

**立法會**  
**Legislative Council**

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by the Administration)

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**Bills Committee on Employment (Amendment) Bill 2014**

**Minutes of meeting**  
**held on Tuesday, 15 April 2014, at 10:45 am**  
**in Conference Room 3 of the Legislative Council Complex**

- Members present** : Hon Kenneth LEUNG (Chairman)  
Hon LEE Cheuk-yan  
Hon Emily LAU Wai-hing, JP  
Hon Tommy CHEUNG Yu-yan, SBS, JP  
Hon WONG Kwok-hing, BBS, MH  
Hon Cyd HO Sau-lan  
Hon WONG Kwok-kin, BBS  
Hon Paul TSE Wai-chun, JP  
Hon Alan LEONG Kah-kit, SC  
Hon CHAN Chi-chuen  
Dr Hon Kenneth CHAN Ka-lok  
Hon CHAN Yuen-han, SBS, JP  
Hon KWOK Wai-keung  
Hon SIN Chung-kai, SBS, JP  
Hon Martin LIAO Cheung-kong, JP  
Hon POON Siu-ping, BBS, MH  
Hon TANG Ka-piu  
Dr Hon CHIANG Lai-wan, JP  
Hon CHUNG Kwok-pan
- Member attending** : Hon James TIEN Pei-chun, GBS, JP
- Members absent** : Hon Jeffrey LAM Kin-fung, GBS, JP  
Dr Hon Helena WONG Pik-wan  
Dr Hon Elizabeth QUAT, JP

**Public Officers : Item II  
attending**

Mr Charles HUI Pak-kwan  
Assistant Commissioner for Labour (Labour Relations)

Ms Melody LUK Wai-ling  
Chief Labour Officer (Labour Relations)  
Labour Department

Miss Candice CHENG Lai-fan  
Senior Labour Officer (Labour Relations)  
Labour Department

Mr Alan CHONG Ka-ning  
Senior Government Counsel  
Department of Justice

**Clerk in : Miss Betty MA  
attendance Chief Council Secretary (2) 1**

**Staff in : Ms Clara TAM  
attendance Assistant Legal Adviser 9**

Mr Raymond LAM  
Senior Council Secretary (2) 7

Ms Mina CHAN  
Council Secretary (2) 1

Ms Kiwi NG  
Legislative Assistant (2) 1

Miss Lulu YEUNG  
Clerical Assistant (2) 1

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## **I. Election of Chairman**

Mr LEE Cheuk-yan, member who had the highest precedence in Council among members of the Bills Committee present, presided over the election of the Chairman. He invited nominations for the chairmanship of the Bills Committee.

2. Mr Kenneth LEUNG was nominated by Mr SIN Chung-kai and the nomination was seconded by Ms Cyd HO. Mr Kenneth LEUNG accepted the nomination.

3. Mr WONG Kwok-kin was nominated by Miss CHAN Yuen-han and the nomination was seconded by Mr KWOK Wai-keung. Mr WONG Kwok-kin accepted the nomination. There was no other nomination.

4. Mr LEE Cheuk-yan then proceeded with the election and announced that voting be conducted by secret ballot. After all the members present had cast their votes, Mr LEE invited Mr SIN Chung-kai and Miss CHAN Yuen-han, who had nominated the two candidates respectively, to monitor the counting of votes.

5. Mr LEE Cheuk-yan announced that eight members voted for Mr Kenneth LEUNG and seven members voted for Mr WONG Kwok-kin respectively. Mr LEE declared Mr Kenneth LEUNG elected as the Chairman of the Bills Committee. Mr Kenneth LEUNG then took the chair.

6. Members agreed that the election of Deputy Chairman was not necessary.

## **II. Meeting with the Administration**

7. The Bills Committee deliberated (index of proceedings attached at **Annex**).

8. Members requested the Administration -

- (a) to provide written response to the letter dated 11 April 2014 from the legal adviser to the Bills Committee to the Administration;

- (b) to explain whether it was in breach of the law for an employer to pay wages in lieu of statutory paternity leave in the respective scenarios where the employer had or had not obtained the agreement of the employee concerned;
- (c) to provide the report of the survey on paternity leave conducted by the Labour Department with member establishments of its 18 Human Resources Managers Clubs in 2012; and
- (d) to consult the Equal Opportunities Commission ("EOC") and provide its view regarding whether the proposal in the Bill of excluding female employees from the statutory paternity leave scheme, with the effect of excluding the female same-sex partner of a mother from the benefits of the Bill, would give rise to an issue of discrimination.

