

勞資審裁處

Labour Tribunal

法庭服務簡介

Guide to Court Services



勞資審裁處

1. 勞資審裁處的工作

- 1.1 勞資審裁處為市民解決勞資雙方的金錢糾紛，程序簡單快捷，所需費用不多。審裁處不容許與訟雙方由法律代表代為出席聆訊，因此與訟雙方的當事人須親自處理案件。儘管調查主任會協助你擬備你的申索表格及審裁官在聆訊進行時會協助你們，但審裁處不會向雙方就其申索提供任何法律意見。如有需要，你應自行索取獨立的法律意見。

2. 我可以在勞資審裁處進行哪些申索？

- 2.1 審裁處的司法管轄權僅限於處理以下申索：
 - 申索額超過港幣15,000元的申索。至於涉及不超過10名申索人而每人的申索金額不超過港幣15,000元的案件則會由小額薪酬索償仲裁處處理（地址：九龍長沙灣道303號長沙灣政府合署十樓，查詢電話號碼：2927 8000）；
 - 因任何人未有遵守《僱傭條例》（第57章）、最低工資條例（第608章）或《學徒制度條例》（第47章）的條文而引起的申索；

- 涉及違反僱傭合約條款的申索（不論違反事項是在香港履行的合約條款或是《往香港以外地方就業合約條例》（第78章）適用的合約條款）；
- 由小額薪酬索償仲裁處或小額錢債審裁處轉介的申索案件。

2.2 根據《時效條例》（第347章），申索由產生之日起計滿6年後，或不得提出。

2.3 僱員提出的申索項目中最常見的包括：

- 所做工作應得工資
- 僱主終止合約時沒有給予規定通知而應支付的代通知金
- 法定假期薪酬、年假薪酬或休息日薪酬
- 遣散費、長期服務金或終止僱傭金
- 年終酬金、雙糧或年終花紅
- 佣金
- 建築及建造業僱員向總承判商及前判次承判商追討不超過兩個月的工資

2.4 僱主提出的申索中常見的項目包括：

- 僱員辭職或終止僱傭合約時應支付的代通知金

3. 我可以在什麼時候把申索糾紛進行和解？

- 3.1 雙方可以在訴訟程序的任何階段提出將案件和解。審裁處亦鼓勵雙方嘗試尋求和解以解決彼此間的爭議。
- 3.2 若你想在勞資審裁處入稟之前嘗試尋求和解，可聯絡勞工處勞資關係科。勞資關係科提供調解服務，協助僱主和僱員盡快及和睦地達成和解。如需調解服務的諮詢，可致電勞工處熱線電話：2717 1771。
- 3.3 若你已經在勞資審裁處入稟，並希望在出席首次聆訊前尋求與被告達成和解，你可向負責處理你的案件的調查主任尋求協助。
- 3.4 在聆訊時，若你想嘗試尋求和解，你應通知審裁官你的意願，以便審裁官可作出所需的和解商討安排。

4. 我如何入稟申索？

- 4.1 你可致電勞資審裁處的二十四小時電話預約系統（電話：2625 0056），或瀏覽司法機構的網頁https://www.judiciary.hk/zh/court_services_facilities/appointment_book.html預約時間到審裁處入稟申索。
- 4.2 在預約當日，你須到勞資審裁處登記處報到。你須向審裁處登記處的職員出示你的香港身份證及勞工處案件轉介編號（如適用）。

- 4.3 審裁處登記處會向你提供一份預約當事人名單以核實你的姓名、地址及香港身份證號碼。你亦應核實擬被告一方的姓名或名稱及地址，以便申索書副本能有效地送達擬被告一方的正確地址。此外，你必須注意，郵政信箱號碼並不能被視作有效地址。
- 4.4 如擬被告一方是有限公司，你應向審裁處登記處提供擬被告一方的註冊辦事處地址。你可於公司註冊處（地址：香港金鐘道66號金鐘道政府合署高座十三樓，查詢電話：2234 9933）找到有關地址的資料，也可透過互聯網瀏覽公司註冊處的網上查冊中心。網址是：<https://www.icris.cr.gov.hk/csci>
- 4.5 如擬被告一方是獨資經營人或業務合夥人，你必須向審裁處登記處提供其經營業務的主要地址及 / 或獨資經營人或合夥人的住址。你可於稅務局商業登記署（地址：香港九龍啟德協調道5號稅務中心2樓，查詢電話：187 8088）找到有關資料，也可透過互聯網作出申請。網址是：<https://www.gov.hk/tc/business/registration/businesscompany/index.htm>
- 4.6 在預約當日，調查主任會與你進行會面並協助你擬定你的申索。你應謹記攜帶所有能夠支持你申索的文件，以供調查主任查閱。
- 4.7 收到所需的資料後，調查主任會協助你發出以下的文件：
- （表格1）申索書標題：載有申索人與被告人的姓名或名稱和地址。

