

Employment (Amendment) Bill 2014
Debate and voting arrangements

First debate: Clauses with no amendment - Clauses 1 to 5 and 7 to 18			
Voting: To vote on the above clauses standing part of the Bill			
Second debate: Clause with amendments proposed by the Secretary for Labour and Welfare (“SLW”) - relevant provisions of clause 6			
Joint debate on the original provision and the amendments thereto. The amendments seek to revise the notification requirement for taking paternity leave, and to make textual or technical revisions.			
<p>● SLW’s Amendments :</p> <ul style="list-style-type: none"> - to add a definition of “child (嬰兒)” which means a new-born child under “section 15CA. Interpretation of Part IIIA”; - to make textual amendments to sections 15D(3)(b), 15F(1) and 15I(2) to align their Chinese and English texts or render their meanings clearer; and - under section 15E(1)(a)(ii), to delete the requirement for an employee who intends to take paternity leave to notify the employer at least two days before the date of leave, and put in place a new requirement for the employee to notify the employer before taking the leave. 			
Mover	Voting	Remarks	Amendments
SLW	SLW’s amendments	Irrespective of whether SLW’s amendments are passed or not, the Members concerned <u>may</u> move their amendments.	Annex 1
Third debate: Clause with amendments proposed by Hon Kenneth LEUNG and Hon LEE Cheuk-yan – Section 15D(2)(b) of clause 6			
Joint debate on the original provision and the amendments thereto. The amendments seek to amend the number of days of statutory paternity leave.			
<p>● Hon Kenneth LEUNG’s first amendment :</p> <p>to amend the proposed section 15D(2)(b) to extend the period of paternity leave from “not more than three days” to “seven days”.</p>			
<p>● Hon LEE Cheuk-yan’s first amendment :</p> <p>to amend the proposed section 15D(2)(b) to fix the period of paternity leave at three days.</p>			

Movers	Voting	Remarks	Amendments
Hon Kenneth LEUNG	Hon Kenneth LEUNG's first amendment	If Hon Kenneth LEUNG's first amendment is <u>passed</u> , Hon LEE Cheuk-yan <u>may not</u> move his first amendment. Irrespective of whether his first amendment is passed or not, Hon Kenneth LEUNG <u>may</u> move his second amendment.	Annex 2
Hon LEE Cheuk-yan	If Hon Kenneth LEUNG's first amendment is <u>negatived</u> , vote on Hon LEE Cheuk-yan's first amendment	Irrespective of whether his first amendment is passed or not, Hon LEE Cheuk-yan <u>may</u> move his second and third amendments.	Annex 3

Fourth debate: Clause with amendments proposed by Hon Kenneth LEUNG – Section 15H(2) of clause 6

Joint debate on the original provision and the amendments thereto. The amendment seeks to amend the paternity leave pay.

- **Hon Kenneth LEUNG's second amendment** : to amend section 15H(2) to increase the paternity leave pay set at four-fifths of the employee's average daily wages to full pay.

Mover	Voting	Remarks	Amendments
Hon Kenneth LEUNG	Hon Kenneth LEUNG's second amendment	If his first and second amendments are <u>negatived</u> , Hon Kenneth LEUNG <u>may not</u> move his third amendment.	Annex 2

Fifth debate: Amendments and new clauses proposed by Hon LEE Cheuk-yan – Section 15L of clause 6 and new clauses 6A, 6B and 7A

Joint debate on the original provision, the amendments thereto and new clauses. The amendments seek to provide protection for employees taking paternity leave against termination of employment.

● **Hon LEE Cheuk-yan's second amendment** : to add section 15M after the proposed section 15L to provide protection for employees who are taking or intend to take paternity leave. It will be an offence for an employer to dismiss an employee during the period from notification of the employee's intention to take paternity leave up to the last day of the paternity leave taken.

● **Hon LEE Cheuk-yan's third amendment** : to add new clauses 6A, 6B and 7A consequential to the addition of new section 15M.

Mover	Voting	Remarks	Amendments
Hon LEE Cheuk-yan	Hon LEE Cheuk-yan's second amendment	If his second amendment is <u>negatived</u> , Hon LEE Cheuk-yan <u>may not</u> move his third amendment.	Annex 3
Hon LEE Cheuk-yan	Hon LEE Cheuk-yan's third amendment		Annex 3

Sixth debate: Amendment to the long title

● **Hon Kenneth LEUNG's third amendment** : to amend the references to the number of days of paternity leave and paternity leave pay in the long title.

