

LEGISLATIVE COUNCIL BRIEF

Employment Ordinance (Chapter 57)

EMPLOYMENT (AMENDMENT) (No. 2) BILL 2000

INTRODUCTION

At the meeting of the Executive Council on 14 November 2000, the Council ADVISED and the Chief Executive ORDERED that the Employment (Amendment) (No. 2) Bill 2000, at Annex A, should be introduced into the Legislative Council.

BACKGROUND AND ARGUMENT

2. There is a need to make amendments to clarify various provisions of the Employment Ordinance (EO) (Chapter 57) and to make necessary amendments as a result of the repeal of the women-specific provisions of the Women and Young Persons (Industry) Regulations.

(A) Clarify various provisions of the Employment Ordinance

3. Under section 15(1) of the EO, an employer is prohibited from dismissing an employee during her pregnancy by giving notice under section 6 or wages in lieu of notice (WILON) under section 7 of the EO. An employer who contravenes this section commits an offence and

is liable, on conviction, to a fine of \$100,000. Similar provision is provided by section 33 of the EO for prohibition of dismissal of an employee during paid sick leave. The purpose of these provisions is to prohibit employers from dismissing pregnant employees or employees on paid sick leave except in circumstances where summary dismissals are justified under section 9 of the EO. Under Section 9 of the EO, an employer may terminate a contract of employment without notice or payment in lieu of notice if the employee has committed serious misconduct, such as fraud or dishonesty or habitual neglect of duties.

4. However, section 15(1) and section 33 of the EO are worded in such a way that they appear to prohibit dismissal of employees during pregnancy or paid sick leave under section 6 or section 7 only, without covering wrongful dismissals which are not justified under section 9. This means once an employer alleges that he has dismissed an employee during pregnancy or paid sick leave summarily under section 9 of the Ordinance, there will be difficulties in prosecuting the employer for contravention of section 15(1) or section 33, even if the alleged summary dismissal is subsequently proved to be unsubstantiated. This is not in line with the policy intention. We therefore consider it necessary and desirable to amend the EO to clarify the wordings of these provisions so as to make it clear that an employer may not terminate the employment of an employee during pregnancy or paid sick leave except in circumstances where summary dismissal is justified under section 9 of the Ordinance, and that an employer who does so shall be subject to prosecution.

5. Under the EO, an employer shall pay to his employee, not later than 7 days after the day of termination, any sum due to him on termination of employment contract and that failure to make such payment within the time limit is a prosecutable offence. This sum includes, inter alia, wages in lieu of notice, long service payment and

compensation for dismissal during paid sick leave. However, there is currently no provision in the EO stipulating the time limit for payment of compensation for dismissal during pregnancy. It is therefore necessary to amend the EO to require an employer to make compensation payable for dismissal of a pregnant employee within 7 days after the day of dismissal and to make non-payment of the amount within the time limit an offence.

6. Under Part IIA of the Ordinance, an employee is eligible for an end of year payment if he has been employed under a continuous contract for a whole payment period and there is contractual agreement for such payment. Section 11F further provides for pro-rata end of year payment in early termination of contract. The intention of these provisions is to ensure that an employee's entitlement to end-of-year payment will not be adversely affected by early termination of his contract by the employer. However, this provision, as it is now worded, gives rise to a situation whereby an employee who wrongfully terminates the contract without giving proper notice or payment of wages in lieu of notice may be entitled to it. As this is not in line with our policy intention, it is proposed to amend the Ordinance to the effect that an employee who terminates his contract otherwise than in the special circumstances prescribed under section 10 (such as fear of violence and ill-treatment by the employer) shall not be entitled to proportional end of year payment.

7. Acts of discrimination within the meaning of Sex Discrimination Ordinance (the SDO) and the Disability Discrimination Ordinance (the DDO) have been excluded from Part VIA of the Ordinance (which relates to employment protection) since the enactment of the SDO and the DDO. The rationale is to avoid subjecting an employer to double penalties under both the Ordinance and these two

pieces of legislation in respect of a single act. The Family Status Discrimination Ordinance (the FSDO) which provides, among other things, protection for employees against unlawful discrimination on the ground of family status, has come into operation on 21 November 1997. Under the same rationale of avoiding double penalties, it is proposed that the Ordinance should be amended to exclude acts of discrimination which are covered by the FSDO.

(B) Necessary amendments as a result of the repeal of the women-specific provisions of the Women and Young Persons (Industry) Regulations

8. The Women and Young Persons (Industry) Regulations (the Regulations) under the Employment Ordinance, which used to contain restrictions for women employed in industrial undertakings were revamped in July 1997 to remove all “women-specific” provisions and references to “women” which were deemed to be discriminatory under the SDO. However, the title and the citation of the Regulations as well as the references to the Regulations in the Ordinance were not amended in that exercise. It is proposed that textual amendments should be made by deleting all references to “women” in the Ordinance in respect of the Regulations, in the title and citation of the Regulations; as well as in the title of the Regulations mentioned in paragraph 1 of Schedule 3 to the SDO.

