

## **LEGISLATIVE COUNCIL BRIEF**

Employment Ordinance  
(Chapter 57)

### **Employment (Amendment) Bill 2017**

#### **INTRODUCTION**

A At the meeting of Executive Council on 25 April 2017, the Council ADVISED and the Chief Executive ORDERED that the Employment (Amendment) Bill 2017 (“the Bill”) at Annex A should be introduced into the Legislative Council (“LegCo”) to amend the Employment Ordinance (EO) (Cap.57) to-

- (a) provide that where an employee who has been unreasonably and unlawfully dismissed<sup>1</sup> makes a claim for remedies under Part VIA of EO, the Labour Tribunal (“LT”)<sup>2</sup> must, without the agreement of the employer, make an order for reinstatement (“RI”)<sup>3</sup> or re-engagement (“RE”)<sup>4</sup> if, taking into account the circumstances of the claim, LT

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<sup>1</sup> Unreasonable and unlawful dismissal refers to the situation where an employee is dismissed as mentioned in s.32A(1)(c) of EO, viz., the employee is dismissed other than for a valid reason as specified under EO (including the conduct of the employee, his/her capability/qualification for performing the job, redundancy or other genuine operational requirements of the business, compliance with legal requirements, or other reason of substance); and the dismissal is in contravention of labour legislation (i.e. unlawful), including dismissal during pregnancy and maternity leave, during paid sick leave, after work-related injury and before determination/settlement and/or payment of compensation under the Employees’ Compensation Ordinance (Cap. 282) or by reason of the employee exercising trade union rights or giving evidence for the enforcement of relevant labour legislation.

<sup>2</sup> For the purpose of hearing and adjudicating claims for remedies under Part VIA of EO, LT may, under EO and the Labour Tribunal Ordinance (Cap.25), transfer a claim to the Court of First Instance or the District Court for adjudication if LT is of the opinion that for any reason the claim should not be heard and determined by it. With respect to a claim so transferred, the Court of First Instance or the District Court may, in the same way as LT does, make all or any of the orders or awards as provided by EO.

<sup>3</sup> Reinstatement is re-employment of the employee by the employer and the employer is to treat the employee in all respects as if he/she had not been dismissed or as if there had been no variation of the terms of the contract of employment.

<sup>4</sup> Re-engagement is re-employment of the employee by the employer, or by a successor of the employer or by an associated company, on terms comparable to his/her original terms of the employment or in other suitable employment.

considers that the order is appropriate and RI or RE of the employee by the employer is reasonably practicable;

- (b) provide that where LT makes an order for RI or RE in the circumstances set out in (a) above, the order shall also specify a further sum, which is set at three times the employee's average monthly wages, subject to a maximum of \$72,500, to be paid by the employer to the employee if the employer eventually does not reinstate or re-engage the employee as required by the order;
- (c) make it a criminal offence if the employer wilfully and without reasonable excuse fails to pay the further sum specified in the relevant RI or RE order; and
- (d) clarify that the obligation to re-engage the employee under an order for RE all along rests with the employer, not his/her successor or associated company, and that, with the agreement of the employee, the employer and the successor or associated company of the employer, the order for RE may be varied to the effect that it will be regarded as having been complied with if the employee is re-engaged by the successor or associated company on or before the date specified by LT in the order as varied.

## **JUSTIFICATIONS**

2. Part VIA of EO on employment protection came into force on 27 June 1997. Under this part, an employee may claim for remedies against his/her employer in cases of unreasonable dismissal<sup>5</sup>, unreasonable variation of the terms of the employment contract<sup>6</sup>, or unreasonable and unlawful dismissal ("UUD"). If the employer fails to show a valid reason as specified under EO for the dismissal or variation of employment contract, LT may award remedies to the employee which may be (a) an order for RI or RE subject to the agreement of the employer and the employee or (b) an award of terminal payments. In the cases of UUD, LT may likewise make an order for RI or RE or an award of terminal payments and if it does not order for RI or RE, LT may award the employee compensation of up to \$150,000 in addition to the terminal payments if it considers just and appropriate in the circumstances. If an RI or RE order is made, an employer who fails to comply with it needs to pay terminal payments and, in cases of UUD, compensation if such is awarded.

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<sup>5</sup> Unreasonable dismissal refers to the situation where the employee has been employed under a continuous contract for not less than 24 months and he/she is dismissed other than for a valid reason as specified under EO. Please refer to footnote 1 for "valid reasons".

<sup>6</sup> Unreasonable variation of the terms of the employment contract refers to the situation where the employee has been employed under a continuous contract, the terms of his/her employment contract are varied by the employer without his/her consent and the employment contract does not contain an express term to permit such a variation, and the terms are varied other than for a valid reason as specified under EO. Please refer to footnote 1 for "valid reasons".

3. Under the existing provisions of EO, where an employee has been unreasonably and unlawfully dismissed and the employee makes a claim for RI or RE, LT has to secure the agreement of the employer in order to make the order for RI or RE even if LT finds in favour of the employee and considers the order appropriate and practicable. A review of the provisions on RI gave rise to the proposal to enable an order of RI or RE of employees to be made in UUD cases, without the employer's agreement. After consultation with the Labour Advisory Board ("LAB")<sup>7</sup>, the Employment (Amendment) Bill 2016 ("the 2016 Bill") was introduced into LegCo in 2016 for the purposes as referred to in paragraph 1(a) – (d) above.

4. A Bills Committee was set up to scrutinise the 2016 Bill. In the process, members of the Bills Committee expressed various views and suggestions and proposed some Committee Stage Amendments ("CSAs") to the Bill. In accordance with the standing practice, the Labour Department ("LD") reported to LAB the views of members of the Bills Committee and their proposed CSAs. The necessary consultation with LAB was concluded in September 2016, after the 2016 Bill had lapsed<sup>8</sup> at the end of the 2012-16 LegCo term. After further deliberations, LAB reached a consensus that the original legislative proposal should remain unchanged, and that the further sum should also remain to be set at three times the employee's average monthly wages, while the ceiling should be raised from \$ 50,000 (as proposed in the 2016 Bill) to \$72,500. We therefore propose to introduce the Bill into LegCo, which is essentially the same as the 2016 Bill except for increasing the ceiling for further sum to \$72,500. Details of the legislative proposals as set out in the Bill are set out in paragraphs 5 – 13 below.

**(A) Making order for RI/RE without employer's agreement**

5. In UUD cases, the employee is not only dismissed by the employer without a valid reason but the dismissal itself is prohibited by law (e.g. dismissals of an employee during pregnancy or maternity leave, during paid sick leave, after work-related injury and before determination/settlement and/or payment of compensation under the Employees' Compensation Ordinance (Cap. 282) or by reason of the employee exercising trade union rights or giving evidence for the enforcement of relevant labour legislation). At present, Part VIA of EO affords employees employment protection under the above circumstances, including the right to claim remedies against their employers. LT may make an order for RI or RE subject to the mutual agreement of the employer and the employee. Without the employer's agreement, no such order for RI or RE could be made by LT. We propose that for UUD cases,

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<sup>7</sup> The LAB is a non-statutory body to advise the Commissioner for Labour on matters affecting labour. It is chaired by the Commissioner for Labour and comprises six members representing employers and another six representing employees.

<sup>8</sup> As LAB needed time to consult their respective organisations and deliberate on the CSAs, there was insufficient time to complete the relevant deliberations. The 2016 Bill thus lapsed at the end of the 2012-16 LegCo term.

the employer's agreement as a prerequisite to ordering for RI or RE be removed so that LT is to make such an order in a UUD case if the employee seeks RI or RE and it finds that the order is appropriate and RI or RE of the employee by the employer is reasonably practicable.

6. We propose that, in making a finding that RI or RE of the employee by the employer is reasonably practicable, LT will need to take into account the circumstances of the case having regard to a number of factors. The employer and the employee will be given an opportunity to present their cases in respect of the making of the order. LT may request the Commissioner for Labour to submit a report containing information on the circumstances of the case obtained in connection with the conciliation undertaken by the LD, with facts agreed by the employer and the employee.

7. Provisions for the court to make an order for RI without the agreement of the employer already exist in other pieces of legislation in Hong Kong. The Sex Discrimination Ordinance (Cap. 480), Disability Discrimination Ordinance (Cap. 487), Family Status Discrimination Ordinance (Cap. 527) and Race Discrimination Ordinance (Cap. 602) empower the District Court to order, among other things, that the respondent shall employ, re-employ or promote the claimant.

**(B) Further sum to be paid by the employer for non-compliance with an order for RI/RE for UUD cases**

8. Under the existing provisions of EO, in making an order for RI or RE, LT must specify, in addition to the terms on which RI or RE is to take place, that in the event that the employer eventually fails to reinstate or re-engage the employee, the employer must pay to the employee (i) the amount of terminal payments<sup>9</sup>; and (ii) for UUD cases, the amount of compensation<sup>10</sup> (up to a maximum of \$150,000) as it considers just and appropriate in the circumstances.

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<sup>9</sup> Terminal payments refer to: (a) the statutory entitlements under EO which the employee is entitled to but has not yet been paid upon termination of employment and other payments due to the employee under his/her contract of employment; and (b) those statutory entitlements for which the employee has not yet attained the minimum qualifying length of service but which the employee might reasonably expect to be entitled to upon termination of employment had he/she been allowed to continue with his/her original employment or original terms of the contract of employment. In such cases, terminal payments shall be calculated according to the employee's actual length of service. (section 32O of EO)

<sup>10</sup> In determining an award of compensation and the amount of the award of compensation, LT shall take into account the circumstances of the claim which include the circumstances of the employer and the employee, the employee's length of service, the manner in which the dismissal took place, any loss sustained by the employee which is attributable to the dismissal, possibility of the employee obtaining new employment, any contributory fault borne by the employee, and any payments that the employee is entitled to receive in respect of the dismissal. (section 32P of EO)

9. We propose that in making an order for RI or RE in the case of UUD, LT must at the same time order a further sum on top of the terminal payments and compensation to be paid to the employee by the employer in the event that the employer fails to reinstate or re-engage the employee as required by the order. Same as the terminal payments and compensation stipulated under the existing provisions of EO, this further sum will be specified at the time when the order for RI or RE is made, thereby sparing the affected employee the need to file another application to LT and enabling the employee to obtain the further sum the soonest possible in the event that he/she is not reinstated or re-engaged as required by the order. The further sum should be an amount set by law and, based on the latest consensus of LAB, set at three times the average monthly wages of the employee, subject to a maximum of \$72,500.

