

LEGISLATIVE COUNCIL BRIEF

Employment Ordinance
(Chapter 57)

EMPLOYMENT (AMENDMENT) BILL 2014

INTRODUCTION

A At the meeting of the Executive Council on 18 February 2014, the Council ADVISED and the Chief Executive ORDERED that the Employment (Amendment) Bill 2014 (the Bill), at Annex A, should be introduced into the Legislative Council (LegCo) to make three days' paid paternity leave (PL), with the pay set at four-fifths of the employee's average daily wages, a statutory benefit for employees under the Employment Ordinance (Cap. 57)(EO).

JUSTIFICATIONS

2. The Labour Department (LD) had conducted a study on legislating for PL in Hong Kong and consulted the Labour Advisory Board (LAB)¹ in May 2012. After a few rounds of discussion, LAB in November 2012 supported legislating for three days' PL with pay at four-fifths of the employee's average daily wages. Noting that both PL and maternity leave emanated from the same cause, and that the nature of PL was similar to that of maternity leave, LAB also agreed that, where appropriate, the relevant requirements and details of PL should be aligned with those applicable to maternity leave under the EO for the purpose of reasonableness and consistency with the existing law.

3. On 16 January 2013, in delivering his first Policy Address, the Chief Executive (CE) said, inter alia, that "*I advocated paternity leave in my Manifesto. The Labour Advisory Board has endorsed legislation for three days of paid paternity leave. The Government hopes that legislation could be enacted as soon as possible.*"². The Labour and Welfare Bureau and LD subsequently, on 25 January 2013, reported the views of LAB and the proposed arrangements of statutory PL to the LegCo Panel on Manpower

¹ LAB, chaired by the Commissioner for Labour, comprises six members representing employers and the other six representing employees.

² CE stated in his Election Manifesto that "*Recognizing that both parents share equal responsibilities in bringing up a family, we will introduce paternity leave for fathers and in the process consult with affected trades and industries.*"

(Panel). The Panel raised no objection to the proposal though some Members asked for more PL days and full-paid PL (paragraph 25 below).

THE PROPOSAL

4. Under the proposal, a male employee who is the father of a newborn or a father-to-be will be entitled to PL if he is employed under a continuous contract³ 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. This approach is in line with the purpose of the statutory PL scheme having regard to the legal responsibilities of a legal father for a child. It is adopted also for its viability and practicability as far as the implementation of and compliance with the proposed PL scheme by employers and employees is concerned. The key features of the proposed PL scheme are set out in paragraphs 5 to 20 below.

(a) Duration of PL

5. A male employee who meets the specified requirements is proposed to be entitled to 3 days’ PL for each incident of birth of his child. Multiple births in a single pregnancy will not entitle an employee to additional PL days as in the case of maternity leave. The proposed duration of 3 days’ PL is based on the LAB’s consensus. In this connection, it should be noted that the cost of PL benefits in the non-government sector is to be shouldered by employers of varying sizes. It is therefore of paramount importance that a reasonable balance is struck between the interests of employees and the affordability of employers. According to a survey on PL conducted by LD with member establishments of its 18 Human Resources Managers Clubs in 2012, the duration of PL provided by the respondent organisations on a voluntary basis ranged from one day to 14 days, with an average duration of three days. Among those respondent organisations offering PL, about 43.5% provided three days of PL and over 81% offered one to three days of PL. Having regard to the prevailing practice of providing PL in the private sector and the consensus reached by LAB, we consider the proposed three-day PL an appropriate starting point for statutory PL.

(b) Rate of PL pay

6. We propose that the rate of PL pay should be pitched at four-fifths of the employee’s normal pay as in the case of maternity leave. This would help preserve the distinction between those kinds of statutory leave applying to all employees across the board such as statutory holiday and annual leave which

³ According to the EO, 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.

attract full pay from other kinds of leave such as maternity leave or sickness days that are only incidental to certain employees and which are paid at a less than full pay level.

