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Panel on Manpower

**Information note prepared by
the Legislative Council Secretariat for the meeting on 17 May 2016**

Provisions on maternity leave under the Employment Ordinance

Under the Employment Ordinance (Cap. 57) ("EO"), a female employee employed under a continuous contract¹ immediately before the commencement of her maternity leave and having given notice of pregnancy and her intention to take maternity leave to the employer is entitled to a continuous period of 10 weeks' maternity leave. The employee may also be granted an additional period of leave for not more than four weeks on the grounds of illness or disability due to the pregnancy or confinement. An employee is eligible for maternity leave pay for a period of 10 weeks if:

- (a) she has been employed under a continuous contract for not less than 40 week immediately before the commencement of scheduled maternity leave;
- (b) she has given notice of pregnancy and her intention to take maternity leave to her employer after the pregnancy has been confirmed; and
- (c) she has produced a medical certificate specifying the expected date of confinement if so required by her employer.

The daily rate of maternity leave pay is a sum equivalent to four-fifths of the average daily wages earned by an employee in the 12-month period preceding the "first day of the maternity leave". If an employee is employed for less than 12 months, the calculation shall be based on the shorter period.

¹ 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.

An employer who fails to grant maternity leave to a pregnant employee or fails to pay maternity leave pay to an eligible pregnant employee is liable to prosecution and, upon conviction, to a fine of \$50,000.

2. The Panel on Manpower ("the Panel") has not specifically discussed the provisions on maternity leave under EO. However, in the context of discussion on female employees' rights and employment protection, most members had from time to time expressed concern that the prevailing rates of maternity leave pay had been in force for a long time and called on the Administration to review the statutory maternity leave period and pay. Members have raised questions relating to pregnancy protection and entitlements to maternity leave under EO at the Council meetings of 9 April and 26 November 2014. The questions raised by Members and the Administration's replies are in **Appendices I** and **II** respectively.

3. The Administration will brief the Panel on the provisions on maternity leave under EO at the meeting on 17 May 2016.

Council Business Division 2
Legislative Council Secretariat
12 May 2016

Press Releases

LCQ16: Breastfeeding

Following is a question by the Dr Hon Elizabeth Quat and a written reply by the Secretary for Food and Health, Dr Ko Wing-man, in the Legislative Council today (April 9):

Question:

Some women have relayed to me that at present the support facilities for breastfeeding are insufficient, public education for promoting breastfeeding is ineffective, and support from members of the public and family members for breastfeeding is also inadequate and, as a result, quite a number of mothers of new-born babies have given up or prematurely stopped breastfeeding. In this connection, will the Government inform this Council:

(1) whether it will introduce legislation to require that breastfeeding rooms and baby-sitting rooms be provided in public places such as shopping malls in newly constructed buildings, and require that when renovation works are carried out for the public places in the existing buildings, such facilities have to be retrofitted; if it will, of the details and the legislative timetable; if not, the reasons for that;

(2) whether it will take measures to encourage private enterprises to provide staff who have resumed duty after maternity leave with an environment congenial to breastfeeding mothers, including the time and place for expressing breast milk, as well as refrigerating facilities for storing breast milk; if it will, of the details; if not, the reasons for that;

(3) among the offices of various government departments, of the current number and percentage of those providing support facilities for breastfeeding mothers; whether it will step up the supervision of various government departments in their implementation and enforcement of the policy of the Department of Health on support for breastfeeding, so as to further encourage the departments to provide staff who have resumed duty after maternity leave with an environment congenial to breastfeeding mothers; if it will, of the details and the timetable for all departments to fully implement the policy; if not, the reasons for that;

(4) whether it will consider lengthening the statutory maternity leave to enable working women to feel at ease in breastfeeding their babies at home for a longer period after giving birth, so that they will not stop breastfeeding prematurely owing to a lack of support facilities in their workplace; if it will, of the details and the legislative timetable; if not, the reasons for that;

(5) whether it will further step up the publicity on the merits of breastfeeding so as to strengthen support for breastfeeding in the community, with a view to reducing the pressure faced by women who breastfeed their babies; if it will, of the details; if not, the reasons for that;

(6) whether it will step up training for healthcare personnel of

maternal and child health centres in providing breastfeeding mothers with guidance and support on breastfeeding skills; if it will, of the details; if not, the reasons for that; and

(7) whether it will encourage private and public hospitals to provide more training courses on breastfeeding skills and knowledge for participation by pregnant women, mothers of newborn babies and their family members, and step up support measures to encourage more pregnant women to choose in advance to breastfeed their babies immediately after delivery; if it will, of the details; if not, the reasons for that?