10. We also propose that an employer may apply for relief from paying the further sum if it becomes no longer reasonably practicable for the employer to reinstate or re-engage the employee as required by the order because of reasons attributable to the employee or because of change of circumstances after the making of the order beyond the employer's control. In determining any such application, LT may take into account any relevant considerations. LT may wholly or partly relieve the employer from paying the further sum or make any order that it considers just and appropriate in the circumstances.

**(C) Non-payment of the further sum to be a criminal offence**

11. Under the existing EO, an employer who wilfully and without reasonable excuse fails to pay, among others, the compensation awarded by LT for UUD cases commits a criminal offence and is subject to a maximum fine of \$350,000 and 3 years of imprisonment on conviction. If such an offence committed by a partner of a firm or a body corporate is committed with the consent or connivance of or attributable to the neglect of another partner of the firm, or a director or responsible person of the body corporate, such partner, director or person commits the like offence. We propose that the non-payment of the further sum also be made a criminal offence, with the penalty and personal liability of the partner or director or the responsible person of the employer to be pitched at the same levels as non-payment of compensation awarded by LT for UUD cases. This is for the sake of maintaining consistency with the offence relating to non-payment of compensation in UUD cases.

**(D) Amendments to the re-engagement provisions for improved clarity**

12. The existing section 32N(6) of EO stipulates that an order for RE is one that requires the employee to be engaged by the employer, or by "a successor of the employer or an associated company". However, section 32N(3), which empowers LT to make an RE order, stipulates that LT shall make the order after getting the agreement of the employer and the employee. Section 32N(3) does not make any reference to the employer's

successor or associated company. Given that the employer's successor or associated company is not a party to the proceedings relating to the employee's claim, there is doubt on how an order made by LT may involve a successor or associated company and, if such an order is made, what the liability of the employer is if the successor or associated company fails to engage the employee. We propose that legislative amendments be made to remove the doubt and make necessary supplementary provisions on the respective obligations of the employer and the successor or the associated company.

13. The purpose of enlisting the successor or associated company of the employer into an RE order is to provide an additional avenue for the employer to discharge his/her obligation under such an order. An employer's obligation to re-engage the employee under an RE order should all along rest with the employer. A pre-requisite for engagement of the employee by the successor or associated company to constitute alternative compliance is the agreement among the employee, the employer and the employer's successor or associated company. For this purpose, we propose that the relevant parties, viz. the employee, employer and successor or associated company, may by a written agreement made among themselves specify the terms of the re-engagement. On the employee's application, LT may vary the RE order, so that it may be complied with by the successor or associated company engaging the employee, if LT is satisfied that the terms on which the alternative employer is to engage the employee are comparable to the terms on which the original employer is required by the original order to re-engage the employee. On engagement of the employee by the employer's successor or associated company, the RE obligation made under the order would be taken as having been fulfilled. If the employee is not engaged by the successor or associated company and if the original employer has not re-engaged the employee, the original employer must pay to the employee the terminal payments, compensation and the further sum as specified in the order. We propose that legislative amendments should be made to reflect the above.

## **THE BILL**

14. The main provisions are as follows:

- (a) Clause 4 amends section 32N of EO mainly to treat a UUD case differently from other cases, in the making of an order for RI or RE. In a UUD case—
  - (i) the employer's agreement will not be a pre-requisite for ordering RI or RE;

- (ii) express provisions are made—
    - (A) to give an opportunity to the employer and the employee to present their cases in respect of the making of an order for RI or RE; and
    - (B) for the circumstances of the claim to be taken into account in determining whether an order for RI or RE is appropriate and reinstatement or re-engagement of the employee by the employer is reasonably practicable; and
  - (iii) the court or LT will be empowered to request the Commissioner for Labour for a report containing information that relates to the circumstances of the claim.
- (b) Clause 5 adds new sections 32NA and 32NB to EO (i) to recast the existing provisions on liabilities, to pay the terminal payment and compensation, on non-compliance with the requirement to reinstate or re-engage as ordered and (ii) to impose, on the non-compliant employer in a UUD case, an additional liability to pay to the employee a further sum that is the lesser of \$72,500 or 3 times the employee's average monthly wages. Clause 8 adds a new section 32PC to EO to provide for a mechanism by which the employer may apply for and obtain relief from the liability to pay the further sum.
- (c) Clause 7 adds new sections 32PA and 32PB to EO to provide for—
- (i) variation of an order for RE made against an employer (original employer) to the effect that the requirement for the original employer to re-engage an employee is to be treated as complied with by the engagement of the employee by a successor or associated company of the original employer;
  - (ii) an application for the variation; and
  - (iii) the legal consequences following from the engagement by the successor or associated company.
- (d) Clauses 9 and 10 amend sections 43N and 43P of EO to the effect that an employer commits an offence if the employee is not reinstated or re-engaged as ordered and the employer also fails, wilfully and without reasonable excuse, to pay any specified entitlements payable on that non-compliance with the order.
- (e) Clauses 13 to 18 are related amendments to the Labour Tribunal Ordinance (Cap. 25) and its subsidiary legislation to provide for—
- (i) the procedures for making an application for the purposes of the new section 32PA or 32PC of EO; and

- (ii) forms for applications for the purposes of the new sections 32PA and 32PC, and the related notice of hearing and a certificate of a LT award or order.

B 15. The existing provisions being amended are at Annex B.

**LEGISLATIVE TIMETABLE**

16. The legislative timetable is as follows:

Publication in the Gazette	5 May 2017
First Reading and commencement of Second Reading Debate	17 May 2017
Resumption of Second Reading Debate, committee stage and Third reading	To be notified

**IMPLICATIONS OF THE PROPOSAL**

C 17. The sustainability, gender and family, financial and civil service, and economic implications of the proposal are set out at Annex C. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It does not affect the current binding effect of EO, and has no productivity or environmental implications.

**PUBLIC CONSULTATION**

18. LAB had several rounds of discussion on the subject in 2000, 2002, 2004, 2007 and 2011 and broad consensus was reached on the various aspects of the proposal, including empowering LT to make an order for RI or RE without the agreement of the employer; specifying in the order a further sum being three times the employee’s average monthly wages subject to the ceiling of \$50,000, to be paid by the employer to the employee if the employer fails to comply with the order; making non-payment of the further sum a criminal offence; and making amendments to clarify and supplement as necessary the provisions on RE. The subject was reported to the LegCo Panel on Manpower (“Panel”) in 2000, 2003, 2008 and 2012, when the general support of the Panel was obtained. Both LAB and the Panel were apprised of the legislative proposal in December 2015. As mentioned in paragraph 4 above, LAB further deliberated the subject matters and reached consensus in September 2016 that the original legislative proposal should remain unchanged except that the ceiling for the further sum should be raised from the originally proposed \$50,000 to \$72,500. The Panel was consulted on 20 December 2016 on this revised proposal and members generally welcomed the introduction of the Bill reflecting LAB’s latest consensus into LegCo.



## **PUBLICITY**

19. A press release will be issued on 5 May 2017. A Government spokesman will be available to handle enquiries.

## **ENQUIRIES**

20. Enquiries on this brief can be addressed to Ms Melody Luk, Assistant Commissioner for Labour (Labour Relations), on 2852 4099; Mr Raymond Liang, Chief Labour Officer (Labour Relations), on 2852 3457 or Ms Cecilia Chan, Senior Labour Officer (Labour Relations)(Policy Support), on 2852 3696.

**Labour and Welfare Bureau**  
**2 May 2017**

**Employment (Amendment) Bill 2017**

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## A BILL

### To

Amend Parts VIA and IXB of the Employment Ordinance so that, for a dismissal in any of the circumstances mentioned in its section 32A(1)(c), the employer's agreement is not a pre-requisite for ordering reinstatement or re-engagement, a failure to comply with the order entails an additional liability to pay a further sum and a failure to pay the sum is covered by the offence under its section 43P; to clarify, and supplement as necessary, provisions on engagement by the employer's successor or associated company under an order for re-engagement; and to provide for incidental and connected matters.

Enacted by the Legislative Council.

### Part 1

#### Preliminary

##### 1. Short title and commencement

- (1) This Ordinance may be cited as the Employment (Amendment) Ordinance 2017.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Labour and Welfare by notice published in the Gazette.

**Part 2****Amendments to Employment Ordinance****2. Employment Ordinance amended**

The Employment Ordinance (Cap. 57) is amended as set out in sections 3 to 12.

**3. Section 32J amended (jurisdiction of Labour Tribunal)**

(1) Section 32J(2)—

**Repeal**

everything before “under this Part”

**Substitute**

“(2) The Labour Tribunal does not have jurisdiction to inquire into, hear or determine a claim”.

(2) Section 32J—

**Repeal subsection (3)****Substitute**

“(3) A claim under this Part over which the Labour Tribunal has jurisdiction may be transferred under section 10 of the Labour Tribunal Ordinance (Cap. 25) but may be so transferred only to the Court of First Instance or the District Court.

(4) The Court of First Instance or the District Court may, for a claim so transferred to it, make all or any of the orders and awards provided for under sections 32N, 32O, 32P, 32PA and 32PC.

(5) Apart from a transfer under subsection (3), neither the Court of First Instance nor the District Court has jurisdiction over a claim under this Part.”.

