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Panel on Manpower

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 25 January 2013**

Legislating for paternity leave

Purpose

This paper gives an account of the past discussion by the Panel on Manpower ("the Panel") on legislating for paternity leave.

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 Chief Executive announced in his 2011-2012 Policy Address that the Government would take the lead in promoting child-bearing and family-friendly practices, beginning with a study into the provision of paid paternity leave for civil servants, and conduct a study on legislating for paternity leave.

3. On 28 March 2012, the Government announced that starting from 1 April 2012, all full-time government employees, including civil servants, non-civil service contract staff and political appointees, who have no less than 40 weeks' continuous service immediately before the expected or actual date of childbirth would be eligible for paternity leave. Under this new family-friendly measure, eligible officers would enjoy five working days of paternity leave on full pay on each occasion of childbirth. Eligible officers whose children's expected due date or actual date of birth falls on or after 1 April 2012 could benefit from the new measure.

Deliberations of the Panel

Policy and implementation issues

4. Most members expressed grave concerns over the lead time required for deliberating on the provision of paid paternity leave in Hong Kong and called for the early implementation of statutory paternity leave to further promote family-friendly employment practices.

5. The Administration advised that it had all along been encouraging employers to adopt different forms of family-friendly employment practices appropriate to their own circumstances, including the provision of paternity leave. It was the Government's established policy to progressively improve employees' rights and benefits in a way which was in line with Hong Kong's overall socio-economic development and needs. To this end, the Administration needed to assess carefully the possible impact of legislating for paternity leave on employers, especially small-and-medium-sized enterprises, and the economy as a whole in order to strike a reasonable balance between the interests of employees and the affordability of employers. The Administration would first and foremost consider whether the community had a general consensus regarding the implementation of statutory paternity leave, before taking any decision on the way forward. In the view of the Administration, the Labour Advisory Board ("LAB") had, for this purpose, been providing an effective channel for exchange of opinions, rational discussion and consensus building by employers and employees. Members were advised that the Administration would report the findings of its study on the subject to LAB before consulting the Panel.

6. Noting that only 32.5% of the respondent member establishments of the 18 Human Resources Managers Clubs ("HRMC") in 2010 offered their male employees paid paternity leave voluntarily after years of publicity by the Government in promoting family-friendly measures in the workplace, most members urged the Administration to legislate for the provision of paternity without further delay.

7. On the proposal of legislating for paternity leave, the Administration pointed out that the notion of "family" was embedded in the study on paternity leave, which touched on societal attitudes and values that might differ among different sectors. These included the question of whether childbirth within marriage recognized by the law should be a prerequisite for paternity leave entitlement, and whether statutory paternity leave should be granted to cases of childbirth in Hong Kong only.

8. Members were advised that as the statutory minimum wage had only been implemented since 2010 and its effects on the business sector had yet to be clearly ascertained, employers were concerned with the introduction of new initiatives on employees' benefits within such a short span of time. There were also concerns that providing for paternity leave would mean extending an employer's statutory obligation to his employee to also his family member or a person related to him. Legislating for this kind of leave might lead to requests for other benefits of a similar nature, thus aggravating the financial burden of employers. While the Administration would continue to pursue the subject with a view to reaching a consensus in LAB, it considered that employer members' worries over the proposal were not without reason and should be addressed. In this regard, the Administration would collect further information on the implementation of paternity leave in other jurisdictions as requested by LAB members and revert to LAB in the fourth quarter of 2012.

9. The Administration stressed that it had no intention to drag on the matter and was inclined to take forward the proposal of legislating for paternity leave in Hong Kong. Members were advised that the Labour Department ("LD") would conduct an updated survey with member establishments of the 18 HRMC to better understand the prevailing situation regarding the provision of paternity leave in the private sector. In its reply to an oral question on paternity leave raised at the Council meeting of 17 October 2012, the Administration advised that the findings of the surveys conducted by LD with member establishments of its 18 HRMC showed that the percentage of respondent organizations voluntarily offering paternity leave to their employees gradually increased from 16% in 2006 to 38.7% in 2012.

