Ord. No. 13 of 2020
A889

Employment (Amendment) Ordinance 2020

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HONG KONG SPECIAL ADMINISTRATIVE REGION

Ordinance No. 13 of 2020

L.S.

Carrie LAM
Chief Executive
16 July 2020

An Ordinance to amend the Employment Ordinance to extend the statutory maternity leave by 4 weeks; to introduce a cap on the maternity leave pay in respect of the extension of maternity leave; to shorten the period of pregnancy mentioned in the definition of ***miscarriage***; to allow a certificate of attendance to be accepted as proof in respect of entitlement to sickness allowance for a day on which a female employee attends a medical examination in relation to her pregnancy; and to provide for transitional and related matters.

[ ]

Enacted by the Legislative Council.

1. Short title and commencement

(1) This Ordinance may be cited as the Employment (Amendment) Ordinance 2020.

(2) This Ordinance comes into operation on a day to be appointed by the Secretary for Labour and Welfare by notice published in the Gazette.

2. Employment Ordinance amended

The Employment Ordinance (Cap. 57) is amended as set out in sections 3 to 14.

3. Section 2 amended (interpretation)

Section 2(1), definition of ***miscarriage***—

Repeal

"28"

Substitute

"24".

4. Section 12 amended (maternity leave)

Section 12(2)(a)—

Repeal

"10"

Substitute

"14".

5. Section 12AA amended (commencement of maternity leave)

Section 12AA(1)—

Repeal

"10 weeks maternity leave"

Substitute

"maternity leave for the purposes of section 12(2)(a)(i)".

6. Section 14 amended (payment for maternity leave)

(1) Section 14(3A)—

Repeal

"Maternity"

Substitute

"Subject to subsection (3E), maternity".

(2) After section 14(3D)—

Add

"(3E) The maximum amount of maternity leave pay payable for the latter period of maternity leave under this section is the amount specified in Schedule 1A.".

(3) Section 14(7), after "that period"—

Add

"(including, for the latter period of maternity leave, after the application of subsection (3E))".

(4) After section 14(7)—

Add

"(8) The Commissioner may, by notice published in the Gazette, amend the amount specified in Schedule 1A.

(9) In this section—

latter period of maternity leave (產假末段期間), in relation to a female employee, means the period of maternity leave taken by the employee and to which the employee is entitled under section 12(2)(a), but does not include the first 10 weeks of the period.".

7. Section 15 amended (prohibition against termination of employment)

Section 15(2)(c)—

Repeal

"10"

Substitute

"14".

8. Section 15E amended (entitlement to paternity leave)

Section 15E(3)(b)—

Repeal

"10"

Substitute

"14".

9. Section 15G amended (paternity leave not affected by other leave entitlements)

Section 15G(4)—

Repeal

"10-week"

Substitute

"14-week".

10. Section 33 amended (sickness allowance)

(1) Section 33(5)(a)—

Repeal

"subsection (5A)"

Substitute

"subsections (5A) and (5B)".

(2) After section 33(5A)—

Add

"(5B) For a sickness day under subsection (3A) on which a female employee attends a medical examination in relation to her pregnancy, the employer is liable to pay sickness allowance for that day if the employee produces, in relation to the examination, a certificate of attendance described in section 33A.".

11. Section 33A added

After section 33—

Add

"**33A. Requirements for certificate of attendance for medical examination in relation to pregnancy**

(1) For the purposes of section 33(5B), this section sets out the requirements for a certificate of attendance in relation to a female employee's attendance on a particular day at a medical examination in relation to her pregnancy.

(2) The certificate—

(a) must state that the employee attends the examination on that day; and

(b) subject to subsections (3), (4) and (5), must be issued by a medical professional.

(3) If the employee attends the examination as an in-patient in a hospital, the certificate must be issued by a medical professional who conducts the examination.