Reply:

President,

Breastfeeding is an important public health issue. The World Health Organization recommends breastfeeding as the way of providing the best food for healthy growth and development of infants. It recommends that babies under six months of age should be exclusively breastfed, and then continue to be breastfed along with supplementary foods up to two years of age or beyond. The Government has all along endeavoured to promote, protect and support breastfeeding, and implement this policy through the Department of Health (DH) and the Hospital Authority (HA). Healthcare professionals provide counselling service for breastfeeding mothers, and help post-natal women acquire breastfeeding skills and tackle the problems they may encounter during breastfeeding.

Moreover, the Food and Health Bureau (FHB) set up a Committee on Promotion of Breastfeeding (the Committee) in early April 2014 under the chairmanship of the Under Secretary for Food and Health. Members include representatives from various professional healthcare bodies, academia as well as representatives of the organisations and individuals that have participated in the promotion of breastfeeding. The Committee will make specific recommendations to further strengthen the promotion, protection and support for breastfeeding. Its objective is to enhance the sustainability of breastfeeding and promote breastfeeding as a norm for baby care widely accepted by the general public. My reply to the various parts of the question is as follows.

(1) The Government has been actively promoting the provision of baby care facilities in government offices and public places. The Advisory Guidelines on Baby Care Facilities were developed in August 2008 for reference by government departments and public organisations. As at December 2013, there were 227 baby care rooms on government premises. In the coming few years, at least 50 new baby care rooms will be provided on various government premises, including facilities of the Leisure and Cultural Services Department (such as stadia, libraries, civic centres etc.), community facilities of the Home Affairs Department and new shopping malls in housing estates of the Housing Department.

The Government also issued the Practice Note on the Provision of Baby Care Rooms in Commercial Buildings (the Practice Note) in February 2009 to encourage and facilitate the provision of baby care rooms on private commercial premises. The response of property developers was positive. For instance, baby care rooms have been provided in shopping malls of The Link and the MTR Corporation, the Urban Renewal Authority has taken reference to the Practice Note and made the provision of baby care rooms a

mandatory tendering requirement for all medium-to-large shopping malls. Babycare and breastfeeding facilities have also been made available, according to needs, in some large shopping malls, department stores, hotels etc. Currently, the Government has no plan to introduce legislation to require the provision of babycare rooms in public places.

(2) and (3) The Government attaches great importance in providing appropriate support to breastfeeding mothers when they return to work. In this regard, the DH has been supportive of breastfeeding by its staff. It has made the work environment accommodative to breastfeeding and put in place supportive measures which include (i) making arrangements to meet the needs of staff in expressing breast milk during working hours; (ii) providing private space with comfortable chairs and electric outlets for breast pumps in the workplace; and (iii) providing refrigerating facilities for safe storage of breast milk. In addition, the FHB issued an advice on public health to individual government bureaux and departments in August 2013, encouraging them to implement the breastfeeding friendly workplace policy by putting in place the above measures so as to facilitate employees to continue breastfeeding after returning to work. Positive responses have been received. According to the information provided to the DH by bureaux and departments in March 2014, some 40 bureaux and departments have already implemented or will implement the breastfeeding friendly workplace policy. We believe that other bureaux and departments will adopt such policy gradually. The DH has also published a leaflet entitled "An Employee's Guide to Combining Breastfeeding with Work" for reference by breastfeeding and working mothers and members of the public. We hope that as the largest employer in Hong Kong, the Government can set an example in promoting the breastfeeding friendly workplace policy and encourage private enterprises to implement the same policy. Moreover, the Committee will provide specific recommendations to encourage private enterprises to implement the breastfeeding friendly workplace policy.

(4) The Labour and Welfare Bureau indicates that under the existing provisions of the Employment Ordinance (EO), a pregnant employee is entitled to ten weeks' maternity leave if she has been employed under a continuous contract immediately before the commencement of maternity leave. If the employee encounters health problems before or after delivery, the employer must allow her to take an additional period of leave for a maximum of four weeks. If the employee takes additional leave with the agreement of the employer, the continuity of her employment contract will not be affected. Moreover, if agreed by the employer, the employee may choose to commence her maternity leave two weeks instead of four weeks before the expected date of confinement and take the remaining maternity leave after she has given birth. This flexible way of taking maternity leave enables the employee to have more time for breastfeeding and recuperation after confinement.

