

Chapter 5: Sickness Allowance

Eligibility for Sickness Allowance

An employee employed under a continuous contract is entitled to sickness allowance if the following conditions are fulfilled:

1. the sick leave taken is not less than four consecutive days (unless for any day off taken by a female employee for her pregnancy check-ups, post confinement medical treatment or miscarriage, any such day on which she is absent shall be counted as a sickness day and, subject to the following conditions, be paid sickness allowance);
2. the employee has accumulated sufficient number of paid sickness days (see the parts below on “Accumulation of Paid Sickness Days” and “Two Categories of Paid Sickness Days”); and
3. the sick leave is supported by:
 - (i) an appropriate medical certificate (regarding an employee’s medical examination in relation to her pregnancy, may also be supported by a certificate of attendance¹ apart from a medical certificate); or
 - (ii) regarding the absence from work of an employee by reason of his / her compliance with a specific anti-epidemic requirement with a movement restriction imposed under the Prevention and Control of Disease Ordinance (Cap. 599), the employee is required to produce a proof of such requirement² (see the part below on “Two Categories of Paid Sickness Days”).

¹ Certificate of attendance is not applicable to an employee’s medical examination in relation to her pregnancy conducted before 11 December 2020.

² Applicable to sickness days taken by employees who are absent from work by reason of their compliance with a movement restriction on or after 17 June 2022. The specific anti-epidemic requirements with a movement restriction are those prescribed in Part 1, Schedule 12 of the Employment Ordinance. The proofs of the relevant requirements include hard copy or electronic form of document, or an electronic data issued by the Government. The relevant proof should show the name of the employee, or information that could identify the identity of employee, the type of movement restriction imposed and the commencement and expiry dates of such restriction.

An employee shall not be entitled to sickness allowance under the following circumstances:

- the employee, without reasonable excuse, refuses treatment by a company doctor of a medical scheme recognised by the Director of Health or disregards the advice of the doctor. (If the recognised scheme of medical treatment operated by an employer does not cover treatment from a certain medical discipline, the employee may choose to receive treatment from any registered medical practitioner, registered Chinese medicine practitioner or registered dentist under that particular discipline);
- the sickness day falls on a statutory holiday on which the employee is entitled to holiday pay; or
- compensation is payable under the Employees' Compensation Ordinance.

Sickness Allowance

The daily rate of sickness allowance is a sum equivalent to four-fifths of the average daily wages earned by an employee in the 12-month period preceding the following specified dates. If an employee is employed for less than 12 months, the calculation shall be based on the shorter period.

Day(s) of Sickness Day(s)	Specified Dates
1 day	The sickness day
More than 1 consecutive day	The first sickness day

NOTE: In calculating the average daily wages, an employer has to exclude (i) the periods for which an employee is not paid his wages or full wages, including rest day, statutory holiday, annual leave, sickness day, maternity leave, paternity leave, sick leave due to work injuries or leave taken with the agreement of the employer, and any normal working day on which the employee is not provided by the employer with work; together with (ii) the sum paid to the employee for such periods. (see Appendix 1 for details)

Sickness allowance should be paid to the employee not later than the normal pay day.

Offences and Penalties

An employer who without reasonable excuse fails to pay sickness allowance to an employee is liable to prosecution and, upon conviction, to a fine of \$50,000.

Accumulation of Paid Sickness Days

An employee can accumulate paid sickness days after having been employed under a continuous contract. Paid sickness days are accumulated at the rate of two paid sickness days for each completed month of the employee's employment during the first 12 months, and four paid sickness days for each completed month of employment thereafter. Paid sickness days can be accumulated throughout the whole employment period, but shall not exceed 120 days at any one time.

Two Categories of Paid Sickness Days

Paid sickness days are divided into two categories - paid sickness days can first be accumulated up to 36 days in Category 1 and then 84 days in Category 2.

Category	Total number	Conditions for taking paid sickness day(s)
Category 1	36	<ul style="list-style-type: none"> supported by a medical certificate³ issued by a registered medical practitioner, a registered Chinese medicine practitioner or a registered dentist regarding an employee's medical examination in relation to her pregnancy, may also be supported by a certificate of attendance⁴ issued by a registered medical practitioner, a registered Chinese medicine practitioner, a registered midwife or a registered nurse, apart from a medical certificate regarding the absence from work of an employee for compliance with a specific anti-epidemic requirement with a movement restriction, the employee is required to produce proof of the relevant requirement (for details, please refer to footnote 2 above)
Category 2	84	<ul style="list-style-type: none"> sickness days taken exceeds the number of paid sickness days remaining in Category 1 if required by the employer, a medical certificate³ issued by a registered medical practitioner, registered Chinese medicine practitioner or registered dentist attending the employee as an out-patient or in-patient in a hospital should be produced upon the employer's request, a brief record of the investigation carried out and the treatment prescribed by the issuer of the medical certificate should also be produced regarding an employee's medical examination in relation to her pregnancy, may also produce a certificate of attendance⁴ issued by a registered medical practitioner, a registered Chinese medicine practitioner, a registered midwife or a registered nurse who conducts the examination for the employee as an out-patient or in-patient in a hospital, apart from a medical certificate regarding the absence from work of an employee for compliance with a specific anti-epidemic requirement with a movement restriction, irrespective of whether the paid sickness day taken by the employee is under Category 1 or Category 2, the employee is only required to produce proof of the relevant requirement (for details, please refer to footnote 2 above)

³ The medical certificate 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.

⁴ The certificate of attendance should state the employee's attendance for a medical examination in relation to her pregnancy and the relevant date. Certificate of attendance is not applicable to a medical examination in relation to pregnancy conducted before 11 December 2020.

Record of Sickness Days

An employer should keep the following records:

1. the date of commencement and termination of employment of each employee;
2. all paid sickness days accumulated by each employee, including the number of paid sickness days accumulated in Category 1 and 2;
3. paid sickness days taken by each employee and deducted from the total number of paid sickness days in either category;
4. sickness allowance paid and the sickness days in respect of which the sickness allowance was paid.

The record should be signed by the employee within seven days of his return to work from paid sick leave, and the employee has the right to inspect the record.

Employment Protection

An employer is prohibited from terminating the contract of employment of an employee on his paid sickness day, except in cases of summary dismissal due to the employee's serious misconduct.

Offences and Penalties

An employer who contravenes the above provision is liable to prosecution and, upon conviction, to a fine of \$100,000. Besides, the employer is required to pay the following sum of money to the dismissed employee within 7 days after the day of termination:

1. payment in lieu of notice;
2. a further sum equivalent to seven days' wages as compensation⁵; and
3. any sickness allowance to which the employee is entitled.

The employee may also claim remedies for employment protection against his employer if he is dismissed other than for a valid reason as specified in the Ordinance. (see the part on “Eligibility and Remedies for Employment Protection” in Chapter 10)

⁵ See Appendix 1 for details of the calculation.