

**Summary of Major Amendments to
the Employment Ordinance made under
the Certification for Employee Benefits
(Chinese Medicine)(Miscellaneous Amendments) Ordinance 2006**

Introduction

Parts 1, 2 and 5 of the Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Ordinance 2006 (“the Amendment Ordinance”) become effective on **1 December 2006**. The provisions cover amendments made to the Employment Ordinance (Cap. 57), the Mandatory Provident Fund Schemes (General) Regulation (Cap. 485 sub. leg. A) and the Mandatory Provident Fund Schemes (Exemption) Regulation (Cap. 485 sub. leg. B).

As far as the Employment Ordinance is concerned, the objective of making the amendments is to recognize the medical treatment, examination and certification given by **registered Chinese medicine practitioners** for the purpose of employees’ entitlement to benefits under the Employment Ordinance.

This leaflet sets out in simple terms the **major amendments** to the Employment Ordinance (Part 2 of the Amendment Ordinance). For information on the major provisions of the Employment Ordinance, please refer to “A Concise Guide to the Employment Ordinance” published by the Labour Department, which can be downloaded from <http://www.labour.gov.hk/eng/public/ConciseGuide.htm>.

Registered Chinese medicine practitioners

A registered Chinese medicine practitioner refers to a person who is registered under sections 69 or 85 of the Chinese Medicine Ordinance (Cap. 549) and whose name appears on the Register of Chinese Medicine Practitioners (“the Register”).

A person is entitled to be known as “registered Chinese medicine practitioner of the Chinese Medicine Council of Hong Kong” or the abbreviation “registered Chinese medicine practitioner” only if his name appears on the Register. A registered Chinese medicine practitioner may use any one of the addition or description of “General Practice”, “Acupuncture” or “Bone-setting” in brackets after his title to indicate his

stream of practice in Chinese medicine.

The Chinese Medicine Council (“CMC”) has published a list of registered Chinese medicine practitioners in the Gazette. The list is also uploaded onto the homepage of the CMC for public consumption. The website of the CMC is <http://www.cmchk.org.hk> .

Code of Practice and Reference Guide for Registered Chinese Medicine Practitioners

To uphold the professional ethics and set standards for the practice, the CMC has issued a Code of Practice for Registered Chinese Medicine Practitioners in Hong Kong (“the Code”) in 2002. The Code requires registered Chinese medicine practitioners to be professionally responsible to patients and should not issue untruthful or misleading documents. It also lays down requirements on keeping medical records and issuing prescriptions.

The CMC has also drawn up a Reference Guide on Issuance of Sick Leave Certificates by Registered Chinese Medicine Practitioners (“the Reference Guide”) setting out the common diseases/injuries and corresponding suggestions on the duration of sick leave. While the suggested duration of sick leave is intended for the reference of registered Chinese medicine practitioners in issuing sick leave certificates and is not legally binding, all registered Chinese medicine practitioners have a duty to issue appropriate sick leave certificates in accordance with their professional judgment with due regard to the circumstances of individual patients. The Code and the Reference Guide can be downloaded from the homepage of the CMC.

Amendments to the Employment Ordinance

- (◆ denotes the provision prior to the amendments
 ⇒ denotes the provision subsequent to the amendments)

1. Sickness allowance

- ◆ An employee shall be entitled to sickness allowance if his sick leave is supported by an appropriate medical certificate, subject to the fulfillment of other eligibility criteria under the Employment Ordinance.

- ⇒ With the amendments, an appropriate medical certificate includes one issued by a registered Chinese medicine practitioner.

- ◆ Under the Employment Ordinance, an employee employed on a continuous contract can accumulate paid sickness days. Paid sickness days are divided into two categories – paid sickness days can first be accumulated up to 36 days in Category 1 and then 84 days in Category 2. If an employee takes paid sickness days under category 2, he shall, if so required by his employer, produce a medical certificate that is issued by a registered medical practitioner or registered dentist attending him in a hospital. His employer may also require the production of a brief record of the investigation carried out and the treatment prescribed.
 - ⇒ With the amendments, the relevant medical certificate or record includes one issued or provided by a registered Chinese medicine practitioner attending the employee in a hospital.

- ◆ If an employer is operating a recognized scheme of medical treatment^{Note 1}, unless the employee has a reasonable excuse to refuse treatment under the scheme, an appropriate medical certificate shall be one issued by the registered medical practitioner or registered dentist engaged by the employer under the scheme. The employee will be entitled to sickness allowance if he meets other eligibility criteria as stipulated by the Employment Ordinance.

