

**《僱傭條例》**  
**(第 57 章)**  
**Employment Ordinance**  
**(Cap. 57)**

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**附註** ——

有關《立法會決議》(2007 年第 130 號法律公告) 所作之修訂的保留及過渡性條文，見載於該決議第 (12) 段。

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For the saving and transitional provisions relating to the amendments made by the Resolution of the Legislative Council (L.N. 130 of 2007), see paragraph (12) of that Resolution.

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## 《僱傭條例》

## (第 57 章)

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## (Cap. 57)

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本條例旨在就僱員工資的保障訂定條文，對僱傭及職業介紹所的一般情況作出規管，並就相關事宜訂定條文。

(由 1970 年第 5 號第 2 條修訂)

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)

[1968 年 9 月 27 日]

[27 September 1968]

## 第 I 部

## Part I

### 導言

### Preliminary

(格式變更——2015 年第 3 號編輯修訂紀錄)

(Format changes—E.R. 3 of 2015)

#### 1. 簡稱

本條例可引稱為《僱傭條例》。

#### 1. Short title

This Ordinance may be cited as the Employment Ordinance.

#### 2. 釋義

(1) 在本條例中，除文意另有所指外——(由 1984 年第 48 號第 2 條修訂)

#### 2. Interpretation

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

**小費及服務費** (tips and service charges)，就工資而言，指僱員在受僱期間及在與其僱傭有關的情況下直接或間接收取的款項，而該款項——

**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)

(a) 乃由僱主以外的其他人士付給，或得自該等人士的付款；及

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

(b) 獲僱主承認為僱員工資的一部分；(由 1984 年第 48 號第 2 條增補)

**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)

**小額薪酬索償仲裁處** (Minor Employment Claims Adjudication Board) 指由《小額薪酬索償仲裁處條例》(第 453 章) 第 3 條設立的小額薪酬索償仲裁處；(由 1994 年第 61 號第 49 條增補)

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

**工資** (wages), 除第 (2) 及 (3) 款另有規定外, 指付給僱員作為該僱員根據其僱傭合約所做或將要做的工作而能以金錢形式表示的所有報酬、收入、津貼 (包括交通津貼及勤工津貼、勤工花紅、佣金及超時工作薪酬)、小費及服務費, 不論其名稱或計算方式, 但不包括 —— (由 1984 年第 48 號第 2 條修訂; 由 1985 年第 76 號第 2 條修訂; 由 1997 年第 74 號第 3 條修訂)

- (a) 由僱主提供的居所、教育、食物、燃料、燈火、醫療或用水的價值;
- (b) 僱主自行負責為退休計劃支付的供款; (由 1990 年第 41 號第 2 條修訂)
- (c) 屬賞贈性質或僅由僱主酌情付給的任何佣金; (由 1997 年第 74 號第 3 條代替)
- (ca) 屬賞贈性質或僅由僱主酌情付給的任何勤工津貼或勤工花紅; (由 1997 年第 74 號第 3 條增補)
- (cb) 屬非經常出現的性質的任何交通津貼; (由 1997 年第 74 號第 3 條增補)
- (cc) 支付因該工作的性質而由僱員招致的實際開銷而須付給該僱員的任何交通津貼; (由 1997 年第 74 號第 3 條增補)
- (cd) 任何交通特惠的價值; (由 1997 年第 74 號第 3 條增補)
- (d) 僱員支付因其工作性質所招致的特別開銷而須付給該僱員的款項;
- (da) 根據第 IIA 部付給的年終酬金或其部分; (由 1984 年第 48 號第 2 條增補)
- (e) 於僱傭合約完成或終止時付給的酬金; 或
- (f) 屬賞贈性質或僅由僱主酌情付給的每年花紅或其部分;

**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—

**工資期** (wage period) 指根據僱傭合約或根據第 22 條有工資付給的期間；

**分娩** (confinement) 指產下嬰兒；(由 1970 年第 5 號第 3 條增補)

**代替假日** (substituted holiday) 指根據第 39(3) 條給予或將給予的假日；(由 1973 年第 39 號第 2 條增補。由 1997 年第 137 號第 2 條修訂)

**另定假日** (alternative holiday) 指根據第 39(2) 及 (2A) 條給予或將給予的假日；(由 1973 年第 39 號第 2 條增補。由 1997 年第 137 號第 2 條修訂)

**外發工** (outworker) 指由他人發給物品或物料而在自己家中或在其他不受該人控制或管理的處所進行工序以獲得付款或報酬的人，而工序是將該物品或物料裝配、清理、洗滌、改換、裝飾、精加工或修理或為出售而改裝；(由 1985 年第 76 號第 2 條增補)

**休息日** (rest day) 指僱員根據第 IV 部有權無須為僱主工作的一段不少於 24 小時的連續期間；(由 1970 年第 23 號第 2 條增補。由 1976 年第 71 號第 2 條修訂)

**危險藥物** (dangerous drug) 具有《危險藥物條例》(第 134 章) 給予該詞的涵義；

**年假** (annual leave) 指第 VIIIA 部所規定的年假；(由 1977 年第 53 號第 2 條增補)

**年假薪酬** (annual leave pay) 指由本條例規定就一段年假而付給的年假薪酬，以及根據第 41D 條的規定而付給的任何款項；(由 1977 年第 53 號第 2 條增補)

**有薪病假日** (paid sickness day) 指僱員有權獲付給疾病津貼的病假日；(由 1973 年第 39 號第 2 條增補)

**有關日期** (relevant date) 就終止僱用僱員而言——

- (a) 凡僱員的僱傭合約是按照第 6 條發出通知而終止的，則指通知期屆滿的日期；

- (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



- (b) 凡僱員的僱傭合約是按照第 7 條付給代通知金而終止的，則指有關工資計至該日為止的日期；
- (c) 凡僱員按照第 10 條不給予通知或代通知金而終止其僱傭合約，則指合約終止生效的日期；
- (d) 凡僱員根據合約受僱一段固定時期，則指該時期屆滿的日期；
- (e) 凡連續性僱傭合約內指明退休年齡，而僱員於該年齡退休，則指退休的日期；
- (f) 凡僱員死亡，則指死亡的日期；及
- (g) 凡僱員的僱傭合約並非按照本條例的條文而終止的，則指合約終止的日期；(由 1988 年第 52 號第 2 條代替)

**有關強制性公積金計劃權益** (relevant mandatory provident fund scheme benefit)，就任何僱員而言，指由強制性公積金計劃的核准受託人就該僱員而持有的該僱員的累算權益，但不包括該權益中可歸因於該僱員支付予該計劃的供款的任何部分；(由 1998 年第 4 號第 5 條增補)

**有關職業退休計劃利益** (relevant occupational retirement scheme benefit)，就任何僱員而言，指在該僱員退休、去世、喪失行為能力或終止服務時根據某職業退休計劃須支付的利益，但不包括該利益中可歸因於該僱員支付予該計劃的供款的任何部分；(由 1998 年第 4 號第 5 條增補)

**侍產假** (paternity leave) 指第 IIIA 部所規定的侍產假；(由 2014 年第 21 號第 3 條增補)

**侍產假薪酬** (paternity leave pay) 指就侍產假而須付給的薪酬；(由 2014 年第 21 號第 3 條增補)

**兒童** (child) 指不足 15 歲的人；(由 1990 年第 41 號第 2 條代替)

**法定假日** (statutory holiday) 指第 39(1) 條指明為法定假日的假日；(由 1973 年第 39 號第 2 條增補。由 1976 年第 71 號第 2 條修訂；由 1997 年第 137 號第 2 條修訂)

- (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*)

**長期服務金** (long service payment) 指僱主根據第 31R 條須向僱員支付或根據第 31RA 條須向有權領取長期服務金的人支付的長期服務金；(由 1985 年第 76 號第 2 條增補。由 1990 年第 41 號第 2 條修訂)

**青年** (young person) 指年滿 15 歲但未滿 18 歲的人；(由 1990 年第 41 號第 2 條代替)

**後嗣** (issue) 指已故僱員的子女，不論該子女是否未足成年歲數，並且——

- (a) 包括繼子女；
- (b) 包括由該僱員領養的子女，但不包括該僱員由他人領養的子女 ((ba) 段另有規定者除外)；(由 2004 年第 28 號第 35 條修訂)
- (ba) 在該僱員任何子女是由他人根據在《領養條例》(第 290 章) 第 5(1) 條 (c) 段下作出的領養令領養而該僱員是該段所提述的父或母的情況下，包括該子女；(由 2004 年第 28 號第 35 條增補)
- (c) 不包括非婚生子女；及
- (d) 凡一夫多妻婚姻合法存續，不包括非經該僱員領養的子女，除非在該子女出生時其母親因以下情況屬該僱員的正妻——
  - (i) 如有關婚姻或於適當情況下每宗有關婚姻，就《婚姻制度改革條例》(第 178 章) 而言，構成舊式婚姻，則其母親按照中國法律與習俗是該僱員的正妻；或
  - (ii) 如屬其他情況，則在有關婚姻或每宗有關婚姻上，其母親按照該僱員本身所受約束的法律是該僱員的正妻；(由 1988 年第 52 號第 2 條增補)

**星期** (week)，就第 11 條及第 VA 及 VB 部而言，指由星期六晚午夜起至下一個星期六晚午夜止的一段期間；(由 1985 年第 76 號第 2 條增補。由 1990 年第 41 號第 2 條修訂)

**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)

**家庭傭工** (domestic servant) 包括園丁、司機及船工，以及類似的私人傭工；(由 1985 年第 76 號第 2 條增補)

**流產** (miscarriage) 指在懷孕 28 個星期內排出不能於產後存活的成孕物體；(由 1981 年第 22 號第 2 條增補)

**疾病津貼** (sickness allowance) 指由第 33 條規定的疾病津貼；(由 1973 年第 39 號第 2 條增補)

**病假日** (sickness day) 指僱員因受傷或患病而不適宜工作，並以此理由缺勤的日子；(由 1973 年第 39 號第 2 條增補)

**配偶** (spouse)，就已婚僱員而言，指與該僱員合法結婚的人；(由 1988 年第 52 號第 2 條增補)

**停止** (cease)，與第 VA 部、VB 部、附表 3 及附表 6 有關時，指由於任何因由而永久或暫時停止；**縮減** (diminish) 亦有相應的涵義；(由 1985 年第 76 號第 2 條增補)

**假日** (holiday) 指 ——

- (a) 法定假日；
- (b) 另定假日；
- (c) 代替假日；或
- (d) 由第 39(4) 條規定給予僱員的假日；(由 1973 年第 39 號第 2 條增補。由 1997 年第 137 號第 2 條修訂)

**假日薪酬** (holiday pay) 指由第 40 條規定的假日薪酬；(由 1973 年第 39 號第 2 條增補)

**強制性公積金計劃** (mandatory provident fund scheme) 指根據《強制性公積金計劃條例》(第 485 章) 註冊的公積金計劃；(由 1998 年第 4 號第 5 條增補)

**產假** (maternity leave) 指女性僱員因懷孕或分娩而按照第 III 部的條文缺勤的期間；(由 1970 年第 5 號第 3 條增補)

**產假薪酬** (maternity leave pay) 指根據第 14 條就產假而付給女性僱員的薪酬；(由 1981 年第 22 號第 2 條增補)

**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*)

**處長** (Commissioner) 指勞工處處長，並包括勞工處副處長及勞工處助理處長；(由 1974 年第 142 號法律公告修訂；由 1993 年第 61 號第 2 條修訂)

**閉廠** (lock-out) 具有《職工會條例》(第 332 章) 第 2 條給予該詞的涵義；(由 1985 年第 76 號第 2 條增補)

**勞資審裁處** (Labour Tribunal) 指由《勞資審裁處條例》(第 25 章) 第 3 條設立的勞資審裁處；(由 1985 年第 76 號第 2 條增補)

**註冊中醫** (registered Chinese medicine practitioner) 具有《中醫藥條例》(第 549 章) 第 2 條給予該詞的涵義；(由 2006 年第 16 號第 2 條增補)

**註冊牙醫** (registered dentist) 的涵義與《牙醫註冊條例》(第 156 章) 第 2(1) 條中該詞的涵義相同；(由 1995 年第 5 號第 2 條增補)

**註冊醫生** (registered medical practitioner) 的涵義，與《醫生註冊條例》(第 161 章) 第 2 條中該詞的涵義相同；(由 1993 年第 61 號第 2 條增補)

**業務** (business) 包括任何人所從事的行業或專業，以及任何同類的活動；(由 1985 年第 76 號第 2 條增補)

**署長** (Director) 指衛生署署長；(由 1973 年第 39 號第 2 條增補。由 1989 年第 76 號法律公告修訂)

**僱主** (employer) 指已訂立僱傭合約僱用他人為僱員的人，以及獲其妥為授權的代理人、經理人或代辦人；

**僱員** (employee) 指憑藉第 4 條而本條例適用的僱員；

**僱傭合約** (contract of employment) 指書面或口頭、明訂或隱含的協議，由協議一方同意僱用另一方，而該另一方則同意以僱員身分為其僱主服務；亦指學徒訓練合約；

**認可醫療計劃** (recognized scheme of medical treatment) 指由僱主經辦並獲署長為本條例的施行而根據第 34(1) 條批准的醫療計劃；(由 1973 年第 39 號第 2 條增補)

**遣散費** (severance payment) 指僱主根據第 31B(1) 條須付給僱員的遣散費；(由 1985 年第 76 號第 2 條增補)

**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)

**罷工** (strike) 具有《職工會條例》(第 332 章) 第 2 條給予該詞的涵義；(由 1985 年第 76 號第 2 條增補)

**職業退休計劃** (occupational retirement scheme) 指一項計劃或安排，而根據該項計劃或安排，在僱員退休、去世、喪失行為能力或終止服務時，須就僱員支付按服務年資支付的利益，但不包括強制性公積金計劃；(由 1998 年第 4 號第 5 條增補)

**續訂** (renewal) 包括延長，而凡提述續訂合約之處，亦須據此解釋。(由 1985 年第 76 號第 2 條增補)

(由 1998 年第 4 號第 5 條修訂；編輯修訂——2015 年第 3 號編輯修訂紀錄)

(2) 凡因以下項目而計算僱員的工資時，超時工作工資無須計算在內——

- (a) 根據第 IIA 部付給的年終酬金；
- (b) 根據第 III 部付給的產假薪酬；
- (ba) 根據第 IIIA 部付給的侍產假薪酬；(由 2014 年第 21 號第 3 條增補)
- (c) 根據第 VA 部付給的遣散費；
- (ca) 根據第 VB 部付給的長期服務金；(由 1985 年第 76 號第 2 條增補)
- (d) 根據第 VII 部付給的疾病津貼；
- (e) 根據第 VIII 部付給的假日薪酬；或
- (f) 根據第 VIIIA 部付給的任何年假薪酬，

除非超時工作薪酬是屬固定性質的，或在緊接第 (2A) 及 (2B) 款所分別指明的日期前 12 個月 (如不適用的話，則以較短的僱傭期間為準) 期間內的超時工作薪酬的每月平均款額相等於或超過該僱員在同一段期間內的每月平均工資的 20%。(由 1984 年第 48 號第 2 條增補。由 1997 年第 74 號第 3 條修訂)

**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)

- (2A) 在根據第 (2) 款計算超時工作薪酬的每月平均款額時，為施行該款而指明的日期 ——
- (a) 就根據第 IIA 部付給的任何年終酬金而言，是酬金期的屆滿日期；
- (b) 就根據第 III 部付給的任何產假薪酬而言，是產假的開始日期；
- (ba) 就根據第 IIIA 部付給的任何侍產假薪酬而言，是 ——
- (i) (如於一段連續日子放取侍產假) 該段日子開始的日期；或
- (ii) (在其他情況下) 放取侍產假的日期；(由 2014 年第 21 號第 3 條增補)
- (c) 就根據第 VA 部付給的任何遣散費及根據第 VB 部付給的任何長期服務金而言 ——
- (i) 除第 (ii) 節另有規定外，是有關日期；
- (ii) 如僱員的僱傭合約是按照第 7 條以代通知金終止的，是該終止的生效日期；
- (d) 就根據第 VII 部付給的任何疾病津貼而言，是首個病假日；
- (e) 就根據第 VIII 部付給的任何假日薪酬而言，是假日首天；及
- (f) 就根據第 VIIIA 部付給的年假薪酬而言，是年假首天。(由 1997 年第 74 號第 3 條增補)
- (2B) 即使第 (2A) 款另有規定，就任何僱傭終止而言，為施行第 (2) 款而指明的日期 ——
- (a) 除 (b) 段另有規定外，是有關日期；
- (b) 如僱員的僱傭合約是按照第 7 條以代通知金終止的，是該終止的生效日期。(由 1997 年第 74 號第 3 條增補)
- (3) 凡根據連續性合約受僱的僱員 ——

- (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) 遭解僱；或
- (b) 被停工（第 31E 條所指的停工）；或
- (c) 在第 10(aa) 或 31R(1)(b) 條所指明情況下終止其僱傭合約；或

- (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*)

(d) 在第 31RA(1) 條所指明情況下死亡，而在該合約的任何期間內，該僱員由於按照本條例或《僱員補償條例》(第 282 章) 的條文或在僱主同意下而放取任何假期，或由於在任何正常工作日不獲其僱主提供工作，而未獲付給工資或全部工資，則就第 VA 及 VB 部而言，即使本條例其他條文另有規定，該僱員須當作已就該段期間根據該合約規定的次數獲付給合約規定的全部工資，猶如他已繼續如常按該合約受僱一樣；根據第 31G 或 31V 條所作的計算，亦須據此處理。(由 1992 年第 62 號第 2 條代替)

- (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



**3. 連續性合約的涵義及舉證責任**

- (1) 在本條例中，**連續性合約** (continuous contract) 指憑藉附表 1 的條文，僱員須當作連續受僱的僱傭合約。
- (2) 在僱傭合約是否連續性合約的爭議中，僱主須承擔證明該合約並非連續性合約的舉證責任。

(由 1970 年第 5 號第 4 條增補。由 1970 年第 71 號第 2 條修訂)

**4. 本條例的適用範圍**

- (1) 除第 (2) 款及第 69 條另有規定外，本條例適用於所有根據僱傭合約受聘的僱員及該等僱員的僱主，以及該等僱主與僱員之間的僱傭合約。
- (2) 除第 IVA 部另有規定外，本條例不適用於——(由 1974 年第 51 號第 2 條修訂)
  - (a) (由 1990 年第 41 號第 3 條廢除)
  - (b) 屬受僱所從業務的東主的家庭成員及與該東主在同一住宅居住的人；

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)

- (c) 《往香港以外地方就業合約條例》(第 78 章)所界定的僱員；(由 1992 年第 33 號第 15 條修訂；由 2000 年第 56 號第 3 條修訂)
- (d) 根據《商船(海員)條例》(第 478 章)所指的船員協議而服務的人，或在不是於香港註冊的船舶上服務的人。(由 1995 年第 44 號第 143 條代替)
- (e) (由 1976 年第 8 號第 49 條廢除)
- (2A) 本條例不適用於根據《學徒制度條例》(第 47 章)註冊的學徒訓練合約，但該條例另有規定者，則屬例外。(由 1976 年第 8 號第 49 條增補)
- (3) 為免生疑問，特此聲明：第 5(3) 條不適用於任何在 1965 年 4 月 1 日前訂立的僱傭合約。

**4A. 對公職人員的授權**

處長可以書面授權任何公職人員或任何一類公職人員，行使或執行本條例授予或委予處長的任何或全部權力、職能或職責。

(由 1980 年第 10 號第 2 條增補)

**4B. 行政長官可發出指示**

- (1) 行政長官可因應一般情況或任何個別情況，就公職人員根據本條例行使或執行任何權力、職能或職責的事宜，發出其認為適當的指示。

- (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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第 57 章

第 I 部  
第 4B 條

- (2) 公職人員在根據本條例行使或執行權力、職能或職責時，必須遵從行政長官根據第 (1) 款發出的任何指示。  
(由 1980 年第 10 號第 2 條增補。由 2000 年第 56 號第 3 條修訂)
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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)*

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## 第 II 部

### 僱傭合約

(格式變更——2015 年第 3 號編輯修訂紀錄)

#### 5. 僱傭合約的持續期

- (1) 每份屬連續性的僱傭合約，如無任何相反的明訂協議，均須當作是為期 1 個月並可按月續期的合約。
- (2) 即使已證明僱傭合約為期超過 1 個月，但除非該合約以書面為證，並由立約各方簽署，否則該合約仍須當作是為期 1 個月並可按月續期的合約。
- (3) 即使本條另有規定，由體力勞動工人所訂立為期 6 個月或以上的僱傭合約，或所訂立工作日數相等於 6 個月或以上的僱傭合約，仍須當作是為期 1 個月並可按月續期的合約。
- (4) 凡為期超過 1 個月的僱傭合約憑藉第 (2) 或 (3) 款的條文當作是可按月續期者，則每月工資在根據該合約議定的工資總額中所佔比例，須按 1 個月的期間在該合約的議定持續期中所佔比例計算。

#### 6. 以通知終止合約的情況

- (1) 除第 (2)、(2A)、(2B)、(3) 及 (3A) 款、第 15 及 33 條另有規定外，僱傭合約的任何一方均可隨時以口頭或書面通知對方其終止合約的意向而終止該合約。(由 1970 年第

## 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

5 號第 5 條修訂；由 1983 年第 57 號第 2 條修訂；由 1984 年第 48 號第 4 條修訂；由 1987 年第 55 號第 2 條修訂；由 1995 年 103 號第 2 條修訂；由 2001 年第 7 號第 2 條修訂)

- (2) 終止僱傭合約所需的通知期如下——
- (a) 如該合約是憑藉第 5 條當作為期 1 個月並可按月續期的合約，又無訂明終止合約所需的通知期，則通知期不得少於 1 個月；(由 1971 年第 44 號第 2 條修訂)
- (b) 如該合約是憑藉第 5 條當作為期 1 個月並可按月續期的合約，而其中訂明終止合約所需的通知期，則通知期為議定的期限，但不得少於 7 天；(由 1971 年第 44 號第 2 條增補)
- (c) 如屬其他情況，則通知期為議定的期限，但如屬連續性合約者，則不得少於 7 天。
- (2A) 在不損害第 41D 條的規定下，僱員根據第 41AA 條有權享有的年假，不得計算在第 (2) 款所訂終止僱傭合約所需的通知期內。(由 1984 年第 48 號第 4 條增補。由 1990 年第 53 號第 5 條修訂)
- (2B) 女性僱員根據第 12 條有權享有的產假，不得計算在第 (2) 款所訂終止僱傭合約所需的通知期內。(由 1987 年第 55 號第 2 條增補)
- (3) 凡在書面或口頭僱傭合約內明示議定該僱傭屬試用性質，合約又無訂明終止合約所需的通知期，則合約可按以下方式終止——(由 1971 年第 44 號第 2 條修訂)
- (a) 任何一方可在該僱傭的首個月內隨時終止該合約，無須給予通知或代通知金；
- (b) 任何一方可在該僱傭的首個月之後，隨時給予對方不少於 7 天的通知而終止該合約。(由 1984 年第 48 號第 4 條修訂)
- (3A) 凡在書面或口頭僱傭合約內明示議定該僱傭屬試用性質，合約並訂明終止合約所需的通知期，則合約可按以下方式終止——

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

- (a) 即使合約已訂明通知期，任何一方仍可在該僱傭的首個月內隨時終止該合約，無須給予通知或代通知金；
- (b) 任何一方可在該僱傭的首個月之後，隨時按議定的通知期給予對方通知而終止該合約，但通知期不得少於 7 天。(由 1984 年第 48 號第 4 條增補)
- (4) 就本條而言，**月** (month) 指由發出終止僱傭合約通知之日起計，或由僱傭開始之日起計 (視屬何情況而定)，至下個月份同一日的前一日終結時的一段期間，如下個月份並無同一日，或如發出通知或僱傭開始之日為一個月的最後一日，則至下個月份最後一日終結時的一段期間。

## 7. 以代通知金終止合約的情況

- (1) 就第 (1A)、(1B) 及 (1C) 款而言，**工資** (wages) 包括僱主就一個以下日子支付的款項——

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) 僱員放取的產假、侍產假、休息日、病假日、假日或年假；(由 2014 年第 21 號第 4 條修訂)
- (b) 僱員在僱主同意下放取的假期；
- (c) 僱員不獲僱主提供工作的正常工作日；
- (d) 僱員因暫時喪失工作能力而缺勤的日子，而根據《僱員補償條例》(第 282 章)第 10 條僱員是會就該日子獲付補償的。(由 2007 年第 7 號第 3 條代替)
- (1A) 除第 15 及 33 條另有規定外——
- (a) 凡根據第 6 條終止僱傭合約所需的通知期為一段以日或星期為單位的期間，則該合約的任何一方如同意付給對方一筆將在該期間內通常須付給僱員工資的日數乘以下列款額所得的款項，即可無須給予通知而隨時終止該合約——
- (i) 僱員在緊接終止合約的一方給予對方終止合約通知的日期 (**通知日期**) 之前的 12 個月期間內所賺取的工資的每日平均款額；或
- (ii) 如僱員在緊接通知日期之前受僱於有關僱主一段短於 12 個月的期間，則僱員在該段較短的期間內所賺取的工資的每日平均款額；或
- (b) 凡根據第 6 條終止僱傭合約所需的通知期為一段以月為單位的期間，則該合約的任何一方如同意付給對方一筆將所需月數乘以下列款額所得的款項，即可無須給予通知而隨時終止該合約——
- (i) 僱員在緊接通知日期之前的 12 個月期間內所賺取的工資的每月平均款額；或
- (ii) 如僱員在緊接通知日期之前受僱於有關僱主一段短於 12 個月的期間，則僱員在該段較短的期間內所賺取的工資的每月平均款額。(由 2007 年第 7 號第 3 條增補)
- (1B) 在計算僱員在該 12 個月或較短的期間內所賺取的工資的每日平均款額或每月平均款額時——

- (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

- (a) 僱員在當中由於 ——
- (i) 放取任何產假、侍产假、休息日、病假日、假日或年假；(由 2014 年第 21 號第 4 條修訂)
  - (ii) 在僱主同意下放取任何假期；
  - (iii) 在任何正常工作日不獲其僱主提供工作；或
  - (iv) 暫時喪失工作能力以致缺勤，而就此僱員根據《僱員補償條例》(第 282 章)第 10 條會獲付補償，因而未獲付給工資或全部工資的期間；以及
- (b) 就 (a) 段提述的期間付給僱員的任何工資，均不計算在內。(由 2007 年第 7 號第 3 條增補)
- (1C) 為免生疑問，如僱員就第 (1) 款指明的某個日子獲付給的工資的數額，僅是僱員在正常工作日所賺取的數額的一個分數，則該工資以及該日子須按照第 (1B) 款不予計算在內。(由 2007 年第 7 號第 3 條增補)
- (1D) 儘管有第 (1A) 款的規定，如因任何理由以該款規定的方式計算僱員所賺取的工資的每日平均款額或每月平均款額並不切實可行，則可參考受僱於同一僱主從事同樣工作的人在緊接通知日期之前的 12 個月期間內所賺取的工資或(如無上述的人)受僱於同一地區的同一年業或職業從事同樣工作的人在緊接通知日期之前的 12 個月期間內所賺取的工資計算該款額。(由 2007 年第 7 號第 3 條增補)
- (2) 僱傭合約的任何一方，在按照第 6 條給予適當通知後，如同意付給對方第 (1) 款所提述款項的一部分，而該部分的款額是就合約終止時至通知期應屆滿的期間按比例計算的，則可隨時終止該合約。(由 1971 年第 44 號第 3 條修訂)
- (3) (由 2007 年第 7 號第 3 條廢除)
- (4) 就本條而言，即使本條例其他條文另有規定，**工資** (wages) 一詞 ——

- 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



- (a) 包括屬固定性質的超時工作薪酬或在緊接終止僱傭生效前 12 個月 (如不適用的話, 則以較短的僱傭期間為準) 期間內每月平均款額相等於或超過該僱員在同一段期間內的每月平均工資的 20% 的超時工作薪酬;
- (b) 除按 (a) 段規定外, 須當作不包括超時工作薪酬。(由 1997 年第 74 號第 4 條代替)

- 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. 權利的保留**

第 6 或 7 條的任何規定，不得用於——

- (a) 阻止僱傭合約的任何一方，在因第 6(2)、(3) 或 (3A) 條的規定須給予通知時，放棄獲給予通知或代通知金的權利；(由 1984 年第 48 號第 5 條修訂)
- (b) 影響僱傭合約的任何一方根據第 9、10 或 11(2) 條不給予通知或代通知金而終止合約的權利。

**8A. 不當地終止合約的損害賠償**

- (1) 在不損害第 9、10 或 11(2) 條的規定下，凡僱傭合約並非按照第 6 或 7 條終止者，終止合約的一方須付給對方一筆款項，款額相等於假若該合約是按照第 7 條終止則本須支付的工資額。
  - (2) 在不損害第 9、10 或 11(2) 條的規定下，凡僱傭合約的任何一方按照第 6 條給予適當通知後，在通知期屆滿前並非按照第 7 條而終止該合約，則終止合約的一方須付給對方一筆款項，款額為第 (1) 款提述的款項的一部分，而該部分是就合約終止時至通知期限應屆滿的期間按比例計算。
  - (3) 就計算第 (1) 款提述的款項而言，凡終止合約的一方沒有給予對方終止合約通知，在按照第 7 條計算該僱員所賺取的工資的每日平均款額或每月平均款額時，在該條中凡提述終止合約的一方給予對方終止合約通知的日期或提述通知日期，均須解釋為提述合約終止日期。(由 2007 年第 7 號第 4 條增補)
- (由 1975 年第 14 號第 2 條增補。由 2007 年第 7 號第 4 條修訂)

**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

**9. 僱主不給予通知而終止合約的情況**

- (1) 如有以下情況，僱主可無須給予通知或代通知金而終止僱傭合約——（由 2000 年第 51 號第 2 條修訂）
- (a) 僱員在與其僱傭有關的事宜上——
- (i) 故意不服從合法而又合理的命令；
  - (ii) 行為不當，與正當及忠誠履行職責的原則不相符；
  - (iii) 犯有欺詐或不忠實行為；或
  - (iv) 慣常疏忽職責；或
- (b) 僱主因任何其他理由而有權根據普通法無須給予通知而終止合約。
- (2) 僱主無權以僱員參加罷工而根據第(1)款終止其僱傭合約。（由 2000 年第 51 號第 2 條增補）

**10. 僱員不給予通知而終止合約的情況**

如有以下情況，僱員可無須給予通知或代通知金而終止僱傭合約——

- (a) 僱員合理地恐懼身體會遭受暴力或疾病危害，而在其僱傭合約並無明示或根據必然含意預料會有此種情形；

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) 僱員 ——
- (i) 根據合約受僱的年數不少於 5 年；及 (由 1990 年第 41 號第 4 條修訂；由 1992 年第 62 號第 3 條修訂)
  - (ii) 獲註冊醫生或註冊中醫按照處長根據第 49 條指明的格式發出證明書，證明其因證明書內述明的一項或多項理由，永久不適宜擔任證明書內指明的某種工作；及 (由 1990 年第 68 號第 24 條修訂；由 1993 年第 61 號第 3 條修訂；由 2006 年第 16 號第 3 條修訂)
  - (iii) 根據合約是從事該種工作的；(由 1988 年第 52 號第 4 條增補)
- (b) 僱員受僱主苛待；或
- (c) 僱員因任何其他理由而有權根據普通法無須給予通知而終止合約。

#### 10A. 當作根據第 7 條終止合約的情況

- (1) 如任何工資由其根據第 23 條變為到期支付予僱員當日起計的 1 個月內仍未獲支付，則在不損害有關僱員在普通法下的權利的原則下，該僱員可終止其僱傭合約而無須給予通知或代通知金。
- (2) 凡根據第 (1) 款終止任何僱傭合約，則該合約須當作由僱主按照第 7 條終止，而該僱主須當作已同意支付予該僱員第 7 條所指明的款項。  
(由 1997 年第 74 號第 5 條增補)

#### 11. 在若干情況下的暫停僱用

- (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) 即使本條例或任何其他法律另有規定，如有以下情況，僱主可無須給予通知或代通知金而暫停僱用任何僱員一段為期不超過 14 天的期間——
- (a) 僱主可因某項理由根據第 9 條終止僱傭合約，而以暫停僱用作為紀律處分；
  - (b) 僱主對是否根據第 9 條行使權利終止僱傭合約尚未作出決定；或
  - (c) 僱員因其僱傭引起或與其僱傭有關的事宜遭刑事檢控，而該刑事法律程序尚未有結果：  
但如該刑事法律程序在 14 天內仍未完結，則暫停僱用期可予延長，直至該刑事法律程序完結為止。
- (2) 儘管有第 6 及 7 條的規定，根據第 (1) 款被暫停僱用的僱員可於暫停僱用期間內，無須給予通知或代通知金而隨時終止其僱傭合約。
- (3) 在不損害第 (1) 款的規定下，僱主可在僱傭合約內明示議定的期間或隱含的期間將僱員停工。
- (4) 儘管有第 (3) 款的規定，停工期在任何情況下不得超過——
- (a) 在任何連續 4 個星期的期間內正常工作日總數的一半；或

- (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) 在任何連續 26 個星期的期間內正常工作日總數的三分之一。(由 1990 年第 41 號第 5 條增補)
- 

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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)
-

**第 IIA 部****年終酬金**

(第 IIA 部由 1984 年第 48 號第 6 條增補。格式變更——2015 年第 3 號編輯修訂紀錄)

**11A. 釋義**

- (1) 在本部中，除文意另有所指外——(由 2007 年第 7 號第 5 條修訂)

**年終酬金** (end of year payment) 指屬合約性質的任何每年酬金 (不論稱為“第十三個月酬金”、“第十四個月酬金”、“雙薪”、“年終花紅”或其他名稱) 或每年花紅，但不包括任何屬賞贈性質或僅由僱主酌情付給的每年酬金或每年花紅或其部分；(由 1997 年第 74 號第 6 條修訂)

**部分年終酬金** (proportion of the end of year payment) 指按照第 11F 條計算的部分年終酬金；

**農曆年** (lunar year) 指緊接農曆年初一之前終結的一個中國農曆年度；

**酬金期** (payment period) 具有第 11C 條給予該詞的涵義。

(由 2007 年第 7 號第 5 條修訂；編輯修訂——2015 年第 3 號編輯修訂紀錄)

- (2) 就第 (3)、(4) 及 (5) 款而言，**工資** (wages) 包括僱主就一個以下日子支付的款項——
- 僱員放取的產假、侍產假、休息日、病假日、假日或年假；(由 2014 年第 21 號第 5 條修訂)
  - 僱員在僱主同意下放取的假期；
  - 僱員不獲僱主提供工作的正常工作日；

**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 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)

- (d) 僱員因暫時喪失工作能力而缺勤的日子，而根據《僱員補償條例》(第 282 章)第 10 條僱員是會就該日子獲付補償的。(由 2007 年第 7 號第 5 條增補)
- (3) 在本部中，凡提述僱員的全月工資，均須解釋為提述僱員在以下期間內所賺取的工資的每月平均款額——
- (a) 在緊接年終酬金根據第 11E(1) 或 (2) 條到期付給僱員的日期或部分年終酬金根據第 11F(3) 或 (4) 條到期付給僱員的日期(視乎何者適用而定)(**到期日**)之前的 12 個月期間；或
- (b) 如僱員在緊接到期日之前受僱於有關僱主一段短於 12 個月的期間，則該段較短的期間。(由 2007 年第 7 號第 5 條增補)
- (4) 在計算僱員在該 12 個月或較短的期間內所賺取的工資的每月平均款額時——
- (a) 僱員在當中由於——
- (i) 放取任何產假、侍產假、休息日、病假日、假日或年假；(由 2014 年第 21 號第 5 條修訂)
- (ii) 在僱主同意下放取任何假期；
- (iii) 在任何正常工作日不獲其僱主提供工作；或
- (iv) 暫時喪失工作能力以致缺勤，而就此僱員根據《僱員補償條例》(第 282 章)第 10 條會獲付補償，因而未獲付給工資或全部工資的期間；以及
- (b) 就 (a) 段提述的期間付給僱員的任何工資，均不計算在內。(由 2007 年第 7 號第 5 條增補)
- (5) 為免生疑問，如僱員就第 (2) 款指明的某個日子獲付給的工資的數額，僅是僱員在正常工作日所賺取的數額的一個分數，則該工資以及該日子須按照第 (4) 款不予計算在內。(由 2007 年第 7 號第 5 條增補)
- (6) 儘管有第 (3) 款的規定，如因任何理由以該款規定的方式計算僱員所賺取的工資的每月平均款額並不切實可行，

- (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;



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則可參考受僱於同一僱主從事同樣工作的人在緊接到期日之前的 12 個月期間內所賺取的工資或 (如無上述的人) 受僱於同一地區的同一年業或職業從事同樣工作的人在緊接到期日之前的 12 個月期間內所賺取的工資計算該款額。(由 2007 年第 7 號第 5 條增補)

- (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. 推定**

- (1) 除非僱傭合約中有相反的書面條款或條件，否則須推定每年酬金或每年花紅不屬賞贈性質和不是僅由僱主酌情付給的。
- (2) 為免生疑問，現聲明：第 (1) 款不適用於在本條的生效日期 \* 前訂立的任何僱傭合約。

**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.

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(由 1997 年第 74 號第 7 條增補)

編輯附註：

\*生效日期：1997 年 6 月 27 日。

### 11B. 第 IIA 部的適用範圍

- (1) 除有任何相反的協議及除第 (2) 款另有規定外，根據連續性合約受僱的僱員，如憑藉僱傭合約的條款或條件（不論是書面或口頭、明訂或隱含的）可獲僱主付給年終酬金，則本部適用於該僱員。
- (2) 凡本部所適用的僱員，如其僱傭合約訂有任何條款或條件看來是阻止根據第 11F 條支付部分年終酬金的，該條款或條件須屬無效。

### 11C. 酬金期

根據本部須支付年終酬金的酬金期——

- (a) 是僱傭合約就此而指明的酬金期；或
- (b) 如合約並無指明，則以一個農曆年為酬金期。

### 11D. 年終酬金款額

本部所適用且於整段酬金期由同一僱主僱用的僱員，其年終酬金——

- (a) 是僱傭合約就此而指明的年終酬金；或

- (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—

- (b) 如合約並無指明，則為一筆相等於該僱員全月工資的款項。

### 11E. 年終酬金的支付日期

- (1) 本部所適用的僱員按酬金期獲付的年終酬金，須於以下日期到期付給該僱員——
- (a) 除第 (2) 款另有規定外，僱傭合約就此而指明的日期；或
- (b) 如合約並無指明，則為酬金期的最後一天，
- 該年終酬金須於到期後在切實可行範圍內盡快支付，但在任何情況下不得遲於到期後 7 天支付；但本條不得解釋為阻止年終酬金於上述日期之前任何時間支付。
- (2) 凡本部所適用且於整段酬金期內受僱的僱員，其僱傭合約於酬金期屆滿後終止，但當時仍未屆合約所指明的年終酬金支付日期，則即使合約已指明日期，年終酬金仍須於以下日期到期付給該僱員——
- (a) 在僱傭合約終止之日；或
- (b) 如年終酬金參考僱主的利潤計算，在僱主利潤確定之日，

該年終酬金須於到期後在切實可行範圍內盡快支付，但在任何情況下不得遲於到期後 7 天支付。

- (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,

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第 57 章第 IIA 部  
第 11F 條Part IIA  
Section 11F2A-12  
Cap. 57**11F. 部分年終酬金**

- (1) 在符合第 (1A) 款的規定下及除第 (1B) 款另有規定外，凡本部所適用的僱員並非於整段酬金期由同一僱主僱用，但於該期間內由同一僱主僱用不少於 3 個月，而——(由 1997 年第 74 號第 8 條修訂；由 2001 年第 7 號第 4 條修訂)
- (a) 其僱傭合約於以下時間終止——
- (i) 酬金期內任何時間；或
- (ii) 酬金期屆滿時；或(由 2001 年第 7 號第 4 條修訂)
- (b) 於酬金期屆滿後，仍繼續由該僱主僱用，則該僱員須獲付假若他於整段酬金期受僱於同一僱主則根據本部本應獲付的年終酬金的一部分，該部分的款額按照第 (2) 款計算。
- (1A) 如僱傭合約中有一項條款或條件為僱員屬試用性質，則在根據第 (1) 款計算 3 個月期間時，該試用的期間或一段 3 個月的期間(以較短者為準)不得包括在內。(由 1997 年第 74 號第 8 條增補)
- (1B) 凡僱傭合約——
- (a) 由有關僱員終止(按照第 10 條終止者除外)；或
- (b) 按照第 9 條終止，第 (1)(a) 款不適用。(由 2001 年第 7 號第 4 條增補)
- (2) 根據第 (1) 款須支付的部分年終酬金——
- (a) 是僱傭合約就此而指明的部分；或
- (b) 如合約並無指明，則為該僱員全月工資的一部分，而該部分在其全月工資中所佔比例，相等於該僱員

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)

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在酬金期內根據僱傭合約服務的期間在該酬金期所佔的比例。

- (3) 根據第 (1) 款須支付的部分年終酬金，須於以下日期到期付給該僱員——
- (a) 如根據該款 (a) 段支付者——
- (i) 在僱傭合約終止之日；或
- (ii) 如部分年終酬金參考僱主的利潤計算，在僱主利潤確定之日；或
- (b) 如根據該款 (b) 段支付者——
- (i) 除第 (4) 款另有規定外，在僱傭合約指明為年終酬金到期支付之日；或
- (ii) 如合約並無指明，則為酬金期的最後一天，
- 該部分年終酬金須於到期後在切實可行範圍內盡快支付，但在任何情況下不得遲於到期後 7 天支付；但本款不得解釋為阻止部分年終酬金於上述日期之前任何時間支付。
- (4) 凡第 (1)(b) 款所適用的僱員，其僱傭合約於酬金期屆滿後終止，但當時仍未屆合約所指明的年終酬金支付日期，則即使合約已指明日期，根據第 (1) 款須付給的部分年終酬金仍須於以下日期到期付給該僱員——
- (a) 在僱傭合約終止之日；或

- (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

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- (b) 如部分年終酬金參考僱主的利潤計算，在僱主利潤確定之日，
- 該部分年終酬金須於到期後在切實可行範圍內盡快支付，但在任何情況下不得遲於到期後 7 天支付。
- 

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.