(c) Period and mode of taking PL

7. Having regard to the period in which maternity leave may be taken, we propose that employees may take PL at any time during the period from four weeks before the expected date of delivery of the child to 10 weeks from and inclusive of the actual date of delivery. The employee may take all 3 days of PL in one go or on discrete days.

(d) Childbirths outside Hong Kong

8. A father whose child is not born in Hong Kong may have the same need for PL so that he can leave Hong Kong to take care of the newborn and the mother who would otherwise have to handle the important change in family circumstances on her own. Given that cross - Hong Kong - Mainland marriage/courtship has become increasingly prevalent, should statutory PL be confined to childbirths in Hong Kong only, employees with Mainland partners and children born on the Mainland would not be entitled to this employment benefit. In fact, according to LD's survey referred to in paragraph 5 above, the vast majority of the organisations currently providing PL on a voluntary basis accept certification issued by authorities in places outside Hong Kong as documentary proof for granting PL⁴. With this in view, we propose not to impose any restriction on the birthplace of the newborn. In other words, documentary proof issued outside Hong Kong will be accepted.

(e) Childbirths outside of marriage

9. The community is broadly of the view that PL should be accorded to "husbands", i.e. legally married males, only. However, failing to grant PL for childbirths outside of marriage might constitute discrimination on grounds of marital status and family status under the Sex Discrimination Ordinance (Cap. 480) and the Family Status Discrimination Ordinance (Cap. 527) respectively and as such might be in breach of these Ordinances. It is also noted that birth within marriage is not a pre-condition for determining whether a female employee is entitled to maternity leave under the EO. Having regard to the best interests of the newborn, the relevant legal opinion and the arrangement applicable to maternity leave, we propose to grant PL to a legal father (as referred to in paragraph 4 above) without imposing a requirement that a male employee has to be legally married with the mother of the newborn child for entitlement to PL.

⁴ According to the results of the survey conducted by LD with member establishments of LD's Human Resources Managers Clubs in 2012, insofar as the requirement for employees to produce documentary proof for PL is concerned, nearly 90% of organisations accepted documentary proof issued by the authorities in places outside Hong Kong.

(f) Miscarriage and stillbirth cases

10. Under the EO, “miscarriage” is defined as “the expulsion of the products of conception which are incapable of survival after being born before 28 weeks of pregnancy”. In the case of a miscarriage a female employee is entitled to sick leave rather than maternity leave. On the other hand, an employee who gives birth to a dead child is eligible for maternity leave. Mirroring the same arrangements applicable to maternity leave, we propose that the statutory PL should not apply to a miscarriage, but to a stillbirth, i.e. when a child who dies during or after delivery, and where the father produces a medical certificate or any other document, where appropriate, certifying the delivery of the child and fulfils other stipulated requirements.

(g) Length of service requirement

11. For entitlement to PL (with or without pay), an employee must have been employed under a continuous contract immediately before taking PL. If the employee has been employed under a continuous contract for not less than 40 weeks immediately before any day of PL, he is entitled to pay for that day of PL.

(h) Notification requirement

12. To enable employers to have early knowledge of their employees’ intention to take PL, an employee who intends to take PL must –

- (i) notify his employer:
 - (a) at least 3 months before the expected date of delivery of the child; and
 - (b) at least 2 days before the day on which PL is to be taken; or
- (ii) (if the employee fails to give the 3 months’ notice to his employer) notify his employer at least 5 days before the day on which PL is to be taken.

13. As an employee may take PL before the proof of father-child relationship (e.g. a birth certificate) or delivery of the child (e.g. a medical certificate certifying the delivery of the child) is available, if the employer so requests, the employee must provide his employer with a written statement signed by him stating the child’s mother’s name, the expected date of delivery of the child or (if available) actual date of delivery, and that he is the child’s father.

(i) Documentary requirement

14. For entitlement to PL pay, the employee must provide the employer with the birth certificate of his newborn child issued by the Births Registry of

the Immigration Department under the Births and Deaths Registration Ordinance (Cap. 174), on which his name is entered as the child's father.

