

Employment Ordinance

(Cap. 57)

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To provide for the protection of the wages of employees, to regulate general conditions of employment and employment agencies, and for matters connected therewith.

(Amended 5 of 1970 s. 2)

[27 September 1968]

Part I

Preliminary

(Format changes—E.R. 3 of 2015)

1. Short title

This Ordinance may be cited as the Employment Ordinance.

2. Interpretation

(1) In this Ordinance, unless the context otherwise requires— *(Amended 48 of 1984 s. 2)*

alternative holiday (另定假日) means a holiday granted or to be granted under section 39(2) and (2A); *(Added 39 of 1973 s. 2. Amended 137 of 1997 s. 2)*

annual leave (年假) means the annual leave provided for in Part VIIIA; *(Added 53 of 1977 s. 2)*

annual leave pay (年假薪酬) means the annual leave pay required by this Ordinance to be paid in respect of a period of annual leave and any sum required to be paid under section 41D; *(Added 53 of 1977 s. 2)*

business (業務) includes a trade or profession and any like activity carried on by a person; *(Added 76 of 1985 s. 2)*

cease (停止), in relation to Part VA, Part VB, the Third Schedule and the Sixth Schedule, means cease either permanently or temporarily and from whatsoever cause, and **diminish** (縮減) has a corresponding meaning; (*Added 76 of 1985 s. 2*)

child (兒童) means a person under the age of 15 years; (*Replaced 41 of 1990 s. 2*)

Commissioner (處長) means the Commissioner for Labour and includes a Deputy Commissioner for Labour and an Assistant Commissioner for Labour; (*Amended L.N. 142 of 1974; 61 of 1993 s. 2*)

confinement (分娩) means the delivery of a child; (*Added 5 of 1970 s. 3*)

contract of employment (僱傭合約) means any agreement, whether in writing or oral, express or implied, whereby one person agrees to employ another and that other agrees to serve his employer as an employee and also a contract of apprenticeship;

dangerous drug (危險藥物) has the meaning assigned to it in the Dangerous Drugs Ordinance (Cap. 134);

Director (署長) means the Director of Health; (*Added 39 of 1973 s. 2. Amended L.N. 76 of 1989*)

domestic servant (家庭傭工) includes a garden servant, chauffeur and boat-boy and any other personal servant of a like class; (*Added 76 of 1985 s. 2*)

employee (僱員) means an employee to whom, by virtue of section 4, this Ordinance applies;

employer (僱主) means any person who has entered into a contract of employment to employ any other person as an employee and the duly authorized agent, manager or factor of such first mentioned person;

holiday (假日) means—

- (a) a statutory holiday;
- (b) an alternative holiday;
- (c) a substituted holiday; or
- (d) a day on which an employee is required by section 39(4) to be granted a holiday; (*Added 39 of 1973 s. 2. Amended 137 of 1997 s. 2*)

holiday pay (假日薪酬) means the holiday pay provided for by section 40; (*Added 39 of 1973 s. 2*)

issue (後嗣) means a child whether under the age of majority or not of a deceased employee and—

- (a) includes a step-child;
- (b) includes a child adopted by the employee, but (subject to paragraph (ba)) does not include a child of the employee adopted by another person; (*Amended 28 of 2004 s. 35*)
- (ba) includes a child of the employee adopted by another person under an adoption order granted under paragraph (c) of section 5(1) of the Adoption Ordinance (Cap. 290) where the employee is the parent referred to in that paragraph; (*Added 28 of 2004 s. 35*)
- (c) does not include an illegitimate child; and
- (d) where polygamy lawfully subsists, does not include a child who is not an adopted child of the employee unless his mother was, at the time of his birth, the employee's principal wife—
 - (i) in case the relevant marriage or, where appropriate, each such marriage constitutes a customary marriage for the purposes of the Marriage Reform Ordinance (Cap. 178), according to Chinese law and custom; or

- (ii) in any other case, according to the law which, as regards the relevant marriage or marriages, was the proper personal law of the employee; (*Added 52 of 1988 s. 2*)

Labour Tribunal (勞資審裁處) means the Labour Tribunal established by section 3 of the Labour Tribunal Ordinance (Cap. 25); (*Added 76 of 1985 s. 2*)

lock-out (閉廠) has the meaning assigned to it by section 2 of the Trade Unions Ordinance (Cap. 332); (*Added 76 of 1985 s. 2*)

long service payment (長期服務金) means the long service payment payable by an employer to an employee under section 31R or to a person entitled to such payment under section 31RA; (*Added 76 of 1985 s. 2. Amended 41 of 1990 s. 2*)

mandatory provident fund scheme (強制性公積金計劃) means a provident fund scheme registered under the Mandatory Provident Fund Schemes Ordinance (Cap. 485); (*Added 4 of 1998 s. 5*)

maternity leave (產假) means absence from work, in accordance with the provisions of Part III, by a female employee because of her pregnancy or confinement; (*Added 5 of 1970 s. 3*)

maternity leave pay (產假薪酬) means pay in respect of maternity leave payable to a female employee under section 14; (*Added 22 of 1981 s. 2*)

Minor Employment Claims Adjudication Board (小額薪酬索償仲裁處) means the Minor Employment Claims Adjudication Board established by section 3 of the Minor Employment Claims Adjudication Board Ordinance (Cap. 453); (*Added 61 of 1994 s. 49*)

miscarriage (流產) means the expulsion of the products of conception which are incapable of survival after being born before 28 weeks of pregnancy; (*Added 22 of 1981 s. 2*)

occupational retirement scheme (職業退休計劃) means a scheme or arrangement under which benefits, based on length of service, are payable in respect of employees on retirement, death, incapacity or termination of service, but does not include a mandatory provident fund scheme; (*Added 4 of 1998 s. 5*)

outworker (外發工) means a person to whom articles or materials are, for payment or reward, given out to be made up, cleaned, washed, altered, ornamented, finished or repaired, or adapted for sale, in his own home or on other premises not under the control or management of the person who gave out the articles or materials; (*Added 76 of 1985 s. 2*)

paid sickness day (有薪病假日) means a sickness day in respect of which an employee is entitled to be paid sickness allowance; (*Added 39 of 1973 s. 2*)

paternity leave (侍產假) means the paternity leave provided for in Part IIIA; (*Added 21 of 2014 s. 3*)

paternity leave pay (侍產假薪酬) means pay payable in respect of paternity leave; (*Added 21 of 2014 s. 3*)

recognized scheme of medical treatment (認可醫療計劃) means a scheme of medical treatment operated by an employer and approved by the Director for the purposes of this Ordinance under section 34(1); (*Added 39 of 1973 s. 2*)

registered Chinese medicine practitioner (註冊中醫) has the meaning assigned to it by section 2 of the Chinese Medicine Ordinance (Cap. 549); (*Added 16 of 2006 s. 2*)

registered dentist (註冊牙醫) has the same meaning as in section 2(1) of the Dentists Registration Ordinance (Cap. 156); (*Added 5 of 1995 s. 2*)

registered medical practitioner (註冊醫生) has the same meaning as in section 2 of the Medical Registration Ordinance (Cap. 161); (*Added 61 of 1993 s. 2*)

relevant date (有關日期), in relation to the termination of employment of an employee, means—

- (a) where the employee's contract of employment is terminated by notice in accordance with section 6, the date on which that notice expires;
- (b) where the employee's contract of employment is terminated by payment in lieu of notice in accordance with section 7, the date up to which such wages are calculated;
- (c) where the employee terminates his contract of employment without notice or payment in lieu in accordance with section 10, the date on which termination takes effect;
- (d) where the employee is employed under a contract for a fixed term and that term expires, the date on which that term expires;
- (e) where a continuous contract of employment specifies an age of retirement and the employee retires at that age, the date of retirement;
- (f) where the employee dies, the date of his death; and
- (g) where the employee's contract of employment is terminated other than in accordance with the provisions of this Ordinance, the date of termination; (*Replaced 52 of 1988 s. 2*)

relevant mandatory provident fund scheme benefit (有關強制性公積金計劃權益), in relation to an employee, means the accrued benefits of the employee held by the approved trustee of a mandatory provident fund scheme in respect of the employee, but does not include any part of the benefit that is attributable to the contributions paid to the scheme by the employee; (*Added 4 of 1998 s. 5*)

relevant occupational retirement scheme benefit (有關職業退休計劃利益), in relation to an employee, means a benefit payable under an occupational retirement scheme on the retirement, death, incapacity or termination of service of the employee, but does not include any part of the benefit that is attributable to the contributions paid to the scheme by the employee; (*Added 4 of 1998 s. 5*)

renewal (續訂) includes extension, and any reference to renewing a contract shall be construed accordingly; (*Added 76 of 1985 s. 2*)

rest day (休息日) means a continuous period of not less than 24 hours during which an employee is entitled under Part IV to abstain from working for his employer; (*Added 23 of 1970 s. 2. Amended 71 of 1976 s. 2*)

severance payment (遣散費) means the severance payment payable by an employer to an employee under section 31B(1); (*Added 76 of 1985 s. 2*)

sickness allowance (疾病津貼) means the sickness allowance provided for by section 33; (*Added 39 of 1973 s. 2*)

sickness day (病假日) means a day on which an employee is absent from his work by reason of his being unfit therefor on account of injury or sickness; (*Added 39 of 1973 s. 2*)

spouse (配偶) means, in relation to a married employee, the person to whom the employee is lawfully married; (*Added 52 of 1988 s. 2*)

statutory holiday (法定假日) means a holiday specified as a statutory holiday in section 39(1); (*Added 39 of 1973 s. 2. Amended 71 of 1976 s. 2; 137 of 1997 s. 2*)

strike (罷工) has the meaning assigned to it by section 2 of the Trade Unions Ordinance (Cap. 332); (*Added 76 of 1985 s. 2*)

substituted holiday (代替假日) means a holiday granted or to be granted under section 39(3); (*Added 39 of 1973 s. 2. Amended 137 of 1997 s. 2*)

tips and service charges (小費及服務費), in relation to wages, means sums of money received, directly or indirectly, by an employee in the course of and in connection with his employment which are—

- (a) paid or derived from payments made by persons other than the employer; and
- (b) recognized by the employer as part of the employee's wages; (*Added 48 of 1984 s. 2*)

wage period (工資期) means the period in respect of which wages are payable under a contract of employment or under section 22;

wages (工資), subject to subsections (2) and (3), means all remuneration, earnings, allowances including travelling allowances and attendance allowances, attendance bonus, commission, overtime pay, tips and service charges, however designated or calculated, capable of being expressed in terms of money, payable to an employee in respect of work done or to be done under his contract of employment, but does not include— (*Amended 48 of 1984 s. 2; 76 of 1985 s. 2; 74 of 1997 s. 3*)

- (a) the value of any accommodation, education, food, fuel, light, medical care or water provided by the employer;
- (b) any contribution paid by the employer on his own account to any retirement scheme; (*Amended 41 of 1990 s. 2*)
- (c) any commission which is of a gratuitous nature or which is payable only at the discretion of the employer; (*Replaced 74 of 1997 s. 3*)

- (ca) any attendance allowance or attendance bonus which is of a gratuitous nature or which is payable only at the discretion of the employer; *(Added 74 of 1997 s. 3)*
- (cb) any travelling allowance which is of a non-recurrent nature; *(Added 74 of 1997 s. 3)*
- (cc) any travelling allowance payable to the employee to defray actual expenses incurred by him by the nature of his employment; *(Added 74 of 1997 s. 3)*
- (cd) the value of any travelling concession; *(Added 74 of 1997 s. 3)*
- (d) any sum payable to the employee to defray special expenses incurred by him by the nature of his employment;
- (da) any end of year payment, or any proportion thereof, which is payable under Part IIA; *(Added 48 of 1984 s. 2)*
- (e) any gratuity payable on completion or termination of a contract of employment; or
- (f) any annual bonus, or any proportion thereof, which is of a gratuitous nature or which is payable only at the discretion of the employer;

week (星期), for the purposes of section 11 and Parts VA and VB, means the period between midnight on Saturday night and midnight on the succeeding Saturday night; *(Added 76 of 1985 s. 2. Amended 41 of 1990 s. 2)*

young person (青年) means a person who has attained the age of 15 years but not the age of 18 years. *(Replaced 41 of 1990 s. 2)*

(Amended 4 of 1998 s. 5)

- (2) No account of overtime pay shall be taken in calculating the wages of an employee for the purpose of—

- (a) any end of year payment under Part IIA;
 - (b) any maternity leave pay under Part III;
 - (ba) any paternity leave pay under Part IIIA; (*Added 21 of 2014 s. 3*)
 - (c) any severance payment under Part VA;
 - (ca) any long service payment under Part VB; (*Added 76 of 1985 s. 2*)
 - (d) any sickness allowance under Part VII;
 - (e) any holiday pay under Part VIII; or
 - (f) any annual leave pay under Part VIIIA,
- unless the overtime pay is of a constant character or the monthly average of the overtime pay over a period of 12 months (or if not applicable, such shorter period of employment) immediately preceding the respective dates specified in subsections (2A) and (2B) is equivalent to or exceeds 20% of his average monthly wages during the same period. (*Added 48 of 1984 s. 2. Amended 74 of 1997 s. 3*)
- (2A) In the calculation of the monthly average of the overtime pay under subsection (2), the date specified for the purpose of that subsection is—
- (a) in relation to any end of year payment under Part IIA, the expiry date of the payment period;
 - (b) in relation to any maternity leave pay under Part III, the commencement date of maternity leave;
 - (ba) in relation to any paternity leave pay under Part IIIA—
 - (i) if paternity leave is taken in a period of consecutive days, the date on which that period begins; or
 - (ii) in any other case, the date on which paternity leave is taken; (*Added 21 of 2014 s. 3*)

- (c) in relation to any severance payment under Part VA and any long service payment under Part VB—
 - (i) subject to subparagraph (ii), the relevant date;
 - (ii) where the employee's contract of employment is terminated by payment in lieu of notice in accordance with section 7, the date on which the termination takes effect;
 - (d) in relation to any sickness allowance under Part VII, the first sickness day;
 - (e) in relation to any holiday pay under Part VIII, the first day of the holiday; and
 - (f) in relation to any annual leave pay under Part VIIIA, the first day of the annual leave. (*Added 74 of 1997 s. 3*)
- (2B) Notwithstanding anything contained in subsection (2A), the date specified for the purpose of subsection (2) in relation to any termination of employment is—
 - (a) subject to paragraph (b), the relevant date;
 - (b) where the employee's contract of employment is terminated by payment in lieu of notice in accordance with section 7, the date on which the termination takes effect. (*Added 74 of 1997 s. 3*)
- (3) Where an employee who has been employed under a continuous contract—
 - (a) is dismissed; or
 - (b) is laid off within the meaning of section 31E; or
 - (c) terminates his contract of employment in circumstances specified in section 10(aa) or 31R(1)(b); or
 - (d) dies in circumstances specified in section 31RA(1),and for any period of that contract he had not been paid his wages, or his full wages, by reason of any leave taken by

him in accordance with the provisions of this Ordinance or the Employees' Compensation Ordinance (Cap. 282) or with the agreement of his employer, or by reason of his not being provided by his employer with work on any normal working day, then the employee shall be deemed, for the purposes of Parts VA and VB and notwithstanding any other provision of this Ordinance, to have been paid, for that period, his full wages under, and at the frequency required by, that contract as if he had continued in the normal course in the employment to which that contract relates, and any calculation under section 31G or 31V shall be made accordingly. *(Replaced 62 of 1992 s. 2)*

3. **Meaning of continuous contract and onus of proof thereof**

- (1) In this Ordinance, ***continuous contract*** (連續性合約) means a contract of employment under which an employee is deemed by virtue of the provisions of the First Schedule to be in continuous employment.
- (2) In any dispute as to whether a contract of employment is a continuous contract the onus of proving that it is not a continuous contract shall be on the employer.

(Added 5 of 1970 s. 4. Amended 71 of 1970 s. 2)

4. **Application of Ordinance**

- (1) Subject to subsection (2) and section 69, this Ordinance applies to every employee engaged under a contract of employment, to an employer of such employee and to a contract of employment between such employer and employee.
- (2) Subject to Part IVA, this Ordinance does not apply— *(Amended 51 of 1974 s. 2)*
 - (a) *(Repealed 41 of 1990 s. 3)*

- (b) to a person who is a member of the family of the proprietor of the business in which he is employed and who dwells in the same dwelling as the proprietor;
 - (c) to an employee as defined in the Contracts for Employment Outside Hong Kong Ordinance (Cap. 78); *(Amended 33 of 1992 s. 15)*
 - (d) to a person who is serving under a crew agreement within the meaning of the Merchant Shipping (Seafarers) Ordinance (Cap. 478), or on board a ship which is not registered in Hong Kong. *(Replaced 44 of 1995 s. 143)*
 - (e) *(Repealed 8 of 1976 s. 49)*
- (2A) This Ordinance shall not apply to contracts of apprenticeship registered under the Apprenticeship Ordinance (Cap. 47) except to the extent provided in that Ordinance. *(Added 8 of 1976 s. 49)*
- (3) For the avoidance of doubt it is hereby declared that the provisions of section 5(3) shall not apply to any contract of employment made before 1 April 1965.

4A. Authorization of public officers

The Commissioner may in writing authorize any public officer or class of public officer to exercise or perform any or all of the powers, functions or duties conferred or imposed on the Commissioner under this Ordinance.

(Added 10 of 1980 s. 2)

4B. Chief Executive may give directions

- (1) The Chief Executive may give such directions as he thinks fit, either generally or in any particular case, with respect to the exercise or performance by any public officer of any powers, functions or duties under this Ordinance.

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- (2) A public officer shall, in the exercise or performance of his powers, functions or duties under this Ordinance, comply with any directions given by the Chief Executive under subsection (1).

(Added 10 of 1980 s. 2. Amended 56 of 2000 s. 3)

Part II

Contracts of Employment

(Format changes—E.R. 3 of 2015)

5. Duration of contracts of employment

- (1) Every contract of employment, which is a continuous contract, shall, in the absence of any express agreement to the contrary, be deemed to be a contract for 1 month renewable from month to month.
- (2) Notwithstanding that it is proved that a contract of employment is for a period in excess of 1 month such contract shall be deemed to be a contract for 1 month renewable from month to month unless the contract is evidenced in writing signed by each of the parties thereto.
- (3) Notwithstanding any other provision of this section, a contract of employment entered into by a manual worker for a period of 6 months or more or for a number of working days equivalent to 6 months or more shall be deemed to be a contract for 1 month renewable from month to month.
- (4) Where any contract of employment for a period in excess of 1 month is deemed by virtue of the provisions of subsection (2) or (3) to be a contract from month to month the wages per month shall be such proportion of the total wages agreed under the contract as 1 month bears to the agreed duration of the contract.

6. Termination of contract by notice

- (1) Subject to subsections (2), (2A), (2B), (3) and (3A) and sections 15 and 33, either party to a contract of employment may at any time terminate the contract by giving to the other

party notice, orally or in writing, of his intention to do so. *(Amended 5 of 1970 s. 5; 57 of 1983 s. 2; 48 of 1984 s. 4; 55 of 1987 s. 2; 103 of 1995 s. 2; 7 of 2001 s. 2)*

- (2) The length of notice required to terminate a contract of employment shall be—
 - (a) in the case of a contract which is deemed by virtue of the provisions of section 5 to be a contract for 1 month renewable from month to month and which does not make provision for the length of notice required to terminate the contract, not less than 1 month; *(Amended 44 of 1971 s. 2)*
 - (b) in the case of a contract which is deemed by virtue of the provisions of section 5 to be a contract for 1 month renewable from month to month and which makes provision for the length of notice required to terminate the contract, the agreed period, but not less than 7 days; *(Added 44 of 1971 s. 2)*
 - (c) in every other case, the agreed period, but not less than 7 days in the case of a continuous contract.
- (2A) Without prejudice to section 41D, annual leave to which an employee is entitled under section 41AA shall not be included under subsection (2) in the length of notice required to terminate a contract of employment. *(Added 48 of 1984 s. 4. Amended 53 of 1990 s. 5)*
- (2B) The period of maternity leave to which a female employee is entitled under section 12 shall not be included under subsection (2) in the length of notice required to terminate a contract of employment. *(Added 55 of 1987 s. 2)*
- (3) Where in any contract of employment, whether in writing or oral, it has been expressly agreed that the employment is on probation and the contract does not make provision for the

length of notice required for its termination such contract may be terminated— (*Amended 44 of 1971 s. 2*)

- (a) by either party at any time during the first month of such employment without notice or payment in lieu;
- (b) by either party at any time after the first month of such employment by giving to the other party notice of not less than 7 days. (*Amended 48 of 1984 s. 4*)

(3A) Where in any contract of employment, whether in writing or oral, it has been expressly agreed that the employment is on probation and the contract makes provision for the length of notice required for its termination such contract may be terminated—

- (a) notwithstanding the length of notice provided for in the contract, by either party at any time during the first month of such employment without notice or payment in lieu;
- (b) by either party at any time after the first month of such employment by giving to the other party notice of the agreed period, but not less than 7 days. (*Added 48 of 1984 s. 4*)

(4) For the purposes of this section the expression ***month*** (月) means a period of time commencing on the day when notice of termination of a contract of employment is given or when employment begins, as the case may be, and ending at the end of the day before the corresponding date in the following month or, where there is no corresponding date in the following month or where the commencing day is the last day of a month, at the end of the last day of the following month.

7. Termination of contract by payment in lieu of notice

- (1) For the purposes of subsections (1A), (1B) and (1C), ***wages*** (工資) includes any sum paid by an employer in respect of—

- (a) a day of maternity leave, a day of paternity leave, a rest day, a sickness day, a holiday or a day of annual leave taken by the employee; (*Amended 21 of 2014 s. 4*)
 - (b) a day of leave taken by the employee with the agreement of his employer;
 - (c) a normal working day on which the employee is not provided with work;
 - (d) a day of absence from work of the employee due to temporary incapacity for which compensation is payable under section 10 of the Employees' Compensation Ordinance (Cap. 282). (*Replaced 7 of 2007 s. 3*)
- (1A) Subject to sections 15 and 33, either party to a contract of employment may at any time terminate the contract without notice by agreeing to pay to the other party—
 - (a) where the length of notice required to terminate the contract under section 6 is a period expressed in days or weeks, a sum calculated by multiplying the number of days in the period for which wages would normally be payable to the employee by the daily average of the wages earned by the employee during—
 - (i) the period of 12 months immediately before the date on which the party terminating the contract gives notice of the termination to the other party (*date of notification*); or
 - (ii) if the employee has been employed by the employer concerned for a period shorter than 12 months immediately before the date of notification, the shorter period; or
 - (b) where the length of notice required to terminate the contract under section 6 is a period expressed in months, a sum calculated by multiplying the number of months

required by the monthly average of the wages earned by the employee during—

- (i) the period of 12 months immediately before the date of notification; or
- (ii) if the employee has been employed by the employer concerned for a period shorter than 12 months immediately before the date of notification, the shorter period. (*Added 7 of 2007 s. 3*)

(1B) In calculating the daily average or monthly average of the wages earned by an employee during the period of 12 months or the shorter period—

- (a) any period therein for which the employee was not paid his wages or full wages by reason of—
 - (i) any maternity leave, paternity leave, rest day, sickness day, holiday or annual leave taken by the employee; (*Amended 21 of 2014 s. 4*)
 - (ii) any leave taken by the employee with the agreement of his employer;
 - (iii) his not being provided by his employer with work on any normal working day; or
 - (iv) his absence from work due to temporary incapacity for which compensation is payable under section 10 of the Employees' Compensation Ordinance (Cap. 282); and
- (b) any wages paid to him for the period referred to in paragraph (a),

are to be disregarded. (*Added 7 of 2007 s. 3*)

(1C) For the avoidance of doubt, if the amount of the wages paid to an employee in respect of a day specified in subsection (1) is only a fraction of the amount earned by the employee on a normal working day, the wages and the day are to be

disregarded in accordance with subsection (1B). (*Added 7 of 2007 s. 3*)

- (1D) Despite subsection (1A), if for any reason it is impracticable to calculate the daily average or monthly average of the wages earned by an employee in the manner provided in that subsection, the amount may be calculated by reference to the wages earned by a person who was employed at the same work by the same employer during the period of 12 months immediately before the date of notification, or, if there is no such person, by a person who was employed in the same trade or occupation and at the same work in the same district during the period of 12 months immediately before the date of notification. (*Added 7 of 2007 s. 3*)
- (2) Either party to a contract of employment, having given proper notice in accordance with section 6, may at any time thereafter terminate the contract by agreeing to pay to the other party such proportion of the sum referred to in subsection (1) as is proportionate to the period between the termination of the contract and the time when the notice given would have expired. (*Amended 44 of 1971 s. 3*)
- (3) (*Repealed 7 of 2007 s. 3*)
- (4) For the purposes of this section, and notwithstanding any other provision of this Ordinance, the term **wages** (工資)—
 - (a) includes overtime pay of a constant character or the monthly average of which over a period of 12 months (or if not applicable, such shorter period of employment) immediately preceding the date on which the termination takes effect is equivalent to or exceeds 20% of his monthly average wages during the same period;
 - (b) except as provided in paragraph (a), shall be deemed not to include overtime pay. (*Replaced 74 of 1997 s. 4*)

8. Saving of rights

Nothing in section 6 or 7 shall be taken—

- (a) to prevent either party to a contract of employment from waiving, at the time notice is required to be given for the purposes of section 6(2), (3) or (3A), his right to notice or to payment in lieu of notice; (*Amended 48 of 1984 s. 5*)
- (b) to affect the right of a party to a contract of employment to terminate the contract without notice or payment in lieu under section 9, 10 or 11(2).

8A. Damages for wrongful termination of contract

- (1) Without prejudice to section 9, 10 or 11(2), where a contract of employment is terminated otherwise than in accordance with section 6 or 7, a sum equal to the amount of wages that would have been payable had the contract been terminated in accordance with section 7 shall be payable by the party terminating the contract to the other party.
- (2) Without prejudice to section 9, 10 or 11(2), where a party to a contract of employment, having given proper notice in accordance with section 6 thereafter terminates the contract before the expiry of the period of notice otherwise than in accordance with section 7, such proportion of the sum referred to in subsection (1) as is proportionate to the period between the termination of the contract and the time when the notice given would have expired shall be payable by the party terminating the contract to the other party.
- (3) For the purpose of calculating the sum referred to in subsection (1), where the party terminating the contract has not given notice of the termination to the other party, in calculating the daily average or monthly average of the

wages earned by the employee in accordance with section 7, the reference in that section to the date on which the party terminating the contract gives notice of the termination to the other party or to the date of notification is to be construed as a reference to the date of termination of the contract. (*Added 7 of 2007 s. 4*)

(*Added 14 of 1975 s. 2. Amended 7 of 2007 s. 4*)

9. Termination of contract without notice by employer

- (1) An employer may terminate a contract of employment without notice or payment in lieu— (*Amended 51 of 2000 s. 2*)
 - (a) if an employee, in relation to his employment—
 - (i) wilfully disobeys a lawful and reasonable order;
 - (ii) misconducts himself, such conduct being inconsistent with the due and faithful discharge of his duties;
 - (iii) is guilty of fraud or dishonesty; or
 - (iv) is habitually neglectful in his duties; or
 - (b) on any other ground on which he would be entitled to terminate the contract without notice at common law.
- (2) The fact that an employee takes part in a strike does not entitle his employer to terminate under subsection (1) the employee's contract of employment. (*Added 51 of 2000 s. 2*)

10. Termination of contract without notice by employee

An employee may terminate his contract of employment without notice or payment in lieu—

- (a) if he reasonably fears physical danger by violence or disease such as was not contemplated by his contract of employment expressly or by necessary implication;

(aa) if—

- (i) he has been employed under the contract for not less than 5 years; and (*Amended 41 of 1990 s. 4; 62 of 1992 s. 3*)
 - (ii) by a certificate in the form specified by the Commissioner under section 49 and issued by a registered medical practitioner or registered Chinese medicine practitioner, he is certified as being permanently unfit for a particular type of work specified in the certificate for a reason or reasons stated therein; and (*Amended 68 of 1990 s. 24; 61 of 1993 s. 3; 16 of 2006 s. 3*)
 - (iii) he is engaged in that type of work under the contract; (*Added 52 of 1988 s. 4*)
- (b) if he is subjected to ill-treatment by the employer; or
- (c) on any other ground on which he would be entitled to terminate the contract without notice at common law.

10A. Deemed termination of contract under section 7

- (1) Without prejudice to the rights of an employee under common law, an employee may terminate his contract of employment without notice or payment in lieu of notice if any wages are not paid within one month from the day on which they become due to him under section 23.
- (2) Where a contract of employment is terminated under subsection (1), the contract shall be deemed to be terminated by the employer in accordance with section 7 and the employer shall be deemed to have agreed to pay to the employee the sum specified in section 7.

(Added 74 of 1997 s. 5)

11. Suspension from employment in certain cases

- (1) Notwithstanding any other provision of this Ordinance or of any other law, an employer may without notice or payment in lieu suspend from employment any employee for a period not exceeding 14 days—
 - (a) as a disciplinary measure for any reason for which the employer could have terminated the contract of employment under section 9;
 - (b) pending a decision by the employer as to whether or not he will exercise his right to terminate the contract of employment under section 9; or
 - (c) pending the outcome of any criminal proceedings against the employee arising out of or connected with his employment:

Provided that where such criminal proceedings are not concluded within the period of 14 days such suspension may be extended till the conclusion of the criminal proceedings.
- (2) An employee who is suspended from employment under subsection (1) may at any time during the period of his suspension, notwithstanding sections 6 and 7, terminate his contract of employment without notice or payment in lieu.
- (3) Without prejudice to the provisions of subsection (1), an employer may lay-off an employee for such periods as are expressly agreed in, or may be implied from, the contract of employment.
- (4) Notwithstanding subsection (3), the period of lay-off shall in no case exceed—
 - (a) a total of half of the total number of normal working days in any period of 4 consecutive weeks; or

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- (b) a total of one-third of the total number of normal working days in any period of 26 consecutive weeks.
(Added 41 of 1990 s. 5)
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Part IIA

End of Year Payment

(Part IIA added 48 of 1984 s. 6. Format changes—E.R. 3 of 2015)

11A. Interpretation

- (1) In this Part, unless the context otherwise requires— *(Amended 7 of 2007 s. 5)*

end of year payment (年終酬金) means any annual payment (whether described as “thirteenth month payment”, “fourteenth month payment”, “double pay”, “end of year bonus” or otherwise) or annual bonus of a contractual nature, but does not include any annual payment or any annual bonus, or any proportion thereof, which is of a gratuitous nature or which is payable only at the discretion of the employer; *(Amended 74 of 1997 s. 6)*

lunar year (農曆年) means a Chinese lunar year ending immediately before a Lunar New Year’s Day;

payment period (酬金期) has the meaning assigned to it by section 11C;

proportion of the end of year payment (部分年終酬金) means the proportion of the end of year payment calculated in accordance with section 11F.

(Amended 7 of 2007 s. 5)

- (2) For the purposes of subsections (3), (4) and (5), ***wages*** (工資) includes any sum paid by an employer in respect of—
- (a) a day of maternity leave, a day of paternity leave, a rest day, a sickness day, a holiday or a day of annual leave taken by the employee; *(Amended 21 of 2014 s. 5)*

- (b) a day of leave taken by the employee with the agreement of his employer;
 - (c) a normal working day on which the employee is not provided with work;
 - (d) a day of absence from work of the employee due to temporary incapacity for which compensation is payable under section 10 of the Employees' Compensation Ordinance (Cap. 282). (*Added 7 of 2007 s. 5*)
- (3) In this Part, a reference to the full month's wages of an employee is to be construed as a reference to the monthly average of the wages earned by the employee during—
 - (a) the period of 12 months immediately before the day on which the end of year payment becomes due to the employee under section 11E(1) or (2) or the day on which the proportion thereof becomes due to the employee under section 11F(3) or (4) (as appropriate) (*due day*); or
 - (b) if the employee has been employed by the employer concerned for a period shorter than 12 months immediately before the due day, the shorter period. (*Added 7 of 2007 s. 5*)
- (4) In calculating the monthly average of the wages earned by an employee during the period of 12 months or the shorter period—
 - (a) any period therein for which the employee was not paid his wages or full wages by reason of—
 - (i) any maternity leave, paternity leave, rest day, sickness day, holiday or annual leave taken by the employee; (*Amended 21 of 2014 s. 5*)
 - (ii) any leave taken by the employee with the agreement of his employer;

- (iii) his not being provided by his employer with work on any normal working day; or
 - (iv) his absence from work due to temporary incapacity for which compensation is payable under section 10 of the Employees' Compensation Ordinance (Cap. 282); and
- (b) any wages paid to him for the period referred to in paragraph (a),
are to be disregarded. (*Added 7 of 2007 s. 5*)
- (5) For the avoidance of doubt, if the amount of the wages paid to an employee in respect of a day specified in subsection (2) is only a fraction of the amount earned by the employee on a normal working day, the wages and the day are to be disregarded in accordance with subsection (4). (*Added 7 of 2007 s. 5*)
- (6) Despite subsection (3), if for any reason it is impracticable to calculate the monthly average of the wages earned by an employee in the manner provided in that subsection, the amount may be calculated by reference to the wages earned by a person who was employed at the same work by the same employer during the period of 12 months immediately before the due day, or, if there is no such person, by a person who was employed in the same trade or occupation and at the same work in the same district during the period of 12 months immediately before the due day. (*Added 7 of 2007 s. 5*)

11AA. Presumption

- (1) It shall be presumed that an annual payment or annual bonus is not of a gratuitous nature and is not payable only at the discretion of the employer unless there is a written term or condition in the contract of employment to the contrary.

- (2) For the avoidance of doubt, it is hereby declared that subsection (1) shall not apply to any contract of employment made before the commencement* of this section.

(Added 74 of 1997 s. 7)

Editorial Note:

*Commencement date: 27 June 1997.

11B. Application of Part IIA

- (1) Subject to any agreement to the contrary and to subsection (2), this Part shall apply to an employee employed under a continuous contract if an end of year payment is payable by the employer to that employee by virtue of a term or condition (whether written or oral, express or implied) of the contract of employment.
- (2) In the case of an employee to whom this Part applies, any term or condition of the contract of employment which purports to prevent the payment under section 11F of a proportion of the end of year payment shall be void.

11C. Payment period

The payment period in respect of which an end of year payment is payable under this Part shall be—

- (a) the payment period specified in that behalf in the contract of employment; or
- (b) if a payment period is not so specified, a lunar year.

11D. Amount of end of year payment

An end of year payment payable to an employee to whom this Part applies who has been employed by the same employer for the whole of a payment period shall be—

- (a) the end of year payment specified in that behalf in the contract of employment; or
- (b) if an end of year payment is not so specified, a sum equivalent to a full month's wages of the employee.

11E. Time of payment of end of year payment

- (1) An end of year payment payable to an employee to whom this Part applies in respect of a payment period shall become due to the employee—
 - (a) subject to subsection (2), on the day specified in that behalf in the contract of employment; or
 - (b) if a day is not so specified, on the last day of the payment period,and shall be paid as soon as is practicable but in any case not later than 7 days after that day but nothing in this section shall be construed as preventing the payment of the end of year payment at any time before that day.
- (2) Where the contract of employment of an employee to whom this Part applies who has been employed for the whole of a payment period is terminated after the expiry of the payment period but before the end of year payment becomes due on the day specified in the contract, the end of year payment shall, notwithstanding that a day is so specified, become due to the employee—
 - (a) on the day on which the contract of employment terminates; or
 - (b) in the case of an end of year payment that falls to be calculated by reference to any profits of the employer, on the day on which the profits of the employer are ascertained,

and shall be paid as soon as is practicable but in any case not later than 7 days after that day.

11F. Proportion of the end of year payment

(1) Subject to subsections (1A) and (1B), where, in the case of an employee to whom this Part applies who has not been employed by the same employer for the whole of a payment period but has been so employed for a period of not less than 3 months in the payment period— (*Amended 74 of 1997 s. 8; 7 of 2001 s. 4*)

(a) the contract of employment is terminated—

(i) at any time during the payment period; or

(ii) on the expiry of the payment period; or (*Replaced 7 of 2001 s. 4*)

(b) the employee continues to be employed by the employer after the expiry of the payment period,

the employee shall be paid a proportion, calculated in accordance with subsection (2), of the end of year payment that would have been payable under this Part if he had been employed by the same employer for the whole of the payment period.

(1A) If it is a term or condition of a contract of employment that the employee is on probation, the period of such probation or a period of 3 months, whichever is the shorter, shall be excluded from the calculation of the 3 months' period under subsection (1). (*Added 74 of 1997 s. 8*)

(1B) Subsection (1)(a) shall not apply where a contract of employment is terminated—

(a) by the employee (except such a termination which is in accordance with section 10); or

(b) in accordance with section 9. (*Added 7 of 2001 s. 4*)

- (2) The proportion of the end of year payment payable under subsection (1) shall be—
- (a) the proportion specified in that behalf in the contract of employment; or
 - (b) if a proportion is not so specified, the sum which bears the same proportion to a full month's wages of the employee as his period of service under the contract of employment in the payment period bears to that payment period.
- (3) The proportion of the end of year payment payable under subsection (1) shall become due to the employee—
- (a) under paragraph (a) of that subsection—
 - (i) on the day on which the contract of employment terminates; or
 - (ii) in the case of a proportion of an end of year payment that falls to be calculated by reference to any profits of the employer, on the day on which the profits of the employer are ascertained; or
 - (b) under paragraph (b) of that subsection—
 - (i) subject to subsection (4), on the day specified in the contract of employment as the day on which the end of year payment becomes due; or
 - (ii) if a day is not so specified, on the last day of the payment period,

and shall be paid as soon as is practicable but in any case not later than 7 days after that day but nothing in this subsection shall be construed as preventing the payment of the proportion of the end of year payment at any time before that day.

- (4) Where the contract of employment of an employee to whom subsection (1)(b) applies is terminated after the expiry of the

payment period but before the end of year payment becomes due on the day specified in the contract, the proportion of the end of year payment payable under subsection (1) shall, notwithstanding that a day is so specified, become due to the employee—

- (a) on the day on which the contract of employment terminates; or
- (b) in the case of a proportion of an end of year payment that falls to be calculated by reference to any profits of the employer, on the day on which the profits of the employer are ascertained,

and shall be paid as soon as is practicable but in any case not later than 7 days after that day.