**4. Section 32N amended (order for reinstatement and re-engagement)**

(1) Section 32N—

**Repeal subsection (3)****Substitute**

“(3) If the court or Labour Tribunal finds that an order for reinstatement or re-engagement is appropriate—

(a) it must explain to the employer and the employee what order for reinstatement or re-engagement may be made; and

(b) it must ask the employer and the employee whether they agree to the making of such an order.

(3A) If the employer and the employee express agreement, the court or Labour Tribunal must make an order for reinstatement or re-engagement pursuant to the agreement.

(3B) For a dismissal of an employee in any of the circumstances mentioned in section 32A(1)(c), even though only the employee expresses agreement, the court or Labour Tribunal must make an order for reinstatement or re-engagement if it finds that reinstatement or re-engagement of the employee by the employer is reasonably practicable.

(3C) Before making a finding for the purposes of subsection (3B), the court or Labour Tribunal—

(a) must give an opportunity to the employer and the employee to present each of their cases in respect

- of the making of an order for reinstatement or re-engagement; and
- (b) must take into account the circumstances of the claim, including—
- (i) the circumstances of the employer and of the employee;
  - (ii) the circumstances surrounding the dismissal;
  - (iii) any difficulty that the employer might face in the reinstatement or re-engagement of the employee; and
  - (iv) the relationship between the employer and the employee, and between the employee and other persons with whom the employee has connection in relation to the employment.
- (3D) Before making a finding for the purposes of subsection (3B), the court or Labour Tribunal may, with the agreement of the employer and the employee, request the Commissioner to provide to it a report containing information that—
- (a) relates to the circumstances of the claim; and
  - (b) was obtained in connection with the conciliation held under the Labour Tribunal Ordinance (Cap. 25).
- (3E) On receiving the request, the Commissioner must prepare the report, seek the agreement of the employer and the employee to the contents of the report and—
- (a) if the employer and the employee agree to the contents of the report—provide the report to the court or Labour Tribunal; or

- (b) if the employer or the employee fails to agree to the contents of the report—inform the court or Labour Tribunal of the failure and the fact that the report cannot be provided to it.”.
- (2) Section 32N(4)—
- Repeal**
- everything from “employment, and on making” to “take place”
- Substitute**
- “employment. On making the order, the court or Labour Tribunal must specify the terms on which the employee must be reinstated.”.
- (3) Section 32N(4)—
- Repeal paragraphs (b), (c) and (d)**
- Substitute**
- “(b) a term to the effect that, for reckoning the employee’s existing and future entitlements under this Ordinance and the employee’s contract of employment, the continuity of the employee’s period of employment is not to be treated as broken by—
- (i) if the contract was terminated by the employer by payment in lieu of notice—the employee’s absence from work between the last date on which the employee rendered services to the employer and the date of reinstatement; or
  - (ii) in any other case—the employee’s absence from work between the relevant date and the date of reinstatement;
- (c) the date by which the employee must be reinstated; and

(d) a term to the effect that, if the employee is not reinstated on the terms specified in the order by the date so specified, the employer must pay to the employee the sums mentioned in section 32NA(1) by the date specified for that purpose in the order.”.

(4) Section 32N(6)—

**Repeal**

“the employee shall be engaged by the employer, or by a successor of the employer or by an associated company,”

**Substitute**

“the employer must re-engage the employee”.

(5) Section 32N(6)—

**Repeal**

everything from “employment, and on making” to “take place”

**Substitute**

“employment. On making the order, the court or Labour Tribunal must specify the terms on which the employee must be re-engaged.”.

(6) Section 32N(6)—

**Repeal paragraph (a).**

(7) Section 32N(6)—

**Repeal paragraphs (e), (f) and (g)**

**Substitute**

“(e) a term to the effect that, for reckoning the employee’s existing and future entitlements under this Ordinance and the employee’s contract of employment, the continuity of the employee’s period of employment is not to be treated as broken by—

(i) if the contract was terminated by the employer by payment in lieu of notice—the employee’s absence from work between the last date on which the employee rendered services to the employer and the date of re-engagement; or

(ii) in any other case—the employee’s absence from work between the relevant date and the date of re-engagement;

(f) the date by which the employee must be re-engaged; and

(g) a term to the effect that, if the employee is not re-engaged on the terms specified in the order by the date so specified, the employer must pay to the employee the sums mentioned in section 32NA(1) by the date specified for that purpose in the order.”.

(8) Section 32N—

**Repeal subsection (8).**

(9) At the end of section 32N—

**Add**

“(9) This section has effect subject to sections 32PA, 32PB and 32PC.

(10) If the employer pays the sums mentioned in section 32NA(1) by the date specified for that purpose in an order for reinstatement or re-engagement (as varied under section 32PA or 32PC, if applicable), the employee is not entitled to enforce the other terms of the order (as so varied, if applicable).”.

**5. Sections 32NA and 32NB added**

After section 32N—

**Add**

**“32NA. Sums specified for purposes of section 32N(4)(d) and (6)(g)**

- (1) For the purposes of section 32N(4)(d) and (6)(g), the following sums are payable by the employer to the employee—
  - (a) the sums that would have been awarded if neither an order for reinstatement nor an order for re-engagement had been made, namely—
    - (i) the amount of terminal payments that would have been awarded under section 32O; and
    - (ii) if the employee has been dismissed in any of the circumstances mentioned in section 32A(1)(c)—the amount of compensation that would have been awarded under section 32P; and
  - (b) if the employee has been dismissed in any of the circumstances mentioned in section 32A(1)(c), a sum that is the lesser of the following—
    - (i) \$72,500;
    - (ii) 3 times the employee’s average monthly wages as calculated in accordance with section 32NB.
- (2) In determining the amounts mentioned in subsection (1)(a)(i) and (ii), the court or Labour Tribunal must not take into account the sum mentioned in subsection (1)(b).
- (3) The Commissioner may, by notice published in the Gazette, amend subsection (1)(b)(i) by substituting another amount for the amount specified in that subsection.

**32NB. Calculation of average monthly wages for section 32NA**

- (1) This section applies in calculating an employee’s average monthly wages for the purposes of section 32NA(1)(b)(ii).
- (2) In subsections (3), (4) and (5)—  
*wages* (工資) includes a sum of money paid by an employer in respect of any of the following days—
  - (a) a day of maternity leave, a day of paternity 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 the employer;
  - (c) a normal working day on which the employee is not provided with work by the employer;
  - (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) The employee’s average monthly wages are the average monthly wages earned by the employee during—
  - (a) the period of 12 months immediately before the date of termination of the contract of employment; or
  - (b) 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 of employment—the shorter period.
- (4) The average monthly wages are to be calculated without regard to—

- (a) any period (*excluded period*) during the 12-month period or shorter period for which the employee was not paid wages or full wages because of—
- (i) any maternity leave, paternity leave, rest day, sickness day, holiday or annual leave taken by the employee;
  - (ii) any leave taken by the employee with the agreement of the employer;
  - (iii) the employee's not being provided with work by the employer on a normal working day; or
  - (iv) the employee's 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 the employee for the excluded period.
- (5) To avoid doubt, if the amount of the wages paid to an employee in respect of a day covered by the definition of *wages* in subsection (2) is only a fraction of the amount earned by the employee on a normal working day, the employee's average monthly wages are to be calculated without regard to the wages and the day.
- (6) Despite subsection (3), if for any reason it is impracticable to calculate an employee's average monthly wages in the manner provided in that subsection, the amount may be calculated by reference to—
- (a) 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

- (b) if there is no such person—the wages earned 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.”.

#### 6. Section 32O amended (award of terminal payments)

Section 32O(6)—

##### Repeal

everything after “terminal payments”

Substitute a full stop.

#### 7. Sections 32PA and 32PB added

After section 32P—

##### Add

#### “32PA. Alternative compliance with order for re-engagement

- (1) For the purposes of this section—
  - (a) *order for re-engagement* (再次聘用的命令) means an order for re-engagement made under section 32N and includes such an order as varied under this section or section 32PC;
  - (b) *successor* (繼承人), in relation to an employer who employed an employee for the purposes of an undertaking or part of an undertaking, means (subject to paragraph (c)) a person who, in consequence of a change in the ownership of that undertaking or part (whether the change occurred



- by virtue of a sale or other disposition or by operation of law), has become the owner of that undertaking or part;
- (c) the definition of *successor* in paragraph (b) has effect (subject to the necessary modifications) in relation to a case where—
- (i) the person who owned an undertaking or part of an undertaking immediately before a change is one of the persons who own it immediately after the change (whether as partners, trustees or otherwise); or
  - (ii) the persons who owned an undertaking or part of an undertaking immediately before a change (whether as partners, trustees or otherwise) include the persons, or one or more of the persons, who own it immediately after the change,
- as it has effect where the previous owner and the new owner are wholly different persons; and
- (d) *associated company* is to be construed in accordance with section 32E(3) and (4).
- (2) If the court or Labour Tribunal made an order for re-engagement (*principal order*) against an employer (*original employer*), it may, on application, order variation of the principal order to the effect that engagement of the employee by a successor or associated company of the original employer (*alternative employer*) is to be treated as re-engagement by the original employer in compliance with the principal order.
- (3) An application for the purposes of subsection (2) may only be made if—

- (a) there is a written agreement among—
  - (i) the original employer;
  - (ii) the employee; and
  - (iii) the alternative employer;
- (b) the agreement states the parties' agreement that engagement of the employee by the alternative employer is to be treated as re-engagement in compliance with the principal order;
- (c) the agreement states the terms on which the alternative employer is to engage the employee in order for the engagement to be treated as re-engagement in compliance with the principal order, including—
  - (i) the nature of the employment;
  - (ii) the remuneration for the employment;
  - (iii) any rights and privileges, including seniority and pension rights, that must be given to the employee;
  - (iv) a term to the effect that the employee's period of employment with the original employer is to be counted as a period of employment of the employee with the alternative employer for reckoning the employee's existing and future entitlements under this Ordinance and the employee's contract of employment with the alternative employer; and
  - (v) a term to the effect that the continuity of the employee's period of employment—
    - (A) is not to be treated as broken by the change of employer from the original