15. If the child is born dead or dies after birth, in the absence of a birth certificate, the employee is required to produce a medical certificate certifying the delivery of the child for entitlement to PL pay. If the employer so requires, the employee must provide a written statement signed by him stating that he is the father of the child delivered by the woman named in the medical certificate, and that the child is born dead or dies after birth.

16. For childbirths outside Hong Kong, the employee must provide a birth certificate issued by the authorities of the place where the child is born, on which his name is entered as the child's father. If the authorities of the place do not issue birth certificates, the employee may provide any other document issued by the authorities of the place that could reasonably be taken as proof that the employee is the child's father. If the child is born dead or dies after birth, in the absence of a birth certificate or the like, the employee is required to provide a medical certificate or any other document issued by the authorities of the place that could reasonably be taken as proof of the delivery of the child. If the employer so requires, the employee must also provide a written statement as specified in paragraph 15 above.

17. For PL that would not come with pay (for reasons such as there being no 40 weeks' employment prior to PL), the employee is not required to produce the above-mentioned documents in connection with his taking PL.

(j) Time for payment of PL pay

18. An employee is not entitled to PL pay until he has produced the required documents. If the employer chooses to effect payment to the employee before the production of the required documents but the employee fails to provide the said documents within 3 months after the first day of PL, or where the employee has ceased to be employed, fails to provide the said documents before the cessation, the employer is allowed to deduct from the employee's wages the amount of PL pay already granted. The employer must pay the PL pay to the employee again upon the employee's production of the required documents within a specified timeframe.

19. As stated in paragraph 20 below, failure to grant PL pay will be made a criminal offence. To strike a balance between the interests of employers and employees, a time limit will be set to define the employer's liability to grant PL pay. To this end, the employee must provide the required documents to the employer within 12 months after the first day of PL taken. If the employee ceases to be employed, he must provide the documents within 6 months after the cessation of employment. No PL pay is payable if the required documents are provided after the time specified above.

(k) Penalty

20. An employer who fails to grant PL or effect PL pay to an eligible employee is liable to prosecution and, upon conviction, to a fine of \$50,000. This level of penalty is also in line with that of failure to grant maternity leave or effect maternity leave pay under the EO.

OTHER OPTIONS

21. Introducing legislative amendments is the only way to achieve the policy objective of granting leave to all eligible working fathers around the time of childbirth to take care of the mother and the newborn. According to the survey on PL conducted by LD mentioned in paragraph 5 above, only 38.7% of the respondent organisations granted PL to their employees. In other words, if PL is not made statutory, a significant proportion of employees in the private sector, especially those working in small and medium enterprises, will probably not be granted PL.

THE BILL

22. The main provisions of the Bill are as follows –

- (a) Clause 1 sets out the short title and provides for commencement.
- (b) Clause 6 adds a new Part IIIA to the EO to introduce a statutory PL and PL pay mechanism.
- (c) Clauses 3, 4, 5, 7, 8, 9(1) and (2) and 10 to 16 contain amendments to the EO consequential to the introduction of the statutory PL and PL pay mechanism.
- (d) Clause 18 contains an amendment to the Minimum Wage Ordinance (Cap. 608) consequential to the introduction of the statutory PL and PL pay mechanism.

LEGISLATIVE TIMETABLE

23. The legislative timetable is as follows –

Publication in the Gazette	28 February 2014
First Reading and commencement of Second Reading debate	26 March 2014
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

B 24. The proposal has economic, financial and civil service and family implications as set out at Annex B. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It does not affect the current binding effect of the EO and has no environmental implications. It should not have significant sustainability implications.

