

For discussion on  
25 January 2013

## **Legislative Council Panel on Manpower**

### **A proposal on legislating for paternity leave**

#### **Purpose**

This paper seeks the views of the Panel on Manpower (“Panel”) on a proposal to legislate for the provision of paternity leave (“PL”) by employers to their employees.

#### **Background**

2. In May and June 2012, we reported the findings of the study on legislating for PL in Hong Kong conducted by the Labour Department (“LD”) respectively to the Labour Advisory Board (“LAB”) and the Panel. At the Panel meeting held on 20 June 2012, Members in general urged the Administration to legislate for PL as soon as possible, while the views were also expressed that the Government should thoroughly consider the impact of statutory PL on the business sector and the implementation details to avoid causing undue hardship to employers. Subsequently, LAB further discussed this subject in October and November 2012 and, at its meeting held on 26 November 2012, supported legislating for three days’ PL paid at four-fifths of the employee’s daily wages. LAB also expressed the view that, where appropriate, the relevant stipulations and details of statutory PL should be aligned with those applicable to maternity leave under the Employment Ordinance (“EO”) for reasonableness and the sake of consistency with the existing law.

3. Legislating for PL entails various issues concerning policy, legal principle and implementation. In firming up the details of the proposal, our prime consideration is to ensure that the proposal will strike a reasonable balance between the interests of employees and the affordability of employers. At the same time, the proposal should be considered fair and practicable by the community. After careful consideration, the Administration has formulated its proposals on the detailed arrangements on statutory PL, as described in paragraphs 4 – 13 below.

## **Proposed details of statutory PL**

### Duration of PL

4. According to the survey on PL conducted by LD with member establishments of its 18 Human Resources Managers Clubs (“HRM Clubs”) in 2012, the duration of PL provided by the respondent organisations on a voluntary basis ranged from one day to 14 days, with the average duration being three days. Among those respondent organisations offering PL, about 43.5% of them provided three days of PL, and over 81% offered one to three days of PL. Having regard to the prevailing practice in the provision of PL on a voluntary basis by local organisations surveyed and the views of LAB, we **propose setting the duration of statutory PL at 3 days.**

### PL pay

5. Under EO, for an employee who takes paid maternity leave or sick leave, the maternity leave pay and sickness allowance is pitched at four-fifths of the average daily wages earned by the employee before the maternity leave or sick leave. Given that both PL and maternity leave emanate from the same cause, and the nature of PL is similar to that of sick leave and maternity leave, for consistency with the existing law, we **propose that, an employee should be paid during PL at a daily rate equivalent to four-fifths of his average daily wages prior to his taking PL.** LAB was supportive of this suggestion.

### Birth within/outside of marriage

6. At the meeting of this Panel held on 20 June last year, we reported to Members that according to legal opinion, failing to grant PL for childbirth outside of marriage might constitute discrimination on grounds of marital status and family status under the Sex Discrimination Ordinance and the Family Status Discrimination Ordinance and as such might be in breach of these Ordinances. Childbirth outside of marriage covers a number of different situations. For example, both parents of the child are single, or either one or both parents is/are married but there is no legally recognised marital relationship between them. Under EO, birth within marriage is not a pre-condition for female employees’ entitlement to maternity leave. In view of these considerations, in formulating the eligibility criteria for PL, we **propose not to impose a marriage requirement for entitlement to PL.**

### Birthplace of the child

7. Given that cross - Hong Kong - Mainland marriage/ courtship has become increasingly common, should statutory PL be confined to childbirth in Hong Kong only, then employees with Mainland spouses and children born on the Mainland would not be entitled to this employment benefit. Moreover, there are views that a father whose child is not born in Hong Kong would also need to be granted PL so that he can leave Hong Kong to take care of the newborn and the mother. As a matter of fact, most of the organisations currently providing PL accept certifications issued by authorities in places outside Hong Kong as documentary proof for taking PL. According to the results of the survey conducted by LD with member establishments of its HRM Clubs in 2012, insofar as the requirement for male employees to produce documentary proof for PL is concerned, nearly 90% of the organisations accepted documentary proof issued by authorities in places outside Hong Kong. In formulating the eligibility criteria for PL, we **propose that no restrictions should be imposed on the birthplace of the newborn.**

### Length of service of employee

8. According to EO, a female employee employed under a continuous contract<sup>1</sup> immediately before the commencement of her maternity leave, having given notice of her pregnancy and intention to take maternity leave to the employer (such as by presenting a medical certificate to the employer confirming her pregnancy), is entitled to a continuous period of 10 weeks' maternity leave commencing four weeks before the expected date of confinement. With the employer's agreement, the employee may choose to commence her maternity leave two weeks before the expected date of confinement. If the employee has been employed under a continuous contract for not less than 40 weeks immediately before the commencement of maternity leave, she is entitled to maternity leave pay. Making reference to the provisions on maternity leave and maternity leave pay for female employees, we **propose that for entitlement to PL, a male employee must have been employed under a continuous contract immediately before the first day of his taking PL; and if he has been employed under a continuous contract for 40 weeks or more immediately before the commencement of PL, he will be entitled to PL pay.**

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<sup>1</sup> According to EO, an employee who has been employed continuously by the same employer for 4 weeks or more, with at least 18 hours worked in each week is regarded as being employed under a continuous contract.