9. Members agreed that the written views of EOC would be sought on whether the different treatment in employment protection against dismissal afforded to female employees taking maternity leave and that under the Bill in respect of male employees taking paternity leave would contravene the Sex Discrimination Ordinance (Cap. 480), the Family Status Discrimination Ordinance (Cap. 527) or other discrimination related ordinances.

10. Members also agreed to invite public views on the Bill by posting a notice on the Legislative Council website. The Chairman said that members who wished to suggest inviting any organisations to give views at the meeting should inform the Clerk.

### **III. Dates of subsequent meetings**

11. Members agreed that a meeting would be held on 10 May 2014 from 9:00 am to 12:00 noon to receive the views of the public on the Bill.

12. The Chairman said that another meeting with the Administration to discuss the Bill would be scheduled, and members would be informed of the meeting date in due course.

13. There being no other business, the meeting ended at 12:41 pm.

Council Business Division 2  
Legislative Council Secretariat  
7 May 2014

**Proceedings of meeting of the  
Bills Committee on Employment (Amendment) Bill 2014  
held on Tuesday, 15 April 2014, at 10:45 am  
in Conference Room 3 of the Legislative Council Complex**

<b>Time marker</b>	<b>Speaker(s)</b>	<b>Subject(s)</b>	<b>Action Required</b>
000000 - 000833	Mr LEE Cheuk-yan Mr SIN Chung-kai Mr Kenneth LEUNG Miss CHAN Yuen-han Mr WONG Kwok-kin	Election of Chairman	
000834 - 001140	Chairman	Opening remarks  Scheduling of a meeting to receive public views on the Employment (Amendment) Bill 2014 ("the Bill") and another meeting to continue discussion with the Administration.	
001141 - 001703	Admin	Briefing by the Administration on the Bill.	
001704 - 002255	Chairman Mr TANG Ka-piu Admin	Mr TANG Ka-piu's view that the duration of paternity leave ("PL") should be increased to seven days and question regarding -  (a) whether the Administration had any plans to increase the duration of PL;  (b) the commencement date of the enacted legislation; and  (c) the mechanism for dealing with disputes over documents required for PL entitlement.  Administration's response that -  (a) the duration of three-day statutory PL was a consensus reached by the Labour Advisory Board ("LAB");  (b) the Administration would review the enacted legislation one year after its implementation and report to LAB;  (c) the Administration hoped that the enacted legislation would come into operation as soon as possible; and	

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		(d) disputes over documents required for PL entitlement would be dealt with in the same way as disputes concerning statutory entitlements under the Employment Ordinance (Cap. 57) ("EO"), i.e. by the Labour Tribunal or Minor Employment Claims Adjudication Board as appropriate.	
002256 - 003115	Chairman Mr WONG Kwok-hing Admin	<p>Mr WONG Kwok-hing's expression of support for the introduction of PL and review of the enacted legislation one year after its implementation.</p> <p>Mr WONG's question regarding whether it was unlawful for an employer to refuse granting PL.</p> <p>Administration's response that it was unlawful for an employer to refuse granting PL if the employee had given the required notification. An employer who failed to grant PL or effect PL pay to an eligible employee was liable on conviction to a fine of \$50,000.</p>	
003116 - 003635	Chairman Mr LEE Cheuk-yan Admin	<p>Mr LEE Cheuk-yan's view that the duration of PL should be increased to seven days and question regarding the estimated number of non-government male employees who might take PL in a year.</p> <p>Administration's response that -</p> <p>(a) it would review the enacted legislation, including the duration of PL, one year after its implementation; and</p> <p>(b) there were about 46 500 fathers of local babies born in Hong Kong in 2010 who were non-government employees, amounting to 3% of the total number of male employees in Hong Kong.</p>	
003636 - 004341	Chairman Mr KWOK Wai-keung Admin	<p>Mr KWOK Wai-keung's view that -</p> <p>(a) the duration of PL was too short and should be reviewed as soon as possible;</p> <p>(b) statutory PL should apply to cases of miscarriage; and</p>	

