

## Employment (Amendment) Bill 2014

**Committee Stage**Amendments to be moved by the Hon LEE Cheuk-yan (1st draft)

<u>Clause</u>	<u>Amendment proposed</u>
Long title	By deleting “of up to 3 days”.
6.	In the proposed section 15D(2)(b), by deleting “not more than”.
6	By adding after the proposed section 15L— <p style="margin-left: 40px;"><b>“15M. Prohibition against termination of employment</b></p> <p style="margin-left: 80px;">(1) In this section—</p> <p style="margin-left: 80px;"><i>period of taking paternity leave</i> (放取侍產假期間), in relation to an employee who has notified his employee in accordance with section 15E, means the period from the date of the notice—</p> <p style="margin-left: 120px;">(a) to the date on which his paternity leave expires; or</p> <p style="margin-left: 120px;">(b) in the case of miscarriage, the date of miscarriage.</p> <p style="margin-left: 80px;"><i>wages</i> (工資), in subsections 5(b), (6) and (7), includes a sum of money paid by an employer in respect of any of the following days—</p> <p style="margin-left: 120px;">(a) a day of paternity leave, a rest day, a sickness day, a holiday or a day of annual leave taken by the employee;</p> <p style="margin-left: 120px;">(b) a day of leave taken by the employee with the agreement of the employer;</p> <p style="margin-left: 120px;">(c) a normal working day on which the employee is not provided with work by the employer;</p> <p style="margin-left: 120px;">(d) a day of absence from work of the</p>

employee due to temporary incapacity for which compensation is payable under section 10 of the Employees' Compensation Ordinance (Cap. 282).

- (2) Subject to subsection (3), after an employee has notified his employer in accordance with section 15E, the employer shall not terminate his continuous contract of employment otherwise than in accordance with section 9 during the period of taking paternity leave.
- (3) An employer who terminates the continuous contract of employment of his employee during the period of taking paternity leave shall be taken for the purposes of subsection (2) to terminate the contract otherwise than in accordance with section 9—
- (a) unless the contrary is proved; or
  - (b) subject to subsection (4), unless the employer proves that—
    - (i) he purported to terminate the contract in accordance with that section; and
    - (ii) at the time of such termination, he reasonably believed that he had a ground to do so.
- (4) Subsection (3)(b) shall not apply in the case of civil proceedings.
- (5) An employer who contravenes subsection (2) shall be liable to pay to the dismissed employee —
- (a) the sum which would have been payable if the contract had been terminated by the employer under section 7;
  - (b) a further sum equivalent to 7 times the employee's average daily wages during —
    - (i) the period of 12 months immediately before the date of

- termination of the contract of employment; or
  - (ii) if the employee has been employed by the employer for a period shorter than 12 months immediately before the date of termination of the contract of employment, the shorter period; and
  - (c) where the employee is or would have been entitled to paternity leave pay, paternity leave pay for 3 days.
- (6) The average daily wages are to be calculated without regard to—
- (a) any period (*excluded period*) during the 12-month period or shorter period for which the employee was not paid wages or full wages because of—
    - (i) any paternity leave, rest day, sickness day, holiday or annual leave taken by the employee;
    - (ii) any leave taken by the employee with the agreement of the employer;
    - (iii) the employee's not being provided with work by the employer on a normal working day; or
    - (iv) the employee's absence from work due to temporary incapacity for which compensation is payable under section 10 of the Employee's Compensation Ordinance (Cap. 282); and
  - (b) any wages paid to the employee for the excluded period.
- (7) To avoid doubt, if the amount of the wages paid

to an employee in respect of a day covered by the definition of *wages* in subsection (1) is only a fraction of the amount earned by the employee on a normal working day, the employee's average daily wages are to be calculated without regard to the wages and the day.

- (8) Despite subsection (5)(b), if for any reason it is impracticable to calculate an employee's average daily wages in the manner provided in that subsection, the amount may be calculated by reference to—
- (a) the wages earned by a person who was employed at the same work by the same employer during the period of 12 months immediately before the date of termination of the contract of employment; or
  - (b) if there is no such person, the wages earned by a person who was employed in the same trade or occupation and at the same work in the same district during the period of 12 months immediately the date of termination of the contract of employment.
- (9) Any employer who contravenes subsection (2) shall be guilty of an offence and shall be liable on conviction to a fine at level 6.

New By adding after clause 6—

**“6A. Section 32A amended (employee's entitlement to employment protection)**

Section 32A(1)(c)(i), after “15(1)”—

**Add**

“, 15M(2)”.

**6B. Section 32M amended (remedies for employment protection)**

Section 32M(2)(a), after “15(1)”—

**Add**  
“, 15M(2)”.”.

New By adding after clause 7—

**“7A. Section 32P amended (award of compensation)**  
Section 32P(1)(b), after “15(1)”—

**Add**  
“, 15M(2)”.”.