

EMPLOYMENT (AMENDMENT) ORDINANCE 2007**CONTENTS**

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HONG KONG SPECIAL ADMINISTRATIVE REGION**ORDINANCE No. 7 OF 2007**L.S.

Donald TSANG
Chief Executive
10 May 2007

An Ordinance to amend the Employment Ordinance to revise the modes of calculating payment in lieu of notice, damages for wrongful termination of contract, end of year payment, maternity leave pay, damages for wrongful termination of an employee's contract during her pregnancy, sickness allowance, damages for wrongful termination of an employee's contract on a sickness day taken by him, holiday pay and annual leave pay so as to provide that these payments are to be calculated on the basis of the average of the wages earned by the employee during the period of 12 months immediately before the specified dates; to clarify that where a sum of money is paid to an employee in respect of a period of maternity leave, a sickness day, a holiday or a day of annual leave, the related maternity leave pay, sickness allowance, holiday pay or annual leave pay payable is to be reduced by that sum; and for related purposes.

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Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Employment (Amendment) Ordinance 2007.

2. Commencement

This Ordinance shall come into operation on a day to be appointed by the Secretary for Economic Development and Labour by notice published in the Gazette.

3. Termination of contract by payment in lieu of notice

(1) Section 7(1) of the Employment Ordinance (Cap. 57) is repealed and the following substituted—

“(1) For the purposes of subsections (1A), (1B) and (1C), “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).

(1A) Subject to sections 15 and 33, 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) where the length of notice required to terminate the contract under section 6 is a period expressed in days or weeks, a sum calculated by multiplying the number of days in the period for which wages would normally be payable to the employee by the daily average of the wages earned by the employee during—
 - (i) the period of 12 months immediately before the date on which the party terminating the contract gives notice of the termination to the other party (“date of notification”); or
 - (ii) if the employee has been employed by the employer concerned for a period shorter than 12 months immediately before the date of notification, the shorter period; or
- (b) where the length of notice required to terminate the contract under section 6 is a period expressed in months, a sum calculated by multiplying the number of months required by the monthly average of the wages earned by the employee during—
 - (i) the period of 12 months immediately before the date of notification; or
 - (ii) if the employee has been employed by the employer concerned for a period shorter than 12 months immediately before the date of notification, the shorter period.

(1B) 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 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.

(1C) For the avoidance of doubt, if the amount of the wages paid to an employee in respect of a day specified in subsection (1) 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 (1B).

(1D) Despite subsection (1A), if for any reason it is impracticable to calculate the daily average or monthly average of the wages earned by an employee in the manner provided in that subsection, the amount may be calculated by reference to the wages earned by 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 a person who was employed in the same trade or occupation and at the same work in the same district during the period of 12 months immediately before the date of notification.”.

- (2) Section 7(3) is repealed.

4. Damages for wrongful termination of contract

(1) Section 8A(1) is amended by repealing “which would have accrued to the employee during the period of notice required by section 6” and substituting “that would have been payable had the contract been terminated in accordance with section 7”.

(2) Section 8A(2) is amended by repealing “equal to the amount of wages which would have accrued to the employee during the period of notice” and substituting “referred to in subsection (1)”.

(3) Section 8A is amended by adding—

“(3) For the purpose of calculating the sum referred to in subsection (1), where the party terminating the contract has not given notice of the termination to the other party, in calculating the daily average or monthly average of the wages earned by the employee in accordance with section 7, the reference in that section to the date on which the party terminating the contract gives notice of the termination to the other party or to the date of notification is to be construed as a reference to the date of termination of the contract.”.

5. Interpretation

(1) Section 11A is amended by renumbering it as section 11A(1).

(2) Section 11A(1) is amended by repealing the definition of “full month’s wages”.

(3) Section 11A is amended by adding—

“(2) For the purposes of subsections (3), (4) and (5), “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).

(3) In this Part, a reference to the full month’s wages of an employee is to be construed as a reference to the monthly average of the wages earned by the employee during—

- (a) the period of 12 months immediately before the day on which the end of year payment becomes due to the employee under section 11E(1) or (2) or the day on which the proportion thereof becomes due to the employee under section 11F(3) or (4) (as appropriate) (“due day”); or
- (b) if the employee has been employed by the employer concerned for a period shorter than 12 months immediately before the due day, the shorter period.

(4) 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 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.

(5) For the avoidance of doubt, if the amount of the wages paid to an employee in respect of a day specified in subsection (2) 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 (4).

(6) Despite subsection (3), if for any reason it is impracticable to calculate the monthly average of the wages earned by an employee in the manner provided in that subsection, the amount may be calculated by reference to the wages earned by 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 a person who was employed in the same trade or occupation and at the same work in the same district during the period of 12 months immediately before the due day.”.

6. Payment for maternity leave

(1) Section 14(3) is repealed and the following substituted—

“(3) For the purposes of subsections (3A), (3B) and (3C), “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).