THE BILL

9. The principal amendments are -

- (a) to provide that an employee who terminates his contract otherwise than in accordance with section 10 shall not be

entitled to proportional end of year payment (clause 4);

- (b) to provide that an employer shall not terminate a continuous contract of employment of a pregnant employee, or of an employee on any sickness day in respect of which sickness allowance is payable under section 33, otherwise than in accordance with section 9; and that employers who do so shall, unless the contrary is proved, be taken to terminate any such contract otherwise than in accordance with section 9 (clauses 5 and 8). It should be noted that clauses 5 and 8 also provide that it shall be a defence for the employer in proceedings for an offence under section 15 or 33 to prove that he purported to terminate the continuous contract of employment of the employee concerned in accordance with section 9 and that, at the time of such termination, he reasonably believed that he had a ground to do so;
- (c) to include in section 25 payment of compensation for dismissal of a pregnant employee payable under section 15(2) such that the said compensation shall be paid within 7 days after the day of termination and that an employer who willfully and without reasonable excuse fails to comply with the above commits an offence (clause 6); and
- (d) to provide that acts of discrimination against persons on the ground of family status within the meaning of the Family Status Discrimination Ordinance (Cap. 527) shall be excluded from the application of Part VIA (which relates to employment protection) (clause 7).

Existing provisions relating to the above amendments to the EO are at **Annex B** Annex B.

10. Clauses 9 to 16 make amendments and specify transitional provisions as a result of the change of the title of the Women and Young Persons (Industry) Regulations (Existing provisions relating to the above amendments are at **Annex C** Annex C).

PUBLIC CONSULTATION

11. The Labour Advisory Board has endorsed the amendments proposed in the Bill. The Legislative Council Panel on Manpower was consulted on the proposed amendments on 16 November 2000.

BASIC LAW IMPLICATIONS

12. The Department of Justice advises that the Bill does not conflict with those provisions of the Basic Law carrying no human rights implications.

HUMAN RIGHTS IMPLICATIONS

13. The Department of Justice advises that the Bill is consistent with the human rights provisions of the Basic Law.

BINDING EFFECT OF THE LEGISLATION

14. The amendments will not affect the current binding effect of the EO.

FINANCIAL AND STAFFING IMPLICATIONS

15. There are no financial or staffing implications for the Government.

ECONOMIC IMPLICATIONS

16. The economic implications of the proposals should be minimal. The proposal merely aims to make clear the intention of the law that an employer is prohibited from dismissing an employee during pregnancy or paid sick leave, unless the dismissal is a summary dismissal justified under section 9. The other technical amendments are for the purposes of clarification and do not have cost implications for employers.

LEGISLATIVE TIMETABLE

17. The legislative timetable will be -

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|--|----------------|
| Publication in the Gazette | 1.12.2000 |
| First Reading and commencement of Second Reading debate | 13.12.2000 |
| Resumption of Second Reading debate committee stage and Third Reading | To be notified |

PUBLICITY

18. A press release explaining the proposed amendments will be issued on 30 November 2000, the day before the Bill is due to be published in the Gazette.

ENQUIRIES

19. For enquiries, please contact Miss Mabel LI, Senior Labour Officer. Her telephone number is 2852 3517.

Education and Manpower Bureau

23 November 2000

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A BILL

To

Amend the Employment Ordinance to provide for the prohibition against the termination, otherwise than in accordance with section 9, of the continuous contract of employment of pregnant employees or employees on a sickness day in respect of which sickness allowance is payable; and to make technical amendments to certain provisions of the Ordinance and the Women and Young Persons (Industry) Regulations.

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Employment (Amendment) (No. 2) Ordinance 2000.

2. Termination of contract by notice

Section 6(1) of the Employment Ordinance (Cap. 57) is amended by repealing "33(4B), (4BA) and (4BB)" and substituting "33".

**3. Termination of contract by
payment in lieu of notice**

Section 7(1) is amended by repealing "section 33(4B), (4BA) and (4BB)" and substituting "section 15 and 33".

4. Proportion of the end of year payment

Section 11F(1)(a) is amended by repealing "otherwise than by the employee under section 6 or 7 or by the employer under section 9" and substituting -

"otherwise than -

- (A) by the employee other than in accordance with section 10; or
- (B) by the employer under section 9".

5. Prohibition against termination of employment

Section 15 is amended -

- (a) by repealing subsection (1) and substituting -

"(1) Subject to subsections (1A) and (1B) -

- (a) after a pregnant employee has served notice of pregnancy on her employer, the employer shall not terminate her continuous contract of employment otherwise than in accordance with section 9 during the period from the date on which her pregnancy is confirmed by a medical certificate to the date on which she is due to return to work on the expiry of her maternity leave or the date of cessation of pregnancy (otherwise than by reason of confinement);
- (b) if a pregnant employee has served such notice on her employer immediately after

being informed of the termination of her contract of employment where the termination was made otherwise than in accordance with section 9 by her employer, the employer shall immediately withdraw the termination or notice of termination in which event the termination or notice of termination shall be treated as if it had not taken place.";

(b) by adding -

"(1B) An employer who terminates the contract of employment of a pregnant employee shall, unless the contrary is proved, be taken for the purpose of subsection (1)(a) or (b) to terminate such contract otherwise than in accordance with section 9.";

(c) in subsection (2), by adding "(a) or (b)" after "subsection (1)";

(d) by repealing subsection (4) and substituting -

"(4) Subject to subsection (5), any employer who contravenes subsection (1)(a) or (b) shall be guilty of an offence and shall be liable on conviction to a fine at level 6.

(5) In proceedings for an offence under subsection (4) (and without prejudice to the operation of subsection (1B)), it shall be a

defence for the employer charged with the offence to prove that -

- (a) he purported to terminate the continuous contract of employment of the pregnant employee concerned in accordance with section 9; and
- (b) at the time of such termination, he reasonably believed that he had a ground to do so."

