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Bills Committee on Employment (Amendment) Bill 2014

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper sets out the background information on the Administration's proposal to legislate for the provision of paternity leave ("PL") and gives a brief account of the discussions by the Panel on Manpower ("the Panel") on the legislative proposal.

Background

2. In view of Hong Kong's changing societal attitudes towards a father's responsibilities in the family and the public demand for granting leave to male employees around the time of childbirth, the Chief Executive announced in his 2011-2012 Policy Address that the Government would take the lead in promoting child-bearing and family-friendly practices, beginning with a study into the provision of paid PL for civil servants, and conduct a study on legislating for PL in Hong Kong.

3. On 28 March 2012, the Administration announced that starting from 1 April 2012, all full-time government employees, including civil servants, non-civil service contract staff and political appointees, who have no less than 40 weeks' continuous service immediately before the expected or actual date of childbirth would be eligible for PL. Under this family-friendly measure, eligible officers whose children's expected due date or actual date of birth falls on or after 1 April 2012 would enjoy five working days of PL on each occasion of childbirth.

4. The Labour Department ("LD") conducted a survey on PL with member establishments of its 18 Human Resources Managers Clubs in 2012, and reported the survey findings to the Labour Advisory Board ("LAB") and the

Panel in May and June 2014 respectively. According to the Administration, after a few rounds of discussion, LAB in November 2012 supported legislating for three days' PL with pay at four-fifths of the employees' daily wages. Subsequently, the Panel was briefed and consulted on the relevant legislative proposal on 25 January 2013.

The Employment (Amendment) Bill 2014

5. The Employment (Amendment) Bill 2014 ("the Amendment Bill") seeks to amend the Employment Ordinance (Cap. 57) ("EO") to provide for a male employee's entitlement, in respect of the birth of a child of the employee, to PL of up to three days and PL pay at a daily rate of four-fifths of the employee's average daily wages, and to make related and other minor amendments.

6. According to the Legislative Council ("LegCo") Brief (File Ref: LD LRF/12-1/2-31/1(C)), a male employee who is the father of a newborn or a father-to-be will be entitled to PL under the proposed PL scheme if he is employed under a continuous contract¹ and has given advance notice to his employer in accordance with the relevant stipulations. He will also be entitled to PL pay if he meets the requirement on the length of service and has submitted the required documentary proof to his employer. Under the proposal, "father" refers to a "legal father" whose name is entered as the father of the child on the birth certificate. The key features of the proposed PL scheme are set out in paragraphs 5 to 20 of the LegCo Brief.

Discussions by the Panel

7. The Panel was consulted on the legislative proposal on 25 January 2013. Their views and concerns are summarized as follows.

Statutory PL period and pay

8. Most members considered that the proposed duration of PL at three days was far from adequate for fathers to look after their newborns and partners, particularly those suffered from postnatal depression. Some members pointed out that the duration of paid PL proposed for Hong Kong employees was less favourable than those implemented in other economies. Moreover, as revealed from a study on the provision of PL conducted by the Hong Kong Women

¹ According to EO, an employee who has been employed continuously by the same employer for four weeks or more and has been working for at least 18 hours each week is regarded as being employed under a continuous contract.

Development Association, 30% of the respondents would take four to six days' leave to take care of the newborns and the mothers while nearly 25% would take leave from seven to 10 days. Given that government employees had already been granted five days' paid PL, these members urged the Administration to give due consideration to extending the duration of statutory PL to at least five days.

9. The Administration advised that reference had been made to the practice in the provision of PL in neighbouring Asian economies such as five days in Korea with pay for the first three days, two days without pay in Macao and three days with pay in Taiwan. In Hong Kong, LD had conducted the survey on PL of which the findings revealed that the majority of the respondent companies offered on voluntary basis one to three days of PL, and the average duration was three days. Having regard to the findings and the views of LAB as well as the need to maintain an appropriate balance between safeguarding the interests of employees and the affordability and flexibility of employers, the Administration proposed to set the duration of statutory PL at three days.

