

**GUIDE ON
HUMAN RESOURCE
MANAGEMENT PRACTICES
RELATING TO SICK LEAVE**



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Labour Department

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I. INTRODUCTION

- 1.1 Employees are the most valuable assets of an organisation. Harmonious labour relations can be strengthened through employers' efforts in implementing enlightened human resource management practices, thereby building a stable working environment.
- 1.2 The Employment Ordinance (EO) provides the minimum standards on employment rights and benefits. Employees are entitled to paid sick leave to guard against loss of earnings due to illness under stipulated conditions. As a matter of fact, many enlightened employers are offering sick leave benefits which are more generous than those provided under the EO in order to enhance staff commitment.
- 1.3 The purpose of this guide is to provide some useful guidelines on human resource management practices relating to sick leave¹. Whilst ensuring that employees are given their proper entitlements under the law and their contracts, it is equally important for employers to implement good human resource management practices relating to sick leave. Adopting such practices can help an organisation enhance staff morale and operational efficiency.

¹ Sick leave in this guide does not include sick leave arising from work-related injuries which is governed by the Employees' Compensation Ordinance.

II. EMPLOYERS' OBLIGATIONS UNDER THE EMPLOYMENT ORDINANCE

2.1 We advise employers, either in devising or reviewing the sick leave policy of their organisations, to first take note of the relevant statutory provisions under the EO. Employers could offer sick leave terms more favourable than the requirements under the EO.

Granting sickness allowance

2.2 In accordance with the EO, an employer shall grant sickness allowance to an employee who is employed under a continuous contract², if:

- 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 day on which she is absent shall be counted as sickness day and, subject to the following conditions, be paid sickness allowance);
- the sick leave is supported by an appropriate medical certificate depending on the category of paid sickness days³ taken (Note: the medical certificate should specify

² An employee who is employed continuously by the same employer for four weeks or more, with at least 18 hours in each week, is regarded as being employed under a continuous contract.

³ Under the EO, paid sickness days can first be accumulated up to 36 days for Category 1 paid sickness days and then 84 days for Category 2. Category 1 paid sickness days should be supported by a medical certificate issued by a registered medical practitioner, a registered Chinese medicine practitioner or a registered dentist. Category 2 paid sickness days should, if so required by the employer, be supported by 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; upon the request of the employer, a brief record of the investigation carried out and the treatment prescribed by the issuer of the medical certificate should also be produced. (Note: the medical certificate should specify the

the number of days on which, and the nature of the sickness or injury on account of which, the employee is unfit for work); and

- the employee has accumulated the number of paid sickness days taken.
- ✧ 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 sickness day.
- ✧ 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.

2.3 Sickness allowance is, however, not payable under the EO under the following circumstances:

- the employee, unless he/she is a patient in a hospital, refuses without reasonable excuse treatment by a company doctor of a medical scheme recognized by the Director of Health or disregards the advice of the doctor without reasonable excuse (Note: 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

number of days on which, and the nature of the sickness or injury on account of which, the employee is unfit for work)

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);

- the sickness day falls on a statutory holiday on which the employee is entitled to holiday pay;
- the sick leave arises from a work injury and the unfitness for work of the employee is caused by his/her serious and wilful misconduct; or
- compensation is payable under the Employees' Compensation Ordinance.

2.4 An employer who fails to pay sickness allowance to an employee is liable to prosecution and, upon conviction, to a fine of \$50,000.

Keeping records of sickness days

2.5 An employer shall keep record of the following:

- the date of commencement and termination of employment of each employee;
- all paid sickness days accumulated by each employee, including the number of paid sickness days accumulated in Category 1 and 2;
- paid sickness days taken by each employee and deducted from the total number of paid sickness days in either categories; and
- sickness allowance paid and the sickness days in respect of which the sickness allowance was paid.