Part III

Maternity Protection

(Part III added 5 of 1970 s. 7. Format changes—E.R. 3 of 2017)

12A. Interpretation

In this Part, unless the context otherwise requires—

pregnant employee (懷孕僱員) means a female employee whose pregnancy has been confirmed by a medical certificate.

(Added 73 of 1997 s. 2)

12. Maternity leave

- (1) A female employee employed under a continuous contract immediately before taking any leave under this Part shall be entitled to maternity leave under this Part. *(Replaced 73 of 1997 s. 3)*
- (2) Maternity leave shall be the aggregate of—
 - (a) a continuous period of 10 weeks from and inclusive of—
 - (i) the date of commencement of maternity leave as determined under section 12AA; or
 - (ii) the actual date of confinement, if confinement occurs before the date of commencement mentioned in subparagraph (i);
 - (b) a further period equal to the number of days, if any, beginning on the day after the expected date of confinement up to and including the actual date of confinement; such further period of leave is to be

- taken immediately following the period of leave under paragraph (a); and
- (c) a further period, not exceeding 4 weeks, on grounds of illness or disability arising out of the pregnancy or confinement. *(Replaced 73 of 1997 s. 3)*
- (3) The period of maternity leave under subsection (2)(c) may be taken—
- (a) wholly or in part immediately before the period mentioned in subsection (2)(a);
 - (b) wholly or in part immediately after the period mentioned in subsection (2)(a) or (b), as the case may be. *(Replaced 73 of 1997 s. 3)*
- (4) Before taking leave, a female employee who intends to take any period of maternity leave under subsection (2) shall give notice of her pregnancy and of her intention to take maternity leave to her employer after her pregnancy has been confirmed by a medical certificate; the presentation of a medical certificate to the employer by the female employee confirming her pregnancy shall be a notice for the purpose of this subsection. *(Replaced 73 of 1997 s. 3)*
- (4A) A female employee who has given notice under subsection (4) shall, if her pregnancy ceases otherwise than by reason of confinement, give notice of such cessation of pregnancy to her employer as soon as is reasonably practicable. *(Added 55 of 1987 s. 3)*
- (5) If her confinement takes place—
- (a) before notice under subsection (4) is given; or
 - (b) after notice under subsection (4) is given but before the commencement of the period of maternity leave under subsection (2)(a)(i),

the female employee shall, within 7 days of her confinement, give notice to her employer of the date of confinement and of her intention to take any period of maternity leave under subsection (2)(a). *(Replaced 73 of 1997 s. 3)*

- (6) A female employee who gives notice under subsection (4) shall, if so required by her employer, produce a medical certificate specifying the expected date of confinement. *(Replaced 73 of 1997 s. 3)*
- (7) A female employee who gives notice under subsection (5) shall, if so required by her employer, produce a medical certificate specifying the date of confinement. *(Replaced 73 of 1997 s. 3)*
- (7A) A female employee who may take any period of maternity leave under subsection (2)(b) shall, if so required by her employer, produce a medical certificate specifying the date of confinement. *(Added 73 of 1997 s. 3)*
- (8) A female employee who intends to take any period of maternity leave under subsection (2)(c) shall give notice to that effect to her employer and shall, if so required by her employer, produce a medical certificate certifying as to the illness or disability. *(Amended 73 of 1997 s. 3)*
- (9) *(Repealed 73 of 1997 s. 3)*
- (10) The continuity of employment of a female employee shall not be treated as broken by her taking maternity leave. *(Added 22 of 1981 s. 3)*
- (11) For the avoidance of doubt it is declared that maternity leave is, and shall be granted, in addition to annual leave to which a female employee is entitled under this Ordinance and that any rest day or holiday that falls due during maternity leave shall be counted as part of the maternity leave and shall not give rise to any entitlement to an additional or other rest day or holiday or to holiday pay in the case of a female employee

who is paid maternity leave pay for that holiday; and where no maternity leave pay is paid to the female employee for that holiday she shall be paid holiday pay for that holiday. (*Added 22 of 1981 s. 3. Amended 48 of 1984 s. 7*)

12AA. Commencement of maternity leave

- (1) With the agreement of her employer, a pregnant employee may decide on the date of commencement of her 10 weeks maternity leave, provided that such date is within a period of not less than 2 weeks before, and not more than 4 weeks before, the expected date of confinement.
- (2) If the employee does not exercise her option to decide on the date of commencement in subsection (1), or if she fails to secure her employer's agreement to her proposed leave schedule, the date of commencement of maternity leave shall be 4 weeks immediately before the expected date of confinement.

(Added 73 of 1997 s. 4)

13. Authority to issue medical certificates

- (1) A medical certificate for the purposes of section 12(4) or (6) or 12AA shall be issued by—
 - (a) a registered medical practitioner;
 - (b) a registered Chinese medicine practitioner; or
 - (c) notwithstanding section 16 of the Midwives Registration Ordinance (Cap. 162), a midwife registered under section 8, or deemed to be registered under section 25, of that Ordinance.
- (2) A medical certificate for the purposes of section 12(7) or (7A) shall be issued by—
 - (a) a registered medical practitioner; or

- (b) notwithstanding section 16 of the Midwives Registration Ordinance (Cap. 162), a midwife registered under section 8, or deemed to be registered under section 25, of that Ordinance.
- (3) A medical certificate for the purposes of section 12(8) or 15AA shall be issued by—
 - (a) a registered medical practitioner; or
 - (b) a registered Chinese medicine practitioner.

(Replaced 16 of 2006 s. 4)

14. Payment for maternity leave

- (1) A female employee shall not be entitled to wages in respect of the period of her maternity leave except as provided in this section or as provided in her contract of employment if such contract provides for paid maternity leave on terms better than in this section.
- (2) An employer shall pay a female employee maternity leave pay for the period of maternity leave taken by her and to which she is entitled under section 12(2)(a) if she— *(Amended 73 of 1997 s. 6)*
 - (a) has been employed by that employer under a continuous contract for a period of not less than 40 weeks immediately before the date of her commencement of maternity leave as determined under section 12AA; *(Amended 5 of 1995 s. 4; 73 of 1997 s. 6)*
 - (b) has given notice under section 12(4) or (5);
 - (c) has complied with any requirement by her employer under section 12(6) or (7); and
 - (d) *(Repealed 73 of 1997 s. 6)*
- (3) For the purposes of subsections (3A), (3B) and (3C), **wages** (工資) includes any sum paid by an employer in respect of—

- (a) a day of maternity leave, a rest day, a sickness day, a holiday or a day of annual leave taken by the employee;
 - (b) a day of leave taken by the employee with the agreement of her employer;
 - (c) a normal working day on which the employee is not provided with work;
 - (d) a day of absence from work of the employee due to temporary incapacity for which compensation is payable under section 10 of the Employees' Compensation Ordinance (Cap. 282). (*Replaced 7 of 2007 s. 6*)
- (3A) Maternity leave pay payable under this section is to be calculated at four-fifths of the daily average of the wages earned by the female employee during—
 - (a) the period of 12 months immediately before the date of commencement of her maternity leave; or
 - (b) if the employee has been employed by the employer concerned for a period shorter than 12 months immediately before the date of commencement of her maternity leave, the shorter period,but no maternity leave pay is payable in respect of a day on which the female employee would not have worked had she not been on maternity leave and for which no wages would normally be payable by the employer. (*Added 7 of 2007 s. 6*)
- (3B) In calculating the daily average of the wages earned by a female employee during the period of 12 months or the shorter period—
 - (a) any period therein for which the employee was not paid her wages or full wages by reason of—
 - (i) any maternity leave, rest day, sickness day, holiday or annual leave taken by the employee;

- (ii) any leave taken by the employee with the agreement of her employer;
 - (iii) her not being provided by her employer with work on any normal working day; or
 - (iv) her absence from work due to temporary incapacity for which compensation is payable under section 10 of the Employees' Compensation Ordinance (Cap. 282); and
- (b) any wages paid to her for the period referred to in paragraph (a),
are to be disregarded. (*Added 7 of 2007 s. 6*)
- (3C) For the avoidance of doubt, if the amount of the wages paid to a female employee in respect of a day specified in subsection (3) is only a fraction of the amount earned by the employee on a normal working day, the wages and the day are to be disregarded in accordance with subsection (3B). (*Added 7 of 2007 s. 6*)
- (3D) Despite subsection (3A), if for any reason it is impracticable to calculate the daily average of the wages earned by a female employee in the manner provided in that subsection, the amount may be calculated by reference to the wages earned by a person who was employed at the same work by the same employer during the period of 12 months immediately before the date of commencement of the employee's maternity leave, or, if there is no such person, by a person who was employed in the same trade or occupation and at the same work in the same district during the period of 12 months immediately before the date of commencement of the employee's maternity leave. (*Added 7 of 2007 s. 6*)
- (4) Maternity leave pay under this section shall be paid by an employer on the same day and in the same manner as he would have been required to pay wages to the female

employee if she had not taken maternity leave and had continued in his employ.

- (5) A female employee who, without the prior permission of her employer, works for another employer during any period of maternity leave under section 12(2)(a) shall forfeit her entitlement to maternity leave pay during that period of maternity leave. *(Amended 73 of 1997 s. 6)*
- (6) *(Repealed 73 of 1997 s. 6)*
- (7) If, pursuant to the terms of her contract of employment or any other agreement or for any other reason, a female employee is paid by her employer a sum of money in respect of any period of her maternity leave, the maternity leave pay payable to the employee in respect of that period is to be reduced by that sum. *(Added 7 of 2007 s. 6)*

(Replaced 22 of 1981 s. 4)

15. Prohibition against termination of employment

- (1) Subject to subsections (1A) and (1B)—
 - (a) after a pregnant employee has served notice of pregnancy on her employer, the employer shall not terminate her continuous contract of employment otherwise than in accordance with section 9 during the period from the date on which her pregnancy is confirmed by a medical certificate to the date on which she is due to return to work on the expiry of her maternity leave or the date of cessation of pregnancy (otherwise than by reason of confinement);
 - (b) if a pregnant employee has served such notice on her employer immediately after being informed of the termination of her contract of employment where the termination was made otherwise than in accordance with section 9 by her employer, the employer shall

immediately withdraw the termination or notice of termination in which event the termination or notice of termination shall be treated as if it had not taken place.
(Replaced 7 of 2001 s. 5)

- (1A) Where in a contract of employment of a pregnant employee, whether in writing or oral, it has been expressly agreed that the employment is on probation, subsection (1) shall not prevent the termination by an employer of such contract for reasons other than pregnancy during the period of probation if the period does not exceed 12 weeks, or during the first 12 weeks of probation if the period of probation exceeds 12 weeks. (Replaced 73 of 1997 s. 7)
- (1B) An employer who terminates the continuous contract of employment of a pregnant employee shall be taken for the purposes of subsection (1)(a) or (b) to terminate the contract otherwise than in accordance with section 9—
 - (a) unless the contrary is proved; or
 - (b) subject to subsection (1C), unless the employer proves that—
 - (i) he purported to terminate the contract in accordance with that section; and
 - (ii) at the time of such termination, he reasonably believed that he had a ground to do so. (Added 7 of 2001 s. 5)
- (1C) Subsection (1B)(b) shall not apply in the case of civil proceedings. (Added 7 of 2001 s. 5)
- (1D) For the purposes of subsections (2)(b), (2A) and (2B), **wages** (工資) includes any sum paid by an employer in respect of—
 - (a) a day of maternity leave, a rest day, a sickness day, a holiday or a day of annual leave taken by the employee;

- (b) a day of leave taken by the employee with the agreement of her employer;
 - (c) a normal working day on which the employee is not provided with work;
 - (d) a day of absence from work of the employee due to temporary incapacity for which compensation is payable under section 10 of the Employees' Compensation Ordinance (Cap. 282). *(Added 7 of 2007 s. 7)*
- (2) An employer who contravenes subsection (1)(a) or (b) shall be liable to pay to the female employee— *(Amended 7 of 2001 s. 5)*
 - (a) the sum which would have been payable if the contract had been terminated by the employer under section 7 provided that she has not received any such payment under that section; *(Amended 73 of 1997 s. 7)*
 - (b) a further sum equivalent to the monthly average of the wages earned by the employee during—
 - (i) the period of 12 months immediately before the date of termination of the contract of employment; or
 - (ii) if the employee has been employed by the employer for a period shorter than 12 months immediately before the date of termination of the contract, the shorter period; and *(Replaced 7 of 2007 s. 7)*
 - (c) where the employee is or would have been entitled to maternity leave pay, maternity leave pay for 10 weeks. *(Added 22 of 1981 s. 5)*
- (2A) In calculating the monthly average of the wages earned by a female employee during the period of 12 months or the shorter period—

- (a) any period therein for which the employee was not paid her wages or full wages by reason of—
 - (i) any maternity leave, rest day, sickness day, holiday or annual leave taken by the employee;
 - (ii) any leave taken by the employee with the agreement of her employer;
 - (iii) her not being provided by her employer with work on any normal working day; or
 - (iv) her absence from work due to temporary incapacity for which compensation is payable under section 10 of the Employees' Compensation Ordinance (Cap. 282); and
- (b) any wages paid to her for the period referred to in paragraph (a),

are to be disregarded. (*Added 7 of 2007 s. 7*)

- (2B) For the avoidance of doubt, if the amount of the wages paid to a female employee in respect of a day specified in subsection (1D) is only a fraction of the amount earned by the employee on a normal working day, the wages and the day are to be disregarded in accordance with subsection (2A). (*Added 7 of 2007 s. 7*)
- (2C) Despite subsection (2)(b), if for any reason it is impracticable to calculate the monthly average of the wages earned by a female employee in the manner provided in that subsection, the amount may be calculated by reference to the wages earned by a person who was employed at the same work by the same employer during the period of 12 months immediately before the date of termination of the employee's contract of employment, or, if there is no such person, by a person who was employed in the same trade or occupation and at the same work in the same district during the period of

12 months immediately before the date of termination of the employee's contract of employment. (*Added 7 of 2007 s. 7*)

- (3) (*Repealed 7 of 2007 s. 7*)
- (4) Any employer who contravenes subsection (1)(a) or (b) shall be guilty of an offence and shall be liable on conviction to a fine at level 6. (*Replaced 7 of 2001 s. 5*)

15AA. Prohibition of assignment of heavy, hazardous or harmful work

- (1) A pregnant employee may, on producing a medical certificate with an opinion as to her unfitness to handle heavy materials, or to work in places where gas injurious to pregnancy is generated, or to do other work injurious to pregnancy, request her employer to refrain from giving her such work during her pregnancy period.
- (2) On receipt of a request under subsection (1), the employer may not allocate to the employee the work specified in the medical certificate and, if the employee is already performing such work, the employer shall remove her from such work as soon as practicable but in any case not later than 14 days after the date of the receipt of the request under subsection (1) notwithstanding that—
 - (a) the result of the medical examination referred to in subsection (3); or
 - (b) the determination of the Commissioner in subsection (6), may be pending.
- (3) Where an employee has produced a medical certificate for the purposes of subsection (1), the employer may arrange for the employee to attend another medical examination, at the employer's expense, to obtain a second opinion as to the employee's fitness to undertake the work at issue. (*Replaced 16 of 2006 s. 5*)

- (3A) A medical examination referred to in subsection (3) shall be conducted by a registered medical practitioner or registered Chinese medicine practitioner named by the employer, regardless of whether the medical certificate produced by the employee was issued by a registered medical practitioner or registered Chinese medicine practitioner. (*Added 16 of 2006 s. 5*)
- (4) The employer shall give the employee at least 48 hours' notice of the examination under subsection (3) which is to be carried out within a period of 14 days after the date of the receipt of the employee's request made under subsection (1).
- (5) If the second medical opinion provides that the employee is fit to do the specified work referred to in subsection (1) or if the employee refuses to attend the medical examination as arranged by the employer under subsection (3), the employer may refer the employee's request made under subsection (1) to the Commissioner; the Commissioner shall take appropriate action, including seeking further medical advice, to assist him in bringing about a determination.
- (6) When the Commissioner receives the employer's reference under subsection (5), he may make a determination to—
- (a) uphold the employee's request;
 - (b) rule that the employee's request is not supported;
 - (c) make such other rulings as he considers reasonable.
- (7) The employer and the employee concerned in the reference shall comply with any determination made by the Commissioner.
- (8) Despite any change in the earnings of the employee as a result of her transfer from heavy, hazardous or harmful work in accordance with this section, payment for maternity leave under section 14(3A) or payment for termination of employment under section 15(2)(a), (b) or (c) is to be

calculated on the basis of the daily average or monthly average (as appropriate) of the wages earned by the employee during—

- (a) the period of 12 months immediately before her transfer from heavy, hazardous or harmful work in accordance with this section; or
- (b) if the employee has been employed by the employer concerned for a period shorter than 12 months immediately before her transfer from heavy, hazardous or harmful work in accordance with this section, the shorter period,

and those sections are to be construed accordingly. (*Replaced 7 of 2007 s. 8*)

(9) Where—

- (a) an employee is transferred from heavy, hazardous or harmful work in accordance with this section; and
- (b) section 7(1D), 14(3D) or 15(2C) is applicable in calculating the maternity leave pay or any payment for termination of employment under section 15 payable to the employee,

for the purpose of the calculation, the reference in section 7(1D), 14(3D) or 15(2C) to a person who was employed at the same work is to be construed as a reference to a person who was employed at the work performed by the employee immediately before her transfer. (*Added 7 of 2007 s. 8*)

(*Added 73 of 1997 s. 8*)

15A. Offences

- (1) Any employer who fails to—
 - (a) grant maternity leave;

- (b) pay maternity leave pay in accordance with section 14; or (*Amended 5 of 1995 s. 5*)
 - (c) pay sickness allowance under section 33(3C),
shall be guilty of an offence and shall be liable on conviction to a fine at level 5. (*Amended 24 of 1988 s. 2; 103 of 1995 s. 4*)
- (2) Any employer who, without any reasonable excuse, fails to comply with—
 - (a) the requirements under section 15AA(2); or
 - (b) the determination made by the Commissioner under section 15AA(6),
shall be guilty of an offence and shall be liable on conviction to a fine at level 5. (*Replaced 73 of 1997 s. 9*)

(*Added 22 of 1981 s. 6*)

15B. Records

Every employer who employs females shall maintain, in a form specified by the Commissioner, a record of maternity leave taken by and maternity leave pay paid to his female employees.

(*Added 22 of 1981 s. 6*)

15C. Restriction on pay in lieu of maternity leave

Save as provided in section 15(2), no payment of maternity leave pay or other sum may be made in lieu of the grant of maternity leave.

(*Added 22 of 1981 s. 6*)

Part IIIA

Paternity Leave

(Part IIIA added 21 of 2014 s. 6)

15D. Interpretation of Part IIIA

In this Part—

child (嬰兒) means a new-born child.

15E. Entitlement to paternity leave

- (1) A male employee is entitled to paternity leave in respect of the birth of a child if—
 - (a) he is the child's father;
 - (b) he has been employed under a continuous contract immediately before taking leave; and
 - (c) he has complied with all the requirements in section 15F.
- (2) For subsection (1), the employee—
 - (a) subject to section 15G, is entitled to take leave during the period specified in subsection (3) on the date or dates notified to the employer under section 15F(1); and
 - (b) is entitled to take leave for not more than 3 days, whether consecutive or not, for each confinement.
- (3) For subsection (2)(a), the period—
 - (a) begins 4 weeks before the expected date of the delivery of the child; and
 - (b) ends 10 weeks beginning on the actual date of the delivery of the child.

- (4) For subsection (2)(b), multiple births in one pregnancy are taken to be one confinement.
- (5) Subsection (1)—
 - (a) applies to a child born on or after the date* on which the Employment (Amendment) Ordinance 2014 (21 of 2014) comes into operation; and
 - (b) does not apply to a miscarriage.

Editorial Note:

* Commencement date: 27 February 2015.

15F. Notification requirements relating to paternity leave

- (1) For section 15E(1)(c), an employee who intends to take paternity leave in respect of the birth of a child must—
 - (a) notify the employer—
 - (i) of his intention at least 3 months before the expected date of the delivery of the child; and
 - (ii) of the intended date of his leave before taking the leave; or
 - (b) (if he does not notify the employer in accordance with paragraph (a)(i)) notify the employer of each intended date of his leave at least 5 days before that date.
- (2) If the employer so requires, the employee must also give the employer a written statement signed by the employee—
 - (a) stating that the employee is the child's father; and
 - (b) stating—
 - (i) the name of the child's mother; and
 - (ii) the expected date of the delivery, or (if the child has been born) the actual date of the delivery, of the child.

15G. Paternity leave not affected by other leave entitlements

- (1) Paternity leave is in addition to rest days, holidays and annual leave to which an employee is entitled under this Ordinance.
- (2) If—
 - (a) an employee has, in compliance with the requirement in section 15F(1), notified the employer that he intends to take paternity leave on a particular day; and
 - (b) that day falls on a rest day or holiday or falls within a period of annual leave,he is entitled to take the leave on the day immediately after the rest day, holiday or period of annual leave.
- (3) Despite subsection (2), the employee is entitled to take the leave on another day he chooses if he has notified the employer of his choice at least 2 days before that other day.
- (4) The employee is entitled to take leave on the day mentioned in subsection (2) even if that day falls on a day after the 10-week period mentioned in section 15E(3)(b).
- (5) However, subsection (3) does not entitle the employee to take leave on a day that falls on a day outside the period specified in section 15E(3).

15H. Entitlement to paternity leave pay

An employee is entitled to pay at the rate specified in section 15I in respect of each day on which he has taken paternity leave if—

- (a) he has been employed under a continuous contract for a period of not less than 40 weeks immediately before that day; and
- (b) he has complied with all the requirements in section 15J or 15K.

15I. Rate of paternity leave pay

(1) In this section—

specified date (指明日期), in relation to paternity leave taken by an employee, means—

- (a) if the leave is taken in a period of consecutive days, the date on which that period begins; or
- (b) in any other case, the date on which the leave is taken;

wages (工資), in subsections (2), (3) and (4), includes a sum of money paid by an employer in respect of any of the following days—

- (a) a day of paternity leave, a rest day, a sickness day, a holiday or a day of annual leave taken by the employee;
- (b) a day of leave taken by the employee with the agreement of the employer;
- (c) a normal working day on which the employee is not provided with work by the employer;
- (d) a day of absence from work of the employee due to temporary incapacity for which compensation is payable under section 10 of the Employees' Compensation Ordinance (Cap. 282).

(2) The daily rate of paternity leave pay is four-fifths of the employee's average daily wages during—

- (a) the period of 12 months immediately before the specified date; or
- (b) if the employee has been employed by the employer for a period shorter than 12 months immediately before the specified date, the shorter period.

(3) The average daily wages are to be calculated without regard to—

- (a) any period (*excluded period*) during the 12-month period or shorter period for which the employee was not paid wages or full wages because of—
 - (i) any paternity leave, rest day, sickness day, holiday or annual leave taken by the employee;
 - (ii) any leave taken by the employee with the agreement of the employer;
 - (iii) the employee's not being provided with work by the employer on a normal working day; or
 - (iv) the employee's absence from work due to temporary incapacity for which compensation is payable under section 10 of the Employees' Compensation Ordinance (Cap. 282); and
 - (b) any wages paid to the employee for the excluded period.
- (4) To avoid doubt, if the amount of the wages paid to an employee in respect of a day covered by the definition of *wages* in subsection (1) is only a fraction of the amount earned by the employee on a normal working day, the employee's average daily wages are to be calculated without regard to the wages and the day.
- (5) Despite subsection (2), if for any reason it is impracticable to calculate an employee's average daily wages in the manner provided in that subsection, the amount may be calculated by reference to—
 - (a) the wages earned by a person who was employed at the same work by the same employer during the period of 12 months immediately before the specified date; or
 - (b) if there is no such person, the wages earned by a person who was employed in the same trade or occupation and at the same work in the same district during the period of 12 months immediately before the specified date.

- (6) If, under the employee's contract of employment or any other agreement or for any other reason, the employer pays a sum of money to the employee in respect of a day on which the employee takes paternity leave, the paternity leave pay payable to the employee in respect of the day under this Part is to be reduced by the sum.

15J. Documentary requirements relating to paternity leave pay: birth in Hong Kong

- (1) For section 15H(b), an employee who takes paternity leave in respect of the birth of a child in Hong Kong must provide the employer with the birth certificate of the child—
- (a) that is issued under the Births and Deaths Registration Ordinance (Cap. 174); and
 - (b) on which the employee's name is entered as the child's father.
- (2) Despite subsection (1), if the child is born dead, or if the child dies after birth and no birth certificate has been issued in respect of the child under the Births and Deaths Registration Ordinance (Cap. 174), the employee must provide the employer with—
- (a) a medical certificate described in subsection (3); and
 - (b) (if the employer so requires) a written statement signed by the employee, stating that—
 - (i) he is the father of the child delivered by the woman named in the medical certificate; and
 - (ii) the child is born dead or dies after birth (whichever is appropriate).
- (3) For subsection (2)(a), the medical certificate—
- (a) must certify the delivery of the child; and
 - (b) must be issued by—

- (i) a registered medical practitioner; or
 - (ii) despite section 16 of the Midwives Registration Ordinance (Cap. 162), a midwife registered under section 8, or deemed to be registered under section 25, of that Ordinance.
- (4) The documents required under this section must be provided to the employer—
 - (a) within 12 months after the first day on which the employee takes the paternity leave; or
 - (b) if the employee has ceased to be employed by the employer, within the period mentioned in paragraph (a) or within 6 months after the cessation (whichever period expires first).

15K. Documentary requirements relating to paternity leave pay: birth outside Hong Kong

- (1) For section 15H(b), an employee who takes paternity leave in respect of the birth of a child in a place outside Hong Kong must provide the employer with—
 - (a) the birth certificate of the child—
 - (i) that is issued by the authorities of the place (*authorities*); and
 - (ii) on which the employee's name is entered as the child's father; or
 - (b) (if the authorities do not issue birth certificates) any other document issued by the authorities that could reasonably be taken as proof that the employee is the child's father.
- (2) Despite subsection (1), if the child is born dead or dies after birth, and neither the birth certificate nor document mentioned

in that subsection is available, the employee must provide the employer with—

- (a) a medical certificate or any other document issued by the authorities that could reasonably be taken as proof of the delivery of the child; and
 - (b) (if the employer so requires) a written statement signed by the employee, stating that—
 - (i) he is the father of the child delivered by the woman named in the medical certificate or document; and
 - (ii) the child is born dead or dies after birth (whichever is appropriate).
- (3) The documents required under this section must be provided to the employer—
- (a) within 12 months after the first day on which the employee takes the paternity leave; or
 - (b) if the employee has ceased to be employed by the employer, within the period mentioned in paragraph (a) or within 6 months after the cessation (whichever period expires first).

15L. Payment of paternity leave pay

- (1) In this section—

requisite document (所需文件), in relation to an employee who has taken paternity leave on a day, means the document required under section 15J or 15K for his entitlement to paternity leave pay in respect of the day.

- (2) If an employee has taken paternity leave on a day (***leave day***) and provided the employer with the requisite document on or before the leave day, the employer must pay him the paternity leave pay in respect of the leave day—

- (a) not later than the day on which he is next paid his wages after the leave day; or
 - (b) if he has ceased to be employed by the employer, not later than 7 days after the cessation.
- (3) If the employee provides the employer with the requisite document after the leave day, the employer must pay him the paternity leave pay in respect of the leave day—
 - (a) not later than the day on which he is next paid his wages after the document is provided; or
 - (b) if he has ceased to be employed by the employer, not later than 7 days after the document is provided.
- (4) Where the employer has paid the employee the paternity leave pay in respect of the leave day before the requisite document is provided, the employer may deduct from his wages an amount equivalent to the paternity leave pay if—
 - (a) he fails to provide the employer with the requisite document within 3 months after the first day on which the paternity leave is taken; or
 - (b) he has ceased to be employed by the employer and fails to provide the employer with the requisite document before the cessation.
- (5) If after the deduction the employee provides the employer with the requisite document in accordance with section 15J(4) or 15K(3), the employer must pay him the paternity leave pay in respect of the leave day again—
 - (a) not later than the day on which he is next paid his wages after the document is provided; or
 - (b) if he has ceased to be employed by the employer, not later than 7 days after the document is provided.

15M. Offence

- (1) An employer must—
 - (a) grant an employee paternity leave to which the employee is entitled; and
 - (b) pay an employee paternity leave pay to which the employee is entitled in accordance with section 15L.
 - (2) An employer who without reasonable excuse contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.
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Part IV

Rest Days

(Part IV added 23 of 1970 s. 3. Format changes—E.R. 3 of 2017)

16. *(Repealed 10 of 1980 s. 3)*

17. Grant of rest days

- (1) Subject to the provisions of this Part, every employee who has been employed by the same employer under a continuous contract shall be granted not less than 1 rest day in every period of 7 days. *(Amended 71 of 1976 s. 3)*
- (2) Rest days shall be in addition to any statutory holiday, or alternative holiday or substituted holiday, to which an employee is entitled under section 39. *(Replaced 39 of 1973 s. 3)*

18. Appointment of rest days

- (1) Rest days shall be appointed by an employer and he may appoint different rest days for different employees. *(Amended 71 of 1976 s. 4)*
- (2) Subject to subsection (4), every employer shall, before the commencement of every month, inform each employee orally or in writing of his rest days in that month.
- (3) The provisions of subsection (2) shall be deemed to be complied with if an employer exhibits in a conspicuous place in the place of employment and for so long as it applies a roster showing the days appointed to be rest days for each employee during the month.

- (4) Subsection (2) shall not apply where rest days are appointed on fixed days in each period of 7 days on a regular basis.
(Amended 71 of 1976 s. 4)
- (5) An employer may, with the consent of his employee, substitute for any rest day appointed under this section some other rest day—
 - (a) within the same month and before the rest day so appointed; or
 - (b) within the period of 30 days next following the rest day so appointed.

19. Compulsory work on rest days

- (1) Subject to subsection (2), no employer shall require an employee to work on any of his rest days.
- (2) An employer may require an employee to work on his rest day if it is necessary to do so by reason of a breakdown of machinery or plant or other unforeseen emergency of any nature.
- (3) An employer shall substitute for any rest day on which an employee is required to work under subsection (2) some other rest day within the period of 30 days next following, notice of which shall be given to the employee within 48 hours after the employee is so required to work.

20. Voluntary work on rest days

- (1) An employee may, at his own request and if the employer agrees, work for his employer on a rest day.
- (2) An employee may, at the request of his employer, work for his employer on a rest day.

21. Void conditions

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Any condition in a contract of employment which makes the payment of any annual bonus, or any end of year payment or any proportion thereof, subject to working on rest days granted under this Part shall be void.

(Amended 48 of 1984 s. 10)

Part IVA

Protection Against Anti-union Discrimination

(Part IVA added 51 of 1974 s. 3. Format changes—E.R. 3 of 2017)

21A. Application of Part IVA

Section 21C shall apply to every person to whom an offer of employment is made or is about to be made or who otherwise is a prospective employee.

(Replaced 41 of 1990 s. 7)

21B. Rights of employees in respect of trade union membership and activities

- (1) Every employee shall as between himself and his employer have the following rights—
 - (a) the right to be or to become a member or an officer of a trade union registered under the Trade Unions Ordinance (Cap. 332);
 - (b) where he is a member or an officer of any such trade union, the right, at any appropriate time, to take part in the activities of the trade union;
 - (c) the right to associate with other persons for the purpose of forming or applying for the registration of a trade union in accordance with the provisions of the Trade Unions Ordinance (Cap. 332); *(Amended 101 of 1997 s. 26)*
 - (d) *(Repealed 135 of 1997 s. 14)*
- (2) Any employer, or any person acting on behalf of an employer, who—

- (a) prevents or deters, or does any act calculated to prevent or deter, an employee from exercising any of the rights conferred on him by subsection (1); or
- (b) terminates the contract of employment of, penalizes, or otherwise discriminates against, an employee by reason of his exercising any such right,

shall be guilty of an offence and shall be liable on conviction to a fine at level 6. (*Amended 24 of 1988 s. 2; 103 of 1995 s. 5*)

(3) In this section—

appropriate time (適當時間) means, in relation to an employee taking part in any activities of a trade union, time which either—

- (a) is outside his working hours; or
- (b) is a time within his working hours at which, in accordance with arrangements agreed with or consent given by or on behalf of his employer, it is permissible for him to take part in those activities;

working hours (工作時間) means, in relation to an employee, any time when, in accordance with his contract with his employer, he is required to be at work.

[*cf. 1971 c. 72 s. 5(1), (2) & (5) U.K.*]

21C. Offer of employment conditional on offeree not being member of trade union

Any person who, acting on his own or another's behalf, in the engagement of persons for employment includes in an offer of employment to any person a condition or requirement that the person to whom the offer is made shall undertake—

- (a) if he is a member or officer of such a trade union, that he will relinquish his membership thereof or office therein;

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- (b) not to become a member of, or officer in, such a trade union; or
- (c) not to associate with other persons for the purpose of forming or applying for the registration of a trade union in accordance with the provisions of the Trade Unions Ordinance (Cap. 332),

shall be guilty of an offence and shall be liable on conviction to a fine at level 6. (*Amended 24 of 1988 s. 2; 103 of 1995 s. 6*)

21D-21J. (*Repealed 135 of 1997 s. 3*)

Part V

Payment of Wages

(Format changes—E.R. 3 of 2017)

22. Wage period

The wage period in respect of which wages are payable under a contract of employment shall, until the contrary is proved, be deemed to be 1 month.

23. Time of payment of wages

Wages shall become due on the expiry of the last day of the wage period and shall be paid as soon as is practicable but in any case not later than 7 days thereafter.

24. Payment on completion

Wages of an employee on completion of his contract of employment and any other sum payable in respect of his contract shall be due to him on the day of the completion of the contract and shall be paid as soon as is practicable but in any case not later than 7 days thereafter.

25. Payment on termination

- (1) Subject to section 31O, where a contract of employment is terminated any sum due to the employee shall be paid to him as soon as is practicable and in any case not later than 7 days after the day of termination. *(Amended 44 of 1971 s. 4; 67 of 1974 s. 4)*
- (2) The sum referred to in subsection (1) shall be—
 - (a) the equivalent of the amount earned by the employee for work done over the period commencing on the expiry of

- his wage period next preceding the time of termination up to that time;
- (b) the sum (if any) payable under sections 7, 15(2) and 33(4BA); (*Amended 57 of 1983 s. 4; 76 of 1985 s. 3; 103 of 1995 s. 7; 7 of 2001 s. 6*)
 - (ba) any long service payment due to the employee; and (*Added 76 of 1985 s. 3. Amended L.N. 34 of 1990*)
 - (c) any other sum due to the employee in respect of his contract of employment.
- (3) In addition to any deduction which may be made under section 32, and subject to any order made by a court, an employer may deduct from any sum payable under subsection (1) to an employee who terminates his employment otherwise than under section 6, 7 or 10 such sum as the employee would have been liable to pay if he had terminated his employment under section 7. (*Replaced 44 of 1971 s. 4. Amended 14 of 1975 s. 3; 48 of 1984 s. 12*)

25A. Interest on late payment of wages

- (1) Subject to subsection (3), if any wages or any sum referred to in section 25(2)(a) are not paid within 7 days from the day on which they become due under sections 23, 24 and 25, the employer shall pay interest at the rate specified in subsection (2) on the outstanding amount of wages or sum from the date on which such wages or sum become due up to the date of actual payment.
- (2) The rate of interest specified for the purpose of subsection (1) shall be the rate fixed by the Chief Justice by notice in the Gazette under section 50 of the District Court Ordinance (Cap. 336).
- (3) No interest shall be payable in respect of any period before the commencement* of this section.

(Added 74 of 1997 s. 9)

Editorial Note:

* Commencement date: 27 June 1997.

26. Manner and place of payment of wages

- (1) Subject to this Ordinance, wages shall be paid on a working day directly to an employee in legal tender at his place of employment or at any office or other place customarily used by the employer for the purpose of payment of wages or at any other place mutually agreed.
- (2) With the consent of an employee wages may be paid—
 - (a) by cheque, money order or postal order;
 - (b) into an account in his name with any bank within the meaning of section 2 of the Banking Ordinance (Cap. 155); or *(Amended 49 of 1995 s. 53)*
 - (c) to his duly appointed agent.

27. Payment not to be made in certain places

Wages, or any sum due to an employee in respect of his contract of employment on the completion or termination thereof, shall not be paid—

- (a) in any place of amusement;
- (b) in any place where cash-sweeps, fixed odds betting or pari-mutuel betting is organized or conducted with the permission or authorization under the Betting Duty Ordinance (Cap. 108); *(Amended 17 of 2006 s. 23)*
- (c) in any place where intoxicating liquor or any dangerous drug is sold; or
- (d) in any shop or store for the retail sale of merchandise,

except where the employee is employed in such place, shop or store.

28. Remuneration other than wages

- (1) A contract of employment may provide for giving to an employee food, accommodation or other allowances or privileges in addition to wages as remuneration for his services.
- (2) No employer shall give to an employee any intoxicating liquor, dangerous drug, or any ticket or other substitute for ticket for any cash-sweep, fixed odds betting or pari-mutuel betting organized or conducted with the permission or authorization under the Betting Duty Ordinance (Cap. 108) as remuneration for his services. (*Amended 17 of 2006 s. 23*)

29. Prohibition of agreements as to manner of spending

No employer shall in any contract of employment or agreement in consideration of a contract of employment make any provision as to the place at which, the manner in which, or the person with whom, wages paid to an employee are to be expended.

30. Provision of shops, etc. by employers for sale of commodities to employees

An employer may establish shops, stores or places for the sale of commodities to his employees, but no employer shall bind any employee by contract, agreement or other obligation, written or oral, express or implied, to make use of any such shop, store or place for the purchase of commodities.

31. Employer not to enter into contract of employment without reasonable belief that he can pay wages

- (1) No person shall enter into, renew or continue a contract of employment as an employer unless he believes upon

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reasonable grounds that he will be able to pay all wages due under the contract of employment as they become due.

- (2) An employer shall, if he ceases to believe upon reasonable grounds that he will be able to pay all the wages due by him under a contract of employment as they become due, forthwith take all necessary steps to terminate the contract in accordance with its terms.