6. Payment on termination

Section 25(2)(b) is amended by adding ", 15(2)" after "sections 7".

7. Exclusion

Section 32Q is amended -

- (a) in paragraph (b), by repealing the full stop and substituting a semicolon;
- (b) by adding -
 - "(c) discrimination against persons on the ground of family status within the meaning of the Family Status Discrimination Ordinance (Cap. 527)".

8. Sickness allowance

Section 33 is amended -

- (a) by repealing subsection (4B) and substituting -

"(4B) Subject to subsection (4BAA), an employer shall not terminate a contract of employment of an employee otherwise than in accordance with section 9 on any sickness day taken by the employee in respect of which sickness allowance is payable under this section.";

(b) by adding -

"(4BAA) An employer who terminates the contract of employment of an employee on any sickness day taken by the employee in respect of which sickness allowance is payable under this section shall, unless the contrary is proved, be taken for the purpose of subsection (4B) to terminate such contract otherwise than in accordance with section 9.";

(c) by repealing subsection (4BB) and substituting -

"(4BB) Subject to subsection (4BC), any employer who contravenes subsection (4B) shall be guilty of an offence and shall be liable on conviction to a fine at level 6.

(4BC) In proceedings for an offence under subsection (4BB) (and without prejudice to the operation of subsection (4BAA)), it shall be a defence for the employer charged with the offence to prove that -

(a) he purported to terminate the continuous contract of employment of the employee

concerned in accordance with section 9;
and

- (b) at the time of such termination, he reasonably believed that he had a ground to do so."

9. Grant of holidays

Section 39(4)(a) is amended by repealing "Women and" and substituting "Employment of".

10. Powers of officers

Section 72(1)(e) is amended by repealing "woman," wherever it appears.

11. Presumptions

Section 72C(b) is amended by repealing "women," and "woman,".

12. Regulations

Section 73(1)(ha) is amended by repealing ", period of employment or hours of overtime employment" and substituting "or period of employment".

Women and Young Persons (Industry) Regulations

13. Title amended

The title to the Women and Young Persons (Industry) Regulations (Cap. 57 sub. leg.) is amended by repealing "**WOMEN AND**" and substituting "**EMPLOYMENT OF**".

14. Citation

Regulation 1 is repealed.

15. Savings and transitional

Where, before the date this Ordinance comes into operation, an employer has -

- (a) posted up a notice under regulation 9;
- (b) served a notice on the Commissioner under regulation 15; or
- (c) maintained a register under regulation 16,

of the Women and Young Persons (Industry) Regulations (Cap. 57 sub. leg.) in such a manner and form as to comply therewith and, but for this Ordinance and any consequent amendment to the forms specified by the Commissioner under section 49 of the Employment Ordinance (Cap. 57), such posting, serving or maintaining would continue to so comply, then notwithstanding the amendments contained in this Ordinance and any consequent amendment to such forms, they shall be deemed to continue to so comply.

Consequential Amendments

Sex Discrimination Ordinance

**16. Provisions specified for purposes
of section 12(2)(g)**

Schedule 3 to the Sex Discrimination Ordinance (Cap. 480) is amended, in paragraph 1, by repealing "Women and" and substituting "Employment of".

Explanatory Memorandum

The object of this Bill is to amend the Employment Ordinance (Cap. 57) ("the principal Ordinance") in order to -

- (a) introduce technical amendments to clarify various provisions (clauses 2 and 3);
- (b) clarify that an employee who terminates his contract otherwise than in accordance with section 10 of the principal Ordinance shall not be entitled to proportional end of year payment (clause 4);
- (c) provide that -
 - (i) an employer shall not terminate a continuous contract of employment of a pregnant employee, or of an employee on any sickness day in respect of which sickness allowance is payable under section 33 of the principal Ordinance, otherwise than in accordance with section 9 of the principal Ordinance (clauses 5(a) and 8(a));
 - (ii) an employer who terminates the continuous contract of employment of a pregnant employee, or of an employee on any sickness day in respect of which sickness allowance is payable, shall, unless the contrary is proved, be taken to terminate such contract otherwise than in accordance with section 9 of the principal Ordinance (clauses 5(b) and 8(b));

- (iii) it shall be a defence for the employer in proceedings for an offence under section 15 or 33 of the principal Ordinance to prove that -
 - (A) he purported to terminate the continuous contract of employment of the employee concerned in accordance with section 9 of the principal Ordinance; and
 - (B) at the time of such termination, he reasonably believed that he had a ground to do so,
(clauses 5(d) and 8(c)); and
- (d) make necessary amendments and transitional provisions as a result of the change of the title of the Women and Young Persons (Industry) Regulations (Cap. 57 sub. leg.) (clauses 9 to 16).

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Section of Enactment

▼
Chapter: 57 Title: EMPLOYMENT Gazette
ORDINANCE Number:
Section: 6 Heading: Termination of contract by Version Date: 30/06/1997
notice

(1) Subject to subsections (2), (2A), (2B), (3) and (3A) and sections 15 and 33(4B), (4BA) and (4BB), either party to a contract of employment may at any time terminate the contract by giving to the other party notice, orally or in writing, of his intention to do so. (Amended 5 of 1970 s. 5; 57 of 1983 s. 2; 48 of 1984 s. 4; 55 of 1987 s. 2; 103 of 1995 s. 2)

(2) The length of notice required to terminate a contract of employment shall be-

(a) in the case of a contract which is deemed by virtue of the provisions of section 5 to be a contract for 1 month renewable from month to month and which does not make provision for the length of notice required to terminate the contract, not less than 1 month; (Amended 44 of 1971 s. 2)

(b) in the case of a contract which is deemed by virtue of the provisions of section 5 to be a contract for 1 month renewable from month to month and which makes provision for the length of notice required to terminate the contract, the agreed period, but not less than 7 days; (Added 44 of 1971 s. 2)

(c) in every other case, the agreed period, but not less than 7 days in the case of a continuous contract.