- employer to the alternative employer;  
and
- (B) is not to be treated as broken by—
- (I) if the employee's contract of employment with the original employer was terminated by the original employer by payment in lieu of notice—the employee's absence from work between the last date on which the employee rendered services to the original employer and the date of engagement of the employee by the alternative employer; or
- (II) in any other case—the employee's absence from work between the relevant date and the date of engagement of the employee by the alternative employer; and
- (d) the agreement states that the parties agree that, if the alternative employer engages the employee, the terms mentioned in paragraph (c) are to form part of the employee's contract of employment with the alternative employer.
- (4) The application may only be made by the employee, and must be accompanied by the agreement or a copy of the agreement.
- (5) The application may only be made—
- (a) not later than the date by which the employee must be re-engaged under the principal order; or

- (b) within such extended time as may be allowed by the court or Labour Tribunal.
- (6) An order of variation may only be made under this section if the court or Labour Tribunal is satisfied that the terms on which the alternative employer is to engage the employee, as specified in the agreement, are comparable to the terms on which the original employer is to re-engage the employee under the principal order, except the terms mentioned in section 32N(6)(f) and (g).
- (7) An order of variation made in relation to an application under this section—
- (a) must specify that, in order for the engagement to be treated as re-engagement in compliance with the principal order, the alternative employer must engage the employee on the terms specified in the agreement by the date specified for that purpose in the order of variation;
- (b) must specify the legal consequences following from the alternative employer engaging the employee, as provided under section 32PB;
- (c) must specify that, subject to paragraphs (a) and (b), the principal order remains in full force and the original employer must re-engage the employee, except that the date by which the employee must be re-engaged by the original employer is also the date mentioned in paragraph (a); and
- (d) must specify that the original employer must pay to the employee the sums mentioned in section 32NA(1) by the date specified for that purpose in the order of variation if, by the date mentioned in paragraph (a), the employee is not re-engaged in accordance with the order (which means neither

actually so re-engaged nor treated as so re-engaged).

- (8) Each of the following dates as specified under subsection (7) in an order of variation may be the same as or different from that date as specified in the principal order—
- (a) the date by which the employee must be engaged;
  - (b) the date by which the original employer must pay the sums mentioned in section 32NA(1).

**32PB. Legal consequences following from alternative employer engaging employee**

- (1) This section applies if—
- (a) an order of variation is made under section 32PA to the effect that engagement of the employee by the alternative employer is to be treated as re-engagement by the original employer in compliance with the principal order; and
  - (b) the alternative employer engages the employee on or before the date by which the employee must be re-engaged, as specified in the order of variation,
- and an expression in this section that also appears in section 32PA has the same meaning as it has in that section.
- (2) The terms on which the alternative employer is to engage the employee, as specified under section 32PA(7)(a) in the order of variation, form part of the employee's contract of employment with the alternative employer.
- (3) The following applies for reckoning the employee's existing and future entitlements under this Ordinance

and the employee's contract of employment with the alternative employer—

- (a) the employee's period of employment with the original employer is to be counted as a period of employment of the employee with the alternative employer; and
  - (b) the continuity of the employee's period of employment—
    - (i) is not to be treated as broken by the change of employer from the original employer to the alternative employer; and
    - (ii) is not to be treated as broken by—
      - (A) if the employee's contract of employment with the original employer was terminated by the original employer by payment in lieu of notice—the employee's absence from work between the last date on which the employee rendered services to the original employer and the date of engagement of the employee by the alternative employer; or
      - (B) in any other case—the employee's absence from work between the relevant date and the date of engagement of the employee by the alternative employer.
- (4) In subsection (3)(a), a reference to the employee's period of employment with the original employer is a reference to the period of employment of the employee with the original employer that, had the original employer re-engaged the employee in accordance with the principal order, would have been counted for reckoning the

employee's existing and future entitlements under this Ordinance and the employee's contract of employment with the original employer.

- (5) The engagement of the employee by the alternative employer is treated as re-engagement by the original employer in compliance with the principal order.
- (6) Any amount specified under section 32N(7) in the principal order as payable by the employer to the employee remains payable by the original employer to the employee. Any amount specified under that section in that order as required to be restored by the employee to the employer remains required to be restored by the employee to the original employer.
- (7) For calculating an amount specified in the principal order under section 32N(7), references in the principal order to re-engagement and to the date of re-engagement are respectively treated as references to the engagement of the employee by the alternative employer and to the date of the engagement.”.

#### 8. Section 32PC added

Before section 32Q—

**Add**

#### “32PC. Relief from paying sum mentioned in section 32NA(1)(b)

- (1) This section applies if an order for reinstatement or re-engagement is made under section 32N in respect of an employee dismissed in any of the circumstances mentioned in section 32A(1)(c), whether or not the order is varied under this section or section 32PA (which order (as so varied, if applicable) is referred to in this section as the *principal order*).

- (2) The employer against whom the principal order is made may apply for it to be varied to the effect that the employer is relieved from the liability to pay the sum mentioned in section 32NA(1)(b).
- (3) An application under subsection (2) may only be made on the ground 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.
- (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 7 days after the date 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) order that the principal order be varied to the effect that the employer be relieved, wholly or partly, from the liability to pay the sum mentioned in section 32NA(1)(b); or
- (c) make any order that it considers just and appropriate in the circumstances, including specifying a later date as the date by which the employee must be reinstated or re-engaged.”.

**9. Section 43N amended (interpretation of Part IXB)**

- (1) Section 43N(1), definition of *specified entitlement*, paragraph (j)(ii)—

**Repeal**

“; or”

**Substitute a semicolon.**

- (2) Section 43N(1), definition of *specified entitlement*, paragraph (k)—

**Repeal the semicolon**

**Substitute**

“; or”.

- (3) Section 43N(1), definition of *specified entitlement*, after paragraph (k)—

**Add**

- “(l) any of the following sums payable under an order for reinstatement or re-engagement made under section 32N (as varied under section 32PA or 32PC, if applicable)—
- (i) the sum mentioned in section 32NA(1)(a)(i), to the extent that the sum would have been awarded as entitlements falling within paragraph (j) if neither

an order for reinstatement nor an order for re-engagement had been made;

- (ii) the sum mentioned in section 32NA(1)(a)(ii);
- (iii) the sum mentioned in section 32NA(1)(b);”.

**10. Section 43P amended (offence of employer’s failure to pay any sum payable under award of tribunal)**

- (1) Section 43P(1)(a), after “entitlement”—

**Add**

“(whether or not the specified entitlement is payable only on any condition being met)”.

- (2) After section 43P(3)—

**Add**

“(4) Subsection (5) applies to an award that is an order for reinstatement or re-engagement made under section 32N (as varied under section 32PA or 32PC, if applicable) (which order (as so varied, if applicable) is referred to in subsection (5) as the *order*).

- (5) Where the order specifies a date (*specified payment date*) as the date by which the employer must pay to the employee a sum if the employer fails to reinstate or re-engage the employee on the terms specified in the order by the date so specified, the specified payment date is, on that failure, the date on which the sum is, by the terms of the award, payable for the purposes of subsection (1)(b)(ii).”.

**11. Section 43R amended (proof of certain matters in proceedings for offence under section 43P)**

- (1) After section 43R(4)(c)—

**Add**

- “(ca) for proceedings relating to an award that is an order for reinstatement or order for re-engagement—
- (i) whether a decision has been made in relation to an application made for the purposes of section 32PA or 32PC (if applicable) in respect of the order and, if so, the particulars of the decision; and
  - (ii) whether an application made for the purposes of section 32PA or 32PC (if applicable) in respect of the order is pending and, if so, the particulars of the application;”.

## (2) Section 43R—

**Repeal subsection (6)****Substitute**

“(6) In this section—

*order for re-engagement* (再次聘用的命令) means an order for re-engagement made under section 32N and includes such an order as varied under section 32PA or 32PC;

*order for reinstatement* (復職的命令) means an order for reinstatement made under section 32N and includes such an order as varied under section 32PC;

*registrar of a court* (司法常務官) means—

- (a) the Registrar of the High Court; or
- (b) the Registrar of the Court of Final Appeal.”.

12. **Section 77 added**

After section 76—

**Add**

“77. **Transitional provisions relating to Employment (Amendment) Ordinance 2017**

- (1) A specified provision applies to a claim by an employee for remedies under Part VIA if the material date for the employee falls on or after the specified date for the specified provision.
- (2) Subsection (1) applies regardless of whether or not the employee’s contract of employment was entered into before that specified date.
- (3) A former provision applies to a claim by an employee for remedies under Part VIA if the material date for the employee falls before the specified date for the former provision.
- (4) Subsection (3) applies regardless of whether or not proceedings in respect of the claim have begun before that specified date.
- (5) In this section—
 

*former provision* (原有條文) means section 32J, 32N, 32O, 43N, 43P or 43R, or any part of the section, as was in force immediately before it was amended by the Employment (Amendment) Ordinance 2017 ( of 2017);

*material date* (關鍵日期) means—

  - (a) in relation to an employee dismissed in any of the circumstances mentioned in section 32A(1)(a) or (c)—
    - (i) if the employer has notified the employee of the dismissal before it took effect—the date on which the employee was notified; or
    - (ii) in any other case—the date on which the dismissal took effect; or

- (b) in relation to an employee the terms of whose contract of employment have been varied in the circumstances mentioned in section 32A(1)(b)—
- (i) if the employer has notified the employee of the variation before it took effect—the date on which the employee was notified; or
  - (ii) in any other case—the date on which the variation took effect;

*specified date* (指明日期)—

- (a) in relation to a former provision, means the commencement date of the provision of the Employment (Amendment) Ordinance 2017 ( of 2017) that—
  - (i) repeals the former provision; or
  - (ii) amends the former provision to become a specified provision; or
- (b) in relation to a specified provision, means the commencement date of the provision of that Ordinance that—
  - (i) adds the specified provision; or
  - (ii) amends a former provision to become the specified provision;

*specified provision* (指明條文) means section 32J, 32N, 32NA, 32NB, 32O, 32PA, 32PB, 32PC, 43N, 43P or 43R, or any part of the section.”

