

Hong Kong Employment Law update



August 2023

As Hong Kong moves on from the COVID-19 pandemic, there are a number of developments in Hong Kong employment law in the first half of 2023. This article serves as a useful summary of the recent changes and developments in Hong Kong employment law.

The repeal of vaccination-related provisions under the Employment Ordinance

As part of the Hong Kong Government's anti-epidemic measures back in 2022, the Employment (Amendment) Ordinance 2022 was enacted to incorporate the vaccination-related provisions into the Employment Ordinance (EO) which took effect on 17 June 2022. The relevant provisions stipulate that the dismissal of an employee due to non-compliance with a legitimate COVID-19 vaccination request made by his/her employer is not considered as an unreasonable dismissal.

The vaccination-related provisions were subject to a sunset clause which provided that the relevant provisions would be repealed once COVID-19 was no longer a matter of public concern. With the Hong Kong government's removal of the statutory vaccine pass requirement and Hong Kong society resuming normalcy in full, the Government repealed the vaccination-related provisions under the EO with effect from 16 June 2023.

In other words, there will no longer be a mechanism for employers to make a legitimate vaccination request with effect from 16 June 2023. Legitimate vaccination requests made prior to 16 June 2023 will cease to have effect from the said date. As such, an employee's failure to comply with a legitimate vaccination request will no longer constitute a valid reason for dismissal.

Hong Kong Government cancelled arrangement of issuing isolation orders to COVID-19 infected persons

As part of the Hong Kong Government's strategy to combat COVID-19 back in 2022, the Amendment Ordinance was enacted to incorporate anti-epidemic provisions into the EO.

As such, the definition of sickness day under the EO was expanded to the effect that it recognised the day on which an employee was subjected to any anti-pandemic restrictions to be regarded as "sickness day(s)", including an isolation order.

However, in view of the enhancement of prevention and treatment capacities of the healthcare system and the handling capacity of society as a whole, the risk posed by COVID-19 to local public health has diminished considerably. Having taken into account the balance between infection control and the resumption of economic and livelihood impetus, the Hong Kong Government decided to cancel the arrangement of issuing isolation orders to infected persons according to the Prevention and Control of Disease Regulation (Cap. 599A) from 30 January 2023.

In the absence of isolation orders, employers should inform those employees whose health condition is unfit for work due to sickness to seek medical attention and take sick leave for rest. If an employee has contracted COVID-19 and is granted with medical certificate, his/her employer must pay the eligible employee sickness allowance to the relevant employee pursuant to the EO. Such arrangement is the same with the situation where an employee falls sick with other disease.

In the event that an employer has set additional anti-epidemic policies for individual enterprises/premises to tailor his/her own needs, the employer should come up with a mutually agreed arrangement with the relevant employee in order to avoid any dispute.

Hong Kong's new statutory minimum wage

Following the Legislative Council's approval of the Minimum Wage Ordinance (Amendment of Schedule 3) Notice 2023, Hong Kong's statutory minimum wage was raised by HK\$2.5 from HK\$37.5 to HK\$40 per hour with effect from 1 May 2023. The decision was made by the Chief Executive in Council based on a recommendation by the Minimum Wage Commission.

This is the first increase in statutory minimum wage since 2019 following the Hong Kong Government's decision to freeze it at HK\$37.5 in 2020 amid the COVID-19 pandemic, during which the Hong Kong's economy was in steep downturn with high unemployment rate.

Apart from the increase of the statutory minimum wage, Legislative Council also approved the Employment Ordinance (Amendment of Ninth Schedule) Notice 2023 which also came into force on 1 May 2023. Pursuant to section 49A of the Employment Ordinance (Cap. 57), employers are required to record the total number of hours worked by an employee in a wage period if they are paid less than a specified amount. The said amount has been increased by HK\$1,000 from HK\$15,300 to HK\$16,300 with effect from 1 May 2023.

Employers are urged to stay on top of and comply with these new legal requirements, failing which employers could be subject to legal liabilities.

Abolition of the Hong Kong MPF offsetting mechanism

The Legislative Council passed the Employment and Retirement Schemes Legislation (Offsetting Arrangement) (Amendment) Bill 2022 on 9 June 2022 to abolish the use of the accrued benefits of employers' mandatory contributions under the Mandatory Provident Fund System to offset severance payment and long service payment.

On 28 April 2023, the Hong Kong Government announced that the abolition of MPF offsetting arrangement will take effect on 1 May 2025. In other words, employers will no longer be allowed to use the accrued benefits derived from their mandatory contributions to their employees' MPF scheme to offset statutory severance payments or long service payments payable to the employees.

In order to facilitate the offsetting abolition and enable companies to adjust to the policy change, the Government intends to set up and implement a government subsidy scheme worth over HK\$33 billion spread over 25 years so as to share the employers' expenses in severance and long service payments. Further details from the Hong Kong Government are expected.

Proposal to amend Hong Kong racial discrimination law to protect Mainland Chinese from discrimination

In Hong Kong, there have been alleged incidents in which Mainland visitors were impolitely treated to such an extent as to amount to harassment, vilification and potentially discrimination. To address this problem, the Hong Kong Equal Opportunities Commission (**EOC**) aims to amend existing Hong Kong racial discrimination law to outlaw “intra-racial discrimination” between people in Hong Kong and Mainland China.

The current Race Discrimination Ordinance (Cap. 602) (**RDO**) provides:

- in section 8(1) that:

“race (種族), in relation to a person, means the race, colour, descent or national or ethnic origin of the person, and includes a race, colour, descent or national or ethnic origin that is imputed to the person”

- in section 8(3)(b) that the following characteristics (among others) are excluded from the definition of “race”:-
 - Hong Kong permanent resident status;
 - right of abode or right to land in Hong Kong;
 - length of residence in Hong Kong; and
 - the nationality, citizenship or resident status of the person under the law of any country or place;
- in section 8(5), that for the purpose of determining if there has been discriminatory treatment, a comparison is to be made between:-

“ ... a person of a particular racial group with that of a person not of that group must be such that the relevant circumstances in the one case are the same, or not materially different, in the other.”

Looking at the above provisions in totality, if a Chinese person treats another Chinese person less favourably or harasses that person on racial ground in Hong Kong, it is unlikely to be deemed as unlawful under the RDO.

With regard to the EOC's plan to amend existing Hong Kong racial discrimination law, Mr. Ricky Chu, the chairperson of the EOC, publicly announced that he hoped to better regulate the discriminatory behaviour against Mainland Chinese in Hong Kong by adding the criteria of a person's homeland or residential identity to existing Hong Kong racial discrimination law.

In the meantime, Mr. Ricky Chu said the EOC had been discussing with the Department of Justice and the Constitutional and Mainland Affairs Bureau for the purpose of amending the existing Hong Kong racial discrimination law. Although there is currently neither detailed and concrete proposal for the intended legislative amendments nor is there a specific timeframe for when the proposed amendments would be tabled to the legislature, the EOC hoped the relevant amendments would be completed this year.



To prevent and address discrimination in the workplace, employers should remain vigilant and keep themselves updated of any changes to the anti-discrimination legislations in Hong Kong.

Disclaimer: This publication is general in nature and is not intended to constitute legal advice. You should seek professional advice before taking any action in relation to the matters dealt with in this publication.

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