

Employment (Amendment) (No.2) Ordinance 2018 comes into force today

The Employment (Amendment) (No.2) Ordinance 2018, which amends the provisions on reinstatement or re-engagement order for unreasonable and unlawful dismissal, came into force today (October 19).

According to the amended provisions, where an employee has been unreasonably and unlawfully dismissed on or after October 19 and the employee makes a claim for reinstatement or re-engagement, and the Labour Tribunal (LT) considers that the order is appropriate and reinstatement or re-engagement of the employee by the employer is reasonably practicable, the LT can make such an order without the employer's agreement.

Should the employer fail to reinstate or re-engage the employee as required by the order, the employer shall pay to the employee a further sum set at three times the employee's average monthly wages, subject to a maximum of \$72,500. This amount is on top of the terminal payments and compensation payable to the employee as ordered by LT as currently provided in the Employment Ordinance (EO). The employer commits a criminal offence if he/she wilfully and without reasonable excuse fails to pay this further sum.

Unreasonable and unlawful dismissal under the EO refers to the situation where an employee is dismissed other than for a valid reason as specified under the EO and the dismissal is in contravention of labour legislation. Valid reasons for dismissal include the conduct of the employee, his/her capability/qualification for performing the job, redundancy or other genuine operational requirements of the business, compliance with legal requirements, or other reasons of substance. Dismissals in contravention of labour legislation include dismissal during pregnancy and maternity leave, during paid sick leave, after work-related injury and before determination/settlement and/or payment of compensation under the Employees' Compensation Ordinance, or by reason of the employee exercising trade union rights or giving evidence for the enforcement of relevant labour legislation.

To assist employers, employees and members of the public in understanding the new law, the Labour Department has published a Brief Note of the amendments, which may be downloaded from the department's homepage: [www.labour.gov.hk/eng/news/EA\(2\)02018.htm](http://www.labour.gov.hk/eng/news/EA(2)02018.htm) and is available at the branch offices of the department's Labour Relations Division.

For further enquiries, employers and employees may call the Labour Department's 24-hour hotline at 2717 1771 (the hotline is handled by 1823) or approach the branch offices of the Labour Relations Division.