonuses, and any other contractual gratuity) of a relevant employee. However, the maximum amount payable for each eligible employee is HK\$9,000 per month.

Payments will be made in two tranches for the relevant period of June to November 2020. Employers may submit their applications online for the first tranche until 14 June 2020 (inclusive) and can expect to receive payment for the first tranche of wage subsidies within four weeks thereafter.

Employers are required to give an undertaking that they will use the wage subsidies entirely on the payment of their employee's wages. That is, the subsidies cannot be applied for other purposes, including to pay for MPF contributions or other employee benefits.

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## Frequently Asked Questions on the ESS

### **1. What is the eligibility criteria for the ESS?**

Employers who have been making contributions to their employees' MPF accounts or an ORSO Scheme on or before 31 March 2020 are eligible to participate in the first tranche of subsidies under the ESS.<sup>[1]</sup>

The ESS will also provide a one-off lump-sum subsidy of HK\$7,500 to self-employed individuals who have made MPF contributions in the past 15 months. However, such applicants must have opened their MPF account on or before 31 March 2020 in order to be eligible for the first tranche of subsidies.

### **2. Can an application be made in respect of all employees?**

The ESS is available for the following full-time and part-time employees:<sup>[2]</sup>

- employees aged between 18 and 65 years, who have been employed for a continuous period of at least 60 days, and for whom MPF contributions have been made by employers;
- employees aged 65 or above who have been employed for a continuous period of at least 60 days; and
- employees who are members of employers' MPF-exempted ORSO Schemes.

Eligible employers can apply for wage subsidies for the applicable employees (i.e. those who satisfy the criteria set out above), including those who work on irregular days, part-time or variable wages, or with differing pay mechanisms (e.g. paid on a weekly or hourly basis). It follows that employees with Hong Kong ID cards who are working outside of Hong Kong, but for whom their employers make contributions to MPF accounts or an ORSO scheme, are eligible for subsidies.

However, new employees for whom the employers did not make MPF/ORSO scheme contributions on or before 31 March 2020 are not eligible for wage subsidies during the first tranche. Similarly, any employee whose information is not included in the MPF record certificates is not eligible for wage subsidies.

### **3. What is the subsidy amount and how it is calculated?**

The amount of the subsidy will be calculated on the basis of 50% of the actual wages paid to employees for any chosen month during December 2019 to March 2020, irrespective of the way the employee is paid. The subsidy is capped at HK\$9,000 per month for each eligible employee for a period of six months (i.e. June to November 2020).

The subsidy amount will be calculated based on the number of employees and their earnings during a specified month from December 2019 to March 2020. Employers can choose any month during the relevant period as the “specified month”. However, the same “specified month” has to be chosen for all applicable employees.

#### ***4. Are the wage subsidies taxable?***

The Hong Kong Government plans to exempt the wage subsidies received by employers from taxation. However, the wages received by employees are subject to taxation, irrespective of whether they were funded by the ESS or fully paid by their employers.

#### ***5. Are MPF contributions required in respect of wage subsidies under the ESS?***

Employers are required to make MPF contributions in respect of the wages paid to their employees (as required by existing laws) as if the wages were fully paid by the employers.

#### ***6. What are the restrictions imposed?***

Eligible employers applying for the ESS are required to provide an undertaking not to implement redundancies. As a result, employers must ensure that the number of their employees is no less than the number employed in March 2020.

For instance, if an employee is terminated (for whatever reason) in April or May 2020, employers should ensure that a new employee is hired by June 2020, so that their headcount in March 2020 is maintained throughout the period of the first tranche (June to August 2020).

Employers cannot claim subsidies for new employees (i.e. replacements hired after 31 March 2020) during the period of the first tranche.

Employers must also undertake to apply all of the subsidies to pay for the wages of its employees. Notably, the subsidies cannot be spent on MPF contributions or to pay for other employee benefits or expenses.

#### ***7. What are the penalties imposed on employers who fail to comply with the restrictions?***

If an employer receives subsidies and fails to comply with the undertaking not to implement redundancies (i.e. reducing headcount below the number employed in March 2020), the employer will be subject to a penalty. The penalty will be calculated using the following formula:

*(Subsidies received in that month) x (headcount reduction percentage compared to paid and unpaid employees in March 2020) x (Penalty percentage)*

The penalty percentage is based on an escalating scale and varies from 10% to 80% depending on the total number of employees in March 2020.

Employers should therefore replace any employees who are terminated to ensure that the headcount in March 2020 is maintained during the subsidy period.

Further, if employers fail to spend the entire wage subsidy received on wages for their employees, the Hong Kong Government will claw back the unspent balance of the wage subsidy. The clawback will be calculated using the following formula:

*(Subsidies received) - (total actual wages paid to employees)*

Employers may also attract criminal liabilities if they are found to have made false statements or acted fraudulently. For example, the Hong Kong Government has warned employers against replacing employees with friends or family members to satisfy the headcount requirement.