(4) If, in relation to the examination—

(a) the employee takes paid sickness days entered in category 2 of the record kept for the employee under section 37(1A); and

(b) the employer requires the employee to attend the examination in a hospital,

the certificate must be issued by a medical professional who conducts the examination for the employee as an out-patient or in-patient in a hospital.

(5) If the employer operates a recognized scheme of medical treatment, the certificate must be issued by a registered medical practitioner, or a registered Chinese medicine practitioner, engaged by the employer for the purposes of the scheme.

(6) However, subsection (5) does not apply if—

(a) subsection (3) or (4) applies in relation to the employee;

(b) the employee chooses to be examined by a registered medical practitioner and no registered medical practitioner is engaged by the employer for the purposes of the scheme;

(c) the employee chooses to be examined by a registered Chinese medicine practitioner and no registered Chinese medicine practitioner is engaged by the employer for the purposes of the scheme; or

(d) the employee has a reasonable excuse not to attend the examination under the scheme.

(7) In this section—

hospital (醫院) has the meaning given by section 33(6)(a);

medical professional (醫療專業人員) means—

(a) a registered medical practitioner;

(b) a registered Chinese medicine practitioner;

(c) a midwife registered under section 8 of the Midwives Registration Ordinance (Cap. 162) or deemed to be registered under section 25 of that Ordinance; or

(d) a nurse registered under section 9 of the Nurses Registration Ordinance (Cap. 164) or deemed to be registered under section 26 of that Ordinance.".

12. Section 78 added

After section 77—

Add

"**78. Transitional provisions relating to Employment (Amendment) Ordinance 2020**

The transitional provisions contained in Schedule 10 have effect.".

13. Schedule 1A added

After the First Schedule—

Add

"Schedule 1A

[s. 14]

Maximum Amount of Maternity Leave Pay for Latter Period of Maternity Leave

$80,000".

14. Schedule 10 added

After the Ninth Schedule—

Add

"Schedule 10

[s. 78]

Transitional Provisions relating to Employment (Amendment) Ordinance 2020

1. Interpretation of Schedule 10

In this Schedule—

2020 Amendment Ordinance (《2020年修訂條例》) means the Employment (Amendment) Ordinance 2020 (13 of 2020);

amendment date (修訂日期), in relation to a section, means the date on which a provision of the 2020 Amendment Ordinance that amends the section comes into operation.

2. Transitional provisions relating to sections 12(2)(a), 12AA(1) and 14

(1) If a female employee's confinement occurs before the amendment date for sections 12(2)(a), 12AA(1) and 14, those sections, as in force immediately before that date, continue to apply in relation to her entitlement to maternity leave and maternity leave pay.

(2) If—

(a) a female employee gives notice of her pregnancy and of her intention to take maternity leave under section 12(4) before the amendment date for sections 12(2)(a), 12AA(1) and 14; but

(b) her confinement occurs on or after that date,

sections 12(2)(a), 12AA(1) and 14, as amended by the 2020 Amendment Ordinance, apply in relation to her entitlement to maternity leave and maternity leave pay.

3. Transitional provisions relating to section 15(2)(c)

If—

(a) a female employee's contract of employment is terminated by her employer in contravention of section 15(1)(a) or (b); and

(b) the date of termination of the contract falls on or after the amendment date for section 15(2)(c),

section 15(2)(c), as amended by the 2020 Amendment Ordinance, applies in relation to the contravention, unless the employee's confinement occurs before that amendment date.

4. Transitional provisions relating to sections 15E(3)(b) and 15G(4)

(1) If a male employee's child is born before the amendment date for sections 15E(3)(b) and 15G(4), those sections, as in force immediately before that date, continue to apply in relation to his entitlement to paternity leave in respect of the birth of the child.

(2) If—

(a) a male employee gives notification under section 15F(1) for taking paternity leave in respect of the birth of his child before the amendment date for sections 15E(3)(b) and 15G(4); but

(b) the child is born on or after that date,

sections 15E(3)(b) and 15G(4), as amended by the 2020 Amendment Ordinance, apply in relation to his entitlement to paternity leave in respect of the birth of the child.".