Mover	Voting	Remarks	Amendments
Hon Kenneth LEUNG	Hon Kenneth LEUNG's third amendment	If his first and second amendments are <u>passed</u> , Hon Kenneth LEUNG <u>may</u> move his third amendment.	Annex 2
		If his first amendment is <u>passed</u> but his second amendment is <u>negatived</u> , Hon Kenneth LEUNG will <u>revise</u> his third amendment by deleting the relevant reference to paternity leave pay in the long title (Revised third amendment (A)).	Annex 4

		<p>If his first amendment is <u>negatived</u> but his second amendment is <u>passed</u>, Hon Kenneth LEUNG will <u>revise</u> his third amendment by deleting the relevant reference to the number of days of paternity leave in the long title (Revised third amendment (B)).</p>	Annex 4
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SLW's amendments

(Issued under LC Paper No. CB(3) 270/14-15 on 10 December 2014)

Hon Kenneth LEUNG's amendments

(Issued under LC Paper No. CB(3) 280/14-15 on 12 December 2014)

Hon LEE Cheuk-yan's amendments

(Issued under LC Paper No. CB(3) 286/14-15 on 15 December 2014)

Hon Kenneth LEUNG's revised amendments

(Issued under LC Paper No. CB(3) 295/14-15 on 16 December 2014)

Council Business Division 3
Legislative Council Secretariat
16 December 2014

Employment (Amendment) Bill 2014

Committee Stage

Amendments to be moved by the Secretary for Labour and Welfare

<u>Clause</u>	<u>Amendment Proposed</u>
6	<p>By adding—</p> <p>“15CA. Interpretation of Part IIIA</p> <p>In this Part—</p> <p><i>child</i> (嬰兒) means a new-born child.”.</p>
6	<p>In the proposed section 15D(3)(b), by deleting “from and inclusive of” and substituting “beginning on”.</p>
6	<p>By deleting the proposed section 15E(1)(a)(ii) and substituting—</p> <p>“(ii) of the intended date of his leave before taking the leave; or”.</p>
6	<p>In the Chinese text, by deleting the proposed section 15F(1) and substituting—</p> <p>“(1) 侍產假是僱員在根據本條例有權享有的休息日、假日及年假以外，另有權享有的假期。”.</p>
6	<p>In the proposed section 15I(2), in the Chinese text, by deleting “出生登記” and substituting “生死登記”.</p>

Employment (Amendment) Bill 2014

Committee Stage

Amendments to be moved by the Honourable Kenneth LEUNG

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	By deleting “paternity leave of up to 3 days and paternity leave pay at a daily rate of four-fifths of the employee’s average daily wages” and substituting “paternity leave of 7 days and paternity leave pay at a daily rate of the employee’s average daily wages”.
6	In the proposed section 15D(2)(b), by deleting “not more than 3 days” and substituting “7 days”.
6	In the proposed section 15H(2), by deleting “four-fifths of”.

Employment (Amendment) Bill 2014

Committee Stage

Amendments to be moved by the Honourable LEE Cheuk-yan

<u>Clause</u>	<u>Amendment Proposed</u>
6	In the proposed section 15D(2)(b), by deleting “not more than”.
6	<p>By adding—</p> <p>“15M. Prohibition against termination of employment</p> <p>(1) In this section—</p> <p><i>period of taking paternity leave</i> (放取侍產假期間), in relation to an employee who has notified his employer in accordance with section 15E, means the period from the date of the notice—</p> <p>(a) to the date on which his paternity leave expires; or</p> <p>(b) in the case of miscarriage, to the date of miscarriage;</p> <p><i>wages</i> (工資), in subsections (5)(b), (6) and (7), includes a sum of money paid by an employer in respect of any of the following days—</p> <p>(a) a day of paternity leave, a rest day, a sickness day, a holiday or a day of annual leave taken by the employee;</p> <p>(b) a day of leave taken by the employee with the agreement of the employer;</p> <p>(c) a normal working day on which the employee is not provided with work by the employer;</p> <p>(d) a day of absence from work of the employee due to temporary incapacity for which compensation is payable under section 10 of the Employees’ Compensation Ordinance (Cap. 282).</p> <p>(2) Subject to subsection (3), after an employee has notified his employer in accordance with section 15E, the employer may not terminate his</p>

continuous contract of employment otherwise than in accordance with section 9 during his period of taking paternity leave.

