

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1623/13-14  
(These minutes have been seen  
by the Administration)

Ref : CB2/BC/3/13

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

**Minutes of meeting**  
**held on Saturday, 10 May 2014, at 9:00 am**  
**in Conference Room 1 of the Legislative Council Complex**

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

**Public Officers : Item I  
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 Michael LAM Siu-chung  
Senior Assistant Law Draftsman  
Department of Justice

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

**Attendance : Item I  
by invitation**

Democratic Alliance for the Betterment and  
Progress of Hong Kong

Mr NGAN Man-yu  
Deputy Spokesperson on Manpower

Right of People's Livelihood & Legal Association,  
Hong Kong

Mr Tim LEE  
President

Hong Kong Taxi Owners' Association Limited

Mr WONG Po-keung  
Chairman

The Federation of Hong Kong and Kowloon  
Labour Unions

Miss CHAN Ho-lam  
Assistant Officer

Service Industry General Union

Ms HUEN Wai-han  
Vice Chairman

I. T. People Association of Hong Kong

Mr PANG Siu-wai  
President

The Hong Kong Federation of Trade Union  
Women Affairs Committee

Ms LEUNG Chung-yan  
Director

Civic Party

Mr Jackal CHAN  
Kowloon East District Developer

Hong Kong Air Cargo Terminals Employees Union

Mr Wilson YAP Yee-liek  
Vice Chairman

Labour Party

Mr C M LAM  
Representative

Democratic Party

Mr Ricky OR Yiu-lam  
Spokesman

Hong Kong Catering Industry Association

Mr Tony TAM  
Vice Chairman

Institution of Dining Art

Mr Kevin YAU  
First Vice Chairman

Public Omnibus Operators Association

Mr Peter MOK  
Committee Member

Association of Restaurant Managers

Mr WOO Chu  
President

Hong Kong & Kowloon Vermicelli & Noodle  
Manufacturing Industry Merchants' General Association

Mr FUNG Bing-hau

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

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

Mr Raymond LAM  
Senior Council Secretary (2) 7

Miss Lulu YEUNG  
Clerical Assistant (2) 1

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## **I. Meeting with deputations and the Administration**

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

2. Members received oral representations from 16 deputations on the Employment (Amendment) Bill 2014 ("the Bill"). The major views of the deputations are set out in the **Annex**.

3. Members noted that the following organisations not attending the meeting had provided the Bills Committee with written submissions -

- (a) Deacons;
- (b) New World First Ferry Services Limited;
- (c) The Society for Truth and Light;
- (d) The Chinese General Chamber of Commerce; and
- (e) Hong Kong Confederation of Trade Unions.

4. Members requested the Administration to -

- (a) give views on the situation where employers and employees agreed to pay wages in lieu of statutory paternity leave ("PL") to circumvent the requirements in the Bill; and
- (b) explain whether an employee who took up outside employment during the period of PL was in breach of the law.

5. The Administration undertook to issue guidelines on documentary requirements relating to PL pay for employers and employees.

## **II. Any other business**

6. Members noted that the next meeting had been scheduled for 12 May 2014 at 2:30 pm to continue discussion with the Administration.

7. There being no other business, the meeting ended at 12:08 pm.

Council Business Division 2  
Legislative Council Secretariat  
27 May 2014

**Proceedings of meeting of the  
Bills Committee on Employment (Amendment) Bill 2014  
held on Saturday, 10 May 2014, at 9:00 am  
in Conference Room 1 of the Legislative Council Complex**

<b>Time marker</b>	<b>Speaker(s)</b>	<b>Subject(s)</b>	<b>Action Required</b>
000000 - 001145	Chairman	Opening remarks	
001146 - 001405	Democratic Alliance for the Betterment and Progress of Hong Kong	<p>Presentation of views -</p> <p>(a) supported the introduction of statutory paternity leave ("PL");</p> <p>(b) the documentary requirements relating to PL pay for birth outside Hong Kong might lead to disputes between employers and employees;</p> <p>(c) a medical certificate of the pregnancy concerned should be included in the notification requirements relating to PL; and</p> <p>(d) guidelines should be issued and publicity should be launched to promote the public's understanding of PL.</p>	
001406 - 001712	Hong Kong Taxi Owners' Association Limited	Presentation of views as detailed in the submission (LC Paper No. CB(2)1436/13-14(01))	
001713 - 001931	Right of People's Livelihood & Legal Association, Hong Kong	Presentation of views as detailed in the submission (LC Paper No. CB(2)1480/13-14(01))	
001932 - 002202	The Federation of Hong Kong and Kowloon Labour Unions	Presentation of views as detailed in the submission (LC Paper No. CB(2)1488/13-14(01))	
002203 - 002509	Service Industry General Union	Presentation of views as detailed in the submission (LC Paper No. CB(2)1500/13-14(01))	
002510 - 002717	I. T. People Association of Hong Kong	Presentation of views as detailed in the submission (LC Paper No. CB(2)1517/13-14(01))	