- （表格2）申索書：詳列申索內容，包括申索理由、申索項目及款額。
- 4.8 你必須於表格2簽署，然後才發送予被告。
- 4.9 假若你是一業務實體，以下人士可代表公司在表格2上簽署：
- 商號的獨資經營人
 - 合夥業務的合夥人
 - 持有法團公司授權書的董事、秘書或其他獲授權的職員
- 4.10 你可選擇以中文或英文填寫表格。審裁處告示板已張貼填妥的表格樣本，以供參考。

5. 提交申索需要多少費用？

申索額（截至2017年12月）	提交申索書費用
2,000元或以下	20元
2,001元 - 5,000元	30元
5,001元 - 10,000元	40元
10,000元以上	50元

- 5.1 審裁處將所需文件送達被告人，會以每個地址計算收費港幣10元。
- 5.2 如你能提供充分及有效的理由，審裁處可削減、免除或延遲收取《勞資審裁處（費用）規則》附表所指明的任何費用，申請須以書面方式向司法常務主任提出。

6. 我已提交申索書，接下來會怎樣？

- 6.1 當你的表格2發出後，你會收到一份表格3 — 「聆訊日期地點通知書」，上載有聆訊的日期及時間。首次聆訊將安排在提交申索書日期起計10至30天內進行。
- 6.2 審裁處會安排將表格1、表格2及表格3的副本送達每位被告人。
- 6.3 在這段過渡期間，調查主任會繼續向雙方就有關申索進行調查，並會要求被告人出席會面和提交抗辯書（採用證人供詞的格式）及支持文件。調查主任可能會要求你就對方提出的指稱或事情的說法作出回應。
- 6.4 當調查完成，調查主任會擬備一份事實摘要，列出雙方各自的指稱和爭議事項，以呈交審裁官。
- 6.5 你必須注意，你有責任確保對方亦有一套你所提交的文件的副本。如你沒有向對方提供你的文件副本，審裁官可指令審裁處職員進行文件複印，而你須支付有關費用。由審裁處職員進行文件複印的費用高昂，為了你的個人利益，你必須確保你已向對方提供一套你所提交的文件的副本。

7. 被告人收到我的申索以後會怎樣？

被告人可能採取以下的其中一項行動：

- 同意繳付你申索的部分或全部款額；
- 同意繳付你的申索款額，但要求在一定的期限內付款；
- 同意你申索的款額，但表示無力支付；
- 爭議你申索的全部或部分，但不提出反申索；
- 爭議你申索的全部或部分，並提出反申索；或
- 對你的申索置之不理。

7.1 如被告人同意繳付我申索的部分或全部款額

7.1.1 如被告人通知調查主任，表示願意於首次聆訊之前全數繳付申索款額，調查主任會安排被告人以書面確認他／她的意願。審裁處會發出裁斷書及取消首次聆訊。有關款項可供領取時，審裁處的會計部將會通知你。

7.1.2 如被告人留待首次聆訊過後或往後的聆訊方確認願意支付申索款額，審裁官會於公開聆訊中作適當的命令。與訟雙方須知道，如申索於首次聆訊當日或其後才得到解決，可能衍生訴訟費用。

7.1.3 如被告人只願意支付部分的申索款額，餘下有爭議的申索項目將會進行審訊。在這種情況下，被告人須通知審裁處是否願意於案件開審之前清繳已同意支付的金額。

7.2 如被告人承認我的申索但要求時間繳付全部款額

- 7.2.1 調查主任會將被告人提出的付款建議告知你。如雙方同意在指定期限付款或同意分期繳付，調查主任便會擬備一份和解條款表格供雙方簽署。有關分期繳付的和解協議一經簽署，對與訟雙方均具有約束力。
- 7.2.2 如與訟雙方於首次聆訊前達成和解協議，審裁官將於內庭批准協議，與訟雙方將不需到庭應訊。
- 7.2.3 然而，如與訟雙方未能於首次聆訊前達成和解協議，雙方均須出席首次聆訊。如與訟雙方願意的話，可於首次聆訊時繼續探討和解方案。
- 7.2.4 如被告人沒有依期繳款，你可以申請執行裁斷以討回未繳付的判決款項。有關執行的事宜，與訟雙方應參閱《執行勞資審裁處的裁斷》小冊子。小冊子可於審裁處的登記處索取或司法機構的網站下載https://www.judiciary.hk/zh/court_services_facilities/gn_index.html。

