

Employment Support Scheme - Updates

What's new?

The HKSAR Government has provided additional details and guidance on the Employment Support Scheme (ESS). Details of the ESS and responses to frequently asked questions can be found on the Government's website, www.ess.gov.hk.

Employers need to consider the subsidy and matters such as eligibility, whether to seek Government support, the financial impact, and on-going operational needs. Applications for Tranche 1 can be made from 25 May to 14 June 2020.

Our insights

While the ESS has been kept relatively simple with reliance on MPF records, and relatively few qualification criteria, there are a number of points of detail that could impact on eligibility, or trigger claw back and/or penalties.

Employers need to understand the details and guidance provided by the Government on the ESS, and determine eligibility for the subsidies, and whether to seek Government support.

Management need to weigh the financial impact, the obligations imposed on employers who take the subsidy, and operational matters needed to ensure on-going compliance with the requirements throughout the subsidy period.

HR, finance and legal teams should be prepared to support this decision making, implement on-going monitoring of the requirements, and address stakeholder enquiries regarding the decision on whether to apply for subsidies and any impact on the company's finances, employment plans, and any business continuity measures.

The Government may issue enquiries or request information to support an ESS application or check compliance with the requirements under the ESS, including possible on-site review of employment and remuneration records.

We recommend employers retain sufficient records to support the claim, and document their analysis and reasons for any actions that impact staff remuneration or head count during the subsidy period.

We set out on the next two pages, a summary of the ESS which includes details from the Government's guidance on 19 May 2020. Full details of the ESS are available on the ESS website, www.ess.gov.hk.



Summary of the ESS



Objective of the ESS

- Provide financial support to employers during the subsidy period to retain employees who might otherwise be made redundant.



Eligibility

- Broadly, all private sector employers (see exceptions below) who have made MPF or ORSO contributions for their employees on or before 31 March 2020 are eligible to participate in the ESS.
- Employers specifically set out in the [exclusion list](#) and employers who applied for Government support under the Catering Business (Social Distancing) Subsidy Scheme are not eligible for the ESS.
- Actions already taken or policies already implemented resulting in staff remuneration or headcount reduction should not preclude participation in the ESS.



Obligations

- Employers participating in the ESS must undertake:
 - 1) not to make redundancies during the subsidy period; and
 - 2) to spend the full amount of subsidy on wages paid to employees during the subsidy period.
- Compliance with the undertaking will be assessed as follows:
 - 1) check that the number of paid employees each month during the subsidy period is not less than the number of paid and unpaid employees in March 2020; and
 - 2) check that wages paid in cash each month during the subsidy period is not less than the subsidy amount for the month.
- The Government will claw back, in full, the portion of the subsidy not spent on employee wages and impose a penalty if there is reduction in headcount (see “Claw back and penalties” on the next page).
- The ESS does not forbid employers from reducing wages during the subsidy period but employers are expected to refrain from reducing wages as far as possible.
- Employers should consider the impact of staffing movement or changes, and business continuity plans on their ability to comply with these obligations.



Subsidy

- Employers need to select a “specified month” (December 2019 to March 2020) on which to base the subsidy. That month’s head count and wage levels will determine the quantum of subsidies.
- Compliance with undertaking not to make redundancies will be monitored based on number of paid and unpaid employees in March 2020 (not the “specified month”).
- The subsidies are calculated as:
 - 50% of the actual wages paid to each eligible employee in the “specified month”, capped at wages of HK\$18,000 per month per employee; or
 - for employees aged 65 or above who are participating in MPF schemes and the employer did not provide information on their basic salaries when making voluntary contributions for them, the subsidies are calculated as the quantum of the voluntary employer contribution to the MPF scheme for the employee in the “specified month” x 10, capped at HK\$9,000 per month.
- The maximum subsidy per employee is HK\$9,000 per month.
- Employers can claim wage subsidies for eligible employees being:
 - “regular employees” (not “casual employees”) aged 18 to 64 whom their employers have made mandatory MPF contributions during the specified month;
 - employees aged 65 or above whom their employers have made voluntary MPF contributions during the specified month; and
 - employees participating in an ORSO scheme with Hong Kong Identity Cards.
- Employers cannot claim wage subsidies for “casual employees” participating in a MPF scheme, or employees in government-funded organisations or employed to work on outsourced government contracts whose wages are fully funded by the Government.
- Broadly, “wages” includes wages, salaries, allowances, commissions and bonuses, but excludes severance payment, long service payment and non-cash benefits.



Summary of the ESS (continued)



Application

- Application for the first tranche of subsidy, i.e., for June to August, must be submitted via the ESS online portal during the period from 25 May to 14 June 2020.
- Employers claiming subsidies for employees participating in ORSO schemes will need to submit details of each employees' actual wages in the "specified month" (and each month during the subsidy period). This is not necessary for employers claiming subsidies for employees participating in MPF schemes (such details will be sent by the MPF trustees to the ESS Processing Agent).
- Details regarding the application for the second tranche, i.e., subsidies for September to November, will be announced in due course.



Auditing and monitoring

- The ESS Processing Agent will vet applications and may conduct sample checking of information submitted by employers and/or conduct on-site checking.
- Details regarding employer participation in the ESS, including which employer received subsidies, the total number of employees benefited, and quantum of subsidies, will be made available to the public.
- The ESS Processing Agent will check compliance with the requirements under the ESS during the subsidy period.
 - For employers claiming subsidies for employees participating in MPF schemes, the MPF trustee will provide the ESS Processing Agent, MPF record certificates for the subsidy period.
 - For employers claiming subsidies for employees participating in ORSO schemes, such employers will need to submit information of wages and number of employees during the subsidy period. Such employers should implement processes to collate such information and prepare for submission.



Disbursement

- It is estimated that employers will receive the wage subsidies within three to four weeks after application.
- The processing time may be longer for employers operating ORSO schemes.



Claw back and penalties

- If an employer does not spend all the subsidy received for one month to pay employee wages for that same month, the Government will claw back the unspent balance of the subsidy.
- Penalties will be imposed if the number of paid employees in any month during the subsidy period is less than the number of employees (whether paid or unpaid) in March 2020.

The penalty is calculated as:

Total subsidy received for the relevant month x headcount reduction percentage (in comparison with headcount in March 2020) x penalty percentage (see table below).

- The penalty percentage depends on the total number of paid and unpaid employees in March 2020 as follows:

No. of employees	Less than 10	10 to 49	50 to 99	100 to 499	500 or more
Penalty percentage	10%	20%	40%	60%	80%

Please contact any member of our team below if you have any questions or would like our support.



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