

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

For issues relating to sickness allowance for employees with COVID-19 rapid antigen test positive results, please refer to Annex added in March 2022.

(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 allowance¹ (equivalent to four-fifths of the employee's average daily wages) if:
- the sick leave is supported by an appropriate medical certificate;
 - the sick leave taken is not less than four consecutive days; and
 - the employee has accumulated sufficient number of paid sickness days.
- 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.
 - In times of severe epidemic like this, even if the employees contracted COVID-19 fail to submit the medical certificate, employers are advised

¹ For details of Sickness Allowance under the EO, please refer to [Chapter 5 of "A Concise Guide to the Employment Ordinance"](#).

to accept the Isolation Order issued by the Department of Health (DH) to the employees contracted COVID-19 and follow EO requirements and pay sickness allowance on time to employees who have fulfilled other criteria specified in the EO. Generally speaking, it is not necessary for the employer to request for a medical certificate when the employee has already presented the Isolation Order to the employer.

(2) For an employee subject to quarantine ordered by a Health Officer

- The DH will arrange for the persons placed under quarantine at home or at a designated quarantine centres to undergo medical surveillance and testing. Upon completion of the quarantine period, DH will issue them with a medical certificate or other documentary proof/information upon request setting out information on the quarantine period and whether they were infected by COVID-19. 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.
- As regards to persons who are subject to “restriction-testing declaration” (declaration) to undergo compulsory testing, upon the completion of the restriction requirement, DH may issue a medical certificate or other documentary proof/information upon request to prove that they were restricted by the declaration during its validity period and attended test(s).
- The Government encourages employers to be considerate and show understanding to the situation of such employees and make flexible arrangements, including, where practicable, allowing employees who are subject to quarantine to work from home or locations other than workplaces or granting special paid leave to employees. Employers may follow EO requirements and pay sickness allowance to employees who are subject to quarantine and have fulfilled other criteria specified in the EO. This will help maintain good labour-management relations and protect the health of all employees as well as the community.
- When employees are absent from work for their due compliance with anti-epidemic requirements, employers and employees should maintain good communication to work out relevant arrangements. Employers should

not dismiss employees because of their being subjected to quarantine requirements (such as the requirements relating to quarantine order, restriction-testing declaration and compulsory testing notice, etc.), lest it may amount to unreasonable dismissal². Affected employees may approach the offices of the Labour Relations Division of the Labour Department for assistance and may lodge a claim against the employer. If no settlement could be reached between employers and employees through conciliation, the employee may seek redress from the Labour Tribunal (“LT”) for an adjudication for his/her claim.

- If LT adjudicates that a case of unreasonable dismissal is established after taking into account the circumstances of the claim, LT may make an order requiring the employer to reinstate or re-engage the employee (when both the employer and the employee agree to it), or make terminal payments to the employee.³

(3) If an employer requires an employee to receive COVID-19 vaccination or to undergo polymerase chain reaction (PCR)-based nucleic acid testing

- The EO does not make provisions for such 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.
- For details of the “Vaccine Pass”, please refer to the thematic website:

² Under 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 as specified in EO, the employee may make a claim for remedies for the unreasonable dismissal. The valid reasons under 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.

³ Terminal payments may include (1) the statutory entitlements under EO which the employee is entitled to but has not yet been paid upon dismissal; (2) the entitlements for which the employee might reasonably be expected to be entitled to under EO had he/she been allowed to continue with his/her original employment; and (3) any other payments due to the employee under his/her contract of employment.

(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?

- Save for those who are unfit for COVID-19 vaccination due to medical reasons, employees should get vaccinated early to support the normal business operation of their employers and to adhere to the epidemic control measures. Instead of simply resorting to dismissal, employers should maintain good communication with employees and provide appropriate assistance to them, including allowing employees to work from home where practicable.
- 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.
- 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 and LT adjudicates that a case of unreasonable and unlawful dismissal is established after taking into account the circumstances of the claim, LT may make an order of reinstatement or re-engagement (without having to first secure the agreement of the employer); or terminal payments and/ or compensation of up to \$150,000.

