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EMPLOYMENT (AMENDMENT) BILL 2006

COMMITTEE STAGE

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

<u>Clause</u>	<u>Amendment Proposed</u>
3(1)	<p>(a) By adding immediately before the proposed section 7(1) -</p> <p>“(1AA) For the purposes of subsections (1), (1A) and (1AAA), “wages” (工資) includes any sum paid by an employer in respect of -</p> <p>(a) a day of maternity leave, a rest day, a sickness day, a holiday or a day of annual leave taken by the employee;</p> <p>(b) a day of leave taken by the employee with the agreement of his employer;</p> <p>(c) a normal working day on which the employee is not provided with work;</p> <p>(d) a day of absence from work</p>

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

- (b) By deleting the proposed section 7(1A) and substituting -

"(1A) In calculating the daily average or monthly average of the wages earned by an employee during the period of 12 months or the shorter period -

- (a) any period therein for which the employee was not paid his wages or full wages by reason of -

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

(ii) any leave taken

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by the employee
with the
agreement of his
employer;

(iii) his not being
provided by his
employer with
work on any
normal working
day; or

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

(b) any wages paid to him for
the period referred to in
paragraph (a),

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are to be disregarded.”.

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

“(1AAA) For the avoidance of doubt, if the amount of the wages paid to an employee in respect of a day specified in subsection (1AA) is only a fraction of the amount earned by the employee on a normal working day, the wages and the day 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”.

5(3)

- (a) By adding immediately before the proposed section 11A(2) -

“(1A) For the purposes of subsections (2), (3) and (3A), “wages” (工資) includes any sum paid by an employer in respect of -

- (a) a day of maternity leave, a rest day, a sickness day, a holiday or a day of annual leave taken by the employee;
- (b) a day of leave taken by the employee with the agreement of his employer;
- (c) a normal working day on which the employee is not provided with work;
- (d) a day 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)."

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

"(3) In calculating the monthly average of the wages earned by an employee during the period of 12 months or the shorter period -

(a) any period therein for which the employee was not paid his wages or full wages by reason of -

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

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

(iii) his not being provided by his employer with work on any normal working day; or

(iv) his absence from work due to temporary

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

(b) any wages paid to him for
the period referred to in
paragraph (a),

are to be disregarded."

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

"(3A) For the avoidance of doubt, if
the amount of the wages paid to an
employee in respect of a day specified in
subsection (1A) is only a fraction of the
amount earned by the employee on a normal
working day, the wages and the day 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

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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".

6(1) (a) By adding immediately before the proposed section 14(3)-

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

- (a) a day of maternity leave, a rest day, a sickness day, a holiday or a day of annual leave taken by the employee;
- (b) a day of leave taken by the employee with the agreement of her employer;
- (c) a normal working day on which the employee is not provided with work;
- (d) a day 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).".

- (b) 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.".

- (c) By deleting the proposed section 14(3A) and substituting -

"(3A) In calculating the daily average of the wages earned by a female employee during the period of 12 months or the shorter period -

- (a) any period therein for which the employee was not paid her wages or full

wages by reason of -

- (i) any maternity leave, rest day, sickness day, holiday or annual leave taken by the employee;
- (ii) any leave taken by the employee with the agreement of her employer;
- (iii) her not being provided by her employer with work on any normal working day; or
- (iv) her absence from work due to temporary incapacity for which compensation is

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

(b) any wages paid to her for
the period referred to in
paragraph (a),

are to be disregarded."

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

"(3AA) For the avoidance of doubt, if
the amount of the wages paid to a female
employee in respect of a day specified in
subsection (2A) is only a fraction of the
amount earned by the employee on a normal
working day, the wages and the day are to
be disregarded in accordance with
subsection (3A)."

(e) In the proposed section 14(3B), by
deleting "female person" and substituting
"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 a person".

6(2) In the proposed section 14(7), by adding "by her employer" after "is paid".

7 By adding before subclause (1) -

"(1A) Section 15 is amended by adding -

"(1D) For the purposes of subsections (2)(b), (2A) and (2AA), "wages" (工資) includes any sum paid by an employer in respect of -

- (a) a day of maternity leave, a rest day, a sickness day, a holiday or a day of annual leave taken by the employee;
- (b) a day of leave taken by the employee with the agreement of her employer;
- (c) a normal working day on which the employee is not provided with work;

(d) a day 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).".".

7(2) (a) By deleting the proposed section 15(2A) and substituting -

"(2A) In calculating the monthly average of the wages earned by a female employee during the period of 12 months or the shorter period -

(a) any period therein for which the employee was not paid her wages or full wages by reason of -

(i) any maternity leave, rest day, sickness day, holiday or annual leave taken by the

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employee;

(ii) any leave taken
by the employee
with the
agreement of her
employer;

(iii) her not being
provided by her
employer with
work on any
normal working
day; or

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

(b) any wages paid to her for

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the period referred to in paragraph (a), are to be disregarded.”.