PUBLIC CONSULTATION

25. LAB was consulted and supported legislating for three days' PL with pay at four-fifths of the employee's average daily wages at its meeting held on 26 November 2012. During the consultation with LAB, a broad consensus was reached on issues like coverage of PL to childbirths outside of marriage and childbirths outside Hong Kong, proof of father-child relationship by birth registration record, duration of PL and rate of PL pay. It was also agreed that the design of the PL scheme should broadly follow that of maternity leave in the EO. LD undertook to review the implementation of the law on PL one year after its coming into operation and report to LAB. The views of LAB and the proposed arrangements of statutory PL were reported to the Panel on 25 January 2013. The Panel raised no objection to the Administration's proposal of legislating for PL but advised the Administration to take into account members' views when formulating the period and pay of statutory PL, as well as the PL entitlement in the event of miscarriage or stillbirth.

PUBLICITY

26. A press release will be issued on 26 February 2014. A spokesperson will be available for answering media enquiries.

ENQUIRIES

27. Enquiries on this brief can be addressed to Mr Charles Hui, Assistant Commissioner for Labour (Labour Relations), on 2852 4099; Ms Melody Luk, Chief Labour Officer (Labour Relations), on 2852 3457 or Miss Candice Cheng, Senior Labour Officer (Labour Relations)(Policy Support), on 2852 3696.

Labour and Welfare Bureau
February 2014

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A BILL

To

Amend the Employment Ordinance to provide for a male employee's entitlement, in respect of the birth of a child of the employee, to paternity leave of up to 3 days and paternity leave pay at a daily rate of four-fifths of the employee's average daily wages; and to make related and other minor amendments.

Enacted by the Legislative Council.

Part 1

Preliminary

1. **Short title and commencement**
 - (1) This Ordinance may be cited as the Employment (Amendment) Ordinance 2014.
 - (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Labour and Welfare by notice published in the Gazette.

Part 2**Amendments to Employment Ordinance****2. Employment Ordinance amended**

The Employment Ordinance (Cap. 57) is amended as set out in sections 3 to 16.

3. Section 2 amended (interpretation)

(1) Section 2(1)—

Add in alphabetical order

“paternity leave (待産假) means the paternity leave provided for in Part IIIA;

paternity leave pay (待産假薪酬) means pay payable in respect of paternity leave;”.

(2) After section 2(2)(b)—

Add

“(ba) any paternity leave pay under Part IIIA;”.

(3) After section 2(2A)(b)—

Add

“(ba) in relation to any paternity leave pay under Part IIIA—

(i) if paternity leave is taken in a period of consecutive days, the date on which that period begins; or

(ii) in any other case, the date on which paternity leave is taken;”.

4. Section 7 amended (termination of contract by payment in lieu of notice)

(1) Section 7(1)(a), after “maternity leave,”—

Add

“a day of paternity leave,”.

(2) Section 7(1B)(a)(i), after “maternity leave,”—

Add

“paternity leave,”.

5. Section 11A amended (interpretation)

(1) Section 11A(2)(a), after “maternity leave,”—

Add

“a day of paternity leave,”.

(2) Section 11A(4)(a)(i), after “maternity leave,”—

Add

“paternity leave,”.

6. Part IIIA added

After Part III—

Add**“Part IIIA****Paternity Leave****15D. Entitlement to paternity leave**

(1) A male employee is entitled to paternity leave in respect of the birth of a child if—

(a) he is the child’s father;

(b) he has been employed under a continuous contract immediately before taking leave; and

- (c) he has complied with all the requirements in section 15E.
- (2) For subsection (1), the employee—
 - (a) subject to section 15F, is entitled to take leave during the period specified in subsection (3) on the date or dates notified to the employer under section 15E(1); and
 - (b) is entitled to take leave for not more than 3 days, whether consecutive or not, for each confinement.
- (3) For subsection (2)(a), the period—
 - (a) begins 4 weeks before the expected date of the delivery of the child; and
 - (b) ends 10 weeks from and inclusive of the actual date of the delivery of the child.
- (4) For subsection (2)(b), multiple births in one pregnancy are taken to be one confinement.
- (5) Subsection (1)—
 - (a) applies to a child born on or after the date on which the Employment (Amendment) Ordinance 2014 (of 2014) comes into operation; and
 - (b) does not apply to a miscarriage.