(2A) Without prejudice to section 41D, annual leave to which an employee is entitled under section 41AA shall not be included under subsection (2) in the length of notice required to terminate a contract of employment. (Added 48 of 1984 s. 4. Amended 53 of 1990 s. 5)

(2B) The period of maternity leave to which a female employee is entitled under section 12 shall not be included under subsection (2) in the length of notice required to terminate a contract of employment. (Added 55 of 1987 s. 2)

(3) Where in any contract of employment, whether in writing or oral, it has been expressly agreed that the employment is on probation and the contract does not make provision for the length of notice required for its termination such contract may be terminated- (Amended 44 of 1971 s. 2)

(a) by either party at any time during the first month of such employment without notice or payment in lieu;

(b) by either party at any time after the first month of such employment by giving to the other party notice of not less than 7 days. (Amended 48 of 1984 s. 4)

(3A) Where in any contract of employment, whether in writing or oral, it has been expressly agreed that the employment is on probation and the contract makes provision for the length of notice required for its termination such contract may be terminated-

(a) notwithstanding the length of notice provided for in the contract, by either party at any time during the first month of such employment without notice or payment in lieu;

(b) by either party at any time after the first month of such employment by giving to the other party notice of the agreed period, but not less than 7 days. (Added 48 of 1984 s. 4)

(4) For the purposes of this section the expression "month" (月) means a period of time commencing on the day when notice of termination of a contract of employment is given or when employment begins, as the case may be, and ending at the end of the day before the corresponding date in the following month or, where there is no corresponding date in the following month or where the commencing day is the last day of a month, at the end of the last day of the following month.

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Chapter: 57 Title: EMPLOYMENT Gazette
ORDINANCE Number:
Section: 7 Heading: Termination of contract by Version Date: 30/06/1997
payment in lieu of notice

(1) Subject to section 33(4B), (4BA) and (4BB), either party to a contract of employment may at any time terminate the contract without notice by agreeing to pay to the other party a sum equal to the amount of wages which would have accrued to the employee during the period of notice required by section 6.

(Amended 44 of 1971 s. 3; 57 of 1983 s. 3; 103 of 1995 s. 2)

(2) Either party to a contract of employment, having given proper notice in accordance with section 6, may at any time thereafter terminate the contract by agreeing to pay to the other party such proportion of the sum referred to in subsection (1) as is proportionate to the period between the termination of the contract and the time when the notice given would have expired. (Amended 44 of 1971 s. 3)

(3) In the case of an employee whose remuneration is calculated by the piece or task the amount of wages which would have accrued to such employee during the period of notice referred to in subsection (1) shall be deemed to be the amount of wages earned by the employee during the equivalent period immediately prior to the giving of the notice or, if for any reason it is impracticable to compute the amount in this manner, it may be calculated by reference to the amount earned during such equivalent period by a person in the same trade or occupation at the same work in the same district.

(4) For the purposes of this section, and notwithstanding any other provision of this Ordinance, the term "wages" (工資)-

(a) includes overtime pay of a constant character or the monthly average of which over a period of 12 months (or if not applicable, such shorter period of employment) immediately preceding the date on which the termination takes effect is equivalent to or exceeds 20% of his monthly average wages during the same period;

(b) except as provided in paragraph (a), shall be deemed not to include overtime pay.
(Replaced 74 of 1997 s. 4)

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Chapter: 57 Title: EMPLOYMENT Gazette
ORDINANCE Number:
Section: 11F Heading: Proportion of the end of year Version Date: 30/06/1997
payment

(1) Subject to subsection (1A), where, in the case of an employee to whom this Part applies who has not been employed by the same employer for the whole of a payment period but has been so employed for a period of not less than 3 months in the payment period- (Amended 74 of 1997 s. 8)

(a) the contract of employment is terminated-

(i) at any time during the payment period; or

(ii) on the expiry of the payment period,

otherwise than by the employee under section 6 or 7 or by the employer under section 9; or

(b) the employee continues to be employed by the employer after the expiry of the payment period, the employee shall be paid a proportion, calculated in accordance with subsection (2), of the end of year payment that would have been payable under this Part if he had been employed by the same employer for the whole of the payment period.

(1A) If it is a term or condition of a contract of employment that the employee is on probation, the period of such probation or a period of 3 months, whichever is the shorter, shall be excluded from the calculation of the 3 months' period under subsection (1). (Added 74 of 1997 s. 8)

(2) The proportion of the end of year payment payable under subsection (1) shall be-

(a) the proportion specified in that behalf in the contract of employment; or

(b) if a proportion is not so specified, the sum which bears the same proportion to a full month's wages of the employee as his period of service under the contract of employment in the payment period bears to that payment period.

(3) The proportion of the end of year payment payable under subsection (1) shall become due to the employee-

(a) under paragraph (a) of that subsection-

(i) on the day on which the contract of employment terminates; or

(ii) in the case of a proportion of an end of year payment that falls to be calculated by reference to any profits of the employer, on the day on which the profits of the employer are ascertained; or

(b) under paragraph (b) of that subsection-

(i) subject to subsection (4), on the day specified in the contract of employment as the day on which the end of year payment becomes due; or

(ii) if a day is not so specified, on the last day of the payment period,

and shall be paid as soon as is practicable but in any case not later than 7 days after that day but nothing in this subsection shall be construed as preventing the payment of the proportion of the end of year payment at any time before that day.

