

**Business Facilitation Advisory Committee  
Task Force on Business Liaison Groups**

*Sickness allowance and employment protection  
under anti-epidemic measures*

**Purpose**

This paper briefs members on the Employment (Amendment) Ordinance 2022 (“Amendment Ordinance”).

**Background**

2. The Amendment Ordinance amends the Employment Ordinance (Cap. 57) (“EO”) to reflect the policy intent clearly and to strengthen the protection of employees’ rights and benefits when they comply with specific anti-epidemic requirements. It also makes clear their respective obligations and rights when employers request their employees for COVID-19 vaccination. The Amendment Ordinance came into operation on 17 June 2022.

**The Amendment Ordinance**

Sickness allowance and employment protection

3. After the Amendment Ordinance came into operation, apart from a day on which an employee is absent from work by reason of his/her being unfit due to sickness or injury, a sickness day under EO also includes a day on which an employee is absent from work by reason of his/her compliance with a specific anti-epidemic requirement<sup>1</sup> that imposes a restriction on movement (such as restrictions imposed by isolation orders, quarantine orders and “restriction-testing declarations”<sup>2</sup>). Employers are required to grant sickness allowance to eligible

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<sup>1</sup> Relevant requirements refer to the requirements provided in Schedule 12 of EO, where the restrictions on movement are imposed on employees under the subsidiary legislation of the Prevention and Control of Disease Ordinance (Cap. 599).

<sup>2</sup> The restrictions imposed by the Government on inbound persons because of their arrivals at Hong Kong are not included.

employees<sup>3</sup> who can produce relevant proof<sup>4</sup> (such as an isolation order, a quarantine order or the certificate on restriction-testing declaration) and relevant employees are no longer required to produce medical certificates. Furthermore, it is not a valid reason under EO for the employee to be dismissed or his/her employment terms be varied by the employer because of his/her absence from work due to his/her compliance with the above-mentioned restrictions. The employee concerned may claim for remedies for the unreasonable dismissal or the unreasonable variation of the terms of the employment contract against the employer in accordance with EO.

#### Employers requesting employees for COVID-19 vaccination

4. Under the Amendment Ordinance, if an employer, in accordance with the requirements of a “legitimate vaccination request” and having regard to the nature of the employees’ work and the related operational requirements, reasonably believes that if an employee contracts COVID-19, the persons with whom the employee may come into face-to-face contact when the employee performs his/her work will be exposed to the risk of infection, he/she can make a written request to all his/her employees undertaking the same or similar job nature for COVID-19 vaccination. If an employee fails to produce a COVID-19 vaccination record within 56 days, the dismissal of such employee is not considered as unreasonable dismissal. However, employees holding a valid COVID-19 Vaccination Medical Exemption Certificate, and where the “Vaccine Pass” is not applicable to the places of work of the employees<sup>5</sup>, pregnant employees, lactating employees or employees who are within 6 months from the date being diagnosed as having contracted COVID-19 are exempted from producing vaccination records against a “legitimate vaccination request”.

5. The Amendment Ordinance neither requires an employer to make a mandatory vaccination request of his/her employees, nor empowers an employer to dismiss his/her employees who fails to present proof of vaccination. It only

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<sup>3</sup> Employed under a continuous contract, sick leave taken is not less than 4 consecutive days, accumulated sufficient number of paid sickness days and the sick leave is supported by the proof restriction imposed by specific anti-epidemic requirement.

<sup>4</sup> Such proof includes hard copy or electronic form of document, or an electronic data issued by the Government. The relevant proof should show the name of employee, or information that could identify the identity of employee, the type of restriction imposed by specific anti-epidemic requirement, and the commencement and expiry dates of such restriction.

<sup>5</sup> Referring to the situations where the places of work of the employees concerned are not the specified premises under Vaccine Pass as stipulated by the Vaccine Pass Direction issued in accordance with the Prevention and Control of Disease (Vaccine Pass) Regulation (Cap. 599L) nor other applicable premises under Vaccine Pass (i.e. relating to employees who perform a particular kind of work where the Government imposes a requirement or makes a recommendation to receive vaccination).

seeks to specify clearly the standards to be met in terms of the manner an employer makes a vaccination request, the time limit and the exemption arrangements. It also sets out the circumstances that a dismissal due to related matters will be a valid reason under EO, which, in turn, clarifies the obligations and rights between employers and employees. The Government encourages employers to maintain good communication with the employees who are yet to comply with the vaccination request and to work out mutually acceptable work arrangements. Relevant provisions relating to “legitimate vaccination request” will be repealed when the pandemic is under control and vaccination is no longer a matter of grave public health concern.

### **Promotion and Publicity**

6. To tie in with the implementation, the Labour Department (“LD”) has been promoting and publicising the Amendment Ordinance through various channels and networks so as to promote public understanding of the amendments. Relevant information has been uploaded to LD’s dedicated webpage ([www.labour.gov.hk/eng/news/EAO2022.htm](http://www.labour.gov.hk/eng/news/EAO2022.htm)) for employers’ and employees’ reference.

7. Employers and employees may make enquiries on the Amendment Ordinance through the 24-hour hotline at 2717 1771 (the hotline is handled by “1823”), email ([enquiry@labour.gov.hk](mailto:enquiry@labour.gov.hk)) or in-person at the branch offices of the Labour Relation Division (LRD) of LD<sup>6</sup>. LD’s labour inspectors also carry out proactive workplace inspections to ensure employers’ compliance with the Amendment Ordinance.

### **Way Forward**

8. Members are invited to note the content of this paper and offer comments, if any.

**Labour Department**  
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<sup>6</sup> Addresses of LRD’s branch offices: [www.labour.gov.hk/eng/tele/lr1.htm](http://www.labour.gov.hk/eng/tele/lr1.htm).