(Added 71 of 1970 s. 3)

Part VA

Severance Payments

(Part VA added 67 of 1974 s. 5. Format changes—E.R. 3 of 2017)

31A. *(Repealed 76 of 1985 s. 4)*

31B. General provisions as to right to severance payment

- (1) Where an employee who has been employed under a continuous contract for a period of not less than 24 months ending with the relevant date— *(Amended 76 of 1985 s. 5)*
 - (a) is dismissed by his employer by reason of redundancy;
or
 - (b) is laid off within the meaning of section 31E,
the employer shall, subject to this Part and Part VC, be liable to pay to the employee a severance payment calculated in accordance with section 31G. *(Amended 52 of 1988 s. 5)*
- (2) For the purposes of this Part an employee who is dismissed shall be taken to be dismissed by reason of redundancy if the dismissal is attributable wholly or mainly to the fact that—
 - (a) his employer has ceased, or intends to cease, to carry on the business—
 - (i) for the purposes of which the employee was employed by him; or
 - (ii) in the place where the employee was so employed;
or
 - (b) the requirements of that business for employees to carry out work of a particular kind, or for employees to carry out work of a particular kind in the place where the

employee was so employed, have ceased or diminished or are expected to cease or diminish. (*Replaced 62 of 1992 s. 4*)

- (3) For the purposes of the application of this Part to an employee who is employed as a domestic servant in, or in connection with, a private household, this Part (except section 31J) shall apply as if the household were a business and the maintenance of the household were the carrying on of that business by the employer.

[*cf. 1965 c. 62 ss. 1 & 19(1) U.K.*]

31C. General exclusions from right to severance payment by reason of dismissal

- (1) An employee shall not be entitled to a severance payment by reason of dismissal where his employer, being so entitled by reason of the employee's conduct, terminates his contract of employment without notice or payment in lieu in accordance with section 9. (*Amended 51 of 2000 s. 3*)
- (2) An employee shall not be entitled to a severance payment by reason of dismissal if, not less than 7 days before the relevant date, the employer has offered to renew his contract of employment, or to re-engage him under a new contract, so that—
- (a) the provisions of the contract as renewed, or of the new contract, as the case may be, as to the capacity and place in which he would be employed, and as to the other terms and conditions of his employment, would not differ from the corresponding provisions of the contract as in force immediately before his dismissal; and
 - (b) the renewal or re-engagement would take effect on or before the relevant date,
- and the employee has unreasonably refused that offer.

- (3) An employee shall not be entitled to a severance payment by reason of dismissal if, not less than 7 days before the relevant date, the employer has made to him an offer in writing to renew his contract of employment, or to re-engage him under a new contract, so that in accordance with the particulars specified in the offer the provisions of the contract as renewed, or of the new contract, as the case may be, as to the capacity and place in which he would be employed, and as to the other terms and conditions of his employment, would differ (wholly or in part) from the corresponding provisions of the contract as in force immediately before his dismissal, but—
- (a) the offer constitutes an offer of suitable employment in relation to the employee;
 - (b) the offer constitutes an offer of employment no less favourable to the employee than hitherto; and
 - (c) the renewal or re-engagement would take effect on or before the relevant date,
- and the employee has unreasonably refused that offer.
- (4) Where the relevant date falls on a rest day or holiday, the references in subsection (2)(b) and subsection (3)(c) to the relevant date shall be construed as references to the next day after that rest day or holiday. (*Amended 75 of 1997 s. 2*)
- (5) An employee shall not be entitled to a severance payment by reason of dismissal where, having been given notice of the termination of his contract of employment by his employer in accordance with section 6, he leaves the service of his employer before the expiration of that notice unless he so leaves—
- (a) with the prior consent of the employer; or
 - (b) after having made a payment in lieu to the employer in accordance with section 7. (*Replaced 75 of 1997 s. 2*)

[cf. 1965 c. 62 s. 2 U.K.]

31D. Dismissal by employer

- (1) For the purposes of and subject to this Part, an employee shall be taken to be dismissed by his employer if, but only if—
 - (a) the contract under which he is employed is terminated by the employer with or without notice or payment in lieu thereof other than in accordance with section 9;
 - (b) where under that contract he is employed for a fixed term, that term expires without being renewed under the same contract; or
 - (c) the employee terminates that contract with or without notice or payment in lieu, in circumstances such that he is entitled to terminate it without notice or payment in lieu in accordance with section 10 by reason of the employer's conduct. *(Replaced 62 of 1992 s. 5)*
- (2) An employee shall not be taken for the purposes of this Part to be dismissed by his employer if—
 - (a) his contract of employment is renewed, or he is re-engaged by the same employer under a new contract of employment; and
 - (b) the renewal or re-engagement takes effect immediately on the ending of his employment under the previous contract.
- (3) For the purposes of the application of subsection (2) to a contract under which the employment ends on a rest day or holiday, the renewal or re-engagement shall be treated as taking effect immediately on the ending of the employment under the previous contract if it takes effect on or before the next day after that rest day or holiday.

[cf. 1965 c. 62 s. 3 U.K.]

31E. Lay-off

(1) Where an employee is employed under a contract on such terms and conditions that his remuneration thereunder depends on his being provided by the employer with work of the kind he is employed to do, he shall for the purposes of section 31B(1) be taken to be laid off where the total number of days on each of which such work is not provided for him by the employer exceeds—

- (a) half of the total number of normal working days in any period of 4 consecutive weeks; or
- (b) one-third of the total number of normal working days in any period of 26 consecutive weeks,

and he is not paid a sum equivalent to the wages which he would have earned if work had been provided on the days on which no work was provided. (*Amended 41 of 1990 s. 8*)

(1A) Notwithstanding subsection (1), any period during which an employee is not provided with work because of a lock-out by his employer, or as a result of a rest day, a statutory holiday or a day of annual leave, shall not be taken into account as normal working days in determining whether an employee has been laid off. (*Added 41 of 1990 s. 8. Amended 61 of 1993 s. 4*)

- (2) The continuity of a contract of employment of an employee shall not be treated as broken by any lay-off as a result of which no severance payment has been made.
- (3) For the purposes of this Part the **relevant date** (有關日期) in respect of the right of an employee to a severance payment arising by reason of lay-off means any day on which the period of 4 consecutive weeks or 26 consecutive weeks, as

the case may be, referred to in subsection (1) has expired.
(*Amended 41 of 1990 s. 8*)

[*cf. 1965 c. 62 s. 5(1) U.K.*]

31F. Excluded classes of employees

Section 31B shall not apply—

- (a) where the employer is the husband or wife of the employee;
- (b) to any outworker;
- (c) (*Repealed 76 of 1985 s. 6*)
- (d) to any person, employed by a government other than the Hong Kong Government, who is a subject or citizen of the state under whose government he is employed; or
- (e) without prejudice to paragraph (a), to any person in respect of employment as a domestic servant in, or in connection with, a private household, where the employer is the father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother or half-sister of the employee.

[*cf. 1965 c. 62 s. 16 U.K.*]

31G. Amount of severance payment

- (1) Subject to this Part, the amount of a severance payment to which an employee is entitled in any case shall be calculated by allowing—
 - (a) in the case of a monthly rated employee, two-thirds of this last full month's wages, or two-thirds of \$22,500, whichever is less; and
 - (b) in any other case, 18 days' wages based on any 18 days chosen by the employee and occurring during his

last 30 normal working days, or two-thirds of \$22,500, whichever is less, (*Amended L.N. 264 of 1995*)

for every year (and pro rata as respects an incomplete year) of employment under a continuous contract by his employer subject in all cases to a maximum payment not exceeding, where the relevant date occurs in a period specified in column 1 of Table A in the Seventh Schedule, the amount specified in column 2 of that table opposite to the period. (*Amended 5 of 1995 s. 6*)

(1A) Notwithstanding subsection (1), where—

- (a) the relevant date occurs in a period specified in column 1 of Table B in the Seventh Schedule; and
- (b) the employee has been employed under a continuous contract by his employer for a period (***employment period***) which immediately precedes the relevant date and is longer than the period specified in column 2 of that table opposite to the period in which the relevant date occurs,

that part of the employment period exceeding the period so specified in column 2 of that table shall be reduced by one half for the purpose of calculating his entitlement under subsection (1). (*Added 5 of 1995 s. 6*)

(2) Notwithstanding subsection (1), the employee may elect to have his wages averaged over the period of 12 months immediately preceding the relevant date, but where he so elects, then—

- (a) in the case of a monthly rated employee, the monthly average shall not exceed \$22,500; and
- (b) in any other case, the total wages for the period of 12 months shall, for the purpose of calculating the daily average, not exceed 12 times \$22,500. (*Amended L.N. 264 of 1995*)

- (3) For the purposes of this section, in the case of an employee who was employed under a continuous contract otherwise than by way of manual labour and whose average monthly wages during the period of 12 months immediately preceding the date of commencement of the Employment (Amendment) Ordinance 1990 (41 of 1990) exceed \$15,000, a reference to the period of employment under a continuous contract shall not include a reference to any such employment occurring more than—
- (a) 3 years prior to 1 January 1990, where the relevant date occurs in 1990;
 - (b) 4 years prior to 1 January 1990, where the relevant date occurs in 1991;
 - (c) 5 years prior to 1 January 1990, where the relevant date occurs in 1992;
 - (d) 6 years prior to 1 January 1990, where the relevant date occurs in 1993;
 - (e) 7 years prior to 1 January 1990, where the relevant date occurs in 1994;
 - (f) 8 years prior to 1 January 1990, where the relevant date occurs in 1995;
 - (g) 9 years prior to 1 January 1990, where the relevant date occurs in 1996;
 - (h) 10 years prior to 1 January 1990, where the relevant date occurs in 1997 or any year thereafter.

(Replaced 41 of 1990 s. 9)

31H. *(Repealed 51 of 2000 s. 4)*

***31I. Severance payment to be reduced by amount of gratuities and benefits in certain cases**

If an employee becomes entitled to payment of a severance payment under this Part and—

- (a) because of the operation of the employee's contract of employment, one or more gratuities based on length of service or one or more relevant occupational retirement scheme benefits have been paid to the employee; or
- (b) a relevant mandatory provident fund scheme benefit is being held in a mandatory provident fund scheme in respect of the employee, or has been paid to or in respect of the employee,

the severance payment is to be reduced by the total amount of all of the gratuities and benefits to or in respect of the employee to the extent that they relate to the employee's years of service for which the severance payment is payable.

(Replaced 4 of 1998 s. 5. Amended 18 of 2001 s. 2)

Editorial Note:

* For transitional and savings provisions relating to the amendment of this section made by the Employment (Amendment) (No. 2) Ordinance 2001 (18 of 2001), see section 5 of that Ordinance.

31IA. Gratuity or benefit to be reduced by amount of severance payment in certain cases

- (1) If—
 - (a) because of the operation of the employee's contract of employment, an employee has become entitled to payment of a gratuity based on length of service, or to payment of a relevant occupational retirement scheme benefit; or
 - (b) a relevant mandatory provident fund scheme benefit is being held in a mandatory provident fund scheme in respect of the employee,

and the employee has been paid a severance payment under this Part, the gratuity or benefit is, to the extent that it is attributable to the same years of service as those for which the severance payment is payable, to be reduced by the whole amount of the severance payment.

- (2) Subsection (1) has effect even though the years of service for which the severance payment was made exceed those to which the gratuity or benefit is attributable.
- (3) Section 70A of the Occupational Retirement Schemes Ordinance (Cap. 426) and section 12A of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) have effect in relation to this section.

(Replaced 4 of 1998 s. 5)

31J. Change of ownership of business

- (1) This section shall have effect where—
 - (a) a change occurs (whether by virtue of a sale or other disposition or by operation of law) in the ownership of a business for the purposes of which a person is employed, or of a part of such a business; and
 - (b) in connection with that change the person by whom the employee is employed immediately before the change occurs (in this section referred to as ***the previous owner***) terminates the employee's contract in accordance with section 6 or 7.
- (2) If, by agreement with the employee, the person who immediately after the change occurs is the owner of the business or of the part of the business in question, as the case may be (in this section referred to as ***the new owner***) renews the employee's contract of employment (with the substitution of the new owner for the previous owner) or re-engages him under a new contract of employment, section 31D(2) shall

have effect as if the renewal or re-engagement had been a renewal or re-engagement by the previous owner (without any substitution of the new owner for the previous owner).

- (3) If the new owner offers to renew the employee's contract of employment (with the substitution of the new owner for the previous owner) or to re-engage him under a new contract of employment, but the employee refuses the offer, section 31C(2) or (3) (as the case may be) shall have effect, subject to subsection (4), in relation to that offer and refusal as it would have had effect in relation to the like offer made by the previous owner and a refusal of that offer by the employee.
- (4) For the purposes of the operation, in accordance with subsection (3), of section 31C(2) or (3) in relation to an offer made by the new owner—
 - (a) the offer shall not be treated as one whereby the provisions of the contract as renewed, or of the new contract, as the case may be, would differ from the corresponding provisions of the contract as in force immediately before the dismissal by reason only that the new owner would be substituted for the previous owner as the employer; and
 - (b) no account shall be taken of that substitution in determining whether the refusal of the offer was unreasonable.
- (5) This section shall have effect (subject to the necessary modifications) in relation to a case where—
 - (a) the person by whom a business, or part of a business, is owned immediately before a change is one of the persons by whom (whether as partners, trustees or otherwise) it is owned immediately after the change; or
 - (b) the persons by whom a business, or part of a business, is owned immediately before a change (whether as

partners, trustees or otherwise) include the person or one or more of the persons by whom it is owned immediately after the change,

as this section has effect where the previous owner and the new owner are wholly different persons.

- (6) Nothing in this section shall be construed as requiring any variation of a contract of employment by agreement between the parties to be treated as constituting a termination of the contract.

[cf. 1965 c. 62 s. 13 U.K.]

31K. Associated companies

- (1) Where the employer is a company, any reference in this Part to re-engagement by the employer shall be construed as a reference to re-engagement by that company or by any associated company, and any reference in this Part to an offer made by the employer shall be construed as including a reference to an offer made by an associated company.
- (2) Subsection (1) shall not affect the operation of section 31J in a case where the previous owner and the new owner (as defined by that section) are associated companies; and where that section applies, subsection (1) shall not apply.
- (3) Where an employee is dismissed by his employer, and the employer is a company (in this subsection referred to as ***the employing company***) which has one or more associated companies, then if—
- (a) none of the conditions specified in section 31B(2) is fulfilled;
- (b) one or other of those conditions would be fulfilled if the business of the employing company and the business of the associated company (or, if more than one, each

of the associated companies) were treated as together constituting one business,

that condition shall for the purposes of this Part be taken to be fulfilled in relation to the dismissal of the employee.

- (4) Where an employee of a company is taken into the employment of another company which, at the time when he is taken into its employment, is an associated company of the first-mentioned company, his period of employment at that time shall count as a period of employment with the associated company, and the change of employer shall not break the continuity of the period of employment.
- (5) For the purposes of this section 2 companies shall be taken to be associated companies if one is a subsidiary of the other, or both are subsidiaries of a third company, and ***associated company*** (相聯公司) shall be construed accordingly.
- (6) In this section—

company (公司) has the meaning given by section 2(1) of the Companies Ordinance (Cap. 622);

subsidiary (附屬公司) has the meaning given by section 15 of the Companies Ordinance (Cap. 622) for the purposes of that Ordinance. (*Replaced 28 of 2012 ss. 912 & 920*)

[*cf. 1965 c. 62 s. 48 U.K.*]

31L. Implied or constructive termination of contract

- (1) Where in accordance with any enactment or rule of law—
- (a) any act on the part of the employer; or
- (b) any event affecting an employer (including, in the case of an individual, his death),

operates so as to terminate a contract under which an employee is employed by him, that act or event shall for the purposes of this Part be treated as a termination of the

contract by the employer, if apart from this subsection it would not constitute a termination of the contract by him.

- (2) Where subsection (1) applies, and the employee's contract of employment is not renewed, and he is not re-engaged under a new contract, as mentioned in section 31D(2), he shall for the purposes of this Part be taken to be dismissed by reason of redundancy if the circumstances in which the contract is not renewed and he is not re-engaged as mentioned in section 31D(2), are wholly or mainly attributable to one or other of the facts specified in section 31B(2).
- (3) For the purposes of subsection (2), section 31B(2)(a), in so far as it relates to the employer ceasing or intending to cease to carry on the business, shall be construed as if the reference to the employer included a reference to any person to whom, in consequence of the act or event in question, power to dispose of the business has passed.
- (4) In this section any reference to section 31D(2) includes a reference to section 31D(2) as applied by section 31J(2).

[cf. 1965 c. 62 s. 22 U.K.]

31M. Death of employer or of employee

Part I of the Third Schedule shall have effect in relation to the death of an employer; and Part II of that Schedule shall have effect in relation to the death of an employee.

[cf. 1965 c. 62 s. 23 U.K.]

31N. Claims for severance payments

Notwithstanding anything in this Part, an employee shall not be entitled to a severance payment unless, before the end of the period of 3 months beginning with the relevant date, or within such extended period as the Commissioner may agree— (*Amended 19 of 1984 s. 3*)

- (a) the payment has been agreed and paid;
- (b) the employee has made a claim for payment by notice in writing given to the employer; or
- (c) a question as to the right of the employee to the payment, or as to the amount of the payment, has been made the subject of a claim filed with—
 - (i) the Registrar of the Minor Employment Claims Adjudication Board in accordance with Part 4 of the Minor Employment Claims Adjudication Board Ordinance (Cap. 453); or
 - (ii) the Registrar of the Labour Tribunal in accordance with Part 4 of the Labour Tribunal Ordinance (Cap. 25). (*Amended 61 of 1994 s. 50*)

(Amended E.R. 1 of 2013)

[cf. 1965 c. 62 s. 21 U.K.]

31O. Making of severance payment

- (1) Where an employee is entitled to a severance payment under this Part, his employer shall make the severance payment to him not later than 2 months from the receipt of a notice in accordance with paragraph (b) of section 31N unless either the employer or the employee has, before the expiration of that period, made the severance payment the subject of a claim filed with—
 - (a) the Registrar of the Minor Employment Claims Adjudication Board in accordance with Part 4 of the Minor Employment Claims Adjudication Board Ordinance (Cap. 453); or
 - (b) the Registrar of the Labour Tribunal in accordance with Part 4 of the Labour Tribunal Ordinance (Cap. 25). (*Amended 61 of 1994 s. 51*)

(1A) *(Repealed 9 of 2010 s. 3)*

(2) A severance payment shall be made in legal tender except that, where the employee so consents, payment may be made—

(a) by cheque, money order or postal order;

(b) into an account in his name with any bank within the meaning of section 2 of the Banking Ordinance (Cap. 155); or *(Amended 49 of 1995 s. 53)*

(c) to his duly appointed agent.

(3) (a) An employer who without reasonable excuse fails to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine at level 5. *(Amended 9 of 2010 s. 3)*

(b) An employer who without reasonable excuse fails to comply with subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine at level 3. *(Replaced 103 of 1995 s. 8)*

(Amended E.R. 1 of 2013)

31P. Written particulars of severance payment

(1) On making any severance payment, otherwise than in pursuance of a decision of the Minor Employment Claims Adjudication Board or Labour Tribunal which specifies the amount of the payment to be made, the employer shall give to the employee a written statement indicating how the amount of the payment has been calculated. *(Amended 61 of 1994 s. 52)*

(2) (a) An employer who without reasonable excuse fails to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine at level 3.

- (b) An employer who in a statement under subsection (1) includes anything which to his knowledge is false in a material particular, or recklessly includes anything which is false in a material particular shall be guilty of an offence and shall be liable on conviction to a fine at level 5. (*Replaced 103 of 1995 s. 9*)
- (3) Without prejudice to any proceedings for an offence under subsection (2)(a), if an employer fails to comply with the requirements of subsection (1), the employee may by notice in writing to the employer require the employer to give to the employee a written statement complying with those requirements within such period (not being less than 1 week beginning with the day on which the notice was given) as may be specified in the notice.
- (4) If, without reasonable excuse, an employer fails to comply with a notice under subsection (3) he shall be guilty of an offence and shall be liable—
 - (a) in the case of a first conviction to a fine at level 3; or
 - (b) in the case of a second or subsequent conviction, to a fine at level 5. (*Amended 24 of 1988 s. 2; 103 of 1995 s. 9*)

[cf. 1965 c. 62 s. 18 U.K.]

31Q. Presumption

For the purposes of this Part an employee who has been dismissed by his employer shall, unless the contrary is proved, be presumed to have been so dismissed by reason of redundancy.

[cf. 1965 c. 62 s. 9(2) U.K.]

Part VB

Long Service Payments

(Part VB added 76 of 1985 s. 8. Format changes—E.R. 3 of 2017)

31R. General provisions as to employee's right to long service payment

(1) Where an employee who has been employed under a continuous contract—

(a) for not less than 5 years of service at the relevant date— *(Amended 74 of 1997 s. 10)*

(i) is dismissed and his employer is not liable to pay him a severance payment by reason thereof; or

(ii) subject to subsections (3) to (5), terminates his contract in the circumstances specified in section 10(aa); or *(Amended 61 of 1993 s. 5)*

(b) terminates his contract and, at the relevant date, he is not less than 65 years of age and has been employed under that contract for not less than 5 years, *(Amended 65 of 1995 s. 2)*

the employer shall, subject to this Part and Part VC, pay to the employee a long service payment calculated in accordance with section 31V(1). *(Amended 105 of 1991 s. 2)*

(2) *(Repealed 74 of 1997 s. 10)*

(3) Where an employee has terminated his contract in the circumstances specified in section 10(aa) upon being certified as being permanently unfit for a particular type of work, the employer may require the employee to undergo a medical examination, at the employer's expense, to obtain a second

opinion as to whether or not the employee is permanently unfit for that type of work. *(Replaced 16 of 2006 s. 6)*

- (3A) A medical examination referred to in subsection (3) shall be conducted by a registered medical practitioner or registered Chinese medicine practitioner named by the employer, regardless of whether the certificate issued in respect of the employee for the purposes of section 10(aa)(ii) was issued by a registered medical practitioner or registered Chinese medicine practitioner. *(Added 16 of 2006 s. 6)*
- (4) An employer shall forfeit his right to exercise the option under subsection (3) unless—
- (a) he makes arrangements for a medical examination to take place not more than 14 days after the employer receives a copy of a certificate issued under section 10(aa); and
 - (b) he notifies the employee in writing, not less than 48 hours before the examination is to take place, giving him details of the appointment. *(Added 61 of 1993 s. 5)*
- (5) An employee referred to in subsection (3) who, without reasonable excuse, refuses to undergo a medical examination forfeits his right to a long service payment under this Part. *(Added 61 of 1993 s. 5)*
- (6) Where the second opinion obtained by an employer under subsection (3) comes to the opposite conclusion from the certificate issued under section 10(aa), the employer shall submit the certificate and the second opinion to the Commissioner and the Commissioner shall, after such consultation with such medical experts as he considers necessary, rule whether or not the employee is entitled to a long service payment under this Part. *(Added 61 of 1993 s. 5)*
- (Replaced 52 of 1988 s. 6. Amended 41 of 1990 s. 11)*

31RA. Death of employee

- (1) Where an employee dies and he had been at the time of his death employed under a continuous contract for not less than 5 years of service on the date of his death, the employer shall, subject to this Part and Part VC, pay a long service payment calculated in accordance with section 31V(1) to— *(Amended 105 of 1991 s. 3; 74 of 1997 s. 11)*
 - (a) the spouse of the employee, if the employee leaves a spouse; or
 - (b) the issue of the employee, if the employee leaves any issue but no spouse; or
 - (c) a parent of the employee, if the employee leaves neither a spouse nor issue; or
 - (d) the personal representative of the employee, if the employee does not leave any spouse, issue or parent.
- (1A) *(Repealed 74 of 1997 s. 11)*
- (2) A person referred to in paragraph (a), (b), (c) or (d) of subsection (1) shall not be entitled to such payment unless—
 - (a) that person serves an application in the form specified by the Commissioner under section 49 on the relevant employer within the period of 30 days beginning on the day next following the date of death of the employee or within such extended period as the Commissioner may allow; and
 - (b) the applicant's relationship (being a relationship mentioned in paragraph (a), (b), (c) or (d) of subsection (1)) to the deceased employee is supported by documentary evidence.
- (3) The Commissioner may extend the time for serving an application under subsection (2) although the application for

extension is not made until after the expiration of the period of 30 days after the date of death of an employee.

- (4) Where a person referred to in paragraph (a) or (b) of subsection (1) is a minor, the application under subsection (2) shall be made by the guardian of that person.
- (5) Where a person is entitled to a long service payment under this section, the employer shall pay such person the long service payment to which he is entitled—
 - (a) where the person so entitled is a spouse, not later than 7 days after the receipt of the application; or
 - (b) where the person so entitled is not a spouse, not earlier than the day (hereinafter in this paragraph called ***the said day***) next following the date of expiration of the period which, as regards the particular case, was the period during which an application under subsection (2)(a) could be served but not later than 7 days after the said day.
- (6) An employer who without reasonable excuse fails to pay a long service payment on or before the latest date for payment as required by subsection (5) shall be guilty of an offence and shall be liable on conviction to a fine at level 5. (*Amended 103 of 1995 s. 10*)
- (7) Where 2 or more persons are entitled to a long service payment under this section, the long service payment shall be divided equally between such persons.
- (8) A long service payment is payable in accordance with this Part by an employer on the death of an employee from whatever cause and is payable in addition to any compensation payable by the employer under the Employees' Compensation Ordinance (Cap. 282).

(Added 52 of 1988 s. 6)

31RB. Application to domestic servants

This Part (except section 31Z) shall apply to an employee who is employed as a domestic servant in, or in connection with, a private household as if the household were a business and the maintenance of the household were the carrying on of that business by the employer.

(Added 52 of 1988 s. 6)

31S. General exclusions from right to long service payment by reason of dismissal

- (1) An employee shall not be entitled to a long service payment by reason of dismissal where his employer, being so entitled by reason of the employee's conduct, terminates his contract of employment without notice or payment in lieu in accordance with section 9. *(Amended 51 of 2000 s. 5)*
- (2) An employee shall not be entitled to a long service payment by reason of dismissal where, having been given notice of the termination of his contract of employment by his employer in accordance with section 6, he leaves the service of his employer before the expiration of that notice unless he so leaves—
 - (a) with the prior consent of the employer; or
 - (b) after having made a payment in lieu to the employer in accordance with section 7. *(Replaced 75 of 1997 s. 3)*
- (3) Subject to subsection (6), an employee employed under a contract for a fixed term shall not be entitled to a long service payment where he is taken to be dismissed by his employer under section 31T(1)(b) if, not less than 7 days before the relevant date, the employer has offered to renew his contract of employment, or to re-engage him under a new contract, so that—

- (a) the provisions of the contract as renewed, or of the new contract, as the case may be, as to the capacity and place in which he would be employed, and as to the other terms and conditions of his employment, would not differ from the corresponding provisions of the contract as in force immediately before his dismissal; and
- (b) the renewal or re-engagement would take effect on or before the relevant date,

and the employee has unreasonably refused that offer. (*Added 75 of 1997 s. 3*)

- (4) Subject to subsection (6), an employee employed under a contract for a fixed term shall not be entitled to a long service payment where he is taken to be dismissed by his employer under section 31T(1)(b) if, not less than 7 days before the relevant date, the employer has made to him an offer in writing to renew his contract of employment, or to re-engage him under a new contract, so that in accordance with the particulars specified in the offer the provisions of the contract as renewed, or of the new contract, as the case may be, as to the capacity and place in which he would be employed, and as to the other terms and conditions of his employment, would differ, wholly or in part, from the corresponding provisions of the contract as in force immediately before his dismissal, but—

- (a) the offer constitutes an offer of suitable employment in relation to the employee;
- (b) the offer constitutes an offer of employment no less favourable to the employee than hitherto; and
- (c) the renewal or re-engagement would take effect on or before the relevant date,

and the employee has unreasonably refused that offer. (*Added 75 of 1997 s. 3*)

- (5) Where the relevant date falls on a rest day or holiday, the references in subsections (3)(b) and (4)(c) to the relevant date shall be construed as references to the next day after that rest day or holiday. (*Added 75 of 1997 s. 3*)
- (6) Without affecting the application of section 31R(1)(a)(ii) and (b) and (2)(b), where an employee employed under a contract for a fixed term, on or before the day on which the contract for a fixed term expires, refuses an offer of any of the descriptions mentioned in subsection (3) or (4)—
 - (a) the employee is entitled to terminate that contract under section 31R(1)(a)(ii) or (2)(b) as appropriate, that expiration shall be regarded as termination of contract by the employee under section 31R(1)(a)(ii) or (2)(b) for the purposes of the application of this Part; or
 - (b) the employee is entitled to terminate that contract under section 31R(1)(b), that expiration shall be regarded as termination of contract by the employee under section 31R(1)(b) for the purposes of the application of this Part. (*Added 75 of 1997 s. 3*)

31T. Dismissal by employer

- (1) For the purposes of and subject to this Part, an employee shall be taken to be dismissed by his employer if, but only if—
 - (a) the contract under which he is employed is terminated by the employer with or without notice or payment in lieu thereof other than in accordance with section 9;
 - (b) where under that contract he is employed for a fixed term, that term expires without being renewed under the same contract; or
 - (c) the employee terminates that contract with or without notice or payment in lieu, in circumstances such that

he is entitled to terminate it without notice or payment in lieu in accordance with section 10 by reason of the employer's conduct. (*Replaced 62 of 1992 s. 9*)

- (2) An employee shall not be taken for the purposes of this Part to be dismissed by his employer if—
- (a) his contract of employment is renewed, or he is re-engaged by the same employer under a new contract of employment; and
 - (b) the renewal or re-engagement takes effect immediately on the ending of his employment under the previous contract.
- (3) For the purposes of the application of subsection (2) to a contract under which the employment ends on a rest day or holiday, the renewal or re-engagement shall be treated as taking effect immediately on the ending of the employment under the previous contract if it takes effect on or before the next day after that rest day or holiday.

31U. Excluded classes of employees

Sections 31R and 31RA shall not apply— (*Amended 52 of 1988 s. 7*)

- (a) where the employer is the husband or wife of the employee;
- (b) to any outworker;
- (c) to any person, employed by a government other than the Hong Kong Government, who is a subject or citizen of the state under whose government he is employed; or
- (d) without prejudice to paragraph (a), to any person in respect of employment as a domestic servant in, or in connection with, a private household, where the employer is the father, mother, grandfather, grandmother,

stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother or half-sister of the employee.

31V. Amount of long service payment

(1) Subject to this Part, the amount of a long service payment payable under section 31R(1) or 31RA(1) shall be calculated by allowing— (*Amended 105 of 1991 s. 4*)

- (a) in the case of a monthly rated employee, two-thirds of his last full month's wages, or two-thirds of \$22,500, whichever is less; and
- (b) in any other case, 18 days' wages based on any 18 days chosen by the employee and occurring during his last 30 normal working days, or two-thirds of \$22,500, whichever is less, (*Amended L.N. 264 of 1995*)

for every year (and pro rata as respects an incomplete year) of employment under a continuous contract by his employer subject in all cases to a maximum payment not exceeding, where the relevant date occurs in a period specified in column 1 of Table A in the Seventh Schedule, the amount specified in column 2 of that table opposite to the period. (*Replaced 41 of 1990 s. 12. Amended 5 of 1995 s. 7*)

(1AA) Notwithstanding subsection (1), where—

- (a) the relevant date occurs in a period specified in column 1 of Table B in the Seventh Schedule; and
- (b) the employee has been employed under a continuous contract by his employer for a period (***employment period***) which immediately precedes the relevant date and is longer than the period specified in column 2 of that table opposite to the period in which the relevant date occurs,

that part of the employment period exceeding the period so specified in column 2 of that table shall be reduced by one half for the purpose of calculating his entitlement under subsection (1). (*Added 5 of 1995 s. 7*)

- (1A) Notwithstanding subsection (1), the employee may elect to have his wages averaged over the period of 12 months immediately preceding the relevant date, but where he so elects, then—
 - (a) in the case of a monthly rated employee, the monthly average shall not exceed \$22,500; and
 - (b) in any other case, the total wages for the 12 months shall, for the purpose of calculating the daily average, not exceed 12 times \$22,500. (*Added 41 of 1990 s. 12. Amended L.N. 264 of 1995*)
- (2) Subject to this Part, the amount of a long service payment payable under section 31R(2) or 31RA(1A) shall be—
 - (a)-(c) (*Repealed 74 of 1997 s. 12*)
 - (d)-(e) (*Repealed 74 of 1997 s. 13*)
- (3) (*Repealed 41 of 1990 s. 12*)

31W. Calculation of period of employment

- (1) For the purposes of this Part, a reference to the period of employment under a continuous contract shall not include a reference to any such employment occurring more than— (*Amended 41 of 1990 s. 13*)
 - (a) 6 years prior to 1 January 1986, where the relevant date occurs in 1986;
 - (b) 7 years prior to 1 January 1986, where the relevant date occurs in 1987;
 - (c) 8 years prior to 1 January 1986, where the relevant date occurs in 1988; and

- (d) 9 years prior to 1 January 1986, where the relevant date occurs in 1989 or any year thereafter.
- (1A) Subsection (1) shall cease to have effect on the commencement of the Employment (Amendment) Ordinance 1995 (5 of 1995). (*Added 5 of 1995 s. 8*)
- (2) Notwithstanding subsection (1), for the purposes of this Part, in the case of an employee who was employed under a continuous contract otherwise than by way of manual labour and whose average monthly wages during the period of 12 months immediately preceding the date of commencement of the Employment (Amendment) Ordinance 1990 (41 of 1990) exceed \$15,000, a reference to the period of employment under a continuous contract shall not include a reference to any such employment occurring more than—
 - (a) 3 years prior to 1 January 1990, where the relevant date occurs in 1990;
 - (b) 4 years prior to 1 January 1990, where the relevant date occurs in 1991;
 - (c) 5 years prior to 1 January 1990, where the relevant date occurs in 1992;
 - (d) 6 years prior to 1 January 1990, where the relevant date occurs in 1993;
 - (e) 7 years prior to 1 January 1990, where the relevant date occurs in 1994;
 - (f) 8 years prior to 1 January 1990, where the relevant date occurs in 1995;
 - (g) 9 years prior to 1 January 1990, where the relevant date occurs in 1996;
 - (h) 10 years prior to 1 January 1990, where the relevant date occurs in 1997 or any year thereafter. (*Added 41 of 1990 s. 13*)

31X. *(Repealed 51 of 2000 s. 4)*

***31Y. Long service payment to be reduced by amount of gratuities and benefits in certain cases**

If an employee becomes entitled to payment of a long service payment under this Part and—

- (a) because of the operation of the employee's contract of employment, one or more gratuities based on length of service or one or more relevant occupational retirement scheme benefits have been paid to the employee; or
- (b) a relevant mandatory provident fund scheme benefit is being held in a mandatory provident fund scheme in respect of the employee, or has been paid to or in respect of the employee,

the long service payment is to be reduced by the total amount of all of the gratuities and benefits to or in respect of the employee to the extent that they relate to the employee's years of service for which the long service payment is payable.

(Replaced 4 of 1998 s. 5. Amended 18 of 2001 s. 3)

Editorial Note:

* For transitional and savings provisions relating to the amendment of this section made by the Employment (Amendment) (No. 2) Ordinance 2001 (18 of 2001), see section 5 of that Ordinance.

31YAA. Gratuity or benefit to be reduced by amount of long service payment in certain cases

(1) If—

- (a) because of the operation of the employee's contract of employment, an employee has become entitled to

payment of a gratuity based on length of service, or to payment of a relevant occupational retirement scheme benefit; or

- (b) a relevant mandatory provident fund scheme benefit is being held in a mandatory provident fund scheme in respect of the employee,

and the employee has been paid a long service payment under this Part, the gratuity or benefit is, to the extent that it is attributable to the same years of service as those for which the long service payment is payable, to be reduced by the whole of the long service payment.

- (2) Subsection (1) has effect even though the years of service for which the long service payment was made exceed those to which the gratuity or benefit is attributable.
- (3) Section 70A of the Occupational Retirement Schemes Ordinance (Cap. 426) and section 12A of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) have effect in relation to this section.

(Replaced 4 of 1998 s. 5)

31YA. Reduction of long service payment and other amounts on employee's death

- (1) If—
 - (a) an employee has died; and
 - (b) as a result of the death, a person becomes entitled to payment of a long service payment and—
 - (i) because of the operation of the employee's contract of employment, one or more gratuities based on length of service or one or more relevant occupational retirement scheme benefits have been paid to the person in respect of the employee; or

- (ii) a relevant mandatory provident fund scheme benefit is being held in a mandatory provident fund scheme in respect of the employee, or has been paid to or in respect of the employee,

the long service payment is to be reduced by the total amount of all of the gratuities and benefits to or in respect of the employee to the extent that they relate to the employee's years of service for which the long service payment is payable.

- (2) If—

- (a) an employee has died; and
- (b) as a result of the death, a person—
 - (i) because of the operation of the employee's contract of employment, becomes entitled to payment of a gratuity based on length of service or to payment of a relevant occupational retirement scheme benefit; or
 - (ii) becomes entitled to payment of a relevant mandatory provident fund scheme benefit; and
- (c) a long service payment under this Part has been paid to the person in respect of the employee,

the gratuity or benefit is, to the extent that it is attributable to the same years of service as those for which the long service payment is payable, to be reduced by the whole of the long service payment.

- (3) Subsection (2) has effect even though the years of service for which the long service payment was made exceed those to which the gratuity or benefit is attributable.

- (4) If—

- (a) the employer of an employee who has died is, as a result of the employee's death, required to make a long service payment under section 31RA to a person; and

- (b) another person is entitled to one or more gratuities, relevant occupational retirement scheme benefits or relevant mandatory provident fund scheme benefits as a result of that death,

that other person is entitled to be paid the gratuities, relevant occupational retirement scheme benefits and relevant mandatory provident fund scheme benefits relating to the employee's years of service only to the extent that the total amount of those gratuities and benefits exceeds the amount of the long service payment.

- (5) If—

- (a) the employer of an employee who has died has made a long service payment under section 31RA to a person as a result of the employee's death; and
- (b) the administrator of an occupational retirement scheme has paid a relevant occupational retirement scheme benefit, or the approved trustee of a mandatory provident fund scheme has paid a relevant mandatory provident fund scheme benefit, to another person as a result of that death,

that other person must repay the benefit to that administrator or trustee except for the amount of the excess referred to in subsection (4).

