

LC Paper No. CB(2) 1430/06-07(01)

**COMMITTEE STAGE AMENDMENTS**  
**EMPLOYMENT (AMENDMENT) BILL 2006**

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**COMMITTEE STAGE**

Amendments to be moved by the Secretary for Economic  
Development and Labour

<u>Clause</u>	<u>Amendment Proposed</u>
3	<p>(a) By deleting the proposed section 7(1A)(a) and substituting -</p> <p>“(a) any period in the period of 12 months or shorter period for which the employee was not paid his wages or full wages by reason of -</p> <ul style="list-style-type: none"><li>(i) any rest day, holiday or annual leave taken by the employee;</li><li>(ii) any maternity leave or sickness day taken by the employee;</li><li>(iii) his absence from work due to temporary incapacity for which compensation is payable under section 10 of the Employees’ Compensation Ordinance</li></ul>

(Cap. 282);

(iv) any leave taken by the employee with the agreement of his employer; or

(v) his not being provided by his employer with work on any normal working day; and".

(b) In the proposed section 7(1A)(b), by deleting "or other sum".

(c) By adding immediately after the proposed section 7(1A) -

"(1AA) For the avoidance of doubt, where an employee is paid wages in respect of any period described in subsection (5)(b), (c), (d) or (e), if the amount of the wages is less than the amount earned by the employee on a normal working day, the wages and the period are to be disregarded in accordance with subsection (1A)."

(d) In the proposed section 7(1B), by adding "a person who was employed at the same work by the same employer during the period of 12 months immediately before the date of notification, or, if there is no such person, by" after "by reference to the wages earned by".

(e) By adding -

"(3) Section 7 is amended by adding -

"(5) For the purposes of subsections (1) and (1A), "wages" (工資) includes any sum paid by an employer in respect of the following periods -

- (a) any rest day, holiday or annual leave taken by the employee;
- (b) any maternity leave or sickness day taken by the employee;
- (c) any period of absence from work of the employee due to temporary incapacity for which

compensation is payable under section 10 of the Employees' Compensation Ordinance (Cap. 282);

(d) any leave taken by the employee with the agreement of his employer;

(e) any normal working day on which the employee is not provided with work."."

5 (a) By deleting the proposed section 11A(3)(a) and substituting -

"(a) any period in the period of 12 months or shorter period for which the employee was not paid his wages or full wages by reason of -

(i) any rest day, holiday or annual leave taken by the employee;

(ii) any maternity leave or

sickness day taken by the employee;

(iii) his absence from work due to temporary incapacity for which compensation is payable under section 10 of the Employees' Compensation Ordinance (Cap. 282);

(iv) any leave taken by the employee with the agreement of his employer; or

(v) his not being provided by his employer with work on any normal working day; and".

(b) In the proposed section 11A(3)(b), by deleting "or other sum".

(c) By adding immediately after the proposed section 11A(3) -

"(3A) For the avoidance of doubt, where an employee is paid wages in respect of any period described in subsection (5)(b), (c), (d) or (e), if

the amount of the wages is less than the amount earned by the employee on a normal working day, the wages and the period are to be disregarded in accordance with subsection (3).".

(d) In the proposed section 11A(4), by adding "a person who was employed at the same work by the same employer during the period of 12 months immediately before the due day, or, if there is no such person, by" after "by reference to the wages earned by".

(e) By adding after the proposed section 11A(4) -

"(5) For the purposes of subsections (2) and (3), "wages" ( 工資 ) includes any sum paid by an employer in respect of the following periods -

- (a) any rest day, holiday or annual leave taken by the employee;
- (b) any maternity leave or sickness day taken by the employee;
- (c) any period of absence from

work of the employee due to temporary incapacity for which compensation is payable under section 10 of the Employees' Compensation Ordinance (Cap. 282);

- (d) any leave taken by the employee with the agreement of his employer;
- (e) any normal working day on which the employee is not provided with work."

6

- (a) In the proposed section 14(3)(b), by deleting "the shorter period." and substituting -

"the shorter period, but no maternity leave pay is payable in respect of a day on which the female employee would not have worked had she not been on maternity leave and for which no wages would normally be payable by the employer."

