

《 2016 年僱傭(修訂)條例草案 》 委員會審議階段修正案

本文件旨在介紹，本人計劃就《 2016 年僱傭(修訂)條例草案 》提出的 5 組委員會審議階段修正案。

第一組修正案(修訂第 4 條)

規定在僱主已聘用另一人永久替代被解僱僱員的情況下，在裁定作出復職或再次聘用令是否合理地切實可行時，除非僱主證明不聘用另一人並不切實可行，或在一段合理時間後不聘用另一人不再合理，否則法院或勞資審裁處不得考慮該項事實(建議的《僱傭條例》第 32N(3CA)條)。

第二組修正案(修訂第 5 條)

修訂如僱主沒有遵從復職或再次聘用令須支付的額外款項：

- (a) 由 50,000 元修訂為 100,000 元(修訂建議的第 32NA(1)(b)(i)條)；
- (b) 由平均月薪的 3 倍修訂為 6 倍(修訂建議的第 32NA(1)(b)(ii)條)；
- (c) 由(a)或(b)兩者較小的款額，修訂為較大者(修訂建議的第 32NA(1)(b)條)；
- (d) 由勞工處處長可藉憲報公告修改(a)項的款額，修訂為立法會可藉決議修改(修訂建議的第 32NA(3)條)。

第三組修正案(修訂第 4、8、14 及 18 條)

修訂在不理解僱的情況下，只需要僱員同意，法院或勞資審裁處仍可作出復職或再次聘用令(修訂建議的第 32N(3)(b)及(3B)條，以及刪去建議的第 32N(3A)條)。

第四組修正案(加入新增的 3A 及 6A 條，及修訂第 5 及 12 條)

修訂在不理解僱的情況下，僱員亦可獲《僱傭條例》第 32P 條指明的補償(加入新條文修訂《僱傭條例》第 32M(1)及 32P(1)條)。

第五組修正案(修訂第 3、4、7、8、9、10、11、12、14 及 18 條，及加入新增的第 5A 條)

修訂在作出復職或再次聘用令的情況下，如僱主已支付建議的第 32NA(1)條所述的款項，僱員無權強制執行該命令的其他條款的安排：

- (a) 僱員可選擇是否同意上述安排(建議的第 32N(3EA)條)；
- (b) 如僱員不同意，法院或勞資審裁處不得在將作出的復職或再次聘用令中，加入一項第 32N(4)(d)或(6)(g)條所述的條款(建議的第 32N(3EB)條)；
- (c) 在上述情況下，如僱主不遵從復職或再次聘用令，僱員可向法院或勞資審裁處提出申請，作出針對僱主的遵從命令(建議的第 32NC(3)條)；
- (d) 如法院或勞資審裁處裁斷，僱主沒有合理理由而不遵從復職或再次聘用令，須作出針對僱主的遵從命令(建議的第 32NC(9)條)；
- (e) 如法院或勞資審裁處裁斷，僱主有合理理由不遵從復職或再次聘用令，須作出命令更改原本的復職或再次聘用令，以加入一項第 32N(4)(d)或(6)(g)條所述的條款(建議的第 32NC(10)條)；
- (f) 如僱主不遵守遵從命令，僱員可向法院提出申請對僱主作出制裁(包括罰款、監禁及扣押財產)，或根據《高等法院規則》(第 4A 章)第 45 號命令強制執行該遵從命令(建議的第 32ND 條)。

李卓人議員辦事處
2016 年 6 月

《2016年僱傭(修訂)條例草案》

委員會審議階段

由李卓人議員動議的修正案

(第一組)

條次

建議修正案

- 4(1) 在建議的第 32N(3C)(b)條，在句首加入“除第(3CA)款另有規定外，”。
- 4(1) 在建議的第 32N(3C)條之後，加入——
- “**(3CA)** 如僱主已聘用另一人永久替代該僱員，法院或勞資審裁處為施行第(3B)款而裁定作出復職或再次聘用的命令是否合理地切實可行時，不得考慮該事實，除非——
- (a) 僱主證明，如不聘用另一人永久替代該僱員，僱主在安排辦理該僱員的工作方面，並非切實可行；或
- (b) 僱主證明——
- (i) 僱主在一段合理時間後才聘用另一人替代該僱員，而僱主在該段期間沒有從該僱員知悉，該僱員有意獲得復職或再次聘用；及
- (ii) 僱主在聘用另一人替代該僱員時，以其他方式安排辦理該僱員的工作已不再屬合理。”。

