

II. REPORT

The date of First Reading of the Bill is 26 March 2014. Members may refer to the LegCo Brief (File Ref.: LD LRD/12-1/2-31/1(C)) issued by Labour and Welfare Bureau in February 2014 for further details.

Object of the Bill

2. The Bill proposes to amend the Employment Ordinance (Cap. 57) to provide a statutory paternity leave for male employees of up to 3 days with pay at a daily rate of four-fifths of the employee's average daily wages¹ and for related matters.

Provisions of the Bill

3. The Bill comprises 3 parts. Part 1 provides for the short title and commencement of the Bill. Parts 2 and 3 set out the proposed amendments to Cap. 57 and the Minimum Wage Ordinance (Cap. 608) respectively. The Bill, if enacted, will come into operation on a day to be appointed by the Secretary for Labour and Welfare by notice published in the Gazette.

4. The Bill proposes to add to Cap. 57 a new Part IIIA which comprises 9 sections (proposed sections 15D to 15L). The main provisions are summarized in the following paragraphs.

Entitlement to paternity leave

5. The Bill proposes that a male employee who is the father of a child is entitled to take three days' paternity leave in respect of the birth of the child if -

- (a) he is employed under a continuous contract² immediately before taking the paternity leave; and
- (b) he has notified his employer of his intention to take paternity leave in accordance with the manner and time limit set out in proposed new section 15E.

6. The eligible employee may take 3 days' paternity leave either in one go or separately at any time during the period from four weeks before the

¹ The term "wages" is defined in proposed section 15H under the Bill, but "daily wages" is not.

² Pursuant to section 3 of and Schedule to Cap. 57, an employee who has been employed continuously by the same employer for four weeks or more, with at least 18 hours worked in each week is regarded as being employed under a continuous contract.

expected date of delivery of the child to 10 weeks from and inclusive of the actual delivery date. The paternity leave applies to situations where the child is born dead or dies after birth but does not apply to a miscarriage.

Entitlement to paternity leave pay

7. The Bill proposes that a male employee is entitled to paternity leave with pay at a daily rate of four-fifths of his average daily wages if -

- (a) he has been employed under a continuous contract for a period not less than 40 weeks immediately before any day of paternity leave; and
- (b) he has provided his employer with documentary proof in respect of the birth of the child as required in proposed new section 15I (for birth in Hong Kong) or section 15J (for birth outside Hong Kong).

Offence

8. It is proposed that an employer who without reasonable excuse fails to grant paternity leave or pay paternity leave pay to an eligible employee commits an offence and is liable on conviction to a fine of HK\$50,000, which aligns with that provided for maternity leave under Cap. 57.

9. Parts 2 and 3 of the Bill also propose amendments consequential upon the introduction of paternity leave, which mainly relate to the interpretation and calculation of "wages" under Cap. 57 and Cap. 608.

Public Consultation

10. According to paragraph 25 of the LegCo Brief, the Labour Advisory Board was consulted and it was supportive of legislating for three days' paternity leave with pay at four-fifths of the employee's average daily wages at its meeting held on 26 November 2012.

Consultation with LegCo Panel

11. As advised by the Clerk to the Panel on Manpower, the Panel on Manpower was briefed on 25 January 2013 on the Administration's proposal to legislate for the provision of three days' paternity leave with pay at four-fifths of the employee's average daily wages. Members supported in principle the proposal to legislate for the provision of paternity leave. Some members,

however, considered that the duration of statutory paternity leave should be extended to five days and male employees should be entitled to full pay during the paternity leave period. Some members also raised concern about the paternity leave entitlement in the event of miscarriage or stillbirth.

Conclusion

12. In view of the concerns raised on the legislative proposal by Panel members, it is recommended that a Bills Committee be formed to study the Bill in detail. Meanwhile, our scrutiny of the Bill is continuing.

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