10. Some members considered it inappropriate to regard the nature of PL the same as maternity leave ("ML") and sick leave ("SL"), and grant the statutory PL pay at the same level as ML pay and sickness allowance, i.e. a daily rate equivalent to four-fifths of the employee's average daily wages. Given that the prevailing rates of ML pay and sickness allowances had been in force for a long time, these members called on the Administration to legislate for fully paid PL and in tandem review the rates of ML pay and sickness allowance. There was a view that the Administration should draw up a concrete plan to progressively increase the statutory PL period and pay in a bid to boost the birth rate in Hong Kong.

11. Members were advised that the proposed rate for statutory PL pay was pitched at the same level as ML pay and sickness allowance for consistency with the existing law. The Administration appealed to members' understanding that it was not easy for LAB to reach a consensus on the proposed arrangements of PL. Should LAB be invited to revisit the proposed arrangements of statutory PL, it would probably unduly delay the legislation work for PL. Moreover, the daily rate of three-day PL to be provided in the law would only be a statutory minimum for employers. Some employers were currently offered PL above the proposed statutory requirements on their own initiative. The Administration would continue to organize promotional and publicity activities to encourage employers to adopt good people management practices which included offering more favourable employment terms than statutory provision. Members were further advised that in response to LAB's request, the Administration would conduct a review in about one year's time

after the implementation of statutory PL.

Eligibility and entitlement of employees

12. As regards the concerns about the PL entitlement in the event of a miscarriage or stillbirth, the Administration advised that under EO, where a female employee suffered from a miscarriage, instead of ML, she would be entitled to SL for any day on which she was absent from work by reason of such miscarriage. Given that PL was provided for a father to help look after the newborn at around the time of delivery, there was insufficient justification for PL to be granted with respect to cases of miscarriage. In addition, extending PL to cover miscarriage cases would present practical difficulties in verifying the father-child relationship, taking into consideration that a child conceived outside of marriage would also be covered under the proposal. The Administration further advised that it would take note of members' concerns in this regard when drafting the legislation.

13. In response to the question as to whether the male employee was entitled to payment in lieu of any untaken statutory PL, the Administration advised that the proposed PL scheme would ensure consistency with the existing law, as PL emanated from similar cause as ML, and the nature of PL resembled that of SL and ML. Concern was also raised about whether male employees would be allowed to take unpaid additional PL under the proposal. Members were advised that though the legislative proposal would not include the provision of unpaid PL, the Administration did not rule out the possibility that unpaid PL could be considered in future.

Notification and documentary requirements

14. Many members supported the proposal of allowing male employees to take PL (in one go or on at most three discrete days) at any time during the period from the four weeks before the expected date of confinement to 10 weeks after the actual date of the childbirth. Some members expressed concern about the impact on the operation of enterprises if male employees, under the proposal, were allowed to take the statutory PL at any time during the period from four weeks before the expected date of confinement to 10 weeks after the actual date of the childbirth. They took the view that the period and mode of taking PL should be worked out mutually by the employer and employee concerned and the Administration should provide clear guidelines to employers with respect to the advance notice required to be given by employees for taking PL.

15. The Administration advised that the proposed arrangement merely sought to enable employers to prepare for their employees' taking PL. The male

employee who intended to take PL was required to inform his employer of his partner's pregnancy and expected date of confinement in advance so that the employer could have sufficient time to make necessary staffing deployment.

16. There was a view that the legislation should stipulate explicitly that employers should under no circumstances dismiss their male employees on the ground of failing to give sufficient notice for taking leave to take care of their partners during and after pregnancy. The Administration advised that the entitlement of male employees to statutory PL would be protected under the proposed legislation. The employee concerned could take his own annual leave beyond the statutory PL period subject to mutual arrangement between the employer and the employee.

17. Clarification was sought on whether there were any penalties for employees taking PL by way of presenting forged documents. The Administration explained that it would be a criminal offence for an employee to present forged documents with a view to taking PL by deception. In case the employee could not present a valid birth certificate, the employer might deduct the employee's wages to recover PL pay already granted under the proposal.

Relevant papers

18. A list of relevant papers on the LegCo website is in the **Appendix**.

Relevant papers on legislating for paternity leave

Committee	Date of meeting	Paper
Panel on manpower	25.1.2013	<u>Agenda</u> <u>Minutes</u>

Council Business Division 2
Legislative Council Secretariat
14 April 2014