- (b) By deleting the proposed section



14 (3A) (a) and substituting -

- "(a) any period in the period of 12 months or shorter period for which the employee was not paid her wages or full wages by reason of -
- (i) any rest day, holiday or annual leave taken by the employee;
  - (ii) any maternity leave or sickness day taken by the employee;
  - (iii) her absence from work due to temporary incapacity for which compensation is payable under section 10 of the Employees' Compensation Ordinance (Cap. 282);
  - (iv) any leave taken by the employee with the agreement of his employer; or
  - (v) her not being provided by her employer with work on any normal working day;

and”.

(c) In the proposed section 14(3A)(b), by deleting “or other sum”.

(d) By adding immediately after the proposed section 14(3A) -

“(3AA) For the avoidance of doubt, where an employee is paid wages in respect of any period described in subsection (8)(b), (c), (d) or (e), if the amount of the wages is less than the amount earned by the employee on a normal working day, the wages and the period are to be disregarded in accordance with subsection (3A).”.

(e) In the proposed section 14(3B), by adding “a female person who was employed at the same work by the same employer during the period of 12 months immediately before the date of commencement of the employee’s maternity leave, or, if there is no such person, by” after “by reference to the wages earned by”.

(f) In the proposed section 14(7), by adding “by her employer” after “is paid”.

(g) By adding after the proposed section

14 (7) -

"(8) For the purposes of subsections (3) and (3A), "wages" ( 工資 ) includes any sum paid by an employer in respect of the following periods -

- (a) any rest day, holiday or annual leave taken by the employee;
- (b) any maternity leave or sickness day taken by the employee;
- (c) any period of absence from work of the employee due to temporary incapacity for which compensation is payable under section 10 of the Employees' Compensation Ordinance (Cap. 282);
- (d) any leave taken by the employee with the agreement of her employer;
- (e) any normal working day on which the employee is not provided with work."

7

(a) By deleting the proposed section

15(2A)(a) and substituting -

"(a) any period in the period of 12 months or shorter period for which the employee was not paid her wages or full wages by reason of -

(i) any rest day, holiday or annual leave taken by the employee;

(ii) any maternity leave or sickness day taken by the employee;

(iii) her absence from work due to temporary incapacity for which compensation is payable under section 10 of the Employees' Compensation Ordinance (Cap. 282);

(iv) any leave taken by the employee with the agreement of his employer; or

(v) her not being provided by

her employer with work on  
any normal working day;  
and".

(b) In the proposed section 15(2A)(b), by  
deleting "or other sum".

(c) By adding immediately after the proposed  
section 15(2A) -

"(2AA) For the avoidance of doubt,  
where an employee is paid wages in  
respect of any period described in  
subsection (3)(b), (c), (d) or (e), if  
the amount of the wages is less than the  
amount earned by the employee on a normal  
working day, the wages and the period are  
to be disregarded in accordance with  
subsection (2A)."

(d) In the proposed section 15(2B), by adding  
"a female person who was employed at the  
same work by the same employer during the  
period of 12 months immediately before  
the date of termination of the employee's  
contract of employment, or, if there is  
no such person, by" after "by reference  
to the wages earned by".

(e) By deleting clause 7(3) and substituting -

"(3) Section 15(3) is repealed and substituted by -

"(3) For the purposes of subsections (2)(b) and (2A), "wages" (工資) includes any sum paid by an employer in respect of the following periods -

- (a) any rest day, holiday or annual leave taken by the employee;
- (b) any maternity leave or sickness day taken by the employee;
- (c) any period of absence from work of the employee due to temporary incapacity for which compensation is payable under section 10 of the Employees' Compensation Ordinance (Cap. 282);

- (d) any leave taken by the employee with the agreement of her employer;
- (e) any normal working day on which the employee is not provided with work."."

