

LCQ19: Issues of employees' rights and interests arising from the epidemic

Following is a question by the Hon Holden Chow and a written reply by the Secretary for Labour and Welfare, Dr Law Chi-kwong, in the Legislative Council today (May 12):

Question:

Under the law, persons placed under quarantine must not leave their place of quarantine within the quarantine period, and persons put under medical surveillance are also subject to certain restrictions on their itineraries within the surveillance period. The Labour Department (LD) has called on employers to grant paid sick leave to their employees who are absent from work on account of being placed under quarantine or medical surveillance. However, some members of the public have pointed out that as "absence from work on account of being placed under quarantine or medical surveillance" is not the reason for taking sick leave under the Employment Ordinance (Cap 57) (i.e. "being unfit for work on account of injury or sickness"), some employers have asked such employees to take no pay leave or offset their absence with their paid annual leave entitlements. Regarding issues of employees' rights and interests arising from the Coronavirus Disease 2019 (COVID-19) epidemic, will the Government inform this Council:

(1) Whether those government employees to whom quarantine orders or medical surveillance notices have been issued will be regarded as being granted authorised absence from work for the relevant period;

(2) Whether LD will draw up relevant guidelines in respect of the aforesaid issues of employees' rights and interests to enhance protection for employees' rights and interests; if so, of the details; if not, the reasons for that; and;

(3) Given that since November 27 last year, eligible Hong Kong residents confirmed to have contracted COVID-19 locally and suffering from financial hardship may apply for a one-off allowance of \$5,000, whether the Government will extend the scope of the allowance to cover all persons to whom quarantine orders or medical surveillance notices have been issued, so as to compensate them for the relevant financial losses they have suffered; if so, of the details; if not, the reasons for that?

Reply:

President,

Having consulted the relevant policy bureaux, my consolidated reply to the Member's question is as follows:

Pursuant to the Prevention and Control of Disease Regulation (Cap 599A), if a health officer has reason to believe that a person is a contact, the

health officer may, by order in writing, place the person under quarantine until a health officer considers that the person is not infectious; or the quarantine can be replaced by medical surveillance. During the quarantine period, a person shall not leave a place in which that person is placed under quarantine without written permission by a health officer. Those who contravene the requirement commit an offence and are liable on conviction to a fine of \$5,000 and to imprisonment for six months.

The Department of Health (DH) will arrange the relevant persons to undergo quarantine, medical surveillance and testing at designated quarantine centres. When they leave the quarantine centres upon completion of quarantine period, the DH would issue a document, which sets out the quarantine period and whether the person was infected by COVID-19, to prove that they stayed at the quarantine centres. Sick leave certificates will also be issued upon request.

On the other hand, the DH will also issue notice of medical surveillance to persons exempted from compulsory quarantine under the Compulsory Quarantine of Certain Persons Arriving at Hong Kong Regulation (Cap 599C) and the Compulsory Quarantine of Persons Arriving at Hong Kong from Foreign Places Regulation (Cap 599E). The exempted persons must follow the instructions for medical surveillance, including wearing a mask, paying attention to health conditions and checking temperature on a daily basis. Certain groups of exempted persons are also required to conduct self-isolation and attend to tests.

(1) The Civil Service Bureau has issued guidelines that if a government employee is put under compulsory quarantine as ordered by the DH, authorised absence not counting as leave may be granted by respective department on a case-by-case basis.

(2) The Employees' Compensation Ordinance (Cap 282) and the Employment Ordinance (EO) (Cap 57) accord protection to employees who have contracted a disease (including COVID-19) by an accident arising out of and in the course of employment as well as those who have contracted a disease (including COVID-19) unrelated to their work respectively. In the latter case, though not work-related, should an employee be granted with an appropriate medical certificate (Note 1), the employer should pay sickness allowance to the employee who has fulfilled relevant conditions (Note 2) in accordance with the provisions of the EO or related terms of the employment contract. The Government also appeals to employers to be considerate and show understanding even if the employees cannot meet all the qualifying conditions for sickness allowance and make flexible arrangements, including granting paid leave to employees.

In addition, the EO stipulates clearly the provisions of paid annual leave, statutory holidays and rest days. Taking paid annual leave as an example, the time of the annual leave should be appointed by the employer after consultation with the employee or his/her representative, and confirmed by a written notice to the employee at least 14 days in advance unless a shorter period has been mutually agreed.

In view of the COVID-19 situation, the Labour Department (LD) has drawn up relevant information on the related obligations and rights of employers and employees under the EO. Employers and employees may make reference to relevant information through the LD's homepage (www.labour.gov.hk).

Note 1: An appropriate medical certificate means a medical certificate issued by a registered medical practitioner, registered Chinese medicine practitioner or registered dentist which should specify the number of days on which, and the nature of the sickness or injury on account of which, the employee is unfit for work.

Note 2: Under the EO, relevant conditions include an employee employed under a continuous contract whose sick leave is supported by an appropriate medical certificate; the sick leave taken by the employee is not less than four consecutive days and the employee has accumulated sufficient number of paid sickness days.

(3) The one-off ex-gratia cash allowance of \$5,000 currently provided by the Government for eligible locally confirmed COVID-19 persons aims to remove the concern of potentially infected persons from coming forward to take COVID-19 tests that they would suffer from financial hardship whilst being hospitalised for COVID-19 treatment. Therefore, applicants should be Hong Kong residents who are currently employed but not entitled to paid sick leave or are self-employed, and are facing financial hardship arising from reduction in income whilst being hospitalised in public hospitals for COVID-19 treatment. Under this premise and after balancing various concerns, the Government has no plan to extend the coverage of the cash allowance to other persons at this stage.