《2016 年僱傭(修訂)條例草案》

委員會審議階段

由李卓人議員動議的修正案

(第二組)

條次

建議修正案

- 5 在建議的第 32NA(1)(b)條中，刪去“較小”而代以“較大”。
- 5 在建議的第 32NA(1)(b)(i)條中，刪去“\$50,000”而代以“\$100,000”。
- 5 在建議的第 32NA(1)(b)(ii)條中，刪去“3 倍”而代以“6 倍”。
- 5 在建議的第 32NA(3)條中，刪去“處長可藉於憲報刊登的公告”而代以“立法會可藉於憲報刊登的決議”。

《2016 年僱傭(修訂)條例草案》

委員會審議階段

由李卓人議員動議的修正案

(第三組)

<u>條次</u>	<u>建議修正案</u>
4(1)	在建議的第 32N(3)(b)條中，刪去“僱主及僱員問明，他們”而代以“僱員問明，僱員”。
4(1)	刪去建議的第 32N(3A)條。
4(1)	在建議的第 32N(3B)條中—— (a) 刪去“僱員表示”之前的所有字句而代以“如”； (b) 刪去“仍須”而代以“須”。
8	在建議的第 32PC(1)條中，刪去“32A(1)(c)”而代以“32A(1)”。
14	在建議的第 30A(1)條中，在 寬免申請 的定義中，刪去“32A(1)(c)”而代以“32A(1)”。
18(1)	在建議的表格 10B 中，刪去“32A(1)(c)”而代以“32A(1)”。

《2016年僱傭(修訂)條例草案》

委員會審議階段

由李卓人議員動議的修正案

(第四組)

條次

建議修正案

新條文 加入 ——

“3A. 修訂第 32M 條(僱傭保障的補救)

第 32M(1)條，在句號之前 ——

加入

“，而凡該法院或勞資審裁處並無根據第 32N 條作出命令，則該法院或勞資審裁處可根據並按照第 32P 條判給其認為在有關情況下屬公正和恰當的並且須由僱主向僱員支付的補償，不論其是否已根據第 32O 條判給終止僱傭金”。”。

5 在建議的第 32NA(1)(a)(ii)條中，刪去“本會”之前的所有字句。

5 在建議的第 32NA(1)(b)條中，刪去“一筆”之前的所有字句。

新條文 加入 ——

“6A. 修訂第 32P 條(補償的判給)

第 32P(1)條 ——

廢除

“如”及“則法院”之間的所有字句

代以

“既無根據第 32N 條作出復職的命令，亦無根據該條作出再次聘用的命令，”。”。

12 在建議的第 77 條中 ——

(a) 在 **指明條文** 的定義中 ——

(i) 在“32J”之後加入“、32M”；

(ii) 在“32O”之後加入“、32P”；

(b) 在 **原有條文** 的定義中 ——

- (i) 在“32J”之後加入“、32M”；
- (ii) 在“32O”之後加入“、32P”。

《2016年僱傭(修訂)條例草案》

委員會審議階段

由李卓人議員動議的修正案

(第五組)

<u>條次</u>	<u>建議修正案</u>
3(2)	在建議的第 32J(4)條中，在“32N”之後加入“、32NC”。
4(1)	在建議的第 32N(3E)條之後，加入—— “(3EA) 在作出復職或再次聘用的命令前，法院或勞資審裁處須向僱員問明，僱員是否同意在將作出的命令中，加入一項第(4)(d)或(6)(g)款所述的條款。 (3EB) 如僱員沒有根據第(3EA)款表示同意，法院或勞資審裁處—— (a) 不得在將作出的復職或再次聘用的命令中，加入一項第(4)(d)或(6)(g)款所述的條款；及 (b) 須向僱主及僱員解釋，如僱員未獲按將作出的命令指明的條款復職或再次聘用，僱員可根據第 32NC 條向法院或勞資審裁處提出申請，以作出針對僱主的遵從命令。”。
4(3)	在建議的第 32N(4)(d)條中，在句首加入“(如該僱員表示同意加入該條款)”。
4(7)	在建議的第 32N(6)(g)條中，在句首加入“(如該僱員表示同意加入該條款)”。
4(9)	在建議的第 32N(9)條中，在“32PA”之前加入“32NC、”。
4(9)	在建議的第 32N(10)條中，在“32PA”之前加入“32NC、”。
新條文	加入—— “5A. 加入第 32NC 及 32ND 條 在第 32O 條之前—— 加入 “32NC. 遵從命令