7.3 如被告人承認我的申索但無力支付

- 7.3.1 被告人須通知調查主任，指其承認申索但無力支付申索款額。與訟雙方可在被告人承認申索但無力支付的基礎上達成和解。另一個

方法是審裁官於聆訊當日要求被告人確認其承認的申索款額，並以有關款額作出裁決。

7.4 如被告人爭議我申索的全部或部分

7.4.1 被告人須提交抗辯，以證人供詞或其他方式列明爭議的申索項目及爭議的原因，被告人須提出證據反駁申索或支持其抗辯。

7.4.2 被告人須將一套抗辯文件給予申索人。

7.5 如被告人爭議我的申索並提出反申索怎麼辦？

7.5.1 如被告人打算向申索人提出反申索，被告人須儘早提出反申索的申請。

7.5.2 除提交抗辯文件之外，被告人須提交文件證明反申索，並以證人供詞的方式列出反申索的相關案情。

7.5.3 被告人有責任將抗辯文件及反申索文件給予申索人。

7.6 如被告人對我的申索置之不理又怎麼辦？

7.6.1 如被告人沒有提出抗辯及沒有出席首次提訊，而審裁官信納被告人已獲知申索，審裁官可於被告人缺席的情況下作出裁決。審裁官會要求你宣誓作供，確認表格2內的申索內容。如審裁官信納你成功證明申索，便會判被告人敗訴。

8. 如審裁處未能將我的申索書送達被告人怎麼辦？

- 8.1 如申索書未能送達被告人，審裁處會要求你提供被告人的正確地址，以及在有需要時核實地址。如申索書仍無法送達，審裁處可下令採用其他方式送達，例如登報，此方式稱為替代送達。如要以登報方式替代送達，你須承擔登報的費用。

9. 聆訊

9.1 出席聆訊的代表

- 9.1.1 香港法例第25章《勞資審裁處條例》第23條列明具有出庭發言權的人士。除工會代表以外，與訟雙方一般須親自出席法庭應訊。
- 9.1.2 勞資審裁處並不容許當事人由律師代表出席應訊，但你的律師代表可於公眾席觀察聆訊的進行。
- 9.1.3 法團可由僱員或一位幹事代表出席聆訊。
- 9.1.4 合夥公司可由其中一位或多位合夥人代表出席聆訊。
- 9.1.5 如果你希望由獲授權的已登記職工會或僱主協會代表出席聆訊，你必須先取得審裁處的批准，有關人士方可代表你出席聆訊。

9.2 首次聆訊的情況會怎樣？

- 9.2.1 請注意，與訟雙方均須出席首次聆訊，如你於預定的聆訊時間缺席，審裁官可剔除你的申索；如被告人缺席，法庭可在其缺席的情況下作出判決。
- 9.2.2 首次聆訊並非審訊，審裁官不會於當天審理申索事宜。進行首次聆訊的目的是確保與訟雙方已提交足夠的文件證據支持各自的案情。在合適的情況下，審裁官亦可能為與訟雙方探討和解的可能性。
- 9.2.3 如與訟雙方無法達成和解，審裁官會指示雙方呈交進一步的證據，並押後申索案件至另一天作提訊或審訊。

9.3 審訊時將會怎樣？

- 9.3.1 主審的審裁官會解釋審訊所採用的程序。
- 9.3.2 一般而言，主審的審裁官會
- 聽取與訟雙方的案情；
 - 讓申索人及被告人盤問對方及其證人；
 - 有需要時，下令與訟雙方提供進一步證據或傳召額外證人，以及押後聆訊至另一天；
 - 在聆訊結束時宣告裁決，或另定日期宣告裁決。

- 9.3.3 與訟雙方應參閱《預備審訊須知》的小冊子瞭解詳情。小冊子可於審裁處的登記處索取或從司法機構的網站下載https://www.judiciary.hk/zh/court_services_facilities/gn_index.html。

10. 聆訊之後

10.1 如因缺席聆訊以致申索被剔除，我應怎樣做？

- 10.1.1 你可申請撤銷命令及恢復聆訊案件，你可填妥一式兩份的表格18 — 「恢復申索申請書」，並向審裁處的登記處繳付45元的訂明費用。此表格可向審裁處的登記處索取及從司法機構的網頁下載https://www.judiciary.hk/zh/court_services_facilities/labourf.html。

- 10.1.2 你須清楚列明缺席上次聆訊的原因及希望審裁官在處理你申請時會考慮的其他理據。

- 10.1.3 你必須在聆訊後7天內或在審裁處容許延長的期限內向審裁處提出申請。

10.2 被告人可否申請撤銷審裁處在他/她缺席聆訊的情況下作出的命令？

- 10.2.1 可以。被告人可在聆訊後7天內或在審裁處容許延長的期限內，以及在審裁處認為適當的情況下，向審裁處申請將該命令撤銷。

10.2.2 被告人如申請將裁斷或命令撤銷，須填寫一式兩份的表格19 — 「要求將裁斷 / 命令作廢的申請書」，並向審裁處的登記處繳付45元的訂明費用。此表格可向審裁處的登記處索取及從司法機構的網頁下載https://www.judiciary.hk/zh/court_services_facilities/labourf.html。

10.3 如敗訴，我可以覆核及/或上訴判決嗎？

10.3.1 可以。如需有關詳情，請參閱《覆核及上訴》的小冊子。該小冊子可向勞資審裁處登記處索取，或從司法機構的網頁下載https://www.judiciary.hk/zh/court_services_facilities/gn_index.html。