With the amendments:

- ⇒ Treatment given by a registered Chinese medicine practitioner may be included in a recognized scheme of medical treatment.

- ⇒ If the recognized scheme of medical treatment operated by an employer does not cover treatment given by a registered Chinese medicine practitioner, the employee may choose to receive treatment from any registered Chinese medicine practitioner. Likewise, if the recognized scheme of medical treatment operated by an employer does not cover treatment given by a registered medical practitioner or registered dentist, the employee may choose to receive

treatment from any registered medical practitioner or registered dentist.

Note 1 A recognized scheme of medical treatment means a scheme of medical treatment operated by an employer and recognized by the Director of Health by way of a notice published in the Gazette.

2. Maternity Protection

- ◆ Prior to the amendments, employees can submit medical certificates issued by registered medical practitioners or registered midwives (in some situations only) to be eligible for maternity protection.
 - ⇒ With the amendments, medical certificates issued by registered Chinese medicine practitioners are recognized in most situations. Please refer to the following table which sets out the requirements:-

Certification pertaining to	Issued by a registered medical practitioner	Issued by a registered Chinese medicine practitioner	Issued by a registered midwife
Pregnancy and the expected date of confinement	✓	✓	✓
Actual date of confinement	✓	✗	✓
An additional period of not more than 4 weeks of maternity leave on ground of illness or disability due to pregnancy or confinement	✓	✓	✗
Absence from work to attend a medical examination in relation to pregnancy or post confinement medical treatment, or by reason of miscarriage	✓	✓	✗
Unfitness to handle heavy, hazardous or harmful work ^{Note 2} .	✓	✓	✗

Note 2 Regardless of whether the medical certificate produced by the employee was issued by a registered medical practitioner or registered Chinese medicine practitioner, an employer may, within 14 days after receiving such certificate, at his own expense, arrange for the employee to attend another medical examination conducted by a registered medical practitioner or registered Chinese medicine

practitioner named by the employer to obtain a second opinion as to the employee's fitness to undertake the work at issue.

3. Long Service Payment

- ◆ An employee who has been employed under a continuous contract for not less than 5 years and is certified as being permanently unfit for his present job through a specified certificate issued by a registered medical practitioner has a right to long service payment on terminating his employment contract.
 - ⇒ With the amendments, a specified certificate issued by a registered Chinese medicine practitioner is recognized for certifying that an employee is permanently unfit for his present job.
- ◆ Within 14 days after receiving the relevant certificate from the employee, the employer may, at his own expense, require the employee to undergo another medical examination by a registered medical practitioner so as to obtain a second opinion as to the employee's permanent unfitness to perform his present job.
 - ⇒ With the amendments, regardless of whether the certificate submitted by the employee is issued by a registered medical practitioner or registered Chinese medicine practitioner, an employer may, at his own expense, require the employee to undergo another medical examination by a registered medical practitioner or registered Chinese medicine practitioner named by the employer to obtain a second opinion as to whether the employee is permanently unfit for that type of work.

4. Other Amendments

Employment of Children Regulations

- ◆ The Commissioner for Labour may require the employer of a child to produce a medical certificate of fitness signed by a registered medical practitioner.
 - ⇒ With the amendments, the medical certificate of fitness can be signed by a registered Chinese medicine practitioner.

5. Application of the Amending Provisions

- ◆ The amendments do not apply in the following circumstances :
 - ◇ A certificate or medical certificate issued by a registered Chinese medicine practitioner before the commencement of Part 2 of the Amendment Ordinance, i.e. 1 December 2006.
 - ◇ For a certificate or medical certificate issued by a registered Chinese medicine practitioner on or after the commencement of Part 2 of the Amendment Ordinance, i.e. 1 December 2006, the sickness days, period of maternity leave or incapability of work that occurs or ends before that date.

Other information on the Amendment Ordinance

- The date of commencement of those parts of the Amendment Ordinance relevant to the Employees' Compensation Ordinance and the Pneumoconiosis (Compensation) Ordinance will be appointed at a later stage.

Enquiries

- ◆ Enquiry Hotline : 2717 1771 (the hotline is handled by the 1823 Call Centre)
- ◆ Homepage : <http://www.labour.gov.hk>

Please note that the above information is for reference only. The Amendment Ordinance and the Employment Ordinance remain the sole authority for the provisions of the law explained.