

立法會
Legislative Council

LC Paper No. CB(2)1833/13-14
(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, 26 May 2014, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex

Members present : Hon Kenneth LEUNG (Chairman)
Hon LEE Cheuk-yan
Hon Emily LAU Wai-hing, JP
Hon WONG Kwok-hing, BBS, MH
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Cyd HO Sau-lan
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
Dr Hon Helena WONG Pik-wan
Dr Hon Elizabeth QUAT, JP
Hon POON Siu-ping, BBS, MH
Hon TANG Ka-piu
Hon CHUNG Kwok-pan

Members absent : Hon Tommy CHEUNG Yu-yan, SBS, JP
Hon WONG Kwok-kin, BBS
Hon Paul TSE Wai-chun, JP
Hon Martin LIAO Cheung-kong, JP
Dr Hon CHIANG Lai-wan, 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

Miss Lulu YEUNG
Clerical Assistant (2) 1

I. Meeting with the Administration

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

2. Members requested the Administration to provide -
 - (a) a response on the actions to be taken by the Administration in relation to the Employment (Amendment) Bill 2014 ("the Bill") if any Member proposed a Committee Stage amendment to the Bill on issues such as the duration of statutory paternity leave ("PL"), including whether consultation would be made with the Labour Advisory Board ("LAB") on the proposed amendment and whether the Second Reading on the Bill would not be resumed until a consensus was reached by LAB;
 - (b) a response on whether the drafting of "take leave for not more than 3 days" in the proposed new section 15D(2)(b) of the Employment Ordinance (Cap. 57) would have the effect of allowing employers to grant less than three days' PL to employees and make payment of wages in lieu of statutory PL; and
 - (c) a response to the issues raised in the written submission from the Law Society of Hong Kong.

II. Any other business

3. Members agreed that the next meeting would be held on 9 June 2014 at 2:30 pm to continue discussion with the Administration.
4. There being no other business, the meeting ended at 6:17 pm.

Council Business Division 2
Legislative Council Secretariat
17 June 2014

**Proceedings of meeting of the
Bills Committee on Employment (Amendment) Bill 2014
held on Monday, 26 May 2014, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker(s)	Subject(s)	Action Required
000000 - 000342	Chairman	Opening remarks	
000343 - 001305	Admin	Briefing by the Administration on its response to issues raised at the meetings on 10 and 12 May 2014 (LC Paper No. CB(2)1588/13-14(01)).	
001306 - 001519	Chairman Mr SIN Chung-kai Admin	Mr SIN Chung-kai's question and the Administration's response regarding - (a) whether it was in breach of the law for an employer to pay wages in lieu of granting statutory paternity leave ("PL") with the agreement of the employee concerned; and (b) whether an eligible employee was entitled to take PL after the employer had paid him wages in lieu of granting statutory PL.	
001520 - 001825	Mr KWOK Wai-keung Admin	Mr KWOK Wai-keung's views and the Administration's response regarding - (a) whether, in the event of termination of contract of employment by payment of wages in lieu of notice, the payment of wages in lieu of notice would be offset by PL pay should PL form part of the notice period; and (b) whether denying the inclusion of PL in the length of notice required to terminate a contract would always work to the advantage of the employer or employee.	
001826 - 002231	Mr TANG Ka-piu Admin	Mr TANG Ka-piu's views and the Administration's response regarding - (a) whether the protection from dismissal afforded under the Employment Ordinance ("EO") (Cap. 57) to female employees taking maternity leave should also be afforded to male employees taking PL; and	