15E. Notification requirements relating to paternity leave

- (1) For section 15D(1)(c), an employee who intends to take paternity leave in respect of the birth of a child must—
 - (a) notify the employer—
 - (i) of his intention at least 3 months before the expected date of the delivery of the child; and
 - (ii) of each intended date of his leave at least 2 days before that date; or

- (b) (if he does not notify the employer in accordance with paragraph (a)(i)) notify the employer of each intended date of his leave at least 5 days before that date.
- (2) If the employer so requires, the employee must also give the employer a written statement signed by the employee—
 - (a) stating that the employee is the child's father; and
 - (b) stating—
 - (i) the name of the child's mother; and
 - (ii) the expected date of the delivery, or (if the child has been born) the actual date of the delivery, of the child.

15F. Paternity leave not affected by other leave entitlements

- (1) Paternity leave is in addition to rest days, holidays and annual leave to which an employee is entitled under this Ordinance.
- (2) If—
 - (a) an employee has, in compliance with the requirement in section 15E(1), notified the employer that he intends to take paternity leave on a particular day; and
 - (b) that day falls on a rest day or holiday or falls within a period of annual leave,
 he is entitled to take the leave on the day immediately after the rest day, holiday or period of annual leave.
- (3) Despite subsection (2), the employee is entitled to take the leave on another day he chooses if he has notified the employer of his choice at least 2 days before that other day.

- (4) The employee is entitled to take leave on the day mentioned in subsection (2) even if that day falls on a day after the 10-week period mentioned in section 15D(3)(b).
- (5) However, subsection (3) does not entitle the employee to take leave on a day that falls on a day outside the period specified in section 15D(3).

15G. Entitlement to paternity leave pay

An employee is entitled to pay at the rate specified in section 15H in respect of each day on which he has taken paternity leave if—

- (a) he has been employed under a continuous contract for a period of not less than 40 weeks immediately before that day; and
- (b) he has complied with all the requirements in section 15I or 15J.

15H. Rate of paternity leave pay

(1) In this section—

specified date (指明日期), in relation to paternity leave taken by an employee, means—

- (a) if the leave is taken in a period of consecutive days, the date on which that period begins; or
- (b) in any other case, the date on which the leave is taken;

wages (工資), in subsections (2), (3) and (4), includes a sum of money paid by an employer in respect of any of the following days—

- (a) a day of paternity leave, a rest day, a sickness day, a holiday or a day of annual leave taken by the employee;
- (b) a day of leave taken by the employee with the agreement of the employer;
- (c) a normal working day on which the employee is not provided with work by the employer;
- (d) a day of absence from work of the employee due to temporary incapacity for which compensation is payable under section 10 of the Employees' Compensation Ordinance (Cap. 282).
- (2) The daily rate of paternity leave pay is four-fifths of the employee's average daily wages during—
- (a) the period of 12 months immediately before the specified date; or
- (b) if the employee has been employed by the employer for a period shorter than 12 months immediately before the specified date, the shorter period.
- (3) 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 Employees' Compensation Ordinance (Cap. 282); and
- (b) any wages paid to the employee for the excluded period.
- (4) 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.
- (5) Despite subsection (2), 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 specified date; 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 before the specified date.
- (6) If, under the employee's contract of employment or any other agreement or for any other reason, the employer pays a sum of money to the employee in respect of a day on which the employee takes paternity leave, the paternity leave pay payable to the employee in respect of the day under this Part is to be reduced by the sum.