11. 經裁斷的款項

11.1 如被告人沒有繳付經審裁處判給我的款項，我應該怎樣做？

11.1.1 你可考慮向敗訴方執行判決程序。

11.1.2 如需有關詳情，請參閱《執行勞資審裁處的裁斷》的小冊子。該小冊子可向勞資審裁處登記處索取，或從司法機構的網頁下載https://www.judiciary.hk/zh/court_services_facilities/gn_index.html。

11.1.3 如有需要，你也應尋求獨立的法律意見。

11.2 如被告人已提出上訴許可的申請，我可否執行有關判決？

11.2.1 執行判決並不會因為被告人已提出上訴許可的申請而自動擱置，意指只要法庭沒有下令擱置執行判決，你仍有權執行相關判決。

12. 服務承諾

- 審裁處會在申索書提交後不超過30天排期作首次提訊。
- 如果情況許可，司法機構會盡可能即時回覆市民的來信。無論如何，我們會在收到信件後10天內作出臨時回覆，並於30天內作出詳盡答覆。如我們未能在30天內作出詳盡答覆，則會發出進一步的臨時回覆解釋原因。
- 我們致力提供更完善的服務，歡迎各方提出意見及建議，來信請寄香港金鐘道38號高等法院司法機構政務長收。

13. 如何聯絡我們？

地址：九龍加士居道36號

電話：2625 0020

傳真：2513 6797 / 2625 0556

電郵：labourtribunal@judiciary.hk

14. 辦公時間

星期一至星期五 上午八時四十五分至下午一時

下午二時至下午五時三十分

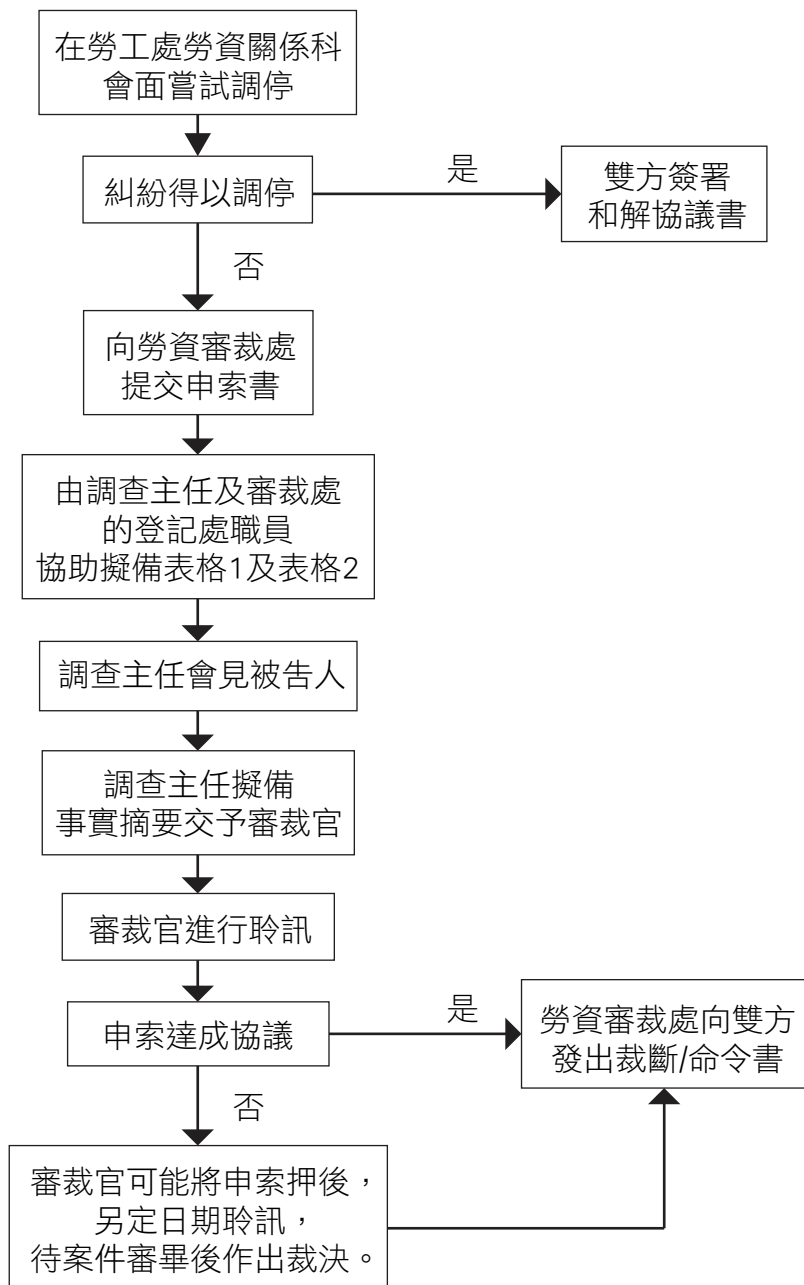
(星期六、日及公眾假日休息)

15. 颱風及暴雨警告的安排

請瀏覽司法機構的網頁https://www.judiciary.hk/zh/court_services_facilities/business_hours_typhoon.html#typhoon_warning有關颱風及暴雨警告的安排，你亦可以留意電台及電視台的公布。

司法機構
2021年9月
(第十一版)

解決勞資金錢糾紛的程序



LABOUR TRIBUNAL

1. What work does the Labour Tribunal do?

- 1.1 The Labour Tribunal offers a quick, informal and inexpensive way of settling monetary disputes between employees and employers. No legal representation is allowed and parties are required to conduct the case themselves. Although the Tribunal Officers will help you draft your claim form and the Presiding Officer will assist you during the hearings, the Tribunal does not provide any legal advice to the parties in respect of their claims. You should seek independent legal advice on your own initiative if necessary.