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

Employment protection

- 2.7 Under the EO, an employer is prohibited from terminating the contract of employment of an employee on his/her paid sickness day, except in cases of a summary dismissal due to the employee's serious misconduct or other grounds in accordance with the EO.
- 2.8 Otherwise, the employer has to pay, in addition to the normal compensation for termination of an employment contract, the following:
- wages in lieu of notice;
 - a further sum equivalent to seven days' wages as compensation; and
 - any sickness allowance to which the employee is entitled.
- 2.9 An employer who contravenes the provision mentioned in paragraph 2.7 is liable to prosecution and, upon conviction, to a fine of \$100,000.
- 2.10 An employee who is dismissed on paid sickness day may also claim remedies against his/her employer for unreasonable and unlawful dismissal if the employer does not have a valid reason⁴ for the dismissal. The remedies include reinstatement⁵

⁴ The five valid reasons for dismissal prescribed under the EO relate to:

- the conduct of the employee;
- the capability or qualifications of the employee for performing his/her work;
- redundancy or other genuine operational requirements of the business;
- statutory requirements (i.e. it would be contrary to the law to allow an employee to continue to work in his/her original position or to continue with the original terms in his/her employment contract); or
- other substantial reasons.

⁵ An order for reinstatement is an order requiring the employer 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 employment contract.

/re-engagement⁶ or terminal payments⁷ and an award of compensation.

2.11 The above provides a brief summary of the relevant provisions of the EO. The ordinance itself, however, remains the sole authority for the provisions of the law explained. For more detailed information, please refer to the website of the following departments:

- Bilingual Laws Information System of the Department of Justice –
<http://www.legislation.gov.hk/eng/home.htm>
- Labour Department –
<http://www.labour.gov.hk/eng/legislat/content.htm>

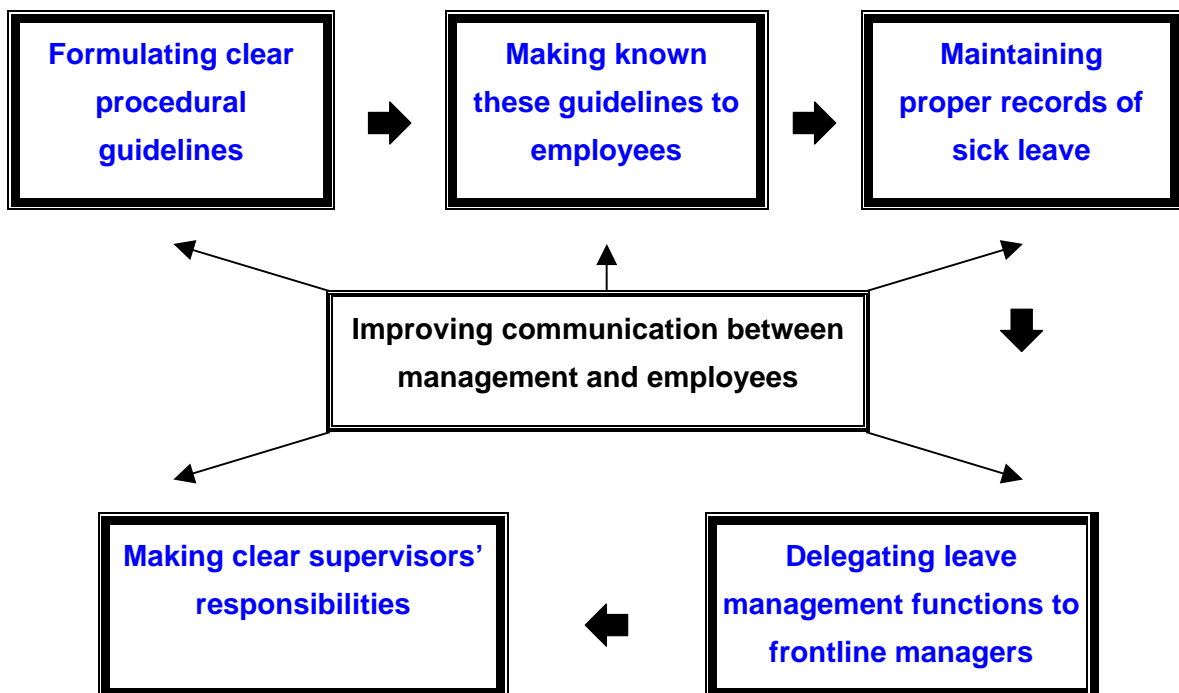
⁶ An order for re-engagement is an order requiring the employer, his/her successor or an associated employer to re-engage the employee in employment on terms comparable to his/her original terms of employment or in other suitable employment.

