

**立法會**  
***Legislative Council***

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the Administration)

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**Bills Committee on Employment (Amendment) Bill 2018**

**Minutes of meeting**  
**held on Tuesday, 17 July 2018, at 2:30 pm**  
**in Conference Room 3 of the Legislative Council Complex**

**Members present** : Hon WONG Ting-kwong, GBS, JP (Chairman)  
Hon Kenneth LEUNG (Deputy Chairman)  
Hon LEUNG Yiu-chung  
Hon WONG Kwok-kin, SBS, JP  
Hon YIU Si-wing, BBS  
Dr Hon KWOK Ka-ki  
Hon KWOK Wai-keung, JP  
Dr Hon Fernando CHEUNG Chiu-hung  
Dr Hon Helena WONG Pik-wan  
Hon IP Kin-yuen  
Dr Hon Elizabeth QUAT, BBS, JP  
Hon POON Siu-ping, BBS, MH  
Hon HO Kai-ming  
Hon Holden CHOW Ho-ding  
Hon SHIU Ka-fai  
Hon SHIU Ka-chun  
Hon CHEUNG Kwok-kwan, JP  
Hon HUI Chi-fung  
Hon LUK Chung-hung, JP  
Hon Gary FAN Kwok-wai  
Hon Tony TSE Wai-chuen, BBS

**Public Officers  
attending** : Item II

Dr LAW Chi-kwong, GBS, JP  
Secretary for Labour and Welfare

Ms Melody LUK, JP  
Assistant Commissioner for Labour (Labour Relations)

Mr Raymond LIANG  
Chief Labour Officer (Labour Relations)  
Labour Department

Miss Annie CHAN  
Senior Labour Officer (Labour Relations)  
Labour Department

Mr Vincent FUNG  
Government Counsel  
Department of Justice

**Clerk in  
attendance** : Miss Betty MA  
Chief Council Secretary (2) 1

**Staff in  
attendance** : Mr Alvin CHUI  
Assistant Legal Adviser 3

Ms Rita LAI  
Senior Council Secretary (2) 1

Mr Raymond LAM  
Senior Council Secretary (2) 7

Ms Gloria TSANG  
Council Secretary (2) 1

Ms Kiwi NG  
Legislative Assistant (2) 1

Miss Lulu YEUNG  
Clerical Assistant (2) 1

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## **I. Election of Chairman**

### Election of Chairman

Mr WONG Ting-kwong, member who had the highest precedence in Council among members of the Bills Committee present, presided over the election of the Chairman. Mr WONG Ting-kwong called for nominations for the chairmanship of the Bills Committee. Mr WONG Ting-kwong was nominated by Mr LUK Chung-hung and the nomination was seconded by Mr Holden CHOW. Mr WONG Ting-kwong accepted the nomination. Mr WONG Ting-kwong called for other nominations.

2. Mr Kenneth LEUNG was nominated by Dr Helena WONG and the nomination was seconded by Dr Fernando CHEUNG. Mr Kenneth LEUNG accepted the nomination. As Mr WONG Ting-kwong was nominated for the office, Mr WONG Kwok-kin, member of the highest precedence among those present not nominated for the office, took over from Mr WONG Ting-kwong to preside over the election.

3. As there was no other nomination, Mr WONG Kwok-kin then proceeded to the election and announced that voting be conducted by secret ballot. After all the members present had cast their votes, Mr WONG Kwok-kin invited Mr LUK Chung-hung and Dr Helena WONG, who had nominated the two candidates respectively, to monitor the counting of votes.

4. After the votes were counted, Mr WONG Kwok-kin announced that 12 members voted for Mr WONG Ting-kwong and 9 members voted for Mr Kenneth LEUNG respectively. Mr WONG Kwok-kin declared Mr WONG Ting-kwong elected as the Chairman of the Bills Committee. Mr WONG Ting-kwong then took the chair.

### Election of Deputy Chairman

5. The Chairman called for nominations for the deputy chairmanship of the Bills Committee. Mr Kenneth LEUNG was nominated by Dr Helena WONG and the nomination was seconded by Mr Gary FAN. Mr Kenneth LEUNG accepted the nomination. The Chairman called for other nominations.

6. As there was no other nomination, the Chairman declared Mr Kenneth LEUNG elected as Deputy Chairman of the Bills Committee.

## **II. Meeting with the Administration**

7. The Bills Committee deliberated (index of proceedings attached at **Annex**).

8. Members requested the Administration to relay to the Education Bureau to consider increasing the allocation of the Teacher Relief Grant to meet the cost for hiring supply teachers when their male teachers taking statutory paternity leave and specifying that the funding should be used for the designated purpose.

## **III. Any other business**

9. Members agreed that another meeting would be scheduled to consider individual members' proposed amendments to the Bill. The Chairman said that members would be informed of the meeting arrangement in due course.

10. There being no other business, the meeting ended at 4:26 pm.

Council Business Division 2  
Legislative Council Secretariat  
10 September 2018

**Proceedings of meeting of the Bills Committee on  
Employment (Amendment) Bill 2018  
held on Tuesday, 17 July 2018, at 2:30 pm  
in Conference Room 3 of the Legislative Council Complex**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s) / Discussion</b>	<b>Action Required</b>
000000 - 001336	Mr WONG Ting-kwong Mr LUK Chung-hung Mr Holden CHOW Dr Helena WONG Dr Fernando CHEUNG Mr Kenneth LEUNG Mr WONG Kwok-kin	Election of Chairman	
001337 - 001546	Chairman Dr Helena WONG Mr Kenneth LEUNG Mr WONG Kwok-kin	Election of Deputy Chairman	
001547 - 002024	Chairman Admin	Briefing by the Administration on the background and contents of the Employment (Amendment) Bill 2018 ("the Bill").	
002025 - 002521	Chairman Mr Tony TSE Admin	Mr Tony TSE was in support of the legislative proposal of increasing the statutory paternity leave ("PL") from three days to five days as well as progressive enhancement of employees' rights and benefits.  In response to Mr TSE's enquiry, the Administration advised that it had no plan to review the PL benefits for government employees at the moment.	
002522 - 003020	Chairman Mr IP Kin-yuen Admin	Mr IP Kin-yuen welcomed the legislative proposal of extending the statutory PL duration and hoped that it would be further extended in the light of the socio-economic development in Hong Kong.  Mr IP expressed concern about the use of the Teacher Relief Grant ("TRG") to hire supply teachers during PL taken by male teachers in the schools with an incorporated management committee, given that TRG could be used for other purposes at the discretion of the schools concerned.	

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		<p>At Mr IP's request, the Administration agreed to relay to the