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002718 - 003021	The Hong Kong Federation of Trade Unions Women Affairs Committee	Presentation of views as detailed in the submission (LC Paper No. CB(2)1500/13-14(02))	
003022 - 003314	Civic Party	Presentation of views as detailed in the submission (LC Paper No. CB(2)1480/13-14(02))	
003315 - 003527	Hong Kong Air Cargo Terminals Employees Union	Presentation of views as detailed in the submission (LC Paper No. CB(2)1454/13-14(01))	
003528 - 003826	Labour Party	Presentation of views as detailed in the submission (LC Paper No. CB(2)1517/13-14(02))	
003827 - 004152	Democratic Party	Presentation of views as detailed in the submission (LC Paper No. CB(2)1500/13-14(03))	
004153 - 004322	Hong Kong Catering Industry Association	Presentation of views as detailed in the joint submission (LC Paper No. CB(2)1480/13-14(03))	
004323 - 004459	Institution of Dining Art	Presentation of views as detailed in the submission (LC Paper No. CB(2)1436/13-14(02))	
004500 - 004626	Public Omnibus Operators Association	Presentation of views -  (a) the Public Omnibus Operators Association had no objection in principle to the enactment of legislation on PL; and  (b) before the introduction of PL, the manpower shortage in the industry should be addressed through strengthening training and importation of labour.	
004627 - 004917	Association of Restaurant Managers	Presentation of views as detailed in the joint submission (LC Paper No. CB(2)1480/13-14(03))	
004918 - 005225	Hong Kong & Kowloon Vermicelli & Noodle Manufacturing Industry Merchants' General Association	Presentation of views as detailed in the submission (LC Paper No. CB(2)1480/13-14(04))	



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005226 - 005921	Chairman Admin	<p>Administration's response to the issues raised by deputations -</p> <p>(a) it was the Government's policy to gradually improve employees' benefits in a way commensurate with the pace of Hong Kong's socio-economic development. To strike a reasonable balance between the interests of employers and employees, all legislative proposals to improve employment benefits, including that on PL, had been discussed and endorsed by the Labour Advisory Board ("LAB");</p> <p>(b) the three-day PL was proposed having regard to the prevailing practice in the voluntary provision of PL in the private sector as reflected in the survey conducted by the Labour Department ("LD") with its 18 Human Resources Managers Clubs in 2012 and the consensus reached by LAB;</p> <p>(c) it would not be appropriate to make a direct comparison between the duration of PL for government employees and that proposed in the Employment (Amendment) Bill 2014 ("the Bill"), as the former was provided by the Government in its capacity of an employer to its employees, having regard to factors such as affordability, its own manpower situation etc.; whereas the latter was a statutory requirement for all employers, including small and medium enterprises, to comply with, and was meant to be a minimum of PL entitlement for all employees. Employers in the private sector were free to decide whether they would offer PL benefit above the statutory minimum upon its enactment, having considered their own circumstances;</p> <p>(d) the rate of PL pay was pitched at four-fifths of the employee's average daily wages as in the case of maternity leave. It was LAB's view that where appropriate, the relevant requirements and details of</p>	

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		<p>statutory PL should be aligned with those applicable to maternity leave under the Employment Ordinance (Cap. 57) ("EO");</p> <p>(e) 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;</p> <p>(f) there was no restriction on the nationality of the employee's spouse/partner. As long as an employee was legally employed in Hong Kong and met the specified criteria, he would be entitled to the proposed PL benefits;</p> <p>(g) PL was applicable to childbirths outside Hong Kong, in which case 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; and</p> <p>(h) 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 LD, or if no settlement could be reached, to be adjudicated by Labour Tribunal ("LT") or Minor Employment Claims Adjudication Board ("MECAB") as appropriate.</p>	
005922 - 010654	Chairman Mr WONG Kwok-hing Admin	<p>Mr WONG Kwok-hing's views and the Administration's response regarding -</p> <p>(a) the positive effect of introduction of PL on corporate image, retention of staff and employer-employee relations;</p> <p>(b) whether the duration of PL should be increased to the same level as that of civil servants;</p>	