10. In the course of the Panel's deliberation on the provision of paid paternity leave in Hong Kong at its meeting on 20 June 2012, some members were concerned about the cost impact of introducing statutory paternity leave on the private enterprises and the economy as a whole. There was a suggestion that the Administration should draw reference from overseas experience in legislating for the provision of paternity leave.

11. According to the Administration, the number of Hong Kong's working fathers with babies born in Hong Kong was around 49 200 (about 3% of total male employees) in 2010. In view of the low birth rate of Hong Kong residents, the incidence of employees taking paternity leave was estimated to be relatively low. As regards the financial implications of providing paternity leave, it was assessed that provided that the number of days of paternity leave to be granted on each occasion of childbirth was relatively modest, the overall staff cost for employers in providing paternity leave to male employees would unlikely be significant. The cost of granting three to five days of paternity leave was estimated to range from \$140 million to \$240 million per annum, representing around 0.02% to 0.04% of the total wage bill.

12. To better understand whether and how the provision of paternity leave would impact on the operation of private enterprises, in particular those with a high proportion of male employees such as the construction and transportation industries, members noted that the Administration would consult the views of relevant industry-based tripartite committees. On the suggestion of drawing reference from overseas experience in legislating for the paternity leave, members were assured that the Administration would collect more information on the practices of other economies to facilitate further deliberation on the matter.

Provision of paternity leave by statutory or public organizations and government subvented organizations

13. Noting the provision of paid paternity leave for civil servants with effect from 1 April 2012, members expressed concern about the unavailability of paid paternity leave to employees working in statutory or public organizations and government subvented organizations. There was a view that the benefit of paternity leave should also be made applicable to employees of service contractors of government departments.

14. Members were advised that the provision of paternity leave for civil servants was an initiative introduced by the Civil Service Bureau. Employees employed under government service contracts were not government employees. Apart from financial implications, whether paternity leave, being one of the employee benefits under the conditions of service for government employees, should be applied to this group of employees concerned a matter of principle.

15. The Administration further advised that as a general rule, the Government was not involved in determining the terms of employment of staff working in statutory or public organizations and government subvented organizations, which were employment matters between these bodies/organizations as employers and their employees. Subvented organizations and public bodies had the autonomy to decide whether to adopt any family-friendly employment practice or measure for their employees having regard to their own circumstances. According to the Administration, some public bodies and subvented organizations had already been providing paternity leave to their employees before the Government implemented paternity leave to its employees.

Latest development

16. In a press release issued on 26 November 2012, the Administration announced that LAB had agreed to provide a three-day statutory paternity leave.

Relevant papers

17. A list of the relevant papers on the Legislative Council website is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
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Relevant papers on legislating for paternity leave

| Committee | Date of meeting | Paper |
|---|-------------------------|---|
| Panel on Manpower | 17.6.2010 (Item III) | <u>Agenda</u> <u>Minutes</u> |
| | 20.10.2011 (Item II) | <u>Agenda</u> <u>Minutes</u> |
| | 20.6.2012 (Item IV) | <u>Agenda</u> <u>Minutes</u> |
| | 11.7.2012 (Item III) | <u>Agenda</u> <u>Minutes</u> |
| Legislative Council | 17.10.2012 | [Question 6] Asked by: Hon WONG Kwok-hing <u>Provision of paid paternity leave</u> |
| Finance Committee (<i>Special meeting to examine the Estimates of Expenditure 2012-2013</i>) | 8.3.2012 | <u>Administration's replies to Members' initial written questions (Reply Serial Nos. LWB(L)008, LWB(L)019, LWB(L)026, LWB(L)043, LWB(L)058, LWB(L)083, LWB(L)108 & LWB(L)130)</u> |