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

“(2AA) For the avoidance of doubt, if the amount of the wages paid to a female employee in respect of a day specified in subsection (1D) is only a fraction of the amount earned by the employee on a normal working day, the wages and the day are to be disregarded in accordance with subsection (2A).”.

(c) In the proposed section 15(2B), by deleting “female person” and substituting “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 a person”.

8

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

9

By adding before subclause (1) -

"(1A) Section 33 is amended by adding immediately after subsection (4B) -

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

- (a) a day of maternity leave, a rest day, a sickness day, a holiday or a day of annual leave taken by the employee;
- (b) a day of leave taken by the employee with the agreement of his employer;
- (c) a normal working day on which the employee is not provided with work;
- (d) a day 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).".".

- 9(2) (a) By deleting the proposed section 33(4BAAA) and substituting -
- "(4BAAA) In calculating the daily average of the wages earned by an employee during the period of 12 months or the shorter period -
- (a) any period therein for which the employee was not paid his wages or full wages by reason of -
- (i) any maternity leave, rest day, sickness day, holiday or annual leave taken by the employee;
- (ii) any leave taken by the employee with the agreement of his employer;

(iii) his not being provided by his employer with work on any normal working day; or

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

(b) any wages paid to him for the period referred to in paragraph (a),

are to be disregarded."

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

"(4BAAAA) For the avoidance of doubt,

if the amount of the wages paid to an employee in respect of a day specified in subsection (4BAAAA) is only a fraction of the amount earned by the employee on a normal working day, the wages and the day are to be disregarded in accordance with subsection (4BAAA)."

(c) 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".

10(1)

(a) By adding immediately before the proposed section 35(1) -

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

(a) a day of maternity leave,
a rest day, a sickness
day, a holiday or a day of

annual leave taken by the employee;

(b) a day of leave taken by the employee with the agreement of his employer;

(c) a normal working day on which the employee is not provided with work;

(d) a day 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).".

(b) 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.".

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

"(2) In calculating the daily average of the wages earned by an employee during the period of 12 months or the shorter period -

(a) any period therein for which the employee was not paid his wages or full wages by reason of -

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

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

(iii) his not being provided by his employer with

work on any
normal working
day; or

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

(b) any wages paid to him for
the period referred to in
paragraph (a),

are to be disregarded."

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

"(2AA) For the avoidance of doubt, if
the amount of the wages paid to an
employee in respect of a day specified in
subsection (1A) is only a fraction of the

amount earned by the employee on a normal working day, the wages and the day 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”.

10(3) In the proposed section 35(4), by adding “by his employer” after “is paid”.

12 (a) By adding immediately before the proposed section 41(1) -

“(1A) For the purposes of subsections (1), (2) and (2A), “wages” (工資) includes any sum paid by an employer in respect of -

- (a) a day of maternity leave, a rest day, a sickness day, a holiday or a day of

annual leave taken by the employee;

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

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

"(2) In calculating the daily average of the wages earned by an employee during the period of 12 months or the shorter period -

- (a) any period therein for which the employee was not paid his wages or full

wages by reason of -

- (i) any maternity leave, rest day, sickness day, holiday or annual leave taken by the employee;
- (ii) any leave taken by the employee with the agreement of his employer;
- (iii) his not being provided by his employer with work on any normal working day; or
- (iv) his absence from work due to temporary incapacity for which compensation is

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

(b) any wages paid to him for
the period referred to in
paragraph (a),

are to be disregarded."

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

"(2A) For the avoidance of doubt, if
the amount of the wages paid to an
employee in respect of a day specified in
subsection (1A) is only a fraction of the
amount earned by the employee on a normal
working day, the wages and the day 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".

14

(a) By adding immediately before the proposed section 41C(1) -

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

- (a) a day of maternity leave, a rest day, a sickness day, a holiday or a day of annual leave taken by the employee;
- (b) a day of leave taken by the employee with the agreement of his employer;
- (c) a normal working day on which the employee is not provided with work;
- (d) a day 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)."

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

"(2) In calculating the daily
average of the wages earned by an
employee during the period of 12 months
or the shorter period -

(a) any period therein for
which the employee was not
paid his wages or full
wages by reason of -

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

(ii) any leave taken
by the employee

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with the
agreement of his
employer;

(iii) his not being
provided by his
employer with
work on any
normal working
day; or

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

(b) any wages paid to him for
the period referred to in
paragraph (a),

are to be disregarded."

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

"(2A) For the avoidance of doubt, if the amount of the wages paid to an employee in respect of a day specified in subsection (1A) is only a fraction of the amount earned by the employee on a normal working day, the wages and the day 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".

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 proposed section 76.
- (b) In the proposed section 76(2)(c), by adding "or (4C)" after "section 33(4BA)".
- (c) In the proposed section 76(2), by adding -
"(ca) any sum payable to the employee
under section 40A(2);".