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**第 III 部****生育保障**

(第 III 部由 1970 年第 5 號第 7 條增補。格式變更——2017 年第 3 號編輯修訂紀錄)

**12A. 釋義**

在本部中，除文意另有所指外——

**懷孕僱員** (pregnant employee) 指已藉醫生證明書證實為懷孕的女性僱員。

(由 1997 年第 73 號第 2 條增補)

**12. 產假**

- (1) 在緊接根據本部放取任何假期前根據連續性合約受僱的女性僱員，根據本部有權享有產假。(由 1997 年第 73 號第 3 條代替)
- (2) 產假是以下期間的合計日數——
  - (a) 自以下日期開始計算的一段 10 個星期的連續期間(該日期亦包括在內)——
    - (i) 根據第 12AA 條決定的產假開始日期；或
    - (ii) 確實分娩日期(如在第(i)節所述的開始日期前分娩)；
  - (b) 相等於由預計分娩日期翌日起至確實分娩日期止(該翌日及該確實分娩日期亦包括在內)的日數(如有的話)的另一期間；而此段產假須在緊接根據(a)段享有的產假後放取；及
  - (c) 因懷孕或分娩引致疾病或無工作能力的另一期間，以不超過 4 個星期為限。(由 1997 年第 73 號第 3 條代替)

**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

- (3) 根據第 (2)(c) 款享有的產假，可——
- (a) 在緊接第 (2)(a) 款所述期間之前全部放取或放取其中部分；
- (b) 在緊接第 (2)(a) 或 (b) 款所述期間（視屬何情況而定）之後全部放取或放取其中部分。（由 1997 年第 73 號第 3 條代替）
- (4) 擬根據第 (2) 款放任何產假的女性僱員在放假前，須於藉醫生證明書證實為懷孕之後，將懷孕一事通知其僱主，並說明其擬放產假；而由女性僱員向其僱主出示證實其懷孕的醫生證明書，即屬一項本款所指的通知。（由 1997 年第 73 號第 3 條代替）
- (4A) 已根據第 (4) 款給予通知的女性僱員，如其懷孕並非因分娩而告終止，須於合理的切實可行範圍內盡快將懷孕終止一事通知其僱主。（由 1987 年第 55 號第 3 條增補）
- (5) 女性僱員如——
- (a) 在根據第 (4) 款發出通知之前分娩；或
- (b) 在根據第 (4) 款發出通知之後，但在根據第 (2)(a)(i) 款享有的該段產假的開始日期之前分娩，
- 則須在分娩後 7 天內，將該分娩日期通知其僱主，並說明其擬根據第 (2)(a) 款放產假。（由 1997 年第 73 號第 3 條代替）
- (6) 如僱主有此要求，根據第 (4) 款發出通知的女性僱員須交出指明其預計分娩日期的醫生證明書。（由 1997 年第 73 號第 3 條代替）
- (7) 如僱主有此要求，根據第 (5) 款發出通知的女性僱員須交出指明其分娩日期的醫生證明書。（由 1997 年第 73 號第 3 條代替）
- (7A) 如僱主有此要求，可根據第 (2)(b) 款放產假的女性僱員須交出指明其分娩日期的醫生證明書。（由 1997 年第 73 號第 3 條增補）

- 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),



- (8) 擬根據第 (2)(c) 款放產假的女性僱員，須給予僱主表明此意的通知；如僱主有此要求，亦須交出醫生證明書，證明其疾病或無工作能力的情況。(由 1997 年第 73 號第 3 條修訂)
- (9) (由 1997 年第 73 號第 3 條廢除)
- (10) 女性僱員受僱期的連續性，不得因放產假而視為中斷。(由 1981 年第 22 號第 3 條增補)
- (11) 為免生疑問，特此聲明：產假是女性僱員在根據本條例有權享有的年假以外另須獲給予的假期；在產假期間的任何休息日或假日皆作產假的一部分計算，僱員無權要求另給額外或其他休息日或假日；女性僱員如已就該假日獲付給產假薪酬，則無權要求付給假日薪酬；如並無就該假日獲付給產假薪酬，則須就該假日獲付給假日薪酬。(由 1981 年第 22 號第 3 條增補。由 1984 年第 48 號第 7 條修訂)

- 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

**12AA. 產假的開始日期**

- (1) 在僱主同意下，懷孕僱員可決定其享有的 10 個星期產假的開始日期，但該日期須在預計分娩日期前不少於 2 個星期及不超過 4 個星期的期間內。
- (2) 懷孕僱員如不行使其決定第 (1) 款所指的開始日期的選擇權，或未能獲得其僱主對其建議中的放假時間表的同意，則產假開始日期須為緊接預計分娩日期前的 4 個星期的首日。

(由 1997 年第 73 號第 4 條增補)

**13. 簽發醫生證明書的權力**

- (1) 為施行第 12(4) 或 (6) 或 12AA 條而簽發的醫生證明書須由以下人士簽發——
  - (a) 註冊醫生；
  - (b) 註冊中醫；或
  - (c) (儘管有《助產士註冊條例》(第 162 章)第 16 條的規定) 根據該條例第 8 條註冊的助產士或根據該條例第 25 條當作已註冊的助產士。
- (2) 為施行第 12(7) 或 (7A) 條而簽發的醫生證明書須由以下人士簽發——
  - (a) 註冊醫生；或

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) (儘管有《助產士註冊條例》(第 162 章)第 16 條的規定)根據該條例第 8 條註冊的助產士或根據該條例第 25 條當作已註冊的助產士。
- (3) 為施行第 12(8) 或 15AA 條而簽發的醫生證明書須——
- (a) 由註冊醫生簽發；或
- (b) 由註冊中醫簽發。

(由 2006 年第 16 號第 4 條代替)

#### 14. 產假薪酬

- (1) 除非按本條所規定，或如僱傭合約所規定的有薪產假條款較本條所訂的為優厚，則除非按該合約所規定，否則女性僱員無權獲得產假期間的工資。
- (2) 僱主須就女性僱員根據第 12(2)(a) 條有權放的產假而付給該僱員產假薪酬，但她須——(由 1997 年第 73 號第 6 條修訂)
- (a) 在緊接根據第 12AA 條決定的產假開始日期前，已根據連續性合約由該僱主僱用不少於 40 個星期；(由 1995 年第 5 號第 4 條修訂；由 1997 年第 73 號第 6 條修訂)
- (b) 已根據第 12(4) 或 (5) 條給予通知；
- (c) 已根據第 12(6) 或 (7) 條遵從僱主提出的要求；及
- (d) (由 1997 年第 73 號第 6 條廢除)
- (3) 就第 (3A)、(3B) 及 (3C) 款而言，**工資** (wages) 包括僱主就一個以下日子支付的款項——
- (a) 僱員放取的產假、休息日、病假日、假日或年假；
- (b) 僱員在僱主同意下放取的假期；
- (c) 僱員不獲僱主提供工作的正常工作日；

- (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—

- (d) 僱員因暫時喪失工作能力而缺勤的日子，而根據《僱員補償條例》(第 282 章)第 10 條僱員是會就該日子獲付補償的。(由 2007 年第 7 號第 6 條代替。)
- (3A) 根據本條須支付的產假薪酬，須以該女性僱員在以下期間內所賺取的工資的每日平均款額的五分之四計算——
- (a) 在緊接其產假開始日期之前的 12 個月期間；或
- (b) 如該僱員在緊接其產假開始日期之前受僱於有關僱主一段短於 12 個月的期間，則該段較短的期間，
- 但假若該女性僱員在某日即使不放產假亦不會工作，而僱主通常無須就該日支付工資，則無須就該日支付產假薪酬。(由 2007 年第 7 號第 6 條增補)
- (3B) 在計算女性僱員在該 12 個月或較短的期間內所賺取的工資的每日平均款額時——
- (a) 僱員在當中由於——
- (i) 放取任何產假、休息日、病假日、假日或年假；
- (ii) 在僱主同意下放取任何假期；
- (iii) 在任何正常工作日不獲其僱主提供工作；或
- (iv) 暫時喪失工作能力以致缺勤，而就此僱員根據《僱員補償條例》(第 282 章)第 10 條會獲付補償，因而未獲付給工資或全部工資的期間；以及
- (b) 就 (a) 段提述的期間付給僱員的任何工資，均不計算在內。(由 2007 年第 7 號第 6 條增補)
- (3C) 為免生疑問，如女性僱員就第 (3) 款指明的某個日子獲付給的工資的數額，僅是僱員在正常工作日所賺取的數額的一個分數，則該工資以及該日子須按照第 (3B) 款不予計算在內。(由 2007 年第 7 號第 6 條增補)
- (3D) 儘管有第 (3A) 款的規定，如因任何理由以該款規定的方式計算某女性僱員所賺取的工資的每日平均款額並不切實可行，則可參考受僱於同一僱主從事同樣工作的人在

- (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;

- 緊接該僱員的產假開始日期之前的 12 個月期間內所賺取的工資或 (如無上述的人) 受僱於同一地區的同一年業或職業從事同樣工作的人在緊接該僱員的產假開始日期之前的 12 個月期間內所賺取的工資計算該款額。 (由 2007 年第 7 號第 6 條增補)
- (4) 本條規定的產假薪酬，須猶如該女性僱員未有放產假而仍繼續受僱一樣，由僱主在本應付給工資的同一日，以同一方式付給該僱員。
- (5) 任何女性僱員，如事先未得僱主准許而在根據第 12(2)(a) 條放產假期間，為另一僱主工作，即喪失獲得該段期間產假薪酬的權利。 (由 1997 年第 73 號第 6 條修訂)
- (6) (由 1997 年第 73 號第 6 條廢除)
- (7) 如依據僱傭合約或任何其他協議的條款或因任何理由，某女性僱員已就其產假的任何期間獲僱主支付一筆款項，則須從須就該段期間付給該僱員的產假薪酬中扣除該筆款項。 (由 2007 年第 7 號第 6 條增補)
- (由 1981 年第 22 號第 4 條代替)

- (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

**15. 對終止僱傭的禁止**

- (1) 除第 (1A) 款另有規定外，且在第 (1B) 款的規限下——
- (a) 如懷孕僱員已向其僱主送達懷孕通知，則在由該僱員藉醫生證明書證實為懷孕之日起至產假結束而應復工之日為止的一段期間（或至非因分娩而終止懷孕之日為止的一段期間）內，該僱主不得終止該僱員的連續性僱傭合約，但按照第 9 條終止該合約則不在此限；
  - (b) 在僱主並非按照第 9 條終止其懷孕僱員的僱傭合約的情況下，如該僱員在獲悉該合約被終止後立即向該僱主送達懷孕通知，則該僱主在接獲該通知後須立即撤銷該項終止或撤回終止該合約的通知，而在此情況下，該項終止或終止該合約的通知須視為猶如從未作出一樣。（由 2001 年第 7 號第 5 條代替）
- (1A) 凡在懷孕僱員的書面或口頭僱傭合約內明示議定該項僱傭屬試用性質，則試用期如不超過 12 個星期，第 (1) 款

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

不得阻止僱主因懷孕以外的理由而在該試用期內終止該合約；試用期如超過 12 個星期，則第 (1) 款不得阻止僱主因懷孕以外的理由而在該試用期的首 12 個星期內終止該合約。（由 1997 年第 73 號第 7 條代替）

- (1B) 凡僱主終止懷孕僱員的連續性僱傭合約，則——
- (a) 除非相反證明成立；或
  - (b) 除第 (1C) 款另有規定外，除非僱主證明——
    - (i) 他的本意是按照第 9 條終止該合約；而且
    - (ii) 在終止該合約時，他合理地相信他有理由如此終止該合約，

否則就第 (1)(a) 或 (b) 款而言，須視僱主為並非按照第 9 條終止該合約。（由 2001 年第 7 號第 5 條增補）

- (1C) 就民事法律程序而言，第 (1B)(b) 款不適用。（由 2001 年第 7 號第 5 條增補）
- (1D) 就第 (2)(b)、(2A) 及 (2B) 款而言，**工資** (wages) 包括僱主就一個以下日子支付的款項——
- (a) 僱員放取的產假、休息日、病假日、假日或年假；
  - (b) 僱員在僱主同意下放取的假期；
  - (c) 僱員不獲僱主提供工作的正常工作日；
  - (d) 僱員因暫時喪失工作能力而缺勤的日子，而根據《僱員補償條例》(第 282 章) 第 10 條僱員是會就該日子獲付補償的。（由 2007 年第 7 號第 7 條增補）
- (2) 任何僱主違反第 (1)(a) 或 (b) 款，即有責任付給該女性僱員以下款項——（由 1995 年第 103 號第 26 條修訂；由 2001 年第 7 號第 5 條修訂）
- (a) 假若僱主根據第 7 條終止僱傭合約本應付給的款項，但該僱員並沒有根據第 7 條收取任何該等款項；（由 1997 年第 73 號第 7 條修訂）

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) 一筆相等於該僱員在以下期間內所賺取的工資的每月平均款額的額外款項——
- (i) 在緊接僱傭合約終止日期之前的 12 個月期間；或
- (ii) 如該僱員在緊接該合約終止日期之前受僱於該僱主一段短於 12 個月的期間，則該段較短的期間；及 (由 2007 年第 7 號第 7 條代替)
- (c) 如該僱員有權或本應有權獲得產假薪酬，再加 10 個星期的產假薪酬。(由 1981 年第 22 號第 5 條增補)
- (2A) 在計算女性僱員在該 12 個月或較短的期間內所賺取的工資的每月平均款額時——
- (a) 僱員在當中由於——
- (i) 放取任何產假、休息日、病假日、假日或年假；
- (ii) 在僱主同意下放取任何假期；
- (iii) 在任何正常工作日不獲其僱主提供工作；或
- (iv) 暫時喪失工作能力以致缺勤，而就此僱員根據《僱員補償條例》(第 282 章)第 10 條會獲付補償，因而未獲付給工資或全部工資的期間；以及
- (b) 就 (a) 段提述的期間付給僱員的任何工資，均不計算在內。(由 2007 年第 7 號第 7 條增補)
- (2B) 為免生疑問，如女性僱員就第 (1D) 款指明的某個日子獲付給的工資的數額，僅是僱員在正常工作日所賺取的數額的一個分數，則該工資以及該日子須按照第 (2A) 款不予計算在內。(由 2007 年第 7 號第 7 條增補)
- (2C) 儘管有第 (2)(b) 款的規定，如因任何理由以該款規定的方式計算某女性僱員所賺取的工資的每月平均款額並不切實可行，則可參考受僱於同一僱主從事同樣工作的人在緊接該僱員的僱傭合約終止日期之前的 12 個月期間內所賺取的工資或 (如無上述的人) 受僱於同一地區的同一年業或職業從事同樣工作的人在緊接該僱員的僱傭合約終

- (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—



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第 III 部  
第 15 條

- 止日期之前的 12 個月期間內所賺取的工資計算該款額。  
(由 2007 年第 7 號第 7 條增補)
- (3) (由 2007 年第 7 號第 7 條廢除)
- (4) 任何僱主違反第 (1)(a) 或 (b) 款，即屬犯罪，一經定罪，可處第 6 級罰款。(由 2001 年第 7 號第 5 條代替)

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- (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

**15AA. 禁止指派粗重、危險或有害的工作**

- (1) 懷孕僱員在交出載有關於其不適宜處理重物、在有損害懷孕的氣體產生的地方工作或擔任其他損害懷孕的工作的意見的醫生證明書後，可請求其僱主在其懷孕期間不將該等工作派給她。
- (2) 即使以下的結果或決定懸而未決——
  - (a) 第 (3) 款所提述的身體檢查的結果；或
  - (b) 第 (6) 款所指的處長的決定，
 僱主在收到根據第 (1) 款提出的請求後，不得將醫生證明書所指的工作分配給懷孕僱員，或如僱員已正從事該等工作，則僱主須在切實可行範圍內盡快（但在任何情況下不得遲於自收到根據第 (1) 款提出的請求的日期翌日起計的 14 天）將該僱員調離該等工作。
- (3) 如僱員為第 (1) 款的目的交出醫生證明書，僱主可安排該僱員接受另一次身體檢查，以就該僱員是否適宜從事受爭議的工作而獲得另一意見，該項檢查的費用須由僱主負擔。（由 2006 年第 16 號第 5 條代替）
- (3A) 第 (3) 款所提述的身體檢查須由僱主指名的註冊醫生或註冊中醫進行，不論僱員交出的醫生證明書是由註冊醫生或是由註冊中醫簽發的。（由 2006 年第 16 號第 5 條增補）
- (4) 僱主須給予僱員關於第 (3) 款所指的檢查的不少於 48 小時通知，而該檢查須在自收到該僱員根據第 (1) 款提出請求的日期翌日起計的 14 天期間內進行。

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*)

- (5) 如上述另一醫學意見認為僱員適宜從事第 (1) 款所提述的指明工作，或如該僱員沒有應僱主根據第 (3) 款作出的安排而拒絕接受身體檢查，則僱主可將該僱員根據第 (1) 款提出的請求轉介處長；處長須採取適當的行動（包括尋求進一步的醫學意見），以協助他作出決定。
- (6) 當處長接獲根據第 (5) 款作出的僱主的轉介，他可作出決定，以——
- 維持僱員的要求；
  - 裁定僱員的要求是沒有理據的；
  - 作出他認為合理的裁定。
- (7) 與上述轉介有關的僱主及僱員須遵從由處長作出的任何決定。
- (8) 即使某僱員因按照本條調離粗重、危險或有害的工作而令其收入有變，根據第 14(3A) 條就產假而支付的款項或根據第 15(2)(a)、(b) 或 (c) 條就終止僱傭而支付的款項，仍須按該僱員在以下期間內所賺取的工資的每日平均款額或每月平均款額（視乎何者適用而定）計算——
- 在緊接該僱員按照本條調離粗重、危險或有害的工作之前的 12 個月期間；或
  - 如該僱員在緊接她按照本條調離粗重、危險或有害的工作之前受僱於有關僱主一段短於 12 個月的期間，則該段較短的期間，
- 而該等條文均須據此解釋。（由 2007 年第 7 號第 8 條代替）
- (9) 凡——
- 某僱員按照本條調離粗重、危險或有害的工作；而且
  - 第 7(1D)、14(3D) 或 15(2C) 條適用於計算須付給該僱員的產假薪酬或根據第 15 條就終止僱傭而支付的款項，

- (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—
- uphold the employee's request;
  - rule that the employee's request is not supported;
  - 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

則就該等款項的計算而言，在第 7(1D)、14(3D) 或 15(2C) 條中凡提述從事同樣工作的人，均須解釋為提述從事該僱員於緊接其調職之前所從事的工作的人。(由 2007 年第 7 號第 8 條增補)

(由 1997 年第 73 號第 8 條增補)

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. 罪行

- (1) 任何僱主如 ——
  - (a) 不給予產假；

### 15A. Offences

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

- (b) 不按照第 14 條付給產假薪酬；或 (由 1995 年第 5 號第 5 條修訂)
- (c) 不根據第 33(3C) 條付給疾病津貼，均屬犯罪，一經定罪，可處第 5 級罰款。(由 1988 年第 24 號第 2 條修訂；由 1995 年第 103 號第 4 條修訂)
- (2) 任何僱主如無合理辯解而不遵從——
- (a) 第 15AA(2) 條的規定；或
- (b) 處長根據第 15AA(6) 條作出的決定，即屬犯罪，一經定罪，可處第 5 級罰款。(由 1997 年第 73 號第 9 條代替)
- (由 1981 年第 22 號第 6 條增補)

**15B. 紀錄**

凡僱用女性僱員的僱主，均須按處長指明的格式保存一份紀錄，記載其女性僱員所放產假及獲付給產假薪酬的資料。

(由 1981 年第 22 號第 6 條增補)

**15C. 付給代產假金的限制**

除按第 15(2) 條的規定外，不得以付給產假薪酬或其他款項代替給予產假。

(由 1981 年第 22 號第 6 條增補)

- (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*)

**第 IIIA 部****侍產假***(第 IIIA 部由 2014 年第 21 號第 6 條增補)***15D. 第 IIIA 部的釋義**

在本部中——

**嬰兒** (child) 指初生嬰兒。**15E. 享有侍產假的權利**

(1) 男性僱員如符合以下情況，即有權就某嬰兒出生，享有侍產假——

- (a) 他是嬰兒的父親；
- (b) 他在緊接放取侍產假前，根據連續性合約受僱；及
- (c) 他已遵守第 15F 條的所有規定。

(2) 就第 (1) 款而言，僱員——

- (a) (除第 15G 條另有規定外) 有權在第 (3) 款指明的期間內，在根據第 15F(1) 條通知僱主的日期放取假期；及
- (b) 有權就每次分娩，放取不多於以下日數的假期(不論假期是否連續日子)——
  - (i) 如嬰兒的出生日期，是 2015 年 2 月 27 日，或是在該日之後但在《2018 年僱傭(修訂)(第 3 號)條例》(2018 年第 30 號) 的生效日期\* 之前——3 日；或
  - (ii) 如嬰兒的出生日期，是上述生效日期\*，或是在該日期之後——5 日。(由 2018 年第 30 號第 3 條代替)

(3) 就第 (2)(a) 款而言，有關期間——

**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—
  - (i) for a child born on or after 27 February 2015 but before the commencement date\* of the Employment (Amendment) (No. 3) Ordinance 2018 (30 of 2018)—3 days; or
  - (ii) for a child born on or after that commencement date\*—5 days,

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- (a) 由預計產下嬰兒的日期前的 4 個星期開始；及
- (b) 在由確實產下嬰兒的日期當日起計的 10 個星期屆滿時結束。
- (4) 就第 (2)(b) 款而言，即使同一胎有多於一名嬰兒出生，亦只視為一次分娩。
- (5) 第 (1) 款 ——
- (a) 並不就流產個案而適用；或
- (b) 並不就於 2015 年 2 月 27 日之前出生的嬰兒而適用。  
(由 2018 年第 30 號第 3 條代替)

編輯附註：

\* 生效日期：2019 年 1 月 18 日。

**15F. 關於侍產假的通知規定**

- (1) 就第 15E(1)(c) 條而言，僱員如擬就嬰兒出生放取侍產假 ——
- (a) 須 ——
- (i) 在預計產下嬰兒的日期前最少 3 個月，通知僱主擬放取侍產假；及
- (ii) 將擬放取侍產假的日期，在放取侍產假前通知僱主；或
- (b) (如他並沒有按照 (a)(i) 段通知僱主) 須在擬放取侍產假的各日期前最少 5 天，將該日期通知僱主。
- (2) 如僱主有此要求，僱員亦須給予僱主一份由僱員簽署的書面陳述 ——
- (a) 述明僱員是嬰兒的父親；及

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- whether consecutive or not, for each confinement.  
(Replaced 30 of 2018 s. 3)
- (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) does not apply in relation to—
- (a) a miscarriage; or
- (b) a child born before 27 February 2015. (Replaced 30 of 2018 s. 3)

Editorial Note:

\* Commencement date: 18 January 2019.

**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—

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- (b) 述明 ——
- (i) 嬰兒的母親的姓名；及
  - (ii) 預計產下嬰兒的日期或（如嬰兒已出生）確實產下嬰兒的日期。

**15G. 侍產假不受其他有權享有的假期影響**

- (1) 侍產假是僱員在根據本條例有權享有的休息日、假日及年假以外，另有權享有的假期。
- (2) 如 ——
  - (a) 僱員為遵守第 15F(1) 條的規定，已通知僱主擬在某日放取侍產假；及
  - (b) 該日適逢休息日或假日，或該日是在一段年假之內，則僱員有權在緊接該休息日、該假日或該段年假後的一日，放取侍產假。
- (3) 儘管有第 (2) 款的規定，僱員如選擇在另一日放取侍產假，並已在該日之前最少 2 天，將其選擇通知僱主，則有權在該日放取侍產假。
- (4) 即使第 (2) 款所述的日子，是在第 15E(3)(b) 條所述的 10 個星期之後，僱員仍有權在該日放取侍產假。
- (5) 然而，第 (3) 款並不使僱員有權在第 15E(3) 條指明的期間以外的日子放取侍產假。

**15H. 獲付給侍產假薪酬的權利**

僱員如符合以下情況，即有權就已放取侍產假的每一日，按

- (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



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第 15I 條指明的薪酬額，獲付給薪酬——

- (a) 他在緊接該日前，根據連續性合約受僱不少於 40 個星期；及
- (b) 他已遵守第 15J 或 15K 條的所有規定。

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. 侍產假薪酬額

(1) 在本條中——

**工資** (wages) 在第 (2)、(3) 及 (4) 款中，包括僱主就以下任何日子付給的款項——

- (a) 僱員放取的侍產假、休息日、病假日、假日或年假；
- (b) 僱員在僱主同意下放取的假期；
- (c) 僱員不獲僱主提供工作的正常工作日；
- (d) 僱員因暫時喪失工作能力而缺勤的日子，而根據《僱員補償條例》(第 282 章) 第 10 條，僱員是會就該日子獲付補償的；

**指明日期** (specified date) 就僱員放取的侍產假而言，指——

- (a) (如於一段連續日子放取侍產假) 該段日子開始的日期；或
  - (b) (在其他情況下) 放取侍產假的日期。
- (2) 按日計的侍產假薪酬，為僱員在以下期間內的每日平均工資的五分之四——
- (a) 在緊接指明日期前的 12 個月；或
  - (b) (如僱員在緊接指明日期前受僱於僱主的期間短於 12 個月) 該段較短期間。
- (3) 在計算每日平均工資時，無須顧及——

### 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) 僱員在上述的 12 個月或較短期間內，由於以下任何原因而未獲付給工資或全部工資的任何期間 (**豁除期間**) ——
- (i) 僱員放取了任何侍產假、休息日、病假日、假日或年假；
  - (ii) 僱員在僱主同意下，放取了任何假期；
  - (iii) 僱員在正常工作日，不獲僱主提供工作；
  - (iv) 僱員暫時喪失工作能力以致缺勤，而根據《僱員補償條例》(第 282 章) 第 10 條會就此獲付補償；及
- (b) 就豁除期間付給僱員的任何工資。
- (4) 為免生疑問，如就第 (1) 款中**工資**的定義所涵蓋的某日 (**有關日子**) 付給僱員的工資 (**有關工資**) 的款額，僅是僱員在一個正常工作日所賺取的款額的一個分數，則在計算僱員的每日平均工資時，無須理會有關工資及有關日子。
- (5) 儘管有第 (2) 款的規定，如因任何理由，以該款規定的方式計算僱員的每日平均工資，並非切實可行，則可參照以下工資，計算每日平均工資 ——
- (a) 受僱於同一僱主並從事同樣工作的人，在緊接指明日期前的 12 個月內賺取的工資；或
  - (b) (如無上述的人) 受僱於同一地區的同一年業或職業並從事同樣工作的人，在緊接指明日期前的 12 個月內賺取的工資。
- (6) 如根據僱員的僱傭合約或任何其他協議，或因任何其他理由，僱主已就僱員放取侍產假的日子，向僱員付給一筆款項，則該筆款項，須從根據本部須就該日子付給僱員的侍產假薪酬中扣除。

- (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—

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第 15J 條Part IIIA  
Section 15J3A-12  
Cap. 57**15J. 與侍產假薪酬有關的所需文件：在香港出生**

- (1) 就第 15H(b) 條而言，如僱員就嬰兒在香港出生放取侍產假，僱員須向僱主提供嬰兒的出生證明書，該證明書須符合以下規定——
  - (a) 是根據《生死登記條例》(第 174 章)發出的；及
  - (b) 僱員的姓名記在該證明書上，顯示僱員是嬰兒的父親。
- (2) 儘管有第 (1) 款的規定，如嬰兒出生時已死亡，或嬰兒出生後死亡而沒有出生證明書根據《生死登記條例》(第 174 章)就嬰兒發出，僱員須向僱主提供——
  - (a) 第 (3) 款描述的醫生證明書；及
  - (b) (如僱主有此要求)由僱員簽署的書面陳述，述明——
    - (i) 他是名列於上述醫生證明書上的女士所產下的嬰兒的父親；及
    - (ii) 嬰兒出生時已死亡，或在出生後死亡(視何者屬適當而定)。

- (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—

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第 15K 條

- (3) 為施行第(2)(a)款，醫生證明書——
- (a) 須證明產下嬰兒；及
  - (b) 須由以下人士發出——
    - (i) 註冊醫生；或
    - (ii) (儘管有《助產士註冊條例》(第 162 章)第 16 條的規定)根據該條例第 8 條註冊的助產士，或根據該條例第 25 條當作已註冊的助產士。
- (4) 本條規定的文件，須於以下期間內，向僱主提供——
- (a) 僱員放取侍產假的首天後的 12 個月；或
  - (b) (如僱員已停止受僱於僱主)(a)段所述的期間或停止受僱後的 6 個月(以先屆滿的期間為準)。

**15K. 與侍產假薪酬有關的所需文件：在香港以外出生**

- (1) 就第 15H(b) 條而言，如僱員就嬰兒在香港以外地方出生放取侍產假，僱員須向僱主提供——
- (a) 嬰兒的出生證明書，該證明書須符合以下規定——
    - (i) 是由該地方的主管當局( **主管當局**)發出的；及
    - (ii) 僱員的姓名記在該證明書上，顯示僱員是嬰兒的父親；或

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- (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

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- (b) (如主管當局並不發出出生證明書)由主管當局發出的任何其他文件,該文件須屬按理可視為僱員是嬰兒父親的證明。
- (2) 儘管有第(1)款的規定,如嬰兒出生時已死亡,或在出生後死亡,而該款所述的出生證明書及文件,均不可取得,僱員須向僱主提供——
- (a) 由主管當局發出的醫生證明書或任何其他文件,該證明書或文件須屬按理可視為產下嬰兒的證明;及
- (b) (如僱主有此要求)由僱員簽署的書面陳述,述明——
- (i) 他是名列於上述醫生證明書或文件上的女士所產下的嬰兒的父親;及
- (ii) 嬰兒出生時已死亡,或在出生後死亡(視何者屬適當而定)。
- (3) 本條規定的文件,須於以下期間內,向僱主提供——
- (a) 僱員放取待產假的首天後的 12 個月;或
- (b) (如僱員已停止受僱於僱主)(a)段所述的期間或停止受僱後的 6 個月(以先屆滿的期間為準)。

**15L. 付給待產假薪酬**

- (1) 在本條中——

- (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—

**所需文件** (requisite document) 就已在某日放取侍產假的僱員而言，指為使他有權就該日獲付給侍產假薪酬，而根據第 15J 或 15K 條須提供的文件。

- (2) 如僱員已於某日 (**侍產假日**) 放取侍產假，並已在侍產假日當日或之前，向僱主提供所需文件，僱主須於以下日子或之前，就該侍產假日向僱員付給侍產假薪酬——
  - (a) 僱員在該侍產假日後的第一個發薪日；或
  - (b) (如僱員已停止受僱於僱主) 停止受僱後的第 7 天。
- (3) 如僱員在侍產假日之後，向僱主提供所需文件，僱主須於以下日子或之前，就該侍產假日向僱員付給侍產假薪酬——
  - (a) 僱員在提供文件後的第一個發薪日；或
  - (b) (如僱員已停止受僱於僱主) 提供文件後的第 7 天。
- (4) 如在僱員提供所需文件前，僱主已就侍產假日向僱員付給侍產假薪酬，則在以下情況下，僱主可從僱員的工資中，扣回相當於侍產假薪酬的款額——
  - (a) 僱員沒有在首日放取侍產假後的 3 個月內，向僱主提供所需文件；或
  - (b) 僱員已停止受僱於僱主，而在停止受僱前，他沒有向僱主提供所需文件。
- (5) 如僱主在扣回工資後，僱員按照第 15J(4) 或 15K(3) 條，向僱主提供所需文件，則僱主須於以下日子或之前，再次就侍產假日向僱員付給侍產假薪酬——
  - (a) 僱員在提供文件後的第一個發薪日；或
  - (b) (如僱員已停止受僱於僱主) 提供文件後的第 7 天。

**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)

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### 15M. 罪行

- (1) 僱主須——
    - (a) 給予僱員他有權享有的侍產假；及
    - (b) 按照第 15L 條，付給僱員他有權獲付給的侍產假薪酬。
  - (2) 僱主如無合理辯解而違反第(1)款，即屬犯罪，一經定罪，可處第 5 級罰款。
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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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**第 IV 部****休息日**

(第 IV 部由 1970 年第 23 號第 3 條增補。格式變更——2017 年第 3 號編輯修訂紀錄)

16. (由 1980 年第 10 號第 3 條廢除)

**17. 休息日的給予**

- (1) 除本部條文另有規定外，凡根據連續性合約由同一僱主僱用的僱員，每 7 天期間須獲給予不少於 1 個休息日。(由 1976 年第 71 號第 3 條修訂)
- (2) 僱員除根據第 39 條有權享有法定假日、另定假日或代替假日外，尚有權享有休息日。(由 1973 年第 39 號第 3 條代替)

**18. 休息日的指定**

- (1) 休息日由僱主指定，而僱主可為不同僱員指定不同的休息日。(由 1976 年第 71 號第 4 條修訂)
- (2) 除第 (4) 款另有規定外，僱主須在每一個月開始之前以口頭或書面通知各僱員在該月份的休息日。
- (3) 如僱主將各僱員該月份指定休息日的輪值表，在適用期間張貼於僱傭地點的顯眼處，即第 (2) 款的條文須當作已獲遵從。
- (4) 凡休息日有規律地固定在每 7 天期間的某一天，則第 (2) 款不適用。(由 1976 年第 71 號第 4 條修訂)
- (5) 僱主如獲得僱員同意，可用另一休息日代替已根據本條指定的休息日，該另一休息日須定於——

**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.



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- (a) 同一月份內，且在原本指定的休息日之前；或
- (b) 原本指定的休息日之後 30 天內。

#### 19. 強制在休息日工作的情況

- (1) 除第(2)款另有規定外，僱主不得要求僱員在休息日工作。
- (2) 如因機器或工廠設備故障，或因其他不能預見的任何緊急事故而有此需要，僱主可要求僱員在休息日工作。
- (3) 僱主若根據第(2)款要求僱員在休息日工作，須在該日之後 48 小時內通知該僱員作為代替該休息日的另一休息日的日期，該另一休息日須定於原本指定的休息日之後 30 天內。

#### 20. 自願在休息日工作的情況

- (1) 僱員可自行提出請求並在其僱主同意下，在休息日為該僱主工作。
- (2) 僱員可應其僱主的請求，在休息日為該僱主工作。

#### 21. 無效條件

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- (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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如僱傭合約訂有任何條件，使僱員必須在根據本部給予的休息日工作方可獲付給每年花紅或年終酬金或部分年終酬金者，該條件須屬無效。

*(由 1984 年第 48 號第 10 條修訂)*

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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)*

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**第 IVA 部****Part IVA****職工會不受歧視的保障****Protection Against Anti-union Discrimination**

(第 IVA 部由 1974 年第 51 號第 3 條增補。格式變更——2017 年第 3 號編輯修訂紀錄)

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

**21A. 第 IVA 部的適用範圍**

第 21C 條適用於所有獲得或行將獲得僱主提出僱傭要約，或以其他方式成為準僱員的人。

(由 1990 年第 41 號第 7 條代替)

**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. 僱員參加職工會及其活動的權利**

(1) 任何僱員，在其本人與僱主之間，享有以下權利——

- (a) 作為或成為根據《職工會條例》(第 332 章)登記的職工會會員或職員的權利；
- (b) 凡為職工會會員或職員，享有在適當時間參加該職工會活動的權利；
- (c) 聯同他人按照《職工會條例》(第 332 章)的條文，組織職工會或申請將職工會登記的權利；(由 1997 年第 101 號第 26 條修訂)
- (d) (由 1997 年第 135 號第 14 條廢除)

(2) 任何僱主，或任何代表僱主的人，如——

- (a) 阻止或阻嚇，或作出任何作為以刻意阻止或阻嚇僱員行使第 (1) 款所授予的任何權利；或
- (b) 因僱員行使任何該等權利而終止其僱傭合約、懲罰或以其他方式歧視該僱員，

即屬犯罪，一經定罪，可處第 6 級罰款。(由 1988 年第 24 號第 2 條修訂；由 1995 年第 103 號第 5 條修訂)

**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—

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(3) 在本條中——

**工作時間** (working hours)，就僱員而言，指其按照與僱主訂立的合約所須工作的任何時間；**適當時間** (appropriate time)，就僱員參加職工會任何活動而言，指——

- (a) 其工作時間以外的時間；或
- (b) 其工作時間以內的时间，而按照與其僱主或任何代表其僱主的人所議定的安排，或得到其僱主或任何代表其僱主的人給予的同意，容許在該時間內參加該等活動。

[比照 1971 c. 72 s. 5(1)、(2) &amp; (5) U.K.]

**21C. 以受要約人並非職工會會員作為僱傭要約的條件**

任何人，不論其本人或代表他人聘用僱員時，在僱傭要約中包括以下條件或規定——

- (a) 如受要約人是職工會會員或職員，他須承諾放棄其會籍或職位；
- (b) 受要約人須承諾不成為職工會會員或職員；或
- (c) 受要約人須承諾不聯同他人按照《職工會條例》(第 332 章) 的條文組織職工會或申請將職工會登記，

(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) &amp; (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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即屬犯罪，一經定罪，可處第 6 級罰款。（由 1988 年第 24 號  
第 2 條修訂；由 1995 年第 103 號第 6 條修訂）

**21D-21J.** (由 1997 年第 135 號第 3 條廢除)

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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*)

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**第 V 部****工資的支付***(格式變更——2017 年第 3 號編輯修訂紀錄)***22. 工資期**

根據僱傭合約須支付工資的工資期須當作為 1 個月，直至相反證明成立為止。

**23. 工資的支付日期**

工資在工資期最後一天完結時即到期支付，須在切實可行範圍內盡快支付，但在任何情況下不得遲於工資期屆滿後 7 天支付。

**24. 僱傭合約完成時的工資支付**

僱員在其僱傭合約完成時的工資及與該合約有關的任何其他須付款項，在該僱傭合約完成之日即到期支付，須在切實可行範圍內盡快支付，但在任何情況下不得遲於僱傭合約完成後 7 天支付。

**25. 僱傭合約終止時的工資支付**

- (1) 除第 31O 條另有規定外，凡僱傭合約終止，到期付給僱員的任何款項須在切實可行範圍內盡快支付，但在任何情況下不得遲於僱傭合約終止後 7 天支付。*(由 1971 年第 44 號第 4 條修訂；由 1974 年第 67 號第 4 條修訂)*
- (2) 第 (1) 款所指的款項為——
  - (a) 相等於僱傭合約終止前對上一個工資期屆滿時起，至合約終止之日止，僱員工作所賺取的款額；

**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

- (b) 根據第 7、15(2) 及 33(4BA) 條所須支付的款項 (如有的話); (由 1983 年第 57 號第 4 條修訂; 由 1985 年第 76 號第 3 條修訂; 由 1995 年第 103 號第 7 條修訂; 由 2001 年第 7 號第 6 條修訂)
- (ba) 到期付給僱員的任何長期服務金; 及 (由 1985 年第 76 號第 3 條增補)
- (c) 與僱傭合約有關而到期付給僱員的任何其他款項。
- (3) 除根據第 32 條可予扣除的款項外, 以及在法庭作出的任何命令的規限下, 僱主對於並非根據第 6、7 或 10 條終止僱傭的僱員, 可從該僱員根據第 (1) 款獲付給的款項中, 扣除該僱員假若根據第 7 條終止僱傭即有責任付給的款項。 (由 1971 年第 44 號第 4 條代替。由 1975 年第 14 號第 3 條修訂; 由 1984 年第 48 號第 12 條修訂)

### 25A. 因過期支付工資而須繳付的利息

- (1) 除第 (3) 款另有規定外, 如任何工資或第 25(2)(a) 條所提及的任何款項由其根據第 23、24 及 25 條變為到期支付當日起計的 7 天內仍未獲支付, 則僱主須按第 (2) 款所指明的利率就尚未清付的工資款額或款項支付利息, 利息自該等工資或款項變為到期支付的日期起計算, 直至實際支付工資或款項的日期為止。
- (2) 為第 (1) 款而指明的利率為終審法院首席法官根據《區域法院條例》(第 336 章) 第 50 條以憲報公告釐定的利率。 (由 1998 年第 25 號第 2 條修訂)
- (3) 不須就本條的生效日期 \* 之前的任何期間支付利息。  
(由 1997 年第 74 號第 9 條增補)

編輯附註：

- 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.

\* 生效日期：1997 年 6 月 27 日。

(Added 74 of 1997 s. 9)

Editorial Note:

\* Commencement date: 27 June 1997.

## 26. 支付工資的方式及地點

- (1) 除本條例另有規定外，僱主須在工作日於僱員僱傭地點，或僱主習慣用作發薪的辦事處或其他地點，或在雙方議定的任何其他地點，用法定貨幣直接將工資付給僱員。
- (2) 在僱員同意下，工資可按以下方式付給——
  - (a) 用支票、匯票或郵政匯票付給；
  - (b) 存入該僱員名下的銀行戶口，而該銀行是《銀行業條例》(第 155 章)第 2 條所指的銀行；或 (由 1995 年第 49 號第 53 條修訂)
  - (c) 付給該僱員妥為指定的代理人。

## 27. 不得在某些地點支付工資的規定

凡工資或任何在僱傭合約完成或終止時與該僱傭合約有關而到期付給僱員的款項，不得在以下地點付給——

- (a) 任何娛樂場所；
  - (b) 根據《博彩稅條例》(第 108 章)獲准許或批准舉辦或進行的現金彩票活動、固定賠率投注或彩池投注的任何舉辦或進行地點；(由 2006 年第 17 號第 23 條修訂)
  - (c) 任何售賣令人醺醉的酒類或危險藥物的地點；或
  - (d) 任何零售商品的店舖，
- 但如該僱員受僱在此等地點或店舖工作，則不在此限。

## 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,



**28. 工資以外的報酬**

- (1) 僱傭合約可規定僱員除工資外，並可獲得食物、居所或其他津貼或優惠，作為其服務的報酬。
- (2) 僱主不得以任何令人醺醉的酒類、危險藥物或根據《博彩稅條例》(第 108 章)獲准許或批准舉辦或進行的現金彩票活動、固定賠率投注或彩池投注的任何彩票或其他彩票代替物，作為僱員服務的報酬。(由 2006 年第 17 號第 23 條修訂)

**29. 禁止就使用工資方式訂立協議**

僱主不得在任何僱傭合約或以僱傭合約為代價的協議內，訂定有關僱員在何處、以何種方式或與何人使用其獲付給的工資的任何條文。

**30. 僱主開設商店等將商品售賣給僱員的情況**

僱主可開設店鋪或場所，將商品售賣給僱員，惟不得以合約、協議或其他義務形式(不論是書面或口頭、明訂或隱含的)，限定僱員在該等店鋪或場所購買商品。

**31. 僱主在無合理理由自信可付給工資的情況下不得訂立僱傭合約**

- (1) 任何人，除非有合理理由自信會有能力在到期支付時付給所有根據僱傭合約須到期支付的工資，否則不得以僱

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

主身分訂立、續訂或繼續任何僱傭合約。

- (2) 僱主如不再有合理理由自信會有能力在到期支付時付給所有根據僱傭合約須到期支付的工資，須隨即採取一切必需步驟，按照僱傭合約的條款終止合約。

*(由 1970 年第 71 號第 3 條增補)*

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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)*

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**第 VA 部****遣散費**

(第 VA 部由 1974 年第 67 號第 5 條增補。格式變更——2017 年第 3 號編輯修訂紀錄)

**31A.** (由 1985 年第 76 號第 4 條廢除)

**31B. 關於領取遣散費權利的一般條文**

- (1) 凡僱員在有關日期前，根據連續性合約受僱一段不少於 24 個月的期間——(由 1985 年第 76 號第 5 條修訂)
  - (a) 因裁員而遭僱主解僱；或
  - (b) 被停工(第 31E 條所指的停工)，  
除本部及第 VC 部另有規定外，僱主有責任付給該僱員一筆遣散費，款額按照第 31G 條計算。(由 1988 年第 52 號第 5 條修訂)
- (2) 就本部而言，僱員如完全或主要歸因於以下情況而遭解僱，須視為因裁員而遭解僱——
  - (a) 僱主已停止或擬停止經營——
    - (i) 僱用該僱員所從事的業務；或
    - (ii) 在僱員受僱工作地點從事的業務；或
  - (b) 該業務對僱用僱員從事某類工作的需求，或該業務對僱用僱員在其受僱工作地點從事某類工作的需求，已告停止或縮減，或預期會停止或縮減。(由 1992 年第 62 號第 4 條代替)
- (3) 為使本部適用於受僱為家庭傭工，在私人住戶工作或其受僱的工作是與私人住戶有關的僱員，在引用本部(第 31J 條除外)時，須猶如該住戶是一種業務，而維持住戶即僱主經營該業務一樣。

**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

[ 比照 1965 c. 62 ss. 1 & 19(1) U.K.]

