

Employment (Amendment) (No.2) Ordinance 2018 gazetted

The Employment (Amendment) (No.2) Ordinance 2018, which was passed by the Legislative Council on May 17, was gazetted today (May 25).

In handling cases of employees' requests for reinstatement or re-engagement after unreasonable and unlawful dismissal, the Labour Tribunal is empowered, under the ordinance, to make an order for reinstatement or re-engagement without the need to first secure the employer's agreement if the Tribunal considers that the making of such an order is appropriate and practicable.

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 the Tribunal 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.

The ordinance will come into operation on a day to be appointed by the Secretary for Labour and Welfare by notice published in the Gazette.