- (6) On being repaid the benefit, the administrator or trustee must pay it to the employer concerned.
- (7) Section 70A of the Occupational Retirement Schemes Ordinance (Cap. 426) and section 12A of the Mandatory Provident Fund Schemes Ordinance (Cap. 485) have effect in relation to this section.

(Replaced 4 of 1998 s. 5)

31Z. Change of ownership of business

- (1) This section shall have effect where—
 - (a) a change occurs (whether by virtue of a sale or other disposition or by operation of law) in the ownership of a business for the purposes of which a person is employed, or of a part of such a business; and
 - (b) in connection with that change the person by whom the employee is employed immediately before the change occurs (in this section referred to as *the previous owner*) terminates the employee's contract in accordance with section 6 or 7.
- (2) If, by agreement with the employee, the person who immediately after the change occurs is the owner of the business or of the part of the business in question, as the case may be, (in this section referred to as *the new owner*) renews the employee's contract of employment (with the substitution of the new owner for the previous owner) or re-engages him under a new contract of employment, section 31T(2) shall have effect as if the renewal or re-engagement had been a renewal or re-engagement by the previous owner (without any substitution of the new owner for the previous owner).
- (3) This section shall have effect (subject to the necessary modifications) in relation to a case where—
 - (a) the person by whom a business, or part of a business, is owned immediately before a change is one of the persons by whom (whether as partners, trustees or otherwise) it is owned immediately after the change; or
 - (b) the persons by whom a business, or part of a business, is owned immediately before a change (whether as partners, trustees or otherwise) include the person or one or more of the persons by whom it is owned immediately after the change,

as this section has effect where the previous owner and the new owner are wholly different persons.

- (4) Nothing in this section shall be construed as requiring any variation of a contract of employment by agreement between the parties to be treated as constituting a termination of the contract.

31ZA. Associated companies

- (1) Where the employer is a company, any reference in this Part to re-engagement by the employer shall be construed as a reference to re-engagement by that company or by any associated company.
- (2) Subsection (1) shall not affect the operation of section 31Z in a case where the previous owner and the new owner (as defined by that section) are associated companies; and where that section applies, subsection (1) shall not apply.
- (3) Where an employee of a company is taken into the employment of another company which, at the time when he is taken into its employment, is an associated company of the first-mentioned company, his period of employment at that time shall count as a period of employment with the associated company, and the change of employer shall not break the continuity of the period of employment.
- (4) For the purposes of this section, 2 companies shall be taken to be associated companies if one is a subsidiary of the other, or both are subsidiaries of a third company, and ***associated company*** (相聯公司) shall be construed accordingly.
- (5) In this section—
company (公司) has the meaning given by section 2(1) of the Companies Ordinance (Cap. 622);

subsidiary (附屬公司) has the meaning given by section 15 of the Companies Ordinance (Cap. 622) for the purposes of that Ordinance. *(Replaced 28 of 2012 ss. 912 & 920)*

31ZB. Implied or constructive termination of contract

Where in accordance with any enactment or rule of law—

- (a) any act on the part of the employer; or
- (b) any event affecting an employer (including, in the case of an individual, his death),

operates so as to terminate a contract under which an employee is employed by him, that act or event shall for the purposes of this Part be treated as a termination of the contract by the employer, if apart from this section it would not constitute a termination of the contract by him.

31ZC. Death of employer

The Sixth Schedule shall have effect in relation to the death of an employer.

(Replaced 52 of 1988 s. 11)

31ZD. Making of long service payment

- (1) A long service payment shall be made in legal tender except that, where the person entitled to the payment so consents, payment may be made— *(Amended 52 of 1988 s. 12)*
 - (a) by cheque, money order or postal order;
 - (b) into an account in his name with any bank within the meaning of section 2 of the Banking Ordinance (Cap. 155); or *(Amended 49 of 1995 s. 53)*
 - (c) to his duly appointed agent.

- (2) Any employer who without reasonable excuse fails to comply with subsection (1) commits an offence and is liable to a fine at level 3. (*Amended 24 of 1988 s. 2; 103 of 1995 s. 11*)

31ZE. Written particulars of long service payment

- (1) On making any long service payment, the employer shall give to the person entitled to the payment a written statement indicating how the amount of the payment has been calculated. (*Amended 52 of 1988 s. 13*)
- (2) (a) An employer who without reasonable excuse fails to comply with subsection (1) shall be guilty of an offence and shall be liable to a fine at level 3.
- (b) An employer who in a statement under subsection (1) includes anything which to his knowledge is false in a material particular, or recklessly includes anything which is false in a material particular shall be guilty of an offence and shall be liable to a fine at level 5. (*Replaced 103 of 1995 s. 12*)
- (3) Without prejudice to any proceedings for an offence under subsection (2)(a), if an employer fails to comply with the requirements of subsection (1), the person entitled to the payment may by notice in writing to the employer require the employer to give to the person entitled to the payment a written statement complying with those requirements within such period (not being less than 1 week beginning with the day on which the notice was given) as may be specified in the notice. (*Amended 52 of 1988 s. 13*)

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- (4) If, without reasonable excuse, an employer fails to comply with a notice under subsection (3) he commits an offence and is liable—
- (a) in the case of a first conviction, to a fine at level 3; or
 - (b) in the case of a second or subsequent conviction, to a fine at level 5. (*Amended 24 of 1988 s. 2; 103 of 1995 s. 12*)
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Part VC

Supplementary Provisions to Parts VA and VB

(Part VC added 52 of 1988 s. 14. Format changes—E.R. 3 of 2017)

***31ZF. Re-employment after retirement at a specified age**

- (1) Subject to subsection (2), where a continuous contract of employment specifies an age of retirement and—
 - (a) the employee retires at that age; and
 - (b) the employee has been employed under that contract for not less than 5 years of service ending at the relevant date; and *(Amended 74 of 1997 s. 14)*
 - (c) he receives in relation to the years of service in respect of which long service payment would have been payable, had the employee been dismissed at the relevant date,—
 - (i) by virtue of the terms of his contract of employment, any gratuity based upon length of service; or
 - (ii) by virtue of a retirement scheme, any payment thereunder ; and
 - (d) the total sum he receives under paragraph (c) is not less than the long service payment to which he would have been entitled had he been dismissed at the relevant date; and
 - (e) immediately after his retirement, the employee is re-employed by the person by whom he was employed immediately before his retirement,

then for the purposes of Parts VA and VB of this Ordinance, the employment after retirement shall be regarded as a fresh employment.

- (2) For the purposes of subsection (1), any reference therein to a retirement scheme payment shall not include that part, if any, of the payment which represents a return of an employee's own contributions, including any sum payable in respect of interest thereon.

(Amended 41 of 1990 s. 16)

Editorial Note:

- * The operation of this section is affected by the transitional provisions contained in s. 31ZG.

31ZG. Transitional

The amendment made by section 14 of the Employment (Amendment) (No. 2) Ordinance 1997 (74 of 1997) to section 31ZF shall not affect employees who retired before the commencement* of that amendment; and the provisions of section 31ZF as they read immediately before such commencement shall continue to apply as regards such employees as if it had not been so amended.

(Added 74 of 1997 s. 15)

Editorial Note:

- * Commencement date: 27 June 1998.
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Part VIA

Employment Protection

(Part VIA added 75 of 1997 s. 4. Format changes—E.R. 3 of 2017)

32A. Employee's entitlement to employment protection

- (1) An employee may be granted remedies against his employer under this Part—
 - (a) where he has been employed under a continuous contract for a period of not less than 24 months ending with the relevant date and he is dismissed by the employer because the employer intends to extinguish or reduce any right, benefit or protection conferred or to be conferred upon the employee by this Ordinance;
 - (b) where he is employed under a continuous contract and the employer, without his consent and, in the absence of an express term in his contract of employment which so permits, varies the terms of his contract of employment because the employer intends to extinguish or reduce any right, benefit or protection conferred or to be conferred upon the employee by this Ordinance; or
 - (c) where he is dismissed by the employer other than for a valid reason within the meaning of section 32K and in contravention of—
 - (i) section 15(1), 21B(2)(b), 33(4B) or 72B(1);
 - (ii) section 6 of the Factories and Industrial Undertakings Ordinance (Cap. 59); or
 - (iii) section 48 of the Employees' Compensation Ordinance (Cap. 282),

whether or not the employer has been convicted of an offence in respect of the dismissal.

- (2) For the purposes of subsection (1)(a), an employee who has been dismissed by the employer shall, unless a valid reason is shown for that dismissal within the meaning of section 32K, be taken to have been so dismissed because the employer intends to extinguish or reduce any right, benefit or protection conferred or to be conferred upon the employee by this Ordinance.
- (3) For the purposes of subsection (1)(b), the variation of the terms of the contract of employment by the employer as referred to in that subsection shall, unless a valid reason is shown for that variation within the meaning of section 32K, be taken to be a variation of the terms of the contract of employment by the employer by reason that the employer intends to extinguish or reduce any right, benefit or protection conferred or to be conferred upon the employee by this Ordinance.
- (4) For the purposes of subsection (1)(c)—
 - (a) it shall not be necessary for an employee to show in relation to—
 - (i) subsection (1)(c)(i), that his contract of employment was terminated by reason of his exercising any of the rights vested in an employee by or by virtue of section 21B(1) or by reason of the fact of his doing any of the things mentioned in section 72B(1);
 - (ii) subsection (1)(c)(ii), that his contract of employment was terminated by reason of the fact of his doing any of the things mentioned in section 6 of the Factories and Industrial Undertakings Ordinance (Cap. 59); and

- (b) an employee who has been dismissed by the employer shall be taken to have been dismissed without a valid reason unless a valid reason is shown for that dismissal within the meaning of section 32K.
- (5) For the purposes of subsection (1)(c), an employee shall be entitled to remedies under this Part if and only if—
 - (a) in relation to a dismissal in contravention of section 21B(2)(b), the employee has exercised any of the rights mentioned in section 21B(1) within a period of 12 months immediately preceding such dismissal by the employer;
 - (b) in relation to a dismissal in contravention of section 72B(1), the employee has done any of the things mentioned in that section within a period of 12 months immediately preceding such dismissal by the employer;
 - (c) in relation to a dismissal in contravention of section 6 of the Factories and Industrial Undertakings Ordinance (Cap. 59), the employee has done any of the things mentioned in that section within a period of 12 months immediately preceding such dismissal by the employer.

32B. Dismissal by employer

- (1) For the purposes of section 32A(1)(a) and subject to this Part, where an employee is dismissed because the employer intends to extinguish or reduce his right to a severance payment or to a long service payment, he shall be taken to be dismissed by his employer if, but only if—
 - (a) the contract under which he is employed is terminated by the employer with or without notice or payment in lieu otherwise than in accordance with section 9;

- (b) where under that contract he is employed for a fixed term, that term expires without being renewed under the same contract; or
 - (c) the employee terminates that contract with or without notice or payment in lieu, in circumstances such that he is entitled to terminate it without notice or payment in lieu in accordance with section 10 by reason of the employer's conduct.
- (2) Subject to subsection (1), an employee shall be taken for the purposes of section 32A(1)(a) and (c) to be dismissed by his employer when the contract under which he is employed is terminated by the employer with or without notice or payment in lieu otherwise than in accordance with section 9.
- (3) An employee shall not be taken for the purposes of section 32A(1)(a) to be dismissed by his employer if—
 - (a) his contract of employment is renewed, or he is re-engaged by the same employer under a new contract of employment; and
 - (b) the renewal or re-engagement takes effect immediately on the ending of his employment under the previous contract.
- (4) For the purposes of the application of subsection (3) to a contract under which the employment ends on a rest day or holiday, the renewal or re-engagement shall be treated as taking effect immediately on the ending of the employment under the previous contract if it takes effect on or before the next day after that rest day or holiday.

32C. General exclusions from right to remedies

- (1) An employee shall not be entitled to remedies under this Part if, not less than 7 days before the relevant date, the employer

has offered to renew his contract of employment, or to re-engage him under a new contract so that—

- (a) the provisions of the contract as renewed, or of the new contract, as the case may be, would not differ from the corresponding provisions of the contract as in force immediately before the dismissal; and
- (b) the renewal or re-engagement would take effect on or before the relevant date,

and the employee has unreasonably refused that offer.

- (2) An employee shall not be entitled to remedies under this Part if, not less than 7 days before the relevant date, the employer has made to him an offer in writing to renew his contract of employment, or to re-engage him under a new contract, so that in accordance with the particulars specified in the offer the provisions of the contract as renewed, or of the new contract, as the case may be, would differ, wholly or in part, from the corresponding provisions of the contract as in force immediately before the dismissal, but—

- (a) the offer constitutes an offer of suitable employment in relation to the employee;
- (b) the offer constitutes an offer of employment no less favourable to the employee than hitherto; and
- (c) the renewal or re-engagement would take effect on or before the relevant date,

and the employee has unreasonably refused that offer.

- (3) Where the relevant date falls on a rest day or holiday, the references in subsections (1)(b) and (2)(c) to the relevant date shall be construed as references to the next day after that rest day or holiday.
- (4) An employee shall not be entitled to remedies under this Part by reason of dismissal where, having been given notice of the

termination of his contract of employment by his employer in accordance with section 6, he leaves the service of his employer before the expiration of that notice unless he so leaves—

- (a) with the prior consent of the employer; or
 - (b) after having made a payment in lieu to the employer in accordance with section 7.
- (5) Subsections (1) to (3) shall not apply where an employee is dismissed in any of the circumstances mentioned in section 32A(1)(c).

32D. Change of ownership of business

- (1) This section shall have effect where—
- (a) a change occurs (whether by virtue of a sale or other disposition or by operation of law) in the ownership of a business for the purposes of which a person is employed, or of a part of such a business; and
 - (b) in connection with that change the person by whom the employee is employed immediately before the change occurs (in this section referred to as *the previous owner*) terminates the employee's contract in accordance with section 6 or 7.
- (2) If, by agreement with the employee, the person who immediately after the change occurs is the owner of the business or of the part of the business in question, as the case may be (in this section referred to as *the new owner*), renews the employee's contract of employment (with the substitution of the new owner for the previous owner) or re-engages him under a new contract of employment, section 32B(3) shall have effect as if the renewal or re-engagement had been a renewal or re-engagement by the previous owner (without any substitution of the new owner for the previous owner).

- (3) If the new owner offers to renew the employee's contract of employment (with the substitution of the new owner for the previous owner) or to re-engage him under a new contract of employment, but the employee refuses the offer, section 32C(1) or (2) (as the case may be) shall have effect, subject to subsection (4), in relation to that offer and refusal as it would have had effect in relation to the like offer made by the previous owner and a refusal of that offer by the employee.
- (4) For the purposes of the operation, in accordance with subsection (3), of section 32C(1) or (2) in relation to an offer made by the new owner—
 - (a) the offer shall not be treated as one whereby the provisions of the contract as renewed, or of the new contract, as the case may be, would differ from the corresponding provisions of the contract as in force immediately before the dismissal by reason only that the new owner would be substituted for the previous owner as the employer; and
 - (b) no account shall be taken of that substitution in determining whether the refusal of the offer was unreasonable.
- (5) This section shall have effect (subject to the necessary modifications) in relation to a case where—
 - (a) the person by whom a business, or part of a business, is owned immediately before a change is one of the persons by whom (whether as partners, trustees or otherwise) it is owned immediately after the change; or
 - (b) the persons by whom a business, or part of a business, is owned immediately before a change (whether as partners, trustees or otherwise) include the person or one or more of the persons by whom it is owned immediately after the change,

as this section has effect where the previous owner and the new owner are wholly different persons.

- (6) Nothing in this section shall be construed as requiring any variation of a contract of employment by agreement between the parties to be treated as constituting a termination of the contract.

32E. Associated companies

- (1) Where the employer is a company, any reference in section 32B, 32C or 32D to renewal or re-engagement by the employer shall be construed as a reference to renewal or re-engagement by that company or by any associated company, and any reference in section 32B, 32C or 32D to an offer made by the employer shall be construed as including a reference to an offer made by an associated company.
- (2) Subsection (1) shall not affect the operation of section 32D in a case where the previous owner and the new owner are associated companies; and where that section applies, subsection (1) shall not apply.
- (3) For the purposes of this section, 2 companies shall be taken to be associated companies if one is a subsidiary of the other, or both are subsidiaries of a third company, and ***associated company*** shall be construed accordingly.

- (4) In this section—

company (公司) has the meaning given by section 2(1) of the Companies Ordinance (Cap. 622);

subsidiary (附屬公司) has the meaning given by section 15 of the Companies Ordinance (Cap. 622) for the purposes of that Ordinance. (*Replaced 28 of 2012 ss. 912 & 920*)

32F. Relevant date

For the purposes of and subject to this Part, ***relevant date*** (有關日

期)——

- (a) in relation to the termination of employment of an employee, has the same meaning as in section 2(1); and
- (b) in relation to the employer varying the terms of the contract of employment of an employee, means the date on which that variation takes effect.

32G. Death of employer or employee

For the purposes of this Part, Part I of the Eighth Schedule shall have effect in relation to the death of an employer and Part II of that Schedule shall have effect in relation to the death of an employee.

32H. *(Repealed 51 of 2000 s. 4)*

32I. Claim for remedies

Notwithstanding anything in this Part, an employee shall not be entitled to remedies under this Part unless——

- (a) the employee has made a claim for such remedies by notice in writing given to the employer before the end of the period of 3 months beginning with the relevant date, or within such extended period not exceeding 6 months as the Commissioner may permit; or
- (b) a question as to the right of the employee to such remedies has been made the subject of a claim filed with the Registrar of the Labour Tribunal in accordance with Part 4 of the Labour Tribunal Ordinance (Cap. 25) before the end of the period of 9 months beginning with the relevant date.

(Amended E.R. 1 of 2013)

32J. Jurisdiction of Labour Tribunal

- (1) Subject to this section, the Labour Tribunal established under the Labour Tribunal Ordinance (Cap. 25) shall have jurisdiction to inquire into, hear and determine a claim made by an employee under this Part in accordance with this Part and with that Ordinance.
- (2) The Labour Tribunal does not have jurisdiction to inquire into, hear or determine a claim under this Part if the relevant date in respect of that claim falls more than 9 months before the date on which the claim is filed with the Registrar of the Labour Tribunal, unless the parties to the claim, by a memorandum signed by them and filed with the Registrar, have agreed that the Tribunal shall have jurisdiction. (*Amended 21 of 2018 s. 3*)
- (3) A claim under this Part over which the Labour Tribunal has jurisdiction may be transferred under section 10 of the Labour Tribunal Ordinance (Cap. 25) but may be so transferred only to the Court of First Instance or the District Court. (*Replaced 21 of 2018 s. 3*)
- (4) The Court of First Instance or the District Court may, for a claim so transferred to it, make all or any of the orders and awards provided for under sections 32N, 32O, 32P, 32PA and 32PC. (*Added 21 of 2018 s. 3*)
- (5) Apart from a transfer under subsection (3), neither the Court of First Instance nor the District Court has jurisdiction over a claim under this Part. (*Added 21 of 2018 s. 3*)

32K. Reasons for the dismissal or the variation of the terms of the contract of employment

For the purposes of this Part, it shall be a valid reason for the employer to show that the dismissal of the employee or the variation of the terms of the contract of employment with the employee was by the reason of—

- (a) the conduct of the employee;
- (b) the capability or qualifications of the employee for performing work of the kind which he was employed by the employer to do;
- (c) the redundancy of the employee or other genuine operational requirements of the business of the employer;
- (d) the fact that the employee or the employer or both of them would, in relation to the employment, be in contravention of the law, if the employee were to continue in the employment of the employer or, were to so continue without that variation of the terms of his contract of employment; or
- (e) any other reason of substance, which, in the opinion of the court or the Labour Tribunal, was sufficient cause to warrant the dismissal of the employee or the variation of the terms of that contract of employment.

32L. Determination of claim

- (1) On a claim for remedies under this Part, in determining whether or not an employer has shown that he has a valid reason for the dismissal of an employee or for the variation of the terms of the contract of employment with an employee within the meaning of section 32K, the court or the Labour Tribunal shall take into consideration the circumstances of the claim.
- (2) Without affecting the generality of subsection (1), the circumstances of a claim include the length of time that the employee has been employed under that contract of employment with the employer as compared to the length of qualifying service required for the right, benefit or protection conferred or to be conferred upon the employee by this

Ordinance which is capable of being extinguished or reduced by means of the dismissal or the variation of the terms of the contract of employment.

32M. Remedies for employment protection

- (1) On a claim for remedies under this Part if the court or Labour Tribunal finds that the employer has not shown a valid reason as specified under section 32K, the employer is deemed to intend to extinguish or reduce any right, benefit or protection conferred or to be conferred upon the employee by this Ordinance and the dismissal or the variation is deemed to be unreasonable and the court or Labour Tribunal may make an order under section 32N or an award of terminal payments under section 32O.
- (2) On a claim for remedies under this Part if, in relation to the dismissal of an employee in any of the circumstances mentioned in section 32A(1)(c), the court or Labour Tribunal finds that the employer has not shown a valid reason for that dismissal within the meaning of section 32K and, upon that finding the employer, after having been given an opportunity to do so, refuses or fails to show that the dismissal is not in contravention of—
 - (a) section 15(1), 21B(2)(b), 33(4B) or 72B(1);
 - (b) section 6 of the Factories and Industrial Undertakings Ordinance (Cap. 59); or
 - (c) section 48 of the Employees' Compensation Ordinance (Cap. 282),

then the court or Labour Tribunal may make an order under section 32N or an award of terminal payments under section 32O and, in the case where the court or Labour Tribunal does not make an order under section 32N, the court or Labour Tribunal may, whether or not it has made an award

of terminal payments under section 32O, make an award of compensation under and in accordance with section 32P to be payable to the employee by the employer as it considers just and appropriate in the circumstances.

- (3) An order or award made under this Part shall not affect the civil or criminal liability of an employer otherwise than under this Part in respect of the dismissal or the variation of the terms of the contract of employment.

32N. Order for reinstatement and re-engagement

- (1) Subject to this section and to section 32M, an order under this section may be an order for reinstatement (in accordance with subsections (4) and (5)) or an order for re-engagement (in accordance with subsections (6) and (7)) as the court or Labour Tribunal may decide and on terms which it considers just and appropriate in the circumstances.
- (2) The court or Labour Tribunal shall first consider whether to make an order for reinstatement, and if it decides not to make an order for reinstatement it shall then consider whether to make an order for re-engagement.
- (3) If the court or Labour Tribunal finds that an order for reinstatement or re-engagement is appropriate—
 - (a) it must explain to the employer and the employee what order for reinstatement or re-engagement may be made; and
 - (b) it must ask the employer and the employee whether they agree to the making of such an order. *(Replaced 21 of 2018 s. 4)*
- (3A) If the employer and the employee express agreement, the court or Labour Tribunal must make an order for reinstatement or re-engagement pursuant to the agreement. *(Added 21 of 2018 s. 4)*

- (3B) For a dismissal of an employee in any of the circumstances mentioned in section 32A(1)(c), even though only the employee expresses agreement, the court or Labour Tribunal must make an order for reinstatement or re-engagement if it finds that reinstatement or re-engagement of the employee by the employer is reasonably practicable. (*Added 21 of 2018 s. 4*)
- (3C) Before making a finding for the purposes of subsection (3B), the court or Labour Tribunal—
- (a) must give an opportunity to the employer and the employee to present each of their cases in respect of the making of an order for reinstatement or re-engagement; and
 - (b) must take into account the circumstances of the claim, including—
 - (i) the circumstances of the employer and of the employee;
 - (ii) the circumstances surrounding the dismissal;
 - (iii) any difficulty that the employer might face in the reinstatement or re-engagement of the employee; and
 - (iv) the relationship between the employer and the employee, and between the employee and other persons with whom the employee has connection in relation to the employment. (*Added 21 of 2018 s. 4*)
- (3D) Before making a finding for the purposes of subsection (3B), the court or Labour Tribunal may, with the agreement of the employer and the employee, request the Commissioner to provide to it a report containing information that—
- (a) relates to the circumstances of the claim; and

- (b) was obtained in connection with the conciliation held under the Labour Tribunal Ordinance (Cap. 25). (*Added 21 of 2018 s. 4*)
- (3E) On receiving the request, the Commissioner must prepare the report, seek the agreement of the employer and the employee to the contents of the report and—
 - (a) if the employer and the employee agree to the contents of the report—provide the report to the court or Labour Tribunal; or
 - (b) if the employer or the employee fails to agree to the contents of the report—inform the court or Labour Tribunal of the failure and the fact that the report cannot be provided to it. (*Added 21 of 2018 s. 4*)
- (4) An order for reinstatement is an order that the employer shall treat the employee in all respects as if he had not been dismissed or as if there had been no such variation of the terms of the contract of employment. On making the order, the court or Labour Tribunal must specify the terms on which the employee must be reinstated, including— (*Amended 21 of 2018 s. 4*)
 - (a) any rights and privileges, including seniority and pension rights, which must be restored to the employee;
 - (b) a term to the effect that, for reckoning the employee's existing and future entitlements under this Ordinance and the employee's contract of employment, the continuity of the employee's period of employment is not to be treated as broken by—
 - (i) if the contract was terminated by the employer by payment in lieu of notice—the employee's absence from work between the last date on which the employee rendered services to the employer and the date of reinstatement; or

- (ii) in any other case—the employee’s absence from work between the relevant date and the date of reinstatement; *(Replaced 21 of 2018 s. 4)*
 - (c) the date by which the employee must be reinstated; and *(Replaced 21 of 2018 s. 4)*
 - (d) a term to the effect that, if the employee is not reinstated on the terms specified in the order by the date so specified, the employer must pay to the employee the sums mentioned in section 32NA(1) by the date specified for that purpose in the order. *(Replaced 21 of 2018 s. 4)*
- (5) On the making of an order for reinstatement, if the court or Labour Tribunal considers just and appropriate in the circumstances, it may specify—
 - (a) any amount payable by the employer to the employee in respect of any arrears of pay and statutory entitlements under this Ordinance which the employee might reasonably be expected to have had but for the dismissal or the variation of the terms of the contract of employment, for the period between the relevant date and the date of reinstatement; or
 - (b) any amount to be restored by the employee to the employer in respect of any statutory entitlements that the employee has been paid by the employer under this Ordinance and that the employee should not have had upon reinstatement.
- (6) An order for re-engagement is an order that the employer must re-engage the employee in an employment on terms comparable to his original terms of the employment or in other suitable employment. On making the order, the court or Labour Tribunal must specify the terms on which the

employee must be re-engaged, including— (*Amended 21 of 2018 s. 4*)

- (a) (*Repealed 21 of 2018 s. 4*)
 - (b) the nature of the employment;
 - (c) the remuneration for the employment;
 - (d) any rights and privileges, including seniority and pension rights, which must be restored to the employee;
 - (e) a term to the effect that, for reckoning the employee's existing and future entitlements under this Ordinance and the employee's contract of employment, the continuity of the employee's period of employment is not to be treated as broken by—
 - (i) if the contract was terminated by the employer by payment in lieu of notice—the employee's absence from work between the last date on which the employee rendered services to the employer and the date of re-engagement; or
 - (ii) in any other case—the employee's absence from work between the relevant date and the date of re-engagement; (*Replaced 21 of 2018 s. 4*)
 - (f) the date by which the employee must be re-engaged; and (*Replaced 21 of 2018 s. 4*)
 - (g) a term to the effect that, if the employee is not re-engaged on the terms specified in the order by the date so specified, the employer must pay to the employee the sums mentioned in section 32NA(1) by the date specified for that purpose in the order. (*Replaced 21 of 2018 s. 4*)
- (7) On the making of an order for re-engagement, if the court or Labour Tribunal considers just and appropriate in the circumstances, it may specify—

- (a) any amount payable by the employer to the employee in respect of any arrears of pay and statutory entitlements under this Ordinance which the employee might reasonably be expected to have had but for the dismissal or the variation of the terms of the contract of employment, for the period between the relevant date and the date of re-engagement; or
 - (b) any amount to be restored by the employee to the employer in respect of any statutory entitlements that the employee has been paid by the employer under this Ordinance and that the employee should not have had upon re-engagement.
- (8) *(Repealed 21 of 2018 s. 4)*
- (9) This section has effect subject to sections 32PA, 32PB and 32PC. *(Added 21 of 2018 s. 4)*
- (10) If the employer pays the sums mentioned in section 32NA(1) by the date specified for that purpose in an order for reinstatement or re-engagement (as varied under section 32PA or 32PC, if applicable), the employee is not entitled to enforce the other terms of the order (as so varied, if applicable). *(Added 21 of 2018 s. 4)*

32NA. Sums specified for purposes of section 32N(4)(d) and (6)(g)

- (1) For the purposes of section 32N(4)(d) and (6)(g), the following sums are payable by the employer to the employee—
 - (a) the sums that would have been awarded if neither an order for reinstatement nor an order for re-engagement had been made, namely—
 - (i) the amount of terminal payments that would have been awarded under section 32O; and

- (ii) if the employee has been dismissed in any of the circumstances mentioned in section 32A(1)(c)—the amount of compensation that would have been awarded under section 32P; and
- (b) if the employee has been dismissed in any of the circumstances mentioned in section 32A(1)(c), a sum that is the lesser of the following—
 - (i) \$72,500;
 - (ii) 3 times the employee's average monthly wages as calculated in accordance with section 32NB.
- (2) In determining the amounts mentioned in subsection (1)(a)(i) and (ii), the court or Labour Tribunal must not take into account the sum mentioned in subsection (1)(b).
- (3) The Commissioner may, by notice published in the Gazette, amend subsection (1)(b)(i) by substituting another amount for the amount specified in that subsection.

(Added 21 of 2018 s. 5)

32NB. Calculation of average monthly wages for section 32NA

- (1) This section applies in calculating an employee's average monthly wages for the purposes of section 32NA(1)(b)(ii).
- (2) In subsections (3), (4) and (5)—
wages (工資) includes a sum of money paid by an employer in respect of any of the following days—
 - (a) a day of maternity leave, a day of paternity leave, a rest day, a sickness day, a holiday or a day of annual leave taken by the employee;
 - (b) a day of leave taken by the employee with the agreement of the employer;

- (c) a normal working day on which the employee is not provided with work by the employer;
 - (d) a day of absence from work of the employee due to temporary incapacity for which compensation is payable under section 10 of the Employees' Compensation Ordinance (Cap. 282).
- (3) The employee's average monthly wages are the average monthly wages earned by the employee during—
 - (a) the period of 12 months immediately before the date of termination of the contract of employment; or
 - (b) if the employee has been employed by the employer for a period shorter than 12 months immediately before the date of termination of the contract of employment—the shorter period.
- (4) The average monthly wages are to be calculated without regard to—
 - (a) any period (*excluded period*) during the 12-month period or shorter period for which the employee was not paid wages or full wages because of—
 - (i) any maternity leave, paternity leave, rest day, sickness day, holiday or annual leave taken by the employee;
 - (ii) any leave taken by the employee with the agreement of the employer;
 - (iii) the employee's not being provided with work by the employer on a normal working day; or
 - (iv) the employee's absence from work due to temporary incapacity for which compensation is payable under section 10 of the Employees' Compensation Ordinance (Cap. 282); and
 - (b) any wages paid to the employee for the excluded period.

- (5) To avoid doubt, if the amount of the wages paid to an employee in respect of a day covered by the definition of *wages* in subsection (2) is only a fraction of the amount earned by the employee on a normal working day, the employee's average monthly wages are to be calculated without regard to the wages and the day.
- (6) Despite subsection (3), if for any reason it is impracticable to calculate an employee's average monthly wages in the manner provided in that subsection, the amount may be calculated by reference to—
 - (a) the wages earned by a person who was employed at the same work by the same employer during the period of 12 months immediately before the date of termination of the employee's contract of employment; or
 - (b) if there is no such person—the wages earned by a person who was employed in the same trade or occupation and at the same work in the same district during the period of 12 months immediately before the date of termination of the employee's contract of employment.

(Added 21 of 2018 s. 5)

32O. Award of terminal payments

- (1) Subject to section 32M, if no order for reinstatement or re-engagement is made under section 32N, the court or Labour Tribunal may make an award of terminal payments to be payable by the employer to the employee as it considers just and appropriate in the circumstances.
- (2) Terminal payments under this section refer to the statutory entitlements under this Ordinance that the employee has not been paid and that the employee is entitled to upon the termination of the contract of employment, or that he might reasonably be expected to be entitled to upon the termination

of the contract of employment had he been allowed to continue with his original employment or original terms of the contract of employment to attain the minimum qualifying length of service required for the entitlements under this Ordinance.

- (3) Subject to subsection (4), terminal payments include—
- (a) any wages and other payments due to the employee under his contract of employment;
 - (b) any payment in lieu of notice payable under Part II, in the case of a dismissal without due notice;
 - (c) any end of year payment payable under Part IIA;
 - (d) any maternity leave pay or sum payable under Part III;
 - (da) any paternity leave pay payable under Part IIIA; (*Added 21 of 2014 s. 7*)
 - (e) any severance payment payable under Part VA or any long service payment payable under Part VB;
 - (f) any sickness allowance or sum payable under Part VII;
 - (g) any holiday pay payable under Part VIII;
 - (h) any annual leave pay payable under Part VIIIA; and
 - (i) any other payments due to the employee under this Ordinance and under his contract of employment.
- (4) Notwithstanding that the employee has not attained the qualifying length of service required for the entitlements under this Ordinance, the court or Labour Tribunal may make an award for terminal payments under subsection (1) or (5) which shall be reckoned according to the actual length of time that the employee has been employed under that contract of employment with the employer.
- (5) For the purposes of this section, where no order for reinstatement or re-engagement is made for an unreasonable

variation of the terms of the contract of employment, the court or Labour Tribunal may treat the unreasonable variation of the terms of the contract of employment as an unreasonable dismissal by the employer and make an award for terminal payments and such terminal payments should be calculated up to the last date on which the employee renders services to the employer or the date on which an award of terminal payments under this section is made by the court or Labour Tribunal, whichever is the earlier.

- (6) The respective provisions governing the calculation of the statutory entitlements shall apply to the calculation of the terminal payments. (*Amended 21 of 2018 s. 6*)
- (7) Sections 31I and 31IA shall apply to any severance payment paid under this section.
- (8) Sections 31Y, 31YAA and 31YA shall apply to any long service payment paid under this section.

32P. Award of compensation

- (1) Subject to section 32M, the court or Labour Tribunal may, whether or not it has made an award of terminal payments under section 32O, make an award of compensation to be payable to the employee by the employer as it considers just and appropriate in the circumstances, if—
 - (a) neither order for reinstatement nor order for re-engagement under section 32N is made; and
 - (b) the employee is dismissed by the employer in contravention of section 15(1), 21B(2)(b), 33(4B) or 72B(1), section 6 of the Factories and Industrial Undertakings Ordinance (Cap. 59), or section 48 of the Employees' Compensation Ordinance (Cap. 282), whether or not the employer has been convicted of the offence in respect of the dismissal.

- (2) In determining an award of compensation and the amount of the award of compensation under this section, the court or Labour Tribunal shall take into account the circumstances of the claim.
- (3) Without affecting the generality of subsection (2) the circumstances of a claim include—
 - (a) the circumstances of the employer and the employee;
 - (b) the length of time that the employee has been employed under the contract of employment with the employer;
 - (c) the manner in which the dismissal took place;
 - (d) any loss sustained by the employee which is attributable to the dismissal;
 - (e) possibility of the employee obtaining new employment;
 - (f) any contributory fault borne by the employee; and
 - (g) any payments that the employee is entitled to receive in respect of the dismissal under this Ordinance, including any award of terminal payments under section 32O.
- (4) The amount of an award of compensation under this section shall be such amount as the court or Labour Tribunal considers just and appropriate but no such award shall exceed an amount of \$150,000.
- (5) The Commissioner for Labour may amend the amount specified in subsection (4) by notice in the Gazette.

32PA. Alternative compliance with order for re-engagement

- (1) For the purposes of this section—
 - (a) ***order for re-engagement*** (再次聘用的命令) means an order for re-engagement made under section 32N and includes such an order as varied under this section or section 32PC;

- (b) **successor** (繼承人), in relation to an employer who employed an employee for the purposes of an undertaking or part of an undertaking, means (subject to paragraph (c)) a person who, in consequence of a change in the ownership of that undertaking or part (whether the change occurred by virtue of a sale or other disposition or by operation of law), has become the owner of that undertaking or part;
 - (c) the definition of **successor** in paragraph (b) has effect (subject to the necessary modifications) in relation to a case where—
 - (i) the person who owned an undertaking or part of an undertaking immediately before a change is one of the persons who own it immediately after the change (whether as partners, trustees or otherwise); or
 - (ii) the persons who owned an undertaking or part of an undertaking immediately before a change (whether as partners, trustees or otherwise) include the persons, or one or more of the persons, who own it immediately after the change,
 as it has effect where the previous owner and the new owner are wholly different persons; and
 - (d) **associated company** is to be construed in accordance with section 32E(3) and (4).
- (2) If the court or Labour Tribunal made an order for re-engagement (**principal order**) against an employer (**original employer**), it may, on application, order variation of the principal order to the effect that engagement of the employee by a successor or associated company of the original employer (**alternative employer**) is to be treated as re-

engagement by the original employer in compliance with the principal order.