(4) Where the contract of employment of an employee to whom subsection (1)(b) applies is terminated after the expiry of the payment period but before the end of year payment becomes due on the day specified in the contract, the proportion of the end of year payment payable under subsection (1) shall, notwithstanding that a day is so specified, become due to the employee-

(a) on the day on which the contract of employment terminates; or

(b) in the case of a proportion of an end of year payment that falls to be calculated by reference to any profits of the employer, on the day on which the profits of the employer are ascertained, and shall be paid as soon as is practicable but in any case not later than 7 days after that day.

(Part IIA added 48 of 1984 s. 6)

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|----------|----|----------|-------------------------|--------------------|------------|
| Chapter: | 57 | Title: | EMPLOYMENT ORDINANCE | Gazette Number: | |
| Section: | 25 | Heading: | Payment on termination | Version Date: | 30/06/1997 |

(1) Subject to section 31O, where a contract of employment is terminated any sum due to the employee shall be paid to him as soon as is practicable and in any case not later than 7 days after the day of termination. (Amended 44 of 1971 s. 4; 67 of 1974 s. 4)

(2) The sum referred to in subsection (1) shall be-

(a) the equivalent of the amount earned by the employee for work done over the period commencing on the expiry of his wage period next preceding the time of termination up to that time;

(b) the sum (if any) payable under sections 7 and 33(4BA); (Amended 57 of 1983 s. 4; 76 of 1985 s. 3; 103 of 1995 s. 7)

(ba) any long service payment due to the employee; and (Added 76 of 1985 s. 3. Amended L.N. 34 of 1990)

(c) any other sum due to the employee in respect of his contract of employment.

(3) In addition to any deduction which may be made under section 32, and subject to any order made by a court, an employer may deduct from any sum payable under subsection (1) to an employee who terminates his employment otherwise than under section 6, 7 or 10 such sum as the employee would have been liable to pay if he had terminated his employment under section 7. (Replaced 44 of 1971 s. 4. Amended 14 of 1975 s. 3; 48 of 1984 s. 12)

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Chapter: 57 Title: EMPLOYMENT Gazette
ORDINANCE Number:
Section: 32Q Heading: Exclusion Version Date: 30/06/1997

This Part shall not apply to acts of-

- (a) sex discrimination within the meaning of the Sex Discrimination Ordinance (Cap 480);
- (b) discrimination against persons on the ground of their or their associates' disability within the meaning of the Disability Discrimination Ordinance (Cap 487).

(Added 75 of 1997 s. 4)

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Chapter: 57 Title: EMPLOYMENT Gazette Number:
ORDINANCE
Section: 33 Heading: Sickness allowance Version Date: 30/06/1997

PART VII

SICKNESS ALLOWANCE

(1) An employee who has been employed by his employer under a continuous contract for a period of 1 month or more immediately preceding a sickness day shall be paid by his employer sickness allowance in accordance with this section and section 35. (Amended 1 of 1977 s. 2; 48 of 1984 s. 14)

(2) Subject to subsection (2A), an entitlement to sickness allowance shall accrue at the rate of-

(a) 2 paid sickness days for each completed month of the employee's employment under the continuous contract with his employer during the first 12 months of such employment; and

(b) 4 paid sickness days for each such month thereafter, and may be accumulated from time to time up to a maximum of 120 paid sickness days. (Replaced 57 of 1983 s. 5)

(2A) In the case of an employee who has been employed by his employer under a continuous contract for a period of 1 month or more immediately preceding the commencement* of the Employment (Amendment) Ordinance 1983 (57 of 1983), the employee's entitlement to sickness allowance shall, with effect from and without prejudice to the entitlement to sickness allowance accrued at such commencement, accrue at the rate prescribed by subsection (2) as amended by that Ordinance, and his employment for part of a month (if any) at such commencement shall be taken into account in calculating his entitlement to sickness allowance under and at the rate prescribed by that subsection. (Added 57 of 1983 s. 5)

(3) Subject to subsection (3C), an employee who takes less than 4 consecutive days as sickness days shall not be entitled to be paid sickness allowance in respect thereof. (Amended 22 of 1981 s. 7)

(3A) Where a female employee who is pregnant or who has given birth to a child and who is required to attend a medical examination in relation to her pregnancy or post confinement medical treatment, any day on which she is absent from work for such examination or treatment shall be a sickness day. (Added 22 of 1981 s. 7)

(3B) Where a female employee suffers a miscarriage, any day on which she is absent from work by reason of such miscarriage shall be a sickness day. (Added 22 of 1981 s. 7)

(3C) A female employee who has an entitlement to a sickness allowance under this section shall, notwithstanding subsection (3), be paid sickness allowance for every sickness day under subsection (3A) or (3B), and subsections (4), (4A), (5), (5A) and (7) shall apply to any such sickness day and sickness allowance in respect thereof. (Added 22 of 1981 s. 7. Amended 57 of 1983 s. 5)

(4) Subject to subsections (5) and (5A), an employee who takes 4 or more consecutive days as sickness days shall be entitled to be paid sickness allowance for the total number of sickness days taken by him, but not exceeding the number of paid sickness days accumulated by him, under subsections (2) and (2A), immediately before the commencement of the sickness days taken. (Replaced 57 of 1983 s. 5)

