

**Sickness Allowance and Employment Protection under Anti-Epidemic Measures
Employment (Amendment) Ordinance 2022
Frequently Asked Questions with Answers**

The Employment (Amendment) Ordinance 2022 (Amendment Ordinance)	
1.	<p>When will the Amendment Ordinance 2022 come into operation? What are the amendments?</p> <p>The Amendment Ordinance, which seeks to enhance the sickness allowance and employment protection under anti-epidemic measures, comes into operation on 17 June 2022. Major amendments include:</p> <ul style="list-style-type: none"> (a) A sickness day under the Employment Ordinance (EO) includes a day when an employee is absent from work by reason of his/her compliance with a specific requirement that imposes a restriction on movement under the Prevention and Control of Disease Ordinance (Cap. 599). Employers are required to grant sickness allowance to eligible employees. (b) Dismissal of an employee by reason of the employee’s absence from work due to his/her compliance with the above-mentioned restriction is considered as unreasonable dismissal under EO. (c) When an employer makes a COVID-19 vaccination request in writing according to the requirements of a “legitimate vaccination request”, an employee, who is not being exempted from the request, is dismissed because of his/her failure to produce the proof of having received COVID-19 vaccine within 56 days from the date of the making of the request, the dismissal is not considered as unreasonable dismissal under EO.
The amendments relating to sickness day(s) and sickness allowance	
2.	<p>What is the meaning of the absence from work by reason of a “Cap. 599 requirement” being considered as sickness day(s)?</p> <p>A sickness day under EO includes a day on which an employee is absent from work by reason of his/her compliance with a specific requirement under Cap. 599.</p> <p>The “Cap. 599 Requirements” refers to the requirements provided in the new Schedule of EO, where the restrictions on movement are imposed under the subsidiary legislation of Cap. 599. Common situations include:</p> <ul style="list-style-type: none"> (a) Isolation Order (b) Quarantine Order (c) Restriction-testing declaration <p>Note 1: The Amendment Ordinance does not cover the compulsory quarantine imposed on persons arriving at Hong Kong, nor the period when employees are merely in the course of undergoing a compulsory testing or awaiting for the test result.</p> <p>Note 2: Other specific requirements under Cap. 599 that are covered by the Amendment Ordinance include: the restriction imposed on an employee who is within a place that is under isolation, and the “compulsory testing notice” and the “compulsory testing order” which have particularly specified for a restriction on movement.</p>

3. Will an employee be eligible to sickness allowance if he/she has granted sick leave because of his/her absence from work by reason of a “Cap. 599 requirement”?

A sickness day under EO includes a day when an employee is absent from work by reason of his/her compliance with a specific requirement that imposes a restriction on movement under Cap. 599. An employee is entitled to sickness allowance under EO if the following conditions are fulfilled:

- (a) the employee is employed under a continuous contract (i.e. an employee who has been employed continuously by the same employer for 4 weeks or more, with at least 18 hours worked in each week);
- (b) the sick leave taken is not less than 4 consecutive days;
- (c) accumulated sufficient number of paid sickness days; and
- (d) the employee can produce the following proof:
 - Hard copy or electronic form of document, and electronic data issued by the Government (no longer limited to medical certificate); and
 - The proof should show the name of employee, or information that could identify the identity of employee; the type of restriction imposed by the specific Cap. 599 requirements and the commencement date and expiry date of such restriction.

Common examples of relevant proof include: the isolation orders or the quarantine orders issued by the Department of Health (DH), or the certificates issued by DH to the affected employee upon request to prove that the employee has been restricted by a restriction-testing declaration during its validity period and attended test.

Note 3: For employees who are employed under continuous contract, paid sickness days are accumulated at the rate of 2 paid sickness days for each completed month of the employee's employment during the first 12 months, and 4 paid sickness days for each completed month of employment thereafter. Paid sickness days can be accumulated throughout the whole employment period, but shall not exceed 120 days at any one time.

