

Readers may wish to note the development of related anti-epidemic measures since after the meeting held on 25 October 2022.
Please visit www.labour.gov.hk/eng/news/EAO2022.htm for the latest information on the subject.

Sickness Allowance & Employment Protection **under Anti-Epidemic Measures** **The Employment (Amendment) Ordinance 2022**

An Introduction to the Employment (Amendment) Ordinance 2022

Labour Department

The objectives of amending the Employment Ordinance

The Employment (Amendment) Ordinance 2022 (“Amendment Ordinance”) took effect on 17 June 2022.

**Reflect the
policy intent**

**Make clear the
rights and
obligations of
employers and
employees**

**Strengthen the
protection of
employees’ rights
and benefits**

**Encourage
employees to
receive
vaccination**

Major amendments to the Employment Ordinance (“EO”)

(1) A sickness day under EO includes a day on which an employee is absent from work by reason of his/her compliance with a specific anti-epidemic requirement with a movement restriction. Eligible employees are entitled to sickness allowance.

(2) Dismissal of an employee by reason of his/her absence from work due to the above restriction is considered as an unreasonable dismissal.

(3) If an employer makes a COVID-19 vaccination request, an employee, who is not being exempted from the request, is dismissed because of his/her failure to produce the proof of COVID-19 vaccination, the dismissal is not considered as an unreasonable dismissal.

The meaning of **Sickness day / Cap. 599 requirement**

“Sickness day”

- It includes a day when an employee is absent from work 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).

“Cap. 599 requirement”

- The specific anti-epidemic requirements with a movement restriction are those prescribed in Schedule 12 of EO.

Coverage of "Cap. 599 requirement"

Common situations include	NOT include
<ul style="list-style-type: none">✓ Isolation Order (infected person)✓ Quarantine Order (close contact)✓ Restriction-testing declaration	<ul style="list-style-type: none">✗ Restrictions imposed on people travelling to Hong Kong✗ The period when an employee is merely in the course of undergoing a compulsory testing or awaiting for the test result

Eligibility for sickness allowance

For the absence from work of an employee for compliance with a specific anti-epidemic requirements with a movement restriction

The Amendment Ordinance

- Proof : Hard copy or electronic form of document, or an electronic data issued by the Government (no longer limited to medical certificate)
- The proof should show the name of 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
- Examples : Isolation Order, Quarantine Order, Certificate of being restricted by a restriction-testing declaration

= Pre-existing criteria under EO

- employed under a continuous contract
- sick leave taken is not less than 4 consecutive days
- accumulated sufficient number of paid sickness days

Employment Protection

The Amendment Ordinance specifies the situation which does not constitute a valid reason under EO

✘ It is not a valid reason under EO for an employee to be dismissed or his/her employment terms be varied by the employer because of his/her absence from work due to his/her compliance with a specific anti-epidemic requirement with a movement restriction.

➔ Eligible employee may lodge a claim for remedies.

Employers requesting employees for COVID-19 vaccination

If an employer, in accordance with the requirements of a “legitimate vaccination request”, makes a written request to his/her employees for COVID-19 vaccination,

an employee, who is not being exempted from the request, is dismissed by reason of his/her failure to produce the proof of COVID-19 vaccination within 56 days from the date of the making of the request,

the dismissal is not considered as unreasonable dismissal.

Employers requesting employees for COVID-19 vaccination

Note

The Amendment Ordinance neither requires an employer to make a mandatory vaccination request to his/her employees, nor empowers an employer to dismiss his/her employees who failed to present proof of vaccination.

- Employers are still required to pay other termination payments in accordance with the requirements under EO and the terms of employment contract for the dismissal.

Relevant provisions relating to “legitimate vaccination request” will be repealed when the pandemic is under control and vaccination is no longer a matter of grave public health concern.

Employers requesting employees for COVID-19 vaccination

“Legitimate vaccination request”

- Employers must make the request in writing and to all employees under his/her employment who perform work of the same or a similar job nature
- Allow the employees so requested 56 days to present proof of COVID-19 vaccination
- Must reasonably believe, having regard to the nature of the employee’s work and the related operational requirements, that if the employee contracts COVID-19, the persons with whom the employee may come into face-to-face contact when the employee performs his/her work will be exposed to the risk of infection
- Must not make such request to those employees who are exempted from producing the proof of COVID-19 vaccination

Proof of vaccination to be produced by employees

Premises where the Vaccine Pass is implemented in accordance with legislation*:

- Place of work is a specified premises under the Vaccine Pass, (e.g. catering business premises, fitness centres, beauty parlours, etc.)

Employees should follow vaccination requirements of the Vaccine Pass and produce proof of vaccination

Other premises where the Vaccine Pass are applicable:

- Employees who perform a particular kind of work where the Government imposes a requirement or makes a recommendation to receive vaccination (e.g. staff working in elderly care homes and public hospitals, etc.)

Employees should follow relevant vaccination requirements or recommendations made by the Government and produce proof of vaccination

Premises where the Vaccine Pass are not applicable:

- e.g. general office staff in commercial buildings

Employees produce proof with at least one dose of the vaccine

Employees exempted from producing proof of vaccination

Premises where the Vaccine Pass is implemented in accordance with legislation and other premises where the Vaccine Pass are applicable

✓ Mainly for employees holding a valid COVID-19 Vaccination Medical Exemption Certificate (Exemption Certificate)

Premises where the Vaccine Pass are not applicable

- ✓ Employees holding a valid Exemption Certificate
- ✓ Employees who are pregnant or breastfeeding
- ✓ Employees who are certified to have contracted COVID-19 in the 6 months before the request is made

Employees holding a Red Code

Red Code is applicable to all confirmed cases



- They are required to comply with an isolation order and are not allowed to leave the isolation location to return to work.
- The absence from work by reason of the compliance with an isolation order by an employee holding a Red Code is deemed as sickness day(s).
- Employers are required to grant sickness allowance to eligible employees who can produce an isolation order.

Employees holding an Amber Code

Employers should allow employees holding an Amber Code to go to work



- Irrespective of whether the place of work of an employee is within the premises subject to “active checking” of the Vaccine Pass and other premises requiring key protection, employers should allow an employee holding an Amber Code to return to work. Persons under the category of Amber Code must strictly observe anti-epidemic measures while working in relevant premises, including mask-wearing and dining alone.

Employees holding an Amber Code



- If an employer imposes additional anti-epidemic rules for individual premises in accordance with his/her own needs, he/she should work out a mutually agreed arrangement with the employees through frank communication.
- If an employer cannot arrange an employee holding an Amber Code to return to work, the employer should pay the employee a sum equivalent to the remuneration that the employee would have earned if he/she had worked for that period. Employers should not deduct the holidays where an employee is entitled to under EO, such as paid annual leave.

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The Employment (Amendment) Ordinance 2022



Hotline : 2717 1771 (handled by 1823)

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Thank you

The Employment Ordinance remains the sole authority for the provisions of the law explained.