- (1) 在以下情況下，本條適用——
 - (a) 如僱員在第 32A(1)條所述的任何情況下，遭受解僱，而法院或勞資審裁處根據第 32N 條，就該僱員作出復職或再次聘用的命令(不論該命令是否根據第 32PA 條更改)(在本條中，該命令(如適用的話，指經上述般更改者)稱為**原本命令**)；及
 - (b) 原本命令不包含一項第 32N(4)(d)或(6)(g)條所述的條款。
- (2) 在本條中，如原本命令曾經根據第 32PA 條被更改——
 - (a) **僱主**指原僱主；
 - (b) 在(a)段中，**原僱主**所具有的涵義，與它在第 32PA(2)條中所具有的涵義相同。
- (3) 如在原本命令指明的日期或之前，有關僱員未獲按該命令指明的條款復職或再次聘用，該僱員可向法院或勞資審裁處提出申請，作出針對有關僱主的遵從命令。
- (4) 有關申請只可向作出原本命令的法院或勞資審裁處提出。
- (5) 有關申請只可在以下期間內提出——
 - (a) 在根據原本命令須將有關僱員復職或再次聘用有關僱員的最後日期後的 1 個月；或
 - (b) 在法院或勞資審裁處准許的延展期間。
- (6) 法院或勞資審裁處在裁定有關申請前，須給予有關僱主及僱員機會，讓他們就該申請，提出其各自的論點。
- (7) 法院或勞資審裁處在裁定有關申請時，可考慮任何有關因素。
- (8) 法院或勞資審裁處可——
 - (a) 拒絕有關申請；
 - (b) 根據第(9)款作出針對有關僱主的遵從命令；或
 - (c) 根據第(10)款飭令對原本命令作出更

改。

- (9) 如法院或勞資審裁處裁斷有關僱主沒有合理理由不遵從原本命令，須作出針對該僱主的遵從命令。法院或勞資審裁處作出該命令時，須指明須按原本命令指明的條款(第 32N(4)(c)或(6)(f)條所述的條款除外)將有關僱員復職或再次聘用有關僱員的最後日期。
- (10) 如法院或勞資審裁處裁斷有關僱主有合理理由不遵從原本命令，須飭令對原本命令作出以下更改——
 - (a) 廢除第 32N(4)(c)或(6)(f)條所述的條款內的日期，並代以一個較後日期，作為須將有關僱員復職或再次聘用有關僱員的最後日期；及
 - (b) 除第(11)款另有規定外，加入一項第 32N(4)(d)或(6)(g)條所述的條款。
- (11) 在行使第(10)(b)款的權力時，法院或勞資審裁處如認為在有關情況下屬公正和恰當，可扣減第 32NA(1)(b)條所述的款額。
- (12) 為施行第(9)及(10)款，在裁定有關僱主是否有合理理由不遵從原本命令時，須由該僱主證明，是由於以下的原因，按照原本命令將有關僱員復職或再次聘用有關僱員，已不再屬合理地切實可行——
 - (a) 可歸因於該僱員的理由；或
 - (b) 在法院或勞資審裁處最近一次裁斷將該僱員復職或再次聘用該僱員屬合理地切實可行後，發生了非該僱主所能控制的情況改變。

32ND. 沒有遵守遵從命令的後果

- (1) 在法院或勞資審裁處根據第 32NC(9)條作出遵從命令的情況下，本條適用。
- (2) 如在遵從命令指明的日期或之前，僱員未獲按該命令指明的條款復職或再次聘用，該僱員可向法院提出申請，由法院行使第(7)、(8)及(9)款的權力。
- (3) 有關申請——