### 31C. 因解僱而獲得遣散費權利的一般免除

- (1) 凡僱主因僱員的行為，按照第 9 條有權不給予通知或代通知金而終止其僱傭合約，則該僱員無權因遭解僱而獲得遣散費。（由 2000 年第 51 號第 3 條修訂）
- (2) 如僱主在有關日期前的 7 天開始之時或之前，向僱員要約續訂僱傭合約，或以新合約再次聘用，而 ——（由 1997 年第 414 號法律公告修訂）
  - (a) 該續訂或新訂合約（視屬何情況而定）的條文，不論是有關該僱員將受僱的身分及受僱地點，以及其他僱傭條款及條件，均與緊接該僱員遭解僱前的有效合約的相應條文無異；及
  - (b) 續約或再次聘用將於有關日期或該日期前生效，而該僱員不合理地拒絕該項要約，則該僱員無權因遭解僱而獲得遣散費。
- (3) 如僱主在有關日期前的 7 天開始之時或之前，以書面向僱員要約續訂僱傭合約，或以新合約再次聘用，而按照要約所指明詳情，續訂或新訂合約（視屬何情況而定）的條文，不論是有關該僱員將受僱的身分及受僱地點，以及其他僱傭條款及條件，均與緊接該僱員遭解僱前的有效合約的相應條文全部或部分有所不同，但 ——（由 1997 年第 414 號法律公告修訂）

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.

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- (a) 該項要約對該僱員而言構成適合僱傭的要約；
- (b) 該項要約對該僱員而言構成並不較前為遜的僱傭要約；及
- (c) 續約或再次聘用將於有關日期或該日期前生效，而該僱員不合理地拒絕該項要約，則該僱員無權因遭解僱而獲得遣散費。
- (4) 凡有關日期適逢休息日或假日，則第 (2)(b) 款與第 (3)(c) 款內所提述的有關日期，須解釋為該休息日或假日的翌日。(由 1997 年第 75 號第 2 條修訂)
- (5) 凡僱員在僱主按照第 6 條給予該僱員終止其僱傭合約的通知後在該通知的期限屆滿前離職，則除非——
- (a) 該僱員的離職是經僱主事先同意的；或
- (b) 該僱員在離職前已按照第 7 條付給僱主一筆代通知金，
- 否則該僱員無權因遭解僱而獲得遣散費。(由 1997 年第 75 號第 2 條代替)

[比照 1965 c. 62 s. 2 U.K.]

- (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. 遭僱主解僱的情況**

- (1) 就本部而言，及除本部另有規定外，僱員只有在以下情況才可視為遭僱主解僱——
  - (a) 不論是否有給予通知或代通知金，僱主並非按照第 9 條終止該僱員的僱傭合約；
  - (b) 如僱員根據合約受僱一段固定時期，而在該時期屆滿後未有以同一合約續約；或
  - (c) 僱員在因僱主的行為而有權按照第 10 條不給予通知或代通知金而終止合約的情況下，給予或不給予通知或代通知金而終止合約。（由 1992 年第 62 號第 5 條代替）
- (2) 就本部而言，僱員在以下情況不得視為遭僱主解僱——
  - (a) 僱員的僱傭合約已予續訂，或已以新僱傭合約獲同一僱主再次聘用；及
  - (b) 續約或再次聘用是在緊接前一合約所訂的僱傭終結時生效。
- (3) 為使第 (2) 款適用於在休息日或假日終結僱傭的合約，如續約或再次聘用是在休息日或假日翌日生效或該翌日之前生效，則續約或再次聘用須視為是在緊接前一合約所訂的僱傭終結時生效。

[比照 1965 c. 62 s. 3 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. 停工**

(1) 凡僱傭合約的條款及條件，訂明僱員的報酬須視乎他獲僱主提供其所受僱的該種工作而定，則就第 31B(1) 條而言，根據該僱傭合約受僱的僱員在以下情況須視為被停工：凡僱主未有向僱員提供該等工作的日子總數超過——

- (a) 在任何連續 4 個星期的期間內正常工作日總數的一半；或
- (b) 在任何連續 26 個星期的期間內正常工作日總數的三分之一，

而該僱員並未獲付一筆款額相等於該僱員在未獲提供工作的日子中假若獲提供工作本可賺取的工資的款項。（由 1990 年第 41 號第 8 條修訂）

- (1A) 儘管有第 (1) 款的規定，如僱員在任何期間，因僱主閉廠或由於休息日、法定假日或年假，以致未獲提供工作，則在決定該僱員是否被停工時，該段時間不得考慮為正常工作日。（由 1990 年第 41 號第 8 條增補。由 1993 年第 61 號第 4 條修訂）
- (2) 僱員的僱傭合約的連續性不得因停工而視為中斷，並因此而未有付予遣散費。
- (3) 就本部而言，關於僱員因被停工而引致享有遣散費權利的**有關日期** (relevant date)，指第 (1) 款所指連續 4 個星期或連續 26 個星期（視屬何情況而定）的期間屆滿日期。（由 1990 年第 41 號第 8 條修訂）

[比照 1965 c. 62 s. 5(1) 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

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第 31F 條Part VA  
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Cap. 57**31F. 各類屬例外的僱員**

第 31B 條不適用於以下的人——

- (a) 任何僱員，而該僱員的僱主是其丈夫或妻子；
- (b) 任何外發工；
- (c) (由 1985 年第 76 號第 6 條廢除)
- (d) 任何受僱於香港政府以外其他政府，且是該政府所屬國家的國民或公民的人；或
- (e) 在不損害 (a) 段的規定下，任何受僱為家庭傭工，在私人住戶工作或其受僱的工作是與私人住戶有關的人，而僱主是其父母、祖父母、繼父母、子女、孫兒、孫女、繼子女、兄弟姊妹、或同父異母的兄弟姊妹或同母異父的兄弟姊妹。

[比照 1965 c. 62 s. 16 U.K.]

**31G. 遣散費的款額**

- (1) 除本部另有規定外，僱員在任何情況下有權獲得的遣散費款額，須按以下方法計算——
  - (a) 如屬按月計薪的僱員，則根據連續性合約為僱主工作每滿一年（不足一年者按比例計算），可獲其最後一個月全月工資的三分之二，或 \$22,500 的三分之二，兩者以較小款額為準；及
  - (b) 如屬其他情況的僱員，則根據連續性合約為該僱主工作每滿一年（不足一年者按比例計算），可獲從其

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



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最後工作的 30 個正常工作日中由僱員選任何 18 天為依據的 18 天工資，或 \$22,500 的三分之二，兩者以較小款額為準，(由 1995 年第 264 號法律公告修訂)

惟如有關日期在附表 7 表 A 第 1 欄所指明的期間內，則遣散費最高限額在任何情況下不得超過該表內與該期間相對列於第 2 欄內的款額。(由 1995 年第 5 號第 6 條修訂)

(1A) 儘管有第 (1) 款的規定，如 ——

- (a) 有關日期在附表 7 表 B 第 1 欄指明的期間內；及
- (b) 該僱員在緊接有關日期前，已根據連續性合約由其僱主僱用一段期間 (**僱傭期**)，而該段僱傭期較該表內與有關日期所在的期間相對列於第 2 欄內的期間為長，

則在計算該僱員根據第 (1) 款有權獲得的遣散費時，該段僱傭期超過該表第 2 欄所指明期間的部分，須縮減一半。(由 1995 年第 5 號第 6 條增補。由 1996 年第 139 號法律公告修訂)

(2) 儘管有第 (1) 款的規定，僱員亦可選擇按緊接有關日期前 12 個月期間的工資平均數計算，但如作此選擇，則 ——

- (a) 如屬按月計薪的僱員，每月平均款額不得超過 \$22,500；及
- (b) 如屬其他情況的僱員，就計算每日平均款額而言，該 12 個月期間的工資總額不得超過 \$22,500 的 12 倍。(由 1995 年第 264 號法律公告修訂)

(3) 就本條而言，如僱員是根據連續性合約受僱於非體力勞動工作的，且在緊接《1990 年僱傭(修訂)條例》\*(1990 年第 41 號) 生效日期前 12 個月期間內每月平均工資超過 \$15,000，則在提述根據連續性合約的僱傭期時，不包括提述任何以下的僱傭 ——

- (a) 凡有關日期在 1990 年內的，指 1990 年 1 月 1 日以前超過 3 年的僱傭；

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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*)

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- (b) 凡有關日期在 1991 年內的，指 1990 年 1 月 1 日以前超過 4 年的僱傭；
- (c) 凡有關日期在 1992 年內的，指 1990 年 1 月 1 日以前超過 5 年的僱傭；
- (d) 凡有關日期在 1993 年內的，指 1990 年 1 月 1 日以前超過 6 年的僱傭；
- (e) 凡有關日期在 1994 年內的，指 1990 年 1 月 1 日以前超過 7 年的僱傭；
- (f) 凡有關日期在 1995 年內的，指 1990 年 1 月 1 日以前超過 8 年的僱傭；
- (g) 凡有關日期在 1996 年內的，指 1990 年 1 月 1 日以前超過 9 年的僱傭；
- (h) 凡有關日期在 1997 年或其後任何一年內的，指 1990 年 1 月 1 日以前超過 10 年的僱傭。

(由 1990 年第 41 號第 9 條代替)

編輯附註：

\* 《1990 年僱傭(修訂)條例》乃“Employment (Amendment) Ordinance 1990”之譯名。

**31H.** (由 2000 年第 51 號第 4 條廢除)

\* **31I.** 在某些情況下須從遣散費中扣除酬金及利益或權益的款額  
如任何僱員根據本部有權就其服務年數獲付一筆遣散費，

- (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

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而——

- (a) 因為該僱員的僱傭合約的施行，一筆或多於一筆按服務年資支付的酬金或一筆或多於一筆有關職業退休計劃利益已支付予該僱員；或
- (b) 在某強制性公積金計劃中有有關強制性公積金計劃權益就該僱員而被持有，或有關強制性公積金計劃權益已支付予該僱員或就該僱員而支付，

則須從該筆遣散費中扣除就該僱員而被持有、已向該僱員支付或就該僱員而支付的所有該等酬金及利益或權益的總款額，但以該等酬金及利益或權益是與上述服務年數有關的款額為限。

(由 1998 年第 4 號第 5 條代替。由 2001 年第 18 號第 2 條修訂)

編輯附註：

\* 與《2001 年僱傭(修訂)(第 2 號)條例》(2001 年第 18 號)對本條作出的修訂相關的過渡性及保留條文，見載於該條例第 5 條。

### 311A. 在某些情況下須從酬金或利益或權益中扣除遣散費的款額

(1) 如——

- (a) 因為某僱員的僱傭合約的施行，該僱員有權獲付按服務年資支付並且可歸因於其服務年數的酬金，或獲付可歸因於其服務年數的有關職業退休計劃利益；或
- (b) 在某強制性公積金計劃中有有關強制性公積金計劃權益就該僱員而被持有，

而該僱員已根據本部獲付一筆遣散費，則須從該等酬金或利益或權益中扣除該筆遣散費的總款額，但以該筆遣

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.

### 311A. 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,

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散費或利益或權益中可歸因於上述服務年數的部分的款額為限。

- (2) 即使有關酬金或利益或權益可歸因於某服務年數，而所支付的遣散費所基於的服務年數超逾該服務年數，第 (1) 款仍然有效。
- (3) 《職業退休計劃條例》(第 426 章) 第 70A 條及《強制性公積金計劃條例》(第 485 章) 第 12A 條就本條而具有效力。  
(由 1998 年第 4 號第 5 條代替)

### 31J. 業務擁有權的變更

- (1) 本條對以下情況具有效力——
  - (a) 任何人所受僱從事的全部或部分業務的擁有權有所變更(不論是憑藉出售、其他形式的產權處置或法律的實施所致); 及
  - (b) 由於該項變更，在緊接該項變更前僱用該僱員的人(本條內稱為**前擁有人**)按照第 6 或 7 條終止該僱員的合約。
- (2) 在緊接該項變更後成為該有關業務或部分業務(視屬何情況而定)擁有人的人(本條內稱為**新擁有人**)，如與僱員達成協議，(以新擁有人代替前擁有人)續訂該僱員的僱傭合約，或以新僱傭合約再次聘用，則第 31D(2) 條對此具有效力，猶如該項續約或再次聘用是由前擁有人(並非以新擁有人代替前擁有人)作出的一樣。
- (3) 如新擁有人(以新擁有人代替前擁有人)向僱員要約續訂僱傭合約，或以新僱傭合約再次聘用，但該僱員拒絕該項要約，則除第 (4) 款另有規定外，第 31C(2) 或 (3) 條(視屬何情況而定)對與該項要約及拒絕有關的事宜具有效

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

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力，猶如對與前擁有人作出相同的要約及該僱員拒絕該項要約有關的事宜具有效力一樣。

- (4) 為按照第 (3) 款的規定，就與新擁有人所作要約有關事宜而實施第 31C(2) 或 (3) 條時——
- (a) 該項要約，不得僅因新擁有人取代前擁有人成為僱主，而將續訂的合約或新合約（視屬何情況而定）的條文，視為與緊接解僱前的有效合約的相應條文有所不同；及
- (b) 在決定拒絕該項要約是否不合理時，對上述取代不加考慮。
- (5) 本條在作出必要的變通後對與以下情況有關的事宜具有效力——
- (a) 緊接業務擁有權變更前擁有該業務或部分業務的人，是緊接該項變更後擁有該業務或該部分業務的其中一人（不論是以合夥人、受託人或其他身分擁有）；或
- (b) 緊接業務擁有權變更前擁有該業務或部分業務的各人（不論是以合夥人、受託人或其他身分擁有），包括緊接該項變更後擁有該業務或該部分業務的人，或其中一人或多人，
- 一如對前擁有人與新擁有人是兩個完全不同的人的情況具有效力一樣。
- (6) 本條不得解釋為規定將在雙方協議下對僱傭合約的任何更改視為構成合約的終止。

[比照 1965 c. 62 s. 13 U.K.]

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

**31K. 相聯公司**

- (1) 如僱主是一間公司，凡本部提述由僱主再次聘用僱員，須解釋為提述該公司或其任何相聯公司再次聘用該僱員；凡本部提述由僱主作出的要約，須解釋為包括提述由其相聯公司作出的要約。
- (2) 凡由第 31J 條所界定的前擁有人及新擁有人俱是相聯公司，則第 (1) 款不影響第 31J 條的實施；凡屬第 31J 條適用之處，第 (1) 款則不適用。
- (3) 凡僱員遭僱主解僱，而僱主是一間公司（即本款所稱**僱用公司**），有一間或多間相聯公司，倘若——
  - (a) 其解僱並不符合第 31B(2) 條所指明的任何一種情況；
  - (b) 僱用公司的業務與相聯公司（如超過一間相聯公司，則每間相聯公司）的業務如被視為共同構成一個業務，其解僱即符合第 31B(2) 條所指明的其中一種情況，
 則就本部而言，有關僱員的解僱，須視為已符合該種情況。
- (4) 凡一間公司的僱員由另一間公司僱用，而後述公司僱用該僱員時是前述公司的相聯公司，則該僱員當時的僱傭

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

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期須算作在該相聯公司的僱傭期，而僱傭期的連續性，不得因僱主的變更而告中斷。

- (5) 就本條而言，如兩間公司的其中一間是另一間的附屬公司，或該兩間公司俱是第三間公司的附屬公司，則該兩間公司須視為相聯公司，而**相聯公司** (associated company) 一詞亦須據此解釋。

- (6) 在本條中——

**公司** (company) 具有《公司條例》(第 622 章) 第 2(1) 條給予該詞的涵義；

**附屬公司** (subsidiary) 具有《公司條例》(第 622 章) 第 15 條為施行該條例而給予該詞的涵義。(由 2012 年第 28 號第 912 及 920 條代替)

[比照 1965 c. 62 s. 48 U.K.]

### 31L. 合約的隱含終止或法律構定終止

- (1) 凡按照任何成文法則或法律規則——

- (a) 僱主方面的任何作為；或  
(b) 影響僱主的任何事情 (如僱主是個人，則包括他的死亡)，

導致所僱用僱員的合約終止，而上述作為或事情，假若無本款的規定便不構成由僱主終止合約，則就本部而言須視為由僱主終止合約。

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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

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- (2) 在第 (1) 款適用的情況下，凡未有如第 31D(2) 條所述般將僱員的僱傭合約續訂，亦未有以新合約再次聘用，而未有如第 31D(2) 條所述般續約及再次聘用的情形，完全或主要歸因於第 31B(2) 條所指明的其中一種情況所致，則就本部而言，該僱員須視為因裁員而遭解僱。
- (3) 就第 (2) 款而言，第 31B(2)(a) 條在與僱主停止或擬停止經營業務有關時，須解釋作猶如提述僱主，即包括提述因有關作為或所發生事情而獲轉移業務處置權的人。
- (4) 在本條中，凡提述第 31D(2) 條時，亦包括提述第 31J(2) 條所引用的第 31D(2) 條的情況。

[比照 1965 c. 62 s. 22 U.K.]

### 31M. 僱主或僱員的死亡

附表 3 第 I 部對與僱主死亡有關的情況具有效力，而該附表的第 II 部則對與僱員死亡有關的情況具有效力。

[比照 1965 c. 62 s. 23 U.K.]

### 31N. 遣散費的申索

即使本部另有規定，除非在由有關日期起計的 3 個月屆滿前或在處長可能同意延長的期間內，有以下情況，否則僱員無權獲得遣散費——（由 1984 年第 19 號第 3 條修訂）

- (a) 遣散費經議定並已付給；

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- 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)



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- (b) 僱員已以書面向僱主發出申索遣散費的通知；或
- (c) 有關僱員獲得遣散費的權利或遣散費款額問題，已成為一項申索之標的，而該項申索已——
- (i) 按照《小額薪酬索償仲裁處條例》(第 453 章)第 4 部提交小額薪酬索償仲裁處案務主任；或
- (ii) 按照《勞資審裁處條例》(第 25 章)第 4 部提交勞資審裁處司法常務主任。(由 1994 年第 61 號第 50 條修訂)
- (編輯修訂——2013 年第 1 號編輯修訂紀錄)
- [比照 1965 c. 62 s. 21 U.K.]

**31O. 遣散費的支付**

- (1) 凡僱員根據本部有權獲得遣散費，其僱主須於接獲按照第 31N(b) 條所發通知後兩個月內，付給僱員遣散費，除非僱主或僱員在上述期限屆滿前，已將遣散費作為申索標的，而該項申索已——(由 2000 年第 32 號第 48 條修訂)
- (a) 按照《小額薪酬索償仲裁處條例》(第 453 章)第 4 部提交小額薪酬索償仲裁處案務主任；或
- (b) 按照《勞資審裁處條例》(第 25 章)第 4 部提交勞資審裁處司法常務主任。(由 1994 年第 61 號第 51 條修訂)
- (1A) (由 2010 年第 9 號第 3 條廢除)
- (2) 遣散費須以法定貨幣付給，但在僱員同意下，亦可按以下方式付給——

- (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)

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- (a) 用支票、匯票或郵政匯票付給；
- (b) 存入該僱員名下的銀行戶口，而該銀行是《銀行業條例》(第 155 章)第 2 條所指的銀行；或 (由 1995 年第 49 號第 53 條修訂)
- (c) 付給該僱員妥為指定的代理人。
- (3) (a) 任何僱主如無合理辯解而不遵從第 (1) 款的規定，即屬犯罪，一經定罪，可處第 5 級罰款。(由 2010 年第 9 號第 3 條修訂)
- (b) 任何僱主如無合理辯解而不遵從第 (2) 款的規定，即屬犯罪，一經定罪，可處第 3 級罰款。(由 1995 年第 103 號第 8 條代替)
- (編輯修訂——2013 年第 1 號編輯修訂紀錄)

**31P. 遣散費詳情說明書**

- (1) 僱主付給遣散費時，須給予僱員一份書面陳述，述明遣散費的款額如何計算；但如遣散費是依據小額薪酬索償仲裁處或勞資審裁處所作決定而付給的，該項決定並指明須付的遣散費款額，則不在此限。(由 1994 年第 61 號第 52 條修訂)
- (2) (a) 任何僱主如無合理辯解而不遵從第 (1) 款的規定，即屬犯罪，一經定罪，可處第 3 級罰款。
- (b) 任何僱主如在根據第 (1) 款給予的書面陳述內，列入任何明知在要項上屬虛假的資料，或罔顧後果地列入任何在要項上屬虛假的資料，即屬犯罪，一經定

- (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.

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罪，可處第 5 級罰款。（由 1995 年第 103 號第 9 條代替）

- (3) 在不損害就第 (2)(a) 款所訂罪行而進行的任何法律程序的情況下，如僱主不遵從第 (1) 款的規定，僱員可給予僱主書面通知，要求僱主在該通知指明的期間內（由給予通知之日起計不少於一個星期），遵從第 (1) 款的規定給予他書面陳述。
- (4) 僱主如無合理辯解而不遵從根據第 (3) 款發出的通知，即屬犯罪，可處罰款如下——
- (a) 如屬首次定罪，可處第 3 級罰款；或
- (b) 如屬第二次或其後再次定罪，可處第 5 級罰款。（由 1988 年第 24 號第 2 條修訂；由 1995 年第 103 號第 9 條修訂）

[比照 1965 c. 62 s. 18 U.K.]

- (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.]

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**31Q. 推定**

就本部而言，僱員如遭僱主解僱，除非相反證明成立，否則須推定該僱員是因裁員而遭解僱。

*[ 比照 1965 c. 62 s. 9(2) U.K.]*

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**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.]*

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**第 VB 部****長期服務金**

(第 VB 部由 1985 年第 76 號第 8 條增補。格式變更——2017 年第 3 號編輯修訂紀錄)

**31R. 僱員領取長期服務金權利的一般條文**

- (1) 凡根據連續性合約受僱的僱員——
- (a) 在有關日期，其服務年數不少於 5 年——(由 1997 年第 74 號第 10 條修訂)
- (i) 遭解僱而其僱主無須因解僱他而付給遣散費；或
- (ii) 在符合第 (3) 至 (5) 款的規定下，是在第 10(aa) 條所指明的情況下終止其合約；或 (由 1993 年第 61 號第 5 條修訂)
- (b) 終止合約，以及他在有關日期已不少於 65 歲，並已根據該合約受僱不少於 5 年者，(由 1995 年第 65 號第 2 條修訂)

則除本部及第 VC 部另有規定外，僱主須付給該僱員長期服務金，款額按照第 31V(1) 條計算。(由 1991 年第 105 號第 2 條修訂)

- (2) (由 1997 年第 74 號第 10 條廢除)
- (3) 如僱員已在第 10(aa) 條所指明的情況下，在被證明為永久不適宜擔任某種工作後終止其合約，僱主可要求該僱員接受身體檢查，以就該僱員是否永久不適宜擔任該種工作而獲得另一意見，該項檢查的費用須由僱主負擔。(由 2006 年第 16 號第 6 條代替)
- (3A) 第 (3) 款所提述的身體檢查須由僱主指名的註冊醫生或註冊中醫進行，不論為第 10(aa)(ii) 條的施行就僱員而簽

**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

- 發的證明書是由註冊醫生或是由註冊中醫簽發的。(由 2006 年第 16 號第 6 條增補)
- (4) 僱主須遵從以下規定，否則喪失根據第 (3) 款作出選擇的權利——
- (a) 僱主安排在收取根據第 10(aa) 條所發出的證明書的副本後不超過 14 天，進行身體檢查；及
- (b) 僱主在該次身體檢查的進行不少於 48 小時前，以書面通知僱員有關該次身體檢查預約的詳情。(由 1993 年第 61 號第 5 條增補)
- (5) 第 (3) 款所提述的僱員，如無合理辯解而拒絕接受身體檢查，即喪失根據本部領取長期服務金的權利。(由 1993 年第 61 號第 5 條增補)
- (6) 凡僱主根據第 (3) 款所獲得的另一意見，與根據第 10(aa) 條所發出的證明書有相反結論，僱主須向處長呈交該證明書及另一意見，而處長在諮詢其認為所需的醫學專家之後，須決定該僱員是否有權根據本部獲得長期服務金。(由 1993 年第 61 號第 5 條增補)
- (由 1988 年第 52 號第 6 條代替。由 1990 年第 41 號第 11 條修訂)

- 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. 僱員的死亡**

- (1) 凡僱員死亡，在其死亡時根據連續性合約受僱服務年數，在其死亡當日不少於 5 年，則除本部及第 VC 部另有規定外，僱主須將按照第 31V(1) 條計算的長期服務金付給——（由 1991 年第 105 號第 3 條修訂；由 1997 年第 74 號第 11 條修訂）
  - (a) 僱員的配偶（如僱員遺下配偶）；或
  - (b) 僱員的後嗣（如僱員無遺下配偶但遺下後嗣）；或
  - (c) 僱員的父母（如僱員並無遺下配偶或後嗣）；或
  - (d) 僱員的遺產代理人（如僱員並無遺下配偶、後嗣或父母）。
- (1A) （由 1997 年第 74 號第 11 條廢除）
- (2) 第 (1) 款 (a)、(b)、(c) 或 (d) 段所指的人，須遵從以下規定，否則無權領取長期服務金——
  - (a) 該人以處長根據第 49 條指明的格式，在僱員死亡後翌日起計 30 天內，或在處長准予延長的期間內，向有關僱主送達申請書；及
  - (b) 有證明申請人與已故僱員的關係（即第 (1) 款 (a)、(b)、(c) 或 (d) 段所述的關係）的書面證據作為佐證。
- (3) 即使延期申請是在僱員死亡後 30 天期滿後才提出，處長仍可延長根據第 (2) 款送達申請書的期限。
- (4) 凡第 (1) 款 (a) 或 (b) 段所指的人為未成年人，則第 (2) 款的申請須由其監護人提出。
- (5) 凡有人根據本條有權領取長期服務金，其僱主須在以下時限付給該人其有權領取的長期服務金——
  - (a) 如有權領取長期服務金的人是僱員的配偶，不得遲於收到申請書後 7 天；或
  - (b) 如有權領取長期服務金的人不是僱員的配偶，則不得早於該期間屆滿後的翌日（以下本段內稱為**該日**）

**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

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付給 ( 該期間在該個別情況下是指根據第 (2)(a) 款可送達申請書的期間 )，但亦不得遲於該日後 7 天。

- (6) 凡僱主無合理辯解而不在第 (5) 款所規定的最後付款日或之前支付長期服務金，即屬犯罪，一經定罪，可處第 5 級罰款。 ( 由 1995 年第 103 號第 10 條修訂 )
- (7) 凡有 2 人或以上有權根據本條領取長期服務金，則該筆長期服務金須平均分配予該等人士。
- (8) 僱主須在僱員死亡時，不論其死因，按照本部付給長期服務金，而長期服務金是僱主除根據《僱員補償條例》( 第 282 章 ) 付給的補償外另須付給的款項。

( 由 1988 年第 52 號第 6 條增補 )

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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*)



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第 57 章第 VB 部  
第 31RB 條Part VB  
Section 31RB5B-10  
Cap. 57**31RB. 對家庭傭工的適用範圍**

本部 (第 31Z 條除外) 適用於受僱為家庭傭工, 在私人住戶工作或其受僱的工作是與私人住戶有關的僱員, 猶如該住戶是一種業務, 而維持住戶即僱主經營該業務一樣。

(由 1988 年第 52 號第 6 條增補)

**31S. 因解僱而領取長期服務金權利的一般免除**

- (1) 凡僱主因僱員的行為, 按照第 9 條有權不給予通知或代通知金而終止其僱傭合約, 則該僱員無權因遭解僱而領取長期服務金。(由 2000 年第 51 號第 5 條修訂)
- (2) 凡僱員在僱主按照第 6 條給予該僱員終止其僱傭合約的通知後在該通知的期限屆滿前離職, 則除非——
  - (a) 該僱員的離職是經僱主事先同意的; 或
  - (b) 該僱員在離職前已按照第 7 條付給僱主一筆代通知金,

否則該僱員無權因遭解僱而領取長期服務金。(由 1997 年第 75 號第 3 條代替)

- (3) 除第 (6) 款另有規定外, 根據合約受僱一段固定時期的僱員如根據第 31T(1)(b) 條被視為遭僱主解僱, 而僱主在有關日期前的 7 天開始之時或之前, 已向該僱員要約續訂其僱傭合約, 或要約以新合約再次聘用該僱員, 而——
  - (a) 該續訂或新訂合約 (視屬何情況而定) 的條文, 不論是關於該僱員將會受僱的身分及受僱地點, 以及其他僱傭條款及條件, 均與在緊接該僱員遭解僱前的有效合約的相應條文無異; 及
  - (b) 續約或再次聘用將會於有關日期或有關日期前生效, 則該僱員如不合理地拒絕該項要約, 該僱員即無權領取長期服務金。(由 1997 年第 75 號第 3 條增補)

**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—

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第 31S 條Part VB  
Section 31S5B-12  
Cap. 57

- (4) 除第 (6) 款另有規定外，根據合約受僱一段固定時期的僱員如根據第 31T(1)(b) 條被視為遭僱主解僱，而僱主在有關日期前的 7 天開始之時或之前，已以書面向僱員要約續訂其僱傭合約，或以新合約再次聘用該僱員，而按照要約所指明詳情，續訂或新訂合約（視屬何情況而定）的條文，不論是關於該僱員將會受僱的身分及受僱地點，以及其他僱傭條款及條件，與在緊接該僱員遭解僱前的有效合約的相應條文完全不同或有部分不同，但——
- (a) 該項要約對該僱員而言構成適合僱傭的要約；
- (b) 該項要約對該僱員而言構成並不遜於較前的僱傭要約；及
- (c) 續約或再次聘用將會於有關日期或有關日期前生效，則該僱員如不合理地拒絕該項要約，該僱員即無權領取長期服務金。（由 1997 年第 75 號第 3 條增補）
- (5) 凡有關日期適逢休息日或假日，則第 (3)(b) 及 (4)(c) 款內所提述的有關日期，須解釋為該休息日或假日的翌日。（由 1997 年第 75 號第 3 條增補）
- (6) 在不影響第 31R(1)(a)(ii) 及 (b) 及 (2)(b) 條的適用下，凡根據合約受僱一段固定時期的僱員在該固定時期的合約屆滿當日或該日之前，拒絕第 (3) 或 (4) 款所述的任何種類的要約，則——
- (a) 該僱員有權根據第 31R(1)(a)(ii) 或 (2)(b) 條（視乎何者適用而定）終止該合約，而就本部的適用而言，該合約屆滿須視為該僱員根據第 31R(1)(a)(ii) 或 (2)(b) 條終止該合約；或
- (b) 該僱員有權根據第 31R(1)(b) 條終止該合約，而就本部的適用而言，該合約屆滿須視為該僱員根據第 31R(1)(b) 條終止該合約。（由 1997 年第 75 號第 3 條增補）

- (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*)

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第 57 章第 VB 部  
第 31T 條Part VB  
Section 31T5B-14  
Cap. 57**31T. 遭僱主解僱的情況**

- (1) 就本部而言，及除本部另有規定外，僱員只有在以下情況才可視為遭僱主解僱——
  - (a) 不論是否有給予通知或代通知金，僱主並非按照第 9 條終止該僱員的僱傭合約；
  - (b) 如僱員根據合約受僱一段固定時期，而在該時期屆滿後未有以同一合約續約；或
  - (c) 僱員在因僱主的行為而有權按照第 10 條不給予通知或代通知金而終止合約的情況下，給予或不給予通知或代通知金而終止合約。（由 1992 年第 62 號第 9 條代替）
- (2) 就本部而言，僱員在以下情況不得視為遭僱主解僱——

- (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

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第 31U 條

- (a) 僱員的僱傭合約已予續訂，或已以新僱傭合約獲同一僱主再次聘用；及
- (b) 續約或再次聘用是在緊接前一合約所訂的僱傭終結時生效。
- (3) 為使第 (2) 款適用於在休息日或假日終結僱傭的合約，如續約或再次聘用是在休息日或假日翌日生效或該翌日之前生效，則續約或再次聘用須視為是在緊接前一合約所訂的僱傭終結時生效。

**31U. 各類屬例外的僱員**

第 31R 及 31RA 條不適用於以下的人 —— (由 1988 年第 52 號第 7 條修訂)

- (a) 任何僱員，而該僱員的僱主是其丈夫或妻子；
- (b) 任何外發工；
- (c) 任何受僱於香港政府以外其他政府，且是該政府所屬國家的國民或公民的人；或
- (d) 在不損害 (a) 段的規定下，任何受僱為家庭傭工，在私人住戶工作或其受僱的工作是與私人住戶有關的人，而僱主是其父母、祖父母、繼父母、子女、孫兒、孫女、繼子女、兄弟姊妹、或同父異母的兄弟姊妹或同母異父的兄弟姊妹。

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- 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,

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第 57 章第 VB 部  
第 31V 條Part VB  
Section 31V5B-18  
Cap. 57**31V. 長期服務金的款額**

(1) 除本部另有規定外，根據第 31R(1) 或 31RA(1) 條付給的長期服務金款額，須按以下方法計算——（由 1991 年第 105 號第 4 條修訂）

- (a) 如屬按月計薪的僱員，則根據連續性合約為僱主工作每滿一年（不足一年者按比例計算），可獲其最後一個月全月工資的三分之二，或 \$22,500 的三分之二，兩者以較小款額為準；及
- (b) 如屬其他情況的僱員，則根據連續性合約為該僱主工作每滿一年（不足一年者按比例計算），可獲從其最後工作的 30 個正常工作日中由僱員選任何 18 天為依據的 18 天工資，或 \$22,500 的三分之二，兩者以較小款額為準，（由 1995 年第 264 號法律公告修訂）

惟如有關日期在附表 7 表 A 第 1 欄所指明的期間內，則長期服務金最高限額在任何情況下不得超過該表內與該期間相對列於第 2 欄內的款額。（由 1990 年第 41 號第 12 條代替。由 1995 年第 5 號第 7 條修訂）

(1AA) 儘管有第 (1) 款的規定，如——

- (a) 有關日期在附表 7 表 B 第 1 欄指明的期間內；及
- (b) 該僱員在緊接有關日期前，已根據連續性合約由其僱主僱用一段期間（**僱傭期**），而該段僱傭期較該表內與有關日期所在的期間相對列於第 2 欄內的期間為長，

則在計算該僱員根據第 (1) 款有權獲得的長期服務金時，該段僱傭期超過該表第 2 欄所指明期間的部分，須縮減一半。（由 1995 年第 5 號第 7 條增補）

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,

- (1A) 儘管有第 (1) 款的規定，僱員亦可選擇按緊接有關日期前 12 個月期間的工資平均數計算，但如作此選擇，則——
- (a) 如屬按月計薪的僱員，每月平均款額不得超過 \$22,500；及
- (b) 如屬其他情況的僱員，就計算每日平均款額而言，該 12 個月期間的工資總額不得超過 \$22,500 的 12 倍。  
(由 1990 年第 41 號第 12 條增補。由 1995 年第 264 號法律公告修訂)
- (2) 除本部另有規定外，根據第 31R(2) 或 31RA(1A) 條須付給的長期服務金款額如下——
- (a)-(c) (由 1997 年第 74 號第 12 條廢除)
- (d)-(e) (由 1997 年第 74 號第 13 條廢除)
- (3) (由 1990 年第 41 號第 12 條廢除)

### 31W. 僱傭期的計算法

- (1) 就本部而言，在提述根據連續性合約的僱傭期時，不包括提述任何以下的僱傭——(由 1990 年第 41 號第 13 條修訂)
- (a) 凡有關日期在 1986 年內的，指 1986 年 1 月 1 日以前超過 6 年的僱傭；
- (b) 凡有關日期在 1987 年內的，指 1986 年 1 月 1 日以前超過 7 年的僱傭；
- (c) 凡有關日期在 1988 年內的，指 1986 年 1 月 1 日以前超過 8 年的僱傭；及

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

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- (d) 凡有關日期在 1989 年或其後任何一年內的，指 1986 年 1 月 1 日以前超過 9 年的僱傭。
- (1A) 第 (1) 款於《1995 年僱傭 (修訂) 條例》\*(1995 年第 5 號) 的生效日期停止生效。(由 1995 年第 5 號第 8 條增補)
- (2) 儘管有第 (1) 款的規定，就本部而言，如僱員是根據連續性合約受僱於非體力勞動工作的，且在緊接《1990 年僱傭 (修訂) 條例》\*(1990 年第 41 號) 生效日期前 12 個月期間內每月平均工資超過 \$15,000，則在提述根據連續性合約的僱傭期時，不包括提述任何以下的僱傭——
- (a) 凡有關日期在 1990 年內的，指 1990 年 1 月 1 日以前超過 3 年的僱傭；
- (b) 凡有關日期在 1991 年內的，指 1990 年 1 月 1 日以前超過 4 年的僱傭；
- (c) 凡有關日期在 1992 年內的，指 1990 年 1 月 1 日以前超過 5 年的僱傭；
- (d) 凡有關日期在 1993 年內的，指 1990 年 1 月 1 日以前超過 6 年的僱傭；
- (e) 凡有關日期在 1994 年內的，指 1990 年 1 月 1 日以前超過 7 年的僱傭；
- (f) 凡有關日期在 1995 年內的，指 1990 年 1 月 1 日以前超過 8 年的僱傭；
- (g) 凡有關日期在 1996 年內的，指 1990 年 1 月 1 日以前超過 9 年的僱傭；
- (h) 凡有關日期在 1997 年或其後任何一年內的，指 1990 年 1 月 1 日以前超過 10 年的僱傭。(由 1990 年第 41 號第 13 條增補)

編輯附註：

\* “《1995 年僱傭 (修訂) 條例》” 乃 “Employment (Amendment) Ordinance 1995” 之譯名。

- (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*)

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# “《1990 年僱傭 (修訂) 條例》” 乃 “Employment (Amendment) Ordinance 1990” 之譯名。

**31X.** (由 2000 年第 51 號第 4 條廢除)

**\*31Y. 在某些情況下須從長期服務金中扣除酬金及利益或權益的款額**

如任何僱員根據本部有權就其服務年數獲付一筆長期服務金，而——

- (a) 因為該僱員的僱傭合約的施行，一筆或多於一筆按服務年資支付的酬金或一筆或多於一筆有關職業退休計劃利益已支付予該僱員；或
- (b) 在某強制性公積金計劃中有有關強制性公積金計劃權益就該僱員而被持有，或有關強制性公積金計劃權益已支付予該僱員或就該僱員而支付，

則須從該筆長期服務金中扣除就該僱員而被持有、已向該僱員支付或就該僱員而支付的所有該等酬金及利益或權益的總款額，但以該等酬金及利益或權益是與上述服務年數有關的款額為限。

(由 1998 年第 4 號第 5 條代替。由 2001 年第 18 號第 3 條修訂)

編輯附註：

\* 與《2001 年僱傭 (修訂) (第 2 號) 條例》(2001 年第 18 號) 對本條作出的修訂相關的過渡性及保留條文，見載於該條例第 5 條。

**31YAA. 在某些情況下須從酬金或利益或權益中扣除長期服務金的款額**

- (1) 如——
  - (a) 因為某僱員的僱傭合約的施行，該僱員有權獲付按服務年資支付並且可歸因於其服務年數的酬金或獲

**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



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付可歸因於其服務年數的有關職業退休計劃利益；  
或

- (b) 在某強制性公積金計劃中有可歸因於某服務年數的有關強制性公積金計劃權益就該僱員而被持有，

而該僱員已根據本部獲付一筆長期服務金，則須從該等酬金或利益或權益中扣除該筆長期服務金的總款額，但以上述服務年數是與支付該筆長期服務金所基於的服務年數是相同的部分的款額為限。

- (2) 即使有關酬金或利益或權益可歸因於某服務年數，而所支付的長期服務金所基於的服務年數超逾該服務年數，第 (1) 款仍然有效。
- (3) 《職業退休計劃條例》(第 426 章) 第 70A 條及《強制性公積金計劃條例》(第 485 章) 第 12A 條就本條而具有效力。

(由 1998 年第 4 號第 5 條代替)

### 31YA. 於僱員死亡時從長期服務金及其他款額中作出扣除

- (1) 如 ——
- (a) 某一僱員已死亡；及
- (b) 由於該僱員的死亡，某人有關該僱員的服務年數獲付一筆長期服務金，而 ——
- (i) 因為該僱員的僱傭合約的施行，一筆或多於一筆按服務年資支付的酬金或一筆或多於一筆有關職業退休計劃利益已就該僱員而支付予該人；或
- (ii) 在某強制性公積金計劃中有有關強制性公積金計劃權益就該僱員而被持有，或有關強制性公

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

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積金計劃權益已支付予該僱員或就該僱員而支付，

則須從該筆長期服務金中扣除就該僱員而被持有、已向該僱員支付或就該僱員而支付的所有該等酬金及利益或權益的總款額，但以該等酬金及利益或權益是與上述服務年數有關的款額為限。(由 2001 年第 18 號第 4 條修訂)

- (2) 如 ——
- (a) 某一僱員已死亡；及
- (b) 由於該僱員的死亡，某人 ——
- (i) 因為該僱員的僱傭合約的施行而有權獲付一筆按服務年資支付並且可歸因於該僱員服務年數的酬金，或獲付可歸因於該僱員服務年數的有關職業退休計劃利益；或
- (ii) 有權獲付可歸因於該僱員服務年數的有關強制性公積金計劃權益；及
- (c) 一筆本部所指的長期服務金已就該僱員而支付予該人，
- 則須從該等酬金或利益或權益中扣除該筆長期服務金的總款額，但以上述服務年數是與支付該筆長期服務金所基於的服務年數是相同的部分的款額為限。
- (3) 即使有關酬金或利益或權益可歸因於某服務年數而所支付的長期服務金所基於的服務年數超逾該服務年數，第 (2) 款仍然有效。
- (4) 如 ——
- (a) 任何已死亡僱員的僱主，由於該僱員的死亡而須根據第 31RA 條向某人支付一筆長期服務金；及
- (b) 由於該僱員的死亡，另一人有權領取一筆或多於一筆的酬金、有關職業退休計劃利益或有關強制性公積金計劃權益，

- (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

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第 31Z 條Part VB  
Section 31Z5B-30  
Cap. 57

則該另一人有權獲付該等與該僱員的服務年數有關的酬金、有關職業退休計劃利益及有關強制性公積金計劃權益，但只以該等酬金及利益或權益的總款額超逾該筆長期服務金款額的部分為限。

- (5) 如 ——
- (a) 任何已死亡僱員的僱主，由於該僱員的死亡而已根據第 31RA 條向某人支付一筆長期服務金；及
- (b) 由於該僱員的死亡，某職業退休計劃的管理人已向另一人支付有關職業退休計劃利益，或某強制性公積金計劃的核准受託人已向另一人支付有關強制性公積金計劃權益，

則該另一人必須將該等利益或權益付還該管理人或受託人，但第 (4) 款所提述的超逾之數除外。

- (6) 該等利益或權益一經付還，該管理人或受託人必須將該等利益或權益支付予有關僱主。
- (7) 《職業退休計劃條例》(第 426 章) 第 70A 條及《強制性公積金計劃條例》(第 485 章) 第 12A 條就本條而具有效力。

(由 1998 年第 4 號第 5 條代替)

### 31Z. 業務擁有權的變更

- (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

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- (1) 本條對以下情況具有效力——
- (a) 任何人所僱從事的全部或部分業務的擁有權有所變更(不論是憑藉出售、其他形式的產權處置或法律的實施所致);及
  - (b) 由於該項變更,在緊接該項變更前僱用該僱員的人(本條內稱為**前擁有人**)按照第 6 或 7 條終止該僱員的合約。
- (2) 在緊接該項變更後成為該有關業務或部分業務(視屬何情況而定)擁有人的人(本條內稱為**新擁有人**),如與僱員達成協議,(以新擁有人代替前擁有人)續訂該僱員的僱傭合約,或以新僱傭合約再次聘用,則第 31T(2) 條對此具有效力,猶如該項續約或再次聘用是由前擁有人(並非以新擁有人代替前擁有人)作出的一樣。
- (3) 本條在作出必要的變通後對與以下情況有關的事宜具有效力——
- (a) 緊接業務擁有權變更前擁有該業務或部分業務的人,是緊接該項變更後擁有該業務或該部分業務的其中一人(不論是以合夥人、受託人或其他身分擁有);或
  - (b) 緊接業務擁有權變更前擁有該業務或部分業務的各人(不論是以合夥人、受託人或其他身分擁有),包括緊接該項變更後擁有該業務或該部分業務的人,或其中一人或多人,
- 一如對前擁有人與新擁有人是兩個完全不同的人的情況具有效力一樣。
- (4) 本條不得解釋為規定將在雙方協議下對僱傭合約的任何更改視為構成合約的終止。

- (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,

**31ZA. 相聯公司**

- (1) 如僱主是一間公司，凡本部提述由僱主再次聘用僱員，須解釋為提述該公司或其任何相聯公司再次聘用該僱員。
- (2) 凡由第 31Z 條所界定的前擁有人及新擁有人俱是相聯公司，則第 (1) 款不影響第 31Z 條的實施；凡屬第 31Z 條適用之處，第 (1) 款則不適用。
- (3) 凡一間公司的僱員由另一間公司僱用，而後述公司僱用該僱員時是前述公司的相聯公司，則該僱員當時的僱傭期須算作在該相聯公司的僱傭期，而僱傭期的連續性，不得因僱主的變更而告中斷。
- (4) 就本條而言，如兩間公司的其中一間是另一間的附屬公司，或該兩間公司俱是第三間公司的附屬公司，則該兩間公司須視為相聯公司，而**相聯公司** (associated company) 一詞亦須據此解釋。

(5) 在本條中——

**公司** (company) 具有《公司條例》(第 622 章) 第 2(1) 條給予該詞的涵義；

**附屬公司** (subsidiary) 具有《公司條例》(第 622 章) 第 15 條為施行該條例而給予該詞的涵義。(由 2012 年第 28 號第 912 及 920 條代替)

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);

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第 57 章第 VB 部  
第 31ZB 條Part VB  
Section 31ZB5B-36  
Cap. 57**31ZB. 合約的隱含終止或法律構成終止**

凡按照任何成文法則或法律規則——

- (a) 僱主方面的任何作為；或
- (b) 影響僱主的任何事情（如僱主是個人，則包括他的死亡），

導致所僱用僱員的合約終止，而上述作為或事情，假若無本條的規定便不構成由僱主終止合約，則就本部而言須視為由僱主終止合約。

**31ZC. 僱主的死亡**

附表 6 對與僱主死亡有關的情況具有效力。

*(由 1988 年第 52 號第 11 條代替)*

**31ZD. 長期服務金的支付**

- (1) 長期服務金須以法定貨幣付給，但在有權領取長期服務金的人同意下，亦可按以下方式付給——*(由 1988 年第 52 號第 12 條修訂)*
  - (a) 用支票、匯票或郵政匯票付給；
  - (b) 存入該人名下的銀行戶口，而該銀行是《銀行業條例》(第 155 章) 第 2 條所指的銀行；或*(由 1995 年第 49 號第 53 條修訂)*
  - (c) 付給該人妥為指定的代理人。

*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.