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		<p>(c) PL pay should be set at the full rate of the employee's average daily wages.</p> <p>Mr KWOK Wai-keung's question regarding whether commission was included in the calculation of PL pay.</p> <p>Administration's response that -</p> <p>(a) in the case of a miscarriage which was defined under EO as the expulsion of the products of conception which were incapable of survival after being born before 28 weeks of pregnancy, a female employee was entitled to sick leave rather than maternity leave. On the other hand, an employee who was certified to have given birth to a dead child was eligible for maternity leave. Mirroring the same arrangements applicable to maternity leave, it was proposed in the Bill that statutory PL should not apply to a miscarriage, but to a stillbirth; and</p> <p>(b) under EO, wages included commission and thus should be included in the calculation of PL pay.</p> <p>Chairman's question and the Administration's response regarding why a threshold of 28 weeks of pregnancy was adopted in the definition of miscarriage in EO.</p>	
004342 - 004913	Chairman Mr Tommy CHEUNG Admin	<p>Mr Tommy CHEUNG's expression of opposition to the Bill and the granting of PL for childbirths outside of marriage.</p> <p>Mr CHEUNG's question regarding -</p> <p>(a) whether a male employee was entitled to take PL if he was dismissed after notifying the employer of his intention to do so and before he actually took the leave;</p> <p>(b) whether the protection from dismissal afforded to female employees taking maternity leave would be afforded under the Bill to male employees taking PL; and</p>	



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		<p>(c) whether there was penalty for an employee who had taken PL but subsequently failed to meet the documentary requirement.</p> <p>Administration's response that -</p> <p>(a) an eligible employee could take PL only when in service and would only be entitled to PL pay if he had taken PL;</p> <p>(b) the protection from dismissal afforded to female employees taking maternity leave was not afforded to male employees taking PL; and</p> <p>(c) an employee's failure to provide the required documents could be due to various reasons but it would be a criminal offence if the employee made or provided false document.</p>	
004914 - 005457	Chairman Mr POON Siu-ping Admin	<p>Mr POON Siu-ping's view that -</p> <p>(a) the enacted legislation should come into operation as soon as possible; and</p> <p>(b) the protection from dismissal afforded to female employees taking maternity leave should be afforded to male employees taking PL.</p> <p>Mr POON's question regarding whether it was unlawful for an employer to pay wages in lieu of PL.</p> <p>Administration's response that -</p> <p>(a) as PL was different from maternity leave in that the situation where a female employee who might be hindered by her pregnancy to perform certain work would not apply to a male employee taking PL, and the duration of the maternity leave was 10 weeks while the duration of PL was three days, it was not proportionate for the same protection from dismissal afforded to female employees taking maternity leave to be afforded to male employees taking PL; and</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>(b) an employer who failed to grant PL or payment for PL taken to an eligible employee committed an offence.</p> <p>The Administration was requested to explain whether it was in breach of the law for an employer to pay wages in lieu of statutory PL in the respective scenarios where the employer had or had not obtained the agreement of the employee concerned.</p>	<b>Admin</b>
005458 - 005834	Chairman Dr CHIANG Lai-wan Admin	<p>Dr CHIANG Lai-wan's expression of support for the introduction of PL and question regarding -</p> <p>(a) in regard of childbirths outside Hong Kong, the employer could insist on the production of the child's birth certificate; and</p> <p>(b) whether there was penalty for taking PL without producing the required document thereafter.</p> <p>Administration's response that -</p> <p>(a) for childbirths outside Hong Kong, the employee must provide the child's birth certificate for entitlement to PL pay. Only if the authorities did not issue birth certificates that the employee might provide other documents issued by the authorities that could reasonably be taken as proof that the employee was the child's father;</p> <p>(b) disputes or doubts over documentary requirement for PL entitlement could be dealt with in the same way as disputes concerning statutory entitlements provided by EO, i.e. by the conciliation service rendered by the Labour Department ("LD"), or if no settlement could be reached, to be adjudicated by Labour Tribunal or Minor Employment Claims Adjudication Board as appropriate; and</p> <p>(c) the use of false instrument was a criminal offence.</p>	

