

立法會
Legislative Council

LC Paper No. CB(2)1680/13-14
(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 Monday, 12 May 2014, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex

Members present : Hon Kenneth LEUNG (Chairman)
Hon LEE Cheuk-yan
Hon WONG Kwok-hing, BBS, MH
Hon Jeffrey LAM Kin-fung, GBS, JP
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
Hon CHAN Yuen-han, SBS, JP
Hon KWOK Wai-keung
Hon SIN Chung-kai, SBS, JP
Hon POON Siu-ping, BBS, MH
Hon TANG Ka-piu
Dr Hon CHIANG Lai-wan, JP
Hon CHUNG Kwok-pan

Members absent : Hon Emily LAU Wai-hing, JP
Hon Tommy CHEUNG Yu-yan, SBS, JP
Dr Hon Kenneth CHAN Ka-lok
Dr Hon Helena WONG Pik-wan
Dr Hon Elizabeth QUAT, JP
Hon Martin LIAO Cheung-kong, JP

**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

**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 Kiwi NG
Legislative Assistant (2) 1

I. Meeting with the Administration

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

2. Members requested the Administration to consider -
 - (a) providing flexibility in the requirement for an employee who intended to take paternity leave ("PL") to notify his employer of each intended date of his leave at least two days before that date;
 - (b) applying the restriction on the inclusion of annual leave and maternity leave in the length of notice required to terminate a contract of employment under the Employment Ordinance ("EO") (Cap. 57) to the proposed statutory PL; and
 - (c) amending the expression "daily average of the wages" in all provisions of EO as "average daily wages" for the purpose of consistency in the use of expressions in EO.

II. Any other business

3. Members agreed that the next meeting would be held on 26 May 2014 at 4:30 pm to continue discussion with the Administration.
4. There being no other business, the meeting ended at 3:52 pm.