The Hong Kong Government has implemented monitoring mechanisms to ensure that employers comply with the restrictions. Further, after disbursement of the first tranche of wage subsidies, the Hong Kong Government will publish a list of employers who have successfully applied for the ESS and the amounts received.

#### ***8. Can employers request employees to go on unpaid leave during the subsidy period?***

Yes but employees who are on unpaid leave for a particular month will not form part of the employer's headcount for that month. It follows that employers may risk breaching their undertaking not to implement redundancies (i.e. to keep headcount at the same number as in March 2020).

Having said that, it is possible for employees to take a short period of unpaid leave per month, or to work part-time, provided that they are paid at least 50% of their usual monthly wages and receive their usual MPF contributions.

#### ***9. Can employers reduce the wages of employees or implement cost-saving measures during the subsidy period?***

Yes, the ESS does not prohibit employers who have successfully applied for wage subsidies from reducing an employee's wages or implementing cost-saving measures, such as replacing highly-paid employees with those on lower wages. However, subsidies are not payable for any newly hired employees.

In this context, we caution that employers cannot unilaterally vary the terms of employment for their staff. They must reach an agreement with each employee in order to vary any such terms.

### **10. Can employers terminate employees? What happens if employees resign?**

Employers can terminate employees during the subsidy period provided that the terminations do not reduce the employer's headcount to a number that is less than in March 2020. Otherwise, the employer will need to replace the terminated employee with a new hire. This reflects the undertaking given by applicants to employers maintain their headcount from March 2020 during the subsidy period.

Similarly, if an employee resigns after 31 March 2020, the employer will remain eligible to participate in the ESS provided that their headcount is no less than in March 2020.

Employees hired after 31 March 2020 will not be eligible to receive subsidies during the first tranche.

### **11. How can employers apply for the ESS?**

Applications for the first tranche of wage subsidies should be submitted via the ESS Online Portal (<https://application.ess.gov.hk/en/apply>) by 11:59pm (Hong Kong time) on 14 June 2020.

Employers are not required to provide their MPF record certificates when lodging an application. However, they must authorise the Hong Kong Government's ESS processing agent to obtain such MPF record certificates directly from the relevant MPF trustee.

Applicants cannot make amendments to the application once submitted but they can email the ESS Secretariat regarding the application (e.g. if special circumstances arise or if they wish to withdraw the application). There is no fee to apply for the ESS. Similarly, eligible employers will not be charged for the costs involved in monitoring the ESS (such as the cost of the ESS processing agent obtaining MPF record certificates).

### **12. What information and documents are required to be submitted for online applications?**

For employers making MPF contributions, the following information should be provided in the online application form:

- Business Registration Number or other registration numbers;
- Name of the MPF Trustee (and include all MPF schemes participated from 1 December 2019 to 31 March 2019) and Scheme Registration / Participation Number;
- Number of eligible employees in March 2020 with designated form to provide information of eligible employees, including the wage of each employee in the "specified month";
- Bank account number of employer; and
- Scanned copy of the bank statement.

For employers making contributions to ORSO Schemes, the following information should be provided in the online application form:

- Business Registration Number or other registration numbers;
- Name of the MPF-exempted ORSO Scheme, MPF Exemption Number and ORSO Registration / Exemption Number;
- Number of eligible employees in March 2020 with designated form to provide information on eligible employees, including the wage of each employee in the “specified month”;
- Bank account number of the employer;
- Scanned copy of the bank statement; and
- Scanned copy of the exemption certificate issued by Mandatory Provident Fund Schemes Authority.

**13. When can employers expect subsidies to be paid and how is payment made?**

The ESS will be provided in two tranches. Subsidies for employers making MPF contributions should be paid to the majority of the eligible employers within four weeks of the application. Subsidies for employees who contribute to ORSO Schemes are likely to take longer to be paid. Applicants will be notified via SMS message and can check the status of application and results (including the approved amount of subsidies disbursed) online at [www.ess.gov.hk](http://www.ess.gov.hk).

Application dates for the second tranche of wage subsidies for September to November 2020 will be announced in due course. Payments for the second tranche are expect to be made in September 2020.

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[1] The ESS does not apply to employees of: (a) the Hong Kong Government; (b) the Chinese Central Government; (c) foreign governments; (d) international organisations (e.g. UN agencies); (e) statutory bodies; (f) specific public organisations, Hong Kong Government-owned companies or subvented organisations; and (g) organisations whose staff costs are funded or subsidised by the Hong Kong Government.

[2] The ESS does not apply to casual employees.

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