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**HONG KONG SPECIAL ADMINISTRATIVE REGION**

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**ORDINANCE NO. 5 OF 2022**



Carrie LAM  
Chief Executive  
16 June 2022

An Ordinance to amend the Employment Ordinance to regard a day on which an employee (*affected employee*) is subject to any restriction on movement imposed under the Prevention and Control of Disease Ordinance as a sickness day; to provide for sickness allowance to be paid to the affected employee under certain circumstances; to provide that it is not a valid reason to dismiss an employee or vary the terms of the employee's contract of employment on the ground of the employee being an affected employee; to provide that it is a valid reason to dismiss an employee (other than an employee that falls within a specified category) or vary the terms of the employee's contract of employment if he or she refuses to produce proof of vaccination after a request is made by the employer; and to provide for related matters.

[17 June 2022]

Enacted by the Legislative Council.

**1. Short title and commencement**

- (1) This Ordinance may be cited as the Employment (Amendment) Ordinance 2022.

- (2) Subject to subsection (3), this Ordinance comes into operation on the day on which it is published in the Gazette.
- (3) Sections 4(2), 6, 11 and 14 come into operation on a day to be appointed by the Commissioner for Labour by notice published in the Gazette.

## 2. **Employment Ordinance amended**

The Employment Ordinance (Cap. 57) is amended as set out in sections 3 to 14.

## 3. **Section 2 amended (interpretation)**

- (1) Section 2(1)—

**Repeal the definition of *sickness day***

**Substitute**

“*sickness day* (病假日)—

- (a) means a day on which an employee is absent from the employee’s work by reason of the employee being unfit for work on account of injury or sickness; and
- (b) includes a day on which an employee is absent from the employee’s work by reason of the employee’s compliance with a Cap. 599 requirement;”.

- (2) Section 2(1)—

**Add in alphabetical order**

“*Cap. 599 requirement* (《第599章》規定) means a requirement set out in Part 1 of Schedule 12 that imposes a restriction on movement;”.

**4. Section 32K amended (reasons for the dismissal or the variation of the terms of the contract of employment)**

- (1) Section 32K(b), before “the capability”—

**Add**

“subject to section 32KB,”.

- (2) Section 32K(b)—

**Repeal**

“subject to section 32KB,”.

- (3) Section 32K(b)—

**Repeal**

“which he”

**Substitute**

“that the employee”.

**5. Sections 32KA and 32KB added**

After section 32K—

**Add**

**“32KA. Compliance with Cap. 599 requirement not valid reason for dismissal etc.**

- (1) This section applies in relation to an employee who is subject to a Cap. 599 requirement, and is dismissed or has the terms of the employee’s contract of employment varied by the employer.
- (2) In determining for the purposes of this Part whether the employer has a valid reason for the dismissal of the employee or the variation of the terms of the employee’s contract of employment within the meaning of section 32K, the employee’s absence from

work due to the employee's compliance with the Cap. 599 requirement does not constitute a valid reason for the dismissal or variation.

**32KB. Failure to comply with legitimate vaccination request regarded as incapable of performing work**

- (1) For the purposes of section 32K(b), an employee who fails to comply with a legitimate vaccination request made to the employee by his or her employer is regarded as being incapable of performing work of the kind that the employee was employed by the employer to do.
- (2) For subsection (1), a legitimate vaccination request is made to the employee (*subject employee*) by the employer if—
  - (a) a written request that meets all the conditions set out in Part 1 of Schedule 13 is made to the subject employee by the employer; and
  - (b) if any other employee (*fellow employee*) of the employer performs work the nature of which is the same as, or similar to, that of the subject employee's work—a written request that meets all the conditions set out in Part 1 of Schedule 13 is made to every fellow employee by the employer.
- (3) Without limiting the ways in which a written request is made for the purposes of subsection (2), a written request is so made to an employee if there is posted in a conspicuous place at the place of employment a notice that—
  - (a) contains the request; and

(b) is addressed to all the employees, or a group of employees to which the employee belongs, of the employer.”.