- (a) (如有關遵從命令是由勞資審裁處作出)只可向區域法院提出；或
 - (b) 在任何其他情況，只可向作出有關遵從命令的法院提出。
- (4) 有關申請只可在以下期間內提出——
- (a) 在根據有關遵從命令須將有關僱員復職或再次聘用有關僱員的最後日期後的 3 個月；或
 - (b) 在法院准許的延展期間。
- (5) 法院在裁定有關申請前，須給予有關僱主及僱員機會，讓他們就該申請，提出其各自的論點。
- (6) 法院在裁定有關申請時，可考慮任何有關因素。
- (7) 如法院裁斷有關僱主沒有遵守遵從命令(不論該僱主是否有合理辯解)，須——
- (a) 飭令該僱主須向有關僱員支付第 32NA(1)(a)(i)、(a)(ii)及 (b)條所述的款項；及
 - (b) 指明該僱主須支付(a)段所指的款項的最後日期。
- (8) 如法院裁斷有關僱主沒有遵守遵從命令而無合理辯解，除作出第(7)款的命令外，亦可作出以下 1 項或多項命令——
- (a) 判處該僱主最高罰款 \$350,000；
 - (b) 判處該僱主最高監禁 3 年；及
 - (c) 暫時扣押該僱主的財產。
- (9) 法院如認為在有關情況下屬公正和恰當，可飭令第(8)(a)款所述的罰款的全部或任何部分，須支付予有關僱員。”。”。

32ND. 遵從命令的強制執行

根據第 32ND(9)條作出的遵從命令，可根據《高等法院規則》(第 4A 章)第 45 號命令的規定強制執行。”。”。

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在建議的第 32PA(1)(a)條中，在“32PC”之前加入“32NC 或”。

- 7 在建議的第 32PA(6)條中，刪去“及(g)”而代以“條及(如適用的話)第 32N(6)(g)”。
- 7 在建議的第 32PA(7)(d)條中，在句首加入“(如適用的話)”。
- 7 在建議的第 32PA(8)(b)條中，在句首加入“(如適用的話)”。
- 8 在建議的第 32PC(1)條中，在句首加入“除第(1A)款另有規定外，”。
- 8 在建議的第 32PC(1)條之後，加入——
“(1A) 在以下情況下，本條不適用——
(a) 原本命令不包含一項第 32N(4)(d)或(6)(g)條所述的條款；或
(b) 原本命令曾經根據第 32NC(10)條被更改。”。
- 9(3) 在建議的 **指明權利** 的定義中，在(1)段中，在“32PA”之前加入“32NC、”。
- 10(2) 在建議的第 43P(4)條中，在“32PA”之前加入“32NC、”。
- 11(1) 在建議的第 43R(4)(ca)(i)條中，在“32PA”之前加入“32NC、”。
- 11(1) 在建議的第 43R(4)(ca)(ii)條中，在“32PA”之前加入“32NC、”。
- 11(2) 在建議的第 43R(6)條中，在 **再次聘用的命令** 的定義中，在“32PA”之前加入“32NC、”。
- 11(2) 在建議的第 43R(6)條中，在 **復職的命令** 的定義中，在“32PA”之前加入“32NC、”。
- 12 在建議的第 77(5)條中，在 **指明條文** 的定義中，在“32NB”之後加入“、32NC、32ND”。
- 14 在建議的第 30A 條的標題中，在“32PA”之前加入“32NC、”。
- 14 在建議的第 30A(1)條中，在 **再次聘用的命令** 的定義中，在“32PA”之前加入“32NC、”。
- 14 在建議的第 30A(1)條中，在 **復職的命令** 的定義中，在“32PA”之前加入“32NC、”。
- 14 在建議的第 30A(1)條中，按筆劃數目順序加入——

遵從命令申請(compliance order application)指向審裁處提出的申請，而該申請符合以下說明——

- (a) 根據《僱傭條例》(第 57 章)第 32NC(3)條，就復職或再次聘用的命令提出，而該命令是就於該條例第 32A(1)條所述的任何情況下遭受解僱的僱員，而針對僱主作出的；及
- (b) 尋求飭令該僱主按照復職或再次聘用的命令指明的條款，將有關僱員復職或再次聘用有關僱員。”。

14 在建議的第 30A(1)條之後，——

“(1A) 遵從命令申請，須符合訂明格式。

(1B) 如有人按照第(1A)款及《僱傭條例》(第 57 章)第 32NC 條，提出遵從命令申請，司法常務官須——

- (a) 定出聆訊該申請的地點及日期；及
- (b) 將聆訊地點及日期通知書(符合訂明格式者)，送達有關僱主及僱員。”。

14 在建議的第 30A(6)條中，在“替代”之前加入“遵從命令申請、”。

14 在建議的第 30A(7)條中，在“替代”之前加入“遵從命令申請、”。

18(1) 在建議的表格 10A 之前，加入——

“表格 10AA [條例第 30A(1A)條]