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.

(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 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. 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 the arrangement of no pay leave for employees. If an employer requests employees to take no pay leave due to special circumstances, he/she should notify the employees in advance and conduct frank dialogues with employees, taking into consideration the circumstances and needs of individual employees and securing their consent before implementing relevant arrangements.
- The EO provides that an employee employed for not less than 24 months under a continuous contract who is laid off⁵ is eligible for severance payment. If an employee is employed on such terms and conditions that

⁵ For details of lay-off/ severance payment, please refer to [Chapter 11 of “A Concise Guide to the Employment Ordinance”](#).

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.

(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 special 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
Labour Department
11 March 2022 updated

**Issues relating to sickness allowance for employees with
COVID-19 rapid antigen test positive results**

Q1: If an employee's self-administered COVID-19 rapid antigen test (RAT) indicates a positive result, how should the employer handle the issues relating to the employee's sickness allowance?

A1: In times of severe epidemic like this, it calls for joint efforts from every member of the community to fight against the epidemic with a view to resuming normal track at the earliest possible. The Government strongly appeals to employers to be considerate of employees affected by the epidemic, to be as flexible as possible in dealing with sick leave arrangements for self-administered RAT positive employees⁶, and to accept the Isolation Order issued by the Department of Health (DH) presented by the employees, and/or to accept the test result notifications and the application for sick leave from these employees through contact means such as telephone, email or social media platforms when they are unable to submit the medical certificate.

Employers should also pay sickness allowance on time to employees who have fulfilled other criteria⁷ specified in the Employment Ordinance (EO).

With such measure in place, employees are assured with income protection while adhering to the Government's prevention and control measures and testing requirements, which in turn can help reduce the risk of spreading COVID-19 in the community, protect enterprises from the loss that may be caused by the transmission of the disease in the workplaces and strengthen the harmonious relations among employers and employees.

⁶ The Government announced earlier that, with effect from 26 February 2022, members of the public tested positive by RAT, whether distributed by the Government or on their own purchase, should be considered positive cases and they should take all necessary steps to avoid further spreading of the virus, including staying at home.

⁷ The sick leave taken by the employee is not less than four consecutive days and the employee has accumulated sufficient number of paid sickness days.

Q2: In practice, how should employers and employees deal with the arrangements of sickness allowance for self-administered RAT positive employees?

A2. For Employees

- (1) For self-administered RAT positive employees, the employees concerned should stay at home and submit their RAT positive results and information related to their sickness to DH's online "Declaration System for Individuals Tested Positive for COVID-19 Using Rapid Antigen Test"⁸ as soon as possible.
- (2) Meanwhile, the employees concerned should notify their employers for sick leave application as soon as possible by practical means, such as sending the Isolation Order issued by DH, the screen image captured upon completion of DH's online declaration and/or photos and/or videos of RAT positive results (if any), to their employers through email or social media platforms. Generally speaking, unless requested by the employer, it is not necessary for the employee to request DH for issuing a medical certificate.

For employers

- (1) For self-administered RAT positive employees, the employers should accept information such as the Isolation Order issued by DH, the screen image captured upon completion of DH's online declaration and/or photographs, videos showing the employees' RAT positive results as proof of their sick leave application and the entitlement to sickness allowance.
- (2) Even if the employees fail to submit the medical certificate, the employers are advised to follow EO requirements and pay sickness allowance on time to the

⁸ The "Declaration System for Individuals Tested Positive for COVID-19 Using Rapid Antigen Test" (<https://www.chp.gov.hk/ratp/>) will accept declaration of persons who tested positive by self-administered RAT on or after 26 February 2022.

employees who have fulfilled other eligibility criteria as specified in EO. Generally speaking, it is not necessary for the employer to request for a medical certificate when the employee has already presented the Isolation Order to the employer.

Labour Department
Department of Health
11 March 2022 updated