⁷ Terminal payments means the statutory entitlements under the EO which the employee is entitled to but has not yet been paid upon dismissal and any other payments due to the employee under his/her contract of employment.

III. A FRAMEWORK OF HUMAN RESOURCE MANAGEMENT PRACTICES RELATING TO SICK LEAVE

3.1 Proper use of sick leave by employees will not only help improve productivity but also help maintain overall staff morale.

3.2 It is in the interests of employers, especially those of small and medium enterprises, to adopt a systematic framework of human resource management practices respecting sick leave. The following paragraphs provide an example of such framework comprising six key elements:



Formulating clear procedural guidelines relating to sick leave

Why

3.3 Formulation of clear procedural guidelines and requirements relating to sick leave can help management to:

- systematically review and decide on what should be the proper notification arrangement, taking into consideration the operational requirements and other special circumstances of individual organisations.
- avoid potential disputes between employees and supervisors arising from lack of consensus to what constitutes inappropriate behaviours, e.g. whether asking a colleague to relate the message to supervisor at a very late time, or leaving a voice message to supervisor, etc. are acceptable.

How

3.4 The guidelines should clearly set out, among other things, the responsibilities of employee in notification of sick leave, in particular:

- to whom the sick leave be reported, e.g. supervisor.
- the time of notification.
- the manner of notification.
- the type of documentary proof required and time for submission.
- other notification arrangements for emergency situations.
- possible disciplinary actions on falsification of certification or repeated failure to follow the notification arrangement without reasonable excuse.

Making known these guidelines to employees for their easy compliance

Why

3.5 To ensure that employees follow the standardized procedures properly, it is important that these procedures are made known clearly to all employees at the commencement of employment.

How

3.6 Such procedures can be communicated to employees through various channels, including:

- employee's handbook;
- company's circulars or notices that will catch the attention of all employees; or
- company's Intranet documenting important information for employees.

3.7 Employers can maintain in the workplace a complete set of the latest guidelines for easy access by employees. Should there be any changes to the guidelines, these should be made known to all employees as soon as possible.

Maintaining proper records of sick leave taken by employees

Why

3.8 Employers should maintain proper record of sick leave taken by employees to comply with the statutory requirements under the EO. Employers can also make use of these systematic records to conduct periodical analysis on the sick leave pattern of employees. Such analysis can assist management to plan work schedules, and also to assess the impact of sick leave taking on the organisation's overall cost, output and productivity.

How

- 3.9 Details of the information to be included in such records are outlined in paragraphs 2.5 and 2.6 of Part II.
- 3.10 Management must check to ensure that sickness benefits granted are no less favourable than the requirements of the EO (mentioned in paragraphs 2.2 and 2.3).
- 3.11 Management should take heed of the Personal Data (Privacy) Ordinance such that it would not request employees for excessive information on proof of legitimate use of paid sick leave.

Delegating leave management functions to frontline managers

Why

- 3.12 Delegating leave management responsibility to frontline managers and supervisors gives them the authority to act promptly and to take effective actions on leave management without delay.

How

- 3.13 Management can specify the rank of staff to whom the authority to handle matters relating to sick leave is delegated.
- 3.14 In case there is grievance against a supervisor relating to sick leave, it is advisable that the case be dealt with immediately by the manager at the next higher rank or according to prescribed grievance procedures.
- 3.15 Where appropriate, employers should provide training on management and communication skills for frontline managers and supervisors.
- 3.16 Human resource department can play the role of consultant in providing professional advice or assistance to designee in handling sick leave cases, especially the more complicated ones.

Making clear supervisors' responsibilities

Why

3.17 Supervisors are usually the management's representatives who are the first to receive sick leave notification from employees. The role and responsibilities of supervisors in handling sick leave must therefore be clearly defined to facilitate them to do their jobs.

How

3.18 Key duties of a supervisor in this respect may include:

- Define the performance targets of subordinates in a clear and fair manner, and duly recognize and reward good performance.
- Check necessary documents for paid sick leave.
- Show concern to subordinates and counsel them where necessary.
- Discuss with concerned employees and liaise with human resource department to explore possible alternative arrangements with a view to assisting employees on grounds of ill-health, e.g. to post them to another job which requires less physical strength if they have problem to cope with the physical requirements of the present job.
- Document all actions taken.
- Conduct performance reviews and indicate any known factors or circumstances affecting employees' performance.
- Consult human resource department on how to handle special cases relating to sick leave.