《勞資審裁處條例》
(第 25 章)

為施行《僱傭條例》(第 57 章)第 32NC 條而提出的申請

[標題如表格 1 所示]

呈勞資審裁處：

本申索由本人(a) 提出，並已由審裁處聆訊和裁定。審裁處於 20..... 年..... 月..... 日，根據《僱傭條例》(第 57 章)第 32N 條，作出*復職／再次聘用的命令，飭令(b) (**被告人**)於(c) 20..... 年..... 月..... 日或之前，將本人復職或再次聘用本人。該命令的文本附於本申請。(d)

本人(a) 現申請根據《僱傭條例》(第 57

章)第 32NC 條，作出一項針對被告人的遵從命令。

日期：20..... 年..... 月..... 日

.....
(申索人簽署)

* 請將不適用者刪去。

- 註：
- (a) 填上提出本申請的申索人的全名。
 - (b) 填上被告人的全名。
 - (c) 填上申索人須獲復職／再次聘用的最後日期。
 - (d) 如就某復職／再次聘用的命令提出本申請，而該命令之前曾經根據《僱傭條例》(第 57 章)第 32PA 條被更改，則就每項之前的更改作出的命令的文本，亦須附於本申請。

”。

18(1) 在建議的表格 10C 中，在標題中，刪去“*32PA/32PC”而代以“*32NC/32PA/32PC”。

18(1) 在建議的表格 10C 中，在第一段之後，加入——
“*申索人已根據《僱傭條例》(第 57 章)第 32NC 條，申請作出針對被告人的遵從命令。
*#該申請的文本，附於本通知書。”。

18(2) 在建議的表格 17 中，在第 1.段中，加入——
“(4) *根據《僱傭條例》(第 57 章)第 32NC(9)條，命令 (b) 按下述條款，*將申索人復職／再次聘用申索人——
[根據該條例第 32NC(9)條指明的條款]”。

18(2) 在建議的表格 17 中，加入——
“1A. *復職／再次聘用的命令，已於 20..... 年..... 月..... 日經審裁處根據《僱傭條例》(第 57 章)第 32NC(10)條作出的命令更改，而經更改的命令具有以下效力——
[根據該條例第 32NC(10)條指明的條款]”。

Employment (Amendment) Bill 2016

Committee Stage

Amendments to be moved by the Honourable LEE Cheuk-yan

(Set 1)

<u>Clause</u>	<u>Amendment Proposed</u>
4(1)	At the beginning of the proposed section 32N(3C)(b), by adding “subject to subsection (3CA),”.
4(1)	By adding after the proposed section 32N(3C)— “(3CA) If the employer has engaged a permanent replacement for the employee, the court or Labour Tribunal must not take that fact into account in determining, for the purposes of subsection (3B), whether it is reasonably practicable to comply with an order for reinstatement or re-engagement, unless the employer shows— (a) that it was not practicable for the employer to arrange for the employee’s work to be done without engaging a permanent replacement; or (b) that— (i) the employer engaged the replacement after the lapse of a reasonable period, without having heard from the employee that the employee wished to be reinstated or re-engaged, and (ii) when the employer engaged the replacement it was no longer reasonable for the employer to arrange for the employee’s work to be done except by a permanent replacement.”.

Employment (Amendment) Bill 2016

Committee Stage

Amendments to be moved by the Honourable LEE Cheuk-yan
(Set 2)

<u>Clause</u>	<u>Amendment Proposed</u>
5	In the proposed section 32NA(1)(b), by deleting “lesser” and substituting “greater”.
5	In the proposed section 32NA(1)(b)(i), by deleting “\$50,000” and substituting “\$100,000”.
5	In the proposed section 32NA(1)(b)(ii), by deleting “3 times” and substituting “6 times”.
5	In the proposed section 32NA(3), by deleting “Commissioner may, by notice” and substituting “Legislative Council may, by resolution”.

Employment (Amendment) Bill 2016

Committee Stage

Amendments to be moved by the Honourable LEE Cheuk-yan

(Set 3)

<u>Clause</u>	<u>Amendment Proposed</u>
4(1)	In the proposed section 32N(3)(b), by deleting “the employer and the employee whether they agree” and substituting “the employee whether the employee agrees”.
4(1)	By deleting the proposed section 32N(3A).
4(1)	In the proposed section 32N(3B), by deleting everything before “the employee expresses” and substituting “If”.
8	In the proposed section 32PC(1), by deleting “32A(1)(c)” and substituting “32A(1)”.
14	In the proposed section 30A(1), in the definition of <i>relief application</i> , by deleting “32A(1)(c)” and substituting “32A(1)”.
18(1)	In the proposed Form 10B, by deleting “32A(1)(c)” and substituting “32A(1)”.