Note 4: 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 is required to take paid sickness days in Category 2 due to his/her absence from work by reason of the compliance with a specific Cap. 599 requirement, the employee is not required to produce a medical certificate or a brief of record of investigation carried out and the treatment prescribed for his/her attendance as an out-patient or in-patient in a hospital.

Note 5: If an employee is subject to a Cap. 599 requirement due to his/her serious and wilful misconduct (e.g. being restricted by a Cap. 599 requirement due to one's wilful contraction of COVID-19), the employer shall not be liable to pay sickness allowance to the employee in respect of such sickness day.

4. How to calculate the number of days of the sickness allowance which an employee is entitled to due to his/her absence from work for compliance with a specific Cap. 599 requirement when the Amendment Ordinance has come into operation?

The Amendment Ordinance comes into operation on 17 June 2022. Eligible employees are entitled to sickness allowance under the Amendment Ordinance for the paid sickness days taken on or after 17 June 2022.

Example 1: An eligible employee starts taking sick leave from the effective date of the Amendment Ordinance due to his/her compliance with an isolation order

- The effective date of the Amendment Ordinance: [17 June 2022](#)
- The period of absence due to an isolation order: [17 June 2022 to 30 June 2022](#)
- The period when sickness allowance is payable: [17 June 2022 to 30 June 2022](#)

Note 6: For employees who contracted COVID-19 before the date the Amendment Ordinance comes into operation, if they have been granted with an appropriate medical certificate and have fulfilled relevant criteria, they may continue to take paid sickness days and are eligible for sickness allowance by reason of their being unfit for work on account of sickness under EO.

Note 7: An appropriate medical certificate is issued by a registered medical practitioner, a registered Chinese medicine practitioner or a registered dentist, which 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.

If an employee takes consecutive sickness days which cross over the effective date of the Amendment Ordinance, when determining whether the employee has fulfilled the condition of “sick leave taken is not less than 4 consecutive days”, the sick leave taken consecutively by the employee immediately preceding to the effective date of the Amendment Ordinance should be counted.

Example 2: An eligible employee takes consecutive sickness days which cross over the effective date of the Amendment Ordinance due to his/her compliance with a quarantine order

- The effective date of Amendment Ordinance: [17 June 2022](#)
- The period of absence due to a quarantine order: [10 June 2022 to 23 June 2022](#)
- The period counted in when determining whether the condition of “sick leave taken is not less than 4 consecutive days” is fulfilled: [10 June 2022 to 23 June 2022](#) [✓ fulfilled]
- The period when sickness allowance is payable: [17 June 2022 to 23 June 2022](#)

If for a continuous period an employee is absent from work for his/her compliance with different types of restriction on movement imposed under Cap. 599, and then being unfit for work on account of sickness, the entire period will be treated as consecutive sick leave.

Example 3: An eligible employee who is absent from work due to the restrictions of different types of specific Cap. 599 requirements, and then being unfit for work on account of sickness.

- The effective date of the Amendment Ordinance: [17 June 2022](#)
- The period of absence due to a restriction-testing declaration: [15 June 2022 to 17 June 2022](#)
- The period of absence due to quarantine order: [18 June 2022 to 1 July 2022](#)
- The period of absence due to sickness: [2 July 2022 to 5 July 2022](#)
- The period counted in when determining whether the condition of “sick leave taken is not less than 4 consecutive days” is fulfilled: [15 June 2022 to 5 July 2022](#) [✓ fulfilled]
- The period when sickness allowance is payable: [17 June 2022 to 5 July 2022](#)

An eligible employee fulfilling the condition of ending the isolation and quarantine early

For employees who have received at least 2 doses of COVID-19 vaccines and have conducted rapid antigen tests (RATs) on Day 6 and Day 7 after obtaining positive test results or during the quarantine period, if they obtain negative test results during RATs on these 2 successive days (or any other subsequent two successive days), the isolation order or the quarantine order concerned can be deemed as finished early. Sickness day(s) would also be ended accordingly.