15I. Documentary requirements relating to paternity leave pay: birth in Hong Kong

- (1) For section 15G(b), an employee who takes paternity leave in respect of the birth of a child in Hong Kong must provide the employer with the birth certificate of the child—
 - (a) that is issued under the Births and Deaths Registration Ordinance (Cap. 174); and
 - (b) on which the employee's name is entered as the child's father.
- (2) Despite subsection (1), if the child is born dead, or if the child dies after birth and no birth certificate has been issued in respect of the child under the Births and Deaths Registration Ordinance (Cap. 174), the employee must provide the employer with—
 - (a) a medical certificate described in subsection (3); and
 - (b) (if the employer so requires) a written statement signed by the employee, stating that—
 - (i) he is the father of the child delivered by the woman named in the medical certificate; and
 - (ii) the child is born dead or dies after birth (whichever is appropriate).
- (3) For subsection (2)(a), the medical certificate—
 - (a) must certify the delivery of the child; and
 - (b) must be issued by—
 - (i) a registered medical practitioner; or
 - (ii) despite section 16 of the Midwives Registration Ordinance (Cap. 162), a midwife registered under section 8, or deemed to be

registered under section 25, of that Ordinance.

- (4) The documents required under this section must be provided to the employer—
- (a) within 12 months after the first day on which the employee takes the paternity leave; or
 - (b) if the employee has ceased to be employed by the employer, within the period mentioned in paragraph (a) or within 6 months after the cessation (whichever period expires first).

15J. Documentary requirements relating to paternity leave pay: birth outside Hong Kong

- (1) For section 15G(b), an employee who takes paternity leave in respect of the birth of a child in a place outside Hong Kong must provide the employer with—
- (a) the birth certificate of the child—
 - (i) that is issued by the authorities of the place (*authorities*); and
 - (ii) on which the employee's name is entered as the child's father; or
 - (b) (if the authorities do not issue birth certificates) any other document issued by the authorities that could reasonably be taken as proof that the employee is the child's father.
- (2) Despite subsection (1), if the child is born dead or dies after birth, and neither the birth certificate nor document mentioned in that subsection is available, the employee must provide the employer with —

- (a) a medical certificate or any other document issued by the authorities that could reasonably be taken as proof of the delivery of the child; and
- (b) (if the employer so requires) a written statement signed by the employee, stating that—
 - (i) he is the father of the child delivered by the woman named in the medical certificate or document; and
 - (ii) the child is born dead or dies after birth (whichever is appropriate).

- (3) The documents required under this section must be provided to the employer—
- (a) within 12 months after the first day on which the employee takes the paternity leave; or
 - (b) if the employee has ceased to be employed by the employer, within the period mentioned in paragraph (a) or within 6 months after the cessation (whichever period expires first).

15K. Payment of paternity leave pay

- (1) In this section—
requisite document (所需文件), in relation to an employee who has taken paternity leave on a day, means the document required under section 15I or 15J for his entitlement to paternity leave pay in respect of the day.
- (2) If an employee has taken paternity leave on a day (*leave day*) and provided the employer with the requisite document on or before the leave day, the employer must pay him the paternity leave pay in respect of the leave day—

- (a) not later than the day on which he is next paid his wages after the leave day; or
 - (b) if he has ceased to be employed by the employer, not later than 7 days after the cessation.
- (3) If the employee provides the employer with the requisite document after the leave day, the employer must pay him the paternity leave pay in respect of the leave day—
- (a) not later than the day on which he is next paid his wages after the document is provided; or
 - (b) if he has ceased to be employed by the employer, not later than 7 days after the document is provided.
- (4) Where the employer has paid the employee the paternity leave pay in respect of the leave day before the requisite document is provided, the employer may deduct from his wages an amount equivalent to the paternity leave pay if—
- (a) he fails to provide the employer with the requisite document within 3 months after the first day on which the paternity leave is taken; or
 - (b) he has ceased to be employed by the employer and fails to provide the employer with the requisite document before the cessation.
- (5) If after the deduction the employee provides the employer with the requisite document in accordance with section 15I(4) or 15J(3), the employer must pay him the paternity leave pay in respect of the leave day again—
- (a) not later than the day on which he is next paid his wages after the document is provided; or

- (b) if he has ceased to be employed by the employer, not later than 7 days after the document is provided.

15L. Offence

- (1) An employer must—
- (a) grant an employee paternity leave to which the employee is entitled; and
 - (b) pay an employee paternity leave pay to which the employee is entitled in accordance with section 15K.
- (2) An employer who without reasonable excuse contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 5.”.