Employment (Amendment) Bill 2016

Committee Stage

Amendments to be moved by the Honourable LEE Cheuk-yan

(Set 4)

<u>Clause</u>	<u>Amendment Proposed</u>
New	By adding— “3A. Section 32M amended (remedies for employment protection) Section 32M(1), before the full stop— Add “and, in the case where the court or Labour Tribunal does not make an order under section 32N, the court or Labour Tribunal may, whether or not it has made an award of terminal payments under section 32O, make an award of compensation under and in accordance with section 32P to be payable to the employee by the employer as it considers just and appropriate in the circumstances”.”.
5	In the proposed section 32NA(1)(a)(ii), by deleting everything before “the amount”.
5	In the proposed section 32NA(1)(b), by deleting everything before “a sum”.
New	By adding— “6A. Section 32P amended (award of compensation) Section 32P(1)— Repeal everything after “the circumstances,” Substitute “if neither order for reinstatement nor order for re-engagement under section 32N is made.”.”.
12	In the proposed section 77— (a) in the definition of <i>former provision</i> — (i) by adding “, 32M” after “32J”; (ii) by adding “, 32P” after “32O”; (b) in the definition of <i>specified provision</i> —

- (i) by adding “, 32M” after “32J”;
- (ii) by adding “, 32P” after “32O”.

Employment (Amendment) Bill 2016

Committee Stage

Amendments to be moved by the Honourable LEE Cheuk-yan

(Set 5)

<u>Clause</u>	<u>Amendment Proposed</u>
3(2)	In the proposed section 32J(4), by adding “, 32NC” after “32N”.
4(1)	By adding after the proposed section 32N(3E)— “(3EA) Before making an order for reinstatement or re-engagement, the court or Labour Tribunal must ask the employee whether the employee agrees to include a term mentioned in subsection (4)(d) or (6)(g) in the order to be made. (3EB) If the employee does not express an agreement under subsection (3EA), the court or Labour Tribunal— (a) must not include a term mentioned in subsection 4(d) or (6)(g) in the order for reinstatement or re-engagement to be made; and (b) must explain to the employer and the employee that the employee may apply to the court or Labour Tribunal for an order for compliance against the employer under section 32NC if the employee is not reinstated or re-engaged on the terms specified in the order to be made.”.
4(3)	In the proposed section 32N(4)(d), by adding at the beginning “(if the employee expresses an agreement for its inclusion)”.
4(7)	In the proposed section 32N(6)(g), by adding at the beginning “(if the employee expresses an agreement for its inclusion)”.
4(9)	In the proposed section 32N(9), by adding “32NC,” before “32PA”.
4(9)	In the proposed section 32N(10), by adding “32NC,” before “32PA”.
New	By adding— “5A. Sections 32NC and 32ND added Before section 32O— Add “32NC. Order for compliance (1) This section applies if—

- (a) an order for reinstatement or re-engagement is made by the court or Labour Tribunal under section 32N in respect of an employee dismissed in any of the circumstances mentioned in section 32A(1), whether or not the order is varied under section 32PA (which order (as so varied, if applicable) is referred to in this section as the *principal order*); and
 - (b) the principal order does not include a term mentioned in section 32N(4)(d) or (6)(g).
- (2) In this section, if the principal order is varied under section 32PA—
- (a) *employer* means the original employer;
 - (b) *original employer* in paragraph (a) has the same meaning as in section 32PA(2).
- (3) The employee may apply to the court or Labour Tribunal for an order for compliance against the employer if the employee is not reinstated or re-engaged on the terms specified in the principal order by the date so specified.
- (4) The application may only be made to the court, or the Labour Tribunal, that made the principal order.
- (5) The application may only be made—
- (a) not later than 1 month after the day by which the employee must be reinstated or re-engaged under the principal order; or
 - (b) within such extended time as may be allowed by the court or Labour Tribunal.
- (6) Before determining the application, the court or Labour Tribunal must give an opportunity to the employer and the employee to present each of their cases in respect of the application.
- (7) In determining the application, the court or Labour Tribunal may take into account any relevant considerations.
- (8) The court or Labour Tribunal may—
- (a) refuse the application;
 - (b) make an order for compliance against the employer under subsection (9); or
 - (c) order that the principal order be varied under subsection (10).