- (3) An employer who terminates the continuous contract of employment of an employee during his period of taking paternity leave is taken for the purposes of subsection (2) to terminate the contract otherwise than in accordance with section 9—
 - (a) unless the contrary is proved; or
 - (b) subject to subsection (4), unless the employer proves that—
 - (i) the employer purported to terminate the contract in accordance with that section; and
 - (ii) at the time of such termination, the employer reasonably believed that the employer had a ground to do so.
- (4) Subsection (3)(b) does not apply in the case of civil proceedings.
- (5) An employer who contravenes subsection (2) is liable to pay to the employee—
 - (a) the sum which would have been payable if the contract of employment had been terminated by the employer under section 7;
 - (b) a further sum equivalent to 7 times the employee's average daily wages during—
 - (i) the period of 12 months immediately before the date of termination of the contract of employment; or
 - (ii) (if the employee has been employed by the employer for a period shorter than 12 months immediately before the date of termination of the contract of employment) the shorter period; and

- (c) (where the employee is or would have been entitled to paternity leave pay) paternity leave pay for 3 days.
- (6) The average daily wages are to be calculated without regard to—
 - (a) any period (*excluded period*) during the 12-month period or shorter period for which the employee was not paid wages or full wages because of—
 - (i) any paternity leave, rest day, sickness day, holiday or annual leave taken by the employee;
 - (ii) any leave taken by the employee with the agreement of the employer;
 - (iii) the employee's not being provided with work by the employer on a normal working day; or
 - (iv) the employee's absence from work due to temporary incapacity for which compensation is payable under section 10 of the Employee's Compensation Ordinance (Cap. 282); and
 - (b) any wages paid to the employee for the excluded period.
- (7) To avoid doubt, if the amount of the wages paid to an employee in respect of a day covered by the definition of *wages* in subsection (1) is only a fraction of the amount earned by the employee on a normal working day, the employee's average daily wages are to be calculated without regard to the wages and the day.
- (8) Despite subsection (5)(b), if for any reason it is impracticable to calculate an employee's average daily wages in the manner provided in that subsection, the amount may be calculated by reference to—
 - (a) the wages earned by a person who was employed at the same work by the same employer during the period of 12 months

immediately before the date of termination of the contract of employment; or

(b) if there is no such person, the wages earned by a person who was employed in the same trade or occupation and at the same work in the same district during the period of 12 months immediately before the date of termination of the contract of employment.

(9) An employer who contravenes subsection (2) commits an offence and is liable on conviction to a fine at level 6.

New

By adding—

“6A. Section 32A amended (employee’s entitlement to employment protection)

Section 32A(1)(c)(i), after “15(1)”—

Add

“, 15M(2)”.

6B. Section 32M amended (remedies for employment protection)

Section 32M(2)(a), after “15(1)”—

Add

“, 15M(2)”.

New

By adding—

“7A. Section 32P amended (award of compensation)

Section 32P(1)(b), after “15(1)”—

Add

“, 15M(2)”.

Employment (Amendment) Bill 2014

Committee StageAmendments to be moved by Hon Kenneth LEUNG

- A. (If the amendment to section 15D(2)(b) proposed by the Hon Kenneth LEUNG is **passed**, he will move the revised amendment to the long title set out below)

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	By deleting “paternity leave of up to 3 days and paternity leave pay at a daily rate of four-fifths of the employee’s average daily wages ” and substituting “paternity leave of 7 days and paternity leave pay at a daily rate of the employee's average daily wages ”.

- B. (If the amendment to section 15H(2) proposed by the Hon Kenneth LEUNG is **passed**, he will move the revised amendment to the long title set out below)

<u>Clause</u>	<u>Amendment Proposed</u>
Long title	By deleting “ paternity leave of up to 3 days and paternity leave pay at a daily rate of four-fifths of the employee’s average daily wages” and substituting “ paternity leave of 7 days and paternity leave pay at a daily rate of the employee's average daily wages”.

Note: Revised amendment is marked or with deletion line.