

For information  
On 18 July 2017

## **Legislative Council Panel on Manpower**

### **Provisions on maternity leave under the Employment Ordinance**

#### **Introduction**

This paper briefs Members on the provisions on maternity leave under the Employment Ordinance (“EO”) (Cap. 57).

#### **Existing provisions**

2. The existing EO provisions have accorded protection for pregnant employees in the aspects of health, employment protection, maternity leave and maternity leave pay.

3. Under EO, a pregnant employee who has been employed under a continuous contract<sup>1</sup> immediately before the commencement of her maternity leave is entitled to a continuous period of 10 weeks’ maternity leave. The employee may commence her 10-week maternity leave 4 weeks before the expected date of confinement. With the agreement of her employer, a pregnant employee may choose to commence her 10-week maternity leave from 2 to 4 weeks before the expected date of confinement.

4. A pregnant employee who has been employed under a continuous contract for not less than 40 weeks immediately before the commencement of maternity leave is entitled to maternity leave pay. The maternity leave pay is a sum equivalent to four-fifths of the employee’s average daily wages. If confinement occurs later than the expected date of confinement, the employee is entitled to a further leave period equal to the number of days from the day after the expected date of confinement to the actual date of confinement. If the employee encounters health problems owing to pregnancy or confinement, the employer shall grant to the employee an

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<sup>1</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.

additional period of leave of up to four weeks. Besides, any day on which a pregnant employee is absent from work to attend medical examination in relation to her pregnancy, post confinement medical treatment or miscarriage shall be counted as a sickness day if supported by an appropriate medical certificate. With the agreement of the employer, the employee may take further leave and, in such situation, the continuity of her employment shall not be affected.

5. Apart from paid maternity leave, EO explicitly prohibits employers from allocating to pregnant employees work involving handling of heavy materials, working in places where gas injurious to pregnancy is generated, or doing other work injurious to pregnancy. Further, an employer who dismisses an employee during her pregnancy or maternity leave (except for summary dismissal owing to the employee's serious misconduct) commits an offence and is liable, upon conviction, to a maximum fine of \$100,000.

6. Regarding maternity benefits, the practices of different places vary according to their unique circumstances in terms of economic development, social security and social welfare systems, etc. In Hong Kong, maternity leave pay is fully borne by individual employers. Hence it is necessary to strike a reasonable balance between the interests of employees and the affordability of employers, in particular that of the small and medium-sized enterprises (SMEs). In many other places around the world, maternity leave pay is funded by the social security system with contributions from both employers and employees. As such it is not appropriate to make a direct comparison between Hong Kong and other places in maternity leave arrangements.

7. The existing provisions on maternity protection under EO have provided a certain level of protection for pregnant employees and have struck a reasonable balance between the interests of employers and employees. In assessing whether to further improve maternity benefits for pregnant employees, we have to take into consideration Hong Kong's socio-economic situation and whether there is consensus in the community.

## **Conclusion**

8. EO serves only to prescribe the basic rights and benefits that employers must provide to their employees. Through a wide range of publicity channels and diversified promotional activities, the Labour Department will continue to strengthen public awareness of EO and actively encourage employers to adopt "employee-oriented" good people

management measures having regard to the unique business environment and operation of their industries and individual enterprises. Such measures include offering their employees with benefits that are more favourable than the statutory requirements of EO, including maternity leave and maternity leave pay, which will help foster employees' sense of belonging to enterprises, boost staff morale, enhance productivity and competitiveness, thereby creating a win-win situation for employers and employees. Meanwhile, the Government will, having regard to the pace of Hong Kong's social changes and economic developments, and on the premise of striking a reasonable balance between the interests of employers and employees, continue to give careful consideration to improving employees' rights and benefits progressively.

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