(3A) Maternity leave pay payable under this section is to be calculated at four-fifths of the daily average of the wages earned by the female employee during—

- (a) the period of 12 months immediately before the date of commencement of her maternity leave; or
- (b) if the employee has been employed by the employer concerned for a period shorter than 12 months immediately before the date of commencement of her maternity leave, 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.

(3B) 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.

(3C) For the avoidance of doubt, if the amount of the wages paid to a female employee in respect of a day specified in subsection (3) 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 (3B).

(3D) Despite subsection (3A), if for any reason it is impracticable to calculate the daily average of the wages earned by a female employee in the manner provided in that subsection, the amount may be calculated by reference to the wages earned by a 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 who was employed in the same trade or occupation and at the same work in the same district during the period of 12 months immediately before the date of commencement of the employee's maternity leave."

(2) Section 14 is amended by adding—

"(7) If, pursuant to the terms of her contract of employment or any other agreement or for any other reason, a female employee is paid by her employer a sum of money in respect of any period of her maternity leave, the maternity leave pay payable to the employee in respect of that period is to be reduced by that sum."

7. Prohibition against termination of employment

(1) Section 15 is amended by adding—

"(1D) For the purposes of subsections (2)(b), (2A) and (2B), "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)."

(2) Section 15(2)(b) is repealed and the following substituted—

- "(b) a further sum equivalent to the monthly average of the wages earned by the employee during—
- (i) the period of 12 months immediately before the date of termination of the contract of employment; or
 - (ii) if the employee has been employed by the employer for a period shorter than 12 months immediately before the date of termination of the contract, the shorter period; and"

(3) Section 15 is amended by adding—

“(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 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.

(2B) 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).

(2C) Despite subsection (2)(b), if for any reason it is impracticable to calculate the monthly average of the wages earned by a female employee in the manner provided in that subsection, the amount may be calculated by reference to the wages earned by 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 a person who was employed in the same trade or occupation and at the same work in the same district during the period of 12 months immediately before the date of termination of the employee’s contract of employment.”.

(4) Section 15(3) is repealed.

8. Prohibition of assignment of heavy, hazardous or harmful work

Section 15AA(8) is repealed and the following substituted—

“(8) Despite any change in the earnings of the employee as a result of her transfer from heavy, hazardous or harmful work in accordance with this section, payment for maternity leave under section 14(3A) or payment for termination of employment under section 15(2)(a), (b) or (c) is to be calculated on the basis of the daily average or monthly average (as appropriate) of the wages earned by the employee during—

(a) the period of 12 months immediately before her transfer from heavy, hazardous or harmful work in accordance with this section; or

(b) if the employee has been employed by the employer concerned for a period shorter than 12 months immediately before her transfer from heavy, hazardous or harmful work in accordance with this section, the shorter period,

and those sections are to be construed accordingly.

(9) Where—

(a) an employee is transferred from heavy, hazardous or harmful work in accordance with this section; and

(b) section 7(1D), 14(3D) or 15(2C) is applicable in calculating the maternity leave pay or any payment for termination of employment under section 15 payable to the employee,

for the purpose of the calculation, the reference in section 7(1D), 14(3D) or 15(2C) to a person who was employed at the same work is to be construed as a reference to a person who was employed at the work performed by the employee immediately before her transfer.”.

9. Sickiness allowance

(1) Section 33 is amended by adding immediately after subsection (4B)—

“(4BAAA) For the purposes of subsections (4BA)(b), (4BAAB) and (4BAAC), “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).”.

(2) Section 33(4BA)(b) is repealed and the following substituted—

“(b) a further sum equivalent to 7 times the daily average of the wages earned by the employee during—

- (i) the period of 12 months immediately before the date of termination of the contract of employment; or
- (ii) if the employee has been employed by the employer for a period shorter than 12 months immediately before the date of termination of the contract, the shorter period.”.

(3) Section 33 is amended by adding immediately after subsection (4BA)—

“(4BAAB) 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.

(4BAAC) For the avoidance of doubt, if the amount of the wages paid to an employee in respect of a day specified in subsection (4BAAA) 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 (4BAAB).

(4BAAD) Despite subsection (4BA)(b), if for any reason it is impracticable to calculate the daily average of the wages earned by an employee in the manner provided in that subsection, the amount may be calculated by reference to the wages earned by 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 a person who was employed in the same trade or occupation and at the same work in the same district during the period of 12 months immediately before the date of termination of the employee’s contract of employment.”.

10. Rate of sickness allowance

(1) Section 35(1) and (2) is repealed and the following substituted—

“(1) For the purposes of subsections (2), (2A) and (2B), “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).

(2) The daily rate of sickness allowance is a sum equivalent to four-fifths of the daily average of the wages earned by the employee during—

- (a) the period of 12 months immediately before the sickness day or first sickness day (as appropriate); or
- (b) if the employee has been employed by the employer concerned for a period shorter than 12 months immediately before the sickness day or first sickness day (as appropriate), 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.

(2A) 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.

(2B) For the avoidance of doubt, if the amount of the wages paid to an employee in respect of a day specified in subsection (1) 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).