## Part 3

### Related Amendment to Labour Tribunal Ordinance

#### 13. Labour Tribunal Ordinance amended

The Labour Tribunal Ordinance (Cap. 25) is amended as set out in section 14.

#### 14. Section 30A added

Part 5, after section 30—

##### Add

#### “30A. Applications for purposes of sections 32PA and 32PC of Employment Ordinance

(1) In this section—

*alternative compliance application* (替代遵令申請) means an application to the tribunal that—

- (a) is made for the purposes of section 32PA(2) of the Employment Ordinance (Cap. 57) in relation to an order for re-engagement against an employer (*original employer*) in respect of an employee; and
- (b) seeks to vary the order to the effect that engagement of the employee by a successor or associated company of the original employer (*alternative employer*) is to be treated as re-engagement by the original employer in compliance with the order;

*order for re-engagement* (再次聘用的命令) means an order for re-engagement made under section 32N of the Employment Ordinance (Cap. 57) (as varied under section 32PA or 32PC of that Ordinance, if applicable);

**order for reinstatement** (復職的命令) means an order for reinstatement made under section 32N of the Employment Ordinance (Cap. 57) (as varied under section 32PC of that Ordinance, if applicable);

**relief application** (寬免申請) means an application to the tribunal that—

- (a) is made under section 32PC(2) 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)(c) of that Ordinance; and
  - (b) seeks to vary the order to the effect that the employer is relieved from the liability to pay the sum mentioned in section 32NA(1)(b) of that Ordinance.
- (2) An alternative compliance application must be in the prescribed form.
  - (3) On an alternative compliance application being made in accordance with subsection (2) and with section 32PA 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 original employer, the alternative employer and the employee.
  - (4) A relief application—
    - (a) must be in the prescribed form;
    - (b) must state the grounds for making the application and the facts relevant to the application; and

- (c) must be accompanied by the documents relevant to the application.
- (5) On a relief application being made in accordance with subsection (4) and with section 32PC 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.
  - (6) Unless the tribunal otherwise orders, neither an alternative compliance application, nor a relief application, operates as a stay of execution of the order in relation to which the application is made.
  - (7) A stay of execution because of an alternative compliance application or relief application may be subject to such conditions as to costs, payment into the tribunal, the giving of security or otherwise as the tribunal thinks fit.”



**Part 4**

**Related Amendment to Labour Tribunal (General) Rules**

**15. Labour Tribunal (General) Rules amended**

The Labour Tribunal (General) Rules (Cap. 25 sub. leg. A) are amended as set out in section 16.

**16. Rule 12 amended (registration of award or order in District Court)**

Rule 12(1)—

**Repeal**

“stay of execution has not been ordered under section”

**Substitute**

“no stay of execution has been ordered under section 30A or”.

**Part 5**

**Related Amendments to Labour Tribunal (Forms) Rules**

**17. Labour Tribunal (Forms) Rules amended**

The Labour Tribunal (Forms) Rules (Cap. 25 sub. leg. C) are amended as set out in section 18.

**18. Schedule amended**

(1) The Schedule, after Form 10—

**Add**

“Form 10A [s. 30A(2)]

Labour Tribunal Ordinance  
(Cap. 25)

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

*[title as in Form I]*

TO THE LABOUR TRIBUNAL.

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

I, (a) ....., apply for variation of the order under section 32PA of the Employment Ordinance (Cap. 57) to the effect

that engagement of me by (e) ..... (*alternative employer*) is to be treated as re-engagement by the defendant in compliance with the order.

\*The agreement/A copy of the agreement in respect of the proposed variation dated the ..... day of ..... 20..... made among myself, the defendant and the alternative employer (as mentioned in section 32PA(3) of the Employment Ordinance (Cap. 57)) accompanies this application. (f)

\*The terms on which the alternative employer is to engage me are the same as the terms on which the defendant is to re-engage me under the order./The terms on which the alternative employer is to engage me are not the same as the terms on which the defendant is to re-engage me under the order. The terms that are different are as follows: .....

.....  
.....  
.....  
.....  
.....

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 re-engaged.  
(d) If this application is made in relation to an order for re-engagement to which any variation has previously been

made under section 32PA or 32PC of the Employment Ordinance (Cap. 57), a copy of the order made for each previous variation must also accompany this application.

- (e) Insert full name of the alternative employer. This application seeks to have the engagement of the claimant by the alternative employer to be treated as re-engagement by the defendant in compliance with the order for re-engagement.
- (f) The agreement among the claimant, the defendant and the alternative employer in respect of the proposed variation, or a copy of the agreement, must accompany this application.

Form 10B

[s. 30A(4)(a)]

Labour Tribunal Ordinance  
(Cap. 25)

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

[title as in Form 1]

TO THE LABOUR TRIBUNAL.

In relation to the above claim in respect of a dismissal in certain circumstances mentioned in section 32A(1)(c) of the Employment Ordinance (Cap. 57), the tribunal made against \*me/us (a) ..... in favour of (b) ..... (*claimant*) an order for \*reinstatement/re-engagement under section 32N of that Ordinance on the ..... day of ..... 20..... A copy of the order accompanies this application. (c)

Under section \*32N(4)(d)/32N(6)(g) of the Employment Ordinance (Cap. 57), the order specifies that, if \*I/we fail to \*reinstate/re-engage the claimant by the (d) ..... day of ..... 20....., \*I/we must pay to the claimant the sum of (e) \$..... by the (f) ..... day

of ..... 20.....

\*I/We apply for relief from the liability to pay that sum (state the relief sought) .....

The grounds for \*my/our application are—  
(state the grounds for making the application) .....

The facts relevant to \*my/our application are—  
(state the relevant facts) .....

The documents relevant to \*my/our application accompany the application. (g)

Dated this ..... day of ..... 20.....

.....  
*(\*Signature of defendant, if an individual/Signature on behalf of defendant, if an unincorporated or incorporated company or a partnership)*

If the defendant is an unincorporated or incorporated company or a partnership, please also state the name of the person or partner who signs on behalf of the defendant (in BLOCK LETTERS):

\* Delete whichever is not applicable.

- Note:*
- (a) Insert full name of the defendant making this application.
  - (b) Insert full name of the claimant.
  - (c) 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 or 32PC of the Employment Ordinance (Cap. 57), a copy of the order made for each previous variation must also accompany this application.
  - (d) Insert date by which the claimant must be reinstated/re-engaged.
  - (e) Insert amount of the sum mentioned in section 32NA(1)(b) of the Employment Ordinance (Cap. 57) that must be paid if the defendant fails to reinstate/re-engage the claimant.
  - (f) Insert date by which the sum must be paid.
  - (g) This application must state the grounds for making this application and the facts relevant to this application. The documents relevant to this application must accompany this application.

Form 10C

[s. 30A(3)(b) & (5)(b)]

Labour Tribunal Ordinance  
(Cap. 25)

NOTICE OF HEARING OF AN  
APPLICATION MADE FOR THE PURPOSES OF SECTION  
\*32PA/32PC OF THE EMPLOYMENT ORDINANCE (CAP. 57)

[title as in Form 1]

TO ALL PARTIES INTERESTED.

The tribunal made an order for \*reinstatement/re-engagement under section 32N of the Employment Ordinance (Cap. 57) on the ..... day of ..... 20..... in respect of this claim. \*#A copy of the order accompanies this notice. Under the order, ..... (*claimant*) is to be \*reinstated/re-engaged by ..... (*defendant*). (a)

\*The claimant has applied for variation of the order for re-engagement under section 32PA of the Employment Ordinance (Cap. 57) to the effect that engagement of the claimant by (b) ..... is to be treated as re-engagement by the defendant in compliance with the order.

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

\*The defendant has applied for relief under section 32PC of the Employment Ordinance (Cap. 57) from the liability under the order for \*reinstatement/re-engagement to pay to the claimant the sum of (c) \$..... (which is payable if the defendant fails to \*reinstatement/re-engage the claimant by the (d) ..... day of ..... 20.....).

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

TAKE NOTICE that ....., Presiding Officer, will hear the application at ..... on the ..... day of ..... 20..... at .....

Dated this ..... day of ..... 20.....

.....  
*Registrar*

*L.S.*

(e) This notice was served by me on ..... at .....

on the ..... day of ..... 20.....

.....  
*(\*Signature of recipient of notice/  
Signature on behalf of recipient of  
notice)*

.....  
*(Signature of process server)*

\* Delete whichever is not applicable.

# Neither a copy of the order for reinstatement/re-engagement, nor a copy of the application, needs to accompany this notice as served on the party making the application.

*Note:* (a) If the application is made in relation to an order for reinstatement/re-engagement to which any variation has previously been made under section 32PA or 32PC of the Employment Ordinance (Cap. 57), a copy of the order made for each previous variation must also accompany this notice, except when this notice is served on the party making the application.

(b) Insert full name of the alternative employer. The application made for the purposes of section 32PA of the Employment Ordinance (Cap. 57) seeks to have the engagement of the claimant by the alternative employer to be treated as re-engagement by the defendant in compliance with the order for re-engagement.

(c) Insert amount of the sum mentioned in section 32NA(1)(b) of the Employment Ordinance (Cap. 57) that must be paid if the defendant fails to reinstate/re-engage the claimant.