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005835 - 010237	Chairman Mr CHUNG Kwok-pan Admin	<p>Mr CHUNG Kwok-pan's concern regarding -</p> <ul style="list-style-type: none"> <li>(a) whether a PL duration of three days would be of any use in cases of childbirth in Europe or the Americas, given that nearly three days might be needed for travelling; and</li> <li>(b) whether it was unlawful for an employee to request payment in lieu of untaken statutory PL.</li> </ul> <p>Administration's response that -</p> <ul style="list-style-type: none"> <li>(a) it was up to the employer and the employee to make arrangements on whether more leave would be granted to meet individual needs. The Bill did not impose restrictions on how PL was to be used; and</li> <li>(b) an employer was only required to grant pay for PL after the employee had taken PL.</li> </ul>	
010238 - 010758	Chairman Miss CHAN Yuen-han Admin	<p>Miss CHAN Yuen-han's view that -</p> <ul style="list-style-type: none"> <li>(a) PL pay should be set at the full rate of the employee's average daily wages;</li> <li>(b) the duration of statutory PL should be increased to five days; and</li> <li>(c) there was a need for PL in stillbirth cases.</li> </ul> <p>Administration's response that -</p> <ul style="list-style-type: none"> <li>(a) the rate of PL pay was pitched at four-fifths of the employee's normal pay as in the case of maternity leave;</li> <li>(b) the stipulations in relevant International Labour Conventions were such that maternity leave pay should be pitched at not less than two-thirds of the employee's previous earnings;</li> <li>(c) in many other places around the world, PL pay was either not paid at full rate or subject to a cap;</li> </ul>	

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		<p>(d) cases of stillbirth were eligible for PL, if the pregnancy period exceeded 28 weeks; and</p> <p>(e) it was the Administration's policy to gradually improve employment benefits in a way commensurate with the pace of Hong Kong's socio-economic developments.</p>	
010759 - 011343	Chairman Mr CHAN Chi-chuen Admin	<p>Mr CHAN Chi-chuen's expression of support for the introduction of PL, the pitching of PL at the full rate of average daily wages and increasing the statutory PL duration to five or seven days.</p> <p>Mr CHAN's concern regarding -</p> <p>(a) whether consideration had been given to granting PL to female employees on the ground of sex equality; and</p> <p>(b) possible future legal challenge to the application of the Bill to male employees only.</p> <p>Administration's response that -</p> <p>(a) one of the objectives of the proposed PL was to facilitate working fathers in taking care of a newborn. In formulating the proposal, consideration had been given to factors like birth registration, documents for verification of father-child relationship, a father's legal rights and responsibilities to the child, viability and practicability for employers to comply with the statutory PL scheme etc.;</p> <p>(b) consideration had also been given to the consistency of the Bill with the anti-discrimination legislation of Hong Kong and the body of Hong Kong family law; and</p> <p>(c) a father had to be of the male sex under Hong Kong family law.</p>	

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011344 - 011936	Chairman Dr Kenneth CHAN Admin	<p>Dr Kenneth CHAN's expression of support for the introduction of PL and view that the statutory PL duration of three days should be increased to five days and public views should be sought on the PL duration.</p> <p>Administration's response that according to a survey on PL conducted by LD with member establishments of its 18 Human Resources Managers Clubs in 2012, the duration of PL provided by the respondent organisations on a voluntary basis ranged from one day to 14 days, with an average duration of three days, and over 81% offered one to three days of PL. Having regard to the prevailing practice of providing PL in the private sector and the consensus reached by LAB, the Administration considered the proposed three-day PL an appropriate starting point for statutory PL.</p> <p>The Administration was requested to provide the Bills Committee with the report of LD's survey on PL.</p>	<b>Admin</b>
011937 - 012551	Chairman Ms Cyd HO Admin	<p>Ms Cyd HO's view that the statutory PL duration of three days was too short and question regarding why an employee who intended to take PL was required to notify his employer at least three months before the expected date of delivery.</p> <p>Administration's response that the three-month notice period was a request of LAB's employer representatives for the purpose of facilitating manpower deployment during the employee's PL. Besides, it was easy to understand and implement by employers and employees.</p>	
012552 - 013100	Chairman Mr SIN Chung-kai Admin	<p>Mr SIN Chung-kai's concern regarding whether the Administration had conducted survey on the average hospitalisation period of pregnant women.</p> <p>Administration's response that employees were free to decide when to take PL so long as the leave was taken during the period from four weeks before the expected date of delivery of the child to 10 weeks from and inclusive of the</p>	

