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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 24 June 2014, setting out your observations on the drafting aspects of the Bill. Our responses are set out below.

Definition of “paternity leave pay” (Clause 3(1))

The proposed definition, in the present form, is sufficiently clear in relating paternity leave pay to paternity leave (PL). No amendment is therefore considered necessary.

New Part IIIA (Proposed new sections 15D to 15L)

Under section 2(1) of the Employment Ordinance (Cap. 57) (EO), “child (兒童)” is defined to mean, unless the context otherwise requires, a person under the age of 15 years and is generally so meant throughout the Ordinance. The term “child (嬰兒)” used in the new Part IIIA refers only to a newly delivered child. It is therefore not necessary to include in the definition of “child” under section 2(1) the use of “嬰兒” as a Chinese equivalent of “child”.

Proposed section 15D

The expression “all the requirements” in the new s.15D(1)(c) must be read as all the requirements that are applicable to the employee. It is not necessary to omit the word “all” and add in references such as “as appropriate”.

The expression “inclusive of” in the proposed section 15D(3)(b) is already reflected in the Chinese text “在由確實產下嬰兒的日期起計的 10 星期屆滿時結束” (emphasis added). No amendment is therefore considered necessary.

Proposed section 15G

The expression “all the requirements” in the new s.15G(b) must be read as all the requirements that are applicable to the employee. It is not necessary to omit the word “all” and add in references such as “as appropriate” as suggested.

Proposed section 15F

The Chinese text of the proposed section 15F(1) accurately reflects its English equivalent and the policy intent. The drafting style is equally clear as that adopted for the existing sections 12(11) and 41AA(10), yet simpler with the use of an employee as the subject in the sentence. No amendment is therefore considered necessary.

Proposed new section 15L

Unlike maternity leave which is linked to the confinement of a woman who is a party to the contract of employment, the entitlement of an employee to PL and PL pay arises from a birth incident with neither the mother nor the child being a party to the employment relationship. Besides, unlike pregnancy of a female employee the physical sign of whom is visible, there is no way for an employer to ascertain whether an employee is a father-to-be or is the father of a newborn. Upon implementation of the proposed provisions, so long as the employee has fulfilled the notification requirements in relation to the taking of PL, the employer must grant the employee PL on dates of the employee’s

choice and pay the employee PL pay in accordance with the proposed section 15K if the employee has fulfilled the eligibility criteria. Given the limited information that the employer would be able to get hold of and the little flexibility that he would be able to exercise in the leave arrangement, it would be fair and reasonable to avail the employer of the opportunity to put up his defence of reasonable excuse, if any, in case prosecution in relation to the granting/payment of PL or PL pay is taken out against him.

We would also like to point out that apart from the proposed section 15L, the defence of reasonable excuse available to an employer is also widely adopted in other offence provisions under EO regarding failure to grant/pay other statutory entitlements such as the granting of holiday, annual leave, sickness allowance, etc.

Yours sincerely,



(Charles Hui)

for Commissioner for Labour

c.c. SLW

DoJ [(Attn: Mr Michael Lam, Sr Asst Law Draftsman and
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