- (3) An application for the purposes of subsection (2) may only be made if—
- (a) there is a written agreement among—
 - (i) the original employer;
 - (ii) the employee; and
 - (iii) the alternative employer;
 - (b) the agreement states the parties' agreement that engagement of the employee by the alternative employer is to be treated as re-engagement in compliance with the principal order;
 - (c) the agreement states the terms on which the alternative employer is to engage the employee in order for the engagement to be treated as re-engagement in compliance with the principal order, including—
 - (i) the nature of the employment;
 - (ii) the remuneration for the employment;
 - (iii) any rights and privileges, including seniority and pension rights, that must be given to the employee;
 - (iv) a term to the effect that the employee's period of employment with the original employer is to be counted as a period of employment of the employee with the alternative employer for reckoning the employee's existing and future entitlements under this Ordinance and the employee's contract of employment with the alternative employer; and
 - (v) a term to the effect that the continuity of the employee's period of employment—

- (A) is not to be treated as broken by the change of employer from the original employer to the alternative employer; and
 - (B) is not to be treated as broken by—
 - (I) if the employee's contract of employment with the original employer was terminated by the original employer by payment in lieu of notice—the employee's absence from work between the last date on which the employee rendered services to the original employer and the date of engagement of the employee by the alternative employer; or
 - (II) in any other case—the employee's absence from work between the relevant date and the date of engagement of the employee by the alternative employer; and
- (d) the agreement states that the parties agree that, if the alternative employer engages the employee, the terms mentioned in paragraph (c) are to form part of the employee's contract of employment with the alternative employer.
- (4) The application may only be made by the employee, and must be accompanied by the agreement or a copy of the agreement.
- (5) The application may only be made—
 - (a) not later than the date by which the employee must be re-engaged under the principal order; or
 - (b) within such extended time as may be allowed by the court or Labour Tribunal.

- (6) An order of variation may only be made under this section if the court or Labour Tribunal is satisfied that the terms on which the alternative employer is to engage the employee, as specified in the agreement, are comparable to the terms on which the original employer is to re-engage the employee under the principal order, except the terms mentioned in section 32N(6)(f) and (g).
- (7) An order of variation made in relation to an application under this section—
 - (a) must specify that, in order for the engagement to be treated as re-engagement in compliance with the principal order, the alternative employer must engage the employee on the terms specified in the agreement by the date specified for that purpose in the order of variation;
 - (b) must specify the legal consequences following from the alternative employer engaging the employee, as provided under section 32PB;
 - (c) must specify that, subject to paragraphs (a) and (b), the principal order remains in full force and the original employer must re-engage the employee, except that the date by which the employee must be re-engaged by the original employer is also the date mentioned in paragraph (a); and
 - (d) must specify that the original employer must pay to the employee the sums mentioned in section 32NA(1) by the date specified for that purpose in the order of variation if, by the date mentioned in paragraph (a), the employee is not re-engaged in accordance with the order (which means neither actually so re-engaged nor treated as so re-engaged).

- (8) Each of the following dates as specified under subsection (7) in an order of variation may be the same as or different from that date as specified in the principal order—
- (a) the date by which the employee must be engaged;
 - (b) the date by which the original employer must pay the sums mentioned in section 32NA(1).

(Added 21 of 2018 s. 7)

32PB. Legal consequences following from alternative employer engaging employee

- (1) This section applies if—
- (a) an order of variation is made under section 32PA to the effect that engagement of the employee by the alternative employer is to be treated as re-engagement by the original employer in compliance with the principal order; and
 - (b) the alternative employer engages the employee on or before the date by which the employee must be re-engaged, as specified in the order of variation,
- and an expression in this section that also appears in section 32PA has the same meaning as it has in that section.
- (2) The terms on which the alternative employer is to engage the employee, as specified under section 32PA(7)(a) in the order of variation, form part of the employee's contract of employment with the alternative employer.
- (3) The following applies for reckoning the employee's existing and future entitlements under this Ordinance and the employee's contract of employment with the alternative employer—

- (a) the employee's period of employment with the original employer is to be counted as a period of employment of the employee with the alternative employer; and
 - (b) the continuity of the employee's period of employment—
 - (i) is not to be treated as broken by the change of employer from the original employer to the alternative employer; and
 - (ii) is not to be treated as broken by—
 - (A) if the employee's contract of employment with the original employer was terminated by the original employer by payment in lieu of notice—the employee's absence from work between the last date on which the employee rendered services to the original employer and the date of engagement of the employee by the alternative employer; or
 - (B) in any other case—the employee's absence from work between the relevant date and the date of engagement of the employee by the alternative employer.
- (4) In subsection (3)(a), a reference to the employee's period of employment with the original employer is a reference to the period of employment of the employee with the original employer that, had the original employer re-engaged the employee in accordance with the principal order, would have been counted for reckoning the employee's existing and future entitlements under this Ordinance and the employee's contract of employment with the original employer.
- (5) The engagement of the employee by the alternative employer is treated as re-engagement by the original employer in compliance with the principal order.

- (6) Any amount specified under section 32N(7) in the principal order as payable by the employer to the employee remains payable by the original employer to the employee. Any amount specified under that section in that order as required to be restored by the employee to the employer remains required to be restored by the employee to the original employer.
- (7) For calculating an amount specified in the principal order under section 32N(7), references in the principal order to re-engagement and to the date of re-engagement are respectively treated as references to the engagement of the employee by the alternative employer and to the date of the engagement.

(Added 21 of 2018 s. 7)

32PC. Relief from paying sum mentioned in section 32NA(1)(b)

- (1) This section applies if an order for reinstatement or re-engagement is made under section 32N in respect of an employee dismissed in any of the circumstances mentioned in section 32A(1)(c), whether or not the order is varied under this section or section 32PA (which order (as so varied, if applicable) is referred to in this section as the *principal order*).
- (2) The employer against whom the principal order is made may apply for it to be varied to the effect that the employer is relieved from the liability to pay the sum mentioned in section 32NA(1)(b).
- (3) An application under subsection (2) may only be made on the ground that it is no longer reasonably practicable for the employer to reinstate or re-engage the employee in accordance with the principal order—
 - (a) because of reasons attributable to the employee; or

- (b) because, since the court or Labour Tribunal last found that reinstatement or re-engagement of the employee is reasonably practicable, a change of circumstances has occurred beyond the employer's control.
- (4) The application may only be made to the court, or the Labour Tribunal, that made the principal order.
- (5) The application may only be made—
 - (a) not later than 7 days after the date by which the employee must be reinstated or re-engaged under the principal order; or
 - (b) within such extended time as may be allowed by the court or Labour Tribunal.
- (6) Before determining the application, the court or Labour Tribunal must give an opportunity to the employer and the employee to present each of their cases in respect of the application.
- (7) In determining the application, the court or Labour Tribunal may take into account any relevant considerations.
- (8) The court or Labour Tribunal may—
 - (a) refuse the application;
 - (b) order that the principal order be varied to the effect that the employer be relieved, wholly or partly, from the liability to pay the sum mentioned in section 32NA(1)(b); or
 - (c) make any order that it considers just and appropriate in the circumstances, including specifying a later date as the date by which the employee must be reinstated or re-engaged.

(Added 21 of 2018 s. 8)

32Q. Exclusion

This Part shall not apply to acts of—

- (a) sex discrimination within the meaning of the Sex Discrimination Ordinance (Cap. 480);
 - (b) discrimination against persons on the ground of their or their associates' disability within the meaning of the Disability Discrimination Ordinance (Cap. 487); *(Amended 7 of 2001 s. 7)*
 - (c) discrimination against persons on the ground of family status within the meaning of the Family Status Discrimination Ordinance (Cap. 527); or *(Added 7 of 2001 s. 7. Amended 29 of 2008 s. 87)*
 - (d) discrimination against a person on the ground of the race of the person or his or her near relative within the meaning of the Race Discrimination Ordinance (Cap. 602). *(Added 29 of 2008 s. 87)*
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Part VI

Deductions from Wages

(Format changes—E.R. 3 of 2015)

32. Restriction on deductions from wages

- (1) No deductions shall be made by an employer from the wages of his employee or from any other sum due to the employee otherwise than in accordance with this Ordinance.
- (2) The following deductions may be made by an employer from the wages of his employee—

- (a) deductions for absence from work:

Provided that—

- (i) in the case of a contract of employment under which wages are calculated on a basis of time, no such deduction shall exceed a sum proportionate to the period of time during which the employee was absent from work;
 - (ii) no such deduction shall be made for the purpose of defraying or partly defraying the cost of holiday pay or sickness allowance which the employer has paid or may be or may become liable to pay to the employee; *(Replaced 39 of 1973 s. 4)*
 - (b) deductions for damage to or loss of goods, equipment or property belonging to or in the possession or control of the employer or expressly entrusted to an employee for custody, or for loss of money for which an employee is required to account, where such damage or loss is directly attributable to his neglect or default:

Provided that—

- (i) the total amount recoverable by deduction in any one case shall not exceed the equivalent in value of the damage or loss suffered by the employer or \$300, whichever is the less; and
 - (ii) the total of such deductions in any one wage period shall not exceed one quarter of the wages payable to the employee in respect of that wage period;
- (c) deductions in respect of meals supplied by the employer at the request of the employee not exceeding the cost to the employer of such meals including expenses of production and service;
- (d) deduction for accommodation provided by the employer for the employee or his family made in respect of the period such accommodation has been in the occupation of the employee or his family;
- (e) deductions for the recovery of any advance or over-payment of wages made by the employer to the employee:

Provided that—

- (i) except with the approval in writing of the Commissioner, no such deductions shall be made by way of discount, interest or any similar charge in consideration of such advance or over-payment; and
 - (ii) the total of such deductions in any one wage period shall not exceed one quarter of the wages payable to the employee in respect of that wage period;
- (f) deductions, with the written consent of an employee, for the recovery of any loan made by the employer to the employee;

- (g) deductions made at the request in writing of the employee in respect of contributions to be paid by him through the employer for the purpose of any medical benefit scheme, superannuation scheme, retirement scheme or thrift scheme lawfully established for the benefit of the employee or his dependants; (*Amended 41 of 1990 s. 17*)
 - (ga) deductions permitted by section 15L(4); (*Added 21 of 2014 s. 8*)
 - (h) deductions which are required or authorized under any enactment to be made from the wages of an employee;
 - (i) other deductions made at the request in writing of the employee and with the approval of the Commissioner, which may be signified in respect of any particular case in writing or in general by notice in the Gazette.
- (3) Except with the approval in writing of the Commissioner, the total of all deductions, excluding deductions in respect of absence from work or any deduction pursuant to an attachment order made under section 20(1) of the Guardianship of Minors Ordinance (Cap. 13), section 9A(1) of the Separation and Maintenance Orders Ordinance (Cap. 16) or section 28(1) of the Matrimonial Proceedings and Property Ordinance (Cap. 192), made under this section from the wages of an employee in any one wage period shall not exceed one half of the wages payable to the employee in respect of the wage period. (*Amended 69 of 1997 s. 34*)

Employment Ordinance

Part VI

6-8

Section 32

Cap. 57

- (4) Nothing in this section shall be construed as preventing an employer from paying to an employee at any time before the due date the amount of wages and other remuneration proportionate to work done and adjusting any amount so paid against the total amount payable at the end of the wage period.
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Part VII

Sickness Allowance

(Part VII added 39 of 1973 s. 5. Format changes—E.R. 2 of 2012)

33. Sickness allowance

- (1) An employee who has been employed by his employer under a continuous contract for a period of 1 month or more immediately preceding a sickness day shall be paid by his employer sickness allowance in accordance with this section and section 35. *(Amended 1 of 1977 s. 2; 48 of 1984 s. 14)*
- (2) Subject to subsection (2A), an entitlement to sickness allowance shall accrue at the rate of—
 - (a) 2 paid sickness days for each completed month of the employee's employment under the continuous contract with his employer during the first 12 months of such employment; and
 - (b) 4 paid sickness days for each such month thereafter, and may be accumulated from time to time up to a maximum of 120 paid sickness days. *(Replaced 57 of 1983 s. 5)*
- (2A) In the case of an employee who has been employed by his employer under a continuous contract for a period of 1 month or more immediately preceding the commencement* of the Employment (Amendment) Ordinance 1983 (57 of 1983), the employee's entitlement to sickness allowance shall, with effect from and without prejudice to the entitlement to sickness allowance accrued at such commencement, accrue

Editorial Note:

* Commencement date: 1 November 1983.

at the rate prescribed by subsection (2) as amended by that Ordinance, and his employment for part of a month (if any) at such commencement shall be taken into account in calculating his entitlement to sickness allowance under and at the rate prescribed by that subsection. *(Added 57 of 1983 s. 5)*

- (3) Subject to subsection (3C), an employee who takes less than 4 consecutive days as sickness days shall not be entitled to be paid sickness allowance in respect thereof. *(Amended 22 of 1981 s. 7)*
- (3A) Where a female employee who is pregnant or who has given birth to a child and who is required to attend a medical examination in relation to her pregnancy or post confinement medical treatment, any day on which she is absent from work for such examination or treatment shall be a sickness day. *(Added 22 of 1981 s. 7)*
- (3B) Where a female employee suffers a miscarriage, any day on which she is absent from work by reason of such miscarriage shall be a sickness day. *(Added 22 of 1981 s. 7)*
- (3C) A female employee who has an entitlement to a sickness allowance under this section shall, notwithstanding subsection (3), be paid sickness allowance for every sickness day under subsection (3A) or (3B), and subsections (4), (4A), (5), (5A) and (7) shall apply to any such sickness day and sickness allowance in respect thereof. *(Added 22 of 1981 s. 7. Amended 57 of 1983 s. 5)*
- (4) Subject to subsections (5) and (5A), an employee who takes 4 or more consecutive days as sickness days shall be entitled to be paid sickness allowance for the total number of sickness days taken by him, but not exceeding the number of paid sickness days accumulated by him, under subsections (2) and (2A), immediately before the commencement of the sickness days taken. *(Replaced 57 of 1983 s. 5)*

- (4A) The number of sickness days in respect of which an employee has been paid sickness allowance under subsection (4) shall be deducted in accordance with section 37(1B) from the total number of paid sickness days accumulated by him. (*Added 57 of 1983 s. 5*)
- (4B) Subject to subsection (4BAA), an employer shall not terminate a contract of employment of an employee otherwise than in accordance with section 9 on any sickness day taken by the employee in respect of which sickness allowance is payable under this section. (*Replaced 7 of 2001 s. 8*)
- (4BAAA) For the purposes of subsections (4BA)(b), (4BAAB) and (4BAAC), **wages** (工資) includes any sum paid by an employer in respect of—
- (a) a day of maternity leave, a day of paternity leave, a rest day, a sickness day, a holiday or a day of annual leave taken by the employee; (*Amended 21 of 2014 s. 9*)
 - (b) a day of leave taken by the employee with the agreement of his employer;
 - (c) a normal working day on which the employee is not provided with work;
 - (d) a day of absence from work of the employee due to temporary incapacity for which compensation is payable under section 10 of the Employees' Compensation Ordinance (Cap. 282). (*Added 7 of 2007 s. 9*)
- (4BA) An employer who contravenes subsection (4B) shall be liable to pay to the dismissed employee—
- (a) the sum which would have been payable if the contract had been terminated by the employer under section 7; and
 - (b) a further sum equivalent to 7 times the daily average of the wages earned by the employee during—

- (i) the period of 12 months immediately before the date of termination of the contract of employment; or
- (ii) if the employee has been employed by the employer for a period shorter than 12 months immediately before the date of termination of the contract, the shorter period. (*Replaced 7 of 2007 s. 9*)

(Added 103 of 1995 s. 13)

(4BAAB) In calculating the daily average of the wages earned by an employee during the period of 12 months or the shorter period—

- (a) any period therein for which the employee was not paid his wages or full wages by reason of—
 - (i) any maternity leave, paternity leave, rest day, sickness day, holiday or annual leave taken by the employee; (*Amended 21 of 2014 s. 9*)
 - (ii) any leave taken by the employee with the agreement of his employer;
 - (iii) his not being provided by his employer with work on any normal working day; or
 - (iv) his absence from work due to temporary incapacity for which compensation is payable under section 10 of the Employees' Compensation Ordinance (Cap. 282); and
- (b) any wages paid to him for the period referred to in paragraph (a),

are to be disregarded. (*Added 7 of 2007 s. 9*)

(4BAAC) For the avoidance of doubt, if the amount of the wages paid to an employee in respect of a day specified in subsection (4BAAA) is only a fraction of the amount earned by the

employee on a normal working day, the wages and the day are to be disregarded in accordance with subsection (4BAAB).
(*Added 7 of 2007 s. 9*)

(4BAAD) Despite subsection (4BA)(b), if for any reason it is impracticable to calculate the daily average of the wages earned by an employee in the manner provided in that subsection, the amount may be calculated by reference to the wages earned by a person who was employed at the same work by the same employer during the period of 12 months immediately before the date of termination of the employee's contract of employment, or, if there is no such person, by a person who was employed in the same trade or occupation and at the same work in the same district during the period of 12 months immediately before the date of termination of the employee's contract of employment. (*Added 7 of 2007 s. 9*)

(4BAA) An employer who terminates the continuous contract of employment of an employee on any sickness day taken by the employee in respect of which sickness allowance is payable under this section shall be taken for the purposes of subsection (4B) to terminate the contract otherwise than in accordance with section 9—

(a) unless the contrary is proved; or

(b) subject to subsection (4BAB), unless the employer proves that—

(i) he purported to terminate the contract in accordance with that section; and

(ii) at the time of such termination, he reasonably believed that he had a ground to do so. (*Added 7 of 2001 s. 8*)

(4BAB) Subsection (4BAA)(b) shall not apply in the case of civil proceedings. (*Added 7 of 2001 s. 8*)

- (4BB) Any employer who contravenes subsection (4B) shall be guilty of an offence and shall be liable on conviction to a fine at level 6. *(Replaced 7 of 2001 s. 8)*
- (4C) Where an employer terminates a contract of employment of an employee on any sickness day taken by the employee, the employer shall, notwithstanding the termination of the contract of employment, pay to the employee sickness allowance for the total number of sickness days in respect of which the employee would have been entitled to be paid sickness allowance under subsection (4), and subsections (5), (5A) and (7) shall apply to any such sickness day and sickness allowance in respect thereof as if the contract of employment had not been terminated. *(Added 57 of 1983 s. 5)*
- (5) An employer shall not be liable to pay sickness allowance to an employee in respect of any sickness day—
- (a) subject to subsection (5A), unless such day is a day specified in the appropriate medical certificate as a day on which, in the opinion of the registered medical practitioner, registered Chinese medicine practitioner or registered dentist who issued the certificate, the employee was, is or will be, as the case may be, unfit for work on account of sickness or injury; *(Amended 57 of 1983 s. 5; 5 of 1995 s. 9; 16 of 2006 s. 7)*
 - (b) if, where the employer is operating a recognized scheme of medical treatment, the employee, at any time during the sickness or injury, unless he is a patient in a hospital, refuses without reasonable excuse to submit himself for treatment under the scheme; *(Amended 57 of 1983 s. 5; 5 of 1995 s. 9; 16 of 2006 s. 7)*
 - (c) if, where the employer is operating a recognized scheme of medical treatment, the employee, having submitted himself for treatment by the registered medical practitioner, registered Chinese medicine practitioner

or registered dentist engaged by the employer for the purposes of the scheme or being a patient in a hospital, at any time during the sickness or injury, without reasonable excuse, disregards— (*Amended 16 of 2006 s. 7*)

- (i) the advice of such medical practitioner, Chinese medicine practitioner or dentist; or
- (ii) the advice of the registered medical practitioner, registered Chinese medicine practitioner or registered dentist who is attending him in the hospital; (*Amended 57 of 1983 s. 5; 5 of 1995 s. 9; 16 of 2006 s. 7*)
- (d) if the unfitness for work of the employee is caused by his serious and wilful misconduct;
- (e) if the unfitness for work of the employee is on account of an injury or occupational disease in respect of which compensation is payable in accordance with the Employees' Compensation Ordinance (Cap. 282);
- (f) in respect of which the employee has received holiday pay.

(5AA) Where a medical certificate issued for the purposes of subsection (5)—

- (a) is issued by a registered medical practitioner, subsection (5)(b) applies only if the recognized scheme of medical treatment operated by the employer covers medical treatment given by a registered medical practitioner;
- (b) is issued by a registered Chinese medicine practitioner, subsection (5)(b) applies only if the recognized scheme of medical treatment operated by the employer covers medical treatment given by a registered Chinese medicine practitioner; or

- (c) is issued by a registered dentist, subsection (5)(b) applies only if the recognized scheme of medical treatment operated by the employer covers medical treatment given by a registered dentist. (*Added 16 of 2006 s. 7*)
- (5A) Where an employee takes paid sickness days entered in category 2 of the record kept in respect of him under section 37(1A), he shall, if so required by his employer, produce to the employer, in respect of each such sickness day, a medical certificate that is 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. (*Added 57 of 1983 s. 5. Amended 5 of 1995 s. 9; 16 of 2006 s. 7*)
- (6) For the purposes of this section—
 - (a) the expression ***hospital*** (醫院) means a hospital or specialist clinic maintained by the Government, a military hospital, a public hospital within the meaning of the Hospital Authority Ordinance (Cap. 113) or a hospital in respect of which a person is registered under the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165); (*Amended 81 of 1991 s. 2; 2 of 2012 s. 3*)
 - (b) in subsection (5)(a), the expression ***appropriate medical certificate*** (適當的醫生證明書) means—
 - (i) where, on the day on which the certificate is issued, the employer is operating a recognized scheme of medical treatment—
 - (A) a certificate issued by the registered medical practitioner, registered Chinese medicine practitioner or registered dentist engaged by the employer for the purposes of the scheme;

- (B) (if the scheme does not cover medical treatment given by a registered medical practitioner) a certificate issued by any registered medical practitioner;
 - (C) (if the scheme does not cover medical treatment given by a registered Chinese medicine practitioner) a certificate issued by any registered Chinese medicine practitioner;
 - (D) (if the scheme does not cover medical treatment given by a registered dentist) a certificate issued by any registered dentist; or
 - (E) (if the employee refuses with reasonable excuse to submit himself for treatment under the scheme) a certificate issued by any registered medical practitioner, registered Chinese medicine practitioner or registered dentist; *(Replaced 16 of 2006 s. 7)*
- (ii) where, on the day on which the certificate is issued, the employee is a patient in a hospital, a certificate issued by the registered medical practitioner, registered Chinese medicine practitioner or registered dentist attending the employee in the hospital; or
 - (iii) in any other cases, a certificate issued by any registered medical practitioner, registered Chinese medicine practitioner or registered dentist. *(Replaced 57 of 1983 s. 5. Amended 5 of 1995 s. 9; 16 of 2006 s. 7)*
- (7) Every medical certificate shall, in addition to specifying the number of days on which, in the opinion of the issuer of the certificate, the employee was, is or will be, as the case may be, unfit for work, specify the nature of the sickness or

injury on account of which, in the opinion of the issuer of the certificate, the employee was, is or will be, as the case may be, unfit for work and, in the case of a medical certificate produced by an employee for the purposes of subsection (5A), the medical certificate shall, if so required by his employer, contain or be accompanied by a brief record of the investigation carried out and the treatment prescribed by the issuer of the certificate. (*Amended 57 of 1983 s. 5; 5 of 1995 s. 9; 16 of 2006 s. 7*)

34. Recognized scheme of medical treatment

- (1) The Director may recognize for the purposes of this Ordinance a scheme of medical treatment operated by an employer, if he is satisfied that each employee, who is qualified to be paid sickness allowance by the employer by whom the scheme is operated, is provided, without expense to the employee, by a registered medical practitioner, registered Chinese medicine practitioner or registered dentist with such medical treatment as an out-patient as the Director considers reasonable. (*Amended 5 of 1995 s. 10; 16 of 2006 s. 8*)
- (2) The Director may, having given to the employer by whom the scheme is operated not less than 1 month's notice of his intention so to do, withdraw his recognition of any scheme of medical treatment.
- (3) Whenever the Director has recognized, or has withdrawn his recognition of, any scheme of medical treatment, he shall publish a notice thereof in the Gazette.

35. Rate of sickness allowance

- (1) For the purposes of subsections (2), (2A) and (2B), **wages** (工資) includes any sum paid by an employer in respect of—

- (a) a day of maternity leave, a day of paternity leave, a rest day, a sickness day, a holiday or a day of annual leave taken by the employee; (*Amended 21 of 2014 s. 10*)
 - (b) a day of leave taken by the employee with the agreement of his employer;
 - (c) a normal working day on which the employee is not provided with work;
 - (d) a day of absence from work of the employee due to temporary incapacity for which compensation is payable under section 10 of the Employees' Compensation Ordinance (Cap. 282). (*Replaced 7 of 2007 s. 10*)
- (2) The daily rate of sickness allowance is a sum equivalent to four-fifths of the daily average of the wages earned by the employee during—
 - (a) the period of 12 months immediately before the sickness day or first sickness day (as appropriate); or
 - (b) if the employee has been employed by the employer concerned for a period shorter than 12 months immediately before the sickness day or first sickness day (as appropriate), the shorter period,but no sickness allowance is payable in respect of a day on which the employee would not have worked had he not been sick and for which no wages would normally be payable by the employer. (*Replaced 7 of 2007 s. 10*)
- (2A) In calculating the daily average of the wages earned by an employee during the period of 12 months or the shorter period—
 - (a) any period therein for which the employee was not paid his wages or full wages by reason of—

- (i) any maternity leave, paternity leave, rest day, sickness day, holiday or annual leave taken by the employee; (*Amended 21 of 2014 s. 10*)
 - (ii) any leave taken by the employee with the agreement of his employer;
 - (iii) his not being provided by his employer with work on any normal working day; or
 - (iv) his absence from work due to temporary incapacity for which compensation is payable under section 10 of the Employees' Compensation Ordinance (Cap. 282); and
- (b) any wages paid to him for the period referred to in paragraph (a),
are to be disregarded. (*Added 7 of 2007 s. 10*)
- (2B) For the avoidance of doubt, if the amount of the wages paid to an employee in respect of a day specified in subsection (1) is only a fraction of the amount earned by the employee on a normal working day, the wages and the day are to be disregarded in accordance with subsection (2A). (*Added 7 of 2007 s. 10*)
- (2C) Despite subsection (2), if for any reason it is impracticable to calculate the daily average of the wages earned by an employee in the manner provided in that subsection, the amount may be calculated by reference to the wages earned by a person who was employed at the same work by the same employer during the period of 12 months immediately before the employee's sickness day or first sickness day (as appropriate), or, if there is no such person, by a person who was employed in the same trade or occupation and at the same work in the same district during the period of 12 months immediately before the employee's sickness day or first sickness day (as appropriate). (*Added 7 of 2007 s. 10*)

- (3) Where a contract of employment of an employee is terminated, sickness allowance payable under section 33(4C) shall be calculated in accordance with this section. *(Added 48 of 1984 s. 15. Amended 7 of 2007 s. 10)*
- (4) If, pursuant to the terms of his contract of employment or any other agreement or for any other reason, an employee is paid by his employer a sum of money in respect of a paid sickness day taken by him, the sickness allowance payable to the employee in respect of that sickness day is to be reduced by the sum. *(Added 7 of 2007 s. 10)*
- (Amended 1 of 1977 s. 3)*

35A. Transitional

Section 35 as in force immediately before the commencement* of the Employment (Amendment) Ordinance 1996 (60 of 1996) shall continue to apply in the calculation of sickness allowance payable to an employee under section 33 in respect of sickness days taken by that employee before that commencement.

(Added 60 of 1996 s. 3)

Editorial Note:

* Commencement date: 1 November 1996

36. Time for payment of sickness allowance

- (1) Except in the case of an employee who is normally paid his wages daily, sickness allowance shall be paid to the employee or his duly appointed agent in the manner and at the place specified in section 26 not later than the day on which the employee is next paid his wages.
- (2) In the case of an employee who is normally paid his wages daily, sickness allowance shall be paid to him or his duly

appointed agent in the manner and at the place specified in section 26 at least once in every 7 days.

- (3) Where a contract of employment of an employee is terminated, sickness allowance payable under section 33(4C) shall be paid to that employee in accordance with subsection (1) or (2) whichever is applicable to the employee as if the contract of employment had not been terminated. *(Added 48 of 1984 s. 16)*

37. Employer to keep record of sickness days

- (1) Every employer shall keep a record—
 - (a) of the date of commencement and termination of the employment of each employee;
 - (b) in accordance with subsection (1A), of all paid sickness days accumulated by each employee under section 33;
 - (c) of all paid sickness days taken by each employee in respect of which sickness allowance is payable under section 33, and such sickness days shall be deducted in accordance with subsection (1B); and
 - (d) of all sickness allowance paid to each employee and the sickness days in respect of which the sickness allowance was paid. *(Replaced 57 of 1983 s. 6)*
- (1A) A record kept for the purposes of subsection (1)(b) shall contain the following heads and details—

Category 1: in which shall be entered the number of paid sickness days accumulated by an employee—

- (a) under section 33(2A); and
- (b) in respect of each month under section 33(2),

but so however that the total number of paid sickness days in this category does not at the time of entry exceed 36 days; and

Category 2: in which shall be entered every paid sickness day in excess of 36 days which cannot be entered in category 1, but so however that the total number of paid sickness days in this category does not at the time of entry exceed 84 days,

and references in this section to category 1 and category 2 shall be construed as references to category 1 and category 2 respectively in this subsection. (*Added 57 of 1983 s. 6*)

- (1B) The number of paid sickness days taken consecutively by an employee shall be deducted from the total number of paid sickness days in category 1 accumulated by him immediately before the commencement of those sickness days and where the number of paid sickness days taken exceeds the total number of paid sickness days in that category, the excess paid sickness days shall be deducted from the total number of paid sickness days in category 2 accumulated by him immediately before such commencement. (*Added 57 of 1983 s. 6*)
- (2) If an employer maintains a record under subsection (1)—
- (a) an employee who returns to work after a sickness day shall, as soon as is practicable but not later than 7 days after his return to work, sign the entry in the record specifying the days on which he has been absent;
 - (b) an employee shall be entitled to inspect that part of the record which relates to him at any reasonable time during working hours and, where an employee has ceased to be employed by his employer, he may inspect that part of the record which relates to him at any

reasonable time during working hours in the period of 2 months next following the date on which he ceased to be employed.

- (3) If an employer fails to maintain the record under subsection (1) in respect of any employee employed by him, or if the record is lost or destroyed, the employee shall, notwithstanding any sickness allowance paid to him by his employer under section 33, be entitled to paid sickness days for each completed month of his employment in accordance with section 33. (*Amended 57 of 1983 s. 6*)

38. Records to be produced to Commissioner

For the purposes of section 37, the Commissioner may, either by notice in writing served by registered post or by notice in the Gazette, require any employer or class of employers to send to him all or any records of sickness days in respect of any period not exceeding 2 years preceding the date of the notice.

Part VIII

Holidays with Pay

(Part VIII added 39 of 1973 s. 5. Format changes—E.R. 2 of 2012)

39. Grant of holidays

- (1) Subject to subsections (1A), (2) and (3), an employee shall be granted a statutory holiday by his employer on each of the following days*— *(Amended 137 of 1997 s. 3)*
- (a) Lunar New Year's Day or, if that day falls on a Sunday, then the fourth day of Lunar New Year; *(Amended 27 of 1982 s. 2; 23 of 2011 s. 5)*
 - (b) the second day of Lunar New Year or, if that day falls on a Sunday, then the fourth day of Lunar New Year; *(Amended 23 of 2011 s. 5)*
 - (c) the third day of Lunar New Year or, if that day falls on a Sunday, then the fourth day of Lunar New Year; *(Amended 23 of 2011 s. 5)*
 - (d) Ching Ming (清明) Festival;
 - (da) Labour Day, being the first day of May; *(Added 100 of 1997 s. 2. Amended 35 of 1998 s. 5)*
 - (e) Tuen Ng (端午) Festival; *(Amended 35 of 1998 s. 5)*
 - (f) the day following the Chinese Mid-Autumn (中秋) Festival or, if that day falls on a Sunday, then the second day following that Festival; *(Amended 27 of 1982 s. 2; 23 of 2011 s. 5);*
 - (g) the Chung Yeung (重陽) Festival;

- (h) the Chinese Winter Solstice Festival (冬節) or Christmas Day, at the option of the employer;
 - (i) the first day of January; (*Replaced 53 of 1976 s. 2*)
 - (j) Hong Kong Special Administrative Region Establishment Day, being the first day of July; and (*Added 137 of 1997 s. 3. Amended 35 of 1998 s. 5*)
 - (k) National Day, being the first day of October. (*Added 137 of 1997 s. 3. Amended 35 of 1998 s. 5*)
- (1A) The operation of subsection (1)(da) shall be suspended for the year 1998. (*Added 137 of 1997 s. 3*)
- (2) An employer may, instead of granting an employee a holiday on a statutory holiday, grant the employee an alternative holiday on another day (which is not a statutory holiday or a substituted holiday) within the period of 60 days immediately preceding or next following the statutory holiday, if the employer has notified the employee, either orally or in writing or by notice posted in a conspicuous place in the place of employment, of the day on which he will be granted the alternative holiday—
- (a) where the alternative holiday is to be taken on a day within the period of 60 days immediately preceding the statutory holiday, not less than 48 hours before that day; or
 - (b) where the alternative holiday is to be taken on a day within the period of 60 days next following the statutory holiday, not less than 48 hours before the statutory holiday.
- (2A) Subsection (2) shall apply to and in relation to a holiday under subsection (4) as it applies to and in relation to a statutory holiday. (*Added 137 of 1997 s. 3*)

(3) An employer and his employee may agree that another day shall be substituted for a statutory holiday or an alternative holiday or a holiday under subsection (4), if such substituted holiday falls within the period of 30 days of such statutory holiday, alternative holiday or holiday under subsection (4). *(Amended 27 of 1982 s. 2)*

(4) Where—

(a) a statutory holiday falls on a rest day, or in the case of an employee who is a young person, on a day on which, by virtue of the Employment of Young Persons (Industry) Regulations (Cap. 57 sub. leg. C), the employment of the employee in an industrial undertaking is not allowed, the employee shall be granted a holiday on the next day thereafter which is not a statutory holiday or an alternative holiday or a substituted holiday or a rest day; or *(Amended 7 of 2001 s. 9)*

(b) a statutory holiday falls on the same day as that of another statutory holiday, an employee shall be granted a holiday on the next day thereafter which is not a statutory holiday or an alternative holiday or a substituted holiday or a rest day. *(Replaced 137 of 1997 s. 3)*

[#](5)-(9) *(Repealed 137 of 1997 s. 3)*

(Amended 53 of 1976 s. 2; 137 of 1997 s. 3)

Editorial Note:

* For additional statutory holidays in 1981, 1986, 1997 and 2015, see 39 of 1981, 35 of 1986, 84 of 1997, s. 2(1) of 111 of 1997 and s. 2(b) of 9 of 2015.

For savings provisions, please see s. 6 of 137 of 1997.

40. Payment of holiday pay

Subject to section 12(11), an employee who has been employed

by his employer under a continuous contract for a period of 3 months immediately preceding a statutory holiday shall, not later than the day on which the employee is next paid his wages after that holiday, be paid by his employer holiday pay at the rate specified in section 41, whether the employee takes a holiday on the statutory holiday or on an alternative or substituted holiday or a holiday under section 39(4).

(Amended 53 of 1976 s. 3; 71 of 1976 s. 6; 48 of 1984 s. 17)

40A. Restriction on pay in lieu of holiday

- (1) Subject to subsection (2), no payment of holiday pay payable under section 40, or other sum, shall be made in lieu of the grant of a holiday.
- (2) Notwithstanding subsection (1), where a contract of employment of an employee is terminated, holiday pay in respect of a holiday granted as an alternative holiday or substituted holiday under section 39(2), (2A) or (3) prior to the termination of the contract of employment but falling after such termination shall be paid to that employee as soon as is practicable but in any case not later than 7 days after the day of termination; and such holiday pay shall be calculated in accordance with section 41 as if the contract of employment had not been terminated. *(Amended 137 of 1997 s. 4; 7 of 2007 s. 11)*

(Added 48 of 1984 s. 18)

41. Rate of holiday pay

- (1) For the purposes of subsections (2), (3) and (4), **wages** (工資) includes any sum paid by an employer in respect of—
 - (a) a day of maternity leave, a day of paternity leave, a rest day, a sickness day, a holiday or a day of annual leave taken by the employee; *(Amended 21 of 2014 s. 11)*

- (b) a day of leave taken by the employee with the agreement of his employer;
 - (c) a normal working day on which the employee is not provided with work;
 - (d) a day of absence from work of the employee due to temporary incapacity for which compensation is payable under section 10 of the Employees' Compensation Ordinance (Cap. 282).
- (2) The daily rate of holiday pay is a sum equivalent to the daily average of the wages earned by the employee during—
 - (a) the period of 12 months immediately before the holiday or first day of the holidays (as appropriate); or
 - (b) if the employee has been employed by the employer concerned for a period shorter than 12 months immediately before the holiday or first day of the holidays (as appropriate), the shorter period.
- (3) In calculating the daily average of the wages earned by an employee during the period of 12 months or the shorter period—
 - (a) any period therein for which the employee was not paid his wages or full wages by reason of—
 - (i) any maternity leave, paternity leave, rest day, sickness day, holiday or annual leave taken by the employee; (*Amended 21 of 2014 s. 11*)
 - (ii) any leave taken by the employee with the agreement of his employer;
 - (iii) his not being provided by his employer with work on any normal working day; or
 - (iv) his absence from work due to temporary incapacity for which compensation is payable under section

10 of the Employees' Compensation Ordinance (Cap. 282); and

- (b) any wages paid to him for the period referred to in paragraph (a),
are to be disregarded.
- (4) For the avoidance of doubt, if the amount of the wages paid to an employee in respect of a day specified in subsection (1) is only a fraction of the amount earned by the employee on a normal working day, the wages and the day are to be disregarded in accordance with subsection (3).
- (5) Despite subsection (2), if for any reason it is impracticable to calculate the daily average of the wages earned by an employee in the manner provided in that subsection, the amount may be calculated by reference to the wages earned by a person who was employed at the same work by the same employer during the period of 12 months immediately before the employee's holiday or first day of the holidays (as appropriate), or, if there is no such person, by a person who was employed in the same trade or occupation and at the same work in the same district during the period of 12 months immediately before the employee's holiday or first day of the holidays (as appropriate).
- (6) If, pursuant to the terms of his contract of employment or any other agreement or for any other reason, an employee is paid by his employer a sum of money in respect of a holiday taken by him, the holiday pay payable to the employee in respect of that holiday is to be reduced by the sum.