(2C) Despite subsection (2), if for any reason it is impracticable to calculate the daily average of the wages earned by an employee in the manner provided in that subsection, the amount may be calculated by reference to the wages earned by 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 a person who was employed in the same trade or occupation and at the same work in the same district during the period of 12 months immediately before the employee's sickness day or first sickness day (as appropriate)."

(2) Section 35(3) is amended by repealing everything after "in accordance with" and substituting "this section."

(3) Section 35 is amended by adding—

"(4) If, pursuant to the terms of his contract of employment or any other agreement or for any other reason, an employee is paid by his employer a sum of money in respect of a paid sickness day taken by him, the sickness allowance payable to the employee in respect of that sickness day is to be reduced by the sum."

11. Restriction on pay in lieu of holiday

Section 40A(2) is amended by repealing "section 41(1) or (2) whichever is applicable to the employee" and substituting "section 41".

12. Section substituted

Section 41 is repealed and the following substituted—

"41. Rate of holiday pay

(1) For the purposes of subsections (2), (3) and (4), "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).

(2) The daily rate of holiday pay is a sum equivalent to the daily average of the wages earned by the employee during—

- (a) the period of 12 months immediately before the holiday or first day of the holidays (as appropriate); or
- (b) if the employee has been employed by the employer concerned for a period shorter than 12 months immediately before the holiday or first day of the holidays (as appropriate), the shorter period.

(3) 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.

(4) For the avoidance of doubt, if the amount of the wages paid to an employee in respect of a day specified in subsection (1) 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).

(5) Despite subsection (2), if for any reason it is impracticable to calculate the daily average of the wages earned by an employee in the manner provided in that subsection, the amount may be calculated by reference to the wages earned by 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 a person who was employed in the same trade or occupation and at the same work in the same district during the period of 12 months immediately before the employee's holiday or first day of the holidays (as appropriate).

(6) If, pursuant to the terms of his contract of employment or any other agreement or for any other reason, an employee is paid by his employer a sum of money in respect of a holiday taken by him, the holiday pay payable to the employee in respect of that holiday is to be reduced by the sum.”.

13. Definitions (Part VIIIA)

Section 41A is amended in the definition of “notional leave pay” by repealing “by reference to the wages at the time of the actual termination” and substituting “in accordance with section 41C”.

14. Section substituted

Section 41C is repealed and the following substituted—

“41C. Rate of annual leave pay

(1) For the purposes of subsections (2), (3) and (4), “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).

(2) The daily rate of annual leave pay is a sum equivalent to the daily average of the wages earned by the employee during—

- (a) the period of 12 months immediately before the day of annual leave, the first day of the annual leave or the date of termination of the contract of employment (as appropriate);
- or

(b) if the employee has been employed by the employer concerned for a period shorter than 12 months immediately before the day of annual leave, the first day of the annual leave or the date of termination of the contract (as appropriate), the shorter period.

(3) 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.

(4) For the avoidance of doubt, if the amount of the wages paid to an employee in respect of a day specified in subsection (1) 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).

(5) Despite subsection (2), if for any reason it is impracticable to calculate the daily average of the wages earned by an employee in the manner provided in that subsection, the amount may be calculated by reference to the wages earned by 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 a person who was employed in the same trade or occupation and at the same work in the same district 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).

(6) If, pursuant to the terms of his contract of employment or any other agreement or for any other reason, an employee is paid by his employer a sum of money in respect of a day of annual leave taken by him, the annual leave pay payable to the employee in respect of that day of annual leave is to be reduced by the sum.”.

15. Ordinary wages instead of holiday pay, annual leave pay, maternity leave pay or sickness allowance

Section 42 is repealed.

16. Requirement to keep wage and employment records

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

17. Section added

The following is added—

“76. Application of this Ordinance as amended by the Employment (Amendment) Ordinance 2007

(1) This Ordinance as amended by the Employment (Amendment) Ordinance 2007 (7 of 2007) (“amending Ordinance”) applies to contracts of employment entered into on or after the date of commencement of the amending Ordinance (“commencement date”).

(2) Where an employee’s contract of employment was entered into before the commencement date and the date of termination of the contract falls on or after the commencement date, this Ordinance as amended by the amending Ordinance applies to the calculation of the following payments—

- (a) any payment in lieu of notice or sum payable by or to the employee under Part II;
- (b) any sum payable to the employee under section 15(2);
- (c) any sum payable to the employee under section 33(4BA) or (4C);
- (d) any sum payable to the employee under section 40A(2);
- (e) any sum payable to the employee under section 41D.

(3) Where an employee’s contract of employment was entered into before the commencement date and any end of year payment or proportion thereof payable to the employee under Part IIA becomes due on or after the commencement date, this Ordinance as amended by the amending Ordinance applies to the calculation of the end of year payment or proportion thereof.

(4) Where an employee's contract of employment was entered into before the commencement date and any maternity leave pay, sickness allowance, holiday pay or annual leave pay is payable by the employer to the employee in respect of a wage period the last day of which falls on or after the commencement date, this Ordinance as amended by the amending Ordinance applies to the calculation of the maternity leave pay, sickness allowance, holiday pay or annual leave pay.”.