

COVID-RELATED CHANGES TO THE EMPLOYMENT ORDINANCE COME INTO OPERATION

On 25 February 2022, the Hong Kong Government published the Employment (Amendment) Bill 2022 seeking to amend the Employment Ordinance (Cap. 57) (the **Employment Ordinance**) and address common issues in the employment relationship which have arisen as a result of the anti-epidemic measures implemented to control the spread of COVID-19. The Employment (Amendment) Ordinance came into effect on 17 June 2022.

This client briefing discusses the key amendments made to the Employment Ordinance.

COVID-19 vaccination requests

Where an employer reasonably believes that, if its employee contracts COVID-19, the persons with whom the employee may come to face-to-face contact at work will also be exposed to the risk of contracting the virus, the employer may request its employee and all other employees who perform the same or similar type of work as the first employee to obtain a COVID-19 vaccination within 56 days (a **legitimate vaccination request**).

The number of doses which an employer can request an employee to receive will vary depending on the employees' place of work and the type of work performed (for example, staff working in catering business premises would ordinarily be required to receive at least 2 doses). The Hong Kong Labour Department (**HKLD**) has published a useful **Information Flyer** which summarises the vaccination requirements for the purposes of a legitimate vaccination request.

An employee who is subject to a legitimate vaccination request would be exempt from complying with the request if he/she holds a valid COVID-19 Vaccination Medical Exemption Certificate.

Where an employee fails to comply with an employer's legitimate vaccination request within 56 days, this would be a valid reason for the employer to dismiss the employee and such dismissal would not be considered as an unreasonable dismissal under the Employment Ordinance.

These provisions are subject to a sunset clause in that they will be repealed when the COVID-19 pandemic is under control.

Protection against unreasonable dismissal

Under Hong Kong law, if an employee has been employed under a continuous contract for a period of not less than 24 months, he cannot be dismissed other than for a valid reason as specified in the Employment Ordinance. The remedies for unreasonable dismissal are an order for reinstatement or re-engagement (only if both the employer and the employee agree to it), or an award of terminal payments.

Employees are now afforded statutory protection against unreasonable dismissal on the basis that they are absent from work due to a restriction on movement (for example, a quarantine or isolation order) under the Prevention and Control of Disease Regulation (Cap 599A) or Prevention and Control of Disease (Compulsory Testing for Certain Persons) Regulation (Cap 599J) (**Cap 599 Requirement**). In other words, it is not a valid reason to dismiss an employee on the ground that he/she is absent from work due to a Cap 599 Requirement.

Calculation of sickness day

It was previously uncertain whether an employee would be considered as taking a "sickness day" (a defined term under the Employment Ordinance) if he/she could not go to work due to a Cap 599 Requirement but had not contracted COVID-19 (and therefore was not sick). For example, a person in the employee's household has been infected with COVID-19 and the employee has been issued with a quarantine order.

The definition of "sickness day" in the Employment Ordinance has now been amended to expressly include a day on which an employee is absent from work by reason of his/her compliance with a Cap 599 Requirement.

The effect is that if an employee, who is employed under a continuous contract, takes sick leave for four or more consecutive days due to a Cap 599 Requirement, he/she would be eligible to claim sickness allowance provided

that he/she is able to produce to the employer proof of the type of restrictions imposed on him/her, and the commencement and end date of those restrictions. According to the [Introduction to the Employment \(Amendment\) Ordinance 2022](#) published by the HKLD, examples of such proof would include isolation orders or quarantine orders issued by the Department of Health. The HKLD has also issued an [FAQ](#) which includes practical guidance on how to calculate employees' entitlement to sickness allowance due to his/her absence from work for compliance with a Cap 599 Requirement.

Further, where a Cap 599 Requirement ends early (e.g. the employee fulfils a condition precedent for ending isolation or quarantine early), an employee is obliged to take the initiative to inform their employers as soon as possible. It is worth noting that undergoing mandatory hotel quarantine upon arrival in Hong Kong from overseas is not a Cap 599 Requirement and therefore employees would not be able to claim sickness allowance.

CONTACTS



WYNNE MOK
PARTNER
T: +852 2901 7201
E: wynne.mok@slaughterandmay.com



JASON CHENG
ASSOCIATE
T: +852 2901 7211
E: jason.cheng@slaughterandmay.com



AUDREY LI
ASSOCIATE
T: +852 2901 7209
E: audrey.li@slaughterandmay.com

London
T +44 (0)20 7600 1200
F +44 (0)20 7090 5000

Brussels
T +32 (0)2 737 94 00
F +32 (0)2 737 94 01

Hong Kong
T +852 2521 0551
F +852 2845 2125

Beijing
T +86 10 5965 0600
F +86 10 5965 0650

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