(d) Insert date by which the claimant must be reinstated/re-engaged.

(e) Service to be effected in accordance with the Labour

Tribunal (General) Rules (Cap. 25 sub. leg. A).”.

(2) The Schedule—

**Repeal Form 17**

**Substitute**

“Form 17 [(Gen.) rule 12(1)]

Labour Tribunal Ordinance  
(Cap. 25)

**CERTIFICATE OF \*A WARD/ORDER**

*[title as in Form 1]*

I, ....., certify as follows—

1. on the ..... day of ..... 20..... (a) .....  
..... obtained against (b) .....  
..... in the tribunal—
  - (1) \*an award of .....
  - (2) \*an order for the payment of .....
  - (3) \*an order under section 32N of the Employment Ordinance (Cap. 57) for the \*reinstatement/re-engagement of the claimant with the following terms—  
*[terms specified under \*section 32N(4) and (5)/section 32N(6) and (7) of that Ordinance]*
2. \*the order for re-engagement was varied by an order of the tribunal made under section 32PA of the Employment Ordinance (Cap. 57) on the ..... day of ..... 20..... to the effect as follows—  
*[terms specified under section 32PA(7) of that Ordinance]*
3. \*the order for \*reinstatement/re-engagement was varied by an order of the tribunal made under section 32PC of the

Employment Ordinance (Cap. 57) on the ..... day  
of ..... 20..... to the effect  
that .....

Dated this ..... day of ..... 20.....

*\*Registrar/Officer authorized by Presiding  
Officer under rule 12(4) of the Labour  
Tribunal (General) Rules*

*L.S.*

TO THE REGISTRAR, DISTRICT COURT.

The above certificate is presented by \*me/us for registration in accordance with rule 12(2) of the Labour Tribunal (General) Rules (Cap. 25 sub. leg. A).

Dated this ..... day of ..... 20.....

.....  
*(\*Signature of party presenting the  
certificate for registration, if an  
individual/Signature on behalf of  
party presenting the certificate for  
registration, if an unincorporated  
or incorporated company or a  
partnership)*

If the party presenting the certificate for registration is an unincorporated or incorporated company or a partnership, please also state the name of the person or

partner who signs on behalf of the party (in BLOCK LETTERS):

The above certificate is registered in the District Court.

Dated this ..... day of ..... 20.....

*Registrar, District Court*

*L.S.*

\* Delete whichever is not applicable.

- Note:* (a) Insert full name of the party in whose favour the award or order is made.
- (b) Insert full name of the party against whom the award or order is made.”.
- \_\_\_\_\_

**Explanatory Memorandum**

The main object of this Bill is to amend the Employment Ordinance (Cap. 57) so that, if an employee is dismissed in any of the circumstances mentioned in section 32A(1)(c) of the Ordinance (which means in essence the employee concerned is dismissed without a valid reason and in contravention of a specified statutory provision)—

- (a) the employer’s agreement is not a pre-requisite for ordering reinstatement or re-engagement of the employee;
- (b) the employer must pay a further sum to the employee if the employer fails to reinstate or re-engage the employee; and
- (c) a failure to pay the further sum is covered by the offence provisions (in section 43P of the Ordinance) on a failure to pay an award of specified entitlement.

The Bill also seeks to clarify the existing provision on engagement by the employer’s successor or associated company under an order for re-engagement, and to make supplementary provisions on the procedure for such an arrangement.

**Removing employer’s agreement as pre-requisite for ordering reinstatement or re-engagement**

- 2. Clause 4 amends section 32N of the Ordinance so that the employer’s agreement will not be a pre-requisite for ordering reinstatement or re-engagement in a case where an employee is dismissed in circumstances mentioned in section 32A(1)(c) of the Ordinance (*section 32A(1)(c) case*). (The employer’s agreement will remain as a pre-requisite for ordering reinstatement or re-engagement in a case where an employee is dismissed in circumstances mentioned in section 32A(1)(a) of the Ordinance or

where an employee's contract of employment is varied in circumstances mentioned in section 32A(1)(b) of the Ordinance.) Further, in a section 32A(1)(c) case—

- (a) express provisions are made—
  - (i) to give an opportunity to the employer and the employee to present their cases in respect of the making of an order for reinstatement or re-engagement; and
  - (ii) for the circumstances to be taken into account in determining whether reinstatement or re-engagement is reasonably practicable;
- (b) the court or Labour Tribunal will be empowered to request the Commissioner for Labour for a report containing information that relates to the circumstances of the claim.

#### **Consequence of failure to reinstate or re-engage; employer's liability to pay further sum**

3. Section 32N(4)(d) and (6)(g) of the Ordinance currently provides for liabilities arising if the employee is not reinstated or re-engaged as ordered. These are liabilities for sums representing terminal payments and compensation that would have been awarded under sections 32O and 32P of the Ordinance respectively if neither an order for reinstatement nor an order for re-engagement had been made. Clause 4(3) and (7) amends section 32N(4)(d) and (6)(g) of the Ordinance. Clause 5 adds new sections 32NA and 32NB to the Ordinance.
4. The new section 32NA elaborates on the employer's liabilities mentioned in paragraph 3 above. For a section 32A(1)(c) case, the new section 32NA(1)(b) imposes on the employer an additional liability to pay to the employee a further sum that is the lesser of \$72,500 or 3 times the employee's average monthly wages. The

new section 32NB provides for calculation of the average monthly wages.

5. Clause 8 adds a new section 32PC to the Ordinance to provide for a mechanism by which the employer may, under certain specific conditions, apply for and obtain relief from the liability to pay the further sum mentioned in the new section 32NA(1)(b).

#### **Alternative compliance with order for re-engagement by successor or associated company of employer**

6. The existing section 32N(6) of the Ordinance alludes to ordering engagement by a successor or associated company of the employer. Clause 7 adds new sections 32PA and 32PB to the Ordinance to clarify and supplement the concept by providing for—
  - (a) variation of an order for re-engagement made against an employer (*original employer*) to the effect that engagement of the employee by such a successor or associated company is to be treated as re-engagement in compliance with the order for re-engagement;
  - (b) an application for the variation; and
  - (c) the legal consequences following from the engagement by the successor or associated company.

#### **Offence of failure to pay sum specified in order for reinstatement or re-engagement**

7. At present, section 43P of the Ordinance contains an offence of failing, wilfully and without reasonable excuse, to comply with an award of specified entitlements (as defined by section 43N(1) of the Ordinance).
8. Clause 9 amends section 43N(1) of the Ordinance to extend the definition of *specified entitlement* to cover substantially the sums payable by an employer after failing to reinstate or re-engage an

employee in accordance with an order for reinstatement or re-engagement.

9. Clause 10 amends section 43P of the Ordinance to—
  - (a) expressly cover an award subject to a condition, for clarity's sake; and
  - (b) state how section 43P of the Ordinance applies to an order for reinstatement or re-engagement that specifies any sum as payable if the employer fails to reinstate or re-engage an employee.
10. The effect is that an employer commits an offence if—
  - (a) the employer fails to reinstate or re-engage the employee as ordered; and
  - (b) the employer also fails, wilfully and without reasonable excuse, to pay specified entitlements payable on that failure (see paragraph 8 above).
11. Clause 11 expands section 43R of the Ordinance to enable the particulars of any pending application made for the purposes of the new section 32PA or 32PC, and the particulars of any decision made in relation to the application, to be proved in criminal proceedings by a certificate issued by or on behalf of the registrar of the court or Labour Tribunal.

#### **Related amendments to Labour Tribunal Ordinance (Cap. 25) and its subsidiary legislation**

12. Clauses 13, 14, 15, 16, 17 and 18 are related amendments to the Labour Tribunal Ordinance (Cap. 25) and its subsidiary legislation.
13. Clause 14 adds a new section 30A to the Labour Tribunal Ordinance (Cap. 25). The new section 30A(2), (3), (4) and (5) provides for the procedures for making an application for the purposes of the new section 32PA or 32PC of the Employment

Ordinance (Cap. 57) mentioned in paragraphs 5 and 6 above. The effect of the new section 30A(6) is that, unless the Labour Tribunal otherwise orders, the making of the application does not operate to stay the execution of the order for reinstatement or re-engagement sought to be varied under the new section 32PA or 32PC.

14. Clauses 15 and 16 are amendments to the Labour Tribunal (General) Rules (Cap. 25 sub. leg. A) consequential to the addition of the new section 30A to the Labour Tribunal Ordinance (Cap. 25).
15. Clauses 17 and 18 make related amendments to the Schedule to the Labour Tribunal (Forms) Rules (Cap. 25 sub. leg. C) by—
  - (a) adding new Forms 10A, 10B and 10C for applications made for the purposes of the new sections 32PA and 32PC of the Employment Ordinance (Cap. 57) and the related notice of hearing; and
  - (b) substituting a new Form 17 for a certificate of a Labour Tribunal award or order.

#### **Technical amendments to sections 32J and 32O of Employment Ordinance**

16. Clause 3 amends section 32J of the Employment Ordinance (Cap. 57). First, a reference to section 9 of the Labour Tribunal Ordinance (Cap. 25) is removed, which reference is obsolete because that section 9 was repealed. Second, the new section 32J(3), (4) and (5) clarifies that the Labour Tribunal may transfer claims under Part VIA (employment protection) of the Employment Ordinance (Cap. 57) to the Court of First Instance or the District Court, which will then have jurisdiction under that Part.
17. Clause 6 repeals a part of section 32O(6) of the Employment Ordinance (Cap. 57) that is obsolete.



Chapter:	57	<b>Employment Ordinance</b>	Gazette Number	Version Date
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Section:	32J	<b>Jurisdiction of Labour Tribunal</b>	25 of 1998	01/07/1997
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Expanded Cross Reference:

32N, 32O, 32P

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

(1) Subject to this section, the Labour Tribunal established under the Labour Tribunal Ordinance (Cap 25) shall have jurisdiction to inquire into, hear and determine a claim made by an employee under this Part in accordance with this Part and with that Ordinance.