(4A) The number of sickness days in respect of which an employee has been paid sickness allowance under subsection (4) shall be deducted in accordance with section 37(1B) from the total number of paid sickness days accumulated by him. (Added 57 of 1983 s. 5)

(4B) No employer shall terminate a contract of employment of an employee under section 6 or 7 on any sickness day taken by the employee in respect of which sickness allowance is payable under this section. (Replaced 103 of 1995 s. 13)

(4BA) An employer who contravenes subsection (4B) shall be liable to pay to the dismissed employee-

- (a) the sum which would have been payable if the contract had been terminated by the employer under section 7; and
- (b) a further sum equivalent to the amount of wages which would have been accrued to the employee during a period of 7 days. (Added 103 of 1995 s. 13)
- (4BB) An employer who contravenes subsection (4B) shall be guilty of an offence and shall be liable on conviction to a fine at level 6. (Added 103 of 1995 s. 13)
- (4C) Where an employer terminates a contract of employment of an employee on any sickness day taken by the employee, the employer shall, notwithstanding the termination of the contract of employment, pay to the employee sickness allowance for the total number of sickness days in respect of which the employee would have been entitled to be paid sickness allowance under subsection (4), and subsections (5), (5A) and (7) shall apply to any such sickness day and sickness allowance in respect thereof as if the contract of employment had not been terminated. (Added 57 of 1983 s. 5)
- (5) An employer shall not be liable to pay sickness allowance to an employee in respect of any sickness day-
- (a) subject to subsection (5A), unless such day is a day specified in the appropriate medical certificate as a day on which, in the opinion of the medical practitioner or registered dentist by whom the certificate is issued, the employee was, is or will be, as the case may be, unfit for work on account of sickness or injury; (Amended 57 of 1983 s. 5; 5 of 1995 s. 9)
- (b) if, where the employer is operating a recognized scheme of medical treatment, the employee, at any time during the sickness or injury, unless he is a patient in a hospital, refuses without reasonable excuse to submit himself for treatment by the medical practitioner or registered dentist employed by the employer for the purposes of the scheme; (Amended 57 of 1983 s. 5; 5 of 1995 s. 9)
- (c) if, where the employer is operating a recognized scheme of medical treatment, the employee, having submitted himself for treatment by the medical practitioner or registered dentist employed by the employer for the purposes of the scheme or being a patient in a hospital, at any time during the sickness or injury, without reasonable excuse, disregards the advice of such medical practitioner or registered dentist or the advice of the medical practitioner or registered dentist by whom he is being attended in the hospital; (Amended 57 of 1983 s. 5; 5 of 1995 s. 9)
- (d) if the unfitness for work of the employee is caused by his serious and wilful misconduct;
- (e) if the unfitness for work of the employee is on account of an injury or occupational disease in respect of which compensation is payable in accordance with the Employees' Compensation Ordinance (Cap 282);
- (f) in respect of which the employee has received holiday pay.
- (5A) Where an employee takes paid sickness days entered in category 2 of the record kept in respect of him under section 37(1A), he shall, if so required by his employer, produce to the employer, in respect of each such sickness day, a medical certificate that is issued by a medical practitioner or registered dentist attending the employee as an out-patient or in-patient in a hospital. (Added 57 of 1983 s. 5. Amended 5 of 1995 s. 9)
- (6) For the purposes of this section-
- (a) the expression "hospital" (醫院) means a hospital or specialist clinic maintained by the Crown, a public hospital within the meaning of the Hospital Authority Ordinance 1990 (68 of 1990) or a hospital in respect of which a person is registered under the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap 165); (Amended 81 of 1991 s. 2)
- (b) in subsection (5)(a), the expression "appropriate medical certificate" (適當的醫生證明書) means-
- (i) where, on the day on which the certificate is issued, the employer is operating a recognized scheme of medical treatment, a certificate issued by the medical practitioner or registered dentist employed by the employer for the purposes of the scheme; (Amended 5 of 1995 s. 9)
- (ii) where, on the day on which the certificate is issued, the employee is a patient in a hospital, a certificate issued by the medical practitioner or registered dentist attending the employee in the hospital; (Amended 5 of 1995 s. 9)
- (iii) in any other cases, a certificate issued by any medical practitioner or registered dentist. (Replaced 57 of 1983 s. 5. Amended 5 of 1995 s. 9)
- (7) Every medical certificate shall, in addition to specifying the number of days on which, in the opinion of the medical practitioner or registered dentist by whom it is issued, the employee was, is or will be, as the case may be, unfit for work, specify the nature of the sickness or injury on account of which, in the opinion of the medical practitioner or registered dentist, the employee was, is or will be, as the case may be, unfit for work and, in the case of a medical certificate produced by an employee for the purposes of subsection (5A), the medical certificate shall, if so required by his employer, contain or be accompanied by a brief record of the investigation carried out and the treatment prescribed by the medical practitioner or registered dentist. (Amended 57 of 1983 s. 5; 5 of 1995 s. 9)

* 1.11.1983-L.N. 349 of 1983.

