

Corporate Commercial Client Alert

Employment & Pensions

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Proposed Amendments to the Employment Ordinance - a sword for employers or a shield for employees?

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In order to achieve the goal of Dynamic Zero, the Chief Executive of Hong Kong announced in a press conference yesterday (8 February 2022) that there will be tighter measures to fight against the current roaring wave of the pandemic, including proposed amendments to the Employment Ordinance ("EO").

Under the Government's proposal, amendments will be made to the EO to make it clear that:-

- (i) If an employee is legally required to report for duty with the vaccine pass (e.g. it is legally required for those in the catering industry to have the vaccine pass in order to report for duty) but the employee fails to produce the same and is therefore unable to return to work, it is not unreasonable for an employer to terminate an employee for that reason. This is also unlawful for an employer to allow such employees to report for duty.
- (ii) It is however unreasonable for an employer to dismiss an employee if the employee is not able to return to work because the employee is subject to a restriction- testing declaration or compulsory testing notice.
- (iii) If an employee is subject to a quarantine order or a restriction- testing declaration, and is supported by a medical certificate issued by the Department of Health, the employee will be treated as taking statutory sick leave during the period of time under the quarantine order, and is subject to the relevant statutory benefits and protection (i.e. it is unlawful for an employer to dismiss an employee when such employee is receiving statutory sickness allowance).

For point (i), it appears that it only affects those industries where vaccine passes are required for the employees to carry out their duties and all not industries. Whilst it is not unreasonable for an employer to dismiss an employee without a vaccine pass, we believe that other protections under the EO or other legislation(s) shall still apply. To give an example, it is likely that it remains unlawful for an employer to dismiss an unvaccinated employee who is pregnant. Similarly, an employer may be in breach of the Disability Discrimination Ordinance if the employer dismisses an employee who is not able to receive vaccination due to valid medical grounds, unless keeping such employee in employment will impose unjustifiable hardship on the part of the employer.

For point (iii), will an employee be subject to protection if the employee leaves Hong Kong without the knowledge or agreement of the employer and is subsequently subject to a quarantine order upon such employee's return to Hong Kong? We will have to wait and see.

The proposed amendments are pending further discussions and enactment by the Legislative Council, and we will need to look at the wording of the actual amendment bill to ascertain the extent of impact on the employers and employees. Stay tuned for our further legal alerts.

Want to know more?

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