7. Section 32O amended (award of terminal payments)

After section 32O(3)(d)—

Add

“(da) any paternity leave pay payable under Part IIIA;”.

8. Section 32 amended (restriction on deductions from wages)

After section 32(2)(g)—

Add

“(ga) deductions permitted by section 15K(4);”.

9. Section 33 amended (sickness allowance)

- (1) Section 33(4BAAA)(a), after “maternity leave,”—

Add

“a day of paternity leave,”.

- (2) Section 33(4BAAB)(a)(i), after “maternity leave,”—

Add

“paternity leave,”.

- (3) Section 33(6)(a), Chinese text—

Repeal

“《醫院、療養院及留產院登記條例》”

Substitute

“《醫院、護養院及留產院註冊條例》”。

10. Section 35 amended (rate of sickness allowance)

- (1) Section 35(1)(a), after “maternity leave,”—

Add

“a day of paternity leave,”.

- (2) Section 35(2A)(a)(i), after “maternity leave,”—

Add

“paternity leave,”.

11. Section 41 amended (rate of holiday pay)

- (1) Section 41(1)(a), after “maternity leave,”—

Add

“a day of paternity leave,”.

- (2) Section 41(3)(a)(i), after “maternity leave,”—

Add

“paternity leave,”.

12. Section 41AA amended (annual leave)

Section 41AA(10)—

Repeal

“holidays and maternity leave”

Substitute

“holidays, maternity leave and paternity leave”.

13. Section 41C amended (rate of annual leave pay)

- (1) Section 41C(1)(a), after “maternity leave,”—

Add

“a day of paternity leave,”.

- (2) Section 41C(3)(a)(i), after “maternity leave,”—

Add

“paternity leave,”.

14. Section 43 amended (payment of holiday pay, etc. in event of bankruptcy, etc.)

Section 43—

Repeal

“maternity leave pay”

Substitute

“maternity leave pay, paternity leave pay”.

15. Section 43N amended (interpretation of Part IXB)

- (1) Section 43N(1), definition of *specified entitlement*, after paragraph (c)—

Add

“(ca) any paternity leave pay payable under Part IIIA;”.

- (2) Section 43N(1), definition of *specified entitlement*, paragraph (i), after “maternity leave,”—

Add

“paternity leave,”.

- (3) Section 43N(1), definition of *specified entitlement*, paragraph (i), after “(c),”—

Add

“(ca),”.

- (4) Section 43N(1), definition of *specified entitlement*, paragraph (j)(i), after “(c),”—

Add

“(ca),”.

16. Section 49A amended (requirement to keep wage and employment records)

Section 49A(3)(f)—

Repeal

“maternity leave”

Substitute

“maternity leave, paternity leave”.

Part 3

Amendment to Minimum Wage Ordinance

17. Minimum Wage Ordinance amended

The Minimum Wage Ordinance (Cap. 608) is amended as set out in section 18.

18. Section 6 amended (wages)

Section 6(1), after “(g),”—

Add

“(ga),”.

Explanatory Memorandum

The main object of this Bill is to amend the Employment Ordinance (Cap. 57) (*Ordinance*) to introduce a statutory paternity leave and paternity leave pay mechanism. Under the mechanism, if a male employee who is a father-to-be or father of a new-born child (*employee*) fulfils the specified conditions, he is entitled to paternity leave of up to 3 days and paternity leave pay at a daily rate of four-fifths of his average daily wages.