2. What claims can I bring before the Tribunal?

- 2.1 The Tribunal's jurisdiction is limited to the following types of claims:
- Claims with a claim sum of more than \$15,000. Claims lodged by not more than 10 claimants for a sum of money not exceeding \$15,000 per claimant are dealt with by the Minor Employment Claims Adjudication Board, located at 10/F, Cheung Sha Wan Government Offices, 303 Cheung Sha Wan Road, Kowloon (Tel: 2927 8000).
 - Claims arising from the failure of a person to comply with the provisions of the Employment Ordinance (Cap. 57), the Minimum Wage Ordinance (Cap. 608) or the

Apprenticeship Ordinance (Cap. 47).

- Claims involving the breach 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 (Cap. 78) applies.
- Claims transferred by the Minor Employment Claims Adjudication Board or the Small Claims Tribunal.

2.2 Claims that arose more than 6 years ago may be barred by the Limitation Ordinance (Cap. 347).

2.3 The most common 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
- payment 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
- omission
- unpaid wages of up to 2 months against the principal contractor and superior sub-contractors in the building and construction industry

2.4 Common items of claim lodged by employers include:

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

3. When can I settle the claim?

- 3.1 Parties may settle their case at any stage of the proceedings and are always encouraged to explore settlement as a means of resolving their disputes.
- 3.2 If you would like to explore settlement before lodging a claim with the Tribunal, you may approach the Labour Relations Division of the Labour Department. The Labour Relations Division provides conciliation services to help parties settle their case quickly and amicably. The hotline number for advice on conciliation services is 2717 1771.
- 3.3 If you have filed a claim in the Labour Tribunal and wish to explore settlement with the defendant before the first hearing, you may seek the assistance of the Tribunal Officer handling your case.
- 3.4 If you would like to explore settlement during the hearing, you should inform the Presiding Officer so that he/she may make the necessary arrangements for settlement negotiations.

4. How do I file a claim?

- 4.1 You should call the 24-hour Telephone Appointment Booking System of the Labour Tribunal at 2625 0056 or visit the Judiciary's website at https://www.judiciary.hk/en/court_services_facilities/appointment_book.html to make an appointment to file the claim.
- 4.2 On the date of the appointment, you should report your attendance to the Tribunal Registry. You will need to produce your Hong Kong Identity Card and the referral number of the Labour Department (if applicable) to the Tribunal Registry staff.
- 4.3 The Tribunal Registry will provide you with an Appointment Parties' List for verification of your name, address and Hong Kong Identity Card number. You should also verify the name and address of the intended defendant so that a copy of the claim can be effectively served on the intended defendant at the correct address. You should note that a P.O. Box number will not be considered as a valid address.
- 4.4 Where the intended defendant is a limited company, you must provide the Tribunal Registry with the intended defendant's registered office address. You may find the address information at the Companies Registry, 13/F, Queensway Government Offices, 66 Queensway, Hong Kong (Tel: 2234 9933), or visit the Companies Registry's Cyber Search Centre on the internet (website at <https://www.icris.cr.gov.hk/csci/>).

- 4.5 Where the intended defendant is a sole proprietorship or a partnership business, you must provide the Tribunal Registry with the intended defendant's principal place of business and/or the residential address of the proprietor or partners. You may find this information at the Business Registration Office of the Inland Revenue Department, 2/F, Inland Revenue Centre, 5 Concorde Road, Kai Tak, Kowloon, Hong Kong (Tel: 187 8088); or apply via the website <https://www.gov.hk/en/business/registration/businesscompany/index.htm>.
- 4.6 You will meet with the Tribunal Officer on the appointment date where the Tribunal Officer will assist you in formulating your claim. You should remember to bring all your supporting documents to show the Tribunal Officer.
- 4.7 Once the Tribunal Officer receives the necessary information, he/she will assist you in issuing the following documents:
- a Title to Claim (Form 1), bearing the names and addresses of the claimant and the defendant, and
 - a Form of Claim (Form 2), showing the details of the claim, including the grounds for the claim, the items and amount of the claim.
- 4.8 You must sign on Form 2 before it is sent out to the defendant.

4.9 If you are a business entity, the following persons may sign on Form 2 for and on behalf of the business:

- The sole proprietor of a firm.
- A partner of a partnership business.
- A director, secretary or other authorised officer of an incorporated company bearing an authorisation letter.