(Replaced 7 of 2007 s. 12)

Part VIIIA

Annual Leave with Pay

(Part VIIIA added 53 of 1977 s. 3. Format changes—E.R. 3 of 2015)

41A. Definitions (Part VIIIA)

In this Part, in relation to an employee—

appropriate day (適用日) means—

- (a) where the employee becomes entitled under section 41F(3) to any annual leave, the first day of the close down as regards which the entitlement arises or where he becomes so entitled more than once in any period of 12 months, the first day of the more or most recent, as appropriate, of such close downs; or
- (b) where the employee does not become so entitled—
 - (i) the day following the end of the employee's last (or only) leave year; or
 - (ii) where there is no such leave year, the day on which his employment commenced;

final employment period (最終僱傭期) means the period beginning on the appropriate day and ending on the termination of his employment;

leave year (假期年), unless the context otherwise requires, means any period of 12 months— *(Amended 61 of 1993 s. 6)*

- (a) commencing on—
 - (i) in case the employee is entitled under section 41F(3) to any annual leave, the first day of the

close down as regards which the entitlement arose;
or

(ii) in the case of any other employee, the day on which his employment commenced; or

(b) commencing on an anniversary of such day;

notional leave pay (假定假期薪酬) means an amount equal to the annual leave pay which would have been due to the employee had his contract of employment terminated, or been terminated, on the appropriate day's anniversary next following such contract's actual termination and had that pay been calculated in accordance with section 41C. (*Amended 7 of 2007 s. 13*)

(*Replaced 53 of 1990 s. 2*)

41AA. Annual leave

- (1) Subject to this Part, every employee who has been in employment under a continuous contract for not less than 12 months shall, in respect of each leave year, be entitled to paid leave (in this Part referred to as ***annual leave***) calculated in accordance with subsection (2).
- (2) Where an employee has been in employment under a continuous contract for a period specified in column (1) of the Table to this section, the amount of annual leave to which he shall be entitled in respect of any leave year in that period shall be the number of days specified in column (2) of such Table in respect of the period.
- (3) Subject to subsection (5)(c), times at which annual leave is granted shall be determined by the employer after consultation with the employee concerned or his representatives.
- (4) An employer shall give an employee not less than 14 days' notice in writing of the time he has determined for the grant

of a period of annual leave, except where a shorter period of notice is agreed to by the employer and employee.

- (5) Annual leave to which an employee is entitled—
 - (a) shall be granted by his employer and be taken by the employee within the period of 12 months beginning immediately after the expiration of the leave year to which it relates;
 - (b) subject to paragraph (c), shall be for an unbroken period; and
 - (c) subject to subsection (9), shall, if the employee so requests his employer, be divided as follows—
 - (i) where the leave entitlement does not exceed 10 days, it shall be granted on consecutive days except that not more than 3 days of the period of leave may be granted on any day or days (whether consecutive or not); and
 - (ii) where such entitlement exceeds 10 days, 7 days of the period of leave shall be granted on consecutive days and the remaining leave may be granted on any day or days (whether consecutive or not).
- (6) If a rest day or holiday falls within any period of annual leave granted in accordance with this section, it shall be counted as annual leave and another rest day or holiday shall be substituted in accordance with section 18(5) or section 39(2), (2A), (3) or (4), as the case may require. (*Amended 137 of 1997 s. 5*)
- (7) No period of total incapacity for work by reason of sickness or injury occurring during a period of annual leave shall count as part of that annual leave unless it commences after the commencement of the period of annual leave.
- (8) Where—

- (a) an employer continues to employ an employee after the expiration of a period during which annual leave should have been granted to him and the employer has not granted that leave, then at the option of the employee but subject to paragraph (b) the employer shall (whether or not proceedings have been taken for an offence under section 63(4)(e))—
 - (i) pay to the employee, in addition to any pay due to him, compensation equal in amount to the annual leave pay which he would have received had the leave been granted so as to end on the expiration of the period during which it should have been granted; or
 - (ii) grant the employee paid leave equal to the leave which should have been granted;
 - (b) an employee opts under paragraph (a) to take paid leave, he shall take the leave on such day or days as may be agreed to by the employer and him or, if there is no such agreement, as shall be specified by the employer.
- (9) Where—
 - (a) an employer proposes to close down his business or part thereof for the purpose of granting annual leave to any of his employees; and
 - (b) notice of the proposed close down is duly given under section 41F; and
 - (c) such close down will not result in any person who has been in employment in the business under a continuous contract for 12 months or more having to take annual leave on fewer consecutive days than—
 - (i) where his leave entitlement does not exceed 10 days, the number of consecutive days' leave that would be required to be granted under subsection

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(5)(c)(i) were his leave being divided under that subsection;

(ii) 7 days where his leave entitlement exceeds 10 days,

then nothing in this section shall prevent or restrict, or be construed as preventing or restricting, the close down.

(10) For the avoidance of doubt it is declared that annual leave is, and shall be granted, in addition to the rest days, holidays, maternity leave and paternity leave to which an employee is entitled under this Ordinance. *(Amended 21 of 2014 s. 12)*

Table

(1) Period of employment	(2) Number of days' annual leave for a leave year ending—				
	in the part of 1990 beginning on the coming into operation of this Table and ending on the following 31 December	in 1991	in 1992	in 1993	in 1994 or in any subsequent year
At least 1 year but less than 3 years	7	7	7	7	7
At least 3 years but less than 4 years	8	8	8	8	8

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(1)	(2) Number of days' annual leave for a leave year ending—				
Period of employment	in the part of 1990 beginning on the coming into operation of this Table and ending on the following 31 December	in 1991	in 1992	in 1993	in 1994 or in any subsequent year
At least 4 years but less than 5 years	9	9	9	9	9
At least 5 years but less than 6 years	10	10	10	10	10
At least 6 years but less than 7 years	10	11	11	11	11
At least 7 years but less than 8 years	10	11	12	12	12
At least 8 years but less than 9 years	10	11	12	13	13
At least 9 years	10	11	12	13	14

(Added 53 of 1990 s. 2)

41AB. Option for common leave year

(1) Notwithstanding anything in this Part, an employer may, at

his option, elect to use a 12 month period determined by him as the leave year for the purpose of calculating the annual leave of all of his employees and, in that case, each of his employees is entitled to an annual leave under this Part determined in accordance with this section.

(2) An employer shall, before making an election under this section, give 1 month's notice—

- (a) to each of his employees in writing; or
- (b) by posting a notice in a conspicuous place in the place of employment,

stating his intention to make the election, the 12 month period he intends to elect to use and the date from which he will commence using it.

(3) Where an employer makes an election under this section, he shall thenceforth use that 12 month period as the leave year for the purpose of calculating the annual leave entitlement of all of his employees and, where an employee has not been in employment under a continuous contract for the full period of a leave year—

(a) the employer shall calculate the leave entitlement on a pro rata basis, based on the number of calendar days between the day the employee commenced employment and the end of the leave year, divided by 365, and any fraction of a day resulting from the calculation shall be counted as a full day's leave; and

(b) the employee may, at his option—

- (i) after consultation with his employer, take his leave entitlement for the pro rata portion referred to in paragraph (a); or
- (ii) carry it forward and combine it with his leave entitlement for the next full leave year.

- (4) Where an employee was already employed on the day an employer commences using a 12 month period for calculating annual leave for all of his employees under this section—
- (a) the employee is entitled to an annual leave calculated on a pro rata basis, based on the number of calendar days between the day he commenced employment (or the anniversary of such day, as the case may be) and the day preceding the day on which the employer commenced using the 12 month period under this section, divided by 365, and any fraction of a day resulting from the calculation shall be counted as a full day's leave; and
 - (b) the employee may, at his option—
 - (i) after consultation with his employer, take his leave entitlement for the pro rata portion referred to in paragraph (a); or
 - (ii) carry it forward and combine it with his leave entitlement for the first full leave year calculated in accordance with this section.
- (5) Where section 41F applies to an employer who has made an election under this section—
- (a) the annual leave granted shall be in respect of the leave year immediately preceding the period of the close down; and
 - (b) section 41F(3) to (6) shall not apply to the calculation of the leave entitlement.

(Added 61 of 1993 s. 7)

41B. Payment of annual leave pay

Where an employee is granted any period of annual leave, the employer shall pay him annual leave pay in respect of that period

not later than the day on which he is next paid his wages after that period.

41C. Rate of annual leave pay

- (1) For the purposes of subsections (2), (3) and (4), **wages** (工資) includes any sum paid by an employer in respect of—
 - (a) a day of maternity leave, a day of paternity leave, a rest day, a sickness day, a holiday or a day of annual leave taken by the employee; (*Amended 21 of 2014 s. 13*)
 - (b) a day of leave taken by the employee with the agreement of his employer;
 - (c) a normal working day on which the employee is not provided with work;
 - (d) a day of absence from work of the employee due to temporary incapacity for which compensation is payable under section 10 of the Employees' Compensation Ordinance (Cap. 282).
- (2) The daily rate of annual leave pay is a sum equivalent to the daily average of the wages earned by the employee during—
 - (a) the period of 12 months immediately before the day of annual leave, the first day of the annual leave or the date of termination of the contract of employment (as appropriate); or
 - (b) if the employee has been employed by the employer concerned for a period shorter than 12 months immediately before the day of annual leave, the first day of the annual leave or the date of termination of the contract (as appropriate), the shorter period.
- (3) In calculating the daily average of the wages earned by an employee during the period of 12 months or the shorter period—

- (a) any period therein for which the employee was not paid his wages or full wages by reason of—
 - (i) any maternity leave, paternity leave, rest day, sickness day, holiday or annual leave taken by the employee; (*Amended 21 of 2014 s. 13*)
 - (ii) any leave taken by the employee with the agreement of his employer;
 - (iii) his not being provided by his employer with work on any normal working day; or
 - (iv) his absence from work due to temporary incapacity for which compensation is payable under section 10 of the Employees' Compensation Ordinance (Cap. 282); and
- (b) any wages paid to him for the period referred to in paragraph (a),
are to be disregarded.
- (4) For the avoidance of doubt, if the amount of the wages paid to an employee in respect of a day specified in subsection (1) is only a fraction of the amount earned by the employee on a normal working day, the wages and the day are to be disregarded in accordance with subsection (3).
- (5) Despite subsection (2), if for any reason it is impracticable to calculate the daily average of the wages earned by an employee in the manner provided in that subsection, the amount may be calculated by reference to the wages earned by a person who was employed at the same work by the same employer during the period of 12 months immediately before the employee's day of annual leave, the first day of his annual leave or the date of termination of his contract of employment (as appropriate), or, if there is no such person, by a person who was employed in the same trade or occupation and at the same work in the same district during the period of 12 months

immediately before the employee's day of annual leave, the first day of his annual leave or the date of termination of his contract of employment (as appropriate).

- (6) If, pursuant to the terms of his contract of employment or any other agreement or for any other reason, an employee is paid by his employer a sum of money in respect of a day of annual leave taken by him, the annual leave pay payable to the employee in respect of that day of annual leave is to be reduced by the sum.

(Replaced 7 of 2007 s. 14)

41D. Payment of annual leave pay on cesser of employment

- (1) Where—

- (a) an employee ceases to be employed; and
- (b) annual leave is due to him,

the person by whom he was formerly employed shall, as soon as practicable and in any case not later than 7 days after such cesser, pay to him in respect of the annual leave compensation equal in amount to the annual leave pay he would have received had the leave so due been granted immediately after such cesser.

- (2) Where—

- (a) an employee ceases to be employed;
- (b) the cesser occurs otherwise than on the expiration of a leave year of the employee;
- (c) his contract of employment terminates or is terminated otherwise than under section 9 for any reason whatsoever (including his resignation); and
- (d) the termination occurs at least 3 months after the appropriate day,

he shall, as soon as practicable and in any case not later than 7 days after the termination, be paid by the person by whom he was formerly employed, in addition to any sum due under subsection (1), a sum equal in amount to that which bears to the notional leave pay the same proportion as the number of days in the final employment period bears to 365.

(Replaced 53 of 1990 s. 3)

41E. Restriction on pay in lieu of leave

- (1) Where an employee is entitled to annual leave, subject to sections 41AA(8)(a) and 41D and to subsection (2), no remuneration shall be paid to him by his employer in lieu of his taking all or any part of the annual leave.
- (2) Where an employee is entitled to more than 10 days' annual leave in respect of a particular leave year, he may, in lieu of taking part of the leave, work on not more than the number of days by which such annual leave exceeds 10, and in case an employee so agrees, the amount payable to him in respect of any such day shall not be less than the aggregate of the following—
 - (a) the wages receivable by him in respect of the period worked on that day; and
 - (b) the annual leave pay he would have received had he been granted leave on that day.

(Replaced 53 of 1990 s. 3)

41EA. Inclusion of certain provisions in contracts of employment prohibited

The inclusion by any person in a contract of employment of any term or condition which purports to affect in any way the provisions of section 41E(2) in their application to such employee,

is prohibited and any such term or condition, if so included, shall be void.

(Added 53 of 1990 s. 3)

41F. Annual leave shutdown

- (1) Every employer who intends to close down his business or part thereof for the purpose of granting annual leave to any of his employees shall give one month's notice in writing of his intention so to do to every employee who will as a result have to take annual leave or otherwise stop work during the period of closure.
- (2) The provisions of subsection (1) shall be deemed to be complied with if not later than one month before commencement of the period of closure, the employer exhibits in a conspicuous place in the place of employment notice of the closure and of the names of all employees who will as a result have to take annual leave or otherwise stop working, or in lieu of such names, a description or other details enabling such employees to be clearly identified.
- (3) Every person who is an employee at the commencement of the period during which the business or part thereof is closed down for the purpose specified in subsection (1), and who is not otherwise entitled to annual leave pay in respect of any day during that period, shall, as regards the period beginning on the appropriate day and ending on the day preceding the first day of the close down, be entitled to annual leave calculated in accordance with subsection (4). *(Amended 53 of 1990 s. 4)*
- (4) The amount of annual leave to which an employee is entitled under subsection (3) shall be determined as follows—
 - (a) a calculation shall be made using the formula

$$\frac{A}{365} \times B$$

where—

- A is the number of days in the period beginning on the relevant day and ending on the day preceding the first day of the close down as regards which the entitlement arose; and
- B is the annual leave to which the employee would be entitled under this Ordinance had there been no close down (or partial close down) of the business concerned and had he been in his employment under a continuous contract for the period of 12 months beginning on the relevant day;
- (b) where the result is not a whole number, the result shall be rounded up to the next whole number; and
- (c) (i) if the result or, where appropriate, the result when rounded up (which result in this section referred to as *the calculated number*) equals or is less than the number of days occurring during the relevant close down being days and as regards none of which the employee is, apart from subsection (3), entitled to annual leave (which days are in this section referred to as *relevant closure days*), the amount of annual leave shall equal the number of relevant closure days; or
- (ii) if the calculated number exceeds the number of relevant closure days, the number of days of annual leave shall equal the calculated number. (*Added 53 of 1990 s. 4*)

- (5) Where an employee is entitled to annual leave under subsection (3) and such leave exceeds the relevant closure days, unless the employee and his employer otherwise agree, the remaining annual leave shall be granted by the employer and be taken by the employee during an unbroken period beginning on the working day next following the last day of the relevant close down or, in case there is only 1 day's remaining annual leave, it shall be so given and taken on such working day. (*Added 53 of 1990 s. 4*)
- (6) For the avoidance of doubt it is hereby declared that where an employee is entitled to annual leave under subsection (3), no period shall, by reason only of the entitlement, be regarded for the purposes of this Ordinance as being a leave year. (*Added 53 of 1990 s. 4*)
- (7) In this section ***the relevant day*** (有關日期) means, in relation to an employee—
- (a) where the employee previously became entitled under subsection (3) to any annual leave in the immediately preceding period of 12 months, the first day of the close down as regards which the entitlement arose, or where he became so entitled more than once in such period of 12 months, the first day of the more or most recent, as appropriate, of such close downs; or
 - (b) in any other case—
 - (i) the day following the end of the employee's last (or only) leave year; or
 - (ii) where there is no such leave year, the day on which his employment commenced. (*Added 53 of 1990 s. 4*)

41G. Employer to keep annual leave records

Every employer shall keep a record of—

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- (a) the date of commencement and termination of—
 - (i) the employment of each employee;
 - (ii) all periods of annual leave taken by each employee; and
 - (iii) all periods of closure of his business or part thereof for the purpose of granting any annual leave to any of his employees; and
 - (b) all annual leave pay received by each employee.
-

Part IX

Ancillary Provisions relating to Sickness Allowance and Holidays and Annual Leave with Pay

(Part IX added 39 of 1973 s. 5. Format changes—E.R. 3 of 2015)

(Amended 53 of 1977 s. 4)

42. *(Repealed 7 of 2007 s. 15)*

43. Payment of holiday pay, etc. in event of bankruptcy, etc.

For the purposes of section 38 of the Bankruptcy Ordinance (Cap. 6) and section 265 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), any holiday pay, annual leave pay, end of year payment or any proportion thereof, maternity leave pay, paternity leave pay or sickness allowance to which an employee is entitled shall, whenever the employee became or becomes entitled thereto, be deemed to be wages in respect of services rendered during the relevant period prescribed in the said section 38 or the said section 265 or in section 79 of the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), as the case may be.

(Amended 53 of 1977 s. 6; 22 of 1981 s. 10; 48 of 1984 s. 21; 28 of 2012 ss. 912 & 920; 21 of 2014 s. 14)

Part IXA

Liability to Pay Wages of Sub-contractor's and Nominated Sub-contractor's Employees

(Part IXA added 54 of 1977 s. 2. Format changes—E.R. 3 of 2017)

Interpretation and application

43A. Interpretation

(1) In this Part, unless the context otherwise requires—

building works (建築工程) means the construction, site formation, reconstruction, maintenance (including redecoration and external cleaning), repairs, alteration or demolition of the whole or any part of—

- (a) any building, dock, pier, bridge, viaduct or other structure; or
- (b) any harbour or port works, reclamation, road, tunnel, sewer, drain, well or waterworks,

and any installation works in respect of such building works;

main nominated sub-contractor (主要指定次承判商) means a nominated sub-contractor who enters into a contract, express or implied, directly with a principal contractor to perform all or any part of the work which the principal contractor has contracted to perform;

nominated sub-contractor (指定次承判商) means—

- (a) any person—
 - (i) who enters into a contract, express or implied, with a principal contractor to perform all or any part of the work which the principal contractor has contracted to perform; or

- (ii) who enters into a contract, express or implied, to perform all or any part of the work which a person referred to in sub-paragraph (i) has contracted to perform,

who is nominated by an owner or occupier of property, or by an agent or authorized architect, surveyor or civil, municipal or structural engineer of such owner or occupier; and

- (b) any person who subsequently enters into a contract, express or implied, to perform all or any part of the work agreed to be performed by a nominated sub-contractor within the meaning of paragraph (a) of this definition;

principal contractor (總承判商) means a person who enters into a contract directly with an owner or occupier of property, or with an agent or authorized architect, surveyor or civil, municipal or structural engineer of such owner or occupier, to perform any work for such owner or occupier;

sub-contractor (次承判商) means—

- (a) any person who enters into a contract, express or implied, with a principal contractor to perform all or any part of the work which the principal contractor has contracted to perform; and
- (b) any other person who enters into a contract, express or implied, to perform all or any part of the work which a sub-contractor within the meaning of paragraph (a) has contracted to perform,

but does not include a nominated sub-contractor;

work (工作) means—

- (a) building works; and

- (b) the supply of manual labour for the purposes of or in connection with building works.
- (2) For the purposes of this Part—
 - (a) a sub-contractor is a superior sub-contractor to another sub-contractor if all or any part of the work which he contracted to perform is sub-contracted to that other sub-contractor, whether or not such work is performed by that other sub-contractor or further sub-contracted by that other sub-contractor;
 - (b) a nominated sub-contractor is a superior nominated sub-contractor to another nominated sub-contractor if all or any part of the work which he contracted to perform is sub-contracted to that other nominated sub-contractor, whether or not such work is performed by that other nominated sub-contractor or further sub-contracted by that other nominated sub-contractor.

43B. Application

This Part shall not apply to wages for any work for which a contract was entered into by a principal contractor, nominated sub-contractor or sub-contractor prior to the commencement* of the Employment (Amendment) (No. 4) Ordinance 1977 (54 of 1977).

Editorial Note:

* Commencement date: 1 November 1977

Sub-contractor's employees' wages

43C. Liability of principal contractor and superior sub-contractor to pay wages of employees of sub-contractors

- (1) Subject to this Part, if any wages become due to an employee who is employed by a sub-contractor on any work which the

sub-contractor has contracted to perform, and such wages are not paid within the period specified in section 23, 24 or 25, as the case may be, such wages shall be payable to the employee—

- (a) where the sub-contractor has contracted with the principal contractor, by the principal contractor; and
 - (b) where the sub-contractor has contracted with a superior sub-contractor, by the principal contractor and every superior sub-contractor to the sub-contractor, jointly and severally.
- (2) The liability of a principal contractor and of a principal contractor and superior sub-contractor or superior sub-contractors jointly and severally under subsection (1) shall be limited—
 - (a) to the wages of an employee whose employment relates wholly to the work which the principal contractor has contracted to perform and whose place of employment is wholly on the site of the building works; and
 - (b) to the wages due to such an employee for 2 months without any deductions under this Ordinance and such months shall be the first 2 months of the period in respect of which the wages are due to the employee.
- (3) Subject to subsection (4) the wages payable under subsection (1) shall be paid by the principal contractor or superior sub-contractor, as the case may be, not later than 30 days after the date on which a notice under section 43D is received by him or service thereof is deemed to be effected on him.
- (4) Where any claim in respect of the wages payable under subsection (1) is filed with the Minor Employment Claims Adjudication Board or Labour Tribunal and an award or order is made in favour of the employee, the wages shall be paid within such time as the Minor Employment Claims

Adjudication Board or Labour Tribunal may direct, or, in the absence of any direction, not later than 30 days after the making of the award or order. (*Amended 61 of 1994 s. 53*)

43D. Notice by employee to principal contractor

- (1) Where the wages of an employee who is employed by a sub-contractor are not paid by his employer within the period specified in section 23, 24 or 25, as the case may be, the employee shall serve on the principal contractor, within 60 days (or such other additional period not exceeding 90 days as the Commissioner may permit) after the date on which the wages become due, a notice in writing stating the— (*Amended 48 of 1984 s. 22*)
 - (a) name and address of the employee;
 - (b) name and address of his employer;
 - (c) address of the place of employment of the employee;
 - (d) particulars of the work in respect of which the wages are due; and
 - (e) amount of wages due and the period to which they relate.
- (2) A principal contractor who receives a notice under subsection (1) from an employee of a sub-contractor shall, within 14 days after the receipt of the notice, serve a copy of the notice on every superior sub-contractor to that sub-contractor (if any) of whom he is aware.
- (3) A principal contractor and superior sub-contractor (if any) shall not be liable to pay any wages under section 43C to the employee of a sub-contractor if that employee fails to serve a notice on the principal contractor under subsection (1).
- (4) A principal contractor who without reasonable excuse fails to comply with subsection (2) shall be guilty of an offence and

shall be liable on conviction to a fine at level 5. (*Amended 24 of 1988 s. 2; 103 of 1995 s. 14*)

43E. Employer to supply information at request of employee

- (1) Where an employer who is a sub-contractor fails to pay, within the period specified in section 23, 24 or 25, as the case may be, any wages due to an employee employed by him on work which he has contracted to perform, he shall within 7 days of the receipt of a written request made by the employee supply to the employee the name and address of the principal contractor and every superior sub-contractor to him and shall, within such 7 days' period, deliver a copy of the written request to the principal contractor and every superior sub-contractor to him.
- (2) An employer who without reasonable excuse fails to comply with subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine at level 5. (*Amended 24 of 1988 s. 2; 103 of 1995 s. 15*)

43F. Recovery of wages paid by principal contractor or superior sub-contractor

- (1) If a principal contractor or superior sub-contractor pays to an employee any wages under section 43C, the wages so paid shall be a debt due by the employer of that employee to the principal contractor or superior sub-contractor, as the case may be.
- (2) Any principal contractor or superior sub-contractor who pays to an employee any wages under section 43C may either—
 - (a) claim contribution from every superior sub-contractor to the employee's employer or from the principal contractor and every other such superior sub-contractor as the case may be; or

- (b) deduct by way of set-off the amount paid by him from any sum due or which may become due—
 - (i) to any sub-contractor to whom he has sub-contracted all or any part of work that he contracted to perform being work upon which the employee was employed, and
 - (ii) in respect of the work that he has sub-contracted.
- (3) For the purposes of this section any amount—
 - (a) paid by a principal contractor or a superior sub-contractor by way of contribution under subsection (2)(a), or
 - (b) deducted by a principal contractor or a superior sub-contractor from any sum due by him by way of set-off under subsection (2)(b),

shall be deemed to be payment by the principal contractor or superior sub-contractor who has paid the amount by way of contribution or by the superior sub-contractor who has suffered a deduction from any sum due to him by way of set-off to an employee of wages under section 43C.

Nominated sub-contractor's employees' wages

43G. Liability of superior nominated sub-contractor to pay wages of employees of nominated sub-contractors

- (1) Subject to this Part, if any wages become due to an employee who is employed by a nominated sub-contractor on any work which the nominated sub-contractor has contracted to perform, and such wages are not paid within the period specified in section 23, 24 or 25, as the case may be, such wages shall be payable to the employee by every superior nominated sub-contractor to the nominated sub-contractor by whom the employee is employed, jointly and severally.

- (2) The liability of a superior nominated sub-contractor or superior nominated sub-contractors jointly and severally under subsection (1) shall be limited—
- (a) to the wages of an employee whose employment relates wholly to the work which the main nominated sub-contractor has contracted to perform whether or not his place of employment is on the site of the building works; and
 - (b) to the wages due to such an employee for 2 months without any deductions under this Ordinance and such months shall be the first 2 months of the period in respect of which the wages are due to the employee.
- (3) Subject to subsection (4) the wages payable under subsection (1) shall be paid by the superior nominated sub-contractor not later than 30 days after the date on which a notice under section 43H is received by him or service thereof is deemed to be effected on him.
- (4) Where any claim in respect of the wages payable under subsection (1) is filed with the Minor Employment Claims Adjudication Board or Labour Tribunal and an award or order is made in favour of the employee, the wages shall be paid within such time as the Minor Employment Claims Adjudication Board or Labour Tribunal may direct, or, in the absence of any direction, not later than 30 days after the making of the award or order. (*Amended 61 of 1994 s. 54*)

43H. Notice by employee to main nominated sub-contractor

- (1) Where the wages of an employee who is employed by a nominated sub-contractor are not paid by his employer within the period specified in section 23, 24 or 25, as the case may be, the employee shall serve on the main nominated sub-contractor, within 60 days (or such other additional period not exceeding 90 days as the Commissioner may permit)

after the date on which the wages became due, a notice in writing containing the particulars specified in section 43D(1).
(Amended 48 of 1984 s. 23)

- (2) A main nominated sub-contractor who receives a notice under subsection (1) from an employee of a nominated sub-contractor shall, within 14 days after the receipt of the notice, serve a copy of the notice on every superior nominated sub-contractor to that nominated sub-contractor (if any) of whom he is aware.
- (3) A superior nominated sub-contractor shall not be liable to pay any wages under section 43G to the employee of a nominated sub-contractor if that employee fails to serve a notice on the main nominated sub-contractor under subsection (1).
- (4) A main nominated sub-contractor who without reasonable excuse fails to comply with subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine at level 5.
(Amended 24 of 1988 s. 2; 103 of 1995 s. 16)

43I. Employer to supply information at request of employee

- (1) Where an employer who is a nominated sub-contractor fails to pay, within the period specified in section 23, 24 or 25, as the case may be, any wages due to an employee employed by him on work which he has contracted to perform, he shall within 7 days of the receipt of a written request made by the employee supply to the employee the name and address of the main nominated sub-contractor and every superior nominated sub-contractor to him and shall, within such 7 days' period, deliver a copy of the written request to the main nominated sub-contractor and every superior nominated sub-contractor to him.
- (2) An employer who without reasonable excuse fails to comply with subsection (1) shall be guilty of an offence and shall be

liable on conviction to a fine at level 5. (*Amended 24 of 1988 s. 2; 103 of 1995 1995 s. 17*)

43J. Recovery of wages paid by superior nominated sub-contractor

- (1) If a superior nominated sub-contractor pays to an employee any wages under section 43G, the wages so paid shall be a debt due by the employer of that employee to the superior nominated sub-contractor.
- (2) Any superior nominated sub-contractor who pays to an employee any wages under section 43G may either—
 - (a) claim contribution from every other superior nominated sub-contractor to the employee's employer; or
 - (b) deduct by way of set-off the amount paid by him from any sum due or which may become due—
 - (i) to any nominated sub-contractor to whom he has sub-contracted all or any part of work that he contracted to perform being work upon which the employee was employed; and
 - (ii) in respect of the work that he has sub-contracted.
- (3) For the purposes of this section any amount—
 - (a) paid by a superior nominated sub-contractor by way of contribution under subsection (2)(a), or
 - (b) deducted by a superior nominated sub-contractor from any sum due by him by way of set-off under subsection (2)(b),

shall be deemed to be payment by the superior nominated sub-contractor who has paid the amount by way of contribution or has suffered a deduction from any sum due to him by way of set-off to an employee of wages under section 43G.

General

43K. Cessation of employer's liability for wages paid by principal contractor, superior sub-contractor or superior nominated sub-contractor

Where any wages are paid to an employee by a principal contractor or superior sub-contractor under section 43C or by a superior nominated sub-contractor under section 43G, the liability of the employer shall, subject to sections 43F(1) and 43J(1), cease.

43L. Service of notice

- (1) A notice under section 43D or 43H may be served on a principal contractor or a main nominated sub-contractor respectively and a request under section 43E or 43I may be served on an employer—
 - (a) by delivering it to him personally;
 - (b) by leaving it at his usual address or last known residential or business address; or
 - (c) by sending it to him by registered post to any address referred to in paragraph (b).
- (2) Service under subsection (1)(b) shall be deemed to have been effected on the day on which the notice or request is left at the premises.

43M. Employee's rights against employer not affected

Nothing in this Part shall prejudice the right of an employee to recover any wages due to him by an employer directly from the employer.

Part IXB

Offence of Employer's Failure to Pay any Sum Payable under Award of Labour Tribunal or Minor Employment Claims Adjudication Board

(Part IXB added 9 of 2010 s. 4. Format changes—E.R. 3 of 2015)

43N. Interpretation of Part IXB

(1) In this Part—

award (判令) includes an order;

registrar (主任), in relation to a tribunal, means the Registrar of the Labour Tribunal or the Registrar of the Minor Employment Claims Adjudication Board (as the case may be);

specified entitlement (指明權利) means—

- (a) any wages or any other sum payable under section 23, 24 or 25, or interest payable under section 25A on the wages or sum;
- (b) any end of year payment payable under Part IIA;
- (c) any maternity leave pay or sum payable under Part III;
- (ca) any paternity leave pay payable under Part IIIA; *(Added 21 of 2014 s. 15)*
- (d) any severance payment payable under Part VA;
- (e) any long service payment payable under Part VB;
- (f) any sickness allowance or sum payable under Part VII;
- (g) any holiday pay payable under Part VIII;
- (h) any annual leave pay payable under Part VIIIA;

- (i) any sum payable in respect of rest days, maternity leave, paternity leave, holiday or annual leave which the employer is required under this Ordinance to grant to an employee but fails to grant, to the extent that the sum is not covered by paragraph (a), (b), (c), (ca), (d), (e), (f), (g) or (h); (*Amended 21 of 2014 s. 15*)
- (j) any terminal payments payable under section 32O to the extent that—
 - (i) the terminal payments are entitlements referred to in paragraph (a), (b), (c), (ca), (d), (e), (f), (g), (h) or (i) to which an employee is entitled upon the termination of the employee's contract of employment or, by virtue of section 32O(5), as a consequence of the unreasonable variation of the terms of that contract; or (*Amended 21 of 2014 s. 15*)
 - (ii) the award of those terminal payments is made by virtue of section 32M(2); (*Amended 21 of 2018 s. 9*)
- (k) any compensation payable under section 32P; or (*Amended 21 of 2018 s. 9*)
- (l) any of the following sums payable under an order for reinstatement or re-engagement made under section 32N (as varied under section 32PA or 32PC, if applicable)—
 - (i) the sum mentioned in section 32NA(1)(a)(i), to the extent that the sum would have been awarded as entitlements falling within paragraph (j) if neither an order for reinstatement nor an order for re-engagement had been made;
 - (ii) the sum mentioned in section 32NA(1)(a)(ii);
 - (iii) the sum mentioned in section 32NA(1)(b); (*Added 21 of 2018 s. 9*)

tribunal (審裁處) means the Labour Tribunal or Minor Employment Claims Adjudication Board.

- (2) A reference in this Part to an award of a tribunal includes—
 - (a) a settlement treated as an award of the Labour Tribunal under section 15(9) of the Labour Tribunal Ordinance (Cap. 25); and
 - (b) a settlement treated as an award of the Minor Employment Claims Adjudication Board under section 14(4) of the Minor Employment Claims Adjudication Board Ordinance (Cap. 453).
- (3) A reference in this Part to the date of an award means, in relation to a settlement referred to in subsection (2)—
 - (a) the date of filing of the settlement in the Labour Tribunal under section 15(8) of the Labour Tribunal Ordinance (Cap. 25); or
 - (b) the date of filing of the settlement with the Registrar of the Minor Employment Claims Adjudication Board under section 14(3) of the Minor Employment Claims Adjudication Board Ordinance (Cap. 453).

43O. Application

- (1) This Part applies to an award of a tribunal that is made on or after the commencement date.
- (2) In this section, ***commencement date** (生效日期) means the date on which the Employment (Amendment) Ordinance 2010 (9 of 2010) comes into operation.

Editorial Note:

* Commencement date: 29 October 2010.

43P. Offence of employer's failure to pay any sum payable under award of tribunal

-
- (1) If—
- (a) an award of a tribunal provides, in whole or in part, for the payment by an employer of any specified entitlement (whether or not the specified entitlement is payable only on any condition being met); and (*Amended 21 of 2018 s. 10*)
 - (b) the employer wilfully and without reasonable excuse fails to pay—
 - (i) any sum payable under the award (other than a sum to which subparagraph (ii) applies) within 14 days after the date of the award; or
 - (ii) any sum payable under the award that is, by the terms of the award, payable otherwise than on the date of the award, within 14 days after the date on which the sum is, by those terms, payable,
- the employer commits an offence and is liable on conviction to a fine of \$350,000 and to imprisonment for 3 years.
- (2) A reference in subsection (1)(b)(i) or (ii) to any sum payable under an award includes—
- (a) any part of a sum payable under the award; and
 - (b) in the case of a sum payable by instalments, any instalment or part of an instalment.
- (3) For the purposes of subsection (1), if—
- (a) an award of a tribunal provides for the payment of a sum but does not indicate whether or not that sum includes any specified entitlement; and
 - (b) the claim to which the award relates consists, in whole or in part, of any specified entitlement,

then, unless there is evidence to the contrary, the award is to be treated as providing for the payment of a specified entitlement.

- (4) Subsection (5) applies to an award that is an order for reinstatement or re-engagement made under section 32N (as varied under section 32PA or 32PC, if applicable) (which order (as so varied, if applicable) is referred to in subsection (5) as the **order**). (*Added 21 of 2018 s. 10*)
- (5) Where the order specifies a date (***specified payment date***) as the date by which the employer must pay to the employee a sum if the employer fails to reinstate or re-engage the employee on the terms specified in the order by the date so specified, the specified payment date is, on that failure, the date on which the sum is, by the terms of the award, payable for the purposes of subsection (1)(b)(ii). (*Added 21 of 2018 s. 10*)

43Q. Liability of directors, partners, etc. for offence under section 43P

- (1) Where an offence under section 43P committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, the director, manager, secretary or other similar officer commits the like offence.
- (2) Where an offence under section 43P committed by a partner in a firm is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any other partner in the firm or any other person concerned in the management of the firm, the other partner or the other person concerned in the management of the firm commits the like offence.

- (3) An offence under section 43P committed by a body corporate is presumed to have been committed with the consent or connivance of, or to be attributable to the neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, if it is proved that, at the time the offence was committed, the director, manager, secretary or other similar officer—
- (a) was concerned in the management of the body corporate; or
 - (b) knew or ought to have known that the award of the tribunal in respect of which the offence was committed had been made against the body corporate.
- (4) An offence under section 43P committed by a partner in a firm is presumed to have been committed with the consent or connivance of, or to be attributable to the neglect on the part of—
- (a) any other partner in the firm, if it is proved that, at the time the offence was committed, the other partner was concerned in the management of the firm; or
 - (b) any other partner in the firm or any other person concerned in the management of the firm, if it is proved that, at the time the offence was committed, the other partner or the other person knew or ought to have known that the award of the tribunal in respect of which the offence was committed had been made against the firm.
- (5) The presumption under subsection (3) or (4) is rebutted by a person charged with an offence under section 43P by virtue of that subsection if—
- (a) there is sufficient evidence to raise an issue that the offence was committed without the person's consent

or connivance and was not attributable to the person's neglect; and

- (b) the contrary is not proved by the prosecution beyond reasonable doubt.

