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HONG KONG SPECIAL ADMINISTRATIVE REGION

ORDINANCE No. 7 OF 2001**L.S.**

TUNG Chee-hwa
Chief Executive
11 April 2001

An Ordinance 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.

[12 April 2001]

Enacted by the Legislative Council.

1. Short title

This Ordinance may be cited as the Employment (Amendment) Ordinance 2001.

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 is amended—

- (a) in subsection (1)—
 - (i) by repealing “subsection (1A)” and substituting “subsections (1A) and (1B)”;
 - (ii) by repealing paragraph (a) and substituting—
 - “(a) the contract of employment is terminated—
 - (i) at any time during the payment period; or
 - (ii) on the expiry of the payment period; or”;
- (b) by adding—
 - “(1B) Subsection (1)(a) shall not apply where a contract of employment is terminated—
 - (a) by the employee (except such a termination which is in accordance with section 10); or
 - (b) in accordance with 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 continuous contract of employment of a pregnant employee shall be taken for the purposes of subsection (1)(a) or (b) to terminate the contract otherwise than in accordance with section 9—

(a) unless the contrary is proved; or

(b) subject to subsection (1C), unless the employer proves that—

(i) he purported to terminate the contract in accordance with that section; and

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

(1C) Subsection (1B)(b) shall not apply in the case of civil proceedings.”;

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

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

“(4) 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.”.

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 continuous 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 be taken for the purposes of subsection (4B) to terminate the contract otherwise than in accordance with section 9—

(a) unless the contrary is proved; or

(b) subject to subsection (4BAB), unless the employer proves that—

(i) he purported to terminate the contract in accordance with that section; and

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

(4BAB) Subsection (4BAA)(b) shall not apply in the case of civil proceedings.”;

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

“(4BB) Any employer who contravenes subsection (4B) shall be guilty of an offence and shall be liable on conviction to a fine at level 6.”.

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.