

For meeting  
on 17 May 2016

## **Legislative Council Panel on Manpower**

### **Implementation and Review of Statutory Paternity Leave**

#### **Purpose**

This paper provides Members an overview on the implementation of statutory paternity leave (“PL”) as provided by the Employment Ordinance (Cap. 57)(“EO”) since 27 February 2015 and briefs Members on the review to be conducted by the Labour Department (“LD”) on the implementation of statutory PL.

#### **Background**

2. The Employment (Amendment) Bill 2014 was passed by the Legislative Council (LegCo) on 18 December 2014 and took effect on 27 February 2015. The new legislation has made PL with pay a statutory benefit for male employees under EO. Upon the enactment of the new legislation, the Government has undertaken to review the implementation of PL one year after its coming into operation.

3. Under EO, a male employee is eligible for three days’ PL for each confinement of his spouse/partner if he (a) is the father<sup>1</sup> of a new-born child or a father-to-be; (b) has been employed under a continuous contract<sup>2</sup>; and (c) has given the required notification to the employer. The employee may take paternity leave at any time during the period from four weeks before the expected date of delivery of the child to ten weeks beginning on the actual date of delivery of the child. He may take all three days of paternity leave in one go or on separate days.

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<sup>1</sup> The employee is not required to be married to the mother of the new born child for entitlement to PL under EO. There is also no restriction on the birthplace of the newborn.

<sup>2</sup> According to EO, an employee who has been employed continuously by the same employer for four weeks or more and has been working for at least 18 hours each week is regarded as being employed under a continuous contract.

4. The employee is entitled to PL pay at the rate of four-fifths of their average daily wages if he has been employed under a continuous contract for not less than 40 weeks immediately before the day of PL, and has provided the required document to the employer within the period as stipulated under EO. There are also other ancillary arrangements including, for example, the provision of a written statement signed by the employee if so required by the employer.

## **Implementation of statutory PL**

### Publicity of statutory PL

5. To tie in with the implementation of statutory PL, LD has since February 2015 launched extensive publicity and promotional activities through various channels including broadcasting Announcements in the Public Interest through radio; widely distributing leaflets; displaying posters at various locations; conveying relevant messages through LD's homepage; placing advertisements in periodical journals of major employers' associations and trade union federations; organising briefings for the public; staging roving exhibitions across districts; and promoting through LD's employers' network of nine industry-based Tripartite Committees and 18 Human Resources Managers' Clubs (HRMCs) covering various trades and industries.

### Enquiries and claims

6. LD provides personal consultation service to employers and employees to answer enquiries on employment rights and obligations. Where there are employment claims, LD also provides free conciliation service to help both parties settle their disputes. Since the enactment of statutory PL, the numbers of PL-related enquiries and claims received by LD have stayed at a very low level. Specifically, up to the end of March 2016, LD received a total of 41 in-person enquiries on statutory PL (i.e. an average of about 3 in-person enquiries per month), mostly about operational issues such as eligibility for PL and PL pay, notification to the employer for taking PL, period and mode of taking PL, and calculation of PL pay, etc. The number of telephone enquiries concerning PL made to the Government hotline 1823 has been on the low side as well. So far, LD has not received complaints/comments on difficulties in complying with statutory PL, both on granting and taking of PL.

7. During the same period, LD received six claims which involved, among others, PL entitlement. The disputes over PL entitlement were mainly about the employees' eligibility for PL pay, calculation of PL pay and notification for taking PL. These claims were either resolved through conciliation in LD or referred to the Labour Tribunal or Minor Employment Claims Adjudication Board for adjudication. There has been no prosecution so far.

8. From the above information we observe that since the coming into effect of statutory PL, the implementation of PL has so far been smooth.

### **Review of the implementation of the law on PL**

9. When the Bill on statutory PL was first introduced into LegCo, the Government had undertaken to review the implementation of the new legislation on PL one year after its coming into operation and that the outcome would be reported to the Labour Advisory Board (LAB) and then LegCo Panel on Manpower. LD will soon embark on the review. The proposed scope and methodology for the review are set out below.

#### Scope of the review

10. It is proposed that the review would cover the following areas of statutory PL:

- (a) duration of PL;
- (b) making of PL pay;
- (c) notification requirements by employees to employers for taking PL;
- (d) documentary proof to be provided by employees to employers;
- (e) timing for submission of relevant documents by employees to employers;
- (f) arrangements concerning childbirths outside Hong Kong;
- (g) timing and mode/pattern of taking PL; and
- (h) other implementation and operational issues as may be identified.

## Review Methodology

11. According to a broad-brush assessment conducted in 2011, it is estimated that if there were statutory PL in 2010, 46 500 working fathers in establishments other than the Government (or about 3% of total male employees) who were Hong Kong residents with babies born in Hong Kong and recorded in the Birth Registry would have been eligible for paid PL. Using this assessment as a basis, the number of employees having taken statutory PL is estimated to be around tens of thousands each year. As the Government does not have relevant information on such employees who come from different establishments, LD considers it necessary to conduct surveys to collect the relevant information in a focused manner for systematic analysis.

12. Before the PL legislation was introduced into LegCo, LD had in 2012 conducted a survey on PL with member establishments of its 18 HRMCs. Building on the useful experience gained in the last survey, LD will in the upcoming review undertake two surveys: one again with member establishments of HRMC, and another with male employees of such establishments who have taken statutory PL since the implementation of statutory PL. Details are as follows:

- (a) survey with member establishments of HRMC - There are currently 18 HRMCs comprising around 2 000 member organisations from 16 industries/sectors, including banking, building services, catering, community and social services, as well as small and medium enterprises. Members attending HRMC meetings are mostly human resources personnel who in their daily work are conversant with the operation of employment benefits provided under EO. By conducting surveys with this group, it would help LD understand the relevant data and various implementation issues experienced by the employers on PL; and
- (b) survey with employees having taken PL employed by the member establishments of HRMC – LD will, through the network of HRMCs, survey those male employees having taken statutory PL and obtained their information and comments on the implementation of PL.

13. Apart from the above-mentioned two surveys, LD will also organise focus group discussions with relevant stakeholders with a view to conducting qualitative reviews of PL and related issues. Participants of the focus groups would come from members of the industry-based Tripartite Committees<sup>3</sup> of LD, including members from both employer and employee groups, as well as professional groups of different industries. Where appropriate, other stakeholders may also be invited.

### Timetable

14. LD plans to conduct in July to November 2016 the two surveys with member establishments of HRMCs and their male employees who have taken statutory PL; and the focus group discussions. Following the completion of the review and analysis of the information gathered, LD will report the outcome and recommendations on the future direction of PL to LAB and then the LegCo Panel on Manpower in the first quarter of 2017.

### **Consultation with LAB**

15. LD has briefed LAB on the matters set out in paragraphs 2 to 14 above. Members generally did not object to the proposed review methodology and timeline. While some Members urged an early completion of the review and considered that statutory PL should at least be five days like that of government employees, some Members however did not consider it necessary to commence a review within this year since the statutory PL has taken effect just over a year or so.

### **Advice Sought**

16. Members are invited to note the contents of this paper.

Labour and Welfare Bureau  
Labour Department  
May 2016

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<sup>3</sup> The Labour Department sets up tripartite committees to strengthen industry-based tripartite cooperation. There are at present nine tripartite committees covering catering, construction, property management, retail, hotel and tourism, warehouse and cargo transport, printing, theatre as well as cement and concrete industries. These committees comprise some 260 members from employers' association, trade unions and business establishments. They meet regularly and conduct discussions on industry-specific issues, thereby having free exchanges between representatives of employers and employees.