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		<p>(c) the review of the implementation of the law on PL one year after its coming into operation; and</p> <p>(d) whether the protection from dismissal afforded under EO to female employees taking maternity leave should also be afforded to a male employee taking PL.</p>	
010655 - 011302	Mr LEE Cheuk-yan Institution of Dining Art	<p>Mr LEE Cheuk-yan's concern and the views of Institution of Dining Art regarding -</p> <p>(a) the manpower shortage problem encountered by the catering industry and the introduction of measures to attract more females to join the workforce and alleviate the manpower shortage problem in the industry;</p> <p>(b) whether the impact of granting PL on the operating cost of employers was material; and</p> <p>(c) whether there was information on the number of members of the Institution of Dining Art which voluntarily offered PL.</p>	
011303 - 011852	Mr KWOK Wai-keung Admin	<p>Mr KWOK Wai-keung's view and the Administration's response regarding -</p> <p>(a) whether the duration of PL should be increased to the same level as that of government employees;</p> <p>(b) the impact of granting PL on the operating cost of employers; and</p> <p>(c) whether it was in breach of the law for an employer who had been granting more than three days' PL in the past to reduce PL to three days after the Bill was implemented.</p>	
011853 - 012413	Mr POON Siu-ping Admin	<p>Mr POON Siu-ping's views and the Administration's response regarding -</p> <p>(a) whether the rate of PL pay should be pitched at four-fifths of the employee's</p>	

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		<p>average daily wages as in the case of maternity leave;</p> <p>(b) whether the protection from dismissal afforded under EO to female employees taking maternity leave should also be afforded to a male employee taking PL; and</p> <p>(c) reviews and studies to improve employees' rights and benefits which were currently being conducted by the Administration.</p>	
012414 - 013252	Miss CHAN Yuen-han Chairman Hong Kong & Kowloon Vermicelli & Noodle Manufacturing Industry Merchants' General Association Admin	<p>Miss CHAN Yuen-han's concerns, views of Hong Kong &amp; Kowloon Vermicelli &amp; Noodle Manufacturing Industry Merchants' General Association and the Administration's response regarding -</p> <p>(a) the problem of high rental cost encountered by employers;</p> <p>(b) the manpower shortage problem encountered by the vermicelli &amp; noodle manufacturing industry; and</p> <p>(c) the encouragement of employers to offer more than three days' PL, which was a minimum requirement in the Bill.</p>	
013253 - 013935	Mr CHUNG Kwok-pan Admin Chairman	<p>Mr CHUNG Kwok-pan's views and the Administration's response regarding -</p> <p>(a) whether PL should be offered on a voluntary basis by employers;</p> <p>(b) difficulties encountered by small and medium enterprises in offering PL;</p> <p>(c) documentary requirements relating to PL and PL pay.</p> <p>Chairman's question and the Administration's response regarding documentary requirements relating to PL pay for births outside Hong Kong.</p>	

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013936 - 014337	Dr Elizabeth QUAT Chairman	<p>Dr Elizabeth QUAT's views regarding -</p> <p>(a) the support of the Women Affairs Committee of the Democratic Alliance for the Betterment and Progress of Hong Kong for the introduction of PL;</p> <p>(b) the problems encountered by the vermicelli &amp; noodle manufacturing industry; and</p> <p>(c) future review of the enacted legislation regarding the duration of PL.</p>	
014338 - 014937	Chairman Mr LEE Cheuk-yan Public Omnibus Operators Association Admin	<p>Mr LEE Cheuk-yan's concerns, views of the Public Omnibus Operators Association and the Administration's response regarding -</p> <p>(a) whether PL was offered voluntarily by franchised bus companies;</p> <p>(b) the manpower shortage problem encountered by non-franchised bus operators; and</p> <p>(c) whether the survey on PL conducted by LD with members of its 18 Human Resources Managers Clubs was representative of the market situation.</p>	
014938 - 015411	Chairman Dr Elizabeth QUAT Admin Hong Kong & Kowloon Vermicelli & Noodle Manufacturing Industry Merchants' General Association	<p>Dr Elizabeth QUAT's question and the Administration's response regarding -</p> <p>(a) whether there was a limit to the number of times a male employee could take PL; and</p> <p>(b) whether the proposals in the Bill were applicable to cases of miscarriage.</p> <p>Chairman's question and the Administration's response regarding whether multiple births in one pregnancy were taken to be one confinement.</p> <p>Views of Hong Kong &amp; Kowloon Vermicelli &amp; Noodle Manufacturing Industry Merchants' General Association on the proposed PL.</p>	