Council Business Division 2
Legislative Council Secretariat
3 June 2014

**Proceedings of meeting of the
Bills Committee on Employment (Amendment) Bill 2014
held on Monday, 12 May 2014, at 2:30 pm
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action Required
000000 - 001338	Chairman	Opening remarks	
001339 - 001748	Chairman Admin	Briefing by the Administration on its response dated 8 May 2014 (LC Paper No. CB(2)1480/13-14(05)) to the letter dated 11 April 2014 from the Assistant Legal Adviser.	
001749 - 002321	Chairman Mr CHUNG Kwok-pan Admin	<p>Mr CHUNG Kwok-pan's view and the Administration's response regarding -</p> <p>(a) the difficulties in verifying birth certificates or other documents regarding childbirth issued by the authorities of other places;</p> <p>(b) the conciliation of disputes or doubts over documentary requirements for paternity leave ("PL") entitlement by the conciliation service rendered by the Labour Department and, if no settlement could be reached, the adjudication by the Labour Tribunal or Minor Employment Claims Adjudication Board as appropriate; and</p> <p>(c) the use of false instrument being a criminal offence.</p>	
002322 - 002849	Chairman Mr TANG Ka-piu Admin	<p>Issues raised in a letter dated 5 May 2014 from Equal Opportunities Commission ("EOC") (LC Paper No. CB(2)1454/13-14(06)).</p> <p>Mr TANG Ka-piu's concern and the Administration's response regarding whether the protection from dismissal afforded under the Employment Ordinance ("EO") (Cap. 57) to female employees taking maternity leave should also be afforded to a male employee taking PL, having regard to the Labour Advisory Board's view that the relevant requirements and details of statutory PL should be aligned with those applicable to maternity leave under EO in the event that it was appropriate to do so.</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
002850 - 003348	Chairman Ms Cyd HO Admin	<p>Ms Cyd HO's expression of support for the introduction of PL.</p> <p>Ms Cyd HO's views and the Administration's response regarding -</p> <p>(a) uncertainty about the actual date of delivery of a child; and</p> <p>(b) whether an employee who intended to take PL in respect of the birth of a child could in practice notify the employer of each intended date of his leave at least two days before that date.</p> <p>The Administration was required to consider providing flexibility in the requirement for an employee who intended to take PL to notify the employer of each intended date of his leave at least two days before that date.</p>	Admin
003349 - 004027	Chairman Mr KWOK Wai-keung Admin ALA9	<p>Mr KWOK Wai-keung's views, advice of the Assistant Legal Adviser and the Administration's response regarding -</p> <p>(a) the method of calculation of PL pay; and</p> <p>(b) the reasons for the use of the expression "average daily wages" in the Employment (Amendment) Bill 2014 ("the Bill") instead of the expression "daily average of the wages" which was used in other provisions of EO.</p> <p>The Administration was requested to consider, for the purpose of consistency in the use of expressions in EO, amending the expression "daily average of the wages" in all provisions of EO as "average daily wages".</p>	Admin
004028 - 004942	Chairman Mr LEE Cheuk-yan Admin	<p>Mr LEE Cheuk-yan's view and the Administration's response regarding whether PL pay should be set at the full rate of the employee's average daily wages.</p> <p>Mr LEE Cheuk-yan's views, the Chairman's views and the Administration's response regarding -</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>(a) whether PL should form part of the notice period in the event of termination of contract of employment by notice;</p> <p>(b) whether the restriction on the inclusion of annual leave and maternity leave in the length of notice required to terminate a contract of employment under EO should be applied to the proposed statutory PL, given that there was no restriction under existing EO on the inclusion of holidays or leave with a duration similar to PL in the length of notice required to terminate an employment contract; and</p> <p>(c) whether denying the inclusion of PL in the length of notice required to terminate a contract would always work to the advantage of the employee.</p>	
004943 - 005434	Chairman Mr TANG Ka-piu Admin	<p>Mr TANG Ka-piu's views and the Administration's response regarding -</p> <p>(a) 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>(b) the protection against dismissal afforded under the Family Status Discrimination Ordinance (Cap. 527).</p>	
005435 - 005719	Chairman Mr CHUNG Kwok-pan Admin	<p>Mr CHUNG Kwok-pan's question and the Administration's response regarding documentary requirements relating to PL pay in the situation where the employee ceased to be employed shortly after taking PL.</p>	
005720 - 010128	Chairman Mr KWOK Wai-keung Admin	<p>Mr KWOK Wai-keung's views and the Administration's response regarding -</p> <p>(a) whether PL should form part of the notice period in the event of termination of contract of employment by notice; and</p> <p>(b) whether an employee was entitled to wage payment in lieu of notice as well as PL pay in the case of termination of employment.</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
010129 - 010522	Chairman Mr POON Siu-ping Admin	Mr POON Siu-ping's views and the Administration's response regarding - (a) 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 (b) review of the implementation of the law on PL one year after its coming into operation.	
010523 - 011108	Chairman Mr Jeffrey LAM Admin	Mr Jeffrey LAM's concerns, Chairman's view and the Administration's response regarding - (a) notification requirements relating to PL; (b) PL entitlement in cases of childbirths outside of marriage; and (c) whether semen donors were entitled to PL.	
011109 - 011546	Chairman Mr LEE Cheuk-yan Admin	Mr LEE Cheuk-yan's views and the Administration's response regarding - (a) whether PL should form part of the notice period in the event of termination of contract of employment by notice; (b) PL-related entitlements in the situation where the three-month notification requirement relating to PL had been fulfilled but the employee was dismissed before PL was taken; and (c) whether granting monetary compensation to an employee dismissed in relation to taking PL similar to that under the maternity protection provisions in EO would be disproportionate to the duration of PL. The Administration was requested to consider applying the restriction on the inclusion of annual leave and maternity leave in the length of notice required to terminate a contract of employment under EO to the proposed statutory PL.	Admin

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011547 - 012033	Chairman Miss CHAN Yuen-han Admin	Miss CHAN Yuen-han's views and the Administration's response regarding - (a) whether PL pay should be set at the full rate of the employee's average daily wages; and (b) whether the duration of PL proposed in the Bill should be increased to the same level as that for government employees.	
012034 - 012211	Chairman Ms Cyd HO	Date of next meeting. Provision of the Administration's response to issues raised by members. Commencement of clause-by-clause examination of the Bill after policy issues had been dealt with.	

Council Business Division 2
Legislative Council Secretariat
3 June 2014