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- (2) 僱主如無合理辯解而不遵從第 (1) 款的規定，即屬犯罪，可處第 3 級罰款。(由 1988 年第 24 號第 2 條修訂；由 1995 年第 103 號第 11 條修訂)

**31ZE. 長期服務金詳情說明書**

- (1) 僱主付給長期服務金時，須給予有權領取該服務金的人一份書面陳述，述明長期服務金的款額如何計算。(由 1988 年第 52 號第 13 條修訂)
- (2) (a) 任何僱主如無合理辯解而不遵從第 (1) 款的規定，即屬犯罪，可處第 3 級罰款。
- (b) 任何僱主如在根據第 (1) 款給予的書面陳述內，列入任何明知在要項上屬虛假的資料，或罔顧後果地列入任何在要項上屬虛假的資料，即屬犯罪，可處第 5 級罰款。(由 1995 年第 103 號第 12 條代替)
- (3) 在不損害就第 (2)(a) 款所訂罪行而進行的任何法律程序的情況下，如僱主不遵從第 (1) 款的規定，有權領取該服務金的人可給予僱主書面通知，要求僱主在該通知指明的期間內(由給予通知當日起計不少於一個星期)，遵從第 (1) 款的規定給予他書面陳述。(由 1988 年第 52 號第 13 條修訂)

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- (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) 僱主如無合理辯解而不遵從根據第 (3) 款發出的通知，即屬犯罪，可處罰款如下——
- (a) 如屬首次定罪，可處第 3 級罰款；或
  - (b) 如屬第二次或其後再次定罪，可處第 5 級罰款。(由 1988 年第 24 號第 2 條修訂；由 1995 年第 103 號第 12 條修訂)
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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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**第 VC 部****Part VC****第 VA 及 VB 部的補充條文****Supplementary Provisions to Parts VA and VB**

(第 VC 部由 1988 年第 52 號第 14 條增補。格式變更——2017 年第 3 號編輯修訂紀錄)

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

**\* 31ZF. 在指明年齡退休後重新僱用的規定****\*31ZF. Re-employment after retirement at a specified age**

- (1) 在符合第 (2) 款的規定下，凡連續性合約有指明退休年齡，而——
  - (a) 僱員在該年齡退休；及
  - (b) 僱員如根據該合約受僱，所服務年數在有關日期終止時不少於 5 年；及 (由 1997 年第 74 號第 14 條修訂)
  - (c) 假若僱員在有關日期遭解僱可按服務年數領取長期服務金，且他——
    - (i) 憑藉其僱傭合約條款，已按服務年資收取酬金；或
    - (ii) 憑藉一項退休計劃，已收取該計劃的款項；及
  - (d) 僱員根據 (c) 段所收取的總款額，不少於假若他在有關日期遭解僱本會有權領取的長期服務金；及
  - (e) 僱員在緊接其退休後即再受僱於緊接其退休前僱用他的人，

則就本條例第 VA 及 VB 部而言，退休後的僱傭須視為新的僱傭。
- (2) 就第 (1) 款而言，凡其內提述退休計劃款項之處，不包括歸還僱員本身供款的部分 (如有供款)，及該供款所應得的利息。

- (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,

(由 1990 年第 41 號第 16 條修訂)

編輯附註：

\* 本條的實施受載於第 31ZG 條的過渡性條文影響。

### 31ZG. 過渡性條文

《1997 年僱傭(修訂)(第 2 號)條例》(1997 年第 74 號)第 14 條對《僱傭條例》(第 57 章)第 31ZF 條作出的修訂不影響在該項修訂的生效日期\*前退休的僱員；而第 31ZF 條的條文須按其在緊接該項修訂的生效日期前的狀況繼續適用於該等僱員，猶如該條從未經過如此修訂一樣。

(由 1997 年第 74 號第 15 條增補)

編輯附註：

\* 生效日期：1998 年 6 月 27 日。

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.

**第 VIA 部****僱傭保障**

(第 VIA 部由 1997 年第 75 號第 4 條增補。格式變更——2017 年第 3 號編輯修訂紀錄)

**32A. 僱員享有僱傭保障的權利**

- (1) 僱員在以下情況下可根據本部獲針對其僱主而授予補救——
  - (a) 僱員在有關日期終結時根據連續性合約受僱一段不少於 24 個月的期間，而該僱員是因為僱主擬使由本條例賦予該僱員或將由本條例賦予該僱員的任何權利、利益或保障終絕或減少而遭僱主解僱的；
  - (b) 僱員根據連續性合約受僱，而僱主是因為他擬使由本條例賦予該僱員或將由本條例賦予該僱員的任何權利、利益或保障終絕或減少而在未經該僱員同意下並在該僱員的僱傭合約中沒有准許更改僱傭合約條款的明訂條款的情況下，更改其僱傭合約的條款的；或
  - (c) 僱員是在並非基於第 32K 條所指的正当理由的情況下遭僱主在違反以下條文的情況下解僱的——
    - (i) 第 15(1)、21B(2)(b)、33(4B) 或 72B(1) 條；
    - (ii) 《工廠及工業經營條例》(第 59 章) 第 6 條；或
    - (iii) 《僱員補償條例》(第 282 章) 第 48 條，  
不論該僱主是否已就該項解僱而被定罪。
- (2) 就第 (1)(a) 款而言，如僱員已遭其僱主解僱，則除非該項解僱獲證明是基於第 32K 條所指的正当理由，否則該僱員須視為是因該僱主擬使由本條例賦予該僱員或將由本條例賦予該僱員的任何權利、利益或保障終絕或減少而如此遭解僱。

**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),

- (3) 就第 (1)(b) 款而言，除非在該款中所提述的由僱主更改僱傭合約的條款獲證明是基於第 32K 條所指的正当理由，否則該項更改須視為是因該僱主擬使由本條例賦予該僱員或將由本條例賦予該僱員的任何權利、利益或保障終絕或減少而由該僱主更改僱傭合約條款。
- (4) 就第 (1)(c) 款而言——
- (a) 僱員——
- (i) 不需要就第 (1)(c)(i) 款證明其僱傭合約是因他行使任何由第 21B(1) 條或憑藉第 21B(1) 條歸屬任何僱員的權利而遭終止的，或因他作出第 72B(1) 條所述任何事情此一事實而遭終止的；
- (ii) 不需要就第 (1)(c)(ii) 款證明其僱傭合約是因他作出《工廠及工業經營條例》(第 59 章) 第 6 條所述任何事情此一事實而遭終止的；及
- (b) 如僱員已遭其僱主解僱，則除非該項解僱獲證明是基於第 32K 條所指的正当理由，否則該僱員須視為在沒有正当理由的情況下遭解僱。
- (5) 就第 (1)(c) 款而言，僱員在以下情況下有權根據本部得到補救，並只有在以下情況下才有權根據本部得到補救——
- (a) 就在違反第 21B(2)(b) 條的情況下作出的解僱而言，該僱員在緊接他遭僱主解僱前的 12 個月的期間內已行使第 21B(1) 條所述的任何權利；
- (b) 就在違反第 72B(1) 條的情況下作出的解僱而言，該僱員在緊接他遭僱主解僱前的 12 個月的期間內已作出該條所述任何事情；
- (c) 就在違反《工廠及工業經營條例》(第 59 章) 第 6 條的情況下作出的解僱而言，該僱員在緊接他遭僱主解僱前的 12 個月的期間內已作出該條所述任何事情。

- 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

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第 57 章第 VIA 部  
第 32B 條Part VIA  
Section 32B6A-6  
Cap. 57**32B. 遭僱主解僱**

- (1) 就第 32A(1)(a) 條而言，以及在符合本部規定下，如僱員是因其僱主擬使其獲得遣散費或領取長期服務金的權利終絕或減少而遭解僱的，則僱員在以下情況下可視為遭僱主解僱，並只有在以下情況下才可視為遭僱主解僱——
- 僱主並非按照第 9 條終止該僱員的僱傭合約，不論是否有給予通知或代通知金；
  - 如僱員根據該合約受僱一段固定時期，而該時期在屆滿後沒有以同一合約續期；或

- 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—
- 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;
  - 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;
  - 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—
- 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;

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第 32C 條

- (c) 僱員在因僱主的行為而有權按照第 10 條不給予通知或代通知金而終止合約的情況下，給予或不給予通知或代通知金而終止該合約。
- (2) 除第 (1) 款另有規定外，當僱員的僱主並非按照第 9 條終止該僱員的僱傭合約時（不論是否有給予通知或代通知金），該僱員就第 32A(1)(a) 及 (c) 條而言須視為遭該僱主解僱。
- (3) 僱員在以下情況下不得視為就第 32A(1)(a) 條而言屬遭其僱主解僱——
- (a) 僱員的僱傭合約已予續訂，或已以新僱傭合約獲同一僱主再次聘用；及
- (b) 續約或再次聘用是在緊接前一合約所訂的僱傭終結時生效。
- (4) 為使第 (3) 款適用於在休息日或假日終結僱傭的合約，如續約或再次聘用是在休息日或假日翌日生效或該翌日之前生效，則續約或再次聘用須視為是在緊接前一合約所訂的僱傭終結時生效。

**32C. 得到補救的權利的一般免除**

- (1) 如僱主在有關日期前的 7 天開始之時或之前，已向僱員要約續訂僱傭合約，或要約以新合約再次聘用該僱員，而——

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- (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

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Section 32C6A-10  
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- (a) 該經續訂或新訂合約（視屬何情況而定）的條文，將與在緊接該僱員遭解僱前的有效合約的相應條文無異；及
- (b) 續訂合約或再次聘用將會於有關日期或有關日期前生效，
- 則該僱員如不合理地拒絕該項要約，該僱員無權根據本部得到補救。
- (2) 如僱主在有關日期前的 7 天開始之時或之前，已以書面向僱員要約續訂僱傭合約，或要約以新合約再次聘用他，而按照要約所指明詳情，續訂的合約或新訂合約（視屬何情況而定）的條文，將會與在緊接該僱員遭解僱前的有效合約的相應條文完全不同或有部分不同，但——
- (a) 該項要約對該僱員而言構成適合僱傭的要約；
- (b) 該項要約對該僱員而言構成並不遜於較前的僱傭要約；及
- (c) 續約或再次聘用將會於有關日期或有關日期前生效，
- 則該僱員如不合理地拒絕該項要約，該僱員即無權根據本部得到補救。
- (3) 凡有關日期適逢休息日或假日，則在第 (1)(b) 及 (2)(c) 款內提述有關日期，須解釋為提述該休息日或假日的翌日。
- (4) 凡僱員在僱主按照第 6 條給予該僱員終止其僱傭合約的通知後在該通知的期限屆滿前離職，則除非——
- (a) 該僱員的離職是經僱主事先同意的；或
- (b) 該僱員在離職前已按照第 7 條付給僱主一筆代通知金，
- 否則該僱員無權因遭解僱而根據本部得到補救。
- (5) 凡僱員在第 32A(1)(c) 條所述的任何情況下遭解僱，則第 (1) 至 (3) 款均不適用。

- 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

6A-11  
第 57 章第 VIA 部  
第 32D 條Part VIA  
Section 32D6A-12  
Cap. 57**32D. 業務擁有權的變更**

- (1) 本條對以下情況具有效力——
- (a) 任何人所受僱從事的全部或部分業務的擁有權有所變更(不論是憑藉出售、其他形式的產權處置或法律的實施所致);及
  - (b) 由於該項變更,在緊接該項變更前僱用該僱員的人(本條內稱為**前擁有人**)按照第 6 或 7 條終止該僱員的合約。
- (2) 在緊接該項變更後成為該有關業務或部分業務(視屬何情況而定)擁有人的人(本條內稱為**新擁有人**),如與僱員達成協議,(以新擁有人代替前擁有人)續訂該僱員的僱傭合約,或以新僱傭合約再次聘用該僱員,則第 32B(3)條對此具有效力,猶如該項續約或再次聘用是由前擁有人(並非以新擁有人代替前擁有人)作出的一樣。
- (3) 如新擁有人(以新擁有人代替前擁有人)向僱員要約續訂該僱員的僱傭合約,或以新僱傭合約再次聘用該僱員,但該僱員拒絕該項要約,則除第(4)款另有規定外,第 32C(1)或(2)條(視屬何情況而定)就該項要約及拒絕而言具有效力,猶如就前擁有人作出相同的要約及該僱員拒絕該項要約而言具有效力一樣。

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).



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第 57 章第 VIA 部  
第 32D 條Part VIA  
Section 32D6A-14  
Cap. 57

- (4) 為按照第 (3) 款的規定，就新擁有人所作要約而實施第 32C(1) 或 (2) 條時 ——
- (a) 該項要約，不得僅因新擁有人取代前擁有人成為僱主，而將續訂的合約或新合約（視屬何情況而定）的條文，視為與緊接解僱前的有效合約的相應條文有所不同；及
- (b) 在決定拒絕該項要約是否不合理時，對上述取代不加考慮。
- (5) 本條在作出必要的變通後對以下情況具有效力 ——
- (a) 在緊接業務擁有權變更前擁有該業務或部分業務的人，是在緊接該項變更後擁有該業務或該部分業務的其中一人（不論是以合夥人、受託人或其他身分擁有）；或
- (b) 在緊接業務擁有權變更前擁有該業務或部分業務的各人（不論是以合夥人、受託人或其他身分擁有），包括在緊接該項變更後擁有該業務或該部分業務的人，或其中一人或多於一人，
- 一如對前擁有人與新擁有人是兩個完全不同的人的情況具有效力一樣。
- (6) 本條不得解釋為規定將在雙方協議下對僱傭合約的任何更改視為構成合約的終止。

- (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,

6A-15  
第 57 章第 VIA 部  
第 32E 條Part VIA  
Section 32E6A-16  
Cap. 57**32E. 相聯公司**

- (1) 如僱主是一間公司，則在第 32B、32C 或 32D 條中提述由僱主續訂合約或再次聘用，須解釋為提述由該公司或其任何相聯公司續訂合約或再次聘用；凡在第 32B、32C 或 32D 條中提述由僱主作出的要約，須解釋為包括提述由其相聯公司作出的要約。
- (2) 凡前擁有人及新擁有人是相聯公司，則第 (1) 款不影響第 32D 條的實施；凡第 32D 條適用，第 (1) 款不適用。
- (3) 就本條而言，如 2 間公司的其中一間是另一間的附屬公司，或該 2 間公司俱是第三間公司的附屬公司，則該兩間公司須視為相聯公司，而**相聯公司**一詞亦須據此解釋。
- (4) 在本條中——

**公司** (company) 具有《公司條例》(第 622 章) 第 2(1) 條給予該詞的涵義；

**附屬公司** (subsidiary) 具有《公司條例》(第 622 章) 第 15 條為施行該條例而給予該詞的涵義。(由 2012 年第 28 號第 912 及 920 條代替)

**32F. 有關日期**

就本部而言，以及除本部另有規定外，**有關日期** (relevant

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

6A-17  
第 57 章第 VIA 部  
第 32G 條Part VIA  
Section 32G6A-18  
Cap. 57

date) ——

- (a) 就終止僱用僱員而言，其涵義與第 2(1) 條中該詞的涵義相同；及
- (b) 就僱主更改僱員的僱傭合約條款而言，指該項更改生效的日期。

**32G. 僱主或僱員的死亡**

就本部而言，附表 8 第 I 部就僱主的死亡具有效力，而該附表的第 II 部則就僱員的死亡具有效力。

**32H.** (由 2000 年第 51 號第 4 條廢除)**32I. 為要求得到補救而提出的申索**

儘管有本部條文的規定，除非 ——

- (a) 在由有關日期開始的 3 個月的期間結束前或在處長所准許的不超逾 6 個月的延展期間內，僱員已藉向僱主發出的書面通知為要求得到補救而提出申索；或
- (b) 在由有關日期開始的 9 個月的期間結束前，關於該僱員得到補救的權利的問題已成為按照《勞資審裁處條例》(第 25 章) 第 4 部向勞資審裁處的司法常務主任提交的申索書的標的，

否則該僱員無權根據本部得到補救。

(編輯修訂 —— 2013 年第 1 號編輯修訂紀錄)

**32J. 勞資審裁處的司法管轄權**

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**

6A-19  
第 57 章第 VIA 部  
第 32K 條Part VIA  
Section 32K6A-20  
Cap. 57

- (1) 除本條另有規定外，根據《勞資審裁處條例》(第 25 章) 設立的勞資審裁處具有司法管轄權按照本部及該條例查訊、聆訊和裁定由僱員根據本部提出的申索。
- (2) 如有根據本部提出的申索，向勞資審裁處的司法常務主任提交，而該項申索的有關日期，是在提交該項申索的日期前的 9 個月之前，則除非該項申索的各方，已藉一份由他們簽署並向司法常務主任提交的備忘錄，同意審裁處具有司法管轄權，以查訊、聆訊或裁定該項申索，否則勞資審裁處並無該項司法管轄權。(由 2018 年第 21 號第 3 條代替)
- (3) 根據本部提出的、勞資審裁處對之具有司法管轄權的申索，可根據《勞資審裁處條例》(第 25 章) 第 10 條移交，但只可如此移交原訟法庭或區域法院。(由 2018 年第 21 號第 3 條代替)
- (4) 原訟法庭或區域法院可就如上述般移交予它的申索，作出第 32N、32O、32P、32PA 及 32PC 條規定的所有或任何命令及判給。(由 2018 年第 21 號第 3 條增補)
- (5) 除第 (3) 款所指的移交外，原訟法庭及區域法院對根據本部提出的申索，均無司法管轄權。(由 2018 年第 21 號第 3 條增補)

**32K. 解僱或更改僱傭合約條款的理由**

就本部而言，僱主如證明因以下理由而將僱員解僱或更改其僱傭合約條款，即屬具有正當理由——

- (a) 該僱員的行為；
- (b) 該僱員執行他受該僱主僱用從事的種類的工作的能力或資格；

- (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—

6A-21  
第 57 章第 VIA 部  
第 32L 條Part VIA  
Section 32L6A-22  
Cap. 57

- (c) 該僱員屬裁員對象或僱主其他真正的業務運作需要；
- (d) 如該僱員繼續受僱於該僱主，或在其僱傭合約條款沒有作出該項更改的情況下繼續如此受僱，則該僱員或僱主或他們兩人均會就有關僱傭違反法律的事實；或
- (e) 法院或勞資審裁處認為足以成為解僱該僱員或更改該僱傭合約條款的充分因由的任何其他實質理由。

- (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. 申索的裁定**

- (1) 在有人根據本部為要求得到補救而提出申索時，法院或勞資審裁處在裁定僱主就解僱僱員或更改該僱員的僱傭合約條款是否已證明他具有第 32K 條所指的正當理由時，須考慮有關申索的情況。
- (2) 在不影響第 (1) 款的一般性的原則下，申索的情況包括就對比由本條例賦予僱員或將由本條例賦予該僱員的權利、利益或保障所需的可享利益服務年資的長度而言，僱員根據該僱傭合約受僱於僱主的時間的長度，而該權利、利益或保障是能夠透過解僱或更改僱傭合約條款而被終絕或減少的。

**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

**32M. 僱傭保障的補救**

- (1) 在有人根據本部為要求得到補救而提出申索時，如法院或勞資審裁處裁斷僱主並未能證明有根據第 32K 條指明的正當理由，該僱主即當作擬使由本條例賦予僱員或將由本條例賦予該僱員的任何權利、利益或保障終絕或減少，有關的解僱或僱傭合約條款的更改則當作為不合理，而該法院或勞資審裁處則可根據第 32N 條作出命令或根據第 32O 條判給終止僱傭金。
- (2) 在有人根據本部為要求得到補救而提出申索時，就在第 32A(1)(c) 條所述的任何情況下解僱僱員而言，如法院或勞資審裁處裁斷僱主並未能證明該項解僱是出於第 32K 條所指的正當理由，而在作出該項裁斷後，該僱主在獲給予證明的機會後，拒絕或沒有證明該項解僱並不是違反以下條文的——
  - (a) 第 15(1)、21B(2)(b)、33(4B) 或 72B(1) 條；
  - (b) 《工廠及工業經營條例》(第 59 章) 第 6 條；或
  - (c) 《僱員補償條例》(第 282 章) 第 48 條，
 則該法院或勞資審裁處可根據第 32N 條作出命令或根據第 32O 條判給終止僱傭金，而凡該法院或勞資審裁處並無根據第 32N 條作出命令，則該法院或勞資審裁處可根據並按照第 32P 條判給其認為在有關情況下屬公正和恰當的並且須由僱主向僱員支付的補償，不論其是否已根據第 32O 條判給終止僱傭金。
- (3) 根據本部作出的命令或判給並不影響僱主就該項解僱或僱傭合約條款的更改而根據本部以外規定所負上的民事或刑事法律責任。

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

**32N. 復職及再次聘用的命令**

- (1) 除本條及第 32M 條另有規定外，根據本條作出的命令可以是由法院或勞資審裁處決定並按其認為在有關情況下屬公正和恰當的條款而（按照第 (4) 及 (5) 款）作出的復職的命令或（按照第 (6) 及 (7) 款作出的）再次聘用的命令。
- (2) 法院或勞資審裁處須首先考慮是否作出復職的命令，如決定不作出復職的命令，則須考慮是否作出再次聘用的命令。
- (3) 如法院或勞資審裁處裁斷，作出復職或再次聘用的命令屬恰當——
  - (a) 法院或勞資審裁處須向僱主及僱員解釋，可作出何種復職或再次聘用的命令；及
  - (b) 法院或勞資審裁處須問明僱主及僱員，他們是否同意作出該命令。（由 2018 年第 21 號第 4 條代替）
- (3A) 如僱主及僱員均表示同意，則法院或勞資審裁處須依據該項同意，作出復職或再次聘用的命令。（由 2018 年第 21 號第 4 條增補）
- (3B) 凡僱員在第 32A(1)(c) 條所述的任何情況下，遭受解僱，則即使只有該僱員表示同意，法院或勞資審裁處如裁斷，由僱主將該僱員復職或再次聘用該僱員，屬合理地切實可行，則仍須作出復職或再次聘用的命令。（由 2018 年第 21 號第 4 條增補）

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)*

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- (3C) 在為施行第(3B)款而作出裁斷前，法院或勞資審裁處——
- (a) 須給予僱主及僱員機會，讓他們就作出復職或再次聘用的命令，提出其各自的論點；及
  - (b) 須考慮有關申索的情況，包括——
    - (i) 僱主及僱員的情況；
    - (ii) 有關解僱的背景情況；
    - (iii) 僱主將僱員復職或再次聘用僱員，可能會遇到何種困難；及
    - (iv) 僱主與僱員之間的關係，以及(凡其他人就有關僱傭，而與該僱員有關聯)僱員與該等其他人之間的關係。(由 2018 年第 21 號第 4 條增補)
- (3D) 在為施行第(3B)款而作出裁斷前，法院或勞資審裁處可在僱主及僱員均表同意的前提下，要求處長向它提交一份載有符合以下說明的資料的報告——
- (a) 關乎有關申索的情況；及
  - (b) 在與根據《勞資審裁處條例》(第 25 章)進行調停相關的情況下取得。(由 2018 年第 21 號第 4 條增補)
- (3E) 處長在收到上述要求後，須擬備有關報告，和尋求僱主及僱員同意該報告的內容，並須——
- (a) 如該僱主及該僱員均同意該報告的內容——向法院或勞資審裁處，提交該報告；或
  - (b) 如該僱主或該僱員不同意該報告的內容——將此事及不能向法院或勞資審裁處提交該報告一事，告知法院或勞資審裁處。(由 2018 年第 21 號第 4 條增補)
- (4) 復職的命令屬飭令僱主在所有方面均視僱員為從未遭解僱或猶如僱傭合約條款從未被更改一樣的命令。法院或勞資審裁處作出該命令時，須指明須按何種條款，將該僱員復職，包括——(由 2018 年第 21 號第 4 條修訂)

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- (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



- (a) 必須歸還該僱員的任何權利及特權，包括年資及退休金權利；
- (b) 具有以下效力的條款：為計算該僱員根據本條例及該僱員的僱傭合約可享有的現有及將來的權利，該僱員的僱傭期的連續性，不得因下述情況，而視為曾中斷——
- (i) 如僱主藉代通知金，終止該合約——在該僱員向僱主提供服務的最後日期與復職日期之間的期間，該僱員缺勤；或
- (ii) 在任何其他情況下——在有關日期與復職日期之間的期間，該僱員缺勤；(由 2018 年第 21 號第 4 條代替)
- (c) 須將該僱員復職的最後日期；及 (由 2018 年第 21 號第 4 條代替)
- (d) 具有以下效力的條款：如在該命令指明的日期或之前，該僱員未獲按該命令指明的條款復職，則僱主須在該命令為此而指明的日期或之前，向該僱員支付第 32NA(1) 條所述的款項。(由 2018 年第 21 號第 4 條代替)
- (5) 法院或勞資審裁處作出復職的命令時，如認為在有關情況下屬公正和恰當，可指明——
- (a) 若非因解僱或僱傭合約條款的更改，僱員本可合理地預期由僱主就有關日期與復職日期之間的期間向他支付的任何欠付薪酬及就根據本條例可享有的任何法定權利而須支付的任何款額；或
- (b) 僱主已根據本條例就任何法定權利付予僱員但僱員在復職時不應享有而須由僱員歸還僱主的任何款額。
- (6) 再次聘用的命令屬飭令僱主須再次聘用有關僱員，擔任條款可與該僱員的原來僱傭條款相比的工作，或擔任其他適合的工作。法院或勞資審裁處作出該命令時，須指
- (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

- 明須按何種條款，再次聘用該僱員，包括——(由 2018 年第 21 號第 4 條修訂)
- (a) (由 2018 年第 21 號第 4 條廢除)
- (b) 工作的性質；
- (c) 工作的報酬；
- (d) 必須歸還該僱員的任何權利及特權，包括年資及退休金權利；
- (e) 具有以下效力的條款：為計算該僱員根據本條例及該僱員的僱傭合約可享有的現有及將來的權利，該僱員的僱傭期的連續性，不得因下述情況，而視為曾中斷——
- (i) 如僱主藉代通知金，終止該合約——在該僱員向僱主提供服務的最後日期與再次聘用的日期之間的期間，該僱員缺勤；或
- (ii) 在任何其他情況下——在有關日期與再次聘用的日期之間的期間，該僱員缺勤；(由 2018 年第 21 號第 4 條代替)
- (f) 須再次聘用該僱員的最後日期；及(由 2018 年第 21 號第 4 條代替)
- (g) 具有以下效力的條款：如在該命令指明的日期或之前，該僱員未獲按該命令指明的條款再次聘用，則僱主須在該命令為此而指明的日期或之前，向該僱員支付第 32NA(1) 條所述的款項。(由 2018 年第 21 號第 4 條代替)
- (7) 法院或勞資審裁處作出再次聘用的命令時，如認為在有關情況下屬公正和恰當，可指明——
- (a) 若非因解僱或僱傭合約條款的更改，僱員本可合理地預期由僱主就有關日期與再次聘用日期之間的期間向他支付的任何欠付薪酬及就根據本條例可享有的任何法定權利而須支付的任何款額；或
- (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

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- (b) 僱主已根據本條例就任何法定權利付予僱員但僱員在再次受聘時不應享有而須由僱員歸還僱主的任何款額。
- (8) (由 2018 年第 21 號第 4 條廢除)
- (9) 本條的效力，受第 32PA、32PB 及 32PC 條規限。(由 2018 年第 21 號第 4 條增補)
- (10) 如在復職或再次聘用的命令(如適用的話，指根據第 32PA 或 32PC 條更改者)為此而指明的日期或之前，僱主支付第 32NA(1) 條所述的款項，則有關僱員無權強制執行該命令(如適用的話，指經上述般更改者)的其他條款。(由 2018 年第 21 號第 4 條增補)

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—

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- (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. 為施行第 32N(4)(d) 及 (6)(g) 條而指明的款項**

- (1) 為施行第 32N(4)(d) 及 (6)(g) 條，僱主須向僱員支付的款項，是以下款項——
  - (a) 假若既無作出復職的命令，亦無作出再次聘用的命令的話，則本會判給的款項，即以下款額——
    - (i) 本會根據第 32O 條判給的終止僱傭金的款額；及
    - (ii) 如該僱員在第 32A(1)(c) 條所述的任何情況下，遭受解僱——本會根據第 32P 條判給的補償的款額；及

**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

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- (b) (如該僱員在第 32A(1)(c) 條所述的任何情況下，遭受解僱) 一筆款額為以下兩者中數目較小的款項——
- (i) \$72,500；
  - (ii) 該僱員每月平均工資(按照第 32NB 條計算者)的 3 倍。
- (2) 法院或勞資審裁處在裁定第 (1)(a)(i) 及 (ii) 款所述的款額時，不得考慮第 (1)(b) 款所述的款項。
- (3) 處長可藉於憲報刊登的公告，修訂第 (1)(b)(i) 款，修訂方式是以另一款額，取代該款指明的款額。

*(由 2018 年第 21 號第 5 條增補)***32NB. 為施行第 32NA 條而計算每月平均工資**

- (1) 在為施行第 32NA(1)(b)(ii) 條而計算僱員的每月平均工資時，本條適用。
- (2) 在第 (3)、(4) 及 (5) 款中——  
**工資** (wages) 包括僱主就任何以下日子付給的款項——
  - (a) 僱員放取產假、侍產假、休息日、病假日、假日或年假的日子；
  - (b) 僱員在僱主同意下放取假期的日子；
  - (c) 僱員不獲僱主提供工作的正常工作日；
  - (d) 僱員因暫時喪失工作能力而缺勤的日子，而根據《僱員補償條例》(第 282 章) 第 10 條，僱員是會就此獲付補償的。

- (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;

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- (3) 僱員每月平均工資指 ——
- (a) 在緊接僱傭合約終止的日期之前的 12 個月內，僱員所賺取的每月平均工資；或
- (b) 如僱員在緊接僱傭合約終止的日期之前受僱於有關僱主的期間，未滿 12 個月 —— 在該段較短的期間內，僱員所賺取的每月平均工資。
- (4) 在計算每月平均工資時，無須顧及 ——
- (a) 僱員在上述的 12 個月或較短期間內，由於任何以下原因而未獲付工資或全部工資的任何期間 (**豁除期間**) ——
- (i) 僱員放取任何產假、侍產假、休息日、病假日、假日或年假；
- (ii) 僱員在僱主同意下，放取任何假期；
- (iii) 僱員在正常工作日，不獲僱主提供工作；或
- (iv) 僱員暫時喪失工作能力，以致缺勤，而根據《僱員補償條例》(第 282 章) 第 10 條，僱員是會就此獲付補償的；及
- (b) 就豁除期間付給僱員的任何工資。
- (5) 為免生疑問，如就第 (2) 款中**工資**的定義所涵蓋的某日 (**有關日子**) 付給僱員的工資 (**有關工資**) 的款額，僅是該僱員在一個正常工作日所賺取的款額的一個分數，則在計算該僱員的每月平均工資時，無須顧及有關日子及有關工資。
- (6) 儘管有第 (3) 款的規定，如以該款規定的方式，計算僱員的每月平均工資，因任何理由而並非切實可行，則可參考以下工資，計算每月平均工資 ——
- (a) 受僱於同一僱主並從事同樣工作的人，在緊接有關僱員的僱傭合約終止的日期之前的 12 個月內賺取的工資；或

- (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.

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- (b) 如無上述的人——受僱於同一地區的同一年業或職業並從事同樣工作的人，在緊接有關僱員的僱傭合約終止的日期之前的 12 個月內賺取的工資。

(由 2018 年第 21 號第 5 條增補)

- (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. 終止僱傭金的判給

- (1) 除第 32M 條另有規定外，如沒有根據第 32N 條作出復職的命令或再次聘用的命令，法院或勞資審裁處可作出按其認為在有關情況下屬公正和恰當的並由僱主支付予僱員的終止僱傭金的判給。
- (2) 本條所指的終止僱傭金是指僱員在僱傭合約終止時有權享有而未獲支付的根據本條例可享有的法定權利，或假若他獲准許繼續其原有僱傭工作或以僱傭合約的原有條款受僱以達致根據本條例就有關享有權而規定的最短可享利益服務年資，則他在僱傭合約終止時可合理地預期有權享有的本條例下的法定權利。

### 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

- (3) 在符合第 (4) 款的規定下，終止僱傭金包括 ——
- (a) 根據僱員的僱傭合約應付予僱員的任何工資及其他款項；
  - (b) 在沒有給予妥當通知而解僱的情況下，根據第 II 部須支付的任何代通知金；
  - (c) 根據第 IIA 部須支付的任何年終酬金；
  - (d) 根據第 III 部須支付的任何產假薪酬或款項；
  - (da) 根據第 IIIA 部須支付的任何侍產假薪酬；(由 2014 年第 21 號第 7 條增補)
  - (e) 根據第 VA 部須支付的任何遣散費或根據第 VB 部須支付的任何長期服務金；
  - (f) 根據第 VII 部須支付的任何疾病津貼或款項；
  - (g) 根據第 VIII 部須支付的任何假日薪酬；
  - (h) 根據第 VIIIA 部須支付的任何年假薪酬；及
  - (i) 根據本條例和根據僱員的僱傭合約應付的該僱員的任何其他款項。
- (4) 儘管僱員並未達致根據本條例就有關享有權而規定的可享利益服務年資，法院或勞資審裁處仍可根據第 (1) 或 (5) 款判給按照該僱員根據僱傭合約受僱於該僱主的實際時間計算的終止僱傭金。
- (5) 為施行本條，如法院或勞資審裁處沒有就僱傭合約條款的不合理更改而作出復職的命令或再次聘用的命令，則該法院或勞資審裁處可將該項僱傭合約條款的不合理更改視為由僱主作出的不理解僱，並可判給終止僱傭金，而該等終止僱傭金須計算至該僱員向僱主提供服務的最後日期或該法院或勞資審裁處根據本條判給終止僱傭金的日期為止，以較早者為準。
- (6) 管限法定享有權的計算方法的各項條文，均適用於終止僱傭金的計算方法。(由 2018 年第 21 號第 6 條修訂)
- (7) 第 31I 及 31IA 條適用於根據本條支付的任何遣散費。

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



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- (8) 第 31Y、31YAA 及 31YA 條適用於根據本條支付的任何長期服務金。

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. 補償的判給

- (1) 除第 32M 條另有規定外，如有以下情況——
- (a) 既無根據第 32N 條作出復職的命令，亦無根據該條作出再次聘用的命令；及
- (b) 僱員遭僱主在違反第 15(1)、21B(2)(b)、33(4B) 或 72B(1) 條、《工廠及工業經營條例》(第 59 章) 第 6 條或《僱員補償條例》(第 282 章) 第 48 條的情況下解僱，不論僱主是否已就該項解僱而被定罪，

則法院或勞資審裁處可判給其認為在有關情況下屬公正和恰當的並且須由僱主向僱員支付的補償，不論其是否已根據第 32O 條判給終止僱傭金。(由 1998 年第 312 號法律公告修訂)

- (2) 法院或勞資審裁處裁定在本條下的補償判給及該補償判給的款額時，須顧及申索的情況。

### 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.

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- (3) 在不影響第(2)款的一般性的原則下，申索的情況包括——
- (a) 僱主和僱員的情況；
  - (b) 僱員根據僱傭合約受僱於僱主的時間；
  - (c) 作出解僱的方式；
  - (d) 僱員所蒙受的可歸因於遭解僱的任何損失；
  - (e) 僱員獲受僱於新職的可能性；
  - (f) 由僱員承擔的任何分擔過失；及
  - (g) 僱員根據本條例有權就該項解僱而收取的任何款項，包括根據第 32O 條作出的任何終止僱傭金的判給。
- (4) 在本條下判給補償的款額須為法院或勞資審裁處認為公正和恰當的款額，但任何該等判給的款額不得超過 \$150,000。
- (5) 勞工處處長可藉憲報公告修訂第(4)款所指明的款額。

**32PA. 遵從再次聘用的命令的另一方法**

- (1) 就本條而言——
- (a) **再次聘用的命令** (order for re-engagement) 指根據第 32N 條作出的再次聘用的命令，並包括根據本條或第 32PC 條更改者；

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- (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) **繼承人** (successor) 就為某企業或某企業的部分而僱用某僱員的僱主而言，在 (c) 段的規限下，指因為該企業或該部分的擁有權有所變更 (不論是否憑藉出售、其他形式的產權處置或法律的實施所致的變更) 而已成為該企業或該部分的擁有人的人；
- (c) (b) 段中**繼承人**的定義，在作出必要的變通後，就以下情況具有效力——
- (i) 在緊接上述變更前擁有某企業或某企業的部分的人，是在緊接該項變更後擁有該企業或該部分的各人中的一人 (不論是否以合夥人、受託人或其他身分擁有)；或
- (ii) 在緊接上述變更前擁有某企業或某企業的部分的各人 (不論是否以合夥人、受託人或其他身分擁有)，包括在緊接該項變更後擁有該企業或該部分的各人，或各人中的一人或多於一人，一如該定義在前擁有人及新擁有人是兩個完全不同的人的情況下具有效力一樣；及
- (d) **相聯公司**須按照第 32E(3) 及 (4) 條解釋。
- (2) 法院或勞資審裁處如作出針對僱主 (**原僱主**) 的再次聘用的命令 (**原本命令**)，則可應申請而飭令更改原本命令，使其具有以下效力：原僱主的繼承人或相聯公司 (**替代僱主**) 聘用有關僱員，即視為一項由原僱主作出並且屬遵從原本命令的再次聘用。
- (3) 為施行第 (2) 款而提出的申請，只可在符合以下條件的前提下提出——
- (a) 以下的人已作出一份書面協議 (**三方協議**)——
- (i) 原僱主；
- (ii) 有關僱員；及
- (iii) 替代僱主；

- (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-

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- (b) 三方協議述明，各方均同意如替代僱主聘用該僱員，即視為一項遵從原本命令的再次聘用；
- (c) 三方協議述明，為使替代僱主聘用該僱員視為一項遵從原本命令的再次聘用，替代僱主須按何種條款，聘用該僱員，包括——
- (i) 受僱工作的性質；
  - (ii) 受僱工作的報酬；
  - (iii) 必須給予該僱員的任何權利及特權，包括年資及退休金權利；
  - (iv) 具有以下效力的條款：為計算該僱員根據本條例及該僱員受僱於替代僱主的僱傭合約可享有的現有及將來的權利，該僱員受僱於原僱主的僱傭期，須計入該僱員受僱於替代僱主的僱傭期之內；及
  - (v) 具有以下效力的條款：該僱員的僱傭期的連續性——
    - (A) 不得因僱主由原僱主轉為替代僱主，而視為曾中斷；及
    - (B) 不得因下述原因，而視為曾中斷——
      - (I) 如原僱主藉代通知金，終止該僱員受僱於原僱主的僱傭合約——在該僱員向原僱主提供服務的最後日期與替代僱主聘用該僱員的日期之間的期間，該僱員缺勤；或
      - (II) 在任何其他情況下——在有關日期與替代僱主聘用該僱員的日期之間的期間，該僱員缺勤；及
- (d) 三方協議述明，各方均同意如替代僱主聘用該僱員，則 (c) 段所述的條款，即構成該僱員受僱於替代僱主的僱傭合約的一部分。

- 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—

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- (4) 有關申請只可由有關僱員提出，並須附有三方協議或其文本。
- (5) 有關申請只可——
- (a) 在根據原本命令有關僱員須獲再次聘用的最後日期或之前提出；或
- (b) 在法院或勞資審裁處准許的延展期間內提出。
- (6) 法院或勞資審裁處只有在信納以下事宜的前提下，方可根據本條作出更改命令：替代僱主須按某些條款（即在三方協議指明者）聘用有關僱員，而該等條款可與原僱主根據原本命令須按以再次聘用該僱員的條款（第 32N(6)(f) 及 (g) 條所述的條款除外）相比。
- (7) 就本條所指的申請而作出的更改命令——
- (a) 須指明為使有關聘用視為一項遵從原本命令的再次聘用，替代僱主須在更改命令為此而指明的日期或之前，按三方協議指明的條款，聘用有關僱員；
- (b) 須指明替代僱主聘用該僱員的法律後果（即第 32PB 條訂明者）；
- (c) 須指明以下事宜：除 (a) 及 (b) 段另有規定外，原本命令仍然維持十足效力，原僱主仍須再次聘用該僱員，但原僱主須再次聘用該僱員的最後日期，亦是 (a) 段所述的日期；及
- (d) 須指明如在 (a) 段所述的日期或之前，該僱員未獲按照更改命令再次聘用（即沒有實際上獲如此再次聘用，亦沒有視為獲如此再次聘用），原僱主須在該命令為此而指明的日期或之前，向該僱員支付第 32NA(1) 條所述的款項。

- (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.