Improving communication between management and employees

Why

- 3.19 Putting in place an effective communication channel between management and employees in an organisation is conducive to enhancing good people management. Therefore, in the process of formulating and implementing the good human resource management practices respecting sick leave, it is important for management to consult employees from time to time, and seek their consent before implementing any changes affecting their terms and conditions of employment.
- 3.20 Good communication can assist the organisation in conveying important messages and required information to employees. Likewise, management can also make use of these communication forums to openly and frankly discuss issues that management discerns or encounters, including those relating to sick leave.

How

- 3.21 Organisations can adopt different modes of workplace communication depending on their size and corporate culture:
- Small organisation may resort to less formal mechanism like on-the-spot briefing sessions, informal discussion groups, lunch meetings, tea gatherings, etc.
 - Medium-sized organisation can adopt a more structured mechanism such as working groups, task forces and quality circles.
 - Large organisation may choose to adopt a more formalised and structured mechanism in the form of a joint consultative committee.

IV. ACTIONS AGAINST MISCONDUCT

4.1 It is possible that in some cases the management may detect serious misconduct relating to sick leave, e.g. theft or tampering sick leave certificates. Under such circumstances, employers may find the pointers set out below useful:

- (a) Carry out investigation according to established disciplinary procedures.
- (b) Analyse whether the evidence collected is sufficient to substantiate the misconduct.
- (c) Assess the nature and seriousness of the misconduct.
- (d) Review whether disciplinary actions have been taken before and the improvements made by the employee.
- (e) Decide on what sort of disciplinary action e.g. verbal warning, written warning, dismissal, etc., is most appropriate depending on the seriousness of the misconduct. The action considered should be consistent with the standard adopted for other forms of misconduct.
- (f) Ensure that the disciplinary action is not in contravention of the relevant legislation, including:
 - Provisions on employment protection⁸ under the EO; and
 - Disability Discrimination Ordinance.
- (g) Communicate the investigation result to the employee concerned and give the employee a fair and quick channel of appeal, preferably to those at least one rank higher than

⁸ Under the provisions on employment protection, an employer is prohibited from terminating the contract of employment of an employee on his/her paid sickness day, except in cases of a summary dismissal due to employee's serious misconduct or other grounds in accordance with the EO.

the supervisor.

- 4.2 When handling disciplinary cases relating to sick leave, supervisors should adopt a flexible approach and should exercise due care to ensure that the disciplinary action, including dismissal, is justified with sufficient evidence. Otherwise, employees can seek legal redress against wrongful dismissal. After all, employees are the most valuable assets of an organisation. If they are disciplined or even dismissed on unjustifiable grounds, the organisation will suffer eventually from lowering of morale or loss of efficiency.

V. CHECKLIST

Has your establishment put in place a framework of good human resource management practices relating to sick leave? The checklist below may help you assess your knowledge in the issue and the extent to which your establishment has adopted these practices.

**Please put a ✓ in the box if you have adopted the practice, otherwise leave it blank.*

I. Employers' obligations under the EO

Granting sickness allowance

Ensure that eligible employee is **at least** paid:

- Sickness allowance at the rate of four-fifths of the average daily wages for sick leave taken not less than four consecutive days with medical proof and the employee has accumulated sufficient paid sick leave.
- Sickness allowance at the rate of four-fifths of the average daily wages for any day off taken by a pregnant employee for pregnancy check-ups, post confinement medical treatment or miscarriage, if the sick leave is supported by an appropriate medical certificate and the employee has accumulated sufficient number of paid sickness days.

keeping records of sick leave

Ensure that records of the following are properly kept:

- The date of commencement and termination of employment of each employee.
- All paid sickness days accumulated by each employee, including the number of paid sickness days accumulated in Category 1 and 2.
- Paid sickness days taken by each employee and deducted from the total number of paid sickness days in either categories.
- Sickness allowance paid and the sickness days in respect of which the sickness allowance was paid.

Also ensure that:

- The records are signed as correct by the employee within seven days of his/her return to work from paid sick leave, and the employee has the right to inspect the record.