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| ▼ | Chapter: | 57 | Title: | EMPLOYMENT ORDINANCE | Gazette Number: | 35 of 1998 s. 5 |
| | Section: | 39 | Heading: | Grant of holidays | Version Date: | 18/09/1998 |

PART VIII

HOLIDAYS WITH PAY

(1) Subject to subsections (1A), (2) and (3), an employee shall be granted a statutory holiday by his employer on each of the following days*-

(a) Lunar New Year's Day or, if that day falls on a Sunday, then the day immediately preceding Lunar New Year's Day; (Amended 27 of 1982 s. 2)

(b) the second day of Lunar New Year or, if that day falls on a Sunday, then the day immediately preceding Lunar New Year's Day;

(c) the third day of Lunar New Year or, if that day falls on a Sunday, then the day immediately preceding Lunar New Year's Day;

(d) Ching Ming (清明) Festival;

(da) Labour Day, being the first day of May; (Added 100 of 1997 s. 2. Amended 35 of 1998 s. 5)

(e) Tuen Ng (端午) Festival; (Amended 35 of 1998 s. 5)

(f) the day following the Chinese Mid-Autumn (中秋) Festival or, if that day falls on a Sunday, the Chinese Mid-Autumn Festival Day; (Amended 27 of 1982 s. 2);

(g) the Chung Yeung (重陽) Festival;

(h) the Chinese Winter Solstice Festival (冬節) or Christmas Day, at the option of the employer;

(i) the first day of January; (Replaced 53 of 1976 s. 2)

(j) Hong Kong Special Administrative Region Establishment Day, being the first day of July; and (Added 137 of 1997 s. 3. Amended 35 of 1998 s. 5)

(k) National Day, being the first day of October. (Added 137 of 1997 s. 3. Amended 35 of 1998 s. 5)

(1A) The operation of subsection (1)(da) shall be suspended for the year 1998. (Added 137 of 1997 s. 3)

(2) An employer may, instead of granting an employee a holiday on a statutory holiday, grant the employee an alternative holiday on another day (which is not a statutory holiday or a substituted holiday) within the period of 60 days immediately preceding or next following the statutory holiday, if the employer has notified the employee, either orally or in writing or by notice posted in a conspicuous place in the place of employment, of the day on which he will be granted the alternative holiday-

(a) where the alternative holiday is to be taken on a day within the period of 60 days immediately preceding the statutory holiday, not less than 48 hours before that day; or

(b) where the alternative holiday is to be taken on a day within the period of 60 days next following the statutory holiday, not less than 48 hours before the statutory holiday.

(2A) Subsection (2) shall apply to and in relation to a holiday under subsection (4) as it applies to and in relation to a statutory holiday. (Added 137 of 1997 s. 3)

(3) An employer and his employee may agree that another day shall be substituted for a statutory holiday or an alternative holiday or a holiday under subsection (4), if such substituted holiday falls within the period of 30 days of such statutory holiday, alternative holiday or holiday under subsection (4). (Amended 27 of 1982 s. 2)

(4) Where-

(a) a statutory holiday falls on a rest day, or in the case of an employee who is a young person, on a day

on which, by virtue of the Women and Young Persons (Industry) Regulations (Cap 57 sub. leg.), the employment of the employee in an industrial undertaking is not allowed, the employee shall be granted a holiday on the next day thereafter which is not a statutory holiday or an alternative holiday or a substituted holiday or a rest day; or

(b) a statutory holiday falls on the same day as that of another statutory holiday, an employee shall be granted a holiday on the next day thereafter which is not a statutory holiday or an alternative holiday or a substituted holiday or a rest day. (Replaced 137 of 1997 s. 3)

#(5)-(9) (Repealed 137 of 1997 s. 3)

(Amended 53 of 1976 s. 2; 137 of 1997 s. 3)

* For additional statutory holidays in 1981, 1986 and 1997, see 39 of 1981, 35 of 1986, 84 of 1997 and s. 2(1) of 111 of 1997.

For savings provisions, please see s. 6 of 137 of 1997.

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Chapter: 57 Title: EMPLOYMENT Gazette
ORDINANCE Number:
Section: 72 Heading: Powers of officers Version Date: 30/06/1997

(1) The Commissioner, or any public officer authorized by the Commissioner in writing for the purpose and on production of that authority, may-

(a) subject to subsection (2), enter, inspect and examine at all reasonable times, by day and night, any premises or place, in which he knows or has reasonable cause to believe that persons are employed;

(b) require the production of any register, record, form or other document required to be kept under this Ordinance and inspect, examine and copy the same;

(c) make such examination and inquiry as may be necessary to ascertain whether the requirements of this Ordinance are complied with, and seize anything which may appear to be evidence of an offence against this Ordinance;

(d) examine, either alone or in the presence of any other person, as he thinks fit, respecting matters under this Ordinance, any person whom he finds in any industrial undertaking within the meaning of the Factories and Industrial Undertakings Ordinance (Cap 59), or whom he has reasonable cause to believe has been within the preceding 2 months employed in any industrial undertaking within the meaning of the Factories and Industrial Undertakings Ordinance (Cap 59), or require any such person to be so examined and to sign a declaration of the truth of the matters respecting which he has been so examined; (Added 10 of 1980 s. 6)

(e) require any person who employs or has employed any woman, young person or child in an industrial undertaking within the meaning of the Factories and Industrial Undertakings Ordinance (Cap 59) or any agent or servant of any such employer to give to him all information in the possession of such person, agent or servant with reference to such woman, young person or child and to the labour conditions and treatment of every woman, young person or child employed by such employer; (Added 10 of 1980 s. 6)

(f) require the posting up, in such place and manner and for such period as he may direct, of any notice or form in connection with the provisions of this Ordinance or of any Ordinance specified in the Fourth Schedule; (Added 10 of 1980 s. 6. Amended 48 of 1984 s. 31)

(g) exercise any other powers which may be conferred on him by any regulations made under this Ordinance. (Added 10 of 1980 s. 6)

(2) No premises or part of a premises which is used for dwelling purposes shall be entered under subsection (1) except by virtue of a warrant issued by a magistrate, where such magistrate is satisfied by information on oath that there is reasonable ground for suspecting that an offence against this Ordinance has been, is being or is about to be committed in such premises or part or that there is in such premises or part anything likely to be or contain evidence of such offence.