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		(b) the protection against dismissal afforded under the Family Status Discrimination Ordinance (Cap. 527).	
002232 - 002904	Chairman Dr Helena WONG Admin	<p>Dr Helena WONG's views and the Administration's response regarding -</p> <p>(a) whether the duration of PL proposed in the Employment (Amendment) Bill 2014 ("the Bill") should be increased to seven days;</p> <p>(b) whether PL pay should be set at the full rate of the employee's average daily wages; and</p> <p>(c) the requirement for an employee who intended to take PL in respect of the birth of a child to notify the employer of each intended date of his leave at least two days before that date after having given the requisite three months' notice in advance.</p> <p>Dr Helena WONG's indication of her intention to propose Committee Stage amendments ("CSAs") to increase the duration of PL to seven days and set PL pay at the full rate of the employee's average daily wages.</p>	
002905 - 003327	Mr LEE Cheuk-yan Admin Chairman	<p>Mr LEE Cheuk-yan's views and the Administration's response regarding -</p> <p>(a) whether the duration of PL proposed in the Bill should be increased to seven days;</p> <p>(b) whether there was a need for the Administration to consult the Labour Advisory Board ("LAB"), if any Member proposed a CSA to increase the duration of PL to seven days;</p> <p>(c) whether the protection from dismissal afforded under EO to female employees taking maternity leave should also be afforded to male employees taking PL; and</p> <p>(d) whether an employee should be compensated with PL pay if he was dismissed by the employer before taking PL.</p>	

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003328 - 003703	Mr CHUNG Kwok-pan Admin Chairman	<p>Mr CHUNG Kwok-pan's views and the Administration's response regarding whether there should be flexibility for an employer to pay wages in lieu of granting statutory PL with the agreement of the employee concerned.</p> <p>Chairman's view regarding whether it was difficult in practice to determine whether an employee willingly agreed to the employer's payment of wages in lieu of granting statutory PL.</p>	
003704 - 004104	Mr CHAN Chi-chuen Chairman ALA9 Admin	<p>Mr CHAN Chi-chuen's views and the Administration's response regarding -</p> <p>(a) whether CSAs to the long title of the Bill could be moved by Members; and</p> <p>(b) whether there was a need for the Administration to consult LAB, if any Member proposed a CSA to amend the duration of PL.</p> <p>ALA9's advice regarding whether CSAs to the long title of the Bill could be moved by Members.</p>	
004105 - 004627	Mr SIN Chung-kai Admin Chairman	Mr SIN Chung-kai's concerns and the Administration's response regarding whether there was a need for the Administration to consult LAB, if any Member proposed a CSA to amend the duration of PL.	
004628 - 005103	Mr TANG Ka-piu Admin Chairman	<p>Mr TANG Ka-piu's concerns and the Administration's response regarding whether the Administration would consult LAB, if any Member proposed a CSA to amend the Bill, and the actions to be taken by the Administration in the event that LAB could not reach a consensus on the amendments proposed in the CSA.</p> <p>Mr TANG Ka-piu's indication of his intention to propose CSAs to extend the protection from dismissal afforded under EO to female employees taking maternity leave to male employees taking PL.</p>	

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005104 - 005544	Dr Helena WONG ALA9 Admin Chairman	<p>Dr Helena WONG's question and ALA9's advice regarding whether the long title of the Bill would restrict Members from moving CSAs to amend the duration of PL and the rate of PL pay.</p> <p>Dr Helena WONG's concern and the Administration's response regarding circumstances under which the Administration would withdraw the Bill.</p> <p>Dr Helena WONG's expression of the Democratic Party's opposition against payment of wages in lieu of granting statutory PL.</p>	
005545 - 010016	Mr LEE Cheuk-yan Admin Chairman	<p>Mr LEE Cheuk-yan's concerns and the Administration's response regarding -</p> <p>(a) whether there was a need for the Administration to consult LAB again when any Member proposed a CSA to amend the duration of statutory PL;</p> <p>(b) the Administration's established mechanism of consulting LAB on legislative proposals and introduction of such proposals into the Legislative Council only after a consensus was reached by LAB.</p>	
010017 - 011447	Mr KWOK Wai-keung Mr Alan LEONG Ms Cyd HO Mr SIN Chung-kai Chairman Admin	<p>Concerns of Mr KWOK Wai-keung, Mr Alan LEONG, Ms Cyd HO and Mr SIN Chung-kai and the Administration's response regarding -</p> <p>(a) the actions to be taken by the Administration in relation to the Bill if any Member proposed a CSA to amend the Bill on issues such as the duration of statutory PL, including whether consultation would be made with LAB on the proposed amendment and whether the Second Reading on the Bill would not be resumed until a consensus was reached by LAB; and</p> <p>(b) the role of LAB in relation to labour matters.</p> <p>The Administration was requested to provide a written response on the actions to be taken by</p>	Admin