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- (8) 根據第 (7) 款在更改命令指明的以下每一日期，可與原本命令指明的日期相同，亦可與該日期不同——
- (a) 有關僱員須獲聘用的最後日期；
  - (b) 原僱主須支付第 32NA(1) 條所述的款項的最後日期。
- (由 2018 年第 21 號第 7 條增補)*

- (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).

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第 57 章第 VIA 部  
第 32PB 條Part VIA  
Section 32PB6A-58  
Cap. 57**32PB. 替代僱主聘用僱員的法律後果**

- (1) 在以下情況下，本條適用——
- (a) 已根據第 32PA 條作出更改命令，其效力令到替代僱主聘用有關僱員，視為一項由原僱主作出並且屬遵從原本命令的再次聘用；及
  - (b) 該更改命令指明該僱員須獲再次聘用的最後日期，而替代僱主在該日期或之前聘用該僱員，
- 而本條中的詞句，如亦在第 32PA 條中出現，則該詞句在本條中所具有的涵義，與它在該條中所具有的涵義相同。
- (2) 凡替代僱主須按某些條款（即根據第 32PA(7)(a) 條在有關更改命令指明者）聘用有關僱員，該等條款即構成該僱員受僱於替代僱主的僱傭合約的一部分。
- (3) 為計算有關僱員根據本條例及該僱員受僱於替代僱主的僱傭合約可享有的現有及將來的權利，以下條文適用——
- (a) 該僱員受僱於原僱主的僱傭期，須計入該僱員受僱於替代僱主的僱傭期之內；及
  - (b) 該僱員的僱傭期的連續性——
    - (i) 不得因僱主由原僱主轉為替代僱主，而視為曾中斷；及
    - (ii) 不得因下述原因，而視為曾中斷——

- (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) 如原僱主藉代通知金，終止該僱員受僱於原僱主的僱傭合約——在該僱員向原僱主提供服務的最後日期與替代僱主聘用該僱員的日期之間的期間，該僱員缺勤；或
- (B) 在任何其他情況下——在有關日期與替代僱主聘用該僱員的日期之間的期間，該僱員缺勤。
- (4) 在第 (3)(a) 款中，提述僱員受僱於原僱主的僱傭期，即提述符合以下說明的期間：假若原僱主按照原本命令，再次聘用該僱員，則該期間本會為計算該僱員根據本條例及該僱員受僱於原僱主的僱傭合約可享有的現有及將來的權利，而計入該僱員受僱於原僱主的僱傭期之內。
- (5) 替代僱主聘用有關僱員，須視為一項由原僱主作出並且屬遵從原本命令的再次聘用。
- (6) 根據第 32N(7) 條在原本命令中指明須由僱主向有關僱員支付的款額，仍然須由原僱主向該僱員支付。根據該條在該命令中指明須由有關僱員歸還僱主的款額，仍然須由該僱員歸還原僱主。
- (7) 為計算根據第 32N(7) 條在原本命令中指定的款額，在原本命令中，凡提述再次聘用，須視為提述替代僱主聘用有關僱員，而凡提述再次聘用的日期，須視為提述該項聘用的日期。

(由 2018 年第 21 號第 7 條增補)

- (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.



**32PC. 關於支付第 32NA(1)(b) 條所述的款項的寬免**

- (1) 如僱員在第 32A(1)(c) 條所述的任何情況下，遭受解僱，而法院或勞資審裁處根據第 32N 條，就該僱員作出復職或再次聘用的命令，則不論該命令是否根據本條或第 32PA 條更改，本條均適用。在本條中，該命令（如適用的話，指經上述般更改者）稱為**原本命令**。
- (2) 原本命令所針對的僱主可提出申請，要求更改該命令的效力，令到該僱主支付第 32NA(1)(b) 條所述的款項的法律責任，獲得寬免。
- (3) 凡僱主按照原本命令將有關僱員復職或再次聘用有關僱員，由於以下的原因，已不再屬合理地切實可行，則只有在以此為理由的前提下，第 (2) 款所指的申請方可提出——
  - (a) 可歸因於該僱員的理由；或
  - (b) 在法院或勞資審裁處最近一次裁斷將該僱員復職或再次聘用該僱員屬合理地切實可行後，發生了非該僱主所能控制的情況改變。
- (4) 有關申請只可向作出原本命令的法院或勞資審裁處提出。

- (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

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- (5) 有關申請只可在以下期間內提出——
- (a) 根據原本命令須將有關僱員復職或再次聘用有關僱員的最後日期後的 7 日；或
  - (b) 法院或勞資審裁處准許的延展期間。
- (6) 法院或勞資審裁處在裁定有關申請前，須給予有關僱主及僱員機會，讓他們就該申請，提出其各自的論點。
- (7) 法院或勞資審裁處在裁定有關申請時，可考慮任何有關因素。
- (8) 法院或勞資審裁處可——
- (a) 拒絕有關申請；
  - (b) 飭令更改原本命令的效力，令到僱主支付第 32NA(1)(b) 條所述的款項的法律責任，獲得完全或局部寬免；或
  - (c) 作出其認為在有關情況下屬公正和恰當的任何命令，包括指明一個較後日期，作為須將有關僱員復職或再次聘用有關僱員的最後日期。

(由 2018 年第 21 號第 8 條增補)

- (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. 例外情況

### 32Q. Exclusion

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本部不適用於 ——

- (a) 屬《性別歧視條例》(第 480 章)所指的性別歧視的作為；
- (b) 屬《殘疾歧視條例》(第 487 章)所指的基於任何人或其有聯繫人士的殘疾而歧視他們的作為；(由 2001 年第 7 號第 7 條修訂)
- (c) 屬《家庭崗位歧視條例》(第 527 章)所指的基於任何人的家庭崗位而歧視他們的作為；或 (由 2001 年第 7 號第 7 條增補。由 2008 年第 29 號第 87 條修訂)
- (d) 屬《種族歧視條例》(第 602 章)所指的基於任何人的種族或其近親的種族而歧視該人的作為。(由 2008 年第 29 號第 87 條增補)

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*)

**第 VI 部****工資的扣除***(格式變更——2015 年第 3 號編輯修訂紀錄)***32. 扣除工資的限制**

- (1) 除按照本條例所規定外，僱主不得從僱員的工資或到期付給僱員的任何其他款項中扣除任何款項。
- (2) 僱主可在以下情況扣除僱員工資——
  - (a) 因僱員缺勤而扣除工資：
 

但——

    - (i) 如根據僱傭合約的工資是按時計酬者，則因缺勤而扣除的工資，不得超過與該僱員缺勤時間成比例的款額；
    - (ii) 僱主不得扣除僱員工資以抵銷或部分抵銷已付給或可能付給或可能有責任付給該僱員的假日薪酬或疾病津貼；(由 1973 年第 39 號第 4 條代替)
  - (b) 因僱員損壞或遺失屬於僱主或由僱主管有或控制，或明訂委託僱員保管的貨品、設備或財產，或因僱員遺失應由他負責交代的金錢，而該等損壞或遺失直接歸因於該僱員的疏忽或失職：
 

但——

    - (i) 僱主在每一事件中藉扣除僱員工資而可收回的總額，不得超過因該僱員損壞或遺失而令僱主所蒙受損失的相等價值或 \$300，兩者以較小款額為準；及
    - (ii) 僱員在任任何一個工資期內被扣除的款項，不得超過他就該工資期須獲付給的工資的四分之一；

**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—

- (c) 應僱員要求供應膳食而可扣除工資，款額不得超過僱主為此等膳食所需付的成本，包括加工及服務費在內；
- (d) 僱主為僱員或僱員家屬提供住所而該僱員或僱員家屬佔用該住所的期間的費用，可從該僱員的工資中扣除；
- (e) 僱主曾預支或超額支付給僱員的工資，可從該僱員的工資中扣回：
- 但 ——
- (i) 除非獲得處長書面批准，否則不得以折扣、利息或任何類似收費作為該等預支或超額支付工資的代價而將之扣除；及
- (ii) 僱員在任何一個工資期內被扣除的款項，不得超過他就該工資期須獲付給的工資的四分之一；
- (f) 在僱員書面同意下，可從該僱員的工資中扣回已借給他的貸款；
- (g) 就僱員經由僱主繳交為使該僱員或其受養人得益而合法設立的醫療福利計劃、離職金計劃、退休計劃或儲蓄計劃的供款，而應僱員書面要求從該僱員的工資中扣除；(由 1990 年第 41 號第 17 條修訂)
- (ga) 可在第 15L(4) 條所准許的情況下，從該僱員的工資中，扣回已付給的侍產假薪酬；(由 2014 年第 21 號第 8 條增補)
- (h) 可根據任何成文法則的規定或授權而扣除僱員工資；
- (i) 可應僱員的書面要求並在獲得處長批准下，從該僱員的工資中作出其他扣除；如屬個別情形，可書面示明處長的批准，如屬一般情形，則在憲報公告該項批准。
- (3) 根據本條在任何一個工資期所扣除的工資總額(因缺勤而扣除者或依據根據《未成年人監護條例》(第 13 章)第 20(1) 條、《分居令及贍養令條例》(第 16 章)第 9A(1) 條

- (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;

或《婚姻法律程序與財產條例》(第 192 章)第 28(1) 條作出的扣押令而扣除者除外), 不得超過就該工資期須付給僱員的工資的半數, 但獲得處長書面批准者不在此限。(由 1997 年第 69 號第 34 條修訂)

- (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*)

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- (4) 本條不得解釋為阻止僱主在到期支付日期之前的任何時間，就僱員已完成的工作而按比例付給僱員工資和其他報酬，並在工資期終結時因應已付款額而調整須付工資總額。
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- (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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**第 VII 部****疾病津貼**

(第 VII 部由 1973 年第 39 號第 5 條增補。格式變更——2012 年第 2 號編輯修訂紀錄)

**33. 疾病津貼**

- (1) 如僱員在緊接病假日之前已根據連續性合約受其僱主僱用 1 個月或以上，須由其僱主按照本條及第 35 條付給疾病津貼。(由 1977 年第 1 號第 2 條修訂；由 1984 年第 48 號第 14 條修訂)
- (2) 除第 (2A) 款另有規定外，有權獲得疾病津貼的日數須按以下計算率累算——
  - (a) 凡僱員根據連續性合約受僱者，在最初受僱的 12 個月內，每受僱滿 1 個月即可享有有薪病假日 2 天；及
  - (b) 其後每受僱滿 1 個月可享有有薪病假日 4 天，有薪病假日可不時予以累積，最多可累積至 120 天。(由 1983 年第 57 號第 5 條代替)
- (2A) 如僱員在緊接《1983 年僱傭(修訂)條例》\*(1983 年第 57 號)生效日期\*前已根據連續性合約受其僱主僱用 1 個月或以上，則由上述條例生效日期起，並在不損害該僱員獲得在該生效日期已累算的疾病津貼的權利下，可獲得的疾病津貼得按經上述條例修訂後的本條第 (2) 款訂明的計算率累算；而在上述條例生效日期，該僱員如有不足 1 個月的僱傭(如有的話)，在根據該第 (2) 款的規定並按該款訂明的計算率計算他有權獲得的疾病津貼時，亦須

編輯附註：

\* 生效日期：1983 年 11 月 1 日。

# “《1983 年僱傭(修訂)條例》”乃“Employment (Amendment) Ordinance 1983”之譯名。

**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.



將該不足 1 個月的僱傭計算在內。(由 1983 年第 57 號第 5 條增補)

- (3) 除第 (3C) 款另有規定外，僱員放病假日數不足連續 4 天者，無權就該等病假日獲得疾病津貼。(由 1981 年第 22 號第 7 條修訂)
- (3A) 凡在懷孕中或分娩後的女性僱員，須接受產前檢查或產後治療者，其因接受該項檢查或治療而缺勤的日子，均屬病假日。(由 1981 年第 22 號第 7 條增補)
- (3B) 凡女性僱員流產，因流產而缺勤的日子，均屬病假日。(由 1981 年第 22 號第 7 條增補)
- (3C) 儘管有第 (3) 款的規定，凡根據本條規定有權獲得疾病津貼的女性僱員，在第 (3A) 或 (3B) 款所指的每一病假日，均須獲付給疾病津貼；而第 (4)、(4A)、(5)、(5A) 及 (7) 款的規定，亦適用於該等病假日及有關的疾病津貼。(由 1981 年第 22 號第 7 條增補。由 1983 年第 57 號第 5 條修訂)
- (4) 除第 (5) 及 (5A) 款另有規定外，任何僱員如連續放病假日 4 天或超過 4 天者，有權獲得病假日總數的疾病津貼，惟該等病假日總數不得超過緊接開始放該等病假日前該僱員根據第 (2) 及 (2A) 款累積的有薪病假日數。(由 1983 年第 57 號第 5 條代替)

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*)

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- (4A) 根據第 (4) 款獲付給疾病津貼的病假日數，須按照第 37(1B) 條的規定從僱員所累積的有薪病假日總數中扣除。  
(由 1983 年第 57 號第 5 條增補)
- (4B) 在第 (4BAA) 款的規限下，如僱主根據本條須就任何僱員所放的病假日付給疾病津貼，則僱主不得在該病假日終止該僱員的僱傭合約，但按照第 9 條終止該合約則不在此限。  
(由 2001 年第 7 號第 8 條代替)
- (4BAAA) 就第 (4BA)(b)、(4BAAB) 及 (4BAAC) 款而言，**工資** (wages) 包括僱主就一個以下日子支付的款項——
- 僱員放取的產假、侍產假、休息日、病假日、假日或年假；  
(由 2014 年第 21 號第 9 條修訂)
  - 僱員在僱主同意下放取的假期；
  - 僱員不獲僱主提供工作的正常工作日；
  - 僱員因暫時喪失工作能力而缺勤的日子，而根據《僱員補償條例》(第 282 章) 第 10 條僱員是會就該日子獲付補償的。  
(由 2007 年第 7 號第 9 條增補)
- (4BA) 任何僱主如違反第 (4B) 款的規定，須付給被解僱的僱員——
- 一筆款項，款額為假若僱主根據第 7 條終止該合約本須付給的款額；及
  - 一筆相等於該僱員在以下期間內所賺取的工資的每日平均款額的 7 倍的額外款項——
    - 在緊接僱傭合約終止日期之前的 12 個月期間；或
    - 如該僱員在緊接該合約終止日期之前受僱於該僱主一段短於 12 個月的期間，則該段較短的期間。  
(由 2007 年第 7 號第 9 條代替)
- (由 1995 年第 103 號第 13 條增補)

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- (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 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)*
  - a day of leave taken by the employee with the agreement of his employer;
  - a normal working day on which the employee is not provided with work;
  - 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—
- the sum which would have been payable if the contract had been terminated by the employer under section 7; and
  - a further sum equivalent to 7 times the daily average of the wages earned by the employee during—

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- (4BAAB) 在計算僱員在該 12 個月或較短的期間內所賺取的工資的每日平均款額時——
- (a) 僱員在當中由於——
- (i) 放取任何產假、侍產假、休息日、病假日、假日或年假；(由 2014 年第 21 號第 9 條修訂)
  - (ii) 在僱主同意下放取任何假期；
  - (iii) 在任何正常工作日不獲其僱主提供工作；或
  - (iv) 暫時喪失工作能力以致缺勤，而就此僱員根據《僱員補償條例》(第 282 章)第 10 條會獲付補償，因而未獲付給工資或全部工資的期間；以及
- (b) 就 (a) 段提述的期間付給僱員的任何工資，均不計算在內。(由 2007 年第 7 號第 9 條增補)
- (4BAAC) 為免生疑問，如僱員就第 (4BAAA) 款指明的某個日子獲付給的工資的數額，僅是僱員在正常工作日所賺取的數額的一個分數，則該工資以及該日子須按照第 (4BAAB) 款不予計算在內。(由 2007 年第 7 號第 9 條增補)
- (4BAAD) 儘管有第 (4BA)(b) 款的規定，如因任何理由以該款規定的方式計算某僱員所賺取的工資的每日平均款額並不切實可行，則可參考受僱於同一僱主從事同樣工作的人在緊接該僱員的僱傭合約終止日期之前的 12 個月期間內所賺取的工資或(如無上述的人)受僱於同一地區的同一年業或職業從事同樣工作的人在緊接該僱員的僱傭合約終止日期之前的 12 個月期間內所賺取的工資計算該款額。(由 2007 年第 7 號第 9 條增補)

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- (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

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(4BAA) 凡僱主在僱員所放的病假日終止其連續性僱傭合約，而根據本條僱主須就該病假日付給疾病津貼，則——

- (a) 除非相反證明成立；或
- (b) 除第 (4BAB) 款另有規定外，除非僱主證明——
  - (i) 他的本意是按照第 9 條終止該合約；而且
  - (ii) 在終止該合約時，他合理地相信他有理由如此終止該合約，

否則就第 (4B) 款而言，須視僱主為並非按照第 9 條終止該合約。(由 2001 年第 7 號第 8 條增補)

(4BAB) 就民事法律程序而言，第 (4BAA)(b) 款不適用。(由 2001 年第 7 號第 8 條增補)

(4BB) 任何僱主違反第 (4B) 款，即屬犯罪，一經定罪，可處第 6 級罰款。(由 2001 年第 7 號第 8 條代替)

(4C) 如僱主在僱員放病假日期間終止其僱傭合約，則即使僱傭合約已告終止，僱主仍須按僱員根據第 (4) 款有權獲得疾病津貼的病假日總數，將疾病津貼付給該僱員，而第 (5)、(5A) 及 (7) 款的規定仍適用於任何該等病假日及有關的疾病津貼，猶如該僱傭合約未予終止一樣。(由 1983 年第 57 號第 5 條增補)

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)

- (5) 在下述情況下，僱主無須就任何病假日付給僱員疾病津貼——
- (a) 除第 (5A) 款另有規定外，沒有適當的醫生證明書指明某日是病假日，而簽發該證明書的註冊醫生、註冊中醫或註冊牙醫認為僱員在該日因疾病或損傷而過去、目前或將來（視屬何情況而定）不適宜工作；（由 1983 年第 57 號第 5 條修訂；由 1995 年第 5 號第 9 條修訂；由 2006 年第 16 號第 7 條修訂）
- (b) 凡僱主辦有認可醫療計劃，僱員在疾病或損傷期內任何時間，除非是留院病人，否則無合理辯解而拒絕在該醫療計劃下接受診治；（由 1983 年第 57 號第 5 條修訂；由 1995 年第 5 號第 9 條修訂；由 2006 年第 16 號第 7 條修訂）
- (c) 凡僱主辦有認可醫療計劃，僱員接受僱主為該醫療計劃所聘用的註冊醫生、註冊中醫或註冊牙醫診治，或身為留院病人，但在疾病或損傷期內任何時間，無合理辯解而不理會——（由 2006 年第 16 號第 7 條修訂）
- (i) 該醫生、中醫或牙醫的意見；或
- (ii) 在醫院為他診治的註冊醫生、註冊中醫或註冊牙醫的意見；（由 1983 年第 57 號第 5 條修訂；由 1995 年第 5 號第 9 條修訂；由 2006 年第 16 號第 7 條修訂）
- (d) 如僱員不適宜工作是因其嚴重和故意的不當行為所導致；
- (e) 如僱員不適宜工作是因損傷或職業病所導致，而其損傷或職業病按照《僱員補償條例》（第 282 章）須獲補償；
- (f) 如僱員已就該病假日收取假日薪酬。

- (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

- (5AA) 凡有為第 (5) 款的施行而簽發的醫生證明書，而該證明書——
- (a) 是由註冊醫生簽發的，則只有在僱主所經辦的認可醫療計劃涵蓋由註冊醫生給予的治療的情況下，第 (5)(b) 款方適用；
  - (b) 是由註冊中醫簽發的，則只有在僱主所經辦的認可醫療計劃涵蓋由註冊中醫給予的治療的情況下，第 (5)(b) 款方適用；或
  - (c) 是由註冊牙醫簽發的，則只有在僱主所經辦的認可醫療計劃涵蓋由註冊牙醫給予的治療的情況下，第 (5)(b) 款方適用。(由 2006 年第 16 號第 7 條增補)
- (5A) 凡僱員所放的有薪病假日記入僱主根據第 37(1A) 條為其備存的紀錄內的第 2 類，則如僱主有此要求，僱員須向僱主出示他在醫院門診部或留院時為他診治的註冊醫生、註冊中醫或註冊牙醫就每一病假日所簽發的醫生證明書。(由 1983 年第 57 號第 5 條增補。由 1995 年第 5 號第 9 條修訂；由 2006 年第 16 號第 7 條修訂)
- (6) 就本條而言——
- (a) **醫院** (hospital) 一詞指政府營辦的醫院或專科診療所、軍方醫院、《醫院管理局條例》(第 113 章) 所指的公營醫院或由某人根據《醫院、護養院及留產院註冊條例》(第 165 章) 註冊的醫院；(由 1991 年第 81 號第 2 條修訂；由 2012 年第 2 號第 3 條修訂；由 2014 年第 21 號第 9 條修訂)
  - (b) 第 (5)(a) 款內**適當的醫生證明書** (appropriate medical certificate) 一詞指——
    - (i) 如僱主在該證明書簽發當日辦有認可醫療計劃——
      - (A) 由該僱主為該計劃而聘用的註冊醫生、註冊中醫或註冊牙醫所簽發的證明書；

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

- (B) (在該計劃沒有涵蓋由註冊醫生給予的治療的情況下)由任何註冊醫生所簽發的證明書；
- (C) (在該計劃沒有涵蓋由註冊中醫給予的治療的情況下)由任何註冊中醫所簽發的證明書；
- (D) (在該計劃沒有涵蓋由註冊牙醫給予的治療的情況下)由任何註冊牙醫所簽發的證明書；或
- (E) (在僱員有合理辯解而拒絕在該計劃下接受診治的情況下)由任何註冊醫生、註冊中醫或註冊牙醫所簽發的證明書；(由 2006 年第 16 號第 7 條代替)
- (ii) 在簽發該證明書當日，如僱員是留院病人，由醫院內為他診治的註冊醫生、註冊中醫或註冊牙醫簽發的證明書；或
- (iii) 在其他情況下由任何註冊醫生、註冊中醫或註冊牙醫所簽發的證明書。(由 1983 年第 57 號第 5 條代替。由 1995 年第 5 號第 9 條修訂；由 2006 年第 16 號第 7 條修訂)
- (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;

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- (7) 每份醫生證明書，除須指明該證明書的簽發者認為僱員過去、目前或將來（視屬何情況而定）不適宜工作的日數外，亦須指明該證明書的簽發者認為導致該僱員過去、目前或將來（視屬何情況而定）不適宜工作的疾病或損傷性質；如該醫生證明書是僱員就第 (5A) 款的規定向僱主出示者，則如其僱主有此要求，該醫生證明書須載有或附有一份該證明書的簽發者所作過的診斷及治療的簡略紀錄。（由 1983 年第 57 號第 5 條修訂；由 1995 年第 5 號第 9 條修訂；由 2006 年第 16 號第 7 條修訂）

- (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



**34. 認可醫療計劃**

- (1) 署長如信納僱主所經辦的醫療計劃，可使每名有資格由經辦該醫療計劃的僱主付給疾病津貼的僱員，免費獲得註冊醫生、註冊中醫或註冊牙醫為其提供署長認為合理的門診治療，則署長為本條例的施行，可認可該僱主所經辦的醫療計劃。（由 1995 年第 5 號第 10 條修訂；由 2006 年第 16 號第 8 條修訂）
- (2) 署長可撤銷其對任何醫療計劃的認可，但在撤銷前須向經辦該計劃的僱主給予不少於 1 個月的有關該項意向的通知。
- (3) 署長對任何醫療計劃予以認可或撤銷其認可時，須在憲報刊登有關此事的公告。

**35. 疾病津貼額**

- (1) 就第 (2)、(2A) 及 (2B) 款而言，**工資** (wages) 包括僱主就一個以下日子支付的款項——
  - (a) 僱員放取的產假、侍產假、休息日、病假日、假日或年假；（由 2014 年第 21 號第 10 條修訂）

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—

- (b) 僱員在僱主同意下放取的假期；
- (c) 僱員不獲僱主提供工作的正常工作日；
- (d) 僱員因暫時喪失工作能力而缺勤的日子，而根據《僱員補償條例》(第 282 章)第 10 條僱員是會就該日子獲付補償的。(由 2007 年第 7 號第 10 條代替)
- (2) 每日病假津貼額為一筆相等於僱員在以下期間內所賺取的工資的每日平均款額的五分之四的款項——
- (a) 在緊接病假日或病假日首天(視乎何者適用而定)之前的 12 個月期間；或
- (b) 如僱員在緊接病假日或病假日首天(視乎何者適用而定)之前受僱於有關僱主一段短於 12 個月的期間，則該段較短的期間，
- 但假若僱員在某日即使沒有生病亦不會工作，而僱主通常無須就該日支付工資，則無須就該日支付病假津貼。(由 2007 年第 7 號第 10 條代替)
- (2A) 在計算僱員在該 12 個月或較短的期間內所賺取的工資的每日平均款額時——
- (a) 僱員在當中由於——
- (i) 放取任何產假、侍產假、休息日、病假日、假日或年假；(由 2014 年第 21 號第 10 條修訂)
- (ii) 在僱主同意下放取任何假期；
- (iii) 在任何正常工作日不獲其僱主提供工作；或
- (iv) 暫時喪失工作能力以致缺勤，而就此僱員根據《僱員補償條例》(第 282 章)第 10 條會獲付補償，因而未獲付給工資或全部工資的期間；以及
- (b) 就 (a) 段提述的期間付給僱員的任何工資，均不計算在內。(由 2007 年第 7 號第 10 條增補)
- (2B) 為免生疑問，如僱員就第 (1) 款指明的某個日子獲付給的工資的數額，僅是僱員在正常工作日所賺取的數額的一

- (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—

- 個分數，則該工資以及該日子須按照第 (2A) 款不予計算在內。(由 2007 年第 7 號第 10 條增補)
- (2C) 儘管有第 (2) 款的規定，如因任何理由以該款規定的方式計算某僱員所賺取的工資的每日平均款額並不切實可行，則可參考受僱於同一僱主從事同樣工作的人在緊接該僱員的病假日或病假日首天(視乎何者適用而定)之前的 12 個月期間內所賺取的工資或(如無上述的人)受僱於同一地區的同一年業或職業從事同樣工作的人在緊接該僱員的病假日或病假日首天(視乎何者適用而定)之前的 12 個月期間內所賺取的工資計算該數額。(由 2007 年第 7 號第 10 條增補)
- (3) 凡僱員的僱傭合約遭終止，根據第 33(4C) 條須付的疾病津貼，須按照本條計算。(由 1984 年第 48 號第 15 條增補。由 2007 年第 7 號第 10 條修訂)
- (4) 如依據僱傭合約或任何其他協議的條款或因任何理由，某僱員已就他所放取的有薪病假日獲僱主支付一筆款項，則須從須就該病假日付給該僱員的疾病津貼中扣除該筆款項。(由 2007 年第 7 號第 10 條增補)
- (由 1977 年第 1 號第 3 條修訂)

- (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*)

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第 57 章第 VII 部  
第 35A 條Part VII  
Section 35A7-26  
Cap. 57**35A. 過渡性條文**

在緊接《1996 年僱傭 (修訂) 條例》(1996 年第 60 號) 生效日期  
\* 前有效的第 35 條，須繼續適用於計算根據第 33 條須就僱員  
在該生效日期前所放的病假日而付給僱員的病假津貼。

(由 1996 年第 60 號第 3 條增補)

編輯附註：

\* 生效日期：1996 年 11 月 1 日。

**36. 疾病津貼的支付日期**

- (1) 除非僱員通常是按日獲付給工資的，否則僱主最遲須在僱員下次獲付給工資之日按第 26 條所指明的方式及地點，將疾病津貼付給該僱員或其妥為指定的代理人。
- (2) 如僱員通常是按日獲付給工資的，則僱主須按第 26 條所指明的方式及地點，每 7 天最少須付給該僱員或其妥為指定的代理人 1 次疾病津貼。
- (3) 凡僱員的僱傭合約遭終止，根據第 33(4C) 條須支付的疾病津貼，須按照第 (1) 或 (2) 款的規定 (視乎何者適用於

- (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

該僱員而定)付給僱員，猶如僱傭合約未予終止一樣。(由 1984 年第 48 號第 16 條增補)

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. 僱主備存病假日紀錄的規定

- (1) 每名僱主須備存一份載有以下資料的紀錄——
- 每名僱員僱傭的開始及終止日期；
  - 每名僱員根據第 33 條所累積的全部有薪病假日數，記錄形式須按照第 (1A) 款所規定者；
  - 每名僱員所放根據第 33 條是可獲發給疾病津貼的全部有薪病假日數，而該等日數須按照第 (1B) 款予以扣除；及
  - 每名僱員所獲付給的全部疾病津貼，及已獲付給疾病津貼的病假日。(由 1983 年第 57 號第 6 條代替)

- (1A) 為施行第 (1)(b) 款而備存的紀錄，須載有以下項目及細則——

第 1 類： 記入僱員在以下情況所累積的有薪病假日數——

- 根據第 33(2A) 條所累積者；及
- 根據第 33(2) 條按月所累積者，

但在記入時，本類的有薪病假日總數不得超過 36 天；及

### 37. Employer to keep record of sickness days

- (1) Every employer shall keep a record—
- of the date of commencement and termination of the employment of each employee;
  - in accordance with subsection (1A), of all paid sickness days accumulated by each employee under section 33;
  - 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
  - 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—

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

第 2 類： 記入超過 36 天而未能記入第 1 類的有薪病假日數，但在記入時，本類的有薪病假日總數不得超過 84 天，

而凡在本條內提述第 1 類及第 2 類，須分別解釋為在本款內提述第 1 類及第 2 類。(由 1983 年第 57 號第 6 條增補)

- (1B) 僱員連續放的有薪病假日數須從該僱員在緊接該等病假日開始前所累積的第 1 類有薪病假日總數中扣除；凡所放的有薪病假日數超過第 1 類有薪病假日總數，則超出的有薪病假日數須從該僱員在緊接該等病假日開始前所累積的第 2 類有薪病假日總數中扣除。(由 1983 年第 57 號第 6 條增補)
- (2) 如僱主有根據第 (1) 款保存病假紀錄 ——
- (a) 則病假日過後復工的僱員，須在切實可行範圍內盡快(但不得遲於他復工後 7 天)在紀錄內指明其曾經缺勤日子的記項上簽署；
- (b) 僱員有權在工作時間內的任何合理時間，查閱病假紀錄中與他有關的部分；凡僱員被其僱主停止僱用，則他可在其被停止僱用之日起計 2 個月內在工作時間內的任何合理時間，查閱病假紀錄中與他有關的部分。
- (3) 如僱主未有根據第 (1) 款保存有關其僱員的病假紀錄，或如病假紀錄遭遺失或毀壞，則即使僱員已根據第 33 條獲僱主付給疾病津貼，仍有權按照第 33 條的規定，就其每受僱滿一個月而享有有薪病假日。(由 1983 年第 57 號第 6 條修訂)

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

**38. 向處長出示病假紀錄的規定**

為施行第 37 條，處長可藉掛號郵遞方式送達通知書，或藉憲報公告，要求任何僱主或任何類別僱主向其呈交通知書或公告日期前兩年內任何期間的全部或任何病假日紀錄。

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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.

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**第 VIII 部****有薪假日**

(第 VIII 部由 1973 年第 39 號第 5 條增補。格式變更——2012 年第 2 號編輯修訂紀錄)

**39. 假日的給予**

- (1) 除第 (1A)、(2) 及 (3) 款另有規定外，僱員須在以下日子獲僱主給予法定假日 \* —— (由 1997 年第 137 號第 3 條修訂)
- (a) 農曆年初一；如該日適逢星期日，則為農曆年初四；  
(由 1982 年第 27 號第 2 條修訂；由 2011 年第 23 號第 5 條修訂)
- (b) 農曆年初二；如該日適逢星期日，則為農曆年初四；  
(由 2011 年第 23 號第 5 條修訂)
- (c) 農曆年初三；如該日適逢星期日，則為農曆年初四；  
(由 2011 年第 23 號第 5 條修訂)
- (d) 清明節；
- (da) 勞動節，即 5 月 1 日；(由 1997 年第 100 號第 2 條增補。由 1998 年第 35 號第 5 條修訂)
- (e) 端午節；
- (f) 中秋節翌日，如該日適逢星期日，則為中秋節後第二日；(由 1982 年第 27 號第 2 條修訂；由 2011 年第 23 號第 5 條修訂)
- (g) 重陽節；
- (h) 冬節或聖誕節 (由僱主選擇)；
- (i) 1 月 1 日；(由 1976 年第 53 號第 2 條代替)

**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;



- (j) 香港特別行政區成立紀念日，即 7 月 1 日；及（由 1997 年第 137 號第 3 條增補。由 1998 年第 35 號第 5 條修訂）
- (k) 國慶日，即 10 月 1 日。（由 1997 年第 137 號第 3 條增補。由 1998 年第 35 號第 5 條修訂）
- (1A) 第 (1)(da) 款在 1998 年暫停實施。（由 1997 年第 137 號第 3 條增補）
- (2) 僱主可另選一日（該日並非法定假日或代替假日）作為另定假日，以代替在法定假日給予僱員假日，而該另定假日是在緊接該法定假日前後 60 天期間內者；惟僱主須口頭或書面通知其僱員，或在僱傭地點顯眼處張貼有關他將會給予該另定假日的通知——
- (a) 凡另定假日是在緊接該法定假日前 60 天期間內者，則僱主須於該另定假日最少 48 小時前作出或張貼上述通知；或
- (b) 凡另定假日是在緊接法定假日後 60 天期間內者，則僱主須於該法定假日最少 48 小時前作出或張貼上述通知。
- (2A) 第 (2) 款適用於第 (4) 款所指的假日並就第 (4) 款所指的假日而適用，一如該款適用於法定假日並就法定假日而適用。（由 1997 年第 137 號第 3 條增補）
- (3) 僱主與僱員可議定以另一日代替某一法定假日或另定假日或第 (4) 款所指假日的日子，惟該代替假日須在該法定假日、另定假日或第 (4) 款所指假日前後 30 天期間內者。（由 1982 年第 27 號第 2 條修訂）
- (4) 凡——
- (a) 法定假日適逢休息日，或如屬青年僱員，該假日適逢憑藉《僱用青年（工業）規例》（第 57 章，附屬法例 C）不准在工業經營中僱用該僱員的日期，則該僱員須獲給予的假日是該日的翌日，惟該翌日須並非

- (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)*

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法定假日、另定假日、代替假日或休息日；或（由 2001 年第 7 號第 9 條修訂）

- (b) 法定假日適逢另一法定假日，則僱員須獲給予的假日是該假日後首個並非法定假日、另定假日、代替假日或休息日的日子。（由 1997 年第 137 號第 3 條代替）

#(5)-(9)（由 1997 年第 137 號第 3 條廢除）

（由 1976 年第 53 號第 2 條修訂；由 1997 年第 137 號第 3 條修訂）

編輯附註：

\* 有關 1981、1986、1997 及 2015 年的額外法定假期，參閱 1981 年第 39 號、1986 年第 35 號、1997 年第 84 號、1997 年第 111 號第 2(1) 條及 2015 年第 9 號第 2(b) 條。

# 請參閱 1997 年第 137 號第 6 條的保留條文。

#### 40. 假日薪酬的支付

除第 12(11) 條另有規定外，如僱員在緊接法定假日之前根據

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- (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

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連續性合約受其僱主僱用滿 3 個月，則他須最遲於該假日後的第一個發薪日，獲其僱主按第 41 條所指明的薪酬額付給假日薪酬，不論該僱員是在法定假日、另定假日、代替假日或根據第 39(4) 條所指的假日休假。

(由 1976 年第 53 號第 3 條修訂；由 1976 年第 71 號第 6 條修訂；  
由 1984 年第 48 號第 17 條修訂)

#### 40A. 以薪酬代替假日的限制

- (1) 除第 (2) 款另有規定外，不得以付給根據第 40 條須付的假日薪酬或其他款項代替給假。
- (2) 儘管有第 (1) 款的規定，凡僱員的僱傭合約遭終止，而在該僱傭合約終止前根據第 39(2)、(2A) 或 (3) 條獲給予的另定假日或代替假日，在該合約終止後方到期，則該等假日的假日薪酬須在切實可行範圍內盡快付給僱員，但在任何情況下不得遲於合約終止後 7 天；該假日薪酬須按照第 41 條計算，猶如該僱傭合約未予終止一樣。(由 1997 年第 137 號第 4 條修訂；由 2007 年第 7 號第 11 條修訂)

(由 1984 年第 48 號第 18 條增補)

#### 41. 假日薪酬額

- (1) 就第 (2)、(3) 及 (4) 款而言，**工資** (wages) 包括僱主就一個以下日子支付的款項——
  - (a) 僱員放取的產假、侍產假、休息日、病假日、假日或年假；(由 2014 年第 21 號第 11 條修訂)
  - (b) 僱員在僱主同意下放取的假期；

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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)

- (c) 僱員不獲僱主提供工作的正常工作日；
- (d) 僱員因暫時喪失工作能力而缺勤的日子，而根據《僱員補償條例》(第 282 章)第 10 條僱員是會就該日子獲付補償的。
- (2) 每日假日薪酬額為一筆相等於僱員在以下期間內所賺取的工資的每日平均款額的款項——
- (a) 在緊接假日或假日首天(視乎何者適用而定)之前的 12 個月期間；或
- (b) 如僱員在緊接假日或假日首天(視乎何者適用而定)之前受僱於有關僱主一段短於 12 個月的期間，則該段較短的期間。
- (3) 在計算僱員在該 12 個月或較短的期間內所賺取的工資的每日平均款額時——
- (a) 僱員在當中由於——
- (i) 放取任何產假、侍产假、休息日、病假日、假日或年假；(由 2014 年第 21 號第 11 條修訂)
- (ii) 在僱主同意下放取任何假期；
- (iii) 在任何正常工作日不獲其僱主提供工作；或
- (iv) 暫時喪失工作能力以致缺勤，而就此僱員根據《僱員補償條例》(第 282 章)第 10 條會獲付補償，因而未獲付給工資或全部工資的期間；以及
- (b) 就 (a) 段提述的期間付給僱員的任何工資，均不計算在內。
- (4) 為免生疑問，如僱員就第 (1) 款指明的某個日子獲付給的工資的數額，僅是僱員在正常工作日所賺取的數額的一個分數，則該工資以及該日子須按照第 (3) 款不予計算在內。
- (5) 儘管有第 (2) 款的規定，如因任何理由以該款規定的方式計算某僱員所賺取的工資的每日平均款額並不切實可行，

- (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

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則可參考受僱於同一僱主從事同樣工作的人在緊接該僱員的假日或假日首天(視乎何者適用而定)之前的 12 個月期間內所賺取的工資或(如無上述的人)受僱於同一地區的同一年業或職業從事同樣工作的人在緊接該僱員的假日或假日首天(視乎何者適用而定)之前的 12 個月期間內所賺取的工資計算該款額。

- (6) 如依據僱傭合約或任何其他協議的條款或因任何理由，某僱員已就他所放取的假日獲僱主支付一筆款項，則須從須就該假日付給該僱員的假日薪酬中扣除該筆款項。

*(由 2007 年第 7 號第 12 條代替)*

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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)*

**第 VIII A 部****有薪年假**

(第 VIII A 部由 1977 年第 53 號第 3 條增補。格式變更——2015 年第 3 號編輯修訂紀錄)

**41A. 定義 (第 VIII A 部)**

在本部中，就僱員而言——

**假定假期薪酬** (notional leave pay) 指一筆款項，款額相等於以下情況本應到期付給僱員的年假薪酬，即假若僱員的僱傭合約在真正終止後隨着而至的適用日週年當日終止或遭終止，並假若該年假薪酬是按照第 41C 條而計算；(由 2007 年第 7 號第 13 條修訂)

**假期年** (leave year)，除文意另有所指外，指任何 12 個月的期間——(由 1993 年第 61 號第 6 條修訂)

- (a) 開始日期——
- (i) 對根據第 41F(3) 條獲享有年假權利的僱員而言，即與引致該權利有關的停業的第一天；或
  - (ii) 對任何其他僱員而言，即其僱傭開始之日；或
- (b) 由上述日期的周年日開始；

**最終僱傭期** (final employment period) 指由適用日起至僱員僱傭合約終止為止的一段期間；

**適用日** (appropriate day) ——

- (a) 對根據第 41F(3) 條獲享有任何年假權利的僱員而言，指與引致該權利有關的停業的第一天；或如僱員在任何 12 個月期間享有該權利多過一次，則指較近或最近一次 (視乎何者適用而定) 有關停業的第一天；或
- (b) 對未有如上述般獲享有年假權利的僱員而言——

**Part VIII A****Annual Leave with Pay**

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

**41A. Definitions (Part VIII A)**

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

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- (i) 指僱員最後一個(或唯一)假期年終結後的翌日；或
- (ii) 如無假期年，則指其僱傭開始之日。
- (由 1990 年第 53 號第 2 條代替)

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. 年假

- (1) 在符合本部的規定下，根據連續性合約受僱不少於 12 個月的僱員，有權就每一個假期年享有按照第 (2) 款計算的有薪假期(本部內稱為**年假**)。
- (2) 凡僱員根據連續性合約受僱一段本條對照表第 (1) 欄所指明的期間，則該僱員有權就該期間內任何假期年享有的年假日數，即為對照表第 (2) 欄就該期間指明的日數。
- (3) 除第 (5)(c) 款另有規定外，所給予的年假時間，由僱主經徵詢有關僱員或其代表後決定。
- (4) 僱主須就其決定給予年假的時間向僱員給予不少於 14 天的書面通知，但如僱主與僱員雙方議定較短的通知期，則不在此限。
- (5) 僱員有權享有的年假——
  - (a) 須在緊接着與年假有關的假期年屆滿後 12 個月內由僱主給予並由僱員放取；
  - (b) 除 (c) 段另有規定外，須為一段不間斷的期間；及

#### 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

- (c) 除第 (9) 款另有規定外，如僱員向僱主提出要求，須作如下劃分——
- (i) 如有權享有的年假不超過 10 天，給予的年假須為連續日子，但如該段年假不超過 3 天，則可在任何日子給予（不論是否連續日子）；及
  - (ii) 如有權享有的年假超過 10 天，該段年假中有 7 天須為連續日子，而其餘的年假可在任何日子給予（不論是否連續日子）。
- (6) 凡按照本條給予的年假期間內適逢有休息日或假日，該日須當作年假計算，並按照第 18(5) 條或第 39(2)、(2A)、(3) 或 (4) 條（視乎情況需要而定）以另一休息日或假日代替。（由 1997 年第 137 號第 5 條修訂）
- (7) 年假期間內由於疾病或損傷以致完全喪失工作能力的期間，不得計算為年假的一部分，除非該期間在年假期間開始後方開始。
- (8) 凡——
- (a) 僱主在本應給予僱員年假的期間內未有給予該假期，而在該期間屆滿後，繼續僱用該僱員，則在符合 (b) 段的規定並在僱員選擇下，僱主（不論曾否就第 63(4)(e) 條所訂罪行採取法律程序）——
    - (i) 除到期付給僱員的任何薪酬外，須另付給他一筆補償，款額相等於假若該僱員獲給予年假，而年假在應給予年假的期間屆滿時終結，該僱員本會收取的年假薪酬；或
    - (ii) 須給予僱員相等於本應給予假期的有薪假期；
  - (b) 僱員根據 (a) 段選擇放有薪假期，他須在與僱主雙方協議的日子放假，或如未有協議者，則由僱主指明放假的日子。
- (9) 凡——
- (a) 僱主為給予其任何僱員年假而提議停止其業務或部分業務；及

- 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—



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Section 41AA8A-8  
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- (b) 已根據第 41F 條就所提議的停業妥為發出通知；及
- (c) 該次停業不會導致在該業務中根據連續性合約受僱 12 個月或以上的人須放較以下連續日數更少的年假——
- (i) 如其有權享有的假期不超過 10 天，則為根據第 (5)(c)(i) 款劃分而必須給予連續假期的日數；
- (ii) 如其有權享有的假期超過 10 天，則為 7 天，
- 則本條並不阻止或限制、或解釋為阻止或限制停業。
- (10) 為免生疑問，特此聲明：年假是僱員在根據本條例有權享有的休息日、假日、產假及侍產假以外另獲給予或須獲給予的假期。(由 2014 年第 21 號第 12 條修訂)

對照表

| (1)<br>僱傭期         | (2)<br>在以下年份內終結的假期年的年假日數                        |              |              |              |                         |
|--------------------|---|--------------|--------------|--------------|-------------------------|
|                    | 在 1990 年<br>本表生效時<br>起至同年 12<br>月 31 日止<br>的部分內 | 在 1991<br>年內 | 在 1992<br>年內 | 在 1993<br>年內 | 在 1994<br>年或其後任何<br>年份內 |
| 最少 1 年但在 3 年<br>以下 | 7   | 7            | 7            | 7            | 7                       |
| 最少 3 年但在 4 年<br>以下 | 8   | 8            | 8            | 8            | 8                       |
| 最少 4 年但在 5 年<br>以下 | 9   | 9            | 9            | 9            | 9                       |
| 最少 5 年但在 6 年<br>以下 | 10  | 10           | 10           | 10           | 10                      |

- (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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第 41AA 條Part VIII A  
Section 41AA8A-10  
Cap. 57

| (1)<br><br>僱傭期     | (2)<br>在以下年份內終結的假期年的年假日數                        |              |              |              |                             |
|--------------------|---|--------------|--------------|--------------|-----------------------------|
|                    | 在 1990 年<br>本表生效時<br>起至同年 12<br>月 31 日止<br>的部分內 | 在 1991<br>年內 | 在 1992<br>年內 | 在 1993<br>年內 | 在 1994<br>年或其<br>後任何<br>年份內 |
| 最少 6 年但在 7 年<br>以下 | 10  | 11           | 11           | 11           | 11                          |
| 最少 7 年但在 8 年<br>以下 | 10  | 11           | 12           | 12           | 12                          |
| 最少 8 年但在 9 年<br>以下 | 10  | 11           | 12           | 13           | 13                          |
| 最少 9 年             | 10  | 11           | 12           | 13           | 14                          |

(由 1990 年第 53 號第 2 條增補)

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

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第 41AB 條Part VIII A  
Section 41AB8A-12  
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| (1)<br><br>Period of<br>employment        | (2)<br>Number of days' annual leave for a leave year<br>ending—  |         |         |         |  |
|---|--|---------|---------|---------|--|
|   | in the part<br>of 1990<br>beginning<br>on the<br>coming into<br>operation of<br>this Table<br>and ending<br>on the<br>following 31<br>December | in 1991 | in 1992 | in 1993 | in 1994<br>or in any<br>subsequent<br>year |
| At least 4 years but<br>less than 5 years | 9  | 9       | 9       | 9       | 9  |
| At least 5 years but<br>less than 6 years | 10   | 10      | 10      | 10      | 10   |
| At least 6 years but<br>less than 7 years | 10   | 11      | 11      | 11      | 11   |
| At least 7 years but<br>less than 8 years | 10   | 11      | 12      | 12      | 12   |
| At least 8 years but<br>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. 共同假期年的選擇**

(1) 即使本部另有規定，僱主可選擇決定採用一段由他所定

**41AB. Option for common leave year**

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

- 的 12 個月期間作為假期年，以計算他所有僱員的年假，在此情況下，他每一名僱員有權根據本部享有按照本條決定的年假。
- (2) 僱主在根據本條作出決定前，須——
- (a) 以書面給予他每一名僱員 1 個月通知；或
- (b) 在僱傭地點顯眼處張貼通知，以給予 1 個月通知，述明他欲作出決定的意向，他擬決定採用的 12 個月期間及他將會開始採用該段期間的日期。
- (3) 凡僱主根據本條作出決定，他須從那時起採用該 12 個月期間為假期年，以計算他所有僱員有權享有的年假，及如僱員並未曾根據連續性合約在假期年的整段期間受僱——
- (a) 僱主須根據僱員開始受僱當日與假期年終結之間的公曆日日數，除以 365，以按比例基準計算該僱員有權享有的年假，因該計算而產生的一日的部分，須算為一整日的假期；及
- (b) 僱員可選擇——
- (i) 在諮詢僱主後，放 (a) 段所提述的比例有權享有的年假；或
- (ii) 將該年假轉入下一年，與下一整年的假期年有權享有的年假合併。
- (4) 凡僱員在僱主開始採用 12 個月期間以根據本條計算他所有僱員的年假之日已經受僱——
- (a) 該僱員有權享有的年假，根據他開始受僱之日（或該日的周年日，視屬何情況而定）與僱主開始根據本條採用 12 個月期間之日的前 1 日之間的公曆日日數，除以 365，按比例基準計算，因該計算而產生的 1 日的部分，須算為一整日的假期；及
- (b) 僱員可選擇——

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.