(2) Notwithstanding section 9 of the Labour Tribunal Ordinance (Cap 25), the Labour Tribunal shall not have jurisdiction to inquire into, hear and determine a claim or part of a claim under this Part if the relevant date in respect of that claim falls more than 9 months before the date on which the claim is filed with the Registrar of the Labour Tribunal, unless the parties to the claim, by a memorandum signed by them and filed with the Registrar, have agreed that the Tribunal shall have jurisdiction.

(3) Where the Labour Tribunal has jurisdiction by virtue of subsection (2), the Labour Tribunal may transfer the claim to the Court of First Instance or the District Court under section 10 of the Labour Tribunal Ordinance (Cap 25) and thereupon the court may make all or any of the orders or awards provided under sections 32N to 32P but there is no jurisdiction in either of those courts apart from such a transfer and section 9(3) of the Labour Tribunal Ordinance (Cap 25) does not apply. (Amended 25 of 1998 s. 2) <\*Note-Exp. x-Ref: Sections 32N, 32O, 32P \*>

Section:	32N	<b>Order for reinstatement and re-engagement</b>		30/06/1997
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(1) Subject to this section and to section 32M, an order under this section may be an order for reinstatement (in accordance with subsections (4) and (5)) or an order for re-engagement (in accordance with subsections (6) and (7)) as the court or Labour Tribunal may decide and on terms which it considers just and appropriate in the circumstances.

(2) The court or Labour Tribunal shall first consider whether to make an order for reinstatement, and if it decides not to make an order for reinstatement it shall then consider whether to make an order for re-engagement.

(3) Where the court or Labour Tribunal finds that an order for reinstatement or re-engagement, as the case may be, is appropriate, it shall explain to both the employer and the employee what order for reinstatement or re-engagement may be made, and shall ask them whether they agree to the court or Labour Tribunal making such an order. If the employer and the employee express such agreement, the court or Labour Tribunal shall make an order for reinstatement or re-engagement in accordance with that agreement.

(4) An order for reinstatement is an order that the employer shall treat the employee in all respects as if he had not been dismissed or as if there had been no such variation of the terms of the contract of employment, and on making such an order the court or Labour Tribunal shall specify the terms on which reinstatement is to take place including-

- (a) any rights and privileges, including seniority and pension rights, which must be restored to the employee;
- (b) the continuity of the period of employment of the employee shall not be treated as broken by any absence on his part from work between the relevant date or where the contract was terminated by the employer by payment in lieu of notice, the last date on which the employee renders services to the

employer, and the date of reinstatement for the purpose of reckoning the existing and future entitlements under this Ordinance and his employment contract;

- (c) the date by which the order must be complied with; and
- (d) where the employer fails to comply with the order on or before the date specified in paragraph (c), the amount of terminal payments payable under section 32O and where appropriate, the amount of compensation payable under section 32P.

(5) On the making of an order for reinstatement, if the court or Labour Tribunal considers just and appropriate in the circumstances, it may specify-

- (a) any amount payable by the employer to the employee in respect of any arrears of pay and statutory entitlements under this Ordinance which the employee might reasonably be expected to have had but for the dismissal or the variation of the terms of the contract of employment, for the period between the relevant date and the date of reinstatement; or
- (b) any amount to be restored by the employee to the employer in respect of any statutory entitlements that the employee has been paid by the employer under this Ordinance and that the employee should not have had upon reinstatement.

(6) An order for re-engagement is an order that the employee shall be engaged by the employer, or by a successor of the employer or by an associated company, in an employment on terms comparable to his original terms of the employment or in other suitable employment, and on making such an order the court or Labour Tribunal shall specify the terms on which re-engagement is to take place including-

- (a) the identity of the employer;
- (b) the nature of the employment;
- (c) the remuneration for the employment;
- (d) any rights and privileges, including seniority and pension rights, which must be restored to the employee;
- (e) the continuity of the period of employment of the employee shall not be treated as broken by any absence on his part from work between the relevant date or where the contract was terminated by the employer by payment in lieu of notice, the last date on which the employee renders services to the employer, and the date of re-engagement for the purpose of reckoning the existing and future entitlements under this Ordinance and his employment contract;
- (f) the date by which the order must be complied with; and
- (g) where the employer fails to comply with the order on or before the date specified in paragraph (f), the amount of terminal payments payable under section 32O and where appropriate, the amount of compensation payable under section 32P.

(7) On the making of an order for re-engagement, if the court or Labour Tribunal considers just and appropriate in the circumstances, it may specify-

- (a) any amount payable by the employer to the employee in respect of any arrears of pay and statutory entitlements under this Ordinance which the employee might reasonably be expected to have had but for the dismissal or the variation of the terms of the contract of employment, for the period between the relevant date and the date of re-engagement; or
- (b) any amount to be restored by the employee to the employer in respect of any statutory entitlements that the employee has been paid by the employer under this Ordinance and that the employee should not have had upon re-engagement.

(8) For the purposes of subsection (6)-

- (a) "successor" (繼承人), in relation to the employer of an employee, means (subject to paragraph (b)) a person who in consequence of a change occurring (whether by virtue of a sale or other disposition or by operation of law) in the ownership of the undertaking, or of part of the undertaking, for the purposes of which the employee was employed, has become the owner of the undertaking or part;
- (b) the definition in paragraph (a) has effect (subject to the necessary modifications) in relation to a case where-
  - (i) the person by whom an undertaking or part of an undertaking is owned immediately before a change is one of the persons by whom (whether as partners, trustees or otherwise) it is owned immediately after the change; or
  - (ii) the persons by whom an undertaking or part of an undertaking is owned immediately before a change (whether as partners, trustees or otherwise) include the persons by whom, or include one or more of the persons by whom, it is owned immediately after the change, as it has effect where

- the previous owner and the new owner are wholly different persons;  
(c) "associated company" shall be construed in accordance with section 32E.

Section:	32O	<b>Award of terminal payments</b>	L.N. 1 of 2015	27/02/2015
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(1) Subject to section 32M, if no order for reinstatement or re-engagement is made under section 32N, the court or Labour Tribunal may make an award of terminal payments to be payable by the employer to the employee as it considers just and appropriate in the circumstances.

(2) Terminal payments under this section refer to the statutory entitlements under this Ordinance that the employee has not been paid and that the employee is entitled to upon the termination of the contract of employment, or that he might reasonably be expected to be entitled to upon the termination of the contract of employment had he been allowed to continue with his original employment or original terms of the contract of employment to attain the minimum qualifying length of service required for the entitlements under this Ordinance.

(3) Subject to subsection (4), terminal payments include-

- (a) any wages and other payments due to the employee under his contract of employment;
- (b) any payment in lieu of notice payable under Part II, in the case of a dismissal without due notice;
- (c) any end of year payment payable under Part IIA;
- (d) any maternity leave pay or sum payable under Part III;
- (da) any paternity leave pay payable under Part IIIA; (Added 21 of 2014 s. 7)
- (e) any severance payment payable under Part VA or any long service payment payable under Part VB;
- (f) any sickness allowance or sum payable under Part VII;
- (g) any holiday pay payable under Part VIII;
- (h) any annual leave pay payable under Part VIIIA; and
- (i) any other payments due to the employee under this Ordinance and under his contract of employment.

(4) Notwithstanding that the employee has not attained the qualifying length of service required for the entitlements under this Ordinance, the court or Labour Tribunal may make an award for terminal payments under subsection (1) or (5) which shall be reckoned according to the actual length of time that the employee has been employed under that contract of employment with the employer.

(5) For the purposes of this section, where no order for reinstatement or re-engagement is made for an unreasonable variation of the terms of the contract of employment, the court or Labour Tribunal may treat the unreasonable variation of the terms of the contract of employment as an unreasonable dismissal by the employer and make an award for terminal payments and such terminal payments should be calculated up to the last date on which the employee renders services to the employer or the date on which an award of terminal payments under this section is made by the court or Labour Tribunal, whichever is the earlier.

(6) The respective provisions governing the calculation of the statutory entitlements shall apply to the calculation of the terminal payments; and, subject to subsection (4), in the case of an employee aged at the relevant date less than 45 years who at that date has less than 5 years service with his employer, any long service payment payable by virtue of subsection (3)(e) shall be calculated in the same manner as any long service payment payable under Part VB to an employee aged at the relevant date less than 45 years who at that date has 5 years service with his employer.

(7) Sections 31I and 31IA shall apply to any severance payment paid under this section.

(8) Sections 31Y, 31YAA and 31YA shall apply to any long service payment paid under this section.

