Abolition of the Offsetting Arrangement

The Legislative Council passed the Employment and Retirement Schemes Legislation (Offsetting Arrangement) (Amendment) Bill 2022 in June 2022 to abolish the use of the accrued benefits of employers' mandatory contributions under the Mandatory Provident Fund (MPF) System (ERMC) to offset severance payment (SP) and long service payment (LSP) (the offsetting arrangement) so as to strengthen the retirement protection of the employees. The abolition of the offsetting arrangement will be implemented in tandem with the full implementation of the eMPF Platform, not later than 2025.

The "grandfathering" arrangement

After the abolition of the offsetting arrangement takes effect (i.e. the transition date), employers can no longer use ERMC to offset employee's SP/LSP[1]. The Amendment Ordinance has no retrospective effect (the "grandfathering" arrangement), which means the abolition of the offsetting arrangement is only applicable to an employee's SP/LSP entitlement in respect of the employment period starting from the transition date. Employers can continue to use the accrued benefits derived from their MPF contributions[2] to offset the SP/LSP in respect of the employment period before the transition date.

Calculation of SP/LSP for employees whose employment period straddles across the transition date

After the abolition, if an employee's employment period straddles across the transition date, the SP/LSP of such employees will be divided into pre-transition portion (i.e. for the employment period before the transition date) and post-transition portion (i.e. for the employment period starting from the transition date). The calculation is as follows:

a) Pre-transition portion: employee's last full month's wages immediately preceding the transition date × 2/3 × years of service before the transition date

b) Post-transition portion: employee's last full month's wages before termination of employment × 2/3 × years of service starting from the transition date

Any amount of an employee's aggregate SP/LSP exceeding the cap of $390,000 will be deducted from the post-transition portion of SP/LSP, i.e. from the portion that cannot be offset.

Employers should not dismiss employees before the transition date

Employers cannot save monies by dismissing their employees before the transition date and employing new employees because –

1) The pre-transition portion of an existing employee's SP/LSP can still be offset, where the SP/LSP of a new employee employed starting from the transition date cannot be offset;

2) The pre-transition portion of an existing employee's SP/LSP is calculated based on the employee's monthly wages preceding the transition date rather than the last monthly wages before the termination of employment; and

3) The new employee's SP/LSP will build up afresh to a maximum of $390,000 which cannot be offset.

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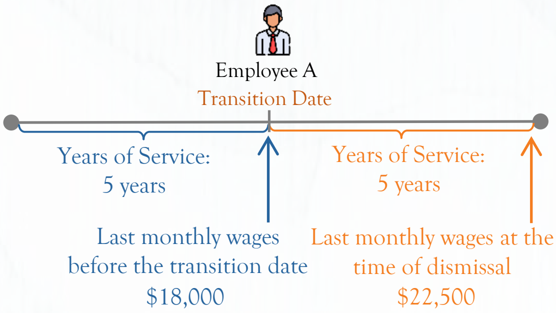
[1] The accrued benefits derived from employers' voluntary contributions as well as gratuities based on employee's length of service can continue to be used to offset the pre-transition or post-transition portion of SP/LSP. Besides, the ceiling on the monthly wages for calculating SP/LSP is $22,500 and the maximum SP/LSP amount is $390,000. These ceilings remain unchanged.

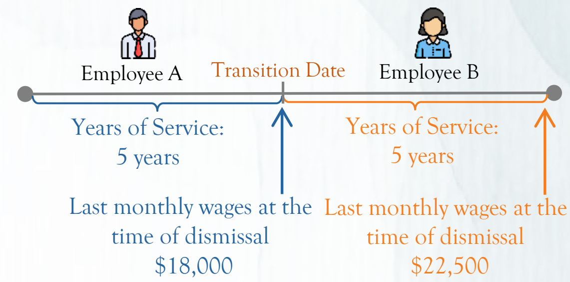
[2] Irrespective of whether the contributions are mandatory or voluntary, and irrespective of whether the contributions are made before or after the transition date.

Employers dismissing their employees before the transition date and employing new employees will generally incur higher total SP/LSP expenses in comparison with retaining the existing employees. For example –

Employer continues to employ Employee A after the transition date



Employer dismisses Employee A before the transition date, and employs a new Employee B



	Employer continues to employ Employee A after the transition date		Employer dismisses Employee A before the transition date, and employs a new Employee B	
	Pre-transition portion	Post-transition portion	Employee A	Employee B
SP/LSP	**$60,000**[3]	**$75,000**[4]	**$60,000**[5]	**$75,000**[6]
ERMC that can be used to offset SP/LSP	**$121,500**[7]	**–**[8]	**$54,000**[9]	**–**[8]
Balance of SP/LSP payable by the employer	**–**[10]	**$75,000**	**$6,000**[11]	**$75,000**
SP/LSP payable by the employer	**$75,000**		**$81,000**	

For more information about the abolition of the offsetting arrangement and examples of the calculation of SP/LSP after the legislation takes effect, please visit: https://www.labour.gov.hk/eng/news/aoa.htm.

3 The amount is calculated by Employee A's last monthly wages before the transition date ($18,000) x 2/3 x 5 years of service.

4 The amount is calculated by Employee A's last monthly wages at the time of dismissal ($22,500) x 2/3 x 5 years of service.

5 Calculated by Employee A's last monthly wages at the time of dismissal ($18,000) x 2/3 x 5 years of service.

6 Calculated by Employee B's last monthly wages at the time of dismissal ($22,500) x 2/3 x 5 years of service.

7 The amount is calculated by Employee A's monthly wages ($18,000) x 5% x 12 months x 5 years plus ($22,500) x 5% x 12 months x 5 years assuming no investment return and relevant salary increment takes effect on the transition date.

8 SP/LSP arising from the post-transition employment period cannot be offset by ERMC.

9 The amount is calculated by Employee A's monthly wages ($18,000) x 5% x 12 months x 5 years assuming no salary change and investment return.

10 Since ERMC ($121,500) can fully offset the pre-transition portion of SP/LSP ($60,000), the employer is not required to pay that portion.

11 Since ERMC ($54,000) cannot fully offset the SP/LSP of Employee A ($60,000), the employer is required to make a top-up payment of $6,000.

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Offsetting Policy Division
Labour Department