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第 57 章第 VIII A 部  
第 41B 條Part VIII A  
Section 41B8A-16  
Cap. 57

- (i) 在諮詢僱主後，放 (a) 段所提述的按比例有權享有的年假；或
- (ii) 將該年假轉入下一年，與按照本條計算的第一個完整假期年的有權享有的年假合併。
- (5) 凡第 41F 條適用於已根據本條作出決定的僱主——
- (a) 則所給予的年假，是關乎緊接停業的期間之前的假期年的；及
- (b) 第 41F(3) 至 (6) 條不適用於有權享有的年假的計算。
- (由 1993 年第 61 號第 7 條增補)*

- (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. 年假薪酬的支付**

凡僱員獲給予任何一段期間的年假，僱主最遲須於該段期間後的第一個發薪日付給該僱員該段期間的年假薪酬。

**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

**41C. 年假薪酬額**

- (1) 就第(2)、(3)及(4)款而言，**工資** (wages) 包括僱主就一個以下日子支付的款項——
- 僱員放取的產假、侍產假、休息日、病假日、假日或年假；(由 2014 年第 21 號第 13 條修訂)
  - 僱員在僱主同意下放取的假期；
  - 僱員不獲僱主提供工作的正常工作日；
  - 僱員因暫時喪失工作能力而缺勤的日子，而根據《僱員補償條例》(第 282 章)第 10 條僱員是會就該日子獲付補償的。
- (2) 每日年假薪酬額為一筆相等於僱員在以下期間內所賺取的工資的每日平均款額的款項——
- 在緊接年假、年假首天或僱傭合約終止日期(視乎何者適用而定)之前的 12 個月期間；或
  - 如僱員在緊接年假、年假首天或該合約終止日期(視乎何者適用而定)之前受僱於有關僱主一段短於 12 個月的期間，則該段較短的期間。
- (3) 在計算僱員在該 12 個月或較短的期間內所賺取的工資的每日平均款額時——
- 僱員在當中由於——
    - 放取任何產假、侍產假、休息日、病假日、假日或年假；(由 2014 年第 21 號第 13 條修訂)
    - 在僱主同意下放取任何假期；
    - 在任何正常工作日不獲其僱主提供工作；或
    - 暫時喪失工作能力以致缺勤，而就此僱員根據《僱員補償條例》(第 282 章)第 10 條會獲付補償，

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 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*)
  - a day of leave taken by the employee with the agreement of his employer;
  - a normal working day on which the employee is not provided with work;
  - 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—
- 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
  - 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—

因而未獲付給工資或全部工資的期間；以及

- (b) 就 (a) 段提述的期間付給僱員的任何工資，均不計算在內。
- (4) 為免生疑問，如僱員就第 (1) 款指明的某個日子獲付給的工資的數額，僅是僱員在正常工作日所賺取的數額的一個分數，則該工資以及該日子須按照第 (3) 款不予計算在內。
- (5) 儘管有第 (2) 款的規定，如因任何理由以該款規定的方式計算某僱員所賺取的工資的每日平均款額並不切實可行，則可參考受僱於同一僱主從事同樣工作的人在緊接該僱員的年假、年假首天或僱傭合約終止日期（視乎何者適用而定）之前的 12 個月期間內所賺取的工資或（如無上述的人）受僱於同一地區的同一年業或職業從事同樣工作的人在緊接該僱員的年假、年假首天或僱傭合約終止日期（視乎何者適用而定）之前的 12 個月期間內所賺取的工資計算該款額。
- (6) 如依據僱傭合約或任何其他協議的條款或因任何理由，某僱員已就他所放取的年假獲僱主支付一筆款項，則須從須就該年假付給該僱員的年假薪酬中扣除該筆款項。

*(由 2007 年第 7 號第 14 條代替)*

- (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

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第 57 章第 VIII A 部  
第 41D 條Part VIII A  
Section 41D8A-22  
Cap. 57**41D. 僱傭停止時年假薪酬的支付**

(1) 凡 ——

- (a) 僱員停止受僱；及
- (b) 到期獲給予年假，

則以前僱用他的人，須在切實可行範圍內盡快，但在任何情況下不得遲於僱傭停止後 7 天，向他付給年假補償金，款額相等於假若該僱員緊接僱傭停止後即獲給予應享假期時本應收取的年假薪酬。

(2) 凡 ——

- (a) 僱員停止受僱；
- (b) 該僱員並非在其假期年屆滿時停止受僱；
- (c) 其僱傭合約並非根據第 9 條而是因任何理由（包括辭職）而告終止或遭終止；及
- (d) 於適用日後最少 3 個月才終止合約，

則以前僱用他的人，須在切實可行範圍內盡快，但在任何情況下不得遲於合約終止後 7 天，除向他付給根據第 (1) 款到期支付的款項外，另付給一筆款項，其款額在假定假期薪酬中所佔比率，與最終僱傭期的日數於 365 天中所佔比率相同。

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,



8A-23  
第 57 章第 VIII A 部  
第 41E 條Part VIII A  
Section 41E8A-24  
Cap. 57*(由 1990 年第 53 號第 3 條代替)***41E. 以薪酬代替假期的限制**

- (1) 除第 41AA(8)(a) 及 41D 條及第 (2) 款另有規定外，凡僱員有權享有年假，其僱主不得向其付給報酬，作為代替僱員放全部或部分年假。
- (2) 凡僱員就某一假期年有權享有超過 10 天年假，他可以不放部分年假而工作，但該工作日數不得多於該年假超出 10 天之數，且如僱員同意，僱員就任何該等日子須獲付給的款額不得少於以下合計總數——
  - (a) 他就該日的工作期所應收取的工資；及
  - (b) 假若他於該日獲給予假期本應收取的年假薪酬。

*(由 1990 年第 53 號第 3 條代替)***41EA. 禁止將某些條文列入僱傭合約的規定**

任何人不得將任何看來對第 41E(2) 條條文適用於僱員方面有任何影響的條款或條件，列入僱傭合約，而任何該等條款或條件，如列入僱傭合約，均屬無效。

*(由 1990 年第 53 號第 3 條增補)*

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,

**41F. 年假歇業**

- (1) 僱主如為給予其任何僱員年假而擬停業或停止部分業務，須於一個月前將其意向以書面通知所有因而須在停業期間放年假或以其他方式停止工作的僱員。
- (2) 如僱主於停業期開始前不遲於一個月，在僱傭地點顯眼處展示停業通告，載明所有因此而須放年假或以其他方式停止工作的僱員姓名，或以能清楚辨別該等僱員的描述或其他細節代替姓名，則第 (1) 款的條文須當作已獲遵從。
- (3) 任何人如在因第 (1) 款所指明目的而停業或停止部分業務的期間開始時已成為僱員，而該人若非因該次停業則無權獲得該段期間內任何一天的年假薪酬者，則就始於適用日而止於停業首天之前一天的期間，須有權享有按照第 (4) 款計算的年假。(由 1990 年第 53 號第 4 條修訂)
- (4) 僱員根據第 (3) 款有權享有的年假日數，須釐定如下——
  - (a) 須採用以下程式計算

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

而——

- A 即始於有關日期而止於停業首天之前一天並引起享有年假權利的期間的日數；及
- B 即假若有關業務並無停業（或部分停業），又假若僱員根據連續性合約由有關日期起計受僱 12 個月，該僱員根據本條例本應有權享有的年假；

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

- (b) 凡所得之數並非整數，不足 1 天之數作 1 天計算；及
- (c) (i) 如所得之數，或於適當情況下將不足 1 天之數作 1 天計算後所得之數（該所得之數於本條內稱為**計算所得日數**）相等於或少於有關停業期內日數，該等日子的任何一日，除第 (3) 款的規定外，並不屬僱員有權享有年假的日子（該等日子在本條內稱為**有關停業日子**），則年假日數相等於有關停業日子的數目；或
- (ii) 如計算所得日數超逾有關停業日子的數目，則年假日數相等於計算所得日數。（由 1990 年第 53 號第 4 條增補）
- (5) 凡僱員根據第 (3) 款有權享有年假，而該等年假超過有關停業日子，除非僱員與其僱主另有協議，否則僱主須在有關停業最後一天的下一個工作日起計的一段不中斷期間，給予剩餘年假而由僱員放假，或如剩餘年假僅得一天，則該一天須在該工作日給予而由僱員在該日放假。（由 1990 年第 53 號第 4 條增補）
- (6) 為免生疑問，特此聲明：就本條例而言，凡僱員根據第 (3) 款有權享有年假，不得僅以有享有年假權利為理由將任何期間視為一個假期年。（由 1990 年第 53 號第 4 條增補）
- (7) 在本條內，**有關日期** (the relevant day) 就僱員而言 ——
- (a) 如僱員先前根據第 (3) 款在緊接前一段 12 個月期間內有權享有任何年假，指引起享有年假權利的停業的首天，或如僱員在該 12 個月期間內有權享有年假多過一次，則指較近或最近一次（視乎何者適用而定）停業的首天；或
- (b) 在其他情況下 ——
- (i) 指僱員最後一個（或唯一）假期年終結後的翌日；或

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

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*)

8A-29  
第 57 章第 VIII A 部  
第 41G 條Part VIII A  
Section 41G8A-30  
Cap. 57

- (ii) 如無該假期年，指僱員僱傭開始之日。(由 1990 年第 53 號第 4 條增補)

- (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. 僱主備存年假紀錄的規定

僱主須備存一份載有以下資料的紀錄——

#### 41G. Employer to keep annual leave records

Every employer shall keep a record of—

8A-31  
第 57 章

第 VIII A 部  
第 41G 條

Part VIII A  
Section 41G

8A-32  
Cap. 57

- 
- (a) (i) 每名僱員僱傭的開始及終止日期；  
(ii) 每名僱員所放每段年假期間的開始及終止日期；及  
(iii) 僱主為給予其任何僱員年假而停業或停止部分業務的每段期間的開始及終止日期；及  
(b) 每名僱員收取的全部年假薪酬。
- 

- 
- (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.
-

**第 IX 部****有關疾病津貼、有薪假日及有薪年假的附帶條文**

(第 IX 部由 1973 年第 39 號第 5 條增補。格式變更——2015 年第 3 號  
編輯修訂紀錄)

(由 1977 年第 53 號第 4 條修訂)

42. (由 2007 年第 7 號第 15 條廢除)

43. 在破產等情況下假日薪酬等的支付

就《破產條例》(第 6 章)第 38 條及《公司(清盤及雜項條文)條例》(第 32 章)第 265 條而言，凡僱員有權獲得的任何假日薪酬、年假薪酬、年終酬金或部分年終酬金、產假薪酬、侍產假薪酬或疾病津貼，不論該僱員何時享有該權利，須當作是上述第 38 條或第 265 條或《公司(清盤及雜項條文)條例》(第 32 章)第 79 條(視屬何情況而定)所訂明的有關期間內所提供服務的工資。

(由 1977 年第 53 號第 6 條修訂；由 1981 年第 22 號第 10 條修訂；由 1984 年第 48 號第 21 條修訂；由 2012 年第 28 號第 912 及 920 條修訂；由 2014 年第 21 號第 14 條修訂)

**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)

**第 IXA 部****支付次承判商及指定次承判商僱員工資的法律責任**

(第 IXA 部由 1977 年第 54 號第 2 條增補。格式變更——2017 年第 3 號編輯修訂紀錄)

**釋義及適用範圍****43A. 釋義**

(1) 在本部中，除文意另有所指外——

**工作** (work) 指——

- (a) 建築工程；及
- (b) 為建築工程或為與建築工程有關事宜而提供體力勞工；

**主要指定次承判商** (main nominated sub-contractor) 指直接與總承判商訂立合約 (不論是明訂或隱含的) 以進行該總承判商已立約進行的全部或部分工作的指定次承判商；

**次承判商** (sub-contractor) 指以下任何人士，但不包括指定次承判商——

- (a) 任何與總承判商訂立合約 (不論是明訂或隱含的) 以進行該總承判商已立約進行的全部或部分工作的人；及
- (b) 任何訂立合約 (不論是明訂或隱含的) 以進行 (a) 段所指的次承判商已立約進行的全部或部分工作的其他人；

**建築工程** (building works) 指以下各項的全部或部分的建造、地盤平整、重建、維修 (包括重修及外部清潔)、修葺、改動或拆卸，以及任何與此等建築工程有關的安裝工程——

**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

- (a) 任何建築物、船塢、碼頭、橋樑、高架道或其他構築物；或
- (b) 任何海港或港口工程、填海工程、道路、隧道、下水道、排水渠、井或水務設施；

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

- (a) 由物業擁有人或佔用人，或該擁有人或佔用人的代理人或核准建築師、測量師或土木、城市或結構工程師指定的下列人士 ——
  - (i) 與總承判商訂立合約 (不論是否明訂或隱含的) 以進行該總承判商已立約進行的全部或部分工作的人；或
  - (ii) 訂立合約 (不論是否明訂或隱含的) 以進行第 (i) 節所提述的人已立約進行的全部或部分工作的人；及
- (b) 凡其後訂立合約 (不論是否明訂或隱含的) 以進行本定義 (a) 段所指的指定次承判商所同意進行的全部或部分工作的人；

**總承判商** (principal contractor) 指直接與物業擁有人或佔用人，或與該擁有人或佔用人的代理人或核准建築師、測量師或土木、城市或結構工程師訂立合約，以便為該擁有人或佔用人進行任何工作的人。

(編輯修訂 —— 2017 年第 3 號編輯修訂紀錄)

- (2) 就本部而言 ——
  - (a) 一名次承判商如將已立約進行的全部或部分工作轉判給另一名次承判商，則他便是該另一名次承判商的前判次承判商，不論該工作是否由該另一名次承判商進行，或由該另一名次承判商再轉判給他人；
  - (b) 一名指定次承判商如將已立約進行的全部或部分工作轉判給另一指定次承判商，則他便是該另一指定次承判商的前判指定次承判商，不論該工作是

- (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



9A-5  
第 57 章第 IXA 部  
第 43B 條Part IXA  
Section 43B9A-6  
Cap. 57

否由該另一名指定次承判商進行，或由該另一名指定次承判商再轉判給他人。

(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. 適用範圍

本部不適用於《1977 年僱傭 (修訂) (第 4 號) 條例》\*(1977 年第 54 號) 生效日期 \* 前，由總承判商、指定次承判商或次承判商所訂立的合約下的工作的工資。

編輯附註：

\* 生效日期：1977 年 11 月 1 日。

\* “《1977 年僱傭 (修訂) (第 4 號) 條例》” 乃 “Employment (Amendment) (No. 4) Ordinance 1977” 之譯名。

#### 次承判商僱員的工資

#### 43C. 總承判商與前判次承判商支付次承判商僱員工資的法律責任

(1) 在符合本部的規定下，如有任何工資到期支付給次承判商所僱用以從事已由其立約進行的工作的僱員，而該工

#### 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

資未於第 23、24 或 25 條 (視屬何情況而定) 所指明的期間內付給, 則該工資須由以下人士付給該僱員——

- (a) 如該次承判商已與總承判商訂立合約, 由總承判商付給; 及
  - (b) 如該次承判商已與前判次承判商訂立合約, 由總承判商及每名前判次承判商共同及各別付給。
- (2) 根據第 (1) 款總承判商承擔的法律責任, 以及總承判商與一名或多名前判次承判商共同及各別承擔的法律責任, 僅限於——
- (a) 僱員的工資, 而該僱員的僱傭完全是與總承判商已立約進行的工作有關, 且其僱傭地點完全是在建築工程所在地盤內; 及
  - (b) 該僱員到期應得的 2 個月工資而無須根據本條例扣除任何款項, 而此 2 個月須為該僱員到期應得工資的該段期間的首 2 個月。
- (3) 除第 (4) 款另有規定外, 根據第 (1) 款須付工資, 須由總承判商或前判次承判商 (視屬何情況而定) 於收到根據第 43D 條給予的通知書或該通知書當作已送達後的 30 天內付給。
- (4) 凡有關根據第 (1) 款須付工資的任何申索已向小額薪酬索償仲裁處或勞資審裁處提出, 且有判決或命令, 判令僱員得直, 則該等工資須於小額薪酬索償仲裁處或勞資審裁處指示的時間內付給; 如未有作出任何指示, 則須於作出判決或命令後不遲於 30 天付給。 (由 1994 年第 61 號第 53 條修訂)

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

**43D. 僱員向總承判商發出通知的規定**

- (1) 凡次承判商所僱用的僱員於第 23、24 或 25 條 (視屬何情況而定) 所指明的期間內未獲僱主付給工資，須於工資到期支付後 60 天內 (或處長所批准不超過 90 天的額外期間內)，向總承判商送達通知書，述明以下各項資料—— (由 1984 年第 48 號第 22 條修訂)
  - (a) 僱員姓名及地址；
  - (b) 僱主姓名及地址；
  - (c) 僱員僱傭地點的地址；
  - (d) 與到期支付的工資有關的工作詳情；及
  - (e) 到期支付的工資額及所涉及的期間。
- (2) 總承判商如接獲次承判商的僱員根據第 (1) 款所發通知書，須於收到通知書後 14 天內，將該通知書副本，分別送達他所知悉該次承判商的每名前判次承判商 (如有的話)。
- (3) 如次承判商的僱員未有根據第 (1) 款將通知書送達總承判商，則總承判商及前判次承判商 (如有的話) 均無須根據第 43C 條付給該僱員工資。
- (4) 任何總承判商如無合理辯解而不遵從第 (2) 款的規定，即屬犯罪，一經定罪，可處第 5 級罰款。(由 1988 年第 24 號第 2 條修訂；由 1995 年第 103 號第 14 及 26 條修訂)

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

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第 57 章第 IXA 部  
第 43E 條Part IXA  
Section 43E9A-12  
Cap. 57**43E. 僱主應僱員要求提供資料的規定**

- (1) 凡僱主身為次承判商，於第 23、24 或 25 條（視屬何情況而定）所指明的期間內，未有向其所僱用以從事其已立約進行的工作的僱員支付到期支付的工資，須於接獲該僱員書面要求 7 天內，將總承判商及每名前判次承判商的姓名、地址提供給該僱員，並於該 7 天期限內，將該份書面要求的副本，分送總承判商及每名前判次承判商。
- (2) 任何僱主如無合理辯解而不遵從第 (1) 款的規定，即屬犯罪，一經定罪，可處第 5 級罰款。（由 1988 年第 24 號第 2 條修訂；由 1995 年第 103 號第 15 及 26 條修訂）

**43F. 總承判商或前判次承判商對已付工資的追討**

- (1) 如總承判商或前判次承判商根據第 43C 條付給僱員工資，則該如此支付的工資即為該僱員的僱主欠下該總承判商或前判次承判商（視屬何情況而定）的債項。
- (2) 總承判商或前判次承判商如根據第 43C 條付給僱員工資，可按以下方式追討——
  - (a) 要求該僱員所事僱主的每名前判次承判商，或總承判商及其他每名前判次承判商（視屬何情況而定）分擔該等工資；或
  - (b) 從到期付給或可能到期付給任何次承判商的款項中扣除，以抵銷已付款項——
    - (i) 而該次承判商乃獲轉判其立約進行的全部或部分工作，而該工作是該僱員受僱從事者，且

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

(ii) 該款項乃為所轉判的工作而付給者。

(3) 就本條而言——

- (a) 由總承判商或前判次承判商根據第(2)(a)款以分擔方式支付的款額，或
- (b) 由總承判商或前判次承判商根據第(2)(b)款從他到期支付的款項中以抵銷方式扣除的款額，

須當作由以分擔方式支付該款額的總承判商或前判次承判商，或由以抵銷方式被扣除部分到期獲付的款項的前判次承判商，根據第 43C 條付給僱員的工資。

### 指定次承判商僱員的工資

#### 43G. 前判指定次承判商支付指定次承判商僱員工資的法律責任

- (1) 在符合本部的規定下，如有任何工資到期支付給指定次承判商所僱用以從事已由其立約進行的工作的僱員，而該工資未於第 23、24 或 25 條（視屬何情況而定）所指明的期間內付給，則該工資須由僱用該僱員的指定次承判商的每名前判指定次承判商共同及各別付給該僱員。（由 1996 年第 139 號法律公告修訂）
- (2) 根據第(1)款一名或多名前判指定次承判商共同及各別承擔的法律責任，僅限於——

(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.

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- (a) 僱員的工資，而該僱員的僱傭完全是與主要指定次承判商已立約進行的工作有關，不論僱傭地點是否在建築工程所在地盤內；及
- (b) 該僱員到期應得的 2 個月工資而無須根據本條例扣除任何款項，而此 2 個月須為該僱員到期應得工資的該段期間的首 2 個月。
- (3) 除第 (4) 款另有規定外，根據第 (1) 款須付工資，須由前判指定次承判商於收到根據第 43H 條給予的通知書或該通知書當作已送達後的 30 天內付給。
- (4) 凡有關根據第 (1) 款須付工資的任何申索已向小額薪酬索償仲裁處或勞資審裁處提出，且有判決或命令，判令僱員得直，則該等工資須於小額薪酬索償仲裁處或勞資審裁處指示的時間內付給；如未有作出任何指示，則須於作出判決或命令後不遲於 30 天付給。 (*由 1994 年第 61 號第 54 條修訂*)

**43H. 僱員向主要指定次承判商發出通知的規定**

- (1) 凡指定次承判商所僱用的僱員於第 23、24 或 25 條 (視屬何情況而定) 所指明的期間內未獲僱主付給工資，須於工資到期支付後 60 天內 (或處長所批准不超過 90 天的額外期間內)，向主要指定次承判商送達通知書，述明第 43D(1) 條所指明的各項詳情。 (*由 1984 年第 48 號第 23 條修訂*)

- (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)

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- (2) 主要指定次承判商如接獲指定次承判商的僱員根據第 (1) 款所發通知書，須於收到通知書後 14 天內，將該通知書副本，分別送達他所知悉該指定次承判商的每名前判指定次承判商（如有的話）。
- (3) 如指定次承判商的僱員未有根據第 (1) 款將通知書送達主要指定次承判商，則前判指定次承判商無須根據第 43G 條付給該僱員任何工資。
- (4) 任何主要指定次承判商如無合理辯解而不遵從第 (2) 款的規定，即屬犯罪，一經定罪，可處第 5 級罰款。（由 1988 年第 24 號第 2 條修訂；由 1995 年第 103 號第 16 及 26 條修訂）

**43I. 僱主應僱員要求提供資料的規定**

- (1) 凡僱主身為指定次承判商，於第 23、24 或 25 條（視屬何情況而定）所指明的期間內，未有向其所僱用以從事其已立約進行的工作的僱員支付到期支付的工資，須於接獲該僱員書面要求 7 天內，將主要指定次承判商及每名前判指定次承判商的姓名、地址提供給該僱員，並於該 7 天期限內，將該份書面要求的副本，分送主要指定次承判商及每名前判指定次承判商。
- (2) 任何僱主如無合理辯解而不遵從第 (1) 款的規定，即屬犯罪，一經定罪，可處第 5 級罰款。（由 1988 年第 24 號第 2 條修訂；由 1995 年第 103 號第 17 及 26 條修訂）

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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

**43J. 前判指定次承判商對已付工資的追討**

- (1) 如前判指定次承判商根據第 43G 條付給僱員工資，則該如此支付的工資即為該僱員的僱主欠下該前判指定次承判商的債項。
- (2) 前判指定次承判商如根據第 43G 條付給僱員工資，可按以下其中一種方式追討——
  - (a) 要求該僱員所事僱主的其他每名前判指定次承判商分擔該等工資；或
  - (b) 從到期付給或可能到期付給任何指定次承判商的款項中扣除，以抵銷已付款項——
    - (i) 而該指定次承判商乃獲轉判其立約進行的全部或部分工作，而該工作是該僱員受僱從事者；且
    - (ii) 該款項乃為所轉判的工作而付給者。
- (3) 就本條而言——
  - (a) 由前判指定次承判商根據第 (2)(a) 款以分擔方式支付的款額，或
  - (b) 由前判指定次承判商根據第 (2)(b) 款從他到期支付的款項中以抵銷方式扣除的款額，
 須當作由前判指定次承判商（即以分擔方式支付該款額，或以抵銷方式被扣除部分到期獲付的款項的前判指定次承判商）根據第 43G 條付給僱員工資。

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.



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## 一般條文

## General

**43K. 由總承判商、前判次承判商或前判指定次承判商支付工資後僱主的法律責任即告終止的規定**

凡由總承判商或前判次承判商根據第 43C 條付給僱員工資，或前判指定次承判商根據第 43G 條付給僱員工資，則除第 43F(1) 及 43J(1) 條另有規定外，僱主的法律責任即告終止。

**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. 通知書的送達**

- (1) 根據第 43D 或 43H 條分別送達總承判商或主要指定次承判商的通知書，或根據第 43E 或 43I 條送達僱主的要求，均可按以下方式送達——
- (a) 面交上述人士；
  - (b) 留在上述人士的通常地址、最後為人所知住址或營業地址；或
  - (c) 以掛號郵遞方式寄往上述人士 (b) 段所提述的任何地址。
- (2) 根據第 (1)(b) 款送達的通知書或要求，須當作在留於該處所之日送達。

**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. 僱員向僱主追討工資的權利不受影響的規定**

本部並不損害僱員直接向僱主追討其拖欠僱員工資的權利。

**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.

**第 IXB 部****僱主沒有支付任何根據勞資審裁處的裁斷或小額薪酬  
索償仲裁處的裁定須支付的款項的罪行**

(第 IXB 部由 2010 年第 9 號第 4 條增補。格式變更——2015 年第 3 號  
編輯修訂紀錄)

**43N. 第 IXB 部的釋義**

(1) 在本部中——

**主任** (registrar) 就審裁處而言，指勞資審裁處的司法常務主任  
或小額薪酬索償仲裁處的案務主任 (視屬何情況而定)；

**判令** (award) 指 (就勞資審裁處而言) 裁斷或 (就小額薪酬索  
償仲裁處而言) 裁定，並包括命令；

**指明權利** (specified entitlement) 指——

- (a) 根據第 23、24 或 25 條須支付的任何工資或任何其他款項，或根據第 25A 條須就該等工資或款項支付的利息；
- (b) 根據第 IIA 部須支付的任何年終酬金；
- (c) 根據第 III 部須支付的任何產假薪酬或款項；
- (ca) 根據第 IIIA 部須支付的任何侍產假薪酬；(由 2014 年第 21 號第 15 條增補)
- (d) 根據第 VA 部須支付的任何遣散費；
- (e) 根據第 VB 部須支付的任何長期服務金；
- (f) 根據第 VII 部須支付的任何疾病津貼或款項；
- (g) 根據第 VIII 部須支付的任何假日薪酬；
- (h) 根據第 VIIIA 部須支付的任何年假薪酬；
- (i) 就僱主根據本條例須給予僱員但沒有給予的休息日、產假、侍產假、假日或年假而須支付的任何款項，

**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;

但以該款項未被 (a)、(b)、(c)、(ca)、(d)、(e)、(f)、(g) 或 (h) 段所涵蓋的範圍為限；(由 2014 年第 21 號第 15 條修訂)

- (j) 根據第 32O 條須支付的任何終止僱傭金，但以下述範圍為限——
- (i) 該等終止僱傭金屬 (a)、(b)、(c)、(ca)、(d)、(e)、(f)、(g)、(h) 或 (i) 段提述的權利，而該等權利是僱員在其僱傭合約終止時有權享有的，或是僱員因其僱傭合約條款的不合理更改而憑藉第 32O(5) 條有權享有的；或 (由 2014 年第 21 號第 15 條修訂)
- (ii) 該等終止僱傭金是憑藉第 32M(2) 條判給的；(由 2018 年第 21 號第 9 條修訂)
- (k) 根據第 32P 條須支付的任何補償；或 (由 2018 年第 21 號第 9 條修訂)
- (l) 按根據第 32N 條作出的復職或再次聘用的命令 (如適用的話，指根據第 32PA 或 32PC 條更改者) 須支付的任何以下款項——
- (i) 第 32NA(1)(a)(i) 條所述的款項，但限於以下範圍：假若既無作出復職的命令，亦無作出再次聘用的命令的話，則該款項本會作為 (j) 段所指的權利而判給；
- (ii) 第 32NA(1)(a)(ii) 條所述的款項；
- (iii) 第 32NA(1)(b) 條所述的款項；(由 2018 年第 21 號第 9 條增補)

**審裁處** (tribunal) 指勞資審裁處或小額薪酬索償仲裁處。

- (2) 在本部中，凡提述審裁處的判令，即包括——
- (a) 根據《勞資審裁處條例》(第 25 章) 第 15(9) 條被視為勞資審裁處的裁斷的和解書；及

- (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)

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- (b) 根據《小額薪酬索償仲裁處條例》(第 453 章) 第 14(4) 條被視為小額薪酬索償仲裁處的裁定的和解書。
- (3) 在本部中，凡提述判令的日期，就第 (2) 款提述的和解書而言，即指——
- (a) 根據《勞資審裁處條例》(第 25 章) 第 15(8) 條向勞資審裁處提交和解書的日期；或
- (b) 根據《小額薪酬索償仲裁處條例》(第 453 章) 第 14(3) 條向小額薪酬索償仲裁處的案務主任提交和解書的日期。

**43O. 適用範圍**

- (1) 本部適用於在生效日期當日或之後作出的審裁處的判令。
- (2) 在本條中，\***生效日期** (commencement date) 指《2010 年僱傭 (修訂) 條例》(2010 年第 9 號) 開始實施的日期。

編輯附註：

\* 生效日期：2010 年 10 月 29 日。

**43P. 僱主沒有支付任何根據審裁處的判令須支付的款項的罪行**Part IXB  
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- 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) 如 ——
- (a) 某審裁處的判令 (全部或部分), 規定某僱主就任何指明權利, 作出付款 (不論是否在任何條件獲得符合後, 才須就該指明權利作出付款); 及 (由 2018 年第 21 號第 10 條修訂)
- (b) (i) 該僱主故意及無合理辯解而沒有在該判令的日期後 14 天內, 支付任何根據該判令須支付的款項 (第 (ii) 節適用的款項除外); 或
- (ii) 按該判令的條款, 任何根據該判令須支付的款項須在該判令的日期以外的日期支付, 但該僱主故意及無合理辯解而沒有在按該等條款須支付該筆款項的日期後 14 天內, 支付該筆款項, 該僱主即屬犯罪, 一經定罪, 可處罰款 \$350,000 及監禁 3 年。
- (2) 在第 (1)(b)(i) 或 (ii) 款中, 凡提述任何根據某判令須支付的款項 ——
- (a) 即包括根據該判令須支付的款項的任何部分; 及
- (b) 如屬以分期方式支付的款項, 則包括任何一期付款或某一期付款的部分。
- (3) 就第 (1) 款而言, 如 ——
- (a) 某審裁處的判令規定支付一筆款項, 但沒有顯示該筆款項是否包括任何指明權利; 及
- (b) 該判令所關乎的申索 (全部或部分) 由任何指明權利組成, 則除非有相反證據, 否則該判令須視為規定就指明權利作出付款。
- (4) 如有關判令是根據第 32N 條作出的復職或再次聘用的命令 (如適用的話, 指根據第 32PA 或 32PC 條更改者), 則第 (5) 款適用於該判令。在第 (5) 款中, 該命令 (如適用

- (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,

的話，指經上述般更改者)稱為**有關命令**。(由 2018 年第 21 號第 10 條增補)

- (5) 凡有關命令指明，僱主如沒有在該命令指明的日期或之前，按該命令指明的條款，將有關僱員復職或再次聘用有關僱員，便須在該命令指明的日期 (**指明付款日期**) 或之前，向該僱員支付一筆款項，則倘若該僱主沒有如此將該僱員復職或再次聘用該僱員，須為施行第 (1)(b)(ii) 款而按判令的條款支付該筆款項的日期，即為指明付款日期。(由 2018 年第 21 號第 10 條增補)

#### 43Q. 董事、合夥人等就第 43P 條所訂罪行的法律責任

- (1) 凡某法團犯了第 43P 條所訂罪行，且經證明該罪行是在該法團的任何董事、經理、秘書或其他類似的人員的同意或縱容下犯的，或可歸因於任何該等人士本身的疏忽的，則該董事、經理、秘書或其他類似的人員即屬犯了相同罪行。
- (2) 凡某商號的某合夥人犯了第 43P 條所訂罪行，且經證明該罪行是在該商號的任何其他合夥人或任何其他涉及該商號管理的人的同意或縱容下犯的，或可歸因於任何該等人士本身的疏忽的，則該其他合夥人或該其他涉及該商號管理的人即屬犯了相同罪行。
- (3) 如某法團犯了第 43P 條所訂罪行，且經證明在犯該罪行時，該法團的任何董事、經理、秘書或其他類似的人員——
- (a) 涉及該法團管理；或

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.

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- (b) 知道或應該知道該罪行所涉及的審裁處的判令，已針對該法團作出，
- 則須推定該罪行是在該董事、經理、秘書或其他類似的人員的同意或縱容下犯的，或可歸因於該等人士本身的疏忽的。
- (4) 如某商號的某合夥人犯了第 43P 條所訂罪行，且經證明在犯該罪行時——
- (a) 該商號的任何其他合夥人涉及該商號管理，則須推定該罪行是在該其他合夥人的同意或縱容下犯的，或可歸因於該其他合夥人本身的疏忽的；或
- (b) 該商號的任何其他合夥人或任何其他涉及該商號管理的人知道或應該知道該罪行所涉及的審裁處的判令，已針對該商號作出，則須推定該罪行是在該其他合夥人或該其他涉及該商號管理的人的同意或縱容下犯的，或可歸因於該等人士本身的疏忽的。
- (5) 憑藉第 (3) 或 (4) 款而被控犯第 43P 條所訂罪行的人，在以下情況下即屬推翻該款所訂的推定——
- (a) 有足夠證據帶出以下的爭論點：該罪行並非在該人的同意或縱容下犯的，且並非可歸因於該人的疏忽的；及
- (b) 控方沒有提出足以排除合理疑點的相反證明。

- (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

**43R. 在為第 43P 條所訂罪行而提起的法律程序中某些事宜的證明**

- (1) 就為第 43P 條所訂罪行而提起的法律程序而言，一份文件 (**首述文件**) 如看來是指明文件的副本，並且看來是由審裁處的主任 (或其代表) 或司法常務官 (或其代表) 核證為該指明文件的真確副本，則首述文件一經在法院席前交出，即須接納為證據而無需再加證明，而除非有相反證據，否則——
- (a) 該法院須推定——
- (i) 首述文件是由審裁處的主任 (或其代表) 或司法常務官 (或其代表) 核證；及
- (ii) 首述文件是該指明文件的真確副本；
- (b) 如首述文件看來是第 (2)(a) 款提述的、並且是由審裁處或法院的人員擬備的指明文件的副本，首述文件即為其內所載的一切事宜的證據；及
- (c) 如首述文件看來是第 (2)(b) 款提述的、並且是由審裁處或法院的人員擬備的指明文件的副本，首述文件即為第 (4) 或 (5) 款指明的事實的證據。
- (2) 在第 (1) 款中，**指明文件** (specified document) 指——
- (a) 向審裁處提交的申索，或由審裁處作出的判令，或關乎在審裁處或法院席前進行的法律程序的任何其他文件；或
- (b) 任何攸關第 (4) 或 (5) 款指明的任何事實的文件。
- (3) 就為第 43P 條所訂罪行而提起的法律程序而言，一份證明書如看來是由審裁處的主任 (或其代表) 或司法常務官 (或其代表) 發出，並且述明第 (4) 或 (5) 款指明的任何事

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—



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- 實，則該證明書一經在法院席前交出，即須接納為證據而無需再加證明，而除非有相反證據，否則——
- (a) 該法院須推定，該證明書是由審裁處的主任（或其代表）或司法常務官（或其代表）發出；及
  - (b) 該證明書即為其內所述明的事實的證據。
- (4) 為施行第 (3) 款而就看來是由審裁處的主任（或其代表）發出的證明書指明的事實如下——
- (a) 是否有人向該審裁處支付任何款項，以全部或部分履行該審裁處的判令，及（如有支付款項）付款的詳情，包括付款日期、款額及（如該判令惠及 2 名或多於 2 名申索人）款額是付予哪名申索人的；
  - (b) 是否有在任何尋求撤銷或覆核該審裁處的判令的法律程序中，作出決定，及（如有作出決定）該決定的詳情；
  - (c) 是否有任何尋求撤銷或覆核該審裁處的判令的法律程序待決，及（如有該法律程序待決）該法律程序的詳情；
  - (ca) 就關乎某項判令（屬復職的命令或再次聘用的命令者）的法律程序而言——
    - (i) 凡有為施行第 32PA 或 32PC 條（如適用的話）而就該命令提出的申請——是否已就該申請作出決定，及（如有決定的話）該決定的詳情；及
    - (ii) 是否有為施行第 32PA 或 32PC 條（如適用的話）而就該命令提出的申請仍然待決，及（如有上述申請待決的話）該申請的詳情；（由 2018 年第 21 號第 11 條增補）
  - (d) 在導致該審裁處作出該審裁處的判令的聆訊中，或在該判令所關乎的申索的任何聆訊中，某人是否有出席；及

- (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;

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- (e) 是否有任何關乎在該審裁處席前進行的法律程序的文件送達任何人，及(如有該文件送達)送達的詳情，包括送達的方式及時間，以及送達地址。
- (5) 為施行第(3)款而就看來是由司法常務官(或其代表)發出的證明書指明的事實如下——
- (a) (如有針對某審裁處的判令的上訴)是否有在有關上訴中，作出決定，及(如有作出決定)該決定的詳情；及
- (b) 是否有針對某審裁處的判令的上訴待決，及(如有該上訴待決)該上訴的詳情。
- (6) 在本條中——
- 司法常務官** (registrar of a court) 指——
- (a) 高等法院司法常務官；或
- (b) 終審法院司法常務官；
- 再次聘用的命令** (order for re-engagement) 指根據第 32N 條作出的再次聘用的命令，並包括根據第 32PA 或 32PC 條更改者；
- 復職的命令** (order for reinstatement) 指根據第 32N 條作出的復職的命令，並包括根據第 32PC 條更改者。(由 2018 年第 21 號第 11 條代替)
- (7) 在第(1)及(3)款中，凡提述文件或證明書在法院席前交出，該法院即包括裁判官。

- (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;

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#### 43S. 就第 43P 條所訂罪行提出檢控

- (1) 如無處長書面同意，不得對第 43P 條所訂罪行展開檢控。
- (2) 處長在根據第 (1) 款同意提出檢控前，須先聆聽被指稱犯罪的人的陳詞，或給予該人陳詞機會。
- (3) 在符合第 (1) 款的規定下，對第 43P 條所訂罪行的檢控，可用處長的名義提出，並可由獲處長就此以書面授權的任何勞工處人員展開及進行。
- (4) 本條並不減損律政司司長對刑事罪行提出檢控的權力。

*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.