### Period and mode of taking PL

9. At present female employees may commence her maternity leave four weeks before the expected date of confinement at the earliest. If confinement precedes her scheduled maternity leave, the 10-week maternity leave is deemed to have commenced on the date of confinement. Having regard to the period in which maternity leave may be taken, we **propose that male employees should be allowed to take PL at any time during the period from the four weeks before the expected date of confinement to 10 weeks after the actual date of the childbirth.** An employee may take all three days of PL in one go or on at most three discrete days.

### Advance notice for taking PL

10. As mentioned in paragraph 8 above, under EO, for entitlement to maternity leave, a female employee has to give notice of her pregnancy and intention to take maternity leave to her employer by way of, for example, presenting to her employer a medical certificate confirming her pregnancy. To enable employers to have early knowledge of their employees' intention to take PL and have sufficient time to make manpower deployment arrangements, we **propose requiring an employee who intends to take PL to inform his employer of his partner's pregnancy and expected date of confinement in advance (such as not less than three months before the expected date of confinement).** Further, **shortly (say, not less than two days) before the commencement of PL, the employee should inform his employer the exact date of his taking PL** so that the employer can make the necessary manpower deployment. If the employee fails to give sufficient advance notice to the employer as required by law, the employee's taking of PL on the dates of his choice would be subject to his employer's consent.

### Proof of relationship between the employee and the child

11. Some employers' associations are concerned about how the relationship between a male employee and a child can be easily and effectively ascertained if the child is delivered by a woman who is not the employee's legal spouse. To address this concern, given that an employee's rights to PL and PL pay are premised on his being or going to be the father of a newborn, we propose, irrespective of whether the child is born within marriage, requiring the employee to produce to his employer documentary proof on the father-child relationship. In Hong Kong, regardless of whether the parents of

a baby are legally married, the birth registration record<sup>2</sup> (commonly known as “birth certificate”) of each baby includes space for filling in the names of his/her father and mother. **We propose taking the birth registration record as proof on the father-child relationship between the male employee and the newborn.**

12. For childbirths outside Hong Kong, the employee is required to produce the birth registration record issued by the authorities of the place where the baby is born. The “birth certificate” issued on the Mainland (at **Annex**) also contains such information as the names of the child’s parents. As mentioned in paragraph 7 above, most of the organisations currently providing PL accept documentary proof issued by places outside Hong Kong to support applications for PL.

#### Time for payment of PL pay

13. As a male employee may need to take PL for taking care of his pregnant partner and the newborn before the birth registration record of the baby is issued, we **propose that an employer may provide an employee with PL first and be allowed to grant PL pay to the employee after he has produced the relevant proof (such as the birth registration record of the baby).** If the employer has already effected payment to the employee before the production of the child’s birth registration record but the employee fails to furnish the relevant proof **within the period as required by law (such as three months after the childbirth),** the employer will be allowed to deduct from the employee’s wages the amount of PL pay already granted.

#### **Advice Sought**

14. The Panel’s views are sought on the proposed arrangements of statutory PL as set out above.

Labour and Welfare Bureau  
Labour Department  
January 2013

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<sup>2</sup> Birth registration records are issued by the Births and Deaths Registries, Hong Kong of the Immigration Department.

Sample of "Birth Certificate" issued on the Mainland

**出生医学证明**  
**BIRTH CERTIFICATE**

《出生医学证明》根据《中华人民共和国母婴保健法》制定，是在中华人民共和国境内出生人口的法定医学证明。由新生儿父母或监护人妥善保管，不得出卖、转让、出借和私自涂改；申报出生登记时必须出示此证明。

“The Medical Certificate of Birth” is formulated according to “The law of the people’s Republic of China on Maternal and Infant Health Care”. It is a legal medical certificate of people born in the People’s Republic of China. It is taken care of by the Newborn baby’s father and mother or guardian. Can not be sold, lent or altered in private. And it is referred to upon civil registration.

新生儿姓名余 [redacted] 男  女  出生日期 [redacted] 年 [redacted] 月 [redacted] 日 [redacted] 时 [redacted] 分  
Full name of baby Male Female Date of birth Year Month Day Hour Minute

出生地 广东省 深圳市 福田区 福田区 乡 出生孕周 40.6 周  
Place of birth Province City County (District) Township Gestation (week) Week

健康状况 良好  一般  差  体重 3800 克 身长 51.0 公分  
Health status Well Normal Weak Weight g Height cm

母亲姓名 彭 [redacted] 年龄 [redacted] 国籍 中国 民族 汉族  
Full name of mother Age Nationality Nationality

身份证号 [redacted] □□□□  
Identity card NO.

父亲姓名 余 [redacted] 年龄 [redacted] 国籍 香港 民族 汉族  
Full name of father Age Nationality Nationality

身份证号 [redacted] □□□□□□□□□□  
Identity card NO.

出生地点分类 医院  妇幼保健院  家庭  其他   
Type of place General hospital MCH hospital Home Other

接生机构名称 深圳市福田区妇幼保健院  
Name of facility

出生证编号 A [redacted] 签发日期 2002 年 [redacted] 月 [redacted] 日  
Birth certificate NO. Date of issue Year Month Day

中华人民共和国卫生部  
MINISTRY OF HEALTH OF THE PEOPLE'S REPUBLIC OF CHINA

深圳市福田区妇幼保健院  
福田区  
接生机构(盖章)