(3) An officer exercising any power conferred on him by subsection (1) in relation to any industrial undertaking within the meaning of the Factories and Industrial Undertakings Ordinance (Cap 59) may take with him any person whom he may reasonably need to assist him in carrying out his duties under this Ordinance and in particular may, for his assistance, take persons who have been engaged by the Commissioner, on account of their special expertise, to advise the Labour Department on any matters necessary for carrying out the purposes of this Ordinance. (Added 10 of 1980 s. 6)

(4) A person who accompanies an officer pursuant to subsection (3)-

(a) may give to the officer such assistance in the exercise of any power conferred on him by subsection (1) as the officer may reasonably require;

(b) shall be deemed to be a public officer for the purposes of sections 72A and 72B. (Added 10 of 1980 s. 6)

(Added 55 of 1979 s. 2)

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▼
Chapter: 57 Title: EMPLOYMENT Gazette
ORDINANCE Number:
Section: 72C Heading: Presumptions Version Version Date: 30/06/1997

In any prosecution under this Ordinance-

(a) where the age of any person at any time is material for the purposes of any provision of this Ordinance, his age at the material time shall be deemed to be or have been that which appears to the court or magistrate, after considering any available evidence, to be or to have been his age at that time;

(b) if the charge alleges the contravention of any of the provisions of this Ordinance prohibiting or controlling the employment of women, young persons or children and the defendant in such prosecution is the employer at the place of employment in or in respect of which the offence is alleged to have been committed, it shall, until the contrary is proved, be presumed that any woman, young person or child to whom the charge relates and who was employed in the place of employment on the day on which the offence is alleged to have been committed was employed therein on that day by such employer.

(Added 10 of 1980 s. 7)

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| Chapter: | 57 | Title: | EMPLOYMENT ORDINANCE | Gazette Number: | 56 of 2000 |
| Section: | 73 | Heading: | Regulations | Version Date: | 01/07/1997 |

Remarks:

Adaptation amendments retroactively made - see 56 of 2000 s. 3

(1) The Chief Executive in Council may make regulations for all or any of the following purposes-
(Amended 56 of 2000 s. 3)

(a) prohibiting or controlling the employment of persons or any class of persons in any industry, occupation or trade;

(b) requiring records to be kept and forms to be maintained in respect of employees or any class of employees employed in any industry, occupation or trade;

(c) imposing obligations for securing compliance with the provisions of this Ordinance upon employers, their agents or servants, and upon employees;

(d) imposing duties and liabilities on employers and employees;

(e) defining the functions, duties and powers of public officers appointed or authorized for the purposes of this Ordinance;

(f) exempting any industry, occupation or trade, or any class or part of any industry, occupation or trade, from the operation of this Ordinance or any provision thereof;

(g) providing that this Ordinance or any provision thereof shall not apply, or may be modified, in relation to any class of persons;

(h) (Repealed 56 of 2000 s. 3)

(ha) providing that, where the Commissioner is satisfied that work in any industrial undertaking within the meaning of the Factories and Industrial Undertakings Ordinance (Cap 59), or class or description thereof, is subject to seasonal or other special pressure, he may by order published in the Gazette as respects any such industrial undertaking, or class or description thereof, increase for any employee during any period of such pressure the hours of work, period of employment or hours of overtime employment specified in relation to that employee in regulations made under this Ordinance for a period in any year not exceeding that specified in the order; (Added 10 of 1980 s. 8)

(hb) providing that-

(i) any document purporting to be a copy of any document or notice and purporting to be signed by a person or his duly authorized agent shall be admitted in evidence in proceedings before any court or magistrate on its production by a public officer without further proof; and

(ii) until the contrary is proved, the court or magistrate before which such document is produced shall presume that the document is a true copy and that it is signed by that person or his duly authorized agent; and

(iii) the document shall be conclusive evidence of the facts stated therein; (Added 10 of 1980 s. 8)

(hc) providing that any person who works in any place of employment at any kind of work whatsoever incidental to or connected with the process, trade or business for which the place of employment is used shall, save as may be provided otherwise in the regulations, be deemed to be employed therein for the purposes of any regulations made under this Ordinance or of any proceedings thereunder; (Added 10 of 1980 s. 8)

(i) generally, carrying into effect the provisions of this Ordinance.

(2) The Commissioner may in writing, in such cases as he thinks fit and for such period and subject to such conditions as he may specify, exempt any person or class of persons from any regulations made

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Chapter: 57C Title: WOMEN AND YOUNG PERSONS (INDUSTRY) REGULATIONS Gazette Number:
Heading: Empowering section Version Date: 30/06/1997

(Cap 57, section 73)

[1 July 1980]

(L.N. 86 of 1980)

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Chapter: 57C Title: WOMEN AND YOUNG PERSONS (INDUSTRY) REGULATIONS Gazette Number:
Regulation: 1 Heading: Citation Version Date: 30/06/1997

These regulations may be cited as the Women and Young Persons (Industry) Regulations.

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