**第 X 部****有關服務條件的資料**

(由 1984 年第 48 號第 24 條修訂)  
(格式變更——2015 年第 3 號編輯修訂紀錄)

**44. 向行將就職僱員提供資料的規定**

- (1) 每一個人就職之前，其僱主須以能令該人明瞭的方法，向他詳細告知他將會以下述服務條件受僱——
  - (a) 工資及工資期；
  - (b) 如第 IIA 部對該人適用，則告知其年終酬金或部分年終酬金及酬金期；及
  - (c) 終止擬訂立的僱傭合約所需通知期。(由 1984 年第 48 號第 25 條代替)
- (2) 凡僱傭合約並非書面合約，而僱主在該僱傭開始前收到該人的書面要求時，須隨即向他送交一份載有上述條件的通知書。(由 1990 年第 41 號第 19 條修訂)
- (3) 凡僱傭合約為書面合約，僱主須在該合約簽署後，或如該合約需經過生效程序，則在該程序完成後，立即向該人提供該合約副本一份。(由 1990 年第 41 號第 19 條增補)

**45. 向僱員提供的資料****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) 僱主須以能令僱員明瞭的方法，告知僱員以下資料——
  - (a) 凡第 44 條所提述的條件或在任何時候有效的條件有所變更，告知該項變更；
  - (b) 如工資的詳情可予變更，每次付給僱員工資時，須告知他在有關工資期內的工資的詳情。
- (2) 如僱傭合約未經書面修訂，而僱主接獲其僱員書面要求——（由 1990 年第 41 號第 20 條修訂）
  - (a) 凡要求是有關第 (1)(a) 款所提述的條件變更，則僱主須隨即向他送交一份載有條件變更的通知書；或
  - (b) 凡要求是有關第 (1)(b) 款所提述的詳情，則僱主須在發給有關工資期的工資時，向他送交一份載有該等詳情變更的通知書。
- (3) 凡僱傭合約經過任何書面修訂，僱主須在該等修訂見諸文字後，或如該等修訂需經過生效程序，則在該程序完成後，立即向其僱員提供該等書面修訂副本一份。（由 1990 年第 41 號第 20 條增補）

#### 46. 條件細則及工資詳情

- (1) 第 44 及 45 條所提述的條件，須包括有關人士或僱員的工資率、超時工作工資率及任何津貼，不論是按件、按工、按時、按日、按週計算，或以其他方式計算。
- (2) 第 45 條所提述的詳情，須包括——

- (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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- (a) 僱員所賺取的款額，包括任何超時工作收入（如有的話）的詳情；及
- (b) 從僱員工資扣除款項的詳情及扣除理由。
- 

- (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.
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**第 XI 部****紀錄、表格及申報表***(格式變更——2015 年第 3 號編輯修訂紀錄)***47. 由僱主備存紀錄的規定**

- (1) 凡屬第 (2) 款指明類別的僱主，均須以指明格式備存有關以下紀錄，以便遵從第 X 部的規定——
  - (a) 其每名僱員的紀錄；或
  - (b) 其任何類別僱員的紀錄。
- (2) 為施行第(1)款，處長可藉憲報公告指明任何類別的僱主。

**48. 向處長遞交申報表的規定**

- (1) 為施行本條例，處長可藉掛號郵遞方式送達通知書，或藉憲報刊登公告，要求任何僱主或任何類別的僱主以該通知書或公告所指示的格式及在指示的時間向處長遞交申報表：  
但對於緊接該通知書或公告日期前超過 6 個月的時間或一段期間的資料或詳情，處長不得要求僱主於申報書內呈報。
- (2) 僱主如向處長申請上述格式的表格，須獲免費供應。

**49. 通知書、紀錄等的格式**

- (1) 處長可指明為施行本條例所需的同意書、要求書、通知

**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,

書、證明書、申請表、紀錄或申報表的格式。(由 1988 年第 52 號第 15 條修訂)

- (2) 處長可在憲報刊登其根據第 (1) 款所指明格式的表格。

#### 49A. 須備存工資及僱傭紀錄的規定

- (1) 每名僱主無論何時均須備存及保存一份紀錄，列明每名僱員在過去 12 個月僱傭期內的工資及僱傭歷史。(由 2007 年第 7 號第 16 條修訂)
- (2) 第 (1) 款所提述的工資紀錄 ——
- (a) 須備存於僱主的營業地點或僱員的受僱地點；及
  - (b) 在僱員停止受僱後仍須備存一段 6 個月期間。
- (3) 就第 (1) 款而言，有關每名僱員的紀錄，如包括有以下詳情在內，即屬完備 ——
- (a) 該僱員的姓名及身分證號碼；
  - (b) 該僱員開始受僱日期；
  - (c) 該僱員所擔任的職位名稱；
  - (d) 就每段工資期付給該僱員的工資；
  - (e) 該僱員的工資期；
  - (ea) 如該僱員屬《最低工資條例》(第 608 章)所指的僱員，而須就任何工資期支付予該僱員的工資，其款額少於附表 9 指明的款額 (或將該款額乘以等同該工資期的長度在該工資期所在的月份中所佔的比率所得之款額，若該工資期橫跨多於一個月，則按該工資期在每一個所涉月份中所佔的日數計算)，該僱員於該工資期的工作時數的總時數 (不足一小時亦須計算在內)；(由 2010 年第 15 號第 20 條增補)
  - (f) (i) 該僱員有權享有的年假、病假、產假、侍產假及假日；及

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



- (ii) 該僱員已放取的年假、病假、產假、侍產假及假日，以及就該段期間獲付給款項的細則；(由 2014 年第 21 號第 16 條修訂)
- (g) 根據第 IIA 部須付的年終酬金款額，以及與該酬金有關的期間；
- (h) 終止合約所需通知期；
- (i) 終止僱傭日期。
- (4) 儘管有第 (3) 款的規定，第 (1) 款須視為——
- (a) (如因某僱員受《最低工資條例》(第 608 章)第 7(4) 條所涵蓋，以致該條例不適用於該僱員)就該僱員而言，亦規定僱主備存某機構發出的顯示以下資料的文件或其副本：有關工作期是在與該機構正向該僱員提供的課程(該課程屬該條例第 2 條中**實習學員**的定義所涵蓋的類別)有關連的情況下，由該機構安排或認可的；及
- (b) (如因某僱員受《最低工資條例》(第 608 章)第 7(5) 條所涵蓋，以致該條例不適用於該僱員)就該僱員而言，亦規定僱主備存該僱員根據該條例第 3(b) 條提供的法定聲明或其副本，及備存某機構發出的顯示以下資料的文件或其副本：該僱員於有關僱用開始時，正修讀該機構提供的課程(該課程屬該條例第 2 條中**工作經驗學員**的定義所涵蓋的類別)。(由 2010 年第 15 號第 20 條增補)
- (5) 如在《最低工資條例》(第 608 章)第 16 條生效\*當日或之後首次於該條例附表 3 第 1 欄指明的每小時工資額，於某日期生效，而某僱員的工資期或其部分是在該日期之前，則第 (1) 款並不規定僱主就該工資期或該部分，在紀錄內列明屬第 (3)(ea) 款提述的類別的詳情。(由 2010 年第 15 號第 20 條增補)
- (6) 處長可藉於憲報刊登的公告修訂附表 9。(由 2010 年第 15 號第 20 條增補)

- 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

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- (7) 為施行第 (3)(ea) 及 (5) 款，**工作時數** (hours worked)、**工資** (wages) 及**工資期** (wage period) 各自具有的涵義與《最低工資條例》(第 608 章) 中該等詞語分別具有的涵義相同。  
(由 2010 年第 15 號第 20 條增補)  
(由 1985 年第 12 號第 29 條增補)

編輯附註：

\* 生效日期：2010 年 11 月 12 日。

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- 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.

**第 XII 部****職業介紹所**

(第 XII 部由 1973 年第 35 號第 2 條代替。格式變更——2017 年第 3 號編輯修訂紀錄)

**50. 本部的釋義及適用範圍**

(1) 在本部中，除文意另有所指外——

**有關連人士** (related person) ——

- (a) 就一間公司而言——指該公司的董事、經理、秘書或其他類似的人員；或
- (b) 就一個合夥中的合夥人而言，指——
  - (i) 該合夥中其他合夥人；或
  - (ii) 其他涉及該合夥的管理的人；(由 2018 年第 8 號第 3 條增補)

**相關人士** (associate) 就某人而言——

- (a) 如該人是一間公司，指——
  - (i) 該人的有關連人士；或
  - (ii) 受僱於該人的個人；
- (b) 如該人是一個合夥中的合夥人——
  - (i) 該人的有關連人士；或
  - (ii) 受僱於該人或該合夥的個人；或
- (c) 如屬任何其他情況——受僱於該人的個人；(由 2018 年第 8 號第 3 條增補)

**牌照** (licence) 指根據第 52 條所發牌照，而**持牌人** (licensee) 須據此解釋；

**豁免證明書** (certificate of exemption) 指根據第 54 條所發證明書；

**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)

**職業介紹所** (employment agency) 指為以下目的經辦業務的人——

- (a) 代人謀職；或
- (b) 向僱主供應別人的勞動力，  
而不論經辦該業務的人會否從有關僱主或別人得到任何金錢或其他物質利益。(由 1990 年第 41 號第 21 條修訂)
- (2) 除第 (3) 款另有規定外，本部適用於任何在香港經營的職業介紹所，不論僱傭是在香港或香港以外地區進行。
- (3) 本部不適用於以下職業介紹所——
  - (a) 由女皇政府或香港政府經營或資助者；
  - (b) 在根據《商船(海員)條例》(第 478 章)發給或視為根據該條例發給的維持船員部的許可證下所經營者；(由 1995 年第 44 號第 143 條修訂)
  - (c) (由 1990 年第 41 號第 21 條廢除)
  - (d) (由 1980 年第 10 號第 4 條廢除)
  - (e) 由僱主專為其本身招募僱員而經營者；
  - (f) 由招聘僱員為別人工作的承判商或次承判商經營者；
  - (g) 由報章或其他刊物的東主經營，而職業介紹所的經辦乃屬非牟利性質，及並非該報章或其他刊物出版的主要目的者；
  - (h)
    - (i) 屬非牟利性質者；
    - (ii) 屬完全由學校、書院、大學或其他獲教育局常任秘書長承認的教育機構的擁有人、教職員或學生所維持或管理者；及 (由 2003 年第 3 號第 41 條修訂；由 2007 年第 130 號法律公告修訂)
    - (iii) 屬專門為了或關乎該學校、書院、大學或教育機構的學生或畢業生的僱傭而經營者；或
  - (i) 屬已獲發給豁免證明書者，但須受任何對其適用的規例所規限。

**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

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第 57 章第 XII 部  
第 51 條Part XII  
Section 5112-6  
Cap. 57**51. 有關經辦職業介紹所的禁制**

- (1) 除非屬以下情況，否則任何人不得經辦、管理或協助管理職業介紹所——
  - (a) 該人是職業介紹所牌照或豁免證明書的持有人；或
  - (b) 該人是該持有人的相關人士。(由 2018 年第 8 號第 4 條代替)
- (2) 除職業介紹所牌照或豁免證明書所指明的營業地點外，任何人不得於其他地點經辦、管理或協助管理職業介紹所。
- (3) (由 1992 年第 28 號第 2 條廢除)

**52. 申請牌照及發牌規定**

- (1) 處長可向任何按訂明方式申請牌照的人發出經辦職業介

- 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

- 紹所牌照。
- (1A) 凡牌照的申請人是一間公司，則該申請須由其董事代表公司提出。 (由 1992 年第 28 號第 3 條增補)
- (2) 根據本條發出的牌照須 ——
- (a) 以處長決定的格式簽發；及 (由 1992 年第 28 號第 3 條代替)
- (b) 指明獲發給牌照的職業介紹所的營業地點。 (由 1992 年第 28 號第 3 條修訂)
- (c) (由 1992 年第 28 號第 3 條廢除)
- (2A) 持牌人須安排將其牌照無論何時均展示於其營業地點的顯眼處。 (由 1992 年第 28 號第 3 條增補)
- (2B) 凡持牌人在超過一個營業地點經辦職業介紹所，他須指定其中一個營業地點為總辦事處，並須為每一分處領取牌照複本，及安排該等牌照複本無論何時均展示於每一分處的顯眼處。 (由 1992 年第 28 號第 3 條增補)
- (2C) 凡持牌人在超過一個地點以不同名稱經辦職業介紹所，該等介紹所須當作為獨立個體，而該持牌人須就所用的每一名稱領取個別牌照。 (由 1992 年第 28 號第 3 條增補)
- (3) (由 1992 年第 28 號第 3 條廢除)
- (4) 除第 53 條另有規定外，根據第 (1) 款發出的牌照，有效期由發牌當日起計 12 個月。
- (5) 處長可因應按訂明方式提出的申請，將根據第 (1) 款發出的牌照續期。

- 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.

**53. 拒絕發牌或撤銷牌照的情況**

- (1) 處長如有合理理由信納有以下情況，可拒絕發牌或續發牌照，亦可將牌照撤銷——
- (a) 所經辦或擬經辦的職業介紹所名稱——
- (i) 與別人正在或曾經經營的另一職業介紹所的名稱相同；或
- (ii) 與另一職業介紹所的名稱極為相似而相當可能欺騙公眾；
- (b) 職業介紹所被用作或相當可能被用作不法或不道德用途；(由 2018 年第 8 號第 5 條修訂)
- (c) 持牌人或擬作為持牌人的人有以下情況——(由 2018 年第 8 號第 5 條修訂)
- (i) 是一名未獲解除破產的破產人；
- (ii) 於過去 5 年內，曾因以下罪行而被定罪：對兒童、青年或婦女犯了侵害人身罪，或犯了涉及身為三合會會員、欺詐、不誠實行為或勒索的罪行；(由 2018 年第 8 號第 5 條修訂)
- (iii) 就有關其發牌或牌照續期的申請向處長明知而提供虛假或誤導的資料；
- (iv) 曾違犯本部的任何條文或根據第 62 條訂立的任何規例；(由 2018 年第 8 號第 5 條修訂)
- (iva) 沒有遵從根據第 62A(1) 條發出的《實務守則》；或(由 2018 年第 8 號第 5 條增補)
- (v) 由於任何其他理由並非是經辦職業介紹所的適當人選；(由 2018 年第 8 號第 5 條修訂)

- (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;

- (d) (如持牌人或擬作為持牌人的人是一間公司、或一個合夥中的合夥人)該持牌人或該人的有關連人士——
- (i) 於過去 5 年內，曾因以下罪行而被定罪：對兒童、青年或婦女犯了侵害人身罪，或犯了涉及身為三合會會員、欺詐、不誠實行為或勒索的罪行；
  - (ii) 曾違犯本部的任何條文或根據第 62 條訂立的任何規例；或
  - (iii) 沒有遵從根據第 62A(1) 條發出的《實務守則》；或 (由 2018 年第 8 號第 5 條增補)
- (e) 某名受僱於持牌人或擬作為持牌人的人的個人——
- (i) 曾違犯本部的任何條文或根據第 62 條訂立的任何規例；或
  - (ii) 沒有遵從根據第 62A(1) 條發出的《實務守則》。(由 2018 年第 8 號第 5 條增補)
- (2) 處長如拒絕發牌或拒絕將牌照續期，或撤銷牌照，須於作出該項拒絕或撤銷後 14 天內，以書面將拒絕或撤銷的理由通知申請人或持牌人。
- (3) 任何人如因處長根據第 (1) 款對其作出的決定而感到受屈，可於根據第 (2) 款獲得通知後 28 天內向行政上訴委員會提出上訴。(由 1994 年第 6 號第 35 條代替)
- (4) (由 1994 年第 6 號第 35 條廢除)
- (5) 如處長根據第 (1) 款拒絕將牌照續期，或撤銷牌照，則持牌人須於下述時間向處長交回牌照及其所有副本——
- (a) 在根據第 (2) 款獲得通知後 28 天內；或
  - (b) 如他已根據第 (3) 款提出上訴，則在撤回上訴或放棄上訴或接獲行政上訴委員會駁回上訴的通知後 14 天內。(由 1994 年第 6 號第 35 條代替)

- (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.



**54. 處長給予豁免的權力**

- (1) 除第 (2) 款另有規定外，處長在接獲按訂明方式提出的申請後，如信納有關的職業介紹所屬非牟利性質，及就公眾利益而言應獲得豁免，則可在他所指明的條件規限下，豁免該職業介紹所使其無須根據第 52 條領取牌照。
- (2) (由 1992 年第 28 號第 4 條廢除)
- (3) 處長須向任何根據第 (1) 款獲得豁免的人士發給豁免證明書。
- (4) 根據第 (3) 款所發豁免證明書須 ——
  - (a) 以處長決定的格式簽發；(由 1992 年第 28 號第 4 條代替)
  - (b) 指明獲發給豁免證明書的職業介紹所的營業地點；及
  - (c) 指明該豁免證明書所受規限的條件。

- (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

**55. 豁免的撤回**

- (1) 處長如信納某一職業介紹所不再屬非牟利性質或就公眾利益而言不應獲得豁免，可隨時將已根據第 54 條給予的豁免撤回。
- (2) 在不損害第 (1) 款的概括性的原則下，處長可撤回豁免所依據的理由，須包括加以必要的變通後的第 53(1) 條所載他可拒絕發牌或續牌或撤銷牌照所依據的理由。
- (3) 處長凡根據第 (1) 款撤回給予任何人的豁免，須以書面將撤回豁免的理由通知該人。
- (4) 豁免證明書持有人須於接獲根據第 (3) 款所發處長撤回豁免的通知後 14 天內，向處長交回豁免證明書及其所有副本。
- (5) 對於處長撤回給予職業介紹所的豁免的決定，不得根據本部提出上訴。

**56. 訂明的紀錄及申報表的保存及提交處長的規定**

- (1) 持牌人須 ——
  - (a) 保存以下人士的紀錄 ——
    - (i) 所有在其職業介紹所登記的職位申請人；及
    - (ii) 在登記時並非香港居民，但其職業介紹所代他們在香港謀得職業的職位申請人，
 該等紀錄須載有該人的姓名、地址、香港身分證號碼（如並非香港居民，其護照號碼及國籍）、所收取

(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

費用及佣金、受僱日期及僱主的姓名或名稱與地址；  
及 (由 1992 年第 28 號第 5 條代替)

- (b) 在職業介紹所營業地點備存該等紀錄，以供處長或獲處長就此授權的任何公職人員，於任何合理時間內查閱。(由 1992 年第 28 號第 5 條修訂)
- (2) 持牌人須在訂明的時間內，向處長提交所訂明有關該職業介紹所的申報表。
- (3) 持牌人須將第 (1) 款所提述的紀錄，在職業介紹所每一個會計年度完結後保留一段不少於 12 個月的期間。(由 1992 年第 28 號第 5 條修訂)

### 57. 與職業介紹所有關的違禁行為

- (1) 職業介紹所持牌人、或職業介紹所持牌人的相關人士、或看來是以此等持牌人或相關人士身分行事的人，不得——(由 2018 年第 8 號第 6 條代替)
- (a) 因已代人謀得職業，或有關代人謀取或尋求謀取職業事宜而直接或間接向該人收取——
- (i) 任何形式的酬勞；或
- (ii) 與開支或其他方面有關的任何付款及其他利益 (訂明佣金除外)；(由 1975 年第 87 號第 2 條代替。由 1992 年第 28 號第 6 條修訂)

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

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- (b) 與並非該職業介紹所其他持牌人或真正合夥人或股東的其他人，直接或間接分享訂明佣金；或 (由 2018 年第 8 號第 6 條代替)
- (c) 直接或間接與任何僱主訂立下述協議 (不論是明訂或隱含的)，獲處長書面許可者除外——
- (i) 該僱主承諾只僱用透過該職業介紹所求職的人；及
- (ii) 該職業介紹所同意付給或給予該僱主某種形式的物質利益。(由 2018 年第 8 號第 6 條修訂)

(2) 在本條中——

**訂明佣金** (prescribed commission) 就職業介紹所而言，指該職業介紹所按根據第 62 條訂立的規例所訂明而准予收取的佣金。(由 2018 年第 8 號第 6 條增補)

### 58. 對持牌或獲豁免的職業介紹所的營業地點的視察

處長或獲處長就此授權的任何公職人員可——

- (a) 於任何合理時間，無須手令而進入及視察職業介紹所的營業地點；
- (b) 要求交出、查閱、審核或複製與職業介紹所有關的任何紀錄或其他文件；(由 1992 年第 28 號第 7 條修訂)
- (c) 要求任何經辦、管理或協助管理職業介紹所的人提供由他指明與該職業介紹所有關的資料或詳情；及

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)

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- (d) 向與該介紹所有關連或相聯的任何其他人作出其認為適當的查訊。

- (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. 調查懷疑發生的罪行

- (1) 處長或獲處長就此授權的任何公職人員，或職級不低於督察的任何警務人員有合理理由懷疑在任何處所或地點有本部所訂罪行的證據，可——
- (a) 於任何合理時間，無須手令而進入及搜查該處所（住宅樓宇除外）；及
- (b) 要求交出、檢取、扣留及移走可能是本部所訂罪行證據的任何物品、紀錄或其他文件。（由 1992 年第 28 號第 7 條修訂）
- (2) 裁判官如根據經宣誓而作的告發，信納在任何住宅樓宇內可尋獲本部所訂罪行的證據，則可發出手令，授權處長或獲處長就此授權的任何公職人員，或職級不低於督察的任何警務人員，於任何合理時間進入及搜查該住宅樓宇。
- (3) （由 1988 年第 24 號第 2 條廢除）

### 60. 罪行

- (1) 任何人如違反第 51(2) 條的規定，即屬犯罪，一經定罪，可處第 3 級罰款。（由 1988 年第 24 號第 2 條修訂；由

### 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.

*1992 年第 28 號第 8 條修訂)*

- (2) 任何人如違反第 53(5) 或 55(4) 條的規定，即屬犯罪，一經定罪，可處第 3 級罰款。*(由 1988 年第 24 號第 2 條修訂)*
- (3) 任何持牌人如違反第 52(2A)、(2B) 或 (2C) 或 56(1)、(2) 或 (3) 條的規定，即屬犯罪，一經定罪，可處第 3 級罰款。*(由 1988 年第 24 號第 2 條修訂；由 1992 年第 28 號第 8 條修訂)*
- (4) *(由 1988 年第 24 號第 2 條廢除)*
- (5) 任何人如 ——
  - (a) 就有關其根據第 52(1) 或 54(1) 條向處長提出的申請，提供明知或理應知道在要項上屬虛假或誤導的資料；或
  - (b) 就有關根據第 58 條進行的任何查訊或視察 ——
    - (i) 當處長或獲處長就此授權的任何公職人員要求交出與職業介紹所有關的任何紀錄或其他文件時，無合理辯解而未有遵從；或 *(由 1992 年第 28 號第 7 條修訂)*
    - (ii) 向處長或任何上述公職人員提供明知或理應知道在要項上屬虛假或誤導的資料，
 即屬犯罪，一經定罪，可處第 5 級罰款。*(由 1988 年第 24 號第 2 條修訂)*
- (6) 任何人違反第 51(1) 條，即屬犯罪，一經定罪，可處罰款 \$350,000 及監禁 3 年。*(由 2018 年第 8 號第 7 條代替)*
- (7) 任何人違反第 57(1)(a) 條，即屬犯罪，一經定罪，可處罰款 \$350,000 及監禁 3 年。*(由 2018 年第 8 號第 7 條代替)*
- (8) 儘管有《裁判官條例》(第 227 章) 第 26 條的規定，就第 (6) 或 (7) 款所訂罪行而作出的申訴或提出的告發，可在罪行發生的日期後 12 個月內作出或提出。*(由 2018 年第 8 號第 7 條增補)*

*(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)*

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- (9) 任何人違反第 57(1)(b) 或 (c) 條，即屬犯罪，一經定罪，可處第 5 級罰款。(由 2018 年第 8 號第 7 條增補)  
(由 1995 年第 103 號第 18 條修訂)

**61. 第 52(2A)、(2B) 及 (2C)、56、57、58 及 59 條對豁免證明書持有人及獲豁免的職業介紹所的適用範圍**

- (1) 第 52(2A)、(2B) 及 (2C)、56、57、58 及 59 條適用於豁免證明書持有人，方式與適用於持牌人一樣。
- (2) 除文意另有所指外，第 52(2A)、(2B) 及 (2C)、56、57、58 及 59 條提述職業介紹所時，須解釋作提述根據第 52 條獲發牌的職業介紹所及根據第 54 條獲豁免的職業介紹所。

(由 1992 年第 28 號第 9 條修訂)

**62. 訂立規例的權力**

行政長官會同行政會議可就以下各項或任何一項的施行而訂立規例——(由 2000 年第 56 號第 3 條修訂)

- (a) 訂明簽發牌照及豁免證明書的程序；

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- (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;

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- (b) 釐定發牌、續牌及發給豁免證明書的費用，以及該等費用的繳付辦法；
- (c) 訂明持牌人或豁免證明書持有人在下述情形所須遵循的程序——
  - (i) 停止經辦其職業介紹所；或
  - (ii) 更改其職業介紹所的營業地點；
- (d) 訂明在下述情形所須遵循的程序——
  - (i) 一間公司獲發牌或獲發給豁免證明書；及
  - (ii) 該公司的管理有所變更；
- (e) 要求持牌人及豁免證明書持有人將牌照或豁免證明書展示在職業介紹所營業地點的顯眼處；
- (f) 規定將所有牌照及豁免證明書的有關詳情在憲報刊登；
- (g) 訂明職業介紹所可收取費用、佣金或開支的服務的性質；
- (h) 訂明職業介紹所可收取的費用及收費最高限額；
- (i) 訂明根據本部須訂明或可訂明的任何事項；及

- (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.



(j) 概括而言，更有效地執行本部的條文及目的。

**62A. 關於職業介紹所的《實務守則》**

- (1) 處長可發出《實務守則》，列出經辦、管理或控制職業介紹所的原則、程序、指引及標準。
- (2) 處長須將各《實務守則》的一份文本，存放於處長指示的政府辦事處，在辦公時間內供公眾人士免費查閱。

*(由 2018 年第 8 號第 8 條增補)*

**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)*

**第 XIII 部****罪行及罰則***(格式變更——2017 年第 3 號編輯修訂紀錄)***63. 罪行及罰則**

- (1) 任何僱主，如故意及無合理辯解而違反第 11E 或 11F(3) 或 (4) 條任何條文，即屬犯罪。*(由 1970 年第 71 號第 4 條修訂；由 1984 年第 48 號第 26 條修訂；由 1988 年第 24 號第 2 條修訂)*
- (2) 任何僱主如——
  - (a) 無合理辯解而沒有——
    - (i) 給予任何僱員根據第 IV 部須給予的任何休息日；或
    - (ii) *(由 1995 年第 103 號第 19 條廢除)*
  - (b) 違反第 19 條的規定，即屬犯罪。*(由 1970 年第 23 號第 4 條增補)*
- (3) 任何人如故意違反第 67(2) 條的規定，即屬犯罪。*(由 1970 年第 71 號第 4 條增補)*
- (4) 任何僱主如無合理辯解而沒有——
  - (a) 給予任何僱員根據第 39 條須給予的任何假日；或
  - (b) 付給任何僱員——
    - (i) 根據第 33 條須付給的任何疾病津貼；或
    - (ii) 根據第 40 或 40A(2) 條須付給的任何假日薪酬；或 *(由 1984 年第 48 號第 26 條修訂)*
  - (c) 給予任何僱員按照第 41AA 或 41F(3) 條須給予或容許的任何假期；或 *(由 1990 年第 53 號第 5 條代替)*

**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)*

- (d) 給予任何僱員根據第 41AA(6) 條須給予的任何休息日或假日；或 (由 1990 年第 53 號第 5 條修訂)
- (e) 付給僱員——
- (i) 有關根據第 41AA 或 41F(3) 條須給予或容許的假期的薪酬；或
- (ii) 根據第 41D 條須付給的款項或補償金，(由 1990 年第 53 號第 5 條代替)
- 即屬犯罪。(由 1973 年第 39 號第 6 條增補。由 1977 年第 53 號第 7 條修訂)
- (5) 任何人如違反第 40A(1) 或 41B 條的規定，即屬犯罪。(由 1995 年第 103 號第 19 條代替)
- (5A) 任何人如——
- (a) 不遵從公職人員根據第 72 條任何條文(該條第 (1)(a)、(b) 及 (c) 款除外) 提出的要求；(由 1992 年第 31 號第 2 條修訂)
- (b) 在根據第 72 條任何條文(該條第 (1)(b) 及 (c) 款除外) 須提供資料的事宜上，故意或罔顧後果地提供在要項上虛假的資料，或隱瞞資料；或 (由 1992 年第 31 號第 2 條修訂；由 1995 年第 103 號第 25 條修訂)
- (c) (由 1988 年第 24 號第 2 條廢除)
- (d) 不遵從根據第 73(2) 條給予豁免時所施加的任何條件，即屬犯罪。(由 1979 年第 55 號第 2 條增補)
- (5B) (a) 任何人如所付給款項是違反第 41E(1) 條規定的，即屬犯罪。
- (b) 在為本款所訂罪行而進行的任何法律程序中，被告人須負舉證責任，以證明任何與該罪行有關的付款，均依據一項根據第 41E(2) 條妥為訂立的協議而作出。(由 1990 年第 53 號第 5 條增補)
- (5C) 任何僱主如違反第 41EA 條的規定，即屬犯罪。(由 1990 年第 53 號第 5 條增補)

- (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)

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- (6) 任何人如不遵從根據第 48(1) 條送達的通知書或刊登的憲報公告所載的要求，即屬犯罪。
- (7) 任何人如犯了本條所訂罪行，一經定罪，可處第 5 級罰款。  
(由 1988 年第 24 號第 2 條修訂；由 1995 年第 103 號第 19 條修訂)

**63A. 與第 31、72A 及 72B 條有關的罪行及罰則**

- (1) 任何僱主如故意及無合理辯解而違反第 31 條任何條文，即屬犯罪。(由 1992 年第 31 號第 3 條修訂)
- (2) (由 1995 年第 103 號第 20 條廢除)
- (3) 任何人如犯了第 (1) 款所訂罪行，一經定罪，可處第 6 級罰款。(由 1995 年第 103 號第 20 條代替)
- (4) 任何人如違反第 72A(3) 條的規定，即屬犯罪，一經定罪，可處第 5 級罰款。(由 1995 年第 103 號第 20 條增補)
- (5) 任何人如違反第 72B(1)(a)、(b)、(c) 或 (d) 條任何條文，即屬犯罪，一經定罪，可處第 6 級罰款。(由 1995 年第 103 號第 20 條增補)

(由 1988 年第 24 號第 2 條增補)

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- (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. 與第 32 及 72(1)(a)、(b) 及 (c) 條有關的罪行**

- (1) 任何人如違反第 32 條的規定或不遵從公職人員根據第 72(1)(a)、(b) 或 (c) 條提出的要求，即屬犯罪。
- (2) 任何人如在根據第 72(1)(b) 或 (c) 條須提供資料的事宜上，故意或罔顧後果地提供在要項上虛假的資料，或隱瞞資料，即屬犯罪。（由 1995 年第 103 號第 25 條修訂）
- (3) 任何人如犯了本條所訂罪行，可處第 6 級罰款及監禁 1 年。（由 1995 年第 103 號第 21 條修訂）

*(由 1992 年第 31 號第 4 條增補)***63C. 與時間及支付工資有關的罪行**

任何僱主如故意及無合理辯解而違反第 23、24 或 25 條的規定，即屬犯罪，可處罰款 \$350,000 及監禁 3 年。

*(由 1992 年第 31 號第 4 條增補。由 2006 年第 1 號第 3 條修訂)***63CA. 關於因過期支付工資而須繳付的利息的罪行**

任何僱主如故意和無合理辯解而違反第 25A 條的規定，即屬犯罪，可處第 3 級罰款。

*(由 1997 年第 74 號第 16 條增補)***63D. 輕微罪行**

- (1) 任何人如違反第 18(2)、26、27、28(2)、29、30、41AA(4) 或 (5)、41F(1)、41G、44、45、47(1)、49A 或 72A(1) 或 (2) 條的規定，即屬犯罪。

**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) 任何人如犯了本條所訂罪行，一經定罪，可處第3級罰款。  
(由 1995 年第 103 號第 22 條增補)

**64. 罪行的檢控**

- (1) 如無處長書面同意，不得對第 31RA(6)、63(1) 或 (3) 或 63A(1) 或 63B 或 63C 條所訂罪行提出檢控。(由 1970 年第 71 號第 4A 條修訂；由 1988 年第 24 號第 2 條修訂；由 1988 年第 52 號第 16 條修訂；由 1992 年第 31 號第 5 條修訂)
- (2) 處長在同意根據第 (1) 款提出檢控前，須先聆聽指稱事項所針對的人的辯解，或給予其獲聆聽機會。
- (3) 在符合第 (1) 款的規定下，對本條例所訂任何罪行的檢控，可以處長的名義提出，亦可由獲處長就此以書面授權的任何勞工處人員展開及進行。(由 1984 年第 48 號第 27 條代替)
- (4) 本條並不減損律政司司長對刑事罪行提出檢控的權力。  
(由 1997 年第 362 號法律公告修訂)

**64A. 傳票的送達**

- (1) 凡與僱主被指稱犯了本條例所訂罪行有關的傳票，其送達方式可以是將該傳票留下給傳票上所載僱傭地點內的人轉交僱主。
- (2) 任何上述傳票可寫明收件人為“僱主”，而無須指明僱主姓名。
- (3) 凡與僱員被指稱犯了本條例所訂罪行有關的傳票，其送達方式可以是將該傳票留下給其最後為人所知住址或通

- (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.

常住址內的人轉交僱員，或留下給傳票上所載僱傭地點內的人轉交僱員。

- (4) 凡與公司被指稱犯了本條例所訂罪行有關的傳票，其送達方式可以是將該傳票留在該公司的註冊辦事處，或以掛號郵遞寄往該公司的註冊辦事處。

*(由 1984 年第 48 號第 28 條增補)*

#### 64B. 董事、合夥人等的法律責任

- (1) 凡法團犯了第 63B 或 63C 條所訂罪行，且經證明該罪行是在該法團的董事、經理、秘書或其他類似的人員的同意或縱容下犯有的，或可歸因於該法團的董事、經理、秘書或其他類似的人員本身的疏忽，則該董事、經理、秘書或其他類似的人員即屬犯了相同罪行。
- (2) 凡商號的合夥人犯了第 63B 或 63C 條所訂罪行，且經證明該罪行是在該商號任何其他合夥人或涉及該商號管理的人的同意或縱容下犯有的，或可歸因於該商號任何其他合夥人或涉及該商號管理的人本身的疏忽，則該其他合夥人或涉及該商號管理的人即屬犯了相同罪行。

*(由 1992 年第 31 號第 6 條增補)*

#### 65. 清付欠薪的法律責任

- (1) 凡因犯了本條例所訂罪行而被定罪的僱主，除須支付根據本條例所施加的罰款外，如判其有罪的法庭有所命令，

- (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,

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亦須付給於定罪時尚未清付而與所犯罪行有關的工資或其他款項。

- (2) 凡法庭以僱主並非故意拖欠，或並非無合理辯解而拖欠為理由，判僱主本條例所訂的罪行罪名不成立而將其釋放，但卻認為與該項控罪有關的工資或其他款項已經到期支付，可下令該僱主付給此等工資或其他款項。

*(由 1992 年第 31 號第 7 條修訂)*

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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)*

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**第 XIV 部****雜項***(格式變更——2017 年第 3 號編輯修訂紀錄)***66. 不得扣押工資的規定**

法庭不得下令扣押僱員工資，或對第 IIA 部適用的僱員而言，法庭不得下令扣押僱員的任何年終酬金或部分年終酬金：

但根據任何成文法則欠下政府的民事債項，可藉扣押僱員工資或其他方法追討。

*(由 1984 年第 48 號第 29 條修訂；由 2000 年第 56 號第 3 條修訂)*

**67. 拘捕潛逃僱主的申請**

(1) 如任何僱主或前僱主，意圖逃避付給以下款項而即將離開香港——*(由 1984 年第 48 號第 30 條修訂)*

(a) 拖欠其任何僱員所賺取的工資，不論該工資是否已經到期支付；或

(b) 拖欠其任何僱員根據僱傭合約應得的其他款項，則其僱員可向區域法院法官申請按照附表 2 發出手令，而附表 2 的規定適用於此類申請。*(由 1998 年第 25 號第 2 條修訂)*

(2) 任何人除非有合理理由，否則不得根據第(1)款提出申請。

*(由 1970 年第 71 號第 5 條增補)*

**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)*

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#### 67A. 對遣散費及長期服務金施加的限制的修訂

立法會可藉憲報刊登決議而修訂第 31G、31V 條及本條所提述的 \$22,500，以決議所指明的另一個款額取代。

(由 1990 年第 41 號第 22 條代替。由 1995 年第 264 號法律公告修訂；由 2000 年第 56 號第 3 條修訂)

#### 68. 表格的修訂

行政長官可藉憲報刊登命令，修訂附表 2 的第 II 部。

(由 1971 年第 44 號第 5 條增補。由 2000 年第 56 號第 3 條修訂)

#### 69. 有關現行僱用合約的保留條文

除本條另有規定外，僱主與僱員之間所訂立的任何僱傭協議或合約，如在本條例生效日期時有效並在實施中，須繼續實施；除受該協議或合約所載任何明訂的條件規限外，有關雙方均受本條例條文約束，但亦同時有權享受本條例所賦予的利益：

但如協議或合約所明訂的條件與本條例條文相抵觸，則此等明訂條件均屬無效。

#### 70. 訂立本條例不適用的合約條款

僱傭合約的任何條款，如看來使本條例賦予僱員的任何權利、利益或保障終絕或減少，即屬無效。

(由 1970 年第 5 號第 8 條增補)

#### 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. 有關根據已廢除的《工業僱傭(有薪假期與疾病津貼)條例》#而進行的醫療計劃的保留條文**

僱主所經辦的任何醫療計劃，如經由署長根據已廢除的《工業僱傭(有薪假期與疾病津貼)條例》\*\*第 8 條認可，須繼續實施及具有效力，猶如該計劃是根據本條例的相應條文經辦及批准的一樣。

(由 1973 年第 39 號第 7 條增補)

編輯附註：

\* 參閱第 333 章，1964 年版。

# “《工業僱傭(有薪假期與疾病津貼)條例》”乃“Industrial Employment (Holidays with Pay and Sickness Allowance) Ordinance”之譯名。

**72. 有關人員的權力**

- (1) 處長或獲處長為此目的而書面授權的任何公職人員在出示該授權書後，可——
  - (a) (除第(2)款另有規定外)於日夜任何合理時間，進入、視察及檢查據他所知或有合理理由相信有人受僱在其內的處所或地點；
  - (b) 要求交出、查閱、審核及複製本條例規定備存的登記冊、紀錄、表格或其他文件；而如紀錄內包括第 49A(3)(ea) 條規定包括在內的詳情，要求將第 49A(3)(a)、(d)、(e)、(ea) 及 (f) 條所指的詳情載於同一份文件內；(由 2010 年第 15 號第 21 條修訂)
  - (c) 按需要進行檢查及查訊，以確定本條例的規定是否獲得遵從；並檢取任何看似是本條例所訂罪行的證據；
  - (d) 按他認為適當而單獨或在有他人在場情況下，就有關本條例的事項，訊問在《工廠及工業經營條例》(第 59 章)所指的工業經營內所發現的任何人，或訊問

**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)

他有合理理由相信曾於過去 2 個月內受僱在《工廠及工業經營條例》(第 59 章)所指的工業經營內工作的人，或要求任何該等人士接受訊問，並簽署聲明，表明其受訊問所答的事項屬實；(由 1980 年第 10 號第 6 條增補)

- (e) 要求僱用或曾經僱用青年或兒童在《工廠及工業經營條例》(第 59 章)所指的工業經營內工作的人士，或此等僱主的任何代理人或傭工，提供他所管有一切與此等青年或兒童有關的資料，以及有關此等僱主所僱用的每名青年或兒童的工作情況及待遇；(由 1980 年第 10 號第 6 條增補。由 2001 年第 7 號第 10 條修訂)
- (f) 要求將與本條例或與附表 4 所指明的任何條例的條文有關的通告或表格，以他所指示的方式，在他所指示的期間及地點張貼；(由 1980 年第 10 號第 6 條增補。由 1984 年第 48 號第 31 條修訂)
- (g) 行使根據本條例訂立的任何規例授予他的任何其他權力。(由 1980 年第 10 號第 6 條增補)
- (2) 任何人均不得根據第 (1) 款進入作住宅用途的處所或其中任何部分，除非裁判官根據經宣誓而作的告發，信納有合理理由懷疑該處所或其中任何部分內曾發生或正發生或將發生本條例所訂罪行，或懷疑在該處所或其中任何部分內有任何物件，相當可能是或相當可能載有該罪行的證據而發出手令，則不在此限。
- (3) 任何人員對《工廠及工業經營條例》(第 59 章)所指的工業經營行使第 (1) 款授予他的權力時，可帶同任何合理需要協助他執行本條例規定的職務的人，尤其是可帶同因有特殊專長而獲處長聘用以就施行本條例所須處理事宜向勞工處提供意見的人士。(由 1980 年第 10 號第 6 條增補)
- (4) 依據第 (3) 款陪同上述人員的人 ——
- (a) 可於該人員行使第 (1) 款所授予的權力時，給予該人員合理要求的協助；

- (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*)

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第 72A 條

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Section 72A

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- (b) 就第 72A 及 72B 條而言，須當作為公職人員。（由 1980 年第 10 號第 6 條增補）  
(由 1979 年第 55 號第 2 條增補)

- (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. 公職人員有責任不披露申訴來源等

- (1) 除獲得申訴人同意或按第 (4) 款的規定外，凡有人作出申

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

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

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第 72B 條Part XIV  
Section 72B14-12  
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訴，指稱有違反本條例規定的情況，或該項申訴導致一名公職人員或其他公職人員知悉有違反本條例規定的情況，該名公職人員不得向任何人（其他正在執行公務的公職人員除外）披露該申訴人的姓名或身分。

- (2) 任何公職人員不得向僱主或其代理人或傭工披露他因接獲第 (1) 款所提述的申訴而曾前往該僱主所維持的僱傭地點探訪。
- (3) 除按第 (4) 款所規定外，任何公職人員凡因執行本條例或與此有關的職務而知悉任何生產秘密或商業秘密或工序，則不論何時，即使他已不再是公職人員，均不得向任何人披露該秘密或工序。
- (4) 法庭或裁判官在任何法律程序中，凡認為為公正有此需要，可命令披露作出第 (1) 款所提述的申訴人的姓名或身分，或披露第 (3) 款所提述的秘密或工序。

*(由 1980 年第 10 號第 7 條增補)*

**72B. 不得以僱員曾在根據本條例進行的法律程序中作供等理由而終止僱用及其他情況**

- (1) 僱主不得因其任何僱員有以下行為，而終止僱用或威脅終止僱用或在任何方面歧視該僱員——*(由 1993 年第 61 號第 9 條修訂)*
  - (a) 該僱員曾在為強制執行本條例而進行的法律程序中作供或同意作供；*(由 1992 年第 29 號第 3 條修訂)*