4.10 You may complete the forms in Chinese or English. Sample completed forms are on display at the Tribunal Registry.

5. How much does it cost to file a claim?

Claim Amount (as at December 2017)	Filing Fees
\$2,000 or less	\$20
\$2,001 - \$5,000	\$30
\$5,001 - \$10,000	\$40
Over \$10,000	\$50

5.1 A fee of \$10 per defendant's address is charged for serving the required documents on the defendant.

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

6. What happens after I file a claim?

- 6.1 Once your Form 2 is issued, you will receive a Form 3 – “Notice of Place and Day Fixed for Hearing” which sets out the date and time of the hearing. This first hearing is called a “call-over hearing”. The call-over hearing will be fixed on a date between 10 and 30 days from the date on which the claim is filed.
- 6.2 The Tribunal Registry will arrange for copies of Forms 1, 2 and 3 to be served on each defendant.
- 6.3 During the interim period, the Tribunal Officer will continue to investigate the claim with both parties. The defendant will be asked to meet with the Tribunal Officer and will be required to submit a defence (by way of a witness statement) together with supporting evidence. You may be asked to reply to the defendant’s allegations or version of events.
- 6.4 Once the investigation is completed, the Tribunal Officer will prepare a Summary of Facts for submission to the Presiding Officer setting out the parties’ respective allegations and the issues in dispute.
- 6.5 You are reminded that it is your responsibility to ensure the other party has a copy of your documents. If you fail to provide the other side with a copy of your documents, the Presiding Officer may order a copy be made by the court staff and you will be required to bear the costs. The costs of copying by court staff is very expensive. It is therefore in your own interest to ensure a copy of your documents is provided to the other side.

7. What will the defendant do after he/she receives my claim?

The defendant may do one of the following:

- agree to pay your claim sum in full or in part;
- agree to pay your claim sum but ask for time to do so;
- agree to your claim sum but allege that he/she is unable to pay;
- partially or wholly dispute your claim but does not file a counterclaim;
- partially or wholly dispute your claim and file a counterclaim;
or
- ignore your claim.

7.1 What happens if the defendant agrees to pay my claim in full or in part?

7.1.1 If the defendant informs the Tribunal Officer he/she is willing to pay the claim in full before the call-over hearing, the Tribunal Officer will arrange for the defendant to confirm his/her agreement in writing. An award will be issued and the call-over hearing will be vacated. The Tribunal Accounts Office will notify you when the money is ready for collection.

7.1.2 If the defendant waits until after the call-over hearing or subsequent hearings to confirm his/her agreement to pay the claim sum, the Presiding Officer will make the necessary orders in open

court. Parties are reminded that there may be costs implications if the matter is resolved at or after the call-over hearing.

- 7.1.3 Where the defendant is only willing to pay part of the claim sum, the remaining disputed items will proceed to trial. In such circumstances, the defendant should inform the Tribunal whether he/she is willing to settle the agreed sums before the trial hearing.

7.2 What happens if the defendant admits my claim but asks for time to pay the full sum?

- 7.2.1 The Tribunal Officer will inform you of the defendant's proposal for payment. 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. Once a settlement is signed on payment by instalments, it is binding on the parties.
- 7.2.2 If the parties reach a settlement agreement before the call-over hearing, the settlement will be approved by the Presiding Officer in chambers and parties will not be required to attend court.
- 7.2.3 If, however, both parties cannot reach settlement before the call-over hearing, they will have to attend the call-over hearing. The parties may continue to explore settlement at the call-over hearing if they so wish.
- 7.2.4 If the defendant fails to make payments in a timely manner, you may apply for execution of the award

to recover the unpaid judgment sum. Parties should refer to the pamphlet “Enforcement of Labour Tribunal Awards” on matters relating to execution. A copy of the pamphlet may be obtained from the Tribunal Registry or found on the Judiciary’s website at https://www.judiciary.hk/en/court_services_facilities/gn_index.html.

7.3 What happens if the defendant admits my claim but is unable to pay?

7.3.1 The defendant should inform the Tribunal Officer that he/she admits the claim but is unable to pay the claim sum. The parties may reach a settlement on the basis that the defendant admits the claim but is unable to pay. Alternatively, the Presiding Officer may, on the day of the hearing, ask the defendant to confirm the claim sum admitted and enter judgment on the admitted sum.

7.4 What happens if the defendant disputes my claim in part or in whole?

7.4.1 The defendant should file a defence (by way of a witness statement or otherwise) setting out which item(s) of claim is / are being disputed and the reasons why he/she disputes those items. The defendant should provide supporting evidence to rebut the claim or to support his/her own defence.

7.4.2 A copy of the defence should be sent to the claimant.

7.5 What if the defendant disputes my claim and has a counterclaim?

7.5.1 If the defendant intends to counterclaim against the claimant, he/she should file the counterclaim as soon as possible.

