

For discussion on
20 June 2012

Legislative Council Panel on Manpower

Study on Legislating for the Provision of Paternity Leave in Hong Kong

Purpose

This paper seeks Members' views on the findings of a study on legislating for the provision of paternity leave (PL) by employers in Hong Kong to their male employees.

Background

2. In view of Hong Kong's changing societal attitudes towards a father's responsibilities in the family and the public demand for granting leave to male employees around the time of childbirth, the Labour Department (LD) has been promoting the provision of PL in the private sector. In his 2011-12 Policy Address, the Chief Executive announced that the Government would take the lead in promoting child-bearing and family-friendly practices, beginning with a study into the provision of paid PL for civil servants, and conduct a study on legislating for PL.

Study Findings

3. For the purpose of this paper, PL refers to a short period of leave available to the father of the newborn around the time of delivery by the mother for providing support to the mother and to bond with the newborn child. In examining the matter, we have looked into the practices of other economies and the local situation on the provision of PL by enterprises. We also need to look into the local circumstances to ensure that any improvement in employees' benefits is in line with the overall socio-economic development and needs of Hong Kong. To this end, we need to carefully assess the possible impact of legislating for PL on employers (especially small-and-medium-sized enterprises) and the economy as a whole in order to strike a balance between the interests of employees and the affordability of employers. There is also a need to examine the various policy, legal, moral and implementation issues that may possibly emerge if PL is to be made a statutory benefit for male employees in Hong Kong.

Provision of statutory PL in other economies

4. We find that a number of developed economies like the United Kingdom, France and New Zealand are providing statutory PL lasting usually from one to two weeks. In most places where there is PL legislation, statutory PL is usually funded by either the social insurance system (as in most Western economies), employers (as in most of our neighbouring economies) or a combination of both (as in certain Western economies). The rate of PL pay varies among countries, ranging from a part of the employee's normal income to full pay.

5. In places where PL pay is not funded by the social insurance system, the duration of leave is usually short. In our neighbouring Asian economies, it generally ranges from two to seven days, namely: two days in Macao (no pay), three days in Taiwan (with pay), five days in Korea (the first three days with pay) and seven days in the Philippines (with pay).

6. In most Western economies, PL is equally applicable to both marital and non-marital births. In some places, PL is further provided to the partner of an infant's mother regardless of whether the partner is related to the infant by blood, or whether the partner is of the same sex. On the other hand, the criteria in our neighbouring Asian economies are more restrictive. In Korea, Taiwan and the Philippines, the right to PL is confined to the fathers of babies born within marriage.

Prevailing position in the provision of PL in Hong Kong

7. After years of publicity by the Government in promoting family-friendly measures in the workplace, there is an increasing trend in the private sector for employers to provide PL to their male employees. According to the surveys conducted by LD with member establishments of its 18 Human Resources Managers Clubs, the percentage of respondent organisations offering PL on their own volition has increased from 16% in 2006, to 21% in 2008 and 32.5% in 2010, representing a twofold increase over four years. The average duration of PL provided by the responding companies was 2.9 days in 2010.

Policy and implementation issues

8. There are different categories of leave benefits for employees under the Employment Ordinance (EO). For example, there is annual leave for employees who have attained a certain period of service. There are also statutory holidays which enable employees to be off duty on certain festive or memorial days. On the other hand, sickness days and maternity leave are days-off necessitated by the physical condition of individual employees. PL bears some resemblance to the latter type of leave. Yet, from another perspective, the nature of statutory PL is different from that of sickness days and maternity leave in that statutory PL extends an employer's statutory liability from providing leave benefit to an employee on account of his/her own physical condition to providing benefit to the employee on account of the physical condition of his/her family member or a related person who is not a party to the employment relationship. Therefore, statutory PL is a new kind of leave.