**6. Section 32KB repealed (failure to comply with legitimate vaccination request regarded as incapable of performing work)**

Section 32KB—

**Repeal the section.**

**7. Section 33 amended (sickness allowance)**

(1) Section 33(5)(a), after “subject to”—

**Add**

“paragraph (ab) and”.

(2) After section 33(5)(a)—

**Add**

“(ab) (if the employee is absent from work due to the employee’s compliance with a Cap. 599 requirement) subject to subsection (8), unless such day is shown, by any of the means specified in Part 2 of Schedule 12, to be a day on which the employee is subject to the Cap. 599 requirement;

(ac) if the employee is subject to a Cap. 599 requirement due to the employee’s serious and wilful misconduct;”.

(3) Section 33(5A), before “entered”—

**Add**

“(other than any sickness day that falls within paragraph (b) of the definition of *sickness day* in section 2(1))”.

(4) After section 33(7)—

**Add**

“(8) An employee is entitled to sickness allowance in respect of a sickness day that falls within paragraph (b) of the definition of *sickness day* in section 2(1) only if—

- (a) the period of the employee’s absence from work lasts for 4 or more consecutive days; and
- (b) the sickness day falls on or after the specified date.

(9) For the purposes of subsection (8), it does not matter—

- (a) whether the period of the employee’s absence from work begins before the specified date;
- (b) whether the period relates to more than one Cap. 599 requirement; and
- (c) whether the period relates to more than one order, notice, declaration, direction or other instruction or request (however described) made, issued, published or given under the Prevention and Control of Disease Ordinance (Cap. 599).

(10) In subsections (8) and (9)—

*specified date* (指明日期) means the day on which the Employment (Amendment) Ordinance 2022 (5 of 2022) is published in the Gazette.”.

**8. Section 35 amended (rate of sickness allowance)**

Section 35(2)—



**Repeal**

“he not been sick”

**Substitute**

“the employee not been sick or injured or absent from work due to the employee’s compliance with a Cap. 599 requirement”.

**9. Section 41AA amended (annual leave)**

Section 41AA(7), after “injury”—

**Add**

“or absence from work due to the employee’s compliance with a Cap. 599 requirement”.

**10. Sections 68A and 68B added**

After section 68—

**Add**

**“68A. Commissioner may amend Schedule 12**

The Commissioner may, by notice published in the Gazette, amend Schedule 12.

**68B. Commissioner may amend Schedule 13**

The Commissioner may, by notice published in the Gazette, amend Schedule 13.”.

**11. Section 68B repealed (Commissioner may amend Schedule 13)**

Section 68B—

**Repeal the section.**

**12. First Schedule amended (continuous employment)**

(1) First Schedule, paragraph 3(2)(a)—

**Repeal**

“; or”

**Substitute a semicolon.**

(2) First Schedule, after paragraph 3(2)(a)—

**Add**

“(ab) absent from work due to the employee’s compliance with a Cap. 599 requirement; or”.

**13. Schedules 12 and 13 added**

The Ordinance—

**Add**

**“Schedule 12**

[ss. 2, 33 & 68A]

**Requirements and Means**

**Part 1**

**Cap. 599 Requirements**

1. The requirements under sections 22(4), 23(3) and 29(2)(b) of the Prevention and Control of Disease Regulation (Cap. 599 sub. leg. A) where the employee—
  - (a) is placed under quarantine or isolation under that Regulation; or

- (b) is within a place that is placed under isolation under that Regulation.
- 2. The requirement not to leave a particular place under a compulsory testing notice published under section 10(1) of the Prevention and Control of Disease (Compulsory Testing for Certain Persons) Regulation (Cap. 599 sub. leg. J) (*Cap. 599J*).
- 3. The requirement not to leave a particular place under a compulsory testing order made under section 14(2) of Cap. 599J.
- 4. The requirement not to leave any restricted premises (as defined by section 19A of Cap. 599J) imposed under section 19C(1) of Cap. 599J.