Employees are obliged to take the initiative to inform their employers as soon as possible of the RAT results, including to inform their employers whether the isolation order or the quarantine order has been finished early or cancelled. Or else, the employee may be involved into a suspected case of obtaining sickness allowance by deception and subject to criminal liability.

Employers should communicate with their employees as soon as practicable to work out necessary arrangements for matters relating to sick leave, including the means of submitting the isolation order or the quarantine order to the employers for sick leave application, or the means of notifying the employers once the isolation order or the quarantine order has been finished early.

For the criteria for discharging from isolation and home quarantine, please [press here](#) for the “Tips for Fighting COVID-19” published by the Department of Health.

	<p>It would generally be justifiable and reasonable for employers to collect an employee’s COVID-19 test results on Day 6 and Day 7 (or any other subsequent two successive days) of the isolation or quarantine period. Employers who collect health data from employees should also observe data protection requirements under the Personal Data (Privacy) Ordinance. For details, please press here for the “Guidance for Employers on Collection and Use of Personal Data of Employees during COVID-19 Pandemic” issued by the Privacy Commissioner for Personal Data, Hong Kong.</p>
<p>5.</p>	<p>Before the Amendment Ordinance comes into operation, for employees who could not produce proof of medical certificate for sick leaves taken due to their absence from work for compliance with a specific Cap. 599 requirement, are employers required to pay sickness allowance to the employees?</p> <p>Under EO, it has all along been the obligation of employers to pay sickness allowance to eligible employees who have contracted a disease (including COVID-19) unrelated to his/her work.</p> <p>Before the Amendment Ordinance comes into operation, though EO did not specify clearly whether the isolation order or other orders issued by the Department of Health imposing restrictions on movement to employees could be taken as the proof for sick leave, as the isolation order or the “Record for Persons Infected with COVID-19” has already contained the information which is comparable to a medical certificate, it is not necessary for employers to request for a medical certificate in order to grant sickness allowance to employees who have fulfilled other conditions under EO.</p> <p>The Government encourages employers to adopt a more lenient and flexible approach on discretionary basis in dealing with employment matters arisen from employees' absence from work for compliance with anti-epidemic measures. If employers and employees have disputes over the handling of wages and benefits matters arisen from the compliance with anti-epidemic measures by the employees, they may approach the Labour Relations Division of the Labour Department for assistance.</p>
<p>6.</p>	<p>What is the employment protection for an employee should he/she is being dismissed due to his/her absence from work for compliance with a specific Cap. 599 requirement? When will such protection be applicable?</p> <p>Dismissal of employee who is absent from work by reason of the compliance with a specific Cap. 599 requirement is considered as unreasonable dismissal. Apart from the termination payments an employer is required to pay pursuant to EO requirements and the terms of the employment contract by the employer in general, if the employee has been employed under a continuous contract for not less than 24 months, the employee may lodge a claim for remedies under unreasonable dismissal against the employer in accordance with EO.</p>

	<p>Moreover, the absent from work of the employee due to his/her compliance with a specific Cap. 599 requirement does not constitute a valid reason for variation of the terms of the employment contract by the employer. If the employee has been employed under a continuous contract, the terms of employment contract have been varied without the employee’s consent and the employment contract does not contain an express term which allows such a variation, the employee may lodge a claim for remedies under unreasonable variation of the terms of the employment contract against the employer in accordance with EO.</p> <p>The Amendment Ordinance comes into operation on 17 June 2022. The above employment protection is applicable to cases when an employee is unreasonably dismissed or when the terms of his/her employment contract are varied unreasonably on or after that day.</p> <p>Note 8: The situations in respect of “unlawful dismissal”, “unreasonable dismissal” and “unreasonable and unlawful dismissal” as specified by EO is set out at Annex 1.</p>
7.	<p>An employee who is absent from work for less than 4 days by reason of his/her compliance with a specific requirement that imposes a restriction on movement under the Cap. 599, can the employee lodge a claim for remedies under unreasonable dismissal or unreasonable variation of terms of employment contract?</p> <p>Yes. If the employer dismissed the employee or varied the terms of employment contract by reason of his/her absence from work due to the compliance with a specific Cap. 599 requirement, it is considered as unreasonable dismissal or unreasonable variation of terms of employment contract. An employee who has fulfilled relevant criteria may lodge a claim for remedies under unreasonable dismissal or unreasonable variation of the terms of the employment contract against the employer.</p>
8.	<p>What is the main content of the amendment in relation to the dismissal of an employee by reason of his/her failure to comply with the COVID-19 vaccination request made by his/her employer is not considered as unreasonable dismissal? When will those provisions be applicable?</p> <p>The Amendment Ordinance specifies that if an employer, having fulfilled the requirements of a “legitimate vaccination request” (please refer to Question 10), makes a written notice requesting the employee to receive COVID-19 vaccination, and an employee who is not being exempted is dismissed by reason of his/her failure to produce the proof of COVID-19 vaccination within 56 days from the date of the making of the request, the dismissal is not considered as unreasonable dismissal under EO. This amendment is applicable to cases where the “legitimate vaccination request” is made by the employer to his/her employees on or after the effective date of the Amendment Ordinance (i.e. 17 June 2022).</p>

