

Bills Committee on the Employment (Amendment) Bill 2014

The Government's response to issues raised by the Bills Committee at its meeting held on 26 May 2014

This paper responds to the issues raised by the Bills Committee on the Employment (Amendment) Bill 2014 (“the Bill”) at its meeting held on 26 May 2014.

Duration of paternity leave (PL)

2. Some Members asked whether the expressions “up to 3 days” and “not more than 3 days” which feature in the long title of the Bill and the proposed new section 15D(2)(b) in relation to the entitlement of a male employee to PL would have an implication that employers would be allowed to grant less than three days’ PL to their employees.

3. Under the proposed PL scheme, a male employee who is the father of a newborn or a father-to-be is entitled to PL if he has been employed under a continuous contract¹ before taking such leave and has given advance notice to his employer in accordance with the proposed new section 15E². The Bill further proposes that PL, which is to be taken during the period from four weeks before the expected date of delivery of the employee’s child to 10 weeks from and inclusive of the actual date of delivery, may be taken consecutively or on discrete days. In the case of an employee taking up employment shortly before the sixth week after his child is born, he may be able to establish a continuous contract just before the expiry of the 10-week postnatal period. Depending on the actual date of his taking up employment, the employee

¹ Under the Employment Ordinance (Cap. 57), an employee who has been employed continuously by the same employer for 4 weeks or more and has been working for at least 18 hours each week is regarded as being employed under a continuous contract.

² Under the proposed new section 15E(1)(a), an employee who intends to take PL must notify the employer of his intention at least 3 months before the expected date of the delivery of the child and of each intended date of PL at least 2 days before that date. Under the proposed new section 15E(1)(b), if the employee does not notify the employer in accordance with section 15E(1)(a), he must notify the employer of each intended date of PL at least 5 days before that date.

may still be able to take one or two days of PL before the 10-week postnatal period expires. In other words, the construction of the long title and the proposed new section 15D(2)(b) in their present form is necessary as they serve to reflect the possibility of an employee taking one or two days of PL in the event that he is not entitled to take all three days of PL owing to his short length of service. The use of the expressions “up to 3 days” and “not more than 3 days” in the Bill would not have the effect of allowing employers to grant PL of a shorter duration to employees who are entitled to three days’ PL and have duly given advance notice in accordance with the relevant provisions.

Consultation with the Labour Advisory Board (LAB)

4. Some Members wished to know why the Government would need to consult LAB again if they proposed to move Committee stage amendment(s) to the Bill. They also requested the Government to provide a list of amendments that would necessitate such consultation.

5. Unlike a number of other economies where employees’ statutory benefits are funded by social insurance contributed jointly by employers and employees, Hong Kong employers are individually liable for their employees’ statutory benefits. To ensure that both the interests of employees and affordability of employers can be taken fully into account, it is imperative that a reliable and credible mechanism should be firmly in place to consider, reflect and reconcile the diversity of perspectives, concerns and needs of the stakeholders over any proposal to improve the rights and benefits of employees. In Hong Kong, this important process operates effectively through the long-established LAB³. Over the years, LAB has, through dialogues, mutual trust and good faith between representatives of the labour and business sectors, arrived at consensus on numerous issues that were translated into legislative amendments or important labour policies to improve the rights and benefits of employees, without losing sight of the cumulative compliance costs to be shouldered

³ With the Commissioner for Labour being its ex-officio chairman, LAB comprises 12 members with six representing employees and another six representing employers. Apart from a representative each on the employees’ and employers’ side appointed ad personum, the other five members representing employees are elected by registered employee unions, and five members representing employers are nominated by major employer associations respectively.

by employers. This long-established and fine tradition and practice of conducting dialogues and negotiations on major labour policies through the LAB platform has served Hong Kong well and contributed to the generally harmonious labour relations scene in Hong Kong.

6. The current proposal of making three days' PL with the pay set at four-fifths of the employee's average daily wages a statutory benefit for male employees under the Employment Ordinance (Cap. 57) (EO), together with an agreement to review its implementation one year after its coming into operation, is a broad consensus reached by LAB after rounds of serious deliberations, detailed discussions and rigorous lobbying. As the interests of the representatives of employers and employees at LAB on the subject of legislating for PL are divergent, the broad consensus reached at LAB regarding the legislative proposal on PL represents a pragmatic and conciliatory stance acceptable to the two sides. It is on this basis that the Government has decided to introduce the Bill to realise the consensus reached at LAB into law. Indeed, when the Bills Committee received deputations at the meeting held on 10 May 2014, it was observed that alongside the support of representatives of employees' groups for the Bill, a large number of employer representatives objected to legislating for PL, let alone increasing the number of PL days or amount of PL pay. Hence, the consensus reached by LAB on the issue is important and should not be taken lightly.

7. According to the established practice, if, in the process of scrutiny of a labour bill, Members wish to move amendments to the relevant bill which represents any deviation from the consensus of LAB, the Government is duty-bound to revert to LAB for consultation before continuing with the legislative process. While we are not able to give an exhaustive list of amendments that necessitate consultation with LAB, the number of PL days and the amount of PL pay are, among others, the core components of the consensus reached at LAB.

8. It is important to note that pushing through a piece of labour legislation without the consensus of LAB would seriously undermine the well-established collaboration between the labour and business sectors over the years. Past experience indicates that representatives of employers and employees need some time to exchange views and

deliberate before reaching consensus on a revised proposal acceptable to both sides while the Government will make every endeavour to facilitate the process.

9. Members will appreciate that LAB is a useful and long-established mechanism which aims, and has served, to resolve the divergent views of employers and employees over the years. It is through this mechanism that dialogues on labour policy issues between the employees' and employers' sectors, each represented by their representatives on LAB, can continue to be conducted in all frankness and sincerity. To be able to sustain a harmonious employment relationship by building consensus along the way is vital to the business viability and benefiting employees in Hong Kong. It is our fervent hope that with the long tradition of trust and mutual respect forged among employer and employee members of LAB, employees' rights and benefits can be progressively improved in a way commensurate with the pace of Hong Kong's socio-economic development.

Labour and Welfare Bureau
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