7.5.2 In addition to filing a defence, the defendant should file documents to support the counterclaim and set out the relevant facts of the counterclaim by way of a witness statement.

7.5.3 The defendant is responsible for sending the defence and the counterclaim documents to the claimant.

7.6 What happens if the defendant ignores my claim?

7.6.1 If the defendant fails to file a defence and fails to attend the call-over hearing, the Presiding Officer may enter judgment in the defendant's absence if he/she is satisfied the defendant had notice of the claim. You will be required to give evidence on oath to verify the claims set out in Form 2. If the Presiding Officer is satisfied you are able to prove your claim, judgment may be entered against the defendant.

8. What happens if the Tribunal cannot serve my claim on the defendant?

- 8.1 If a claim cannot be served on the defendant, you 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. This is known as substituted service. If substituted service by way of newspaper advertisement is required, you will be responsible for paying the fee of advertisement.

9. Hearings

9.1 Representation at hearings

- 9.1.1 Persons who have a right of audience in the Tribunal are set out in section 23 of the Labour Tribunal Ordinance (Cap. 25). With the exception of union representatives, parties are generally required to personally attend court to conduct the proceedings.
- 9.1.2 Legal representation is not permitted in the Labour Tribunal. However, your legal representative may sit in the public gallery to observe the proceedings.
- 9.1.3 Corporations may be represented by their employees or an office bearer.
- 9.1.4 Partnerships may be represented by one or more of the partners.

- 9.1.5 If you wish to be represented by a registered trade union or an association of employers who has been authorized, you must seek the permission of the Tribunal before your representative is permitted to represent you in the proceedings.

9.2 What happens at the call-over hearing?

- 9.2.1 It is important that parties attend the call-over hearing. If you are absent at the time your case is set to be heard, the Presiding Officer may strike out your claim. If the defendant is absent, judgment may be entered in his/her absence.
- 9.2.2 The call-over hearing is not a trial hearing and the Presiding Officer will not try the issues on that day. The purpose of the call-over hearing is to ensure parties have filed sufficient documentary evidence to support their case. In appropriate cases, the Presiding Officer may also explore the possibility of settlement between the parties.
- 9.2.3 If there is no prospect of settlement between the parties, the Presiding Officer will give directions for further filing of evidence and adjourn the case to another date for mention or trial.

9.3 What will happen at the trial hearing?

- 9.3.1 The trial Presiding Officer will explain the procedures to be adopted during trial.

9.3.2 In general, the trial 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/her judgment at the end of the hearing or fix a date to deliver judgment.

9.3.3 For more information, parties should refer to the pamphlet "General Guidelines for Preparation for Trial". A copy of the pamphlet may be obtained from the Tribunal Registry or found on the Judiciary's website at https://www.judiciary.hk/en/court_services_facilities/gn_index.html.

10. After a hearing

10.1 What should I do if my claim has been struck out because I was absent from the hearing?

10.1.1 You may apply to have the order set-aside and to have the case restored by completing the Form 18 – “Application for Restoration of a Claim” in duplicate and by paying a prescribed fee of \$45 at the Tribunal Registry. The form is available at the Tribunal Registry and on the Judiciary’s website at https://www.judiciary.hk/en/court_services_facilities/labourf.html.

10.1.2 You should clearly set out the reasons why you were absent from the last hearing and other grounds you wish the Presiding Officer to consider in your application.

10.1.3 The application must be made within 7 days after the hearing or such further period as the Tribunal may allow.

10.2 Can a defendant set aside an order made in his/her absence?

10.2.1 Yes. The defendant can apply to set aside an order made in his/her absence within 7 days after the hearing or such further period as the Tribunal may allow and on any conditions the Tribunal thinks fit.

10.2.2 A defendant applying to set aside an award or order must complete Form 19 – “Application to

Set Aside an Award/Order” in duplicate and pay a prescribed fee of \$45 at the Tribunal Registry. The form is available at the Tribunal Registry and on the Judiciary’s website at https://www.judiciary.hk/en/court_services_facilities/labourf.html.

10.3 Could I apply to review and/or appeal a judgment if I lose the case?

10.3.1 Yes. For more information, please refer to the pamphlet “Review and Appeal”. A copy of the pamphlet may be obtained from the Tribunal Registry or found on the Judiciary’s website at https://www.judiciary.hk/en/court_services_facilities/gn_index.html.

11. Payment of Award

11.1 What should I do if the defendant does not pay the sum awarded to me by the Tribunal?

11.1.1 You may consider taking enforcement procedures against the non-paying party.

11.1.2 For more information, you may refer to the pamphlet “Enforcement of Labour Tribunal Awards”. A copy of the pamphlet may be obtained from the Tribunal Registry or found on the Judiciary website at https://www.judiciary.hk/en/court_services_facilities/gn_index.html.

11.1.3 You should also seek independent legal advice if necessary.

11.2 Could I enforce my judgment if the defendant has lodged an application for leave to appeal?

11.2.1 There is no automatic stay of execution just because the defendant has made an application for leave to appeal. This means you are entitled to enforce your award so long as there is no court order ordering there be a stay of execution.