<p>9.</p>	<p>Is it a must for employers making COVID-19 vaccination request to their employees? Is it necessary for employers to dismiss employees who failed to produce proof of vaccination?</p> <p>The Amendment Ordinance does neither require an employer to make a COVID-19 vaccination request to his/her employees, nor empower an employer to dismiss his/her employees who failed to present proof of vaccination. On the contrary, the Amendment Ordinance stipulates 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 makes clear that under what circumstances a dismissal due to related matters will be a valid reason for employers when making the vaccination requests, and also specifies explicitly the circumstances under which dismissal by reason of relevant matters is a valid reason under EO, which, in turn, clarifies the rights and obligation between employers and employees. On the other hand, the Government encourages employers to maintain good communication with the employees who failed to comply with the vaccination request and to work out appropriate work arrangements.</p>
<p>10.</p>	<p>What is a “legitimate vaccination request”?</p> <p>The Amendment Ordinance specifies the requirements of a “legitimate vaccination request, which include:</p> <ul style="list-style-type: none"> • Employers must make a written request (including letter, email or a notice which is posted at a conspicuous place of employment contains the request and is addressed to all employees or a group of employees who are required to receive vaccination, etc.) to all employees under his/her employment and who undertake the same or a similar job nature; • Employers must allow the employees so requested 56 days to present proof of COVID-19 vaccination (please refer to Question 11 for details of the COVID-19 vaccination request); • Employers when making the request must reasonably believe, having regard to the nature of the employee’s work and the related operational requirements, that if the employee contracts the specified disease, 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 • Employers must not make request to those employees who are exempted from complying with the vaccination request (please refer to Question 11 for details of exemption arrangements).

11. How can employees comply with the “legitimate vaccination request” made by employers? What categories of employees can be exempted?

After the employers make the “legitimate vaccination request”, the employees so requested are required to present proof of vaccination to employers within 56 days from the date of the making of the request. For example, if the employer makes the request on 17 June 2022, the expiry date of compliance period for the employee is 11 August 2022.

The vaccination requirements and exemption arrangements under the Amendment Ordinance are provided as follows:

Situations vis-à-vis the “Vaccine Pass”	Vaccination requirements	Employees exempted from producing proof of vaccination
<p>Premises where the “Vaccine Pass” is implemented in accordance with legislation*</p> <p>Place of work is within the specified premises under the “Vaccine Pass”</p> <p>e.g. staff working in catering business premises, fitness centres, beauty parlours, etc.</p>	<p>Employees should follow vaccination requirements of the “Vaccine Pass” and produce proof of vaccination</p>	<p>✓ Mainly for employees holding a valid COVID-19 Vaccination Medical Exemption Certificate (Exemption Certificate)</p>
<p>Other premises where the “Vaccine Pass” are applicable</p> <p>Employees who perform a particular kind of work where the Government imposes a requirement or makes a recommendation to receive vaccination</p> <p>e.g. staff working in elderly care homes and public hospitals, etc.</p>	<p>Employees should follow relevant vaccination requirements or recommendations made by the Government and produce proof of vaccination</p>	
<p>Premises where the “Vaccine Pass” are not applicable</p> <p>e.g. general office staff in commercial buildings</p>	<p>Employees produce proof with at least one dose of the vaccine</p>	<p>✓ Employees holding a valid Exemption Certificate</p> <p>✓ Employees who are pregnant or breastfeeding</p> <p>✓ Employees who are within 6 months from the date being diagnosed as having contracted COVID-19</p>