8 In the proposed section 15AA(8), by adding "or monthly average (as appropriate)" after "daily average".

- 9 (a) By deleting the proposed section 33(4BAAA)(a) and substituting -
- "(a) any period in the period of 12 months or shorter period for which the employee was not paid his wages or full wages by reason of -
    - (i) any rest day, holiday or annual leave taken by the employee;
    - (ii) any maternity leave or sickness day taken by the

employee;

(iii) his absence from work due to temporary incapacity for which compensation is payable under section 10 of the Employees' Compensation Ordinance (Cap. 282);

(iv) any leave taken by the employee with the agreement of his employer; or

(v) his not being provided by his employer with work on any normal working day; and".

(b) In the proposed section 33(4BAAA)(b), by deleting "or other sum".

(c) By adding immediately after the proposed section 33(4BAAA) -

"(4BAAAA) For the avoidance of doubt,

where an employee is paid wages in

respect of any period described in

subsection (8)(b), (c), (d) or (e), if

the amount of the wages is less than the



amount earned by the employee on a normal working day, the wages and the period are to be disregarded in accordance with subsection (4BAAA)."

(d) In the proposed section 33(4BAAB), by adding "a person who was employed at the same work by the same employer during the period of 12 months immediately before the date of termination of the employee's contract of employment, or, if there is no such person, by" after "by reference to the wages earned by".

(e) By adding -

"(3) Section 33 is amended by adding -

"(8) For the purposes of subsections (4BA)(b) and (4BAAA), "wages" ( 工資 ) includes any sum paid by an employer in respect of the following periods -

(a) any rest day, holiday or annual leave taken by the employee;

(b) any maternity leave or sickness day taken

- by the employee;
- (c) any period of absence from work of the employee due to temporary incapacity for which compensation is payable under section 10 of the Employees' Compensation Ordinance (Cap. 282);
  - (d) any leave taken by the employee with the agreement of his employer;
  - (e) any normal working day on which the employee is not provided with work."."

10

- (a) In the proposed section 35(1)(b), by deleting "the shorter period." and substituting -  
"the shorter period,

but no sickness allowance is payable in respect of a day on which the employee would not have worked had he not been sick and for which no wages would normally be payable by the employer.”.

(b) By deleting the proposed section 35(2)(a) and substituting -

“(a) any period in the period of 12 months or shorter period for which the employee was not paid his wages or full wages by reason of -

- (i) any rest day, holiday or annual leave taken by the employee;
- (ii) any maternity leave or sickness day taken by the employee;
- (iii) his absence from work due to temporary incapacity for which compensation is payable under section 10 of the Employees’ Compensation Ordinance (Cap. 282);
- (iv) any leave taken by the

employee with the  
agreement of his employer;  
or

(v) his not being provided by  
his employer with work on  
any normal working day;  
and".

(c) In the proposed section 35(2)(b), by  
deleting "or other sum".

(d) By adding immediately after the proposed  
section 35(2) -

"(2AA) For the avoidance of  
doubt, where an employee is paid wages in  
respect of any period described in  
subsection (5)(b), (c), (d) or (e), if  
the amount of the wages is less than the  
amount earned by the employee on a normal  
working day, the wages and the period are  
to be disregarded in accordance with  
subsection (2)."

(e) In the proposed section 35(2A), by adding  
"a person who was employed at the same  
work by the same employer during the  
period of 12 months immediately before  
the employee's sickness day or first

sickness day (as appropriate), or, if there is no such person, by" after "by reference to the wages earned by".

(f) In the proposed section 35(4), by adding "by his employer" after "is paid".

(g) By adding after the proposed section 35(4) -

"(5) For the purposes of subsections (1) and (2), "wages" ( 工資 ) includes any sum paid by an employer in respect of the following periods -

- (a) any rest day, holiday or annual leave taken by the employee;
- (b) any maternity leave or sickness day taken by the employee;
- (c) any period of absence from work of the employee due to temporary incapacity for which compensation is payable under section 10 of the Employees' Compensation Ordinance (Cap. 282);

- (d) any leave taken by the employee with the agreement of his employer;
- (e) any normal working day on which the employee is not provided with work."