Employment protection

To safeguard the right of employee, your establishment:

- Does not terminate the contract of employment of an employee on his/her paid sickness day, except in cases of a summary dismissal due to the employee's serious misconduct or other grounds in accordance with the EO.

II. A framework of human resource management practices relating to sick leave

Your establishment has adopted a framework of human resource management practices respecting sick leave, including:

- Formulating clear procedural guidelines .
- Making known these guidelines to employees through employee's handbook, Intranet, circulars, etc.
- Maintaining proper records of sick leave taken by employees.

Your establishment has also:

- Delegated leave management functions to frontline managers.
- Made clear supervisors' responsibilities which may include:
 - Defining the performance targets of subordinates in a clear and fair manner, and duly recognize and reward good performance.
 - Checking necessary documents for paid sick leave.
 - Showing concern to subordinates and counselling them where necessary.
 - Discussing with concerned employees and liaising with human resource department to explore possible alternative arrangements with a view to assisting employees on grounds of ill-health.
 - Documenting all actions taken.
 - Conducting performance reviews and indicating any known factors or circumstances affecting employees' performance.
 - Consulting human resource department on how to handle special cases relating to sick leave.

In formulating and implementing sick leave policy, your establishment has:

- Consulted your employees.
- Sought the consent of employees where a change of term and condition of employment is involved.
- Notified employees through communication channel(s).

III. Actions against misconduct

To handle cases of serious misconduct relating to sick leave, your establishment:

- carries out investigation according to established disciplinary procedures.
- assesses whether sufficient evidence is collected and the nature and seriousness of the misconduct.
- reviews whether disciplinary actions have been taken before and the improvements made by the employee.
- decides on what sort of disciplinary action is most appropriate depending on the seriousness of the misconduct, and the action considered is consistent with the standard adopted for other forms of misconduct.
- ensures that the disciplinary action is not in contravention of the provisions of the EO and Disability Discrimination Ordinance.
- communicates the investigation result to the employee concerned, and gives the disciplined employee a fair and quick channel for appeal.

VI. Enquiry services

6.1 Labour Department's homepage -

<http://www.labour.gov.hk>

6.2 Enquiries relating to the Employment Ordinance and conditions of employment -

24-hour Telephone Enquiry Service Tel : 2717 1771
(The hotline is handled by the 1823 Call Centre)

Enquiries in person to offices of the Labour Relations Division of the Labour Department -

Hong Kong

Hong Kong East

34/F., Revenue Tower, 5 Gloucester Road, Hong Kong

Hong Kong West

3/F, Western Magistracy Building, 2A Pokfulam Road, Hong Kong.

Kowloon

Kowloon East

Room 1206, 12/F, Stelux House, 698 Prince Edward Road East, San Po Kong, Kowloon.

Kowloon West

Room 1009, 10/F, Cheung Sha Wan Government Offices, 303 Cheung Sha Wan Road, Kowloon.

Kowloon South

2/F, Mongkok Government Offices, 30 Luen Wan Street, Mongkok, Kowloon.

Kwun Tong

6/F, Kowloon East Government Offices, 12 Lei Yue Mun Road, Kwun Tong, Kowloon.

New Territories

Tsuen Wan

5/F, Tsuen Wan Government Offices, 38 Sai Lau Kok Road,
Tsuen Wan, New Territories.

Kwai Chung

6/F, Kwai Hing Government Offices, 166-174 Hing Fong Road,
Kwai Chung, New Territories.

Tuen Mun

Room 2720, Tuen Mun Parklane Square, 2 Tuen Hi Road,
Tuen Mun, New Territories.

Shatin & Tai Po

Rooms 304-313, 3/F, Sha Tin Government Offices,
1 Sheung Wo Che Road, Sha Tin, New Territories.

6.3 Enquiries relating to the Promotion of Workplace Cooperation -

Workplace Consultation Promotion Unit Tel : 2121 8690
Fax : 2121 8695

6.4 Enquiries relating to the Disability Discrimination Ordinance -

Equal Opportunities Commission Tel : 2511 8211
Fax : 2511 8142

6.5 Enquiries relating to the personal data of employees -

Office of the Privacy Commissioner for Tel : 2827 2827
Personal Data Fax : 2877 7026