*Vaccine Pass Direction issued in accordance with the Prevention and Control of Disease (Vaccine Pass) Regulation (Cap. 599L).

	<p>Note 9: Regarding the proof of exemption, employers may consider to accept: (1) the medicate certificate produced by pregnant employees certifying the pregnancy in accordance to the existing maternity protection mechanism under EO; (2) self-declaration by employees who are breastfeeding; and (3) the infection, discharge or recovery records issued by local or relevant health authorities of the employees who were diagnosed as having contracted the COVID-19.</p>
<p>12.</p>	<p>Can employers dismiss employees who failed to comply with the vaccination request made by employers without notice and compensation?</p> <p>The Amendment Ordinance stipulates that only if employers have fully complied with the “legitimate vaccination request”, the dismissal of an employee by reason of non-compliance with the vaccination request made by the employer may constitute a “valid reason” for dismissal, but this does not mean that the Amendment Ordinance has empowered employers to dismiss the employee without prior notice or compensations. Upon contract termination, employers are still required to pay termination payments to employees in accordance with the requirements of EO and the terms of employment contract. For details on termination of employment contract, please press here.</p> <p>Also, employers are also required to pay attention to certain statutory restrictions on termination of employment contracts. For details, please refer to <u>Annex 1</u>.</p> <p>Note 10: Summary dismissal is a serious disciplinary action, it only applies to case where an employee has committed very serious misconduct or fails to improve himself after the employer’s repeated warnings.</p> <p>Note 11: For employment protection for pregnant employees under EO, please refer to <u>Annex 2</u>.</p>

Note: This information sheet sets out in simple terms major amendments to EO. The EO remains the sole authority for the provisions of the law explained.

Labour Department
June 2022

Situations of Unlawful/Unreasonable Dismissals under the Employment Ordinance (EO)

Dismissal Situation	Conditions	Consequences
Unlawful dismissal	It is unlawful for an employer to dismiss an employee under the following circumstances: (1) during pregnancy or maternity leave ¹ ; (2) on paid sickness day ² ; (3) after work-related injury and before determination/settlement and/or payment of compensation under the Employee's Compensation Ordinance; (4) by reason of the employee exercising trade union rights; or (5) by reason of the employee giving evidence for the enforcement of relevant labour legislation.	Apart from paying the employee relevant compensation for the dismissal, the employer is liable to criminal prosecution and, upon conviction, to a maximum fine of \$100,000.
Unreasonable dismissal	The employee is dismissed other than for a valid reason as specified in EO. The valid reasons include: (1) the conduct of the employee; (2) the capability or qualifications of the employee for performing his work; (3) redundancy or other genuine operational requirements of the business; (4) statutory requirements; or (5) other substantial reasons. • The Employment (Amendment) Ordinance 2022 specifies that: ➤ Dismissal of an employee by reason of the employee's absence from work for compliance with a specific Cap. 599 requirement with restriction on movement does not constitute a valid reason for the dismissal. ➤ Unless being exempted, it is a valid reason to dismiss an employee by reason of the employee's failure to comply with a legitimate vaccination request made by his/her employer.	If the employee has been employed under a continuous contract for a period of not less than 24 months, the employee may claim for remedies for the unreasonable dismissal: • An order for reinstatement or re-engagement; or • An award of terminal payments.
Unreasonable and Unlawful dismissal	A dismissal that meets both the conditions of an unlawful dismissal and that the employee is dismissed other than for a valid reason as specified in EO.	The employee may claim for remedies for the unreasonable and unlawful dismissal: • An order for reinstatement or re-engagement; or • An award of terminal payments and/or compensation ³ .

