Obligations and rights of employers and employees under the Employment Ordinance relating to the Coronavirus Disease 2019

(1) For an employee who has contracted Coronavirus Disease 2019 (COVID-19)

(i) The Employees' Compensation Ordinance and the Employment Ordinance (EO) accord protection to employees who have contracted a disease by an accident arising out of and in the course of employment as well as to those who have contracted a disease unrelated to their work respectively. Where an employee has contracted a disease (including COVID-19) unrelated to his/ her work, the employer should grant sick leave to the employee in accordance with the EO and related terms of the employment contract, and pay sickness allowance to the eligible employee.

(ii) Under the EO, an employee employed under a continuous contract is entitled to sickness allowance (equivalent to four-fifths of the employee’s average daily wages) if:

- the sick leave is supported by an appropriate medical certificate¹;
- the sick leave taken is not less than four consecutive days; and
- the employee has accumulated sufficient number of paid sickness days².

• If a sick employee cannot meet all the qualifying conditions for sickness allowance (e.g. the employee has not accumulated sufficient paid sickness days to cover the period of sick leave), the Government urges the employer to be compassionate and to consider granting the employee paid sick leave.

¹ Under the EO, an appropriate medical certificate is one which is issued by a registered medical practitioner, registered Chinese medicine practitioner or registered dentist, and 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.

² For details of Sickness Allowance under the EO (including “Accumulation of Paid Sickness Day” and “Two Categories of Paid Sickness Days”), please refer to Chapter 5 of “A Concise Guide to the Employment Ordinance”.
(2) **For an employee subject to quarantine ordered by a Health Officer**

- The Department of Health (DH) will arrange for the persons placed under quarantine at designated quarantine centres to undergo medical surveillance and testing. When they leave the quarantine centre upon completion of the quarantine period, DH will issue them with a document, setting out the quarantine period and whether they were infected with COVID-19, as proof of their stay at the quarantine centre. Sick leave certificates will also be issued upon request. If the employee satisfies the qualifying conditions as specified in section (1)(ii) above, the employee will be entitled to sickness allowance under the EO.

- The Government encourages employers to be considerate and show understanding to the situation of such employees and make flexible arrangements, including granting paid leave to employees, or where practicable allowing employees to work from locations other than workplaces. This will help maintain good labour-management relations and protect the health of all employees as well as the community.

(3) **If an employer requires an employee to receive COVID-19 vaccination or to undergo COVID-19 testing**

- The EO does not make provisions for such particular circumstances. On matters relating to COVID-19 vaccination or testing, employers should maintain good communication with employees to work out relevant arrangements through dialogues so as to maintain harmonious labour-management relations. The Government appeals to employers to provide facilitation to their staff to receive vaccination where practicable, such as introducing vaccination leave arrangements. Moreover, employers should consider the needs of employees who are not suitable for vaccination and consider making other appropriate arrangements for them.

(4) **Can an employer dismiss an employee due to the employee’s refusal to the request relating to COVID-19 vaccination or testing raised by the employer/ dismiss an employee on his/ her paid sickness day?**

- The EO stipulates clearly the provisions of dismissal of employees. Generally speaking, when an employer terminates a contract of
employment, the employer should pay the employee termination payments in accordance with the EO and related terms of the employment contract.

- Under the EO, if an employee has been employed under a continuous contract for a period not less than 24 months, and is dismissed other than for a valid reason\(^3\) as specified in the EO, the employee may make a claim for remedies for the unreasonable dismissal. The Labour Tribunal (LT), taking into account the circumstances of the claim, may make an order of reinstatement or re-engagement; or terminal payments.

- The EO stipulates certain situations where a dismissal is in contravention of the law (i.e. unlawful dismissal)\(^4\). An employer is prohibited from terminating the contract of employment of an employee on his/her paid sickness day under the EO, except in the case of a summary dismissal due to the employee’s serious misconduct. An employer who contravenes this provision commits an offence, and is liable to prosecution and, upon conviction, to a maximum fine of $100,000. The employer is also required to pay the dismissed employee the compensation he/she is entitled. Moreover, if the employee is dismissed other than for a valid reason, LT, taking into account the circumstances of the claim, may make an order of reinstatement or re-engagement; or terminal payments and/or compensation of up to $150,000.