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		<p>the Administration in relation to the Bill if any Member proposed a CSA to amend the Bill on issues such as the duration of statutory PL, including whether consultation would be made with LAB on the proposed amendment and whether the Second Reading on the Bill would not be resumed until a consensus was reached by LAB.</p>	
<p>011448 - 011824</p>	<p>Dr Helena WONG Admin Chairman ALA9</p>	<p>Dr Helena WONG's question and the Administration's response regarding whether the drafting of "paternity leave of up to 3 days" in the long title of the Bill would have the effect of allowing employers to grant less than three days' PL to employees.</p> <p>Dr Helena WONG's question, ALA9's advice and the Administration's response regarding -</p> <p>(a) whether amendments could be moved by Members to the long title of the Bill; and</p> <p>(b) the effect of amendments to the long title of the Bill.</p>	
<p>011825 - 012922</p>	<p>Chairman Mr LEE Cheuk-yan Ms Cyd HO Admin</p>	<p>Mr LEE Cheuk-yan's concern and the Administration's response regarding whether the drafting of "take leave for not more than 3 days" in the proposed new section 15D(2)(b) of EO would have the effect of allowing payment of wages in lieu of granting statutory PL.</p> <p>Concerns of Mr LEE Cheuk-yan and Ms Cyd HO regarding -</p> <p>(a) the actions to be taken by the Administration in relation to the Bill if any Member proposed a CSA to amend the duration of statutory PL, including whether the Second Reading on the Bill would not be resumed until a consensus was reached by LAB on the amendment;</p> <p>(b) the Administration's established mechanism of consulting LAB on legislative proposals and introduction of such proposals into the Legislative Council only after a consensus was reached by LAB.</p>	

Time marker	Speaker(s)	Subject(s)	Action Required
		<p>The Administration was requested to provide a written response on whether the drafting of "take leave for not more than 3 days" in the proposed new section 15D(2)(b) of EO would have the effect of allowing employers to grant less than three days' PL and make payment of wages in lieu of granting statutory PL.</p>	<p>Admin</p>
<p>012923 - 014055</p>	<p>Chairman Admin ALA9</p>	<p>Administration's response to the submission from the Law Society of Hong Kong (LC Paper No. CB(2)1540/13-14(01)).</p> <p>Chairman's concern, ALA9's view and the Administration's response regarding the need for consistency relating to the use of the expression "average daily wages" in the Bill and the use of the expression "daily average of the wages" in other provisions of EO.</p>	
<p>014056 - 014512</p>	<p>Miss CHAN Yuen-han Admin Chairman</p>	<p>Miss CHAN Yuen-han's concern 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 male employees taking PL;</p> <p>(b) whether PL pay should be set at the full rate of the employee's average daily wages; and;</p> <p>(c) the stipulations in relevant International Labour Conventions that maternity leave pay should be pitched at not less than two-thirds of the employee's previous earnings.</p>	
<p>014513 - 014709</p>	<p>Chairman</p>	<p>Date of next meeting.</p> <p>Provision of the Administration's response to issues raised by members.</p> <p>Commencement of clause-by-clause examination of the Bill at the next meeting after policy issues had been dealt with.</p> <p>The Administration was requested to provide a written response to the issues raised in the submission from the Law Society of Hong Kong.</p>	<p>Admin</p>

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