



中華人民共和國香港特別行政區
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11 April 2014

Mr HUI Pak Kwan, Charles
Assistant Commissioner for Labour
(Labour Relations)
Labour Department
Labour Administration Branch
Labour Relations
16/F, Harbour Building
38 Pier Road
Central, Hong Kong

Dear Mr HUI,

Re: Employment (Amendment) Bill 2014

I am scrutinizing the Bill with a view to advising Members on its legal and drafting aspects. I would be most grateful if you could clarify the following matters.

Documentary requirements

Under proposed new section 15J, the employee is required to provide the birth certificate of the child born outside Hong Kong or, if the relevant authorities outside Hong Kong do not issue birth certificate, any other document issued by the authorities that could be reasonably be taken as proof that the employee is the child's father. It appears that the employee may provide document other than birth certificate to prove his relationship to the child only if he can prove that the relevant authorities do not issue birth certificate and such condition may be difficult to satisfy given different languages and procedures involved in places outside Hong Kong. Please explain the policy intention for having this condition under the proposed section 15J.

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In the event that there is doubt or dispute over the document provided by the employee, on which hinges his entitlement to the paid paternity leave, what is the procedure/mechanism to resolve or adjudicate the dispute? In particular, please let us know whether the Minor Employment Claims Adjudication Board and the Labour Tribunal respectively has the jurisdiction to adjudicate the dispute as to paternity leave pay entitlement arising from the documentary proof and if yes, the relevant legal provisions

Calculation of paternity leave pay

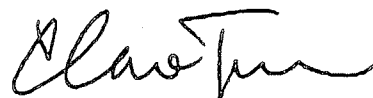
Under the proposed new section 15H(2), the daily rate of the paternity leave pay is the four-fifths of the employee's average daily wages. The term "average daily wages" is not defined in the Bill. According to paragraph 6 of the LegCo Brief (File Ref: LD LRD/12-1/2-31/1(C)), it is proposed that "the rate of paternity leave should be pitched at four-fifths of the employee's normal pay as in the case of maternity leave". Under section 14(3A) of Cap. 57, the daily rate of maternity leave pay is four-fifths of the daily average of the wages earned by the female employee. The method for the calculation of the daily rate of paternity leave as proposed in the Bill is the same with that for maternity leave. Please let us know the reason for not adopting the same formulation of "daily average of the wages" as used in Cap. 57 in respect of maternity leave pay as well as other statutory entitlements, i.e. sickness allowance (section 35), holiday pay (section 41) and annual leave pay (section 41C).

Mode of taking paternity leave

Under section 6 of Cap. 57, maternity leave and annual leave are not counted as part of the notice period. In the absence of a similar provision in the Bill, it follows that the paternity leave may form part of the notice period in the event of terminating the contract by notice. Please confirm.

I would be grateful if you could let me have your response in bilingual form at your earliest convenience.

Yours sincerely,



(Clara TAM)

Assistant Legal Adviser

cc. DoJ (Attn: Mr Michael LAM, SALD & Mr Alan CHONG, SGC
(By Fax: 2869 1302))
Clerk to Bills Committee