

Changes to the Hong Kong Employment Ordinance because of Covid-19



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The Hong Kong government recently announced its proposal to amend the Employment Ordinance (Cap. 57) ("EO") in certain aspects by way of the Employment (Amendment) Bill 2022 which is expected to come into force soon. In short, the bill aims to address and clarify the following:

- the dismissal of unvaccinated employees or variation of their employment terms;
- protection offered to affected employees; and
- the definition of sickness day under the EO.

Dismissal of unvaccinated employees or variation of their employment terms:

The bill provides that employers may make a legitimate vaccination request. In the event an employee fails to comply with the request made by the employer, the employee will be regarded as being incapable of performing work of the kind that the employee was employed to do, which will constitute a valid reason for dismissal or variation of the terms of the employment contract.

Be that as it may, the request cannot be made against certain exempted employees, including pregnant employees, lactating employees and those employees who hold medical exemption certificate.

Protection offered to affected employees:

As part of the Hong Kong Government's efforts to curtail the Covid-19 outbreak, various measures have been implemented under the Prevention and Control of Disease Ordinance and other subsidiary legislations thereunder in order to address the public health emergency, such as placing an individual under quarantine or isolation and to prohibit an individual from leaving a restricted premise.

In this regard, the bill stipulates that an employee's absence from work by reason of the employee's compliance with a government order or requirement would be an invalid reason for dismissal or variation of the terms of the employment contract. An employee's absence from work due to their compliance would not break the continuity of his/her employment with the employer.

Definition of sickness day under the EO:

The bill will expand the definition of sickness day under the EO to include a day on which an employee is absent from work by virtue of the employee's compliance with a government requirement. The employer would be required to pay sickness allowance to the employee provided that the employee could furnish proof as follows:

- a) a document issued by a public officer or any person on behalf of the government which shows the prescribed information relating to the employee; or
- b) accessible electronic data (in a manner specified by a public officer) which shows the prescribed information relating to the employee.

Please [reach out to us](#) if you have any questions.