Section:	43N	<b>Interpretation of Part IXB</b>	E.R. 3 of 2015	12/11/2015
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(1) In this Part—

*award* (判令) includes an order;

*registrar* (主任), in relation to a tribunal, means the Registrar of the Labour Tribunal or the Registrar of the Minor Employment Claims Adjudication Board (as the case may be);

*specified entitlement* (指明權利) means—

- (a) any wages or any other sum payable under section 23, 24 or 25, or interest payable under section 25A on the wages or sum;
- (b) any end of year payment payable under Part IIA;
- (c) any maternity leave pay or sum payable under Part III;
- (ca) any paternity leave pay payable under Part IIIA; (Added 21 of 2014 s. 15)
- (d) any severance payment payable under Part VA;
- (e) any long service payment payable under Part VB;
- (f) any sickness allowance or sum payable under Part VII;
- (g) any holiday pay payable under Part VIII;
- (h) any annual leave pay payable under Part VIIIA;
- (i) any sum payable in respect of rest days, maternity leave, paternity leave, holiday or annual leave which the employer is required under this Ordinance to grant to an employee but fails to grant, to the extent that the sum is not covered by paragraph (a), (b), (c), (ca), (d), (e), (f), (g) or (h); (Amended 21 of 2014 s. 15)
- (j) any terminal payments payable under section 32O to the extent that—
  - (i) the terminal payments are entitlements referred to in paragraph (a), (b), (c), (ca), (d), (e), (f), (g), (h) or (i) to which an employee is entitled upon the termination of the employee's contract of employment or, by virtue of section 32O(5), as a consequence of the unreasonable variation of the terms of that contract; or (Amended 21 of 2014 s. 15)
  - (ii) the award of those terminal payments is made by virtue of section 32M(2); or
- (k) any compensation payable under section 32P;

**tribunal** (審裁處) means the Labour Tribunal or Minor Employment Claims Adjudication Board.

- (2) A reference in this Part to an award of a tribunal includes—
  - (a) a settlement treated as an award of the Labour Tribunal under section 15(9) of the Labour Tribunal Ordinance (Cap 25); and
  - (b) a settlement treated as an award of the Minor Employment Claims Adjudication Board under section 14(4) of the Minor Employment Claims Adjudication Board Ordinance (Cap 453).
- (3) A reference in this Part to the date of an award means, in relation to a settlement referred to in subsection (2)—
  - (a) the date of filing of the settlement in the Labour Tribunal under section 15(8) of the Labour Tribunal Ordinance (Cap 25); or
  - (b) the date of filing of the settlement with the Registrar of the Minor Employment Claims Adjudication Board under section 14(3) of the Minor Employment Claims Adjudication Board Ordinance (Cap 453).

Section:	43P	<b>Offence of employer's failure to pay any sum payable under award of tribunal</b>	E.R. 3 of 2015	12/11/2015
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- (1) If—
  - (a) an award of a tribunal provides, in whole or in part, for the payment by an employer of any specified entitlement; and
  - (b) the employer wilfully and without reasonable excuse fails to pay—
    - (i) any sum payable under the award (other than a sum to which subparagraph (ii) applies) within 14 days after the date of the award; or
    - (ii) any sum payable under the award that is, by the terms of the award, payable otherwise than on the date of the award, within 14 days after the date on which the sum is, by those terms, payable,
 the employer commits an offence and is liable on conviction to a fine of \$350000 and to imprisonment for 3 years.
- (2) A reference in subsection (1)(b)(i) or (ii) to any sum payable under an award includes—
  - (a) any part of a sum payable under the award; and
  - (b) in the case of a sum payable by instalments, any instalment or part of an instalment.
- (3) For the purposes of subsection (1), if—
  - (a) an award of a tribunal provides for the payment of a sum but does not indicate whether or not that sum includes any specified entitlement; and
  - (b) the claim to which the award relates consists, in whole or in part, of any specified entitlement, then, unless there is evidence to the contrary, the award is to be treated as providing for the payment of a specified entitlement.

Section:	43R	<b>Proof of certain matters in proceedings for offence under section 43P</b>	E.R. 3 of 2015	12/11/2015
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- (1) For the purposes of proceedings for an offence under section 43P, a document (*first-mentioned document*) purporting to be a copy of a specified document, and purporting to be certified by or on behalf of the registrar of a tribunal or the registrar of a court as a true copy of the specified document, is admissible in evidence on its production without further proof and, unless there is evidence to the contrary—
- (a) the court before which the first-mentioned document is produced must presume—
    - (i) that the first-mentioned document is certified by or on behalf of the registrar of a tribunal or the registrar of a court; and
    - (ii) that the first-mentioned document is a true copy of the specified document;
  - (b) in the case of the first-mentioned document purporting to be a copy of a specified document referred to in subsection (2)(a) and prepared by an officer of a tribunal or of a court, the first-mentioned document is evidence of all matters contained in it; and
  - (c) in the case of the first-mentioned document purporting to be a copy of a specified document referred to in subsection (2)(b) and prepared by an officer of a tribunal or of a court, the first-mentioned document is evidence of the facts specified in subsection (4) or (5).
- (2) In subsection (1), *specified document* (指明文件) means—
- (a) a claim filed with a tribunal, or an award made by a tribunal, or any other document relating to proceedings before a tribunal or a court; or
  - (b) any document that is relevant to any fact specified in subsection (4) or (5).
- (3) For the purposes of proceedings for an offence under section 43P, a certificate purporting to be issued by or on behalf of the registrar of a tribunal or the registrar of a court and stating any of the facts specified in subsection (4) or (5) is admissible in evidence on its production without further proof and, unless there is evidence to the contrary—
- (a) the court before which the certificate is produced must presume that the certificate is issued by or on behalf of the registrar of a tribunal or the registrar of a court; and
  - (b) the certificate is evidence of the facts so stated.
- (4) The following facts are specified for the purposes of subsection (3) in relation to a certificate purporting to be issued by or on behalf of the registrar of a tribunal—
- (a) whether any payment has been made to the tribunal in full or partial discharge of an award of the tribunal and, if so, particulars of the payment (including the date, amount and, in the case of an award made in favour of 2 or more claimants, to which claimant the amount is paid);
  - (b) whether a decision has been made in any proceedings to set aside or review an award of the tribunal and, if so, the particulars of the decision;
  - (c) whether any proceedings are pending to set aside or review an award of the tribunal and, if so, the particulars of the pending proceedings;
  - (d) whether any person was present at the hearing of the tribunal at which an award of the tribunal was made or at any hearing of the claim to which the award relates; and
  - (e) whether any document relating to proceedings before the tribunal has been served on any person and, if so, the particulars of service (including the mode, time and address of service).
- (5) The following facts are specified for the purposes of subsection (3) in relation to a certificate purporting to be issued by or on behalf of the registrar of a court—
- (a) whether a decision has been made in an appeal (if any) against an award of a tribunal and, if so, the particulars of the decision; and
  - (b) whether an appeal is pending against an award of a tribunal and, if so, the particulars of the pending appeal.
- (6) In this section, *registrar of a court* (司法常務官) means—
- (a) the Registrar of the High Court; or
  - (b) the Registrar of the Court of Final Appeal.
- (7) In subsections (1) and (3), a reference to a court before which a document or a certificate is produced includes a magistrate.

Chapter:	25A	<b>Labour Tribunal (General) Rules</b>	Gazette Number	Version Date
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Rule:	12	<b>Registration of award or order in District Court</b>	E.R. 1 of 2015	29/01/2015
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- (1) Where an award or order is made by the tribunal, and if stay of execution has not been ordered under section 37 of the Ordinance, the registrar shall, on the application of the party in whose favour the award or order is made, supply to him a certificate of award or order in the prescribed form and a copy thereof. (see Form 17)
- (2) The registrar of the District Court must, on the production of a certificate of award or order and a copy of it to the registrar, register the certificate in the Register of Actions kept in the District Court. (L.N. 127 of 1976; 20 of 2014 s. 18)
- (3) The registrar of the District Court shall seal and date the copy certificate and return it to the person producing it.
- (4) A presiding officer may at any time authorize an officer attached to the tribunal, not being below the rank of senior clerical officer, to discharge the duties of the registrar under paragraph (1). (L.N. 279 of 1981)

Chapter:	25C	Labour Tribunal (forms) Rules	Gazette Number	Version Date
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Form 17

[[Gen.] rule 12(1)]

Labour Tribunal Ordinance  
(Chapter 25)

CERTIFICATE OF \*AWARD/ORDER

[*title as in Form 1*]

I, ....., certify that (a) ..... on the ..... day of ..... obtained against (b) ..... in the tribunal \*the award of ...../the order for the payment of .....

Dated this ..... day of .....

*\*Registrar/Officer authorized by Presiding Officer under rule 12(4) of the Labour Tribunal (General) Rules*

L.S.

TO THE REGISTRAR, DISTRICT COURT.

The above certificate is presented by me for registration in accordance with rule 12(2) of the Labour Tribunal (General) Rules.

Dated this ..... day of .....

.....  
*(Signature of party presenting for registration)*

The above certificate is registered in the District Court.

Dated this ..... day of .....

*Registrar, District Court*

L.S.

\* Delete whichever is not applicable.

- Note:*
- (a) Insert full name of party in whose favour the award or order is made.
  - (b) Insert full name of party against whom the award or order is made.
  - (c) (Repealed 20 of 2014 s. 19)

(L.N. 126 of 1976; L.N. 280 of 1981 L.N. 125 of 1995; 20 of 2014 s. 19)

## **Implications of the Proposal**

### **Sustainability Implications**

By providing greater employment protection to employees who may be more vulnerable in the labour market, namely, those who are pregnant, taking sick leave or injured at work, the proposal may help reduce the likelihood of their being discriminated against in employment because of their pregnancy or health, and enhance their prospect of staying in their job. However, given that the number of cases of UUD with the employees involved seeking RI or RE has been very small, the positive impact in this respect is unlikely to be significant.

### **Gender and Family Implications**

2. The proposal provides greater employment protection to employees. For employees who are the breadwinners of the family, the proposal may help relieve the financial burden caused by the loss of job and hence may have a positive effect on the family. Besides, protection for female employees who are pregnant is also enhanced. This may have a positive effect on women employment. These implications, however, are unlikely to be significant given that the number of cases of UUD with the employees involved seeking RI or RE has been very small.

### **Financial and Civil Service Implications**

3. The proposal has no civil service or additional financial implications for the Government. The Bill may result in some additional work on the Judiciary and LD. In line with the agreed funding arrangements between the Government and the Judiciary, the Government should provide the Judiciary with any necessary financial and manpower resources if such needs arise in future. For LD, the additional workload arising from implementing the legislative amendment should be limited. LD will absorb the additional workload within its existing resources. In case there is any substantial increase in workload, LD may seek additional resources with justifications in accordance with the established mechanism.

### **Economic Implications**

4. The proposal would promote better employment protection to employees, while not imposing considerable cost at the enterprise level. It can be expected that both sides could benefit from the removal of impediments to better labour relations in the long run.