Part 1 (Preliminary)

2. Clause 1 sets out the short title and provides for commencement.

Part 2 (Amendments to Ordinance)

3. Clause 6 adds a new Part IIIA to the Ordinance—
 - (a) the new section 15D provides that, subject to specified conditions, an employee is entitled to paternity leave in respect of the birth of a child of the employee under the Ordinance, and sets out the period during which he may take leave and the total number of days he may take leave for each confinement;
 - (b) the new section 15E sets out the notification requirements that an employee must comply with before he is entitled to paternity leave;
 - (c) the new section 15F provides that paternity leave is in addition to rest days, holidays and annual leave to which an employee is entitled under the Ordinance;
 - (d) the new section 15G provides that, subject to specified conditions, an employee is entitled to paternity leave pay in respect of each day on which he has taken paternity leave under the Ordinance;

- (e) the new section 15H sets out how an employee's daily rate of paternity leave pay is calculated;
 - (f) the new section 15I sets out the documentary requirements that an employee who takes paternity leave in respect of a child born in Hong Kong must comply with before he is entitled to paternity leave pay;
 - (g) the new section 15J sets out the documentary requirements that an employee who takes paternity leave in respect of a child born in a place outside Hong Kong must comply with before he is entitled to paternity leave pay;
 - (h) the new section 15K sets out the time limit for the payment of paternity leave pay, and provides that, under specified circumstances, an employer who has paid an employee paternity leave pay in advance may deduct from the employee's wages an amount equivalent to the pay; and
 - (i) the new section 15L imposes criminal liability on an employer who, without reasonable excuse, fails to grant or pay an employee paternity leave or paternity leave pay to which the employee is entitled under the Ordinance.
4. Clauses 3, 4, 5, 7, 8, 9(1) and (2) and 10 to 16 contain amendments to the Ordinance consequential to the introduction of the statutory paternity leave and paternity leave pay mechanism.
 5. Clause 9(3) amends the Chinese text of the Ordinance to rectify an error in the Chinese reference to the short title of the Hospitals, Nursing Homes and Maternity Homes Registration Ordinance (Cap. 165).

Part 3 (Amendment to Minimum Wage Ordinance)

6. Clause 18 contains an amendment to the Minimum Wage Ordinance (Cap. 608) consequential to the introduction of the statutory paternity leave and paternity leave pay mechanism.

Implications of the Proposal

Economic Implications

According to a broad-brush assessment conducted in 2011 based on the data of 2010, 46 500 working fathers in the non-government sector (or about 3% of total male employees) who were Hong Kong residents with babies born in Hong Kong and recorded in the Births Registry would be eligible for paid paternity leave (PL) if there were statutory PL. Owing to data limitations, the assessment has not taken into account working fathers who were Hong Kong residents with babies born outside Hong Kong and may also be eligible for PL benefits. Given Hong Kong's prevailing low birth rate, the additional labour costs arising from three days' PL with pay should be relatively small and affordable to most businesses.

Financial and Civil Service Implications

2. Government employees are already entitled to five days' PL with effect from 1 April 2012 and therefore statutory PL will have no additional financial implications for the Government in its capacity as an employer. As statutory PL will be applicable to Government-funded public bodies, subvented organisations and employers of outsourced government service, additional financial commitment from the Government in this respect may be required. However, given the small number of working fathers with babies born to them as stated in paragraph 1 above, the financial impact of statutory PL on the Government is unlikely to be significant. Bureaux/departments should be able to absorb the additional funding requirement, if any, from within their existing provisions.

3. The Labour Department will be responsible for implementing and enforcing the legislation on PL (including promotion, conciliation, inspection and prosecution, etc), and will absorb the additional workload generated therefrom. However, if there are any new initiatives under the Employment Ordinance in future, the cumulative manpower implications resulting from such initiatives may be more significant and additional manpower may need to be sought.

Family implications

4. The proposed statutory PL scheme was discussed at the meeting of the Sub-committee on Family Support of the Family Council on 19 December 2013. Whilst welcoming the proposed PL as a

family-friendly employment practice, some members expressed concern over the possible impact on the values of society if birth outside of marriage would also entitle a male employee to paid PL. Besides, the 40-week continuous service requirement for entitlement to PL pay was considered disproportionate when only three days of PL were involved. In the consultation paper published by the Steering Committee on Population Policy (SCPP) on 24 October 2013, the SCPP considers that a more friendly and supportive environment for forming and raising families should be explored and paid PL is quoted as a possible measure which could be effective in encouraging people to form and raise families.