

## **Chapter 5: Sickness Allowance**

### **Eligibility for Sickness Allowance**

An employee employed under a continuous contract is entitled to sickness allowance if:

1. the sick leave taken is not less than four consecutive days (unless for any day off taken by a female employee for her pregnancy check-ups, post confinement medical treatment or miscarriage, any such day on which she is absent shall be counted as a sickness day and, subject to the following conditions, be paid sickness allowance);
2. the sick leave is supported by an appropriate medical certificate (see the part below on "Two Categories of Paid Sickness Days"); and
3. the employee has accumulated sufficient number of paid sickness days (see the parts below on "Accumulation of Paid Sickness Days" and "Two Categories of Paid Sickness Days").

An employee shall not be entitled to sickness allowance under the following circumstances :

- the employee, without reasonable excuse, refuses treatment by a company doctor of a medical scheme recognised by the Director of Health or disregards the advice of the doctor. (If the recognised scheme of medical treatment operated by an employer does not cover treatment from a certain medical discipline, the employee may choose to receive treatment from any registered medical practitioner, registered Chinese medicine practitioner or registered dentist under that particular discipline) ;
- the sickness day falls on a statutory holiday on which the employee is entitled to holiday pay; or
- compensation is payable under the Employees' Compensation Ordinance.

### **Sickness Allowance**

The daily rate of sickness allowance is a sum equivalent to four-fifths of the average daily wages earned by an employee in the 12-month period preceding the following specified dates. If an employee is employed for less than 12 months, the calculation shall be based on the shorter period.

| <b>Day(s) of sickness day(s)</b> | <b>Specified Dates</b> |
|----------------------------------|------------------------|
| 1 day                            | The sickness day       |
| More than 1 consecutive day      | The first sickness day |

*NOTE: In calculating the average daily wages, an employer has to exclude (i) the periods for which an employee is not paid his wages or full wages, including rest day, statutory holiday, annual leave, sickness day, maternity leave, sick leave due to work injuries or leave taken with the agreement of the employer, and any normal working day on which the employee is not provided by the employer with work; together with (ii) the sum paid to the employee for such periods. (see Appendix 2 for details)*

Sickness allowance should be paid to the employee not later than the normal pay day.

#### ***Offences and Penalties***

An employer who without reasonable excuse fails to pay sickness allowance to an employee is liable to prosecution and, upon conviction, to a fine of \$50,000.

#### **Accumulation of Paid Sickness Days**

An employee can accumulate paid sickness days after having been employed under a continuous contract. Paid sickness days are accumulated at the rate of two paid sickness days for each completed month of the employee's employment during the first 12 months, and four paid sickness days for each completed month of employment thereafter. Paid sickness days can be accumulated up to a maximum of 120 days.

### **Two Categories of Paid Sick 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.

| <b>Category</b>   | <b>Total Number</b> | <b>Conditions for taking paid sickness day(s)</b>   |
|-------------------|---------------------|---|
| <b>Category 1</b> | 36                  | <ul style="list-style-type: none"><li>supported by a medical certificate* issued by a registered medical practitioner, a registered Chinese medicine practitioner or a registered dentist</li></ul>   |
| <b>Category 2</b> | 84                  | <ul style="list-style-type: none"><li>sickness days taken exceeds the number of paid sickness days remaining in Category 1</li><li>if required by the employer, a medical certificate* issued by a registered medical practitioner, registered Chinese medicine practitioner or registered dentist attending the employee as an out-patient or in-patient in a hospital should be produced ; upon the employer's request, a brief record of the investigation carried out and the treatment prescribed by the issuer of the medical certificate should also be produced</li></ul> |

\* The medical certificate should specify the number of days on which, and the nature of the sickness or injury on account of which, the employee is unfit for work.

### **Record of Sickness Days**

An employer should keep the following records:

1. the date of commencement and termination of employment of each employee;
2. all paid sickness days accumulated by each employee, including the number of paid sickness days accumulated in Category 1 and 2;

3. paid sickness days taken by each employee and deducted from the total number of paid sickness days in either categories;
4. sickness allowance paid and the sickness days in respect of which the sickness allowance was paid.

The record should be signed by the employee within seven days of his return to work from paid sick leave, and the employee has the right to inspect the record.

### **Employment Protection**

An employer is prohibited from terminating the contract of employment of an employee on his paid sickness day, except in cases of summary dismissal due to the employee's serious misconduct.

### ***Offences and Penalties***

An employer who contravenes the above provision is liable to prosecution and, upon conviction, to a fine of \$100,000. Besides, the employer is required to pay the following sum of money to the dismissed employee within 7 days after the day of termination:

1. wages in lieu of notice;
2. a further sum equivalent to seven days' wages as compensation\*\*;  
and
3. any sickness allowance to which the employee is entitled.

\*\*see Appendix 2 for details of the calculation

The employee may also claim remedies for employment protection against his employer if he is dismissed other than for a valid reason as specified in the Ordinance.

(see the part on Eligibility and Remedies for Employment Protection in Chapter 9)