

My Wife's Boss Owes Her 15 Months' Salary

Q MY WIFE has worked for her present employer for more than 30 years. Over the past five years, her boss has not been paying her salary on time.

Very frequently, she has had to work for three to four months before being paid one month's salary - and that is only after she begs for it.

She is now owed 15 months of salary. She was last paid a month's salary in January.

Her boss is always giving the excuse that business is slow and says that she will be paid when the situation gets better.

My wife has to pay income tax for the year 2003 even though she has not been paid her salary.

Also, over the past five years, she took less than seven days of leave per year. She is not a union member.

I wish to know whether there is any way for me to help her recover her salary. I was retrenched a year ago.

A THERE are several avenues open to your wife to pursue her claim.

First, determine whether your wife is an 'employee' within the ambit of the Employment Act - such as she must not be holding a managerial or executive position in the company or earning a salary above \$1,600 a month.

The other exclusions - seamen, domestic workers and government servants - probably do not apply to your wife.

If she is an employee under the Act, she can lodge a complaint with the Commissioner for Labour, Ministry of Manpower, paying a fee of \$3.

An officer will be appointed to her case and will try to mediate the matter with the employer. If mediation fails, the matter will be referred to the Labour Court where the commissioner can order the employer to pay the outstanding salary to your wife.

However, the complaint cannot relate to matters occurring more than one year prior to the date of complaint, so your wife can lodge a complaint only regarding unpaid salary for the last 12 months.

The proceedings at the Labour Court are kept simple and no legal representation is allowed.

If the employer still does not make payment after being ordered to do so, the employee can enforce the order by the usual methods of enforcing a judgment of the court - such as by a writ of seizure and sale and/or garnishee proceedings.

Secondly, if she is not an employee within the definition of the Employment Act, I understand that she can still lodge a complaint with Manpower Ministry, which will try to mediate.

However, if no compromise is reached, the matter will not be referred to the Labour Court.

If she does not make a complaint to the Ministry of Manpower, she can engage a lawyer to recover the unpaid salary.

This is the same avenue that she would need to pursue with regards to the unpaid salary of earlier years.

If the employer does not respond to the initial letter of demand, your wife can start proceedings in the Subordinate Courts to obtain a judgment against her employer for payment of the outstanding salary.

From the brief facts you provided, the chances of your wife obtaining a judgment in her favour are very high. But this does not automatically mean she will get her unpaid salary.

She will still need to enforce the judgment against her employer. If the employer is a sole-proprietorship or partnership, the judgment can be enforced against the assets of the sole proprietor or the partners.

If the employer is a private limited company, then the enforcement action is limited to the assets of the company.

I would also advise you to check whether the employer has paid your wife's Central Provident Fund (CPF) contributions and to alert the CPF Board if this has not been done.

Please bear in mind that any action you take could annoy the employer and lead to the employer terminating your wife's employment.

Finally, you indicated that she took only seven days of leave in the last five years of her employment. If her contract is terminated or if she chooses to resign, she may be entitled to salary in lieu of leave days not taken.

This would depend very much on the terms of her employment contract.

Vijai Parwani
Managing Partner
Parwani & Company