The Administration is of the view that the provisions on maternity protection in the EO, including those on the duration and the taking of maternity leave, have provided comprehensive protection for pregnant employees in various aspects and have struck a reasonable balance between the interests of both the employers and the employees. Currently, the Government has no plan to extend the duration of statutory maternity leave.

(5) The DH has been actively promoting and supporting breastfeeding through different channels. These include (i)

training maternal and child health professionals and producing a self-learning VCD on breastfeeding; (ii) providing health information on breastfeeding for parents through workshops, production and distribution of educational materials such as booklets and videos, as well as the webpage of Family Health Service of the DH; (iii) providing guidance and skills support for breastfeeding mothers through the Maternal and Child Health Centres (MCHCs) and the breastfeeding hotline; and (iv) organising publicity activities (e.g. showing of promotional videos on TV and buses, advertising on bus bodies, attending media interviews, etc.) to enhance public awareness of breastfeeding.

(6) and (7) The DH provides breastfeeding training regularly for newly appointed doctors and nurses at the MCHCs and organises continuing education courses regularly for serving healthcare professionals.

In addition, to strengthen training about breastfeeding for local doctors, the DH, in collaboration with a number of professional bodies, produced a breastfeeding learning package in 2011 targeted at obstetricians, pediatricians, doctors working in accident and emergency departments, family physicians and nurses, who provide support for pregnant and breastfeeding women. The aim is to foster their understanding of the breastfeeding promotion policy and update them on the latest information about breastfeeding so that they can render effective counselling service and professional support to local mothers and their babies.

The DH also organises training courses from time to time to enhance the breastfeeding knowledge and skills of healthcare professionals. A train-the-trainer course on breastfeeding co-organised by the DH and the HA was held in February 2014, which was attended by healthcare professionals from the DH, the HA and private hospitals.

The HA provides local mothers and their family members with sufficient information on breastfeeding skills and knowledge through various channels such as antenatal and postnatal health talks, and production of VCDs for lending to pregnant women and their family members. Post-natal workshops are conducted on group or individual basis in post-natal wards and special care baby units to equip breastfeeding mothers with the necessary skills and help working mothers prepare for sustained breastfeeding after returning to work. In order to create a favourable environment for breastfeeding, public hospitals encourage mothers to get skin-to-skin contact with their newborn babies as early as possible. Arrangements will also be made as far as possible for mothers to stay with their babies in the same ward round-the-clock so that they can feed according to the needs of their babies. As at March 2014, there were 73 designated babycare rooms in the HA as well as its public hospitals and clinics.

In addition, the HA announced in August 2013 that it would implement by phases an accreditation scheme on Baby Friendly Hospital (BFH) in its eight public hospitals with maternity wards. Among these hospitals, the Queen Elizabeth Hospital, Queen Mary Hospital and Kwong Wah Hospital are the first batch of hospitals participating in the scheme. The objective of the BFH accreditation scheme is to support more mothers to sustain breastfeeding through the provision of services and guidance.

Ends/Wednesday, April 9, 2014
Issued at HKT 18:01

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Appendix II

Press Releases

LCQ3: Elimination of discrimination against women

Following is a question by the Hon Sin Chung-kai and a reply by the Secretary for Labour and Welfare, Mr Matthew Cheung Kin-chung, in the Legislative Council today (November 26):

Question:

At its meeting held on the 23rd of last month in Geneva, the United Nations (UN) Committee on the Elimination of Discrimination against Women (the Committee) considered the report submitted by the Government of the Hong Kong Special Administrative Region (HKSAR) on Hong Kong's fulfilment of her obligations under the UN Convention on the Elimination of All Forms of Discrimination against Women. The Committee published its concluding observations on the 7th of this month, putting forward a number of recommendations to HKSAR Government. In this connection, will the Executive Authorities inform this Council:

(1) as the Committee is concerned that maternity leave in Hong Kong is limited to 10 weeks which does not comply with international standards, and urges the authorities to increase the maternity leave period, as well as their efforts to promote the use of flexible working arrangements and paternity leave to encourage men to participate equally in childcare responsibilities, whether the authorities will accept and implement the Committee's recommendations with a view to complying with international standards;

(2) as the Committee has pointed out the low level representation of women in politics in HKSAR, and recommends the authorities to conduct a study on the impact of the electoral system of functional constituencies on the equal participation of women in political life, whether the authorities will conduct such a study; if they will, of the details; if not, the reasons for that; and

(3) as the Committee is concerned that women foreign domestic helpers (FDHs) are subjected to abuse and unfavourable working conditions, and urges the authorities to strengthen the protection of FDHs from discrimination and abuse by employers and by recruitment and placement agencies, whether the authorities will accept the recommendation?

