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Employer's Obligation on Medical and Maternity Leave in Hong Kong and China

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Hong Kong Sickness Protection

- Accrue sickness days
 - 2 days p.m. – first 12 months
 - 4 days p.m. – subsequent
 - up to maximum 120 days

- Paid sickness days
 - 4 consecutive days
 - accrue enough sickness days
 - sickness allowance : 4/5 average wages
 - medical certificate

Protection by Law

- cannot terminate an employee on a day on which the employee is entitled to sickness allowance (but can do so on a sickness day on which no sickness allowance is payable)
- cannot discriminate employee who is sick
 - physical
 - mental

Hong Kong Sickness Protection

- Points to note
 - if sickness day falls on annual leave or statutory holiday
 - count as annual leave/statutory holiday
- Tips for long term sick leave
 - negotiate for mutual settlement
 - keep accurate sick leave/allowance record
 - enforce medical policy
 - keep record of poor performance pre-leave (if applicable)

Hong Kong Maternity Protection

- Eligibility for leave : all female employees
10 weeks
- Eligibility for paid leave : female employees over 40 weeks of employment
- Maternity leave pay : 4/5 average wages

Protection by Law

- ❑ Cannot terminate employee during pregnancy or maternity leave
- ❑ Cannot make employee do hazardous work
- ❑ Cannot discriminate pregnant employee or employee on maternity leave

- Points to note

- Rest day or holiday that falls during maternity leave = maternity leave and no additional payment but if no maternity pay, then holiday pay

- Tips

- Negotiate for mutual settlement
- Keep record of poor performance pre-leave (if applicable)

China Sickness Protection

□ Medical Treatment Period

	Actual Years of Service	Years of Service with Current Employer	Length of Medical Treatment Period	Cumulated Within
1	< 10 years	< 5 years	3 months	6 months
2		> 5 years	6 months	12 months
3	> 10 years	< 5 years	6 months	12 months
4		5 to 10 years	9 months	15 months
5		10 to 15 years	12 months	18 months
6		15 to 20 years	18 months	24 months
7		< 20 years	24 months	30 months

Points to note:

1. *Public holidays and statutory holidays included.*
2. *Extendable subject to approval by the employer and the labour authority.*

China Sickness Protection

- Protection by Law
 - Cannot terminate labour contract unless the employee is at fault or by mutual agreement
 - Salary no less than prescribed standard is payable (Protection varies from location to location)
 - Medical fees covered by the medical insurance

China Sickness Protection

- Tips for sick leave
 - specify the relevant rules in staff handbook
 - keep accurate sick leave record
 - keep an eye on possible false medical certificate
 - arrange medical insurance for employees as required by law
 - keep record of poor performance pre-leave (if applicable)
 - negotiate for mutual settlement
 - terminate the labour contract as allowed by law

China Maternity Protection

□ Maternity leave

- 98 days generally, including 15 days of antenatal leave. Additional 15 days in case of dystocia, additional 15 days for each additional baby in case of multiple births (Public holidays and statutory holidays included)

□ Maternity leave pay

- Participated in maternity insurance: maternity subsidy payable by maternity insurance fund and calculated on the basis of the average monthly salary of all the employees of the employer during the previous year
- Not participated in maternity insurance: maternity subsidy payable by the employer and calculated on the basis of the salary of female employee prior to her maternity leave

China Maternity Protection

- Maternity expenses for delivery or miscarriage
 - Participated in maternity insurance: payable by maternity insurance fund on the basis of the prescribed maternity insurance items and standards
 - Not participated in maternity insurance: payable by the employer

- Breastfeeding period
 - 1 hour for breastfeeding during working hours until the baby reaches 1 year old

Points to note:

The female employees may be entitled to additional leaves (e.g. late childbirth leave) and additional payment during their leaves, depending on the relevant provisions under the local regulations.

China Maternity Protection

□ Protection by Law

- Cannot terminate labour contract during the employee's pregnancy, childbirth or breastfeeding period
- Cannot reduce the employee's salary due to the employee's pregnancy, childbirth or breastfeeding
- Cannot make employee do hazardous work
- No overtime work or night shift for those at or over 7th month of pregnancy or in breastfeeding period
- Shall adjust the employee's job if necessary during her pregnancy based on valid medical certificate

China Maternity Protection

□ Tips

- specify the relevant rules in staff handbook
- keep accurate record of leaves taken and relevant medical certificate
- arrange maternity insurance for employees as required by the laws
- keep record of poor performance pre-leave (if applicable)
- negotiate for mutual settlement

Thank you for your participation

Any Questions?

The background of the slide features a collection of white, rectangular papers scattered across a light blue surface. Each paper has a large, dark grey question mark printed on it. The papers are slightly overlapping and tilted at various angles, creating a sense of depth and movement. The overall aesthetic is clean and professional, with a focus on the central text.