

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 "sections 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-

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(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 forms 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).