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015412 - 015535	Mr POON Siu-ping Chairman	Letter dated 5 May 2014 from Equal Opportunities Commission ("EOC").	
015536 - 015703	Chairman Hong Kong Catering Industry Association	View of Hong Kong Catering Industry Association regarding the manpower shortage problem in the catering industry.	
015704 - 015815	Chairman Association of Restaurant Managers	View of the Association of Restaurant Managers that PL should be offered on a voluntary basis.	
015816 - 020421	Mr Paul TSE Hong Kong & Kowloon Vermicelli & Noodle Manufacturing Industry Merchants' General Association The Hong Kong Federation of Trade Unions Women Affairs Committee Public Omnibus Operators Association Hong Kong Air Cargo Terminals Employees Union I. T. People Association of Hong Kong Service Industry General Union	Mr Paul TSE's question and views of Hong Kong & Kowloon Vermicelli & Noodle Manufacturing Industry Merchants' General Association, the Hong Kong Federation of Trade Unions Women Affairs Committee, Public Omnibus Operators Association, Hong Kong Air Cargo Terminals Employees Union, I. T. People Association of Hong Kong and Service Industry General Union regarding whether small and medium enterprises which experienced manpower shortage problem should be allowed to pay wages in lieu of statutory PL with the agreement of the employee concerned.	
020422 - 021022	Chairman Admin	Briefing by the Administration on its response to issues raised by members at the meeting on 15 April 2014 (LC Paper No. CB(2)1436/13-14(04)).	
021023 - 021919	Chairman Mr Tommy CHEUNG Admin	Mr Tommy CHEUNG's view and the Administration's response regarding -  (a) the difficulties in verifying birth certificates or other documents issued by the authorities of other places regarding childbirth;  (b) the impact of passage of Marriage (Amendment) Bill 2014 on entitlement to take PL;  (c) the conciliation of disputes or doubts over documentary requirements for PL	

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		<p>entitlement by the conciliation service rendered by LD and, if no settlement could be reached, the adjudication by LT or MECAB as appropriate;</p> <p>(d) the use of false instrument being a criminal offence; and</p> <p>(e) the review of the implementation of the law on PL one year after its coming into operation.</p>	
021920 - 022507	Dr CHIANG Lai-wan Admin	<p>Dr CHIANG Lai-wan's question and the Administration's response regarding -</p> <p>(a) the period within which an eligible employee could take PL;</p> <p>(b) whether the three days' statutory PL had to be taken consecutively;</p> <p>(c) the notification requirements relating to PL; and</p> <p>(d) whether employers could pay wages in lieu of statutory PL with the agreement of the employee concerned.</p>	
022508 - 022835	Mr CHUNG Kwok-pan Admin	Mr CHUNG Kwok-pan's concern and the Administration's response regarding whether restrictions should be imposed in the Bill on how PL was to be used.	
022836 - 023155	Mr Paul TSE Admin	Mr Paul TSE's question and the Administration's response regarding why an employee would be entitled to PL pay only if he had been employed under a continuous contract for a period of not less than 40 weeks immediately before the day on which he took PL.	
023156 - 024241	Dr Kenneth CHAN Admin	<p>Dr Kenneth CHAN's views and the Administration's response regarding -</p> <p>(a) studying the experience of the Immigration Department and other government departments in dealing with documents relating to birth outside Hong</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>Kong to facilitate the tackling of problems relating to documentary requirements relating to PL pay for birth outside Hong Kong; and</p> <p>(b) objective of the survey on PL conducted by LD with members of its 18 Human Resources Managers Clubs.</p>	
024242 - 024451	Mr CHAN Chi-chuen Admin	Mr CHAN Chi-chuen's question and the Administration's response regarding whether a person who had undergone full sex reassignment surgery was entitled to PL.	
024452 - 025414	Chairman Mr Tommy CHEUNG Mr CHUNG Kwok-pan Admin	<p>Concerns of Mr Tommy CHEUNG and Mr CHUNG Kwok-pan and the Administration's response regarding -</p> <p>(a) the tackling of disputes or doubts over documentary proof of birth outside Hong Kong, in particular those documents in languages other than Chinese and English; and</p> <p>(b) the review of the implementation of the law on PL one year after its coming into operation.</p> <p>The Administration undertook to issue guidelines on documentary requirements relating to PL pay for employers and employees.</p>	
025415 - 025927	Chairman Mr Paul TSE Admin	<p>Mr Paul TSE's question and the Administration's response regarding the situation where employers and employees agreed to pay wages in lieu of statutory PL to circumvent the requirements in the Bill.</p> <p>The Administration was requested to give views on the issue raised by Mr TSE.</p>	<b>Admin</b>
025928 - 025934	Chairman	Extension of meeting by 15 minutes.	



<b>Time marker</b>	<b>Speaker(s)</b>	<b>Subject(s)</b>	<b>Action Required</b>
025935 - 030347	Dr CHIANG Lai-wan Admin	Dr CHIANG Lai-wan's question and the Administration's response regarding whether an employee who took up outside employment during the period of PL was in breach of the law.  The Administration was requested to provide a response to the issue raised by Dr CHIANG.	<b>Admin</b>
030348 - 030940	Chairman Dr Kenneth CHAN Dr CHIANG Lai-wan Dr Elizabeth QUAT	Date of next meeting	

Council Business Division 2  
Legislative Council Secretariat  
27 May 2014