(5) If an employee experienced side effects or was unwell after receiving COVID-19 vaccination

- Where an employee has contracted a disease unrelated to his/her work or has been unwell, the employer should pay sickness allowance to the eligible employee in accordance with the EO and related terms of the employment contract. If the employee concerned cannot meet all the qualifying conditions for sickness allowance, the Government urges the

\(^3\) The valid reasons under the EO include: (1) the conduct of the employee; (2) the capability or qualifications of the employee for performing the work; (3) redundancy or other genuine operational requirements of the business; (4) statutory requirements; or (5) other substantial reasons.

\(^4\) Unlawful dismissal under the EO refers to dismissal (1) during pregnancy and maternity leave; (2) during paid sick leave; (3) after work-related injury and before determination/ settlement and/or payment of compensation under the Employees’ Compensation Ordinance; (4) by reason of the employee exercising trade union rights; or (5) by reason of giving evidence for the enforcement of relevant labour legislation.
employer to be compassionate and to consider granting the employee paid sick leave.

(6) For an employee who is asked to take paid annual leave, statutory holidays or rest days during the suspension

- The EO stipulates clearly the provisions of paid annual leave, statutory holidays and rest days. The employer has to abide by these provisions in granting such annual leave/statutory holidays/rest days. Taking paid annual leave as an example, the time of the annual leave should be appointed by the employer after consultation with the employee or his/her representative, and confirmed by a written notice to the employee at least 14 days in advance unless a shorter period has been mutually agreed.

(7) For an employee who is asked to take no pay leave

- There is no provision under the EO on no pay leave. If employees are required to take no pay leave due to needs of the business or special circumstances, employers should conduct prior thorough consultation and frank dialogues with employees, taking into consideration the needs of individual employees, so as to reach mutually agreeable arrangements and maintain harmonious employment relations.

- The EO provides that an employee employed for not less than 24 months under a continuous contract who is laid off\(^5\) is eligible for severance payment. If an employee is employed on such terms and conditions that his remuneration depends on his being provided by the employer with work of the kind he is employed to do, he shall be taken to be laid off if the total number of days on which no work is provided and no wages is paid exceeds:

- half of the total number of normal working days in any four consecutive weeks; or
- one-third of the total number of normal working days in any 26 consecutive weeks.

The days of lock-out, rest days, annual leave and statutory holidays should not be counted as normal working days during the above periods.

\(^5\) For details of lay-off/severance payment, please refer to Chapter 11 of “A Concise Guide to the Employment Ordinance”.
(8) For a pregnant employee who is concerned about possible infection at the workplace

- While the EO does not provide for absence from work in these circumstances, it requires an employer not to assign to a pregnant employee duties injurious to her pregnancy if she can produce a medical certificate with an opinion indicating her unfitness to do such work.

- If both parties agree, the employer may redeploy the pregnant employee to a position with no or less contact with the public, or allow her to work from home by using telephone, e-mail, fax, etc.

- The Government also urges the employer to be compassionate and flexible in working out mutually agreeable arrangements with the pregnant employee as far as possible, and to consider granting the pregnant employee paid leave until COVID-19 infection comes under control.

Further information

The Labour Department stands ready to assist individual employers and employees on labour issues. For enquiries, please call our hotline 2717 1771 (operated by “1823”), email us at enquiry@labour.gov.hk or browse the Department’s website at www.labour.gov.hk.

The Employment Ordinance does not regulate situations of discrimination on the grounds of sex, disability, family status or race nor matters relating to personal data privacy. For enquiries on whether an act of an employer would constitute a discrimination or an invasion of privacy, please approach the Equal Opportunities Commission or the Office of the Privacy Commissioner for Personal Data.

Labour Relations Division
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