12. Performance Pledge

- The Tribunal will list the call-over 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 10 days and a full response within 30 days of receiving a letter. If a full response cannot be given within 30 days, we will give you a further interim reply with a brief explanation.
- We welcome all comments and suggestions for improving our services. Please send them to the Judiciary Administrator at the High Court, 38 Queensway, Hong Kong.

13. How to Contact Us?

Address: 36, Gascoigne Road, Kowloon

Telephone: 2625 0020

Facsimile: 2513 6797 / 2625 0556

Email: labourtribunal@judiciary.hk

14. Business Hours

Monday to Friday 8:45 a.m. – 1:00 p.m.

2:00 p.m. – 5:30 p.m.

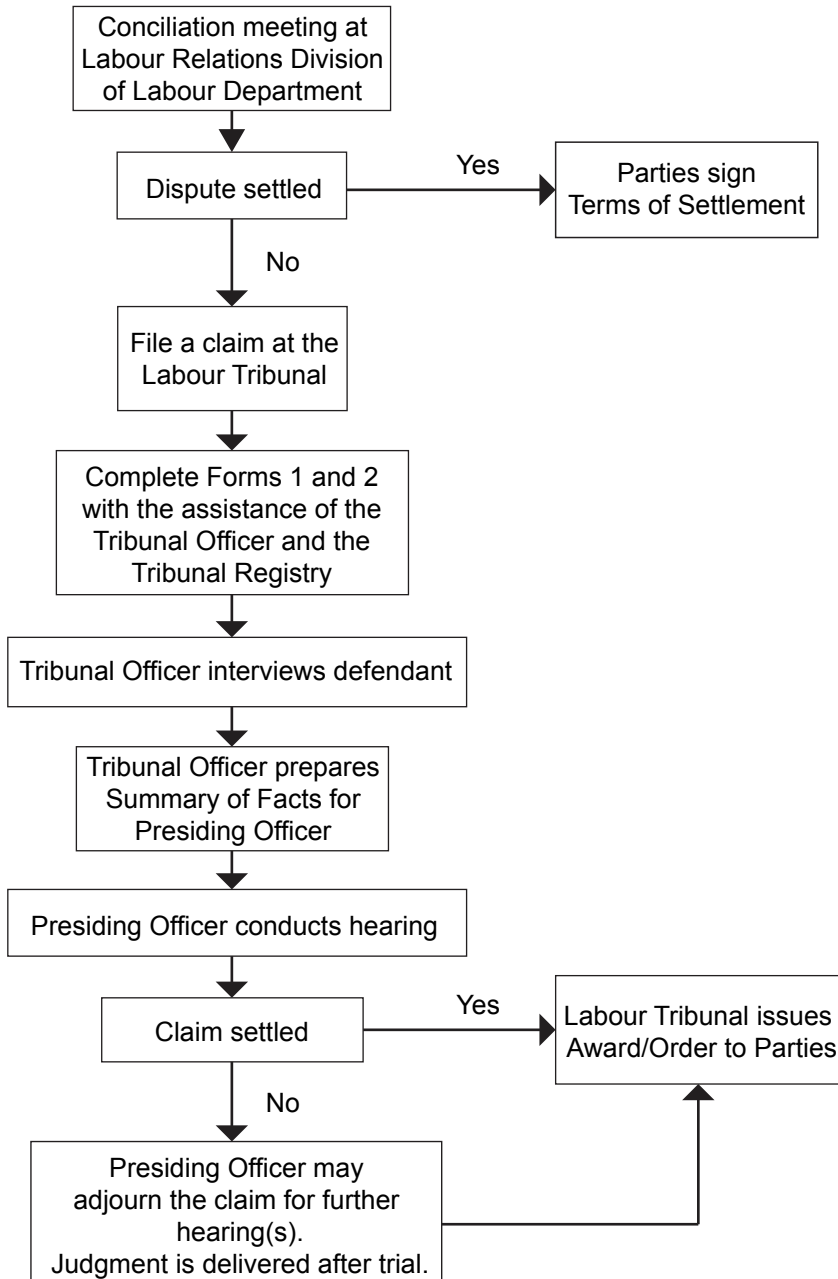
(Closed on Saturdays, Sundays and Public Holidays)

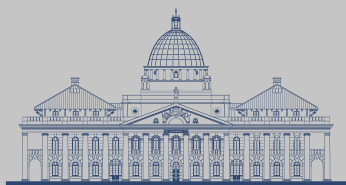
15. Typhoon and Rainstorm Warning Arrangements

Please refer to Typhoon and Rainstorm Warning Arrangements on the Judiciary's website at https://www.judiciary.hk/en/court_services_facilities/business_hours_typhoon.html#typhoon_warning or radio/ television announcements of the same.

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Procedures for Settling Monetary Disputes between Employees and Employers





司 法 機 構 JUDICIARY

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