43R. Proof of certain matters in proceedings for offence under section 43P

- (1) For the purposes of proceedings for an offence under section 43P, a document (*first-mentioned document*) purporting to be a copy of a specified document, and purporting to be certified by or on behalf of the registrar of a tribunal or the registrar of a court as a true copy of the specified document, is admissible in evidence on its production without further proof and, unless there is evidence to the contrary—
 - (a) the court before which the first-mentioned document is produced must presume—
 - (i) that the first-mentioned document is certified by or on behalf of the registrar of a tribunal or the registrar of a court; and
 - (ii) that the first-mentioned document is a true copy of the specified document;
 - (b) in the case of the first-mentioned document purporting to be a copy of a specified document referred to in subsection (2)(a) and prepared by an officer of a tribunal or of a court, the first-mentioned document is evidence of all matters contained in it; and
 - (c) in the case of the first-mentioned document purporting to be a copy of a specified document referred to in subsection (2)(b) and prepared by an officer of a tribunal or of a court, the first-mentioned document is evidence of the facts specified in subsection (4) or (5).
- (2) In subsection (1), *specified document* (指明文件) means—

- (a) a claim filed with a tribunal, or an award made by a tribunal, or any other document relating to proceedings before a tribunal or a court; or
 - (b) any document that is relevant to any fact specified in subsection (4) or (5).
- (3) For the purposes of proceedings for an offence under section 43P, a certificate purporting to be issued by or on behalf of the registrar of a tribunal or the registrar of a court and stating any of the facts specified in subsection (4) or (5) is admissible in evidence on its production without further proof and, unless there is evidence to the contrary—
 - (a) the court before which the certificate is produced must presume that the certificate is issued by or on behalf of the registrar of a tribunal or the registrar of a court; and
 - (b) the certificate is evidence of the facts so stated.
- (4) The following facts are specified for the purposes of subsection (3) in relation to a certificate purporting to be issued by or on behalf of the registrar of a tribunal—
 - (a) whether any payment has been made to the tribunal in full or partial discharge of an award of the tribunal and, if so, particulars of the payment (including the date, amount and, in the case of an award made in favour of 2 or more claimants, to which claimant the amount is paid);
 - (b) whether a decision has been made in any proceedings to set aside or review an award of the tribunal and, if so, the particulars of the decision;
 - (c) whether any proceedings are pending to set aside or review an award of the tribunal and, if so, the particulars of the pending proceedings;

- (ca) for proceedings relating to an award that is an order for reinstatement or order for re-engagement—
 - (i) whether a decision has been made in relation to an application made for the purposes of section 32PA or 32PC (if applicable) in respect of the order and, if so, the particulars of the decision; and
 - (ii) whether an application made for the purposes of section 32PA or 32PC (if applicable) in respect of the order is pending and, if so, the particulars of the application; (*Added 21 of 2018 s. 11*)
- (d) whether any person was present at the hearing of the tribunal at which an award of the tribunal was made or at any hearing of the claim to which the award relates; and
- (e) whether any document relating to proceedings before the tribunal has been served on any person and, if so, the particulars of service (including the mode, time and address of service).
- (5) The following facts are specified for the purposes of subsection (3) in relation to a certificate purporting to be issued by or on behalf of the registrar of a court—
 - (a) whether a decision has been made in an appeal (if any) against an award of a tribunal and, if so, the particulars of the decision; and
 - (b) whether an appeal is pending against an award of a tribunal and, if so, the particulars of the pending appeal.
- (6) In this section—

order for re-engagement (再次聘用的命令) means an order for re-engagement made under section 32N and includes such an order as varied under section 32PA or 32PC;

order for reinstatement (復職的命令) means an order for reinstatement made under section 32N and includes such an order as varied under section 32PC;

registrar of a court (司法常務官) means—

- (a) the Registrar of the High Court; or
 - (b) the Registrar of the Court of Final Appeal. (*Replaced 21 of 2018 s. 11*)
- (7) In subsections (1) and (3), a reference to a court before which a document or a certificate is produced includes a magistrate.

43S. Prosecution of offence under section 43P

- (1) No prosecution for an offence under section 43P may be commenced without the consent in writing of the Commissioner.
- (2) Before giving consent to prosecute under subsection (1), the Commissioner must hear the person against whom the allegation is made, or give the person an opportunity of being heard.
- (3) Subject to subsection (1), a prosecution for an offence under section 43P may be brought in the name of the Commissioner and may be commenced and conducted by any officer of the Labour Department authorized in that behalf in writing by the Commissioner.
- (4) Nothing in this section derogates from the powers of the Secretary for Justice in respect of the prosecution of criminal offences.

Part X

Information respecting Conditions of Service

(Amended 48 of 1984 s. 24)

(Format changes—E.R. 3 of 2015)

44. Information to persons entering employment

- (1) Every employer shall inform each person in detail before such person enters his employment, in a manner intelligible to such person, of the conditions with regard to—
 - (a) the wages and the wage period;
 - (b) where Part IIA applies to such person, the end of year payment or proportion of the end of year payment and the payment period; and
 - (c) the length of notice required to terminate the proposed contract of employment,under which he is to be employed. *(Replaced 48 of 1984 s. 25)*
- (2) Where the contract of employment is not in writing, upon receipt, before such employment is entered into, of a written request therefor from such person the employer shall forthwith deliver to him a notice in writing containing such conditions. *(Amended 41 of 1990 s. 19)*
- (3) Where the contract of employment is in writing, the employer shall provide such person with a copy of the contract immediately after it is signed or immediately after the procedure to validate the contract is completed where such procedure is required. *(Added 41 of 1990 s. 19)*

45. Information to employees

- (1) Every employer shall inform his employee, in a manner intelligible to the employee—
 - (a) whenever any change takes place in the conditions referred to in section 44 or the conditions in force at any time, of such change;
 - (b) at the time of each payment to him of his wages, in so far as such particulars may be subject to change, of the particulars of his wages for the wage period concerned.
- (2) Where there is no written amendment to a contract of employment, upon receipt of a written request from his employee the employer shall deliver to him— (*Amended 41 of 1990 s. 20*)
 - (a) where the request relates to changes in the conditions referred to in subsection (1)(a), forthwith; or
 - (b) where it relates to the particulars referred to in subsection (1)(b), at the time of the payment to him of his wages for the wage period concerned,a notice in writing containing such changes in conditions or particulars, as the case may be.
- (3) Where there is any written amendment made to a contract of employment, the employer shall provide his employee with a copy of the written amendment immediately after the amendment is reduced to writing or immediately after the procedure to validate the amendment is completed where such procedure is required. (*Added 41 of 1990 s. 20*)

46. Details of conditions and particulars of wages

- (1) The conditions referred to in sections 44 and 45 shall include the rate of wages, the overtime rate and any allowances, whether calculated by the piece, job, hour, day, week or otherwise, of the person or employee concerned.

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- (2) The particulars referred to in section 45 shall include—
- (a) particulars of the amount earned, including overtime earnings (if any), by the employee; and
 - (b) particulars of any deductions made from the wages of the employee and the reasons therefor.
-

Part XI

Records, Forms and Returns

(Format changes—E.R. 3 of 2015)

47. Records to be kept by employers

- (1) Every employer who is a member of a class specified under subsection (2) shall in respect of—
 - (a) each of his employees; or
 - (b) any class of them,keep records in such form as may be specified to enable him to comply with Part X.
- (2) For the purposes of subsection (1), the Commissioner may, by notice in the Gazette, specify any class of employers.

48. Returns to be made to Commissioner

- (1) For the purposes of this Ordinance, the Commissioner may, either by notice in writing served by registered post or by notice in the Gazette, require any employer or class of employers to make returns in such form and at such times as he may in any such notice direct:

Provided that the Commissioner shall not require in any return information or particulars in respect of a time or period more than 6 months immediately preceding the date of the notice.
- (2) Copies of any such form shall be supplied to an employer free of charge on application to the Commissioner.

49. Form of notices, records, etc.

- (1) The Commissioner may specify the form of any consent,

request, notice in writing, certificate, application, record or return required for the purposes of this Ordinance. (*Amended 52 of 1988 s. 15*)

- (2) The Commissioner may publish in the Gazette any forms specified by him under subsection (1).

49A. Requirement to keep wage and employment records

- (1) Every employer shall at all times keep and maintain a record in which is set out the wage and employment history of each employee covering the period of his employment during the preceding 12 months. (*Amended L.N. 34 of 1990; 7 of 2007 s. 16*)
- (2) The wage records referred to in subsection (1) shall be kept—
- (a) at the employer's place of business or at the place where the employee is employed; and
 - (b) for a period of 6 months after the employee ceases to be employed.
- (3) A record which includes particulars in relation to each employee of—
- (a) his name and identity card number;
 - (b) the date he commenced his employment;
 - (c) his job title;
 - (d) the wages paid to him in respect of each wage period;
 - (e) his wage period;
 - (ea) if the employee is an employee within the meaning of the Minimum Wage Ordinance (Cap. 608) and the wages payable to the employee in respect of any wage period are less than the amount specified in the Ninth Schedule (or the amount that bears the same ratio to that amount as the length of that wage period bears to the month

- in which that wage period falls, calculated where that wage period falls in more than one month according to the number of days of that wage period falling in each particular month), the total number of hours (including any part of an hour) that are hours worked by the employee in that wage period; (*Added 15 of 2010 s. 20*)
- (f) periods of annual leave, sick leave, maternity leave, paternity leave and holidays— (*Amended 21 of 2014 s. 16*)
 - (i) to which he is entitled; and
 - (ii) that he has taken together with details of payments made in respect of such period;
 - (g) the amount of any end of year payment payable under Part IIA and the period to which it relates;
 - (h) the period of notice required for termination of contract;
 - (i) the date of any termination of employment,
- shall be a sufficient record for the purposes of subsection (1).
- (4) Despite subsection (3), subsection (1) must also be taken to require an employer to keep—
 - (a) for an employee to whom the Minimum Wage Ordinance (Cap. 608) does not apply because of section 7(4) of that Ordinance, a document (or copy of a document) issued by an institution showing that the period of work is arranged or endorsed by the institution in connection with a programme being provided by the institution to the employee that is of a kind covered by the definition of *student intern* in section 2 of that Ordinance; and
 - (b) for an employee to whom the Minimum Wage Ordinance (Cap. 608) does not apply because of section 7(5) of that Ordinance, the statutory declaration (or a copy of the statutory declaration) provided by the employee under

section 3(b) of that Ordinance and a document (or copy of a document) issued by an institution showing that the employee is at the commencement of the employment enrolled in a programme being provided by the institution that is of a kind covered by the definition of ***work experience student*** in section 2 of that Ordinance. (*Added 15 of 2010 s. 20*)

- (5) Nothing in subsection (1) requires an employer to set out in a record particulars of a kind referred to in subsection (3)(ea) for any wage period, or part of a wage period, of an employee that occurred before the effective date of the hourly wage rate first specified in column 1 of Schedule 3 to the Minimum Wage Ordinance (Cap. 608) on or after the commencement* of section 16 of that Ordinance. (*Added 15 of 2010 s. 20*)
- (6) The Commissioner may, by notice published in the Gazette, amend the Ninth Schedule. (*Added 15 of 2010 s. 20*)
- (7) For the purposes of subsections (3)(ea) and (5), ***hours worked*** (工作時數), ***wage period*** (工資期) and ***wages*** (工資) have the same respective meanings as in the Minimum Wage Ordinance (Cap. 608). (*Added 15 of 2010 s. 20*)

(*Added 12 of 1985 s. 29*)

Editorial Note:

* Commencement date: 12 November 2010.

Part XII

Employment Agencies

(Part XII replaced 35 of 1973 s. 2. Format changes—E.R. 3 of 2017)

50. Interpretation and application of Part

(1) In this Part, unless the context otherwise requires—

associate (相關人士), in relation to a person, means—

- (a) if the person is a company—
 - (i) a related person of the person; or
 - (ii) an individual employed by the person;
- (b) if the person is a partner in a partnership—
 - (i) a related person of the person; or
 - (ii) an individual employed by the person or by the partnership; or
- (c) in any other case—an individual employed by the person; *(Added 8 of 2018 s. 3)*

certificate of exemption (豁免證明書) means a certificate issued under section 54;

employment agency (職業介紹所) means a person who operates a business the purpose of which is—

- (a) to obtain employment for another person; or
- (b) to supply the labour of another person to an employer, whether or not the person who operates the business will derive any pecuniary or other material advantage from either the employer or such other person; *(Amended 41 of 1990 s. 21)*

licence (牌照) means a licence issued under section 52 and **licensee** (持牌人) shall be construed accordingly; (*Amended 8 of 2018 s. 3*)

related person (有關連人士) means—

- (a) in relation to a company—a director, manager, secretary or other similar officer of the company; or
- (b) in relation to a partner in a partnership—
 - (i) another partner in the partnership; or
 - (ii) another person concerned in the management of the partnership. (*Added 8 of 2018 s. 3*)
- (2) Subject to subsection (3), this Part shall apply to any employment agency which is carried on in Hong Kong, whether the employment is to take place within or outside Hong Kong.
- (3) This Part shall not apply to any employment agency—
 - (a) which is carried on or subvented by Her Majesty's Government or the Hong Kong Government;
 - (b) which is carried on under the terms of a permit to maintain a crew department granted or deemed to be granted under the Merchant Shipping (Seafarers) Ordinance (Cap. 478); (*Amended 44 of 1995 s. 143*)
 - (c) (*Repealed 41 of 1990 s. 21*)
 - (d) (*Repealed 10 of 1980 s. 4*)
 - (e) which is carried on by an employer for the sole purpose of recruiting persons for employment on his own behalf;
 - (f) which is carried on by a contractor, or sub-contractor, who employs any person on work for another person;
 - (g) which is carried on by the proprietor of a newspaper or other publication if the operation of an employment agency is non-profit making and is not the principal

purpose of the publication of the newspaper or other publication;

(h) which is—

(i) non-profit making;

(ii) wholly maintained or managed by the owner, staff or students of a school, college, university or other educational institution recognized by the Permanent Secretary for Education; and (*Amended 3 of 2003 s. 41; L.N. 130 of 2007*)

(iii) carried on solely for or in connection with the employment of the students or graduates of such school, college, university or other educational institution; or

(i) subject to any regulations which may be applicable thereto, in respect of which a certificate of exemption has been issued.

51. Prohibitions in respect of the operation of employment agencies

(1) A person must not operate, manage or assist in the management of an employment agency unless the person—

(a) is the holder of a licence or certificate of exemption issued in respect of the employment agency; or

(b) is an associate of the holder. (*Replaced 8 of 2018 s. 4*)

(2) No person shall operate, manage or assist in the management of an employment agency at any place other than the place of business specified in the licence or certificate of exemption issued in respect of the employment agency.

(3) (*Repealed 28 of 1992 s. 2*)

52. Application for and issue of licences

(1) The Commissioner may issue a licence to operate an

employment agency to any person who applies therefor in such manner as may be prescribed.

- (1A) Where the applicant for a licence is a company, the application shall be submitted by a director of the company on its behalf. *(Added 28 of 1992 s. 3)*
- (2) A licence issued under this section shall—
 - (a) be in a form determined by the Commissioner; and *(Replaced 28 of 1992 s. 3)*
 - (b) specify the place of business of the employment agency in respect of which it is issued. *(Amended 28 of 1992 s. 3)*
 - (c) *(Repealed 28 of 1992 s. 3)*
- (2A) A licensee shall cause his licence to be displayed at all times in a conspicuous position at his place of business. *(Added 28 of 1992 s. 3)*
- (2B) Where a licensee operates an employment agency at more than one place of business, he shall designate which place of business is the main location and shall obtain a duplicate licence for each branch location and cause the duplicate licence to be displayed at all times in a conspicuous position at the branch location. *(Added 28 of 1992 s. 3)*
- (2C) Where a licensee operates an employment agency at more than one location using different names, the agencies shall be deemed to be separate entities and he shall obtain a separate licence for each name used. *(Added 28 of 1992 s. 3)*
- (3) *(Repealed 28 of 1992 s. 3)*
- (4) Subject to section 53, a licence issued under subsection (1) shall be valid for 12 months after the date on which it is issued.

- (5) The Commissioner may, upon application in such manner as may be prescribed, renew a licence issued under subsection (1).

53. Refusal to issue, or revocation of, licences

- (1) The Commissioner may refuse to issue or renew a licence, or may revoke a licence, if he is satisfied on reasonable grounds—
- (a) that the name under which the employment agency is operated or is intended to be operated—
 - (i) is identical with the name of another employment agency which is being, or has been, carried on by another person; or
 - (ii) so nearly resembles the name of another employment agency as to be likely to deceive the public;
 - (b) that the employment agency is being, or is likely to be, used for unlawful or immoral purposes; (*Amended 8 of 2018 s. 5*)
 - (c) that the licensee or the person intending to be the licensee— (*Amended 8 of 2018 s. 5*)
 - (i) is an undischarged bankrupt;
 - (ii) has, within the preceding 5 years, been convicted of an offence against the person of a child, young person or woman or of an offence involving membership of a triad society, fraud, dishonesty or extortion;
 - (iii) has knowingly furnished to the Commissioner any false or misleading information in connection with his application for the issue or renewal of the licence;

- (iv) has contravened any provision of this Part or any regulation made under section 62; (*Amended 8 of 2018 s. 5*)
 - (iva) has not complied with a code of practice issued under section 62A(1); or (*Added 8 of 2018 s. 5*)
 - (v) is not, for any other reason, a fit and proper person to operate an employment agency; (*Amended 8 of 2018 s. 5*)
- (d) (if the licensee or the person intending to be the licensee is a company or a partner in a partnership) that a related person of the licensee or person—
 - (i) has, within the preceding 5 years, been convicted of an offence against the person of a child, young person or woman or of an offence involving membership of a triad society, fraud, dishonesty or extortion;
 - (ii) has contravened any provision of this Part or any regulation made under section 62; or
 - (iii) has not complied with a code of practice issued under section 62A(1); or (*Added 8 of 2018 s. 5*)
- (e) that an individual employed by the licensee or by the person intending to be the licensee—
 - (i) has contravened any provision of this Part or any regulation made under section 62; or
 - (ii) has not complied with a code of practice issued under section 62A(1). (*Added 8 of 2018 s. 5*)
- (2) The Commissioner shall, if he refuses to issue or renew a licence or revokes a licence, within 14 days after such refusal or revocation, notify the applicant or licensee in writing of the grounds for such refusal or revocation.

- (3) Any person aggrieved by a decision of the Commissioner taken in respect of him under subsection (1) may, within 28 days after he is notified under subsection (2), appeal to the Administrative Appeals Board. *(Replaced 6 of 1994 s. 35)*
- (4) *(Repealed 6 of 1994 s. 35)*
- (5) The licensee shall, if the Commissioner refuses to renew or revokes his licence under subsection (1),—
 - (a) within 28 days after he is notified under subsection (2); or
 - (b) if he has appealed under subsection (3), within 14 days after he withdraws or abandons the appeal or he is notified of the Administrative Appeals Board's dismissal of the appeal,deliver the licence, and every copy thereof, to the Commissioner. *(Replaced 6 of 1994 s. 35)*

54. Commissioner's power of exemption

- (1) Subject to subsection (2), the Commissioner may, upon application in such manner as may be prescribed, exempt an employment agency from obtaining a licence under section 52, subject to such conditions as he may specify, if he is satisfied that the employment agency is non-profit making and should, in the public interest, be so exempted.
- (2) *(Repealed 28 of 1992 s. 4)*
- (3) The Commissioner shall issue to any person exempted under subsection (1) a certificate of exemption.
- (4) A certificate of exemption issued under subsection (3) shall—
 - (a) be in a form determined by the Commissioner; *(Replaced 28 of 1992 s. 4)*
 - (b) specify the place of business of the employment agency in respect of which it is issued; and

- (c) specify any conditions subject to which it is issued.

55. Withdrawal of exemption

- (1) The Commissioner may, at any time, withdraw an exemption granted under section 54 if he is satisfied that the employment agency has ceased to be non-profit making or should not be so exempted in the public interest.
- (2) Without prejudice to the generality of subsection (1), the grounds on which the Commissioner may withdraw an exemption shall include *mutatis mutandis* the grounds contained in section 53(1) on which he may refuse to issue or renew a licence or revoke a licence.
- (3) Where the Commissioner withdraws his exemption from any person under subsection (1) he shall notify such person in writing of the grounds for such withdrawal.
- (4) The holder of a certificate of exemption shall, within 14 days after he is notified under subsection (3) of the withdrawal of the Commissioner's exemption, deliver the certificate of exemption, and every copy thereof, to the Commissioner.
- (5) No appeal shall lie under this Part against the decision of the Commissioner to withdraw an exemption granted to an employment agency.

56. Maintenance and delivery to the Commissioner of prescribed registers, records and returns

- (1) A licensee shall—
 - (a) maintain a record of—
 - (i) all job applicants registered with his employment agency; and
 - (ii) job applicants who, at the time of registration, were not residents of Hong Kong and who were placed

in employment in Hong Kong by his employment agency,

containing the person's name, address, Hong Kong Identity Card number or, in the case of a non-resident, passport number and citizenship, fee and commission received, date of employment and name and address of employer; and (*Replaced 28 of 1992 s. 5*)

- (b) keep such records available for inspection at the place of business of the employment agency by the Commissioner, or by any public officer authorized by him in that behalf, at all reasonable times. (*Amended 28 of 1992 s. 5*)
- (2) A licensee shall, within such time as may be prescribed, deliver to the Commissioner such returns in respect of the employment agency as may be prescribed.
- (3) The records referred to in subsection (1) shall be retained by the licensee for a period of not less than 12 months after the expiration of each accounting year of the employment agency concerned. (*Amended 28 of 1992 s. 5*)

57. Prohibited acts in respect of employment agencies

- (1) A licensee, or an associate of a licensee, in respect of an employment agency, or a person purporting to act as such a licensee or associate, must not, directly or indirectly— (*Amended 8 of 2018 s. 6*)
 - (a) receive from any person on account of having obtained, or in connection with obtaining or seeking to obtain, employment for that person—
 - (i) any reward of any kind; or
 - (ii) any payment or other advantage in respect of expenses or otherwise, except the prescribed

commission; (*Replaced 87 of 1975 s. 2. Amended 28 of 1992 s. 6*)

- (b) share with any person, other than another licensee or a bona fide partner or shareholder in the employment agency, the prescribed commission; or (*Amended 87 of 1975 s. 2; 28 of 1992 s. 6*)
- (c) enter, except with the written permission of the Commissioner, into an agreement, express or implied, with any employer whereby—
 - (i) the employer undertakes to employ only persons who seek employment through the employment agency; and
 - (ii) the employment agency agrees to pay or give to the employer some form of material benefit. (*Amended 8 of 2018 s. 6*)

(2) In this section—

prescribed commission (訂明佣金), in relation to an employment agency, means the commission that the employment agency is permitted to charge and receive as prescribed by a regulation made under section 62. (*Added 8 of 2018 s. 6*)

58. Inspection of places of business of licensed or exempted employment agencies

The Commissioner, and any public officer authorized by him in that behalf may—

- (a) enter and inspect without a warrant at any reasonable time the place of business of an employment agency;
- (b) require the production of, inspect, examine or take copies of any record or other document relating to an employment agency; (*Amended 28 of 1992 s. 7*)

- (c) require any person who operates, manages or assists in the management of an employment agency to furnish such information or particulars relating to the employment agency as he may specify; and
- (d) make such other inquiries from any other person connected or associated with the employment agency as he thinks fit.

59. Investigation of suspected offences

- (1) If the Commissioner, any public officer authorized by him in that behalf or any police officer not below the rank of inspector suspects on reasonable grounds that there is in any premises or place evidence of an offence under this Part he may—
 - (a) enter and search without a warrant any such premises (other than domestic premises) at any reasonable time; and
 - (b) require the production of, seize, detain and remove any article, record or other document which may be evidence of an offence under this Part. (*Amended 28 of 1992 s. 7*)
- (2) A magistrate may, if he is satisfied by information on oath that there may be found in any domestic premises any evidence of an offence under this Part, issue a warrant authorizing the Commissioner, any public officer authorized in that behalf by the Commissioner or any police officer not below the rank of inspector to enter and search the domestic premises at any reasonable time.
- (3) (*Repealed 24 of 1988 s. 2*)

60. Offences

- (1) Any person who contravenes section 51(2) shall be guilty of an offence and shall be liable on conviction to a fine at level 3.

(Amended 24 of 1988 s. 2; 28 of 1992 s. 8)

- (2) Any person who contravenes section 53(5) or 55(4) shall be guilty of an offence and shall be liable on conviction to a fine at level 3. *(Amended 24 of 1988 s. 2)*
- (3) Any licensee who contravenes section 52(2A), (2B) or (2C) or 56(1), (2) or (3) shall be guilty of an offence and shall be liable on conviction to a fine at level 3. *(Amended 24 of 1988 s. 2; 28 of 1992 s. 8)*
- (4) *(Repealed 24 of 1988 s. 2)*
- (5) Any person who—
 - (a) in connection with any application to the Commissioner under section 52(1) or 54(1) furnishes any information which he knows or reasonably ought to know to be false or misleading in any material particular; or
 - (b) in connection with any inquiry or inspection under section 58—
 - (i) fails without reasonable excuse to produce any record or other document relating to the employment agency when required to do so by the Commissioner or any public officer authorized in that behalf by the Commissioner; or *(Amended 28 of 1992 s. 7)*
 - (ii) furnishes to the Commissioner or any such public officer any information which he knows or reasonably ought to know to be false or misleading in any material particular,shall be guilty of an offence and shall be liable on conviction to a fine at level 5. *(Amended 24 of 1988 s. 2)*
- (6) A person who contravenes section 51(1) commits an offence and is liable on conviction to a fine of \$350,000 and to imprisonment for 3 years. *(Replaced 8 of 2018 s. 7)*

- (7) A person who contravenes section 57(1)(a) commits an offence and is liable on conviction to a fine of \$350,000 and to imprisonment for 3 years. *(Replaced 8 of 2018 s. 7)*
- (8) Despite section 26 of the Magistrates Ordinance (Cap. 227), a complaint may be made or an information laid in respect of an offence under subsection (6) or (7) within 12 months after the date of the commission of the offence. *(Added 8 of 2018 s. 7)*
- (9) A person who contravenes section 57(1)(b) or (c) commits an offence and is liable on conviction to a fine at level 5. *(Added 8 of 2018 s. 7)*

(Amended 103 of 1995 s. 18)

61. Application of sections 52(2A), (2B) and (2C), 56, 57, 58 and 59 to holders of certificates of exemption and exempted employment agencies

- (1) Sections 52(2A), (2B) and (2C), 56, 57, 58 and 59 shall apply to holders of certificates of exemption in the same manner as they apply to licensees.
- (2) Every reference to an employment agency in sections 52(2A), (2B) and (2C), 56, 57, 58 and 59 shall, except where the context otherwise requires, be construed as a reference to both an employment agency licensed under section 52 and an employment agency exempted under section 54.

(Amended 28 of 1992 s. 9)

62. Power to make regulations

The Chief Executive in Council may make regulations for all or any of the following purposes— *(Amended 56 of 2000 s. 3)*

- (a) prescribing the procedure for the issue of licences and certificates of exemption;

- (b) fixing the fees to be paid for the issue and renewal of a licence or certificate of exemption and the method of payment of such fees;
- (c) prescribing the procedure to be followed when a licensee or holder of a certificate of exemption—
 - (i) ceases to operate his employment agency; or
 - (ii) changes the place of business of his employment agency;
- (d) prescribing the procedure to be followed when—
 - (i) a company is issued with a licence or certificate of exemption; and
 - (ii) there is a change in the management of the company;
- (e) requiring a licensee and the holder of a certificate of exemption to display his licence or certificate of exemption conspicuously at the place of business of the employment agency;
- (f) providing for the publication in the Gazette of particulars of all licences and certificates of exemption;
- (g) prescribing the nature of services in respect of which an employment agency may charge and receive any fee, commission or expenses;
- (h) prescribing the maximum fees and charges which may be charged and received by an employment agency;
- (i) prescribing any thing which is to be or may be prescribed under this Part; and
- (j) generally for the better carrying out of the provisions and purposes of this Part.

62A. Codes of practice for employment agencies

- (1) The Commissioner may issue codes of practice setting out principles, procedures, guidelines and standards for the operation, management or control of employment agencies.
- (2) The Commissioner is to make a copy of every code of practice available for inspection by the public free of charge during business hours at offices of the Government directed by the Commissioner.

(Added 8 of 2018 s. 8)

Part XIII

Offences and Penalties

(Format changes— E.R. 3 of 2017)

63. Offences and penalty

- (1) Any employer who wilfully and without reasonable excuse contravenes any of the provisions of section 11E or 11F(3) or (4) shall be guilty of an offence. *(Amended 71 of 1970 s. 4; 48 of 1984 s. 26; 24 of 1988 s. 2)*
- (2) Any employer who—
 - (a) without reasonable excuse, fails—
 - (i) to grant to any employee any rest day which he is required to grant under Part IV; or
 - (ii) *(Repealed 103 of 1995 s. 19)*
 - (b) contravenes section 19,shall be guilty of an offence. *(Added 23 of 1970 s. 4)*
- (3) Any person who wilfully contravenes section 67(2) shall be guilty of an offence. *(Added 71 of 1970 s. 4)*
- (4) Any employer who without reasonable excuse fails—
 - (a) to grant to any employee any holiday which he is required to grant under section 39; or
 - (b) to pay to any employee—
 - (i) any sickness allowance which he is required to pay under section 33; or
 - (ii) any holiday pay which he is required to pay under section 40 or 40A(2); or *(Amended 48 of 1984 s. 26)*

- (c) to give to any employee any leave which he is required to grant or allow by section 41AA or 41F(3); or *(Replaced 53 of 1990 s. 5)*
 - (d) to grant to any employee any rest day or holiday which he is required to grant under section 41AA(6); or *(Amended 53 of 1990 s. 5)*
 - (e) to pay to an employee—
 - (i) pay as regards leave which he is required to grant or allow under section 41AA or 41F(3); or
 - (ii) a sum or compensation which he is required to pay under section 41D, *(Replaced 53 of 1990 s. 5)*
- shall be guilty of an offence. *(Added 39 of 1973 s. 6. Amended 53 of 1977 s. 7)*
- (5) Any person who contravenes section 40A(1) or 41B shall be guilty of an offence. *(Replaced 103 of 1995 s. 19)*
- (5A) Any person who—
- (a) fails to comply with a requirement made by any officer under any of the provisions of section 72 other than subsection (1)(a), (b) and (c) of that section; *(Amended 31 of 1992 s. 2)*
 - (b) wilfully or recklessly gives information which is false in a material particular or withholds information as to any of the matters in respect of which information is required to be given under any of the provisions of section 72 other than subsection (1)(b) and (c) of that section; or *(Amended 31 of 1992 s. 2)*
 - (c) *(Repealed 24 of 1988 s. 2)*
 - (d) fails to comply with any condition imposed on the granting of any exemption under section 73(2),
- shall be guilty of an offence. *(Added 55 of 1979 s. 2)*

- (5B) (a) Any person who makes a payment in contravention of section 41E(1) shall be guilty of an offence.
- (b) In any proceedings for an offence under this subsection the onus shall be on the defendant to show that any payment to which the offence relates was made pursuant to an agreement duly made under section 41E(2). (*Added 53 of 1990 s. 5*)
- (5C) Any employer who contravenes section 41EA shall be guilty of an offence. (*Added 53 of 1990 s. 5*)
- (6) Any person who fails to comply with the requirements of a notice in writing or a notice published in the Gazette under section 48(1) shall be guilty of an offence.
- (7) A person who is guilty of an offence under this section shall be liable on conviction to a fine at level 5. (*Amended 24 of 1988 s. 2; 103 of 1995 s. 19*)

63A. Offences relating to sections 31, 72A and 72B and penalty

- (1) Any employer who wilfully and without reasonable excuse contravenes any of the provisions of section 31 shall be guilty of an offence. (*Amended 31 of 1992 s. 3*)
- (2) (*Repealed 103 of 1995 s. 20*)
- (3) A person who is guilty of an offence under subsection (1) shall be liable on conviction to a fine at level 6. (*Replaced 103 of 1995 s. 20*)
- (4) Any person who contravenes section 72A(3) shall be guilty of an offence and shall be liable on conviction to a fine at level 5. (*Added 103 of 1995 s. 20*)
- (5) Any person who contravenes any of the provisions of section 72(B)(1)(a), (b), (c) or (d) shall be guilty of an offence and shall be liable on conviction to a fine at level 6. (*Added 103 of 1995 s. 20*)

(Added 24 of 1988 s. 2)

63B. Offences relating to sections 32 and 72(1)(a), (b) and (c)

- (1) Any person who contravenes section 32 or fails to comply with a requirement made by an officer under section 72(1)(a), (b) or (c) commits an offence.
- (2) Any person who wilfully or recklessly gives information which is false in a material particular or withholds information as to any of the matters in respect of which information is required to be given under section 72(1)(b) or (c) commits an offence.
- (3) A person who commits an offence under this section is liable to a fine at level 6 and to imprisonment for 1 year. *(Amended 103 of 1995 s. 21)*

(Added 31 of 1992 s. 4)

63C. Offences relating to time and payment of wages

Any employer who wilfully and without reasonable excuse contravenes section 23, 24 or 25 commits an offence and is liable to a fine of \$350,000 and to imprisonment for 3 years.

(Added 31 of 1992 s. 4. Amended 1 of 2006 s. 3)

63CA. Offences relating to interest on late payment of wages

Any employer who wilfully and without reasonable excuse contravenes section 25A commits an offence and is liable to a fine at level 3.

(Added 74 of 1997 s. 16. Amended L.N. 312 of 1998)

63D. Minor offences

- (1) Any person who contravenes section 18(2), 26, 27, 28(2), 29, 30, 41AA(4) or (5), 41F(1), 41G, 44, 45, 47(1), 49A or 72A(1) or (2) shall be guilty of an offence.

- (2) A person who is guilty of an offence under this section is liable on conviction to a fine at level 3.

(Added 103 of 1995 s. 22)

64. Prosecution of offences

- (1) No prosecution for an offence under section 31RA(6) or section 63(1) or (3) or 63A(1) or 63B or 63C shall be commenced without the consent in writing of the Commissioner. *(Amended 71 of 1970 s. 4A; 24 of 1988 s. 2; 52 of 1988 s. 16; 31 of 1992 s. 5)*
- (2) Before the Commissioner gives his consent to prosecute under subsection (1) he shall hear the person against whom the allegation is made, or give him an opportunity of being heard.
- (3) Subject to subsection (1), a prosecution for any offence under this Ordinance may be brought in the name of the Commissioner and may be commenced and conducted by any officer of the Labour Department authorized in that behalf in writing by the Commissioner. *(Replaced 48 of 1984 s. 27)*
- (4) Nothing in this section shall derogate from the powers of the Secretary for Justice in respect of the prosecution of criminal offences. *(Amended L.N. 362 of 1997)*

64A. Service of summons

- (1) Any summons relating to an offence alleged to have been committed under this Ordinance by an employer may be served by leaving a copy of the summons with some person for him at the place of employment mentioned in the summons.
- (2) Any such summons may be addressed to “the employer” without specifying the name of the employer.

- (3) Any summons relating to an offence alleged to have been committed under this Ordinance by an employee may be served by leaving a copy of the summons either with some person for him at his last or usual place of abode or with some person for him at his place of employment mentioned in the summons.
- (4) Any summons relating to an offence alleged to have been committed under this Ordinance by a company may be served by leaving a copy of the summons at, or sending it by registered post to, the registered office of the company.

(Added 48 of 1984 s. 28)

64B. Liability of directors, partners, etc.

- (1) Where an offence under section 63B or 63C committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, the director, manager, secretary or other similar officer shall be guilty of the like offence.
- (2) Where an offence under section 63B or 63C committed by a partner in a firm is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any other partner in the firm or any person concerned in the management of the firm, that partner or the person concerned in the management of the firm shall be guilty of the like offence.

(Added 31 of 1992 s. 6)

65. Liability for outstanding wages

- (1) An employer convicted of an offence under this Ordinance shall, in addition to any fine imposed under this Ordinance,

if the court before which the conviction was obtained so orders, pay any wages or other sum outstanding at the time of the conviction and in respect of which the offence was committed.

- (2) Where the employer is acquitted of an offence under this Ordinance on grounds that his default was not wilful or not without reasonable excuse, the court may, if it finds that any wages or other sums in respect of which the charge was brought are due, order the employer to pay such wages or other sums.

(Amended 31 of 1992 s. 7)

Part XIV

Miscellaneous

(Format changes— E.R. 3 of 2017)

66. Wages not to be attached

No order for the attachment of wages, or, in the case of an employee to whom Part IIA applies, any end of year payment or proportion thereof, of an employee shall be made by any court:

Provided that a civil debt due to the Government under any enactment may be recovered from the wages of an employee by attachment or otherwise.

(Amended 48 of 1984 s. 29; 56 of 2000 s. 3)

67. Application for apprehension of absconding employer

(1) If an employer or former employer is about to leave Hong Kong with intent to evade payment of— *(Amended 48 of 1984 s. 30)*

(a) any wages earned by any of his employees and owed by the employer, whether or not the payment of such wages is yet due; or

(b) any other moneys owed by the employer under a contract of employment to any of his employees,

any of his employees may apply to a District Judge to issue a warrant in accordance with the Second Schedule, and in respect of any such application the Second Schedule shall apply.

(2) No person shall make an application under subsection (1) unless he has reasonable grounds for making such application.

(Added 71 of 1970 s. 5)

67A. Amendment of limitation imposed on severance payment and long service payment

The Legislative Council may, by resolution published in the Gazette, amend the references to \$22,500 in sections 31G and 31V and in this section by substituting a different amount specified in the resolution.

(Replaced 41 of 1990 s. 22. Amended L.N. 264 of 1995)

68. Amendment of forms

The Chief Executive may, by order published in the Gazette, amend Part II of the Second Schedule.

(Added 44 of 1971 s. 5. Amended 56 of 2000 s. 3)

69. Saving as to existing contracts of service

Save as is otherwise provided in this section, any agreement or contract of employment entered into between an employer and an employee, which is valid and in force at the commencement of this Ordinance, shall continue to be in force and, subject to any express conditions contained in any such agreement or contract, the parties thereto shall be subject to and entitled to the benefit of the provisions of this Ordinance:

Provided that where any express condition in the agreement or contract is contrary to the provisions of this Ordinance, the express condition shall be void.

70. Contracting out

Any term of a contract of employment which purports to extinguish or reduce any right, benefit or protection conferred upon the employee by this Ordinance shall be void.

(Added 5 of 1970 s. 8)

71. Saving as to schemes of medical treatment under repealed Industrial Employment (Holidays with Pay and Sickness Allowance) Ordinance

Any scheme of medical treatment which is operated by an employer and is recognized by the Director under section 8 of the repealed Industrial Employment (Holidays with Pay and Sickness Allowance) Ordinance* shall continue in force and have effect as if it were operated and approved under the corresponding provision in this Ordinance.

(Added 39 of 1973 s. 7)

Editorial Note:

* See Chapter 333, 1964 Ed.