- (9) If the court or Labour Tribunal finds that the employer does not have reasonable grounds for the non-compliance of the principal order, it must make an order for compliance against the employer. On making the order, the court or Labour Tribunal must specify the date by which the employee must be reinstated or re-engaged on the terms specified in the principal order, except the term mentioned in section 32N(4)(c) or (6)(f).
- (10) If the court or Labour Tribunal finds that the employer has reasonable grounds for the non-compliance of the principal order, it must order that the principal order be varied by—
 - (a) repealing the date in the term mentioned in section 32N(4)(c) or (6)(f) and substituting with a later date by which the employee must be reinstated or re-engagement; and
 - (b) subject to subsection (11), adding a term mentioned in section 32N(4)(d) or (6)(g).
- (11) In exercising its powers under subsection (10)(b), the court or Labour Tribunal may reduce the amount mentioned in section 32NA(1)(b) if it considers just and appropriate in the circumstances.
- (12) In determining for the purposes of subsections (9) and (10) whether or not the employer has reasonable grounds for the non-compliance of the principal order, it is for the employer to show that it is no longer reasonably practicable for the employer to reinstate or re-engage the employee in accordance with the principal order—
 - (a) because of reasons attributable to the employee; or
 - (b) because, since the court or Labour Tribunal last found that reinstatement or re-engagement of the employee is reasonably practicable, a change of circumstances has occurred beyond the employer's control.

32ND. Consequence of failure to comply with an order for compliance

- (1) This section applies if an order for compliance is made by the court or Labour Tribunal under section 32NC(9).

- (2) The employee may apply to the court for the exercise of its powers under subsections (7), (8) and (9) if the employee is not reinstated or re-engaged on the terms specified in the order for compliance by the date so specified.
- (3) The application may only be made to—
 - (a) the District Court if the order for compliance is made by the Labour Tribunal; or
 - (b) in any other case, the court that made the order for compliance.
- (4) The application may only be made—
 - (a) not later than 3 months after the day by which the employee must be reinstated or re-engaged under the order for compliance; or
 - (b) within such extended time as may be allowed by the court.
- (5) Before determining the application, the court must give an opportunity to the employer and the employee to present each of their cases in respect of the application.
- (6) In determining the application, the court may take into account any relevant considerations.
- (7) If the court finds that the employer has failed to comply with the order for compliance (with or without reasonable excuse), it must—
 - (a) order that the employer must pay to the employee the sums mentioned in section 32NA(1)(a)(i), (a)(ii) and (b); and
 - (b) specify the date by which the employer must pay the sums under paragraph (a).
- (8) If the court finds that the employer has failed to comply with the order for compliance without reasonable excuse, it may, in addition to the order under subsection (7), make 1 or more of the following orders—
 - (a) that the employer be imposed a maximum fine of \$350,000;
 - (b) that the employer be sentenced to a maximum imprisonment 3 years; and
 - (c) that the property of the employer be sequestered.

- (9) The court may order that the whole or any part of the fine mentioned in subsection 8(a) must be paid to the employee if it considers just and appropriate in the circumstances.”.”.

32ND. Enforcement of order for compliance

An order for compliance made under section 32NC(9) is enforceable in accordance with Order 45 of the Rules of the High Court (Cap. 4A).”.”.

- 7 In the proposed section 32PA(1)(a), by adding “32NC or” before “32PC”.
- 7 In the proposed section 32PA(6), by deleting “(g)” and substituting “(if applicable) section 32N(6)(g)”.
- 7 In the proposed section 32PA(7)(d), by adding “(if applicable)” at the beginning.
- 7 In the proposed section 32PA(8)(b), by adding “(if applicable)” at the beginning.
- 8 In the proposed section 32PC(1), by deleting “This” and substituting “Subject to subsection (1A), this”.
- 8 By adding after the proposed section 32PC(1)—
 “(1A) This section does not apply if—
 (a) the principal order does not include a term mentioned in section 32N(4)(d) or (6)(g); or
 (b) the principal order is varied under section 32NC(10).”.
- 9(3) In the proposed definition of *specified entitlement*, in paragraph (l), by adding “32NC,” before “32PA”.
- 10(2) In the proposed section 43P(4), by adding “32NC,” before “32PA”.
- 11(1) In the proposed section 43R(4)(ca)(i), by adding “32NC,” before “32PA”.
- 11(1) In the proposed section 43R(4)(ca)(ii), by adding “32NC,” before “32PA”.
- 11(2) In the proposed section 43R(6), in the definition of *order for re-engagement*, by adding “32NC,” before “32PA”.
- 11(2) In the proposed section 43R(6), in the definition of *order for reinstatement*, by adding “32NC or” before “32PC”.

