

立法會
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Tel : 3919 3329

Date : 21 May 2020

From : Clerk to the Legislative Council

To : All Members of the Legislative Council

Council meeting of 27 May 2020

**Proposed amendments to
Discrimination Legislation (Miscellaneous Amendments) Bill 2018**

Further to LC Paper No. CB(3) 410/19-20 issued on 12 May 2020, the President has given permission for the Secretary for Constitutional and Mainland Affairs to move amendments to the captioned Bill, subject to the Bill receiving Second Reading.

2. As directed by the President, the proposed amendments are attached for Members' consideration.

(Thomas CHAN)
for Clerk to the Legislative Council

Encl.

Committee Stage

Amendments to be moved by the Secretary for Constitutional and Mainland Affairs

<u>Clause</u>	<u>Amendment Proposed</u>
4(2)	In the proposed definition of <i>breastfeeding</i> , by deleting “—see section 8A(2);” and substituting “means breastfeeding within the meaning of section 8A(2)(a);”.
7	In the proposed section 8A(2)(a)(i), by deleting “her child or expressing breast milk to feed her child” and substituting “a child or expressing breast milk”.
7	In the proposed section 8A(2)(a)(ii), by deleting “her child” and substituting “a child”.
New	<p>In Part 5, in Division 1, by adding—</p> <p>“18A. Section 2 amended (interpretation)</p> <p>Section 2(1)—</p> <p>Add in alphabetical order</p> <p>“<i>intern</i> (實習人員)—see section 23A(2);</p> <p><i>internship</i> (實習)—see section 23A(2);</p> <p><i>pupillage</i> (見習職位)—see section 36(4);</p> <p><i>volunteer</i> (義工)—see section 23A(2);”.</p>
19	<p>In the proposed section 23A(2), in the definition of <i>workplace participant</i>, by deleting paragraphs (f) and (g) and substituting—</p> <p>“(f) the principal, within the meaning of section 20(1), of a commission agent;</p> <p>(g) a partner in a firm;</p> <p>(h) an intern; or</p> <p>(i) a volunteer.”.</p>

19

In the proposed section 23A(2), by adding in alphabetical order to the proposed definitions—

“*intern* (實習人員) means a person who is engaged by another person for an internship but is not an employee of that other person;

internship (實習) means—

(a) a period of work the completion of which is required for attaining a professional or academic qualification and includes a pupillage; or

(b) any other work that is usually described as an internship;

volunteer (義工) means a person who performs volunteer work other than in the capacity of an employer or employee;”.

New

In Part 5, in Division 1, by adding—

“19A. Section 46A added

After section 46—

Add

“46A. Liability of persons engaging interns and volunteers

(1) This section applies for the purposes of section 23A.

(2) For the avoidance of doubt, this section does not apply for the purposes of any criminal proceedings.

(3) An act done by an intern in the course of an internship is to be treated as an act done—

(a) by the intern; and

(b) by the person who engaged the intern for the internship, whether or not the act was done with the knowledge or approval of that person.

(4) In proceedings brought under this Ordinance against a person in respect of an act alleged to have been done by an intern engaged by the person, it is a defence for the person to prove that the person took reasonably practicable steps to prevent the intern—

(a) from doing that act; or

(b) from doing acts of that description in the course of the internship.

- (5) Subsections (6) and (7) apply if a volunteer is engaged by another person to perform volunteer work.
- (6) An act done by a volunteer in the course of performing volunteer work is to be treated as an act done—
 - (a) by the volunteer; and
 - (b) by the person who engaged the volunteer to perform the work, whether or not the act was done with the knowledge or approval of that person.
- (7) In proceedings brought under this Ordinance against a person in respect of an act alleged to have been done by a volunteer engaged by the person, it is a defence for the person to prove that the person took reasonably practicable steps to prevent the volunteer—
 - (a) from doing that act; or
 - (b) from doing acts of that description in the course of performing volunteer work.”.

19B. Section 47 amended (aiding unlawful acts)

After section 47(2)—

Add

- “(2A) For the purposes of subsection (1), if a person who engaged an intern—
 - (a) is liable under section 46A for an act done by the intern; or
 - (b) would be liable under section 46A for the act but for section 46A(4),the intern is deemed to aid the doing of the act by that person.
- (2B) For the purposes of subsection (1), if a person who engaged a volunteer—
 - (a) is liable under section 46A for an act done by the volunteer; or
 - (b) would be liable under section 46A for the act

but for section 46A(7),
the volunteer is deemed to aid the doing of the act
by that person.”.

19C. Section 76 amended (claims under Part 3 or 4)

Section 76(1)(d)—

Repeal

“46”

Substitute

“46, 46A”.”.

20 By renumbering the clause as clause 20(3).

20 By adding—

“(1) Section 2(1), English text, definition of *unjustifiable hardship*—

Repeal the full stop

Substitute a semicolon.

(2) Section 2(1)—

Add in alphabetical order

“*intern* (實習人員)—see section 22A(2);

internship (實習)—see section 22A(2);

pupillage (見習職位)—see section 33(4);

volunteer (義工)—see section 22A(2).”.”.

21 In the proposed section 22A(2), in the definition of *workplace participant*, by deleting paragraphs (f) and (g) and substituting—

“(f) the principal, within the meaning of section 20(1), of a commission agent;

(g) a partner in a firm;

(h) an intern; or

(i) a volunteer.”.

21

In the proposed section 22A(2), by adding in alphabetical order to the proposed definitions—

“*intern* (實習人員) means a person who is engaged by another person for an internship but is not an employee of that other person;

internship (實習) means—

(a) a period of work the completion of which is required for attaining a professional or academic qualification and includes a pupillage; or

(b) any other work that is usually described as an internship;

volunteer (義工) means a person who performs volunteer work other than in the capacity of an employer or employee;”.