72. Powers of officers

- (1) The Commissioner, or any public officer authorized by the Commissioner in writing for the purpose and on production of that authority, may—
 - (a) subject to subsection (2), enter, inspect and examine at all reasonable times, by day and night, any premises or place, in which he knows or has reasonable cause to believe that persons are employed;
 - (b) require the production of any register, record, form or other document required to be kept under this Ordinance (and, in the case of a record which includes particulars required to be included under section 49A(3)(ea), require that the particulars under section 49A(3)(a), (d), (e), (ea) and (f) are produced in a single document) and inspect, examine and copy the same; *(Amended 15 of 2010 s. 21)*

- (c) make such examination and inquiry as may be necessary to ascertain whether the requirements of this Ordinance are complied with, and seize anything which may appear to be evidence of an offence against this Ordinance;
- (d) examine, either alone or in the presence of any other person, as he thinks fit, respecting matters under this Ordinance, any person whom he finds in any industrial undertaking within the meaning of the Factories and Industrial Undertakings Ordinance (Cap. 59), or whom he has reasonable cause to believe has been within the preceding 2 months employed in any industrial undertaking within the meaning of the Factories and Industrial Undertakings Ordinance (Cap. 59), or require any such person to be so examined and to sign a declaration of the truth of the matters respecting which he has been so examined; (*Added 10 of 1980 s. 6*)
- (e) require any person who employs or has employed any young person or child in an industrial undertaking within the meaning of the Factories and Industrial Undertakings Ordinance (Cap. 59) or any agent or servant of any such employer to give to him all information in the possession of such person, agent or servant with reference to such young person or child and to the labour conditions and treatment of every young person or child employed by such employer; (*Added 10 of 1980 s. 6. Amended 7 of 2001 s. 10*)
- (f) require the posting up, in such place and manner and for such period as he may direct, of any notice or form in connection with the provisions of this Ordinance or of any Ordinance specified in the Fourth Schedule; (*Added 10 of 1980 s. 6. Amended 48 of 1984 s. 31*)

- (g) exercise any other powers which may be conferred on him by any regulations made under this Ordinance.
(Added 10 of 1980 s. 6)
- (2) No premises or part of a premises which is used for dwelling purposes shall be entered under subsection (1) except by virtue of a warrant issued by a magistrate, where such magistrate is satisfied by information on oath that there is reasonable ground for suspecting that an offence against this Ordinance has been, is being or is about to be committed in such premises or part or that there is in such premises or part anything likely to be or contain evidence of such offence.
- (3) An officer exercising any power conferred on him by subsection (1) in relation to any industrial undertaking within the meaning of the Factories and Industrial Undertakings Ordinance (Cap. 59) may take with him any person whom he may reasonably need to assist him in carrying out his duties under this Ordinance and in particular may, for his assistance, take persons who have been engaged by the Commissioner, on account of their special expertise, to advise the Labour Department on any matters necessary for carrying out the purposes of this Ordinance. *(Added 10 of 1980 s. 6)*
- (4) A person who accompanies an officer pursuant to subsection (3)—
- (a) may give to the officer such assistance in the exercise of any power conferred on him by subsection (1) as the officer may reasonably require;
- (b) shall be deemed to be a public officer for the purposes of sections 72A and 72B. *(Added 10 of 1980 s. 6)*
- (Added 55 of 1979 s. 2)*

72A. Duty of public officers not to disclose source of complaint, etc.

- (1) Save with the consent of the person who has made the

complaint or as provided in subsection (4), no public officer shall disclose to any person, other than another public officer in the course of official duty, the name or identity of any person who has made a complaint alleging a contravention of this Ordinance or as a result of which a contravention of this Ordinance has come to his notice or to the notice of any other public officer.

- (2) No public officer shall disclose to an employer or his agent or servant that a visit to the place of employment maintained by that employer was made in consequence of the receipt of any such complaint as is referred to in subsection (1).
- (3) Save as provided in subsection (4), where, arising out of, or in connection with, the enforcement of this Ordinance, any manufacturing or commercial secret or any working process comes to the knowledge of a public officer, such officer shall not at any time, and notwithstanding that he is no longer a public officer, disclose such secret or process to any person.
- (4) Where in any proceedings a court or a magistrate considers that justice so requires, the court may order the disclosure of the name or identity of any person who has made any such complaint as is referred to in subsection (1) or the disclosure of any such secret or process as is referred to in subsection (3).

(Added 10 of 1980 s. 7)

72B. Employment not to be terminated, etc. by reason of fact that employee has given evidence in proceedings under Ordinance, etc.

- (1) No employer shall terminate, or threaten to terminate, the employment of, or in any way discriminate against, any of his employees by reason of the fact that the employee has— *(Amended 61 of 1993 s. 9)*

- (a) given evidence, or agreed to give evidence, in any proceeding for the enforcement of this Ordinance; *(Amended 29 of 1992 s. 3)*
 - (b) given information to a public officer in any inquiry made by such officer for the purposes of or in connection with the enforcement of this Ordinance;
 - (c) given evidence, or agreed to give evidence, in any proceeding relating to an accident to an employee arising out of and in the course of his employment or for the breach of a statutory duty in relation to the safety of persons at work; or *(Added 29 of 1992 s. 3)*
 - (d) given information to a public officer in any inquiry made by such officer for the purposes of or in connection with an accident to an employee arising out of and in the course of his employment or for the breach of a statutory duty in relation to the safety of persons at work. *(Added 29 of 1992 s. 3)*
- (2) Where an employer is convicted of an offence under section 63A(5) in respect of an action prohibited by this section, the court or magistrate before which the conviction is obtained may, in addition to any fine that may be imposed, order the employer to pay as compensation to the employee who was the victim of the offence, such amount as the court or magistrate considers appropriate having regard to the circumstances of the case. *(Added 61 of 1993 s. 9. Amended 103 of 1995 s. 23)*

(Added 10 of 1980 s. 7)

72C. Presumptions

In any prosecution under this Ordinance—

- (a) where the age of any person at any time is material for the purposes of any provision of this Ordinance, his

age at the material time shall be deemed to be or have been that which appears to the court or magistrate, after considering any available evidence, to be or to have been his age at that time;

- (b) if the charge alleges the contravention of any of the provisions of this Ordinance prohibiting or controlling the employment of young persons or children and the defendant in such prosecution is the employer at the place of employment in or in respect of which the offence is alleged to have been committed, it shall, until the contrary is proved, be presumed that any young person or child to whom the charge relates and who was employed in the place of employment on the day on which the offence is alleged to have been committed was employed therein on that day by such employer.
(Amended 7 of 2001 s. 11)

(Added 10 of 1980 s. 7)

73. Regulations

- (1) The Chief Executive in Council may make regulations for all or any of the following purposes— *(Amended 56 of 2000 s. 3)*
 - (a) prohibiting or controlling the employment of persons or any class of persons in any industry, occupation or trade;
 - (b) requiring records to be kept and forms to be maintained in respect of employees or any class of employees employed in any industry, occupation or trade;
 - (c) imposing obligations for securing compliance with the provisions of this Ordinance upon employers, their agents or servants, and upon employees;
 - (d) imposing duties and liabilities on employers and employees;

- (e) defining the functions, duties and powers of public officers appointed or authorized for the purposes of this Ordinance;
- (f) exempting any industry, occupation or trade, or any class or part of any industry, occupation or trade, from the operation of this Ordinance or any provision thereof;
- (g) providing that this Ordinance or any provision thereof shall not apply, or may be modified, in relation to any class of persons;
- (h) *(Repealed 56 of 2000 s. 3)*
- (ha) providing that, where the Commissioner is satisfied that work in any industrial undertaking within the meaning of the Factories and Industrial Undertakings Ordinance (Cap. 59), or class or description thereof, is subject to seasonal or other special pressure, he may by order published in the Gazette as respects any such industrial undertaking, or class or description thereof, increase for any employee during any period of such pressure the hours of work or period of employment specified in relation to that employee in regulations made under this Ordinance for a period in any year not exceeding that specified in the order; *(Added 10 of 1980 s. 8. Amended 7 of 2001 s. 12)*
- (hb) providing that—
 - (i) any document purporting to be a copy of any document or notice and purporting to be signed by a person or his duly authorized agent shall be admitted in evidence in proceedings before any court or magistrate on its production by a public officer without further proof; and
 - (ii) until the contrary is proved, the court or magistrate before which such document is produced shall

presume that the document is a true copy and that it is signed by that person or his duly authorized agent; and

- (iii) the document shall be conclusive evidence of the facts stated therein; *(Added 10 of 1980 s. 8)*
 - (hc) providing that any person who works in any place of employment at any kind of work whatsoever incidental to or connected with the process, trade or business for which the place of employment is used shall, save as may be provided otherwise in the regulations, be deemed to be employed therein for the purposes of any regulations made under this Ordinance or of any proceedings thereunder; *(Added 10 of 1980 s. 8)*
 - (i) generally, carrying into effect the provisions of this Ordinance.
- (2) The Commissioner may in writing, in such cases as he thinks fit and for such period and subject to such conditions as he may specify, exempt any person or class of persons from any regulations made under this section.
- (3) *(Repealed 24 of 1988 s. 2)*
- (Added 55 of 1979 s. 2. Amended 10 of 1988 s. 8)*

74. Penalty for contravention of regulations

Regulations under this Ordinance may provide that a contravention thereof shall be an offence and may provide penalties therefor not exceeding a fine at level 6.

(Added 24 of 1988 s. 2. Amended 103 of 1995 s. 24)

75. Transitionals for Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Ordinance 2006

- (1) A reference in this Ordinance to a certificate or medical

certificate issued by a registered Chinese medicine practitioner—

- (a) does not include a certificate or medical certificate so issued before the commencement* of the 2006 Ordinance; and
- (b) does not include a certificate or medical certificate so issued on or after the commencement of the 2006 Ordinance to the extent—
 - (i) that it relates to any period of days or hours which ends before that commencement; or
 - (ii) if it relates to any period of days or hours which occurs partly before that commencement, that it relates to such part of the period occurring before that commencement.

(2) For the purposes of this section—

- (a) **2006 Ordinance** (《2006年條例》) means Part 2 of the Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Ordinance 2006 (16 of 2006);
- (b) a certificate or medical certificate relates to a period of days or hours if the certificate or medical certificate is produced for the purposes of—
 - (i) an employee taking that period of days as maternity leave under Part III or sickness days under Part VII; or
 - (ii) having that period of hours counted as hours in which an employee has worked by virtue of paragraph 3(2)(a) of the First Schedule.

(Added 16 of 2006 s. 9)

* Commencement date: 1 December 2006.

76. Application of this Ordinance as amended by the Employment (Amendment) Ordinance 2007

- (1) This Ordinance as amended by the Employment (Amendment) Ordinance 2007 (7 of 2007) (*amending Ordinance*) applies to contracts of employment entered into on or after the date of commencement* of the amending Ordinance (*commencement date*).
- (2) Where an employee's contract of employment was entered into before the commencement date and the date of termination of the contract falls on or after the commencement date, this Ordinance as amended by the amending Ordinance applies to the calculation of the following payments—
 - (a) any payment in lieu of notice or sum payable by or to the employee under Part II;
 - (b) any sum payable to the employee under section 15(2);
 - (c) any sum payable to the employee under section 33(4BA) or (4C);
 - (d) any sum payable to the employee under section 40A(2);
 - (e) any sum payable to the employee under section 41D.
- (3) Where an employee's contract of employment was entered into before the commencement date and any end of year payment or proportion thereof payable to the employee under Part IIA becomes due on or after the commencement date, this Ordinance as amended by the amending Ordinance applies to the calculation of the end of year payment or proportion thereof.

- (4) Where an employee's contract of employment was entered into before the commencement date and any maternity leave pay, sickness allowance, holiday pay or annual leave pay is payable by the employer to the employee in respect of a wage period the last day of which falls on or after the commencement date, this Ordinance as amended by the amending Ordinance applies to the calculation of the maternity leave pay, sickness allowance, holiday pay or annual leave pay.

(Added 7 of 2007 s. 17)

Editorial Note:

- * Commencement date: 13 July 2007 (sections 1 to 15 and 17); and
13 January 2008 (section 16).

**77. Transitional provisions relating to Employment (Amendment)
(No. 2) Ordinance 2018**

- (1) A specified provision applies to a claim by an employee for remedies under Part VIA if the material date for the employee falls on or after the specified date for the specified provision.
- (2) Subsection (1) applies regardless of whether or not the employee's contract of employment was entered into before that specified date.
- (3) A former provision applies to a claim by an employee for remedies under Part VIA if the material date for the employee falls before the specified date for the former provision.
- (4) Subsection (3) applies regardless of whether or not proceedings in respect of the claim have begun before that specified date.
- (5) In this section—

former provision (原有條文) means section 32J, 32N, 32O, 43N, 43P or 43R, or any part of the section, as was in force

immediately before it was amended by the Employment (Amendment) (No. 2) Ordinance 2018 (21 of 2018);

material date (關鍵日期) means—

- (a) in relation to an employee dismissed in any of the circumstances mentioned in section 32A(1)(a) or (c)—
 - (i) if the employer has notified the employee of the dismissal before it took effect—the date on which the employee was notified; or
 - (ii) in any other case—the date on which the dismissal took effect; or
- (b) in relation to an employee the terms of whose contract of employment have been varied in the circumstances mentioned in section 32A(1)(b)—
 - (i) if the employer has notified the employee of the variation before it took effect—the date on which the employee was notified; or
 - (ii) in any other case—the date on which the variation took effect;

specified date (指明日期)—

- (a) in relation to a former provision, means the commencement date* of the provision of the Employment (Amendment) (No. 2) Ordinance 2018 (21 of 2018) that—
 - (i) repeals the former provision; or
 - (ii) amends the former provision to become a specified provision; or
- (b) in relation to a specified provision, means the commencement date* of the provision of that Ordinance that—
 - (i) adds the specified provision; or

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- (ii) amends a former provision to become the specified provision;

specified provision (指明條文) means section 32J, 32N, 32NA, 32NB, 32O, 32PA, 32PB, 32PC, 43N, 43P or 43R, or any part of the section.

(Added 21 of 2018 s. 12)

Editorial Note:

* Commencement date: 19 October 2018.

First Schedule

[ss. 3 & 75]

(Amended 16 of 2006 s. 10)

Continuous Employment

(Format changes—E.R. 3 of 2017)

1.
 - (a) The provisions of this Schedule are to ascertain whether or not any contract of employment is a “continuous contract” for the purposes of this Ordinance.
 - (b) In the case of a contract of employment existing at the commencement of this Ordinance, such period of employment next preceding the date of commencement of the Ordinance as may be necessary shall be taken into account in order to ascertain whether or not the contract of employment is a continuous contract.
2. Subject to the following provisions, where at any time an employee has been employed under a contract of employment during the period of 4 or more weeks next preceding such time he shall be deemed to have been in continuous employment during that period.
3.
 - (1) For the purposes of paragraph 2, no week shall count unless the employee has worked for 18 hours or more in that week, and in determining whether he has worked in any hour the provisions of sub-paragraph (2) shall apply.
 - (2) If in any hour the employee is, for the whole or part of the hour—

(a) incapable of work in consequence of sickness or injury; provided that any such incapability in excess of 48 hours is supported by a certificate issued by a registered medical practitioner, registered Chinese medicine practitioner or registered dentist; or (*Amended 5 of 1995 s. 11; 16 of 2006 s. 10*)

(b) absent from work in circumstances such that, by law, mutual arrangement or the custom of the trade, business or undertaking, he is regarded as continuing in the employment of his employer for any purpose,

then, save as provided in paragraph 4, that hour shall count as an hour in which he has worked.

4. Where an employee is absent from work for the whole or part of any hour—

(a) because of a strike (which is not illegal) in which he takes part; or

(b) because of a lock-out by his employer,

that hour shall not count as an hour in which he has worked, but the continuity of his period of employment shall not be treated as broken by any such absence.

5. If a trade, business or undertaking is transferred from one person to another, the period of employment of an employee in the trade, business or undertaking at the time of the transfer shall count as a period of employment with the transferee, and the transfer shall not break the continuity of the period employment.

6. For the purposes of this Schedule, any reference to hours in which an employee has worked shall mean hours in which he has worked for his employer whether or not the hours were worked under the

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same or another contract of employment with that employer and whether or not they were consecutive hours. (*Replaced 41 of 1990 s. 23*)

7. In this Schedule, unless the context otherwise requires—
lock-out (閉廠) and ***strike*** (罷工), respectively, have the meanings assigned to them in the Trade Unions Ordinance (Cap. 332);
week (星期) means a week ending with Saturday.
(*Amended 5 of 1970 s. 9; 71 of 1970 s. 6; 41 of 1990 s. 23*)
-

Second Schedule

[s. 67]

Procedure for Apprehension of Absconding Employer

(Format changes—E.R. 3 of 2017)

Part I

1. In this Part, the wages and moneys described in section 67(1)(a) and (b) are referred to as *the debt*. *(Amended 32 of 2000 s. 48)*
2. An application under section 67 shall be as in Form 1 in Part II.
3. If a District Judge, after making such investigation as he considers necessary in respect of an application made under section 67, is satisfied that there is probable cause for believing that the employer is about to leave Hong Kong with intent to evade payment of the debt, he may issue a warrant as in Form 2 in Part II ordering that the employer be apprehended and brought before a District Judge to show cause why the employer should not be required to give security in accordance with paragraph 5. *(Amended 48 of 1984 s. 32)*
4. If an employer who is brought before a District Judge in accordance with a warrant issued under paragraph 3 shows cause why he should not be required to give security in accordance with paragraph 5, the warrant shall be discharged and the employer shall be released.
5. (1) If an employer who is brought before a District Judge in accordance with a warrant issued under paragraph 3 does not

show cause why he should not be required to give security in accordance with this paragraph, the District Judge may make an order requiring the employer to enter a bond, in accordance with sub-paragraph (3), for his appearance before a District Judge whenever called upon until he has paid to the employee the full amount of the debt.

- (2) If the employer offers, in lieu of entering a bond under sub-paragraph (1), to secure the payment to the employee of the full amount of the debt by any other arrangement, the District Judge may accept such other arrangement as security for the payment to the employee of the full amount of the debt in lieu of the bond.
- (3) A bond entered under sub-paragraph (1)—
 - (a) shall be in favour of the employee;
 - (b) shall be as in Form 3 in Part II;
 - (c) shall be for such sum, not exceeding the amount of the debt, as the District Judge may order; and
 - (d) shall be a bond with such number of sureties, approved by the District Judge, as the District Judge may order.

6. If an employer complies with an order made under paragraph 5(1), or secures the payment to the employee of the full amount of debt by any other arrangement under paragraph 5(2), the warrant issued under paragraph 3 shall be discharged and the employer shall be released.

7. If an employer fails to comply with an order made under paragraph 5(1), a District Judge may commit him to prison until the order is complied with or until the expiration of 3 months from the date of committal, whichever event occurs first.

8. (1) On the application of the employer, or of any surety for a bond entered under paragraph 5, a District Judge, if he is satisfied that any of the conditions specified in sub-paragraph (2) have been fulfilled, shall order as may be appropriate—
- (a) that any warrant issued under paragraph 3 be discharged;
 - (b) that the employer, if apprehended or brought before a District Judge under paragraph 3, or committed to prison under paragraph 7, be released;
 - (c) that any bond entered under paragraph 5 shall be void (notwithstanding the conditions thereof); and
 - (d) that the employer be released from any arrangement made under paragraph 5(2).
- (2) The conditions referred to in sub-paragraph (1) are—
- (a) that the debt has been satisfied in full or has been abandoned;
 - (b) that no proceedings have been brought within 14 days after the application under section 67 to recover any part of the debt from the employer;
 - (c) that no proceedings brought to recover the debt or any part of the debt from the employer have been prosecuted diligently;
 - (d) that all proceedings brought to recover the debt or any part of the debt from the employer have been finally struck out or dismissed.
9. (1) Any surety for a bond entered under paragraph 5 may at any time apply to a District Judge to be discharged from his obligation under the bond.
- (2) On receipt of an application under sub-paragraph (1), the District Judge shall call upon the employer to appear before a District Judge.

- (3) On the appearance of the employer before the District Judge, the District Judge shall order the surety by whom the application under sub-paragraph (1) is made to be discharged from his obligation under the bond, and shall order the employer to provide another surety or sureties, approved by the District Judge, for the bond.
- (4) If an employer is ordered under sub-paragraph (3) to provide an approved surety or sureties for a bond, the provisions of paragraphs 6 and 7 shall apply as if the order were an order made under paragraph 5(1).
10. No fees shall be payable to the District Court in respect of or in connection with an application made under section 67 or under paragraph 8 or 9.

Part II

FORM 1

[Employment Ordinance,
Second Schedule, Part I,
paragraph 2]

APPLICATION FOR WARRANT FOR APPREHENSION OF ABSCONDING EMPLOYER

Title

IN THE DISTRICT COURT OF HONG KONG

Held at

No.of 19

IN THE MATTER of an application under section 67 of the Employment Ordinance, for a warrant for the apprehension of.....

....., an employer.

EX PARTE, an employee.

Employment Ordinance

Second Schedule—Part II

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I, , of
(name of applicant) (address of applicant)

apply for the issue of a warrant in accordance with paragraph 3 of Part I
of the Second Schedule to the Employment Ordinance in respect of

.....
(name of employer)

of
(address of employer)

.....
(occupation of employer)

2. The grounds for my application are—

(a) that I am an employee/former employee⁽¹⁾ of ;
(name of employer)

(b) that is the employer/former
(name of employer)

employer⁽¹⁾ of each person specified in the First Column of the
Schedule;

(c) that the employer owes to such employees the wages and/or⁽¹⁾
other moneys specified in the Second Column of the Schedule
opposite their names, by reason of the facts specified in the
Third Column of the Schedule; and

(d) that I believe for the following reasons that the employer is
about to leave Hong Kong with intent to evade payment of the
wages and/or⁽¹⁾ other moneys specified in the Second Column
of the Schedule—

.....
.....

Employment Ordinance

Second Schedule—Part II

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SCHEDULE

FIRST COLUMN	SECOND COLUMN	THIRD COLUMN
Name and address of employee	Amount of wages and/or ⁽¹⁾ other moneys owing to employee	Reason for which moneys owing
Total amount owing to employees		

Dated this day of 19 .

.....
Applicant.

AFFIDAVIT IN SUPPORT OF APPLICATION

I, make oath/do solemnly, sincerely and truly declare and affirm⁽¹⁾ and say that the facts stated in paragraph 2 of the above application are correct to the best of my knowledge and belief.

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Sworn/affirmed⁽¹⁾ at

Hong Kong, the day of 19 .

Before me,

A Commissioner, &c.

Note: (1) Delete whichever is inapplicable.

(Amended L.N. 48 of 1972; L.N. 177 of 1981)

FORM 2

[Employment Ordinance,
Second Schedule, Part I,
paragraph 3]

WARRANT FOR APPREHENSION OF ABSCONDING EMPLOYER

[Title as in Form 1]

To each and all the police officers and bailiffs of Hong Kong.

Whereas I am satisfied, on application made on the day of 19 by [*name of applicant*] that the applicant [and the other persons referred to in the application]⁽²⁾ is/are/was/were⁽¹⁾ the employee/employees⁽¹⁾ of [*name of employer*], and that there is probable cause for believing that the said [*name of employer*] is about to leave Hong Kong with intent to evade payment of the sum of [*amount of debt*] being moneys earned by and owed to such employee/employees⁽¹⁾:

Employment Ordinance

Second Schedule—Part II

S2-16

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This is therefore to command you forthwith to apprehend the said [name of employer] and to bring him before a District Judge to show cause why he the said [name of employer] should not be required to give security in accordance with paragraph 5 of Part I of the Second Schedule to the Employment Ordinance, and to be further dealt with according to law.

Dated this day of 19 .

.....
District Judge.

[L.S.]

Notes : (1) Delete whichever is inapplicable.
(2) Delete if inapplicable.

(Amended L.N. 177 of 1981; 56 of 2000 s. 3)

FORM 3

[Employment Ordinance,
Second Schedule, Part I,
paragraph 5]

BOND TO SECURE PAYMENT OF WAGES DUE TO EMPLOYEES BY EMPLOYER

Employment Ordinance

Second Schedule—Part II

S2-18

Cap. 57

I/We⁽¹⁾ [*name of employer*] of [*address*], [*name of surety*] of [*address*], and [*name of surety*] of [*address*], is/are⁽¹⁾ bound to [*name of employee*] [and the other employees of (*name of employer*) specified in the application of (*name of applicant*) made on the _____ day of _____ 19____ to District Judge _____, under section 67 of the Employment Ordinance]⁽²⁾ in the sum of \$ _____, to be paid to [*name of employee*] [*and the said other employees*]⁽²⁾ or his/their respective⁽¹⁾ executors, administrators or assignees; for which payment to be made I/we jointly and severally⁽¹⁾ bind myself/ourselves⁽¹⁾, and my/our respective⁽¹⁾ heirs, executors and administrators.

In witness whereof I/we⁽¹⁾ have hereto set my hand and seal/our
hands and seals⁽¹⁾ this day of 19 .

The condition of this obligation is that if [*name of employer*] appears before a District Judge whenever called upon until he has paid [*name of employee*] [*and the said other employees*]⁽²⁾ the full amount of \$ _____ specified in the application, then this obligation shall be void but this obligation shall otherwise remain in full force.

Signed, sealed and delivered in the presence of	}	[Employer]	(L.S.)
		[Surety]	(L.S.)
		[Surety]	(L.S.)

Notes : (1) Delete whichever is inapplicable.

(2) Delete if inapplicable.

(Second Schedule added 71 of 1970 s. 7)

Third Schedule

[s. 31M]

Death of Employer or of Employee

(Format changes—E.R. 3 of 2017)

Part I

Death of Employer

1. This Part shall have effect in relation to an employee where his employer (in this Part referred to as *the deceased employer*) dies.
2. Section 31J shall not apply to any change whereby the ownership of the business, for the purposes of which the employee was employed by the deceased employer, passes to a personal representative of the deceased employer.
3. Where, by virtue of section 31L(1), the death of the deceased employer is to be treated for the purposes of Part VA of this Ordinance as a termination by him of the contract of employment, the employee shall nevertheless not be treated for these purposes as having been dismissed by the deceased employer if—
 - (a) his contract of employment is renewed by a personal representative of the deceased employer, or he is re-engaged under a new contract of employment by such a personal representative; and
 - (b) the renewal or re-engagement takes effect not later than 4 weeks after the death of the deceased employer.

4. Where, by reason of the death of the deceased employer, the employee is treated for the purposes of Part VA of this Ordinance as having been dismissed by him, he shall not be entitled to a severance payment in respect of that dismissal if a personal representative of the deceased employer has made to him an offer in writing to renew his contract of employment, or to re-engage him under a new contract, so that in accordance with the particulars specified in the offer the renewal or re-engagement would take effect not later than 4 weeks after the death of the deceased employer and either—
- (a) the provisions of the contract as renewed, or of the new contract, as the case may be, as to the capacity and place in which he would be employed, and as to the other terms and conditions of his employment, would not differ from the corresponding provisions of the contract as in force immediately before the death; or
 - (b) if, in accordance with the particulars specified in the offer, those provisions would differ (wholly or in part) from the corresponding provisions of the contract as in force immediately before the death, the offer constitutes an offer of suitable employment in relation to that employee,
- and (in either case) the employee has unreasonably refused that offer.
5. For the purposes of paragraph 4—
- (a) an offer shall not be treated as one whereby the provisions of the contract as renewed, or of the new contract, as the case may be, would differ from the corresponding provisions of the contract as in force immediately before the death of the deceased employer by reason only that the personal representative would be

substituted as the employer for the deceased employer;
and

- (b) no account shall be taken of that substitution in determining whether the refusal of the offer was unreasonable.

6. Whereby virtue of section 31L(1) the death of the deceased employer is to be treated as a termination by him of the contract of employment, any reference in subsection (2) of that section to section 31D(2) shall be construed as including a reference to paragraph 3.
7. Where by virtue of paragraph 3 the employee is treated as not having been dismissed by reason of a renewal or re-engagement taking effect after the death of the deceased employer, then—
 - (a) in determining, for the purposes of section 31B(1), whether he has been employed under a continuous contract for the requisite period, the interval between the death and the date on which the renewal or re-engagement takes effect shall count as a period of employment with the personal representative of the deceased employer, if apart from this paragraph it would not count for that purpose as such a period of employment; and
 - (b) in computing the period specified in section 31B(1), the continuity of the employee's period of employment shall be treated as not being broken by any week which falls within that interval.
8. For the purposes of the application, in accordance with section 31B(3), of Part VA of this Ordinance in relation to an employee who was employed as a domestic servant in, or in connection with, a

private household, any reference to a personal representative in this Part of this Schedule shall be construed as including a reference to any person to whom, otherwise than in pursuance of a sale or other disposition for valuable consideration, the management of the household has passed in consequence of the death of the deceased employer.

9. Subject to this Part of this Schedule, in relation to an employer who has died—
 - (a) any reference in Part VA of this Ordinance to the doing of anything by, or in relation to, an employer shall be construed as including a reference to the doing of that thing by, or in relation to, any personal representative of the deceased employer; and
 - (b) any reference in Part VA of this Ordinance to a thing required or authorized to be done by, or in relation to, an employer shall be construed as including a reference to anything which, in accordance with any provision of Part VA of this Ordinance as modified by this Part of this Schedule (including sub-paragraph (a)), is required or authorized to be done by, or in relation to, any personal representative of his.
10. Where by virtue of Part VA of this Ordinance, as modified by this Part of this Schedule, a personal representative of the deceased employer is liable to pay a severance payment, or part of a severance payment, and that liability had not accrued before the death of the deceased employer, it shall be treated for all purposes as if it were a liability of the deceased employer which had accrued immediately before his death.

Part II

Death of Employee

11. Where an employer has given notice to an employee to terminate his contract of employment, and before that notice expires the employee dies, Part VA of this Ordinance shall apply as if the contract had been duly terminated by the employer by notice expiring on the date of the employee's death.
12. Where an employer has given notice to an employee to terminate his contract of employment, and has offered to renew his contract of employment, or to re-engage him under a new contract, and—
 - (a) the employee dies without having either accepted or refused the offer; and
 - (b) the offer has not been withdrawn before his death,subsection (2) or (as the case may be) subsection (3) of section 31C shall apply as if, for the words “the employee has unreasonably refused”, there were substituted the words “it would have been unreasonable on the part of the employee to refuse”.
13. In relation to the making of a claim by a personal representative of a deceased employee who dies before the end of the period of 1 month beginning with the relevant date, section 31N shall apply with the substitution, for the words “3 months”, of the words “6 months”. (*Amended 76 of 1985 s. 9*)
14. Subject to this Part of this Schedule, in relation to an employee who has died, any reference in Part VA of this Ordinance to—
 - (a) the doing of anything by, or in relation to, an employee shall be construed as including a reference to the doing of that thing by, or in relation to, any personal representative of the deceased employee; and

Employment Ordinance

Third Schedule—Part II

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(b) a thing required or authorized to be done by, or in relation to, an employee shall be construed as including a reference to anything which, in accordance with Part VA of this Ordinance as modified by this Part of this Schedule (including sub-paragraph (a)), is required or authorized to be done by, or in relation to, any personal representative of his.

15. Any right of a personal representative of a deceased employee to a severance payment, where that right had not accrued before the employee's death, shall devolve as if it had accrued before his death.

(Third Schedule added 67 of 1974 s. 6)

Fourth Schedule

[s. 72(1)]

Specified Ordinances

(Format changes—E.R. 3 of 2017)

Item	Title
1.	Labour Tribunal Ordinance (Cap. 25).
2.	Apprenticeship Ordinance (Cap. 47).
3.	Labour Relations Ordinance (Cap. 55).
4.	Contracts for Employment Outside Hong Kong Ordinance (Cap. 78).
5.	Employees' Compensation Ordinance (Cap. 282).
6.	Trade Unions Ordinance (Cap. 332).
7.	Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360). <i>(Amended 6 of 2008 s. 37)</i>
8.	Minor Employment Claims Adjudication Board Ordinance (Cap. 453). <i>(Added 61 of 1994 s. 55)</i> <i>(Fourth Schedule added 48 of 1984 s. 33)</i>

Fifth Schedule(Repealed 74 of 1997 s. 18)*

Editorial Note:

* The Fifth Schedule has been repealed since 27 June 1998. The Fifth Schedule as it reads immediately before 27 June 1998 reads as follows—

“FIFTH SCHEDULE**TABLE**

Column 1	Column 2
Age in years of employee as at relevant date	Number of years of service of employee as at relevant date
Not more than 43	7
44	6
Not less than 45	5

”.

Sixth Schedule

[s. 31ZC]

Death of Employer—Long Service Payments

(Format changes—E.R. 3 of 2017)

1. This Schedule shall have effect in relation to an employee where his employer (in this Schedule referred to as *the deceased employer*) dies.
2. Section 31Z shall not apply to any change whereby the ownership of the business, for the purposes of which the employee was employed by the deceased employer, passes to a personal representative of the deceased employer.
3. Where, by virtue of section 31ZB, the death of the deceased employer is to be treated for the purposes of Part VB of this Ordinance as a termination by him of the contract of employment, the employee shall nevertheless not be treated for these purposes as having been dismissed by the deceased employer if—
 - (a) his contract of employment is renewed by a personal representative of the deceased employer, or he is re-engaged under a new contract of employment by such a personal representative; and
 - (b) the renewal or re-engagement takes effect not later than 4 weeks after the death of the deceased employer.

4. Where by virtue of paragraph 3 the employee is treated as not having been dismissed by reason of a renewal or re-engagement taking effect after the death of the deceased employer, then—
- (a) in determining, for the purposes of section 31R or 31RA, whether he has been employed under a continuous contract for the requisite number of years of service, the interval between the death and the date on which the renewal or re-engagement takes effect shall count as a period of employment with the personal representative of the deceased employer, if apart from this paragraph it would not count for that purpose as such a period of employment; and
 - (b) in computing the number of years of service specified in section 31R or 31RA, the continuity of the employee's period of employment shall be treated as not being broken by any week which falls within that interval.
5. For the purposes of the application, in accordance with section 31RB, of Part VB of this Ordinance in relation to an employee who was employed as a domestic servant in, or in connection with, a private household, any reference to a personal representative in this Schedule shall be construed as including a reference to any person to whom, otherwise than in pursuance of a sale or other disposition for valuable consideration, the management of the household has passed in consequence of the death of the deceased employer.
6. Subject to this Schedule, in relation to an employer who has died—
- (a) any reference in Part VB of this Ordinance to the doing of anything by, or in relation to, an employer shall be construed as including a reference to the doing of that thing by, or in relation to, any personal representative of the deceased employer; and

- (b) any reference in Part VB of this Ordinance to a thing required or authorized to be done by, or in relation to, an employer shall be construed as including a reference to anything which, in accordance with any provision of Part VB of this Ordinance as modified by this Schedule (including sub-paragraph (a)), is required or authorized to be done by, or in relation to, any personal representative of his.

- 7. Where by virtue of Part VB of this Ordinance, as modified by this Schedule, a personal representative of the deceased employer is liable to pay a long service payment, or part of a long service payment, and that liability had not accrued before the death of the deceased employer, it shall be treated for all purposes as if it were a liability of the deceased employer which had accrued immediately before his death.

(Sixth Schedule added 76 of 1985 s. 10. Amended 52 of 1988 s. 17; 41 of 1990 s. 24)

Seventh Schedule

[ss. 31G & 31V]

*(Format changes—E.R. 3 of 2017)***Table A**

Column 1	Column 2
Relevant date	Maximum amount
Before the date of commencement of the Employment (Amendment) Ordinance 1995 (5 of 1995)	The total amount of wages earned by the employee during the period of 12 months immediately preceding the relevant date, or \$180,000, whichever is less
On or after the date of commencement of the Employment (Amendment) Ordinance 1995 (5 of 1995), but before 1 October 1995	\$210,000
1 October 1995 to 30 September 1996	\$230,000
1 October 1996 to 30 September 1997	\$250,000
1 October 1997 to 30 September 1998	\$270,000
1 October 1998 to 30 September 1999	\$290,000
1 October 1999 to 30 September 2000	\$310,000
1 October 2000 to 30 September 2001	\$330,000
1 October 2001 to 30 September 2002	\$350,000
1 October 2002 to 30 September 2003	\$370,000
On or after 1 October 2003	\$390,000

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Table B

Column 1	Column 2
Relevant date	Fully reckonable years of service
On or after the date of commencement of the Employment (Amendment) Ordinance 1995 (5 of 1995), but before 1 October 1995	25 years
1 October 1995 to 30 September 1996	27 years
1 October 1996 to 30 September 1997	29 years
1 October 1997 to 30 September 1998	31 years
1 October 1998 to 30 September 1999	33 years
1 October 1999 to 30 September 2000	35 years
1 October 2000 to 30 September 2001	37 years
1 October 2001 to 30 September 2002	39 years
1 October 2002 to 30 September 2003	41 years
1 October 2003 to 30 September 2004	43 years

(Seventh Schedule added 5 of 1995 s. 12)

Eighth Schedule

[s. 32G]

Employment Protection

Death of Employer or of Employee

(Format changes—E.R. 3 of 2017)

Part I

Death of Employer

1. If an employer dies after his employee's right of action has arisen under Part VIA of this Ordinance on employment protection but before the adjudication of the claim, the claim shall be actionable by the employee against the personal representative of the deceased employer.
2. In relation to the death of an employer, a reference to renewal or re-engagement by the employer in section 32B or 32C shall be construed as including a reference to renewal or re-engagement by any personal representative of the deceased employer, and a reference to an offer made by the employer shall be construed as including a reference to an offer made by any personal representative of the deceased employer.

Part II

Death of Employee

3. If an employee dies after his right of action has arisen under

Part VIA of this Ordinance on employment protection but before the adjudication of the claim, the claim shall be actionable by a personal representative of the deceased employee.

4. Where an employer has given notice to an employee to terminate his contract of employment and before that notice expires the employee dies, Part VIA of this Ordinance on employment protection shall apply as if the contract had been terminated by the employer by notice expiring on the date of the employee's death.
5. Where an employer has given notice to an employee to terminate his contract of employment and has offered to renew his contract of employment or to re-engage him under a new contract and—
 - (a) the employee dies without having either accepted or refused that offer; and
 - (b) the offer has not been withdrawn by the employer before the death of the employee,

section 32C(1) or (2), as the case may be, shall apply as if, for the words “the employee has unreasonably refused”, there were substituted the words “it would have been unreasonable on the part of the employee to refuse”.

(Eighth Schedule added 75 of 1997 s. 5)

Ninth Schedule

[s. 49A]

Monetary Cap on Keeping Records of Hours Worked

(Format changes—E.R. 1 of 2013)

\$14,100 per month

*(Ninth Schedule added 15 of 2010 s. 22. Amended L.N. 148 of 2010;
L.N. 187 of 2012; L.N. 7 of 2015; L.N. 12 of 2017)*