

**Employment (Amendment) (No.2) Ordinance 2018
Provisions on Reinstatement or Re-engagement Order
for Unreasonable and Unlawful Dismissal**

Frequently Asked Questions with Answers

- 1. What are the major amendments in respect of reinstatement or re-engagement order for unreasonable and unlawful dismissal?**

Upon the commencement of the Employment (Amendment) (No.2) Ordinance 2018 (“Amendment Ordinance”), where an employee has been **unreasonably and unlawfully dismissed** and the employee makes a claim for reinstatement or re-engagement, and the Labour Tribunal (“LT”) considers that the order is appropriate and reinstatement or re-engagement of the employee by the employer is reasonably practicable, LT can make such order for reinstatement or re-engagement **without the need to secure the employer’s agreement**.

If the employer eventually does not reinstate or re-engage the employee as required by the order, the employer shall pay to the employee a further sum, amounting to three times the employee’s average monthly wages and subject to a ceiling of \$72,500, on top of the above monetary remedies payable to the employee as ordered by LT. The employer will commit a criminal offence if he/she wilfully and without reasonable excuse fails to pay the further sum.

- 2. When will Amendment Ordinance come into operation?**

The Amendment Ordinance will come into operation on 19 October 2018 and is applicable to cases where an employee is unlawfully and unreasonably dismissed on or after that day.

3. What is an unreasonable and unlawful dismissal ?

The employee is dismissed other than for a valid reason as specified in the Employment Ordinance and the dismissal is in contravention of the law.

Valid reasons include the conduct of the employee, the capability or qualifications of the employee for performing his work, redundancy or other genuine operational requirements of the business, statutory requirements (i.e. it would be contrary to the law to allow an employee to continue to work in his original position or to continue with the original terms in his employment contract) and other substantial reasons.

The employee is unlawfully dismissed if he/she is dismissed during pregnancy and maternity leave, during paid sick leave, after work-related injury and before determination/ settlement and/or payment of compensation under the Employees' Compensation Ordinance, by reason of the employee exercising trade union rights or by reason of the employee giving evidence for the enforcement of relevant labour legislation.

4. What are the remedies for unreasonable and unlawful dismissal?

The remedies for unreasonable and unlawful dismissal include reinstatement or re-engagement, terminal payments and compensation. If no order for reinstatement or re-engagement is made by LT, LT may make an award of terminal payments to be payable by the employer to the employee as it considers fair and appropriate. An employee may also be awarded compensation up to a maximum of \$150,000.

5. What is reinstatement and re-engagement ?

Reinstatement is re-employment of the employee by the employer and the employer is to treat the employee in all respects as if he/she

had not been dismissed or as if there had been no variation of the terms of the contract of employment.

Re-engagement is re-employment of the employee by the employer, or by a successor of the employer or by an associated company, on terms comparable to his/her original terms of the employment or in other suitable employment.

6. Is the making of a reinstatement or re-engagement order by LT without the need to secure the employer's agreement applicable to cases of unreasonable dismissal or unreasonable variation of terms of employment contract?

No, it is only applicable to cases of unreasonable and unlawful dismissal.

[Note: The information in this document sets out in simple terms major changes to EO made by the subject amendment. The EO remains the sole authority for the provisions of the law explained. More information on this subject is available at the Labour Department's website: [http://www.labour.gov.hk/eng/news/EA\(2\)O2018.htm](http://www.labour.gov.hk/eng/news/EA(2)O2018.htm)]