- 12 In the proposed section 77(5), in the definition of *specified provision*, by adding “, 32NC, 32ND” after “32NB”.
- 14 In the heading of the proposed section 30A, by adding “32NC,” before “32PA”.
- 14 In the proposed section 30A(1), in the definition of *order for re-engagement*, by adding “32NC,” before “32PA”.
- 14 In the proposed section 30A(1), in the definition of *order for reinstatement*, by adding “32NC,” before “32PA”.
- 14 In the proposed section 30A(1), by adding in alphabetical order—
“*compliance order application* (遵從命令申請) means an application to the tribunal that—
(a) is made for the purposes of section 32NC(3) of the Employment Ordinance (Cap. 57) in relation to an order for reinstatement or re-engagement against an employer in respect of an employee dismissed in any of the circumstances mentioned in section 32A(1) of the Ordinance; and
(b) seeks to order the employer to reinstate or re-engage the employee under the terms specified in the order for reinstatement or re-engagement.”.
- 14 By adding after the proposed section 30A(1)—
“(1A) A compliance order application must be in the prescribed form.
(1B) On a compliance order application being made in accordance with subsection (1A) and with section 32NC of the Employment Ordinance (Cap. 57), the registrar—
(a) must fix a place and date for hearing the application; and
(b) must serve a notice, in the prescribed form, of the place and date of the hearing on the employer and the employee.”.
- 14 In the proposed section 30A(6), by adding “a compliance order application,” after “neither”.
- 14 In the proposed section 30A(7), by adding “a compliance order application,” after “because of”.
- 18(1) By adding before the proposed Form 10A—
“Form 10AA [s. 30A(1A)]

(Cap. 25)

APPLICATION MADE FOR THE PURPOSES OF SECTION 32NC OF THE EMPLOYMENT ORDINANCE (CAP. 57)

[title as in Form 1]

TO THE LABOUR TRIBUNAL.

This claim, made by me (a), was heard and determined by the tribunal. The tribunal made an order for *reinstatement/re-engagement under section 32N of the Employment Ordinance (Cap. 57) on the day of 20....., for (b) (defendant) to *reinstate/re-engage me by the (c) day of 20..... A copy of the order accompanies this application. (d)

I, (a), apply for an order for compliance against the defendant under section 32NC of the Employment Ordinance (Cap. 57).

Dated this day of 20.....

.....
(Signature of claimant)

* Delete whichever is not applicable.

- Note:
- (a) Insert full name of the claimant making this application.
 - (b) Insert full name of the defendant.
 - (c) Insert date by which the claimant must be reinstated/re-engaged.
 - (d) If this application is made in relation to an order for reinstatement/re-engagement to which any variation has previously been made under section 32PA of the Employment Ordinance (Cap. 57), a copy of the order made for each previous variation must also accompany this application.

_____”.

18(1) In the proposed Form 10C, in the heading, by deleting “*32PA/32PC” and substituting “*32NC/32PA/32PC”.

18(1) In the proposed Form 10C, by adding after the first paragraph—

“*The claimant has applied for an order for compliance against the defendant under section 32NC of the Employment Ordinance (Cap. 57).

*#A copy of the application accompanies this notice.”.

18(2) In the proposed Form 17, in paragraph 1., by adding—

“(4) *an order under section 32NC(9) of the Employment Ordinance (Cap. 57) for the *reinstatement/re-engagement of the claimant with the following terms—

[terms specified under section 32NC(9) of that Ordinance]

18(2) In the proposed Form 17, by adding—

“1A. *the order for *reinstatement/re-engagement was varied by an order of the tribunal made under section 32NC(10) of the Employment Ordinance (Cap. 57) on the day of 20..... to the effect as follows—

[terms specified under section 32NC(10) of that Ordinance]”.