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		actual date of delivery. PL was not introduced solely for accompanying the mother during hospitalisation.	
013101 - 013611	Chairman Ms Emily LAU Admin	<p>Ms Emily LAU's expression of support for the introduction of PL and the view that the Administration should promote among employers the positive effect of family-friendly practice on productivity and encourage employers to grant a longer PL duration to employees.</p> <p>Administration's response that the Bill only set out the minimum standard and employers were always encouraged to offer better benefits than what was required by law.</p>	
013612 - 014147	Chairman Mr LEE Cheuk-yan Admin	<p>Mr LEE Cheuk-yan's concern that -</p> <ul style="list-style-type: none"> <li>(a) the three-day PL duration was determined on the basis of a survey conducted on a relatively small sample of organisations; and</li> <li>(b) the dismissal of a male employee for reason of taking PL might contravene the Family Status Discrimination Ordinance (Cap. 527) ("FSDO").</li> </ul> <p>Mr LEE's question about the financial implications of taking PL by the fathers of about 46 500 local babies born in Hong Kong in a year.</p> <p>Administration's response that -</p> <ul style="list-style-type: none"> <li>(a) the survey on PL was conducted by LD with members of its 18 Human Resources Managers Clubs, which represented 1 580 member organisations;</li> <li>(b) labour cost of three-day PL taken by the estimated number of 46 500 male employees with babies born in Hong Kong in a year was estimated to be about \$140 million, which amounted to about 0.02 % of the total wage costs; and</li> </ul>	

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		(c) apart from EO provisions, employers also had to comply with the requirements under FSDO.	
014148 - 014713	Chairman Mr TANG Ka-piu Admin	<p>Mr TANG Ka-piu's concern that protection from dismissal was afforded under EO to female employees taking maternity leave but there was no similar provision in the Bill to prohibit the employer from dismissing a male employee for reason of taking PL.</p> <p>Members agreed that the views of the Equal Opportunities Commission ("EOC") be sought on whether the different treatment in employment protection against dismissal afforded to female employees taking maternity leave and that under the Bill in respect of male employees taking PL would contravene the Sex Discrimination Ordinance (Cap. 480) ("SDO"), FSDO or other discrimination related ordinances.</p>	<b>Clerk</b>
014714 - 015142	Chairman Ms Cyd HO Admin	<p>Ms Cyd HO's question regarding whether the Administration had consulted EOC on whether failure to grant PL for childbirths outside of marriage might constitute discrimination.</p> <p>Administration's response that the Department of Justice ("DoJ") had been consulted on the consistency of the Bill with the Hong Kong Bill of Rights and various discrimination-related ordinances, and DoJ advised that failing to grant PL for childbirths outside of marriage might constitute discrimination on grounds of marital status and family status under SDO and FSDO.</p> <p>The Administration was requested to consult EOC and provide the latter's view regarding whether the proposal in the Bill of excluding female employees from the statutory PL scheme, with the effect of excluding the female same-sex partner of a mother from the benefits of the Bill, would give rise to an issue of discrimination.</p>	<b>Admin</b>

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015143 - 015435	Chairman Mr James TIEN	Mr James TIEN's remark that -  (a) employers respected the consensus reached by LAB on the three-day duration of PL;  (b) many small and medium enterprises were experiencing difficulties in operating their businesses; and  (c) many employers would grant a longer PL duration than that required by law, if possible.	
015436 - 015732	Chairman Ms Cyd HO Ms Emily LAU	Provision of the Administration's response to the letter dated 11 April 2014 from the legal adviser to the Bills Committee as well as issues raised and information requested by members.  Invitation of public views on the Bill.  Scheduling of subsequent meetings.	<b>Admin</b>