Obligations and rights of employers and employees under the Employment Ordinance (EO) relating to the Coronavirus Disease 2019 (COVID-19)

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

- Where an employee has contracted the disease, his/her employer should grant him/her sick leave in accordance with the EO and the relevant employment contract. 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 certificate (note 1);
  - the sick leave is not less than four consecutive days; and
  - the employee has accumulated sufficient number of paid sickness days (note 2).

- Where a sick employee has not accumulated sufficient paid sickness days to cover the period of sick leave, we urge the employer to be compassionate and to consider granting the employee paid sick leave.

✧ Note 1: An appropriate medical certificate is one which is issued by any registered medical practitioner, registered Chinese medicine practitioner or registered dentist, and which specifies the number of days on which the employee was, is or will be, unfit for work, and the nature of the sickness or injury on account of which, the employee was, is or will be, unfit for work.

✧ Note 2: On details of “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 employee is required to satisfy the criteria as specified in section (1) above in order to be entitled to sickness allowance under the Employment Ordinance.

- We encourage employers to be considerate and show understanding to such employees’ situation and make flexible arrangements, including where
practicable allowing employees to work from home or granting paid leave to them. This will help maintain good labour-management relations and protect the health of all employees as well as the community.

(3) If an employer dismisses an employee on his/her paid sickness day

- An employer is prohibited from terminating the contract of employment of an employee on his/her paid sickness day under the EO. 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 to the dismissed employee 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.

- If the employee is dismissed other than for a valid reason, he/she can make a claim for remedies at the Labour Tribunal. The Labour Tribunal may make an order of (a) reinstatement or re-engagement; or (b) terminal payments. If no order for reinstatement or re-engagement is made, the Labour Tribunal may, as it considers just and appropriate, make an award of terminal payments and an award of compensation of up to $150,000.

(4) If an employee does not contract any disease during quarantine and therefore no sick leave being granted, will wages be paid during this period

- The EO does not provide for wage arrangements in such circumstances. Under the EO, wages generally means all remuneration in terms of money which are payable to the employee in respect of work done or to be done. We encourage employers to be considerate and show understanding to such employees’ situation and make flexible arrangements.

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

- The EO stipulates clearly the provision 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.
(6) 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 special needs of the business, 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 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. (note 3)

  Note 3: On details of lay-off/ severance payment, please refer to Chapter 11 of “A Concise Guide to the Employment Ordinance”.

(7) 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.

- In view of the special situation, the employer should, as far as possible, work out with the pregnant employee mutually agreeable arrangements.

- 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.
• We also urge the employer to be compassionate and flexible 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.

Labour Relations Division
Labour Department
March 2020