

Sickness Allowance and Employment Protection under Anti-Epidemic Measures

An Introduction to the Employment (Amendment) Ordinance 2022

The Employment (Amendment) Ordinance 2022 comes into operation on 17 June 2022.

Objectives of the amendments

1.	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)*, and employers are required to grant sickness allowance to eligible employees.
2.	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.
3.	When an employer makes a COVID-19 vaccination request in writing, 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.

* refer to the requirements provided in the new Schedule of EO, where the restrictions on movement are imposed under the subsidiary legislation of Cap. 599.

Amendment 1: 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. Eligible employees are entitled to sickness allowance.

Eligibility to the entitlement of sickness allowance

Common situations where employees are absent from work for compliance with a specific Cap. 599 requirement	Conditions for employees to be eligible for statutory sickness allowance
<ul style="list-style-type: none"> ✓ Isolation Order (IO) (infected person) ✓ Quarantine Order (QO) (close contact) ✓ Restriction-testing declaration (RTD) 	<ul style="list-style-type: none"> ✓ Employed under a continuous contract ✓ Sick leave taken is not less than four consecutive days ✓ Accumulated sufficient number of paid sickness days ✓ The employee can produce the following proof: <ul style="list-style-type: none"> ➢ Hard copy or electronic form of document, or an electronic data issued by the Government (no longer limited to medical certificate) ➢ 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 requirement; and the commencement and expiry dates of such restriction
<ul style="list-style-type: none"> ✗ The compulsory quarantine imposed on persons arriving at Hong Kong are not covered 	

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.

Proof for absence from work of employees for compliance with specific Cap. 599 requirements and numbers of relevant sickness days

Employees contracted COVID-19	IO issued by the Department of Health
Employees who are close contacts	QO issued by the Department of Health
Employees who are subject to RTD	Department of Health will issue certificate to the affected employee upon request to prove that the employee was restricted by RTD during its validity period and attended test
The number of sickness day(s) of employees who are subject to IO, QO or RTD	<ul style="list-style-type: none"> ➤ Number of Sickness day(s): Reference can be made to IO, QO or relevant certificate of RTD which stated the commencement and expiry dates of the restriction imposed by specific Cap. 599 requirement. ➤ Handling of sick leave: 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 IO or the QO 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 IO or the QO 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.

Amendment 2: Dismissal of employees due to absence from work of employees for compliance with a specific Cap. 599 requirement is considered as unreasonable dismissal

Absence from work of employees due to their compliance with a specific requirement with restriction on movement imposed under Cap. 599 does not constitute a valid reason for the dismissal or variation of contract by the employers. The employee may lodge an employment claim against the employer under EO.

Amendment 3: Dismissal of employees due to employee’s failure to comply with the COVID-19 vaccination request made by the employer is not considered as unreasonable dismissal

When an employer makes a written notice in accordance with the requirements of a “legitimate vaccination request” to all employees of the same or similar job nature with not less than 56 days requesting the employees to produce the proof of COVID-19 vaccination, unless the employee has appropriate exemption proof, it is a valid reason to dismiss an employee by reason of the employee’s failure to produce the proof of COVID-19 vaccination by the expiry of the notice.

Relevant provisions of Amendment 3 will be repealed when the pandemic is under control and vaccination is no longer a matter of grave public health concern.

Vaccination requirements and exemption arrangement

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>	Employees should follow vaccination requirements of the “Vaccine Pass” and produce proof of vaccination	<ul style="list-style-type: none"> ✓ Mainly for employees holding a valid COVID-19 Vaccination Medical Exemption Certificate (Exemption Certificate)
<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>	Employees should follow relevant vaccination requirements or recommendations made by the Government and produce proof of vaccination	
<p>Premises where the “Vaccine Pass” are not applicable</p> <p>e.g. general office staff in commercial buildings</p>	Employees produce proof with at least one dose of the vaccine	<ul style="list-style-type: none"> ✓ Employees holding a valid Exemption Certificate ✓ Employees who are pregnant or breastfeeding ✓ Employees who are within 6 months from the date being diagnosed as having contracted COVID-19

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