12

(a) By deleting the proposed section 41(2)(a) and substituting -

"(a) any period in the period of 12 months or shorter period for which the employee was not paid his wages or full wages by reason of -

- (i) any rest day, holiday or annual leave taken by the employee;
- (ii) any maternity leave or sickness day taken by the employee;
- (iii) his absence from work due to temporary incapacity for which compensation is payable under section 10 of the Employees' Compensation Ordinance

(Cap. 282);

(iv) any leave taken by the employee with the agreement of his employer; or

(v) his not being provided by his employer with work on any normal working day; and".

(b) In the proposed section 41(2)(b), by deleting "or other sum".

(c) By adding immediately after the proposed section 41(2) -

"(2A) For the avoidance of doubt, where an employee is paid wages in respect of any period described in subsection (5)(b), (c), (d) or (e), if the amount of the wages is less than the amount earned by the employee on a normal working day, the wages and the period are to be disregarded in accordance with subsection (2)".

(d) In the proposed section 41(3), by adding "a person who was employed at the same work by the same employer during the

period of 12 months immediately before the employee's holiday or first day of the holidays (as appropriate), or, if there is no such person, by" after "by reference to the wages earned by".

(e) In the proposed section 41(4), by adding "by his employer" after "is paid".

(f) By adding after the proposed section 41(4) -

"(5) For the purposes of subsections (1) and (2), "wages" (工資) includes any sum paid by an employer in respect of the following periods -

- (a) any rest day, holiday or annual leave taken by the employee;
- (b) any maternity leave or sickness day taken by the employee;
- (c) any period of absence from work of the employee due to temporary incapacity for which compensation is payable under section 10 of the Employees'



Compensation Ordinance

(Cap. 282);

- (d) any leave taken by the employee with the agreement of his employer;
- (e) any normal working day on which the employee is not provided with work."

14

(a) By deleting the proposed section 41C(2)(a) and substituting -

"(a) any period in the period of 12 months or shorter period for which the employee was not paid his wages or full wages by reason of -

- (i) any rest day, holiday or annual leave taken by the employee;
- (ii) any maternity leave or sickness day taken by the employee;
- (iii) his absence from work due to temporary incapacity for which compensation is payable under section 10

of the Employees'  
Compensation Ordinance  
(Cap. 282);

(iv) any leave taken by the  
employee with the  
agreement of his employer;  
or

(v) his not being provided by  
his employer with work on  
any normal working day;  
and".

(b) In the proposed section 41C(2)(b), by  
deleting "or other sum".

(c) By adding immediately after the proposed  
section 41C(2) -

"(2A) For the avoidance of doubt,  
where an employee is paid wages in  
respect of any period described in  
subsection (5)(b), (c), (d) or (e), if  
the amount of the wages is less than the  
amount earned by the employee on a normal  
working day, the wages and the period are  
to be disregarded in accordance with  
subsection (2)."

(d) In the proposed section 41C(3), by adding

"a person who was employed at the same work by the same employer during the period of 12 months immediately before the employee's day of annual leave, the first day of his annual leave or the date of termination of his contract of employment (as appropriate), or, if there is no such person, by" after "by reference to the wages earned by".

(e) In the proposed section 41C(4), by adding "by his employer" after "is paid".

(f) By adding after the proposed section 41C(4) -

"(5) For the purposes of subsections (1) and (2), "wages" (工資) includes any sum paid by an employer in respect of the following periods -

- (a) any rest day, holiday or annual leave taken by the employee;
- (b) any maternity leave or sickness day taken by the employee;
- (c) any period of absence from work of the employee due

to temporary incapacity  
for which compensation is  
payable under section 10  
of the Employees'  
Compensation Ordinance  
(Cap. 282);

- (d) any leave taken by the  
employee with the  
agreement of his employer;
- (e) any normal working day on  
which the employee is not  
provided with work."

New

By adding -

**"15A. Requirement to keep wage and  
employment records**

Section 49A(1) is amended by  
repealing "6 months" and substituting "12  
months"."

16

- (a) By renumbering the proposed section 75 as  
section 76.
- (b) In the proposed section 76(2)(c), by  
adding "or (4C)" after "section 33(4BA)".