Reply:

President,

My reply to the question raised by the Hon Sin Chung-kai is as follows:

(a) Under the Employment Ordinance (EO), an eligible pregnant employee is entitled to a continuous period of 10 weeks' maternity leave (ML) with pay. If the employee encounters health problems owing to pregnancy or confinement before or after delivery, she is entitled to an additional period of leave up to four weeks. If the employee, by an agreement with the employer, takes further leave, the continuity of her employment shall not be affected.

Regarding paternity leave (PL), the Government introduced on March 26, 2014 the Employment (Amendment) Bill 2014 into the Legislative Council (LegCo) to provide for eligible male employees statutory PL of three days. The relevant Bills Committee of LegCo has completed scrutinising the Bill. We are discussing with LegCo on the date of resuming the Second Reading debate of the Bill. We earnestly hope that the Bill can be passed as soon as possible to benefit the eligible employees who are fathers-to-be.

Given that the varying economic situations and social systems in different places, individual places have to formulate their own employee benefit standards according to their individual circumstances. Taking ML as an example, the cost of ML pay for female employees is fully borne by individual employers in Hong Kong, which is different from the arrangement adopted in some other places around the world where ML pay is fully or partially financed by a social insurance system with contributions from both employers and employees. We consider that the existing provisions on maternity protection under the EO in Hong Kong have offered suitable protection to pregnant employees, while striking a reasonable balance between the interests of employers and employees. In assessing whether the duration of ML should be extended, we have to take into consideration our social and economic situation, and also whether the community has a general consensus on the feasibility of this suggestion.

I have to point out that the EO only serves to prescribe the minimum level of rights and benefits which the employers have to provide to their employees. The Government will continue to actively encourage employers to adopt employee-oriented good people management practices and, having regard to their own circumstances and the needs of their employees, implement family-friendly measures to enable their employees to take care of family needs through the adoption of more flexible working hours. Employers are also encouraged to draw up, in consultation with their employees, employment terms that are more favourable than those stipulated under the EO.

(b) The Hong Kong Special Administrative Region (HKSAR) Government will, in accordance with the law, ensure that all public elections are conducted in an open, fair and honest manner. Article 26 of the Basic Law stipulates that permanent residents of the HKSAR shall have the right to vote and the right to stand for election in accordance with the law. The legislation governing voter registration or the eligibility of candidates, etc. in the functional constituencies of LegCo does not contain any special arrangements on the grounds of gender.

(c) Foreign domestic helpers (FDHs) enjoy equal protection and benefits as local employees under our labour laws, e.g. the EO and Employees' Compensation Ordinance. FDHs also enjoy further protection provided by the Standard Employment Contract, including the Minimum Allowable Wage, free accommodation, free food (or food allowance), free medical benefits and passages to / from their places of domicile.

We consider that ensuring that FDHs, employers, employment agencies (EAs) as well as the general public are fully aware of the rights of FDHs is an effective way of preventing FDHs from being exploited. As such, the Government has already stepped up the relevant publicity and promotional efforts in different channels, such as distributing information packs and pamphlets at

the airport and through various government departments, staging information kiosks at FDHs' popular gathering places, placing advertisements in local Filipino and Indonesian newspapers, and screening television and radio Announcement of Public Interests (API) in various local media to disseminate information on the rights of FDHs and on the channels for their seeking assistance. The Labour Department (LD) also participates in briefings and cultural activities organised by various consulates for newly-arrived FDHs from time to time, and has intensified collaboration with the consulates of the major FDH exporting countries in Hong Kong, including setting up a regular liaison mechanism for enhancing co-operation and exchanging information on problematic EAs, employers and FDHs.

The Government has always been committed to protecting the rights of FDHs in Hong Kong. We do not tolerate any malpractices of the employers or the EAs and will take rigorous enforcement and prosecution actions against any contraventions of laws. Those FDHs who suspect that they are being exploited or abused should come forward and report their cases to the authorities as soon as possible. Upon receipt of complaints, the Government will promptly investigate and will initiate prosecution if there is sufficient evidence. Furthermore, if satisfied on reasonable grounds, LD may revoke or refuse to renew the licences of EAs involved. At the same time, the Government has increased the frequency of inspections of EAs and is considering to issue a Code of Practice for the industry in a continuing process to strengthen the regulation of EAs.

Ends/Wednesday, November 26, 2014
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