## **Part 2**

### **Means Specified for purposes of Section 33(5)(ab)**

- 1. The means specified for the purposes of section 33(5)(ab) are—
  - (a) a document (in hard copy form or electronic form)—
    - (i) issued by a public officer or any person on behalf of the Government; and
    - (ii) that shows the prescribed information relating to the employee;

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- (b) electronic data—
- (i) access to which can be obtained, by telecommunications, in a manner specified by a public officer; and
  - (ii) that shows the prescribed information relating to the employee.
2. In section 1 of this Part—
- prescribed information*** (訂明資料) means—
- (a) the name of the employee who is subject to the Cap. 599 requirement mentioned in section 33(5)(ab) (or information that could identify the identity of the employee);
  - (b) the type of the restriction imposed by that requirement; and
  - (c) the commencement date and the expiry date of the period for the restriction imposed by that requirement.
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## Schedule 13

[ss. 32KB & 68B]

### Legitimate Vaccination Request

#### Part 1

#### Conditions

1. The request is one that requests the employee to produce, within 56 days from the date of the making of the request (*compliance period*), to the employer—
  - (a) if the place of work is situated in any premises, or if the place of work is a public transport carrier, in respect of which a Cap. 599L direction is in force—a record, document or information showing that the employee has, in relation to the premises or the carrier, been vaccinated in the specified manner for the purposes of the direction within the meaning of the Vaccine Pass Regulation; or
  - (b) a record, document or information showing that—
    - (i) if the Government, by any means other than a Cap. 599L direction, imposes a requirement (or makes a recommendation) that persons who perform a particular kind of work are to be (or should be) administered with a certain number of dose of a vaccine as defined by section 2 of the Prevention and Control of Disease

- (Use of Vaccines) Regulation (Cap. 599 sub. leg. K) (*vaccine*) in relation to the specified disease as at the date of the making of the request, and the work performed by the employee falls within that kind of work—the employee has been administered with that number of dose of the vaccine; or
- (ii) if no Cap. 599L direction or a requirement or recommendation mentioned in subparagraph (i) applies to the employee—the employee has been administered with at least one dose of the vaccine.
2. When making the request, the employer reasonably believes, having regard to the nature of the employee's work and the related operational requirements, that if the employee contracts the specified disease, the persons with whom the employee may come into face-to-face contact when the employee performs the employee's work will be exposed to the risk of infection.
3. The request is not made to an employee—
- (a) if section 1(a) or (b)(i) of this Part applies in relation to the employee—who is a person referred to in section 5(2) of the Vaccine Pass Regulation; or
  - (b) if section 1(b)(ii) of this Part applies in relation to the employee—
    - (i) who is pregnant;
    - (ii) who is breastfeeding;

- (iii) who is issued with a specified medical exemption certificate within the meaning of section 17 of the Vaccine Pass Regulation showing that it is unsuitable for the employee to get vaccinated during the compliance period; or
- (iv) in relation to whom all of the following conditions are met—
  - (A) the employee holds a proof of discharge or recovery issued by a person specified by the Director certifying that the employee was diagnosed on a particular date as having contracted the specified disease;
  - (B) that date falls within 6 months before the date on which the request is proposed to be made.

## Part 2

### Interpretation

1. In this Schedule—

**Cap. 599L direction** (《第599L章》指示) means a direction issued under section 3(1) of the Vaccine Pass Regulation;

**specified disease** (指明疾病) means the coronavirus disease 2019 (COVID-19), which is specified in item 8A of Schedule 1 to the Prevention and Control of Disease Ordinance (Cap. 599);

***Vaccine Pass Regulation*** (《疫苗通行證規例》) means the Prevention and Control of Disease (Vaccine Pass) Regulation (Cap. 599 sub. leg. L).”.

**14. Schedule 13 repealed (legitimate vaccination request)**

Schedule 13—

**Repeal the Schedule.**