New

In Part 5, in Division 2, by adding—

“21A. Section 48A added

After section 48—

Add

“48A. Liability of persons engaging interns and volunteers

(1) This section applies for the purposes of section 22A.

(2) For the avoidance of doubt, this section does not apply for the purposes of any criminal proceedings.

(3) An act done by an intern in the course of an internship is to be treated as an act done—

(a) by the intern; and

(b) by the person who engaged the intern for the internship, whether or not the act was done with the knowledge or approval of that person.

(4) In proceedings brought under this Ordinance against a person in respect of an act alleged to have been done by an intern engaged by the person, it is a defence for the person to prove that the person took reasonably practicable steps to prevent the intern—

(a) from doing that act; or

(b) from doing acts of that description in the course of the internship.

- (5) Subsections (6) and (7) apply if a volunteer is engaged by another person to perform volunteer work.
- (6) An act done by a volunteer in the course of performing volunteer work is to be treated as an act done—
 - (a) by the volunteer; and
 - (b) by the person who engaged the volunteer to perform the work, whether or not the act was done with the knowledge or approval of that person.
- (7) In proceedings brought under this Ordinance against a person in respect of an act alleged to have been done by a volunteer engaged by the person, it is a defence for the person to prove that the person took reasonably practicable steps to prevent the volunteer—
 - (a) from doing that act; or
 - (b) from doing acts of that description in the course of performing volunteer work.”.

21B. Section 49 amended (aiding unlawful acts)

After section 49(2)—

Add

- “(2A) For the purposes of subsection (1), if a person who engaged an intern—
 - (a) is liable under section 48A for an act done by the intern; or
 - (b) would be liable under section 48A for the act but for section 48A(4),the intern is deemed to aid the doing of the act by that person.
- (2B) For the purposes of subsection (1), if a person who engaged a volunteer—
 - (a) is liable under section 48A for an act done by the volunteer; or
 - (b) would be liable under section 48A for the act

but for section 48A(7),
the volunteer is deemed to aid the doing of the act
by that person.”.

21C. Section 72 amended (claims under Part 3 or 4)

Section 72(1)(d)—

Repeal

“48”

Substitute

“48, 48A”.”.

New In Part 5, in Division 3, by adding—

“21D. Section 2 amended (interpretation)

(1) Section 2(1), English text, definition of *training*—

Repeal the full stop

Substitute a semicolon.

(2) Section 2(1)—

Add in alphabetical order

“*intern* (實習人員)—see section 24A(2);

internship (實習)—see section 24A(2);

pupillage (見習職位)—see section 35(4);

volunteer (義工)—see section 24A(2).”.”.

22 In the proposed section 24A(2), in the definition of *workplace participant*, by deleting paragraphs (f) and (g) and substituting—

“(f) the principal, within the meaning of section 22(1), of a commission agent;

(g) a partner in a firm;

(h) an intern; or

(i) a volunteer.”.

22 In the proposed section 24A(2), by adding in alphabetical order to the proposed definitions—

“*intern* (實習人員) means a person who is engaged by another person for an internship but is not an employee of that other

person;

internship (實習) means—

- (a) a period of work the completion of which is required for attaining a professional or academic qualification and includes a pupillage; or
- (b) any other work that is usually described as an internship;

volunteer (義工) means a person who performs volunteer work other than in the capacity of an employer or employee;”.

New

In Part 5, in Division 3, by adding—

“23A. Section 47A added

After section 47—

Add

“47A. Liability of persons engaging interns and volunteers

- (1) This section applies for the purposes of section 24A.
- (2) For the avoidance of doubt, this section does not apply for the purposes of any criminal proceedings.
- (3) An act done by an intern in the course of an internship is to be treated as an act done—
 - (a) by the intern; and
 - (b) by the person who engaged the intern for the internship, whether or not the act was done with the knowledge or approval of that person.
- (4) In proceedings brought under this Ordinance against a person in respect of an act alleged to have been done by an intern engaged by the person, it is a defence for the person to prove that the person took reasonably practicable steps to prevent the intern—
 - (a) from doing that act; or
 - (b) from doing acts of that description in the course of the internship.
- (5) Subsections (6) and (7) apply if a volunteer is engaged by another person to perform volunteer work.
- (6) An act done by a volunteer in the course of

performing volunteer work is to be treated as an act done—

- (a) by the volunteer; and
- (b) by the person who engaged the volunteer to perform the work, whether or not the act was done with the knowledge or approval of that person.

(7) In proceedings brought under this Ordinance against a person in respect of an act alleged to have been done by a volunteer engaged by the person, it is a defence for the person to prove that the person took reasonably practicable steps to prevent the volunteer—

- (a) from doing that act; or
- (b) from doing acts of that description in the course of performing volunteer work.”.

23B. Section 48 amended (aiding unlawful acts)

After section 48(2)—

Add

“(2A) For the purposes of subsection (1), if a person who engaged an intern—

- (a) is liable under section 47A for an act done by the intern; or
- (b) would be liable under section 47A for the act but for section 47A(4),

the intern is deemed to aid the doing of the act by that person.

(2B) For the purposes of subsection (1), if a person who engaged a volunteer—

- (a) is liable under section 47A for an act done by the volunteer; or
- (b) would be liable under section 47A for the act but for section 47A(7),

the volunteer is deemed to aid the doing of the act by that person.”.

23C. Section 70 amended (claims in respect of discrimination,

harassment and vilification)

Section 70(1)(d)—

Repeal

“47”

Substitute

“47, 47A”.”.