9. We note also that PL is advocated in public discourse as a family-friendly employment measure that facilitates working fathers to discharge their family responsibilities. While embedding the notion of "family" in PL, legislating for PL necessitates consideration of a number of issues relating to "family", which touches on societal attitudes and values that may differ among different sectors. These include the question of whether childbirth within marriage recognised by the law should be a prerequisite for PL entitlement. Legal opinion is that failing to grant PL to childbirth outside of marriage may constitute discrimination on grounds of marital status and family status, and hence in breach of both the Sex Discrimination Ordinance and Family Status Discrimination Ordinance. However, if childbirth outside of marriage is to be covered, one would need to go one step further to consider whether PL should also be granted for childbirth in an extra-marital relationship.

10. While making birth within marriage as a criterion for granting PL is unlikely to be tenable from the legal perspective, if such requirement is to be dispensed with, there would then be a need to address the issue of how to verify that the male employee is the father of the baby if the latter is delivered by a woman who is not his spouse by law.

11. Apart from the issue concerning childbirth outside of marriage, another issue that also needs attention is the place of childbirth. Given the distinctive social reality in Hong Kong regarding cross-boundary marriage/courtship, there would probably be concerns from the working community if statutory PL is granted to cases of childbirth in Hong Kong only.

12. The above mentioned issues aside, we also need to address other implementation issues including whether PL should be paid; if PL is to be paid, the relevant amount of pay; the minimum length of service for entitlement to PL¹; and the means to minimise abuse if legal marriage is dispensed with and childbirths outside Hong Kong are covered, etc.

Cost implication

13. In view of the low birth rate of Hong Kong residents, the incidence of employees taking PL is estimated to be relatively low². As regards the financial implications of providing PL, it is assessed that provided that the number of days of PL to be granted on each occasion of childbirth is relatively modest, the overall staff cost for employers in providing PL to male employees would unlikely be significant. The cost of granting three to five days of PL is estimated to range from \$140 million to \$240 million per annum, representing around 0.02% to 0.04% of the total wage bill.

Other views

14. There is an increasing recognition by employers and employees of the importance of family-friendly measures in the employment arena. According to the surveys conducted by LD, more and more employers in the private sector are providing PL to their male employees voluntarily. The Government has also taken the initiative to promote PL by providing paid PL for its employees starting from 1 April 2012. On the other hand, there are concerns from employers of the male-dominated sectors, such as construction and transport trades, over making the provision of PL a mandatory requirement. There are also views that as a family-friendly employment measure, PL should be provided on the volition of employers, having regard to the circumstances and affordability of individual employers.

¹ Under the EO, a female employee is entitled to maternity leave pay only if she has been employed under a continuous contract for not less than 40 weeks before the scheduled maternity leave. As for the provision of PL to male government employees, there is a requirement of not less than 40 weeks' continuous service immediately before the expected or actual date of childbirth for entitlement to such leave.

² In 2010, the number of Hong Kong's working fathers with babies born in Hong Kong is around 49 200 (about 3% of total male employees).

Views of the Labour Advisory Board

15. Having regard to the increasing public awareness of the need to provide more support to families and the public aspiration for statutory PL, we consider that legislating for PL merits further pursuit. We consulted the Labour Advisory Board (LAB) on the issue on 3 May 2012. Employee members unanimously supported legislating for the provision of PL. While basically agreeing that enterprises should be encouraged to provide PL to their male employees on a voluntary basis having regard to their own circumstances and operating conditions, employer members had reservation on implementing PL by legislative means at this stage. Specifically, as the statutory minimum wage had been enacted for only one year and its effects on the business sector had yet to be clearly ascertained, introducing any new labour welfare initiatives within such a short span would further increase the operating cost of enterprises. There were also concerns that as PL would extend an employer's statutory liability towards an employee by covering his family member or a person related to him, legislating for this kind of leave might trigger requests for other benefits of a similar nature, thus adding to the financial burden of employers. Besides, some members of LAB requested the Administration to gather more information on the implementation of PL in other jurisdictions to facilitate employer and employee members in considering the need for statutory PL in Hong Kong and its details. We will collect the relevant information for reference by LAB, and continue to pursue the subject with a view to reaching a consensus within LAB.

Advice Sought

16. Members' views are sought on the findings of the study on legislating for the provision of PL in Hong Kong as set out above.

Labour and Welfare Bureau
Labour Department
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