¹ An employer is not prohibited from dismissing a pregnant employee under the following circumstances: (1) the employee is summarily dismissed due to her serious misconduct; or (2) where it has been expressly agreed that the employment is on probation, the employee is dismissed for reasons other than pregnancy during the probation period of not more than 12 weeks.

² 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 employees' serious misconduct. The employee may claim for compensation under unlawful dismissal, which include: payment in lieu of notice; a further sum equivalent to seven days' wages as compensation; and any sickness allowance to which the employee is entitled. The Amendment Ordinance specifies that the absence from work of employees for compliance with specific Cap. 599 requirements with restrictions on movement will be deemed as "sickness day(s)" under EO. Employees who fulfilled relevant conditions under EO would be entitled to sickness allowance. It is an unlawful dismissal if an employer dismissed an employee on his/her paid sickness day.

³ Terminal payments means: (1) the statutory entitlements under EO which the employee is entitled to but has not yet been paid upon dismissal; (2) the entitlements the employee might reasonably be expected to be entitled to under EO had he been allowed to continue his employment; and (3) any other payments due to the employee under his contract of employment. As regards to the compensation, the maximum amount is up to \$150,000.

Employment Protection for Pregnant Employees under the Employment Ordinance (EO)

Except for specified circumstances under EO⁴, an employer is prohibited from dismissing a pregnant employee. An employer who contravenes the above provision is liable to prosecution for the unlawful dismissal, and upon conviction, to a fine of \$100,000.

Situations vis-à-vis the “Vaccine Pass”	Can a pregnant employee be exempted from producing proof of vaccination	The civil liability of employers who have dismissed pregnant employees due to their non-compliance with employers’ vaccination request
<p>Premises where the “Vaccine Pass” are applicable</p> <p>Premises where the “Vaccine Pass” is implemented in accordance with legislation⁵ e.g. staff working in catering business premises, fitness centres, beauty parlours, etc.</p> <p>Other premises where the “Vaccine Pass” are applicable Employees who perform a particular kind of work where the Government imposes a requirement or makes a recommendation to receive vaccination e.g. staff working in elderly care homes and public hospitals, etc.</p>	<ul style="list-style-type: none"> • No. Except for holding a valid COVID-19 Vaccination Medical Exemption Certificate (Exemption Certificate) 	<p>Pregnant employees who are not being exempted may claim for compensation under unlawful dismissal, which include:</p> <ul style="list-style-type: none"> • payment in lieu of notice; • a further sum equivalent to one month's wages as compensations; and • maternity leave pay if, but for the dismissal, she would have been entitled to such payment. <p>Pregnant employees who are exempted may claim for remedies under unreasonable and unlawful dismissal in addition to above payments, which include:</p>
<p>Premises where the “Vaccine Pass” are not applicable e.g. general office staff in commercial buildings</p>	<ul style="list-style-type: none"> • Yes 	<ul style="list-style-type: none"> • An order for reinstatement or re-engagement; or • An award or terminal payments and/or compensation⁶

4 The employer is not prohibited from dismissing a pregnant employee under the following circumstances: (1) the employee is summarily dismissed due to her serious misconduct; or (2) where it has been expressly agreed that the employment is on probation, the employee is dismissed for reasons other than pregnancy during the probation period of not more than 12 weeks.

5 Vaccine Pass Direction issued in accordance with the Prevention and Control of Disease (Vaccine Pass) Regulation (Cap. 599L).

6 Terminal payments means: (1) the statutory entitlements under EO which the employee is entitled to but has not yet been paid upon dismissal; (2) the entitlements the employee might reasonably be expected to be entitled to under EO had he been allowed to continue his employment; and (3) any other payments due to the employee under his contract of employment. While the amount of compensation should not exceed \$150,000.