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)*

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- (b) 該僱員曾向為強制執行本條例或與此有關而進行查訊的公職人員，提供資料；
- (c) 該僱員曾在有關一名僱員於受僱工作期間因工遭遇意外的法律程序中，或就違反涉及個人工作安全的法定職責的法律程序中作供或同意作供；或（由 1992 年第 29 號第 3 條增補）
- (d) 該僱員在公職人員就一名僱員於受僱工作期間因工遭遇意外而進行查訊時，或就違反涉及個人工作安全的法定職責而進行查訊時，曾向該人員提供資料。（由 1992 年第 29 號第 3 條增補）
- (2) 凡僱主就第 63A(5) 條所訂與本條所禁止的行動有關的罪行而被定罪，則判其有罪的法庭或裁判官，可命令該僱主，除須支付可對其施加的罰款外，並須支付賠償給在該罪行中為受害人的僱員，賠償款額是法庭或裁判官在考慮有關個案的情況後認為是適當的款額。（由 1993 年第 61 號第 9 條增補。由 1995 年第 103 號第 23 條修訂）  
（由 1980 年第 10 號第 7 條增補）

**72C. 推定**

在根據本條例提出的檢控中——

- (a) 就本條例的任何條文而言，凡一個人在任何時間的年齡具關鍵性，則他在關鍵時間的年齡須被當作為

- (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

或被當作曾經為法庭或裁判官在考慮可得證據後覺得是或曾經是當時的年齡；

- (b) 如控罪是指稱有人違反本條例任何有關禁止或管制僱用青年或兒童的條文，而在該宗檢控中被告人乃所指稱發生該罪行的僱傭地點的僱主，或與所指稱發生該罪行有關的僱傭地點的僱主，則直至相反證明成立為止，須推定與該控罪有關而在所指稱發生該罪行當日受僱於僱傭地點的青年或兒童，是由該僱主在該日僱用於該地點的。（由 2001 年第 7 號第 11 條修訂）

*(由 1980 年第 10 號第 7 條增補)*

### 73. 規例

- (1) 行政長官會同行政會議可為下列各項或任何一項目的而訂立規例——（由 2000 年第 56 號第 3 條修訂）
- (a) 禁止或管制任何工業、職業或行業僱用任何人或任何類別人士；
  - (b) 要求任何工業、職業或行業就其僱員或任何類別僱員備存紀錄及保存表格；
  - (c) 將確保遵從本條例條文的義務，施加於僱主、其代理人或傭工及僱員；
  - (d) 向僱主及僱員委以職責及法律責任；
  - (e) 界定為本條例的施行而獲委任或授權的公職人員的職能、職責及權力；

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;



- (f) 豁免任何工業、職業或行業，或其任何部分或類別受本條例或其任何條文的施行所規限；
- (g) 規定本條例或其任何條文對與某類人士有關的事宜並不適用或可作出修改；
- (h) *(由 2000 年第 56 號第 3 條廢除)*
- (ha) 規定凡處長信納《工廠及工業經營條例》(第 59 章)所指的工業經營或其中任何類別或種類的工業經營的工作，受到季節性壓力或其他特殊壓力，他可藉憲報刊登的命令，容許該等工業經營或該類別或種類的工業經營在受壓力期間，延長根據本條例訂立的規例所指明有關僱員的工作時間或僱傭期，但在任何一年內不得超過該命令所指明的期間；*(由 1980 年第 10 號第 8 條增補。由 2001 年第 7 號第 12 條修訂)*
- (hb) 規定——
- (i) 任何文件如看來是某份文件或通知書的副本，並看來是由某人或其妥為授權的代理人簽署，則在任何法庭或裁判官進行的法律程序中由公職人員交出時，須接納為證據而無須再加證明；及
- (ii) 直至相反證明成立為止，獲呈交該文件的法庭或裁判官須推定該文件是真實副本，並經由該人或其妥為授權的代理人簽署；及
- (iii) 該文件是其內所載事實的確證；*(由 1980 年第 10 號第 8 條增補)*
- (hc) 規定凡在任何僱傭地點從事任何工作的人，其所從事的工作種類與在該僱傭地點所進行的生產程序、行業或業務有附帶關係或相關，就任何根據本條例訂立的任何規例而言，或就根據本條例而進行的任何法律程序而言，均當作在該僱傭地點受僱；但規例內另有規定者，則不在此限；*(由 1980 年第 10 號第 8 條增補)*

- (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

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- (i) 概括而言，本條例條文的施行。
- (2) 處長可在其認為適當的情況下，在經其指明的期間內及受他指明條件的規限下，以書面豁免任何人或任何類別的人受根據本條訂立的任何規例所規限。
- (3) (由 1988 年第 24 號第 2 條廢除)  
(由 1979 年第 55 號第 2 條增補。由 1980 年第 10 號第 8 條修訂)

- 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. 違反規例的罰則**

根據本條例訂立的規例，可規定如違反規例即屬犯罪，並可規定該罪行的刑罰，但不得超過第 6 級的罰款。  
(由 1988 年第 24 號第 2 條增補。由 1995 年第 103 號第 24 條修訂)

**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. 關於《2006 年為僱員權益作核證(中醫藥)(雜項修訂)條例》的過渡性條文**

- (1) 凡本條例提述由註冊中醫簽發的證明書或醫生證明書，

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

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

該項提述 ——

- (a) 不包括在《2006 年條例》生效日期\*之前由註冊中醫簽發的證明書或醫生證明書；及
  - (b) 在《2006 年條例》生效日期或之後由註冊中醫簽發的證明書或醫生證明書的以下範圍內不包括該證明書或醫生證明書 ——
    - (i) 它關乎任何在該生效日期之前結束的日子或時段的範圍；或
    - (ii) (如它關乎的任何日子或時段有部分是在該生效日期之前的)它關乎該段日子或時段中在該生效日期之前的部分的範圍。
- (2) 就本條而言 ——
- (a) **《2006 年條例》** (2006 Ordinance) 指《2006 年為僱員權益作核證(中醫藥)(雜項修訂)條例》(2006 年第 16 號) 第 2 部；
  - (b) 如某證明書或醫生證明書是為以下目的交出的 ——
    - (i) 僱員在某段日子根據第 III 部放取產假或根據第 VII 部放取病假日；或
    - (ii) 憑藉附表 1 第 3(2)(a) 段將某段時段計作僱員曾經工作的時段，
 則該證明書或醫生證明書關乎的期間為該段日子或時段。

(由 2006 年第 16 號第 9 條增補)

編輯附註：

\* 生效日期：2006 年 12 月 1 日。

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)

Editorial Note:

## 76. 經《2007 年僱傭 (修訂) 條例》修訂的本條例的適用情況

- (1) 經《2007 年僱傭 (修訂) 條例》(2007 年第 7 號)(《修訂條例》)修訂的本條例適用於在《修訂條例》的生效日期\* (生效日期) 當日或之後訂立的僱傭合約。
- (2) 凡某僱員的僱傭合約是在生效日期之前訂立的，而該合約的終止日期是在生效日期當日或之後，則經《修訂條例》修訂的本條例適用於計算以下款項——
  - (a) 根據第 II 部須由該僱員支付或須付給該僱員的代通知金或款項；
  - (b) 根據第 15(2) 條須付給該僱員的款項；
  - (c) 根據第 33(4BA) 或 (4C) 條須付給該僱員的款項；
  - (d) 根據第 40A(2) 條須付給該僱員的款項；
  - (e) 根據第 41D 條須付給該僱員的款項。
- (3) 凡某僱員的僱傭合約是在生效日期之前訂立的，而根據第 IIA 部須付給該僱員年終酬金或部分年終酬金是在生效日期當日或之後到期支付，則經《修訂條例》修訂的本條例適用於計算該年終酬金或部分年終酬金。

\* 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.

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第 77 條Part XIV  
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- (4) 凡某僱員的僱傭合約是在生效日期之前訂立的，而僱主須就某工資期付給該僱員產假薪酬、疾病津貼、假日薪酬或年假薪酬，如該工資期的最後一天是在生效日期當日或之後，則經《修訂條例》修訂的本條例適用於計算該產假薪酬、疾病津貼、假日薪酬或年假薪酬。

(由 2007 年第 7 號第 17 條增補)

編輯附註：

\* 生效日期：2007 年 7 月 13 日 (第 1 至 15 及 17 條)；及  
2008 年 1 月 13 日 (第 16 條)。

#### 77. 關乎《2018 年僱傭 (修訂) (第 2 號) 條例》的過渡條文

- (1) 如關於某僱員的關鍵日期，是指明條文的指明日期，或是在該指明日期之後，則凡該僱員根據第 VIA 部提出申索，以要求補救，該指明條文即適用於該項申索。
- (2) 不論有關僱員的僱傭合約，是否在有關指明日期之前訂立，第 (1) 款均適用。
- (3) 如關於某僱員的關鍵日期，是在原有條文的指明日期之前，則凡該僱員根據第 VIA 部提出申索，以要求補救，該原有條文即適用於該項申索。
- (4) 不論關於有關申索的法律程序，是否在有關指明日期之前展開，第 (3) 款均適用。
- (5) 在本條中——

**指明日期** (specified date) ——

- (a) 就原有條文而言，指以下條文的生效日期\* ——
  - (i) 《2018 年僱傭 (修訂) (第 2 號) 條例》(2018 年第 21 號) 中，廢除該原有條文的條文；或

- (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

(ii) 該條例中，修訂該原有條文使之成為指明條文的條文；或

(b) 就指明條文而言，指以下條文的生效日期 \* ——

(i) 該條例中，加入該指明條文的條文；或

(ii) 該條例中，修訂某原有條文使之成為該指明條文的條文；

**指明條文** (specified provision) 指第 32J、32N、32NA、32NB、32O、32PA、32PB、32PC、43N、43P 或 43R 條或該條的任何部分；

**原有條文** (former provision) 指在緊接被《2018 年僱傭 (修訂) (第 2 號) 條例》(2018 年第 21 號) 修訂前有效的第 32J、32N、32O、43N、43P 或 43R 條，或該條的任何部分；

**關鍵日期** (material date) ——

(a) 就於第 32A(1)(a) 或 (c) 條所述的任何情況下遭受解僱的僱員而言 ——

(i) 如有關僱主在該項解僱生效前，已將解僱一事，通知該僱員 —— 指該僱員獲通知的日期；或

(ii) 在其他情況下 —— 指該項解僱的生效日期；或

(b) (凡僱員的僱傭合約的條款，曾在第 32A(1)(b) 條所述的情況下更改) 就該僱員而言 ——

(i) 如有關僱主在該項更改生效前，已將該項更改，通知該僱員 —— 指該僱員獲通知的日期；或

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) 在其他情況下——指該項更改的生效日期。  
(由 2018 年第 21 號第 12 條增補)

編輯附註：

\* 生效日期：2018 年 10 月 19 日。

(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.

**附表 1**

[第 3 及 75 條]  
(由 2006 年第 16 號第 10 條修訂)

**連續性僱傭**

(格式變更——2017 年第 3 號編輯修訂紀錄)

1. (a) 本附表的條文，旨在確定任何僱傭合約就本條例而言是否屬“連續性合約”。
- (b) 如僱傭合約在本條例生效日期當日已經存在，緊接本條例生效日期前的僱傭期亦須獲得考慮，以確定僱傭合約是否屬連續性合約。
2. 在符合以下條文的規定下，不論何時，凡僱員在緊接該時間前，根據僱傭合約受僱 4 個星期或以上者，須當作在該段期間內是連續受僱。
3. (1) 就第 2 段而言，除非僱員在一個星期內工作 18 小時或以上，否則該星期不計算在內；在決定僱員曾否在某一個小時工作時，第 (2) 節的條文便須適用。
- (2) 如僱員在任何一個小時，不論整小時或其部分——
  - (a) 因疾病或損傷而無能力工作（但如無能力工作超過 48 小時，須有註冊醫生、註冊中醫或註冊牙醫簽發的醫生證明書作為佐證）；或（由 1995 年第 5 號第 11 條修訂；由 2006 年第 16 號第 10 條修訂）
  - (b) 在因法律規定、雙方的安排，或因行業、業務或經營的習慣而被視為仍繼續受僱主為任何目的而僱用的情況下缺勤，

**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—



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則除按第 4 段所規定外，該小時須計作為該僱員曾經工作的小時。

4. 凡僱員在任何一個小時或其部分因下列理由而缺勤——
- (a) 僱員參與不屬非法的罷工；或
  - (b) 僱主閉廠，
- 則該小時不得計作為他曾經工作的小時，但其僱傭期的連續性則不會因該次缺勤而視為中斷。
5. 如一個行業、業務或經營由一人轉讓給另一人，則在轉讓時僱員在該行業、業務或經營的僱傭期，須計作為受僱於受讓人的僱傭期，而該項轉讓亦不會令僱傭期的連續性中斷。
6. 就本附表而言，凡提述僱員曾經工作的小時，均指他曾為僱主工作的小時，不論是否按同一僱傭合約或另一僱傭合約受僱於該僱主，亦不論該等小時是否屬連續性者。（由 1990 年第 41 號第 23 條代替）

- (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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7. 在本附表中，除文意另有所指外——  
**星期** (week) 指以星期六為最後一天的一個星期；  
**閉廠** (lock-out) 及 **罷工** (strike) 具有《職工會條例》(第 332 章)  
 分別給予該兩詞的涵義。  
 (由 1970 年第 5 號第 9 條修訂；由 1970 年第 71 號第 6 條修訂；  
 由 1990 年第 41 號第 23 條修訂)

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)*

## 附表 2

[ 第 67 條 ]

## 拘捕潛逃僱主的程序

( 格式變更 —— 2017 年第 3 號編輯修訂紀錄 )

## 第 I 部

1. 在本部內，第 67(1)(a) 及 (b) 條所述工資及款項均稱為**債項**。  
( 由 2000 年第 32 號第 48 條修訂 )
2. 凡根據第 67 條提出的申請，須按第 II 部內表格 1 的格式提出。
3. 區域法院法官就根據第 67 條提出的申請作出他認為需要的調查後，如信納有頗能成理的因由相信僱主即將離開香港，意圖逃避支付債項，可按第 II 部表格 2 的格式發出手令，下令拘捕及將該僱主帶到區域法院法官席前，向區域法院法官提出為何不應按照第 5 段規定他提交保證的因由。( 由 1984 年第 48 號第 32 條修訂 )
4. 按照第 3 段發出的手令被帶到區域法院法官席前的僱主，如能提出為何不應按照第 5 段規定他提交保證的因由，則該手令須予以撤銷，而僱主須獲得釋放。
5. (1) 根據第 3 段發出手令而按照該手令被帶到區域法院法官席前的僱主，如未能提出為何不應按照本段規定他提交保證的因由，則區域法院法官可下令規定該僱主按照第 (3) 節訂立保證書，隨傳隨到區域法院法官席前，直至將債項款額全數付給僱員為止。

## 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

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附表 2 —— 第 I 部

Second Schedule—Part I

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- (2) 如僱主要約以任何其他安排，保證將債項款額全數付給僱員，以代替根據第(1)節訂立保證書，則區域法院法官可接受此種安排，作為將債項款額全數付給僱員的保證，以代替保證書。
- (3) 根據第(1)節訂立的保證書——
- 須使僱員受惠；
  - 須採用第 II 部內表格 3 的格式；
  - 所保證的款項須由區域法院法官命令，但不得超過債項款額；及
  - 須為經區域法院法官所命令的連同有若干數目擔保人的保證書，而該數目的擔保人須為區域法院法官所批准。
6. 如僱主遵從區域法院法官根據第 5(1) 段所作出的命令，或根據第 5(2) 段以其他安排保證將債項款額全數付給僱員，則根據第 3 段發出的手令須予以撤銷，而僱主須獲得釋放。(由 1997 年第 80 號第 102 條修訂)
7. 如僱主未有遵從區域法院法官根據第 5(1) 段所作出的命令，則區域法院法官可將他交付監獄羈押，直至該命令獲得遵從，或羈押滿 3 個月為止，兩者以較早發生者為準。
8. (1) 如僱主或根據第 5 段訂立的保證書的任何擔保人提出申請，而區域法院法官信納第(2)節所指明的任何一種情況已經出現，則可在適當情形下令——
- 撤銷根據第 3 段發出的手令；
  - 如僱主根據第 3 段被拘捕或被帶到區域法院法官席前，或根據第 7 段被交付監獄羈押，則將該僱主釋放；
  - 根據第 5 段訂立的任何保證書無效(不論其內所載條件如何)；及

- 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)—
- shall be in favour of the employee;
  - shall be as in Form 3 in Part II;
  - shall be for such sum, not exceeding the amount of the debt, as the District Judge may order; and
  - 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.

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附表 2 —— 第 I 部

Second Schedule—Part I

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- (d) 免除僱主遵從根據第 5(2) 段所作的任何安排。
- (2) 第 (1) 節所指情況如下 ——
- (a) 債項已全數清付或已放棄追討；
- (b) 在根據第 67 條申請向僱主追討任何部分債項後 14 天內，仍未提出法律程序；
- (c) 向僱主追討全部或部分債項的法律程序未有努力進行；
- (d) 向僱主追討全部或部分債項的所有法律程序，最後已經被取消或撤銷。
9. (1) 根據第 5 段訂立的保證書的擔保人，可隨時向區域法院法官申請解除其根據該保證書所須承擔的義務。
- (2) 區域法院法官在接獲根據第 (1) 節提出的申請後，須傳召僱主到區域法院法官席前。
- (3) 僱主到區域法院法官席前時，區域法院法官須下令解除根據第 (1) 節提出申請的擔保人根據該保證書所須承擔的義務，並命令該僱主提供另外 1 名或多名經區域法院法官批准的擔保人，作為該保證書的擔保人。
- (4) 如區域法院法官根據第 (3) 節命令僱主提供一名或多名經批准的保證書擔保人，則第 6 及 7 段的條文須屬適用，猶如該命令是根據第 5(1) 段作出的一樣。
10. 根據第 67 條或第 8 或 9 段提出申請或與該申請有關的事宜，均無須向區域法院付給任何費用。

*(由 1998 年第 25 號第 2 條修訂)*

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.

**第 II 部**

表格 1 [《僱傭條例》  
附表 2 第 I 部第 2 段]

**Part II**

FORM 1 [Employment Ordinance,  
Second Schedule, Part I,  
paragraph 2]

要求發出拘捕潛逃僱主手令的申請書

APPLICATION FOR WARRANT FOR APPREHENSION OF ABSCONDING EMPLOYER

*標題*

*Title*

在香港 ..... 區域法院聆訊的  
19 ..... 年第 ..... 號案件

IN THE DISTRICT COURT OF HONG KONG  
Held at .....  
No. ....of 19 .....

申請事項： 根據《僱傭條例》第 67 條申請發出手令拘捕僱主 .....  
..... °  
單方面 提出申請：申請人是僱員 ..... °  
我 ..... 地址為 .....

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.

(申請人姓名)

..... ,

(申請人地址)

現按照《僱傭條例》附表 2 第 I 部第 3 段申請發出手令，拘捕.....  
(僱主姓名)

該僱主地址為.....  
其職業是.....。

2. 我提出申請所根據的理由如下 ——

(a) 我是.....的僱員 / 前僱員<sup>(1)</sup>;  
(僱主姓名)

(b) .....是名列附表第 1 欄內各人的僱主 / 前僱主<sup>(1)</sup>;  
(僱主姓名)

(c) 該僱主所拖欠該等僱員的工資及 / 或<sup>(1)</sup> 其他款項，已詳列於附表第 2 欄，相對於該等僱員姓名的位置，而拖欠的理由則詳列於附表第 3 欄內；及

(d) 由於下述理由，我相信該僱主即將離開香港，意圖逃避支付附表第 2 欄所列工資及 / 或<sup>(1)</sup> 其他款項 ——

.....  
.....

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<sup>(1)</sup> of ..... ;  
(name of employer)

(b) that ..... is the employer/former  
(name of employer)

employer<sup>(1)</sup> of each person specified in the First Column of the Schedule;

(c) that the employer owes to such employees the wages and/or<sup>(1)</sup> 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<sup>(1)</sup> other moneys specified in the Second Column of the Schedule—

.....  
.....

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附表 2 —— 第 II 部

Second Schedule—Part II

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## 附表

| 第 1 欄    | 第 2 欄                            | 第 3 欄 |
|----------|----------------------------------|-------|
| 僱員姓名及地址  | 拖欠僱員的工資及 / 或 <sup>(1)</sup> 其他款項 | 拖欠理由  |
|          |                                  |       |
| 拖欠僱員款項總額 |                                  |       |

## SCHEDULE

| FIRST COLUMN                    | SECOND COLUMN  | THIRD COLUMN                  |
|---------------------------------|--|-------------------------------|
| Name and address of employee    | Amount of wages and/or <sup>(1)</sup> other moneys owing to employee | Reason for which moneys owing |
|                                 |  |                               |
| Total amount owing to employees |  |                               |

日期：19      年      月      日。

Dated this      day of      19      .

.....  
申請人.....  
*Applicant.*

## 支持申請的誓章

## AFFIDAVIT IN SUPPORT OF APPLICATION

我.....謹此以宗教形式宣誓 / 謹此鄭重、衷誠及據實聲明及以非宗教形式宣誓<sup>(1)</sup>，據我所知所信，以上申請書第 2 段所述各項事實，均屬正確。

I, ..... make oath/do solemnly, sincerely and truly declare and affirm<sup>(1)</sup> 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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附表 2 —— 第 II 部

Second Schedule—Part II

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19 ..... 年 ..... 月 ..... 日於香港 ..... 在  
我面前以宗教形式宣誓 / 以非宗教形式宣誓<sup>(1)</sup>。

Sworn/affirmed<sup>(1)</sup> at

Hong Kong, the ..... day of ..... 19 .....

Before me,

*A Commissioner, &c.*

.....  
監督員

註：(1) 將不適用者刪去。

(由 1972 年第 48 號法律公告修訂；由 1981 年第 177 號法律公  
告修訂；由 1998 年第 25 號第 2 條修訂)

Note: (1) Delete whichever is inapplicable.

(Amended L.N. 48 of 1972; L.N. 177 of 1981)

表格 2  
[《僱傭條例》  
附表 2 第 I 部第 3 段]

FORM 2  
[Employment Ordinance,  
Second Schedule, Part I,  
paragraph 3]

拘捕潛逃僱主的手令

WARRANT FOR APPREHENSION OF ABSCONDING EMPLOYER

[ 標題與表格 1 的標題相同 ]

[Title as in Form 1]

致：全體及每名香港警務人員及執達主任：

根據 [ 申請人姓名 ] 於 19 ..... 年 ..... 月 ..... 日呈遞的  
申請書，我信納申請人 [ 及申請書內所提述的其他人 ]<sup>(2)</sup> 是 / 曾是<sup>(1)</sup> [ 僱  
主姓名 ] 的僱員，而根據頗能成理的因由相信上述 [ 僱主姓名 ] 即將  
離開香港，意圖逃避支付該等僱員所賺取而遭拖欠的款項共計 [ 債項  
款額 ]：

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]<sup>(2)</sup> is/are/was/  
were<sup>(1)</sup> the employee/employees<sup>(1)</sup> 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<sup>(1)</sup>:

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附表 2 —— 第 II 部

Second Schedule—Part II

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為此，現命令你隨即將上述 [僱主姓名] 拘捕，並帶他到區域法院法官席前，向區域法院法官提出為何不應按照《僱傭條例》附表 2 第 I 部第 5 段規定他 [僱主姓名] 提交保證的因由，並進一步依法處理。

日期：19          年          月          日。

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          .

.....  
區域法院法官

.....  
District Judge.

[ 蓋印處 ]

註： (1) 將不適用者刪去。  
(2) 如不適用可刪去。

(由 1981 年第 177 號法律公告修訂；由 1998 年第 25 號第 2 條修訂；由 2000 年第 56 號第 3 條修訂)

[L.S.]

Notes : (1) Delete whichever is inapplicable.  
(2) Delete if inapplicable.

(Amended L.N. 177 of 1981; 56 of 2000 s. 3)

表格 3          [《僱傭條例》  
附表 2 第 I 部第 5 段]

FORM 3          [Employment Ordinance,  
Second Schedule, Part I,  
paragraph 5]

僱主付給僱員欠薪保證書

BOND TO SECURE PAYMENT OF WAGES DUE TO EMPLOYEES BY EMPLOYER

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第 57 章

附表 2 —— 第 II 部

Second Schedule—Part II

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我 / 我們<sup>(1)</sup>，即 [僱主姓名]，地址為 [地址]，[擔保人姓名]，地址為 [地址]，以及 [擔保人姓名]，地址為 [地址]，現保證負責支付 \$ 給 [僱員姓名] 及 [(僱主姓名) 的其他僱員，其姓名在 19 年 月 日 (申請人姓名) 根據《僱傭條例》第 67 條向區域法院法官 呈遞的申請書內均有列明]<sup>(2)</sup>。該款項將付給 [僱員姓名] 及上述其他僱員]<sup>(2)</sup> 或他 / 他們各自<sup>(1)</sup> 的遺囑執行人、遺產管理人或承讓人；我 / 我們共同及各別<sup>(1)</sup> 保證及保證我 / 我們各自<sup>(1)</sup> 的繼承人、遺囑執行人以及遺產管理人支付上述款項。

此證，我 / 我們<sup>(1)</sup> 謹於 19 年 月 日在此簽署蓋印作實。

是項義務的條件是：[僱主姓名] 須隨傳隨到區域法院法官席前，直至將申請書所指明 \$ 全數付給 [僱員姓名] 及上述其他僱員]<sup>(2)</sup> 為止，屆時是項義務須告無效，但在未支付前，此項義務仍完全有效。

|   |   |             |
|---|---|-------------|
| 在 | } | [僱主] (蓋印處)  |
|   |   | [擔保人] (蓋印處) |
|   |   | [擔保人] (蓋印處) |

面前簽署、蓋印並交付作實

註： (1) 將不適用者刪去。  
(2) 如不適用可刪去。

(由 1998 年第 25 號第 2 條修訂)

(附表 2 由 1970 年第 71 號第 7 條增補)

I/We<sup>(1)</sup> [name of employer] of [address], [name of surety] of [address], and [name of surety] of [address], is/are<sup>(1)</sup> 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]<sup>(2)</sup> in the sum of \$ , to be paid to [name of employee] [and the said other employees]<sup>(2)</sup> or his/their respective<sup>(1)</sup> executors, administrators or assignees; for which payment to be made I/we jointly and severally<sup>(1)</sup> bind myself/ourselves<sup>(1)</sup>, and my/our respective<sup>(1)</sup> heirs, executors and administrators.

In witness whereof I/we<sup>(1)</sup> have hereto set my hand and seal/our hands and seals<sup>(1)</sup> 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]<sup>(2)</sup> 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)

## 附表 3

[ 第 31M 條 ]

## 僱主或僱員的死亡

(格式變更——2017 年第 3 號編輯修訂紀錄)

## 第 I 部

## 僱主的死亡

1. 本部的規定，就僱員而言，對與其僱主（本部內稱為**已故僱主**）死亡有關的情況具有效力。
2. 已故僱主生前僱用僱員所從事的業務的擁有權，如轉移至該已故僱主的遺產代理人，因此而引起的變更，第 31J 條並不適用。
3. 憑藉第 31L(1) 條的規定，凡已故僱主的死亡就本條例第 VA 部而言，視為是該僱主終止僱傭合約，惟在下列情況，僱員不得視為已遭該已故僱主解僱——
  - (a) 其僱傭合約經由已故僱主的遺產代理人予以續訂，或經由該遺產代理人以新僱傭合約再次聘用；及
  - (b) 續約或再次聘用是在已故僱主死亡後 4 個星期內生效。
4. 就本條例第 VA 部而言，僱員凡因已故僱主死亡而被視為已遭解僱，如已故僱主的遺產代理人曾以書面向該僱員要約續訂合約，或以新合約再次聘用，而按照要約所列詳情，續約或再次聘用會在已故僱主死亡後 4 個星期內生效，且有以下其中一種情形——

## 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.

- (a) 該續訂或新訂合約（視屬何情況而定）的條文，不論是有關該僱員將受僱的身分及受僱地點，以及其他僱傭條款及條件，均與緊接僱主死亡前的有效合約的相應條文無異；或
- (b) 如按照要約所指明的詳情，該等條文與緊接僱主死亡前的有效合約的相應條文全部或部分有所不同，但該項要約對該僱員而言構成適合僱傭的要約，

該僱員在上述任何一種情況下不合理地拒絕該項要約，即無權因是次遭解僱而獲得遣散費。

5. 就第 4 段而言 ——

- (a) 任何要約，不得僅因遺產代理人取代已故僱主成為僱主，而將續訂的合約或新合約（視屬何情況而定）的條文，視為與緊接已故僱主死亡前的有效合約的相應條文有所不同；及
- (b) 在決定拒絕該項要約是否不合理時，對上述取代不加考慮。

6. 憑藉第 31L(1) 條的規定，凡已故僱主的死亡視為由該僱主終止僱傭合約，則該條第 (2) 款中凡提述第 31D(2) 條時，須解釋為包括提述第 3 段。

7. 憑藉第 3 段的規定，凡僱員因其獲續約或獲再次聘用是在已故僱主死亡後生效而不視為被解僱，則 ——

- (a) 就第 31B(1) 條而言，在決定該僱員是否在必要期間內曾根據連續性合約受僱時，由僱主死亡之日起至續約或再次聘用生效之日止的一段相隔期間，須計作為受僱於已故僱主的遺產代理人的僱傭期（假若無本段的規定，該段相隔期間就該目的而言不得計作為上述僱傭期）；及

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

- (b) 在計算第 31B(1) 條所指明的期間時，僱員僱傭期的連續性不得視為被在該段相隔期間內任何一個星期所打斷。
8. 為按照第 31B(3) 條使本條例第 VA 部適用於受僱為家庭傭工，在私人住戶工作或其受僱的工作是與私人住戶有關的僱員，本附表內本部凡提述遺產代理人時，均解釋為包括提述任何因已故僱主的死亡而獲轉移該住戶管理權的人；但依據出售或為有值代價的其他產權處置而獲轉移管理權者除外。
9. 除本附表本部另有規定外，就一名已死亡的僱主而言——
- (a) 本條例第 VA 部內凡提述僱主所作事情或所作與僱主有關的事情時，均須解釋為包括提述該已故僱主任何遺產代理人所作事情或所作與該遺產代理人有關的事情；及
- (b) 本條例第 VA 部內凡提述僱主被要求或獲授權作出的事情，或被要求或獲授權作出與他有關的事情時，均須解釋為包括提述按照本條例第 VA 部而經由本附表內本部（包括 (a) 分節）所修改的條文，僱主的遺產代理人被要求或獲授權作出的事情，或被要求或獲授權作出與他有關的事情。

- 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

10. 憑藉本條例第 VA 部而經由本附表本部加以修改的規定，凡已故僱主的遺產代理人有法律責任付給遣散費或部分遣散費，而該法律責任並非於僱主死亡前產生，則就各方面而言，該法律責任須視為猶如是已故僱主的法律責任一樣，而該法律責任在緊接他死亡前產生。

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.

## 第 II 部

## Part II

**僱員的死亡**

11. 凡僱主已給予僱員通知，終止其僱傭合約，而該僱員在通知期限屆滿前死亡，則本條例第 VA 部即須適用，猶如該僱主已藉在僱員死亡之日屆滿的通知而妥為終止合約。
12. 凡僱主已給予通知僱員終止其僱傭合約，並要約續訂其僱傭合約或以新合約再次聘用，而——
- (a) 該僱員在接受或拒絕該項要約之前死亡；及
  - (b) 在該僱員死亡前，其僱主未有撤回該項要約，
- 則第 31C 條第 (2) 或 (3) 款（視屬何情況而定）即須適用，猶如該兩款內“該僱員不合理地拒絕該項要約”字句，改由“僱員方面如拒絕該項要約應屬不合理”字句取代。
13. 如僱員於有關日期後的 1 個月期間終結前死亡，則對其遺產代理人提出的申索，第 31N 條須予適用，但其內“3 個月”的字句改由“6 個月”取代。（由 1985 年第 76 號第 9 條修訂）
14. 除本附表內本部另有規定外，就一名已死亡的僱員而言，本條例第 VA 部內——
- (a) 凡提述僱員所作事情或所作與僱員有關的事情，均須解釋為包括提述該已故僱員任何遺產代理人所作事情或所作與該遺產代理人有關的事情；及
  - (b) 凡提述僱員被要求或獲授權作出的事情，或被要求或獲授權作出與他有關的事情時，均須解釋為包括提述任何按照本條例第 VA 部而經由本附表內本部（包括 (a) 分節）所修改的條文，僱員的遺產代理人被要求或獲授權作出的事情，或被要求或獲授權作出與他有關的事情。

**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



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第 57 章

附表 3 —— 第 II 部

Third Schedule—Part II

S3-12  
Cap. 57

15. 已故僱員的遺產代理人獲付給遣散費的權利，凡該權利並非在僱員死亡前產生，須轉予遺產代理人，猶如是在僱員死亡前產生一樣。

(附表 3 由 1974 年第 67 號第 6 條增補)

- (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)

**附表 4**

[ 第 72(1) 條 ]

**指明條例***(格式變更——2017 年第 3 號編輯修訂紀錄)*

| 項  | 名稱   |
|----|--|
| 1. | 《勞資審裁處條例》(第 25 章)。   |
| 2. | 《學徒制度條例》(第 47 章)。  |
| 3. | 《勞資關係條例》(第 55 章)。  |
| 4. | 《往香港以外地方就業合約條例》(第 78 章)。(由 2000 年第 56 號第 3 條修訂)                                  |
| 5. | 《僱員補償條例》(第 282 章)。   |
| 6. | 《職工會條例》(第 332 章)。  |
| 7. | 《肺塵埃沉着病及間皮瘤(補償)條例》(第 360 章)。(由 1997 年第 18 號法律公告修訂；由 2008 年第 6 號第 37 條修訂)         |
| 8. | 《小額薪酬索償仲裁處條例》(第 453 章)。(由 1994 年第 61 號第 55 條增補)<br>(附表 4 由 1984 年第 48 號第 33 條增補) |

**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><br><i>(Fourth Schedule added 48 of 1984 s. 33)</i> |

S5-1  
第 57 章

附表 5

Fifth Schedule

S5-2  
Cap. 57**\* 附表 5***(由 1997 年第 74 號第 18 條廢除)*

編輯附註：

\* 附表 5 已自 1998 年 6 月 27 日起廢除。緊接 1998 年 6 月 27 日前的附表 5 內容如下——

“附表 5

對照表

| 第 1 欄      | 第 2 欄        |
|------------|--------------|
| 僱員在有關日期的年齡 | 僱員在有關日期的服務年數 |
| 不超過 43 歲   | 7 年          |
| 44 歲       | 6 年          |
| 不少於 45 歲   | 5 年 ”。       |

**\*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 ”.   |

## 附表 6

[ 第 31ZC 條 ]

## 僱主的死亡——長期服務金

(格式變更——2017 年第 3 號編輯修訂紀錄)

1. 本附表的規定，就僱員而言，對與其僱主（本附表內稱為**已故僱主**）死亡有關的情況具有效力。
2. 已故僱主生前僱用僱員所從事的業務的擁有權，如轉移至該已故僱主的遺產代理人，因此而引起的變更，第 31Z 條並不適用。
3. 憑藉第 31ZB 條的規定，凡已故僱主的死亡就本條例第 VB 部而言，視為是該僱主終止僱傭合約，惟在下列情況，僱員不得視為已遭該已故僱主解僱——
  - (a) 其僱傭合約經由已故僱主的遺產代理人予以續訂，或經由該遺產代理人以新僱傭合約再次聘用；及
  - (b) 續約或再次聘用是在已故僱主死亡後 4 個星期內生效。
4. 憑藉第 3 段的規定，凡僱員因其獲續約或獲再次聘用是在已故僱主死亡後生效而不視為被解僱，則——
  - (a) 就第 31R 或 31RA 條而言，在決定該僱員是否曾根據連續性合約受僱滿必要服務年數，由僱主死亡之日起至續約或再次聘用生效之日止的一段相隔期間，須計作為受僱於已故僱主的遺產代理人的僱傭期（假

## 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.

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第 57 章

附表 6

Sixth Schedule

S6-4  
Cap. 57

- 若無本段的規定，該段相隔期間就該目的而言不得計作為上述僱傭期)；及
- (b) 在計算第 31R 或 31RA 條所指明的服務年數時，僱員僱傭期的連續性不得視為被在該段相隔期間內任何一個星期所打斷。
5. 為按照第 31RB 條使本條例第 VB 部適用於受僱為家庭傭工，在私人住戶工作或其受僱的工作是與私人住戶有關的僱員，本附表內凡提述遺產代理人時，均解釋為包括提述任何因已故僱主的死亡而獲轉移該住戶管理權的人；但依據出售或為有值代價的其他產權處置而獲轉移管理權者除外。
6. 除本附表另有規定外，就一名已死亡的僱主而言——
- (a) 本條例第 VB 部內凡提述僱主所作事情或所作與僱主有關的事情時，均須解釋為包括提述該已故僱主任何遺產代理人所作事情或所作與該遺產代理人有關的事情；及
- (b) 本條例第 VB 部內凡提述僱主被要求或獲授權作出的事情，或被要求或獲授權作出與他有關的事情時，均須解釋為包括提述按照本條例第 VB 部而經由本附表 (包括 (a) 分節) 所修改的條文，僱主的遺產代理人被要求或獲授權作出的事情，或被要求或獲授權作出與他有關的事情。
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

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附表 6

第 57 章

7. 憑藉經由本附表加以修改的本條例第 VB 部，凡已故僱主的遺產代理人有法律責任付給長期服務金或部分長期服務金，而該法律責任並非於僱主死亡前產生，則就各方面而言，該法律責任須視為猶如是已故僱主的法律責任一樣，而該法律責任在緊接他死亡前產生。

*(附表 6 由 1985 年第 76 號第 10 條增補。由 1988 年第 52 號第 17 條修訂；由 1990 年第 41 號第 24 條修訂)*

Sixth Schedule

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- (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)*

S7-1  
第 57 章

附表 7

Seventh Schedule

S7-2  
Cap. 57

## 附表 7

[第 31G 及 31V 條]  
(格式變更——2017 年第 3 號編輯修訂紀錄)

表 A

| 第 1 欄   | 第 2 欄   |
|---|---|
| 有關日期  | 最高款額  |
| 在《1995 年僱傭(修訂)條例》*(1995 年第 5 號)生效日期之前                         | 僱員在緊接有關日期前的 12 個月期間所賺取的工資總額，或 \$180,000，兩者以較小款額為準 |
| 在《1995 年僱傭(修訂)條例》*(1995 年第 5 號)生效日期當日或之後，但在 1995 年 10 月 1 日之前 | \$210,000   |
| 1995 年 10 月 1 日至 1996 年 9 月 30 日                              | \$230,000   |
| 1996 年 10 月 1 日至 1997 年 9 月 30 日                              | \$250,000   |
| 1997 年 10 月 1 日至 1998 年 9 月 30 日                              | \$270,000   |
| 1998 年 10 月 1 日至 1999 年 9 月 30 日                              | \$290,000   |
| 1999 年 10 月 1 日至 2000 年 9 月 30 日                              | \$310,000   |
| 2000 年 10 月 1 日至 2001 年 9 月 30 日                              | \$330,000   |
| 2001 年 10 月 1 日至 2002 年 9 月 30 日                              | \$350,000   |
| 2002 年 10 月 1 日至 2003 年 9 月 30 日                              | \$370,000   |
| 2003 年 10 月 1 日當日或之後  | \$390,000   |

編輯附註：

\* “《1995 年僱傭(修訂)條例》” 乃 “Employment (Amendment) Ordinance 1995” 之譯名。

## 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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附表 7

Seventh Schedule

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表 B

| 第 1 欄   | 第 2 欄      |
|---|------------|
| 有關日期  | 可十足計算的服務年資 |
| 在《1995 年僱傭(修訂)條例》*(1995 年第 5 號)生效日期當日或之後，但在 1995 年 10 月 1 日之前 | 25 年       |
| 1995 年 10 月 1 日至 1996 年 9 月 30 日                              | 27 年       |
| 1996 年 10 月 1 日至 1997 年 9 月 30 日                              | 29 年       |
| 1997 年 10 月 1 日至 1998 年 9 月 30 日                              | 31 年       |
| 1998 年 10 月 1 日至 1999 年 9 月 30 日                              | 33 年       |
| 1999 年 10 月 1 日至 2000 年 9 月 30 日                              | 35 年       |
| 2000 年 10 月 1 日至 2001 年 9 月 30 日                              | 37 年       |
| 2001 年 10 月 1 日至 2002 年 9 月 30 日                              | 39 年       |
| 2002 年 10 月 1 日至 2003 年 9 月 30 日                              | 41 年       |
| 2003 年 10 月 1 日至 2004 年 9 月 30 日                              | 43 年       |

編輯附註：

\* “《1995 年僱傭(修訂)條例》” 乃 “Employment (Amendment) Ordinance 1995” 之譯名。

(附表 7 由 1995 年第 5 號第 12 條增補)

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)*



## 附表 8

[ 第 32G 條 ]

### 僱傭保障

#### 僱主或僱員的死亡

(格式變更——2017 年第 3 號編輯修訂紀錄)

#### 第 I 部

##### 僱主的死亡

1. 如僱主於其僱員在僱傭保障上的訴訟權根據本條例第 VIA 部產生後但在有關申索獲判定前死亡，則僱員可就有關申索對已故僱主的遺產代理人進行訴訟。
2. 就僱主死亡而言，凡在第 32B 或 32C 條中提述由僱主續訂合約或再次聘用，須解釋為包括提述由已故僱主的任何遺產代理人續訂合約或再次聘用；而提述由僱主所作的要約，須解釋為包括提述由已故僱主的任何遺產代理人所作的要約。

#### 第 II 部

##### 僱員的死亡

3. 如僱員於其在僱傭保障上的訴訟權根據本條例第 VIA 部產生

## 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

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附表 8 —— 第 II 部

後但在有關申索獲判定前死亡，則已故僱員的遺產代理人可就有關申索進行訴訟。

4. 凡僱主已給予僱員通知，終止其僱傭合約，而該僱員在該通知期限屆滿前死亡，則本條例第 VIA 部關於僱傭保障的條文須適用，猶如該僱主已藉在該僱員死亡當日屆滿的通知終止該合約一樣。
5. 凡僱主已給予僱員通知，終止其僱傭合約，並要約續訂其僱傭合約或要約以新合約再次聘用該僱員，而——
- (a) 該僱員在未曾接受或拒絕該項要約前已死亡；及
  - (b) 在該僱員死亡前，其僱主未有撤回該項要約，
- 則第 32C(1) 或 (2) 條 (視屬何情況而定) 須適用，猶如在該兩款內“該僱員如不合理地拒絕該項要約”的字句，已由“該僱員如拒絕該項要約本應屬不合理”的字句取代一樣。

(附表 8 由 1997 年第 75 號第 5 條增補)

Eighth Schedule—Part II

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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)

**附表 9**

[ 第 49A 條 ]

**就備存工作時數紀錄指明的金額上限**

每月 \$15,300

(附表 9 由 2010 年第 15 號第 22 條增補。由 2010 年第 148 號法律公告修訂；由 2012 年第 187 號法律公告修訂；由 2015 年第 7 號法律公告修訂；由 2017 年第 12 號法律公告修訂；由 2019 年第 11 號法律公告修訂)

**Ninth Schedule**

[s. 49A]

**Monetary Cap on Keeping Records of Hours Worked**

*(Format changes—E.R. 1 of 2013)*

\$15,300 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; L.N. 11 of 2019)*