



**Labour Department (Headquarters)**

**勞工處（總處）**

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8 May 2014

Ms Clara TAM  
Assistant Legal Adviser  
Legislative Council  
Legislative Council Complex,  
1 Legislative Council Road,  
Central, Hong Kong

Dear Ms TAM,

**Employment (Amendment) Bill 2014**

Thank you for your letter of 11 April 2014. Our response to the matters raised concerning the Employment (Amendment) Bill 2014 ("Bill") is set out below.

Documentary requirements

As the birth of a child to an employee is central to an employer's legal liability to provide paternity leave (PL) benefits to the employee, there is a need for the employee claiming such entitlement to produce document(s) in support of the birth of a child and the father-child relationship. Having regard to the viability and practicability as far as the implementation of and compliance with the proposed PL scheme by employers and employees is concerned, the Government considers that the birth certificate should be a practical and effective document that can reasonably establish the father-child relationship. The Bill therefore proposes that, for childbirth in Hong Kong, the birth certificates be adopted as the required documentary proof on the father-child relationship for entitlement to PL pay (please see the proposed new section 15I(1) under the Bill).

It is the policy intention of the Bill not to impose any restriction on the birthplace of the newborn. Accordingly, documentary proof issued outside Hong Kong will be accepted. For parity's sake, for childbirth in a place outside Hong Kong, we propose that the employee must also provide the employer with the birth certificate of the child that is issued by the authorities of the birthplace of the child for entitlement to PL pay. Having regard to the possibility that individual countries/places may not issue birth certificates, we further propose that where the authorities do not issue birth certificates, the employee may provide any other document issued by the authorities of the birthplace of the child outside Hong Kong that can reasonably be taken as proof that the employee is the child's father. There is no requirement under the Bill that the employee must prove the non-issuance of birth certificates by the relevant authorities before he may produce "any other document" as mentioned above for entitlement to PL pay (please see the proposed new section 15J(1) under the Bill).

In the event that there is doubt or dispute over the documentary proof provided by the employee for entitlement to PL benefits, the dispute may be dealt with in the same way as other disputes concerning statutory entitlements under the Employment Ordinance (Cap. 57) ("EO"), i.e. by means of the conciliation service provided by the Labour Department or adjudication by the Labour Tribunal ("LT") or Minor Employment Claims Adjudication Board ("MECAB"), as appropriate. The Labour Tribunal Ordinance (Cap.25) and the Minor Employment Claims Adjudication Board Ordinance (Cap. 453) respectively provide that LT and MECAB have the jurisdiction to inquire into, hear and determine a claim for a sum of money arising from the failure of a person to comply with the provisions of EO. As the proposed PL provisions will be added to EO upon the passage and implementation of the Bill, LT and MECAB will by then have the jurisdiction to adjudicate on disputes over an employee's entitlement for PL benefits, including whether the documentary requirements specified in the proposed new sections 15I and 15J pertaining to PL pay are met.

#### Calculation of PL pay

In the new s.15H, the expression "average daily wages", in relation to an employee, means the "daily average of the wages earned by the employee". The expression "average daily wages" has been widely used in the Government's statistics and publications on wages and labour earnings. The subsections under s.15H have clearly spelt out how the average daily wages of an employee is to be reckoned to ensure that there is no possibility for any misinterpretation on the meaning of the expression. On this basis, the Government proposes to adopt the term "average daily wages" in the calculation of PL pay.



## Mode of taking PL

The Government has no intention to apply 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. Under EO, the length of notice to terminate a continuous contract of employment can be as short as 7 days. If annual leave and maternity leave<sup>1</sup> were allowed to be included in the length of notice required to terminate a contract of employment, it would be possible that the termination could take effect immediately after the maternity leave or annual leave expires, thus defeating the purpose of requiring the giving of prior notice for termination of a contract of employment as stipulated in section 6 of EO. To balance the interests of employers and employees, there is a need to forbid the use of maternity leave or annual leave in lieu of the notice period required for termination of contract. Having regard to the proposed duration of statutory PL at 3 days, which is shorter than the minimum 7-day advanced notice for the termination of a continuous contract of employment under EO, the chance that the length of notice for termination of a contract of employment could be entirely offset by the employee's taking of PL is on the low side. As such, we do not consider it necessary to impose a restriction on the taking of PL during the notice period for termination of a contract of employment.

Yours sincerely,



(Charles Hui)  
for Commissioner for Labour

c.c. SLW

DoJ [(Attn : Mr Michael Lam, Sr Asst Law Draftsman and  
Mr Alan Chong, Sr Govt Counsel)  
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<sup>1</sup> Maternity leave lasts for 10 consecutive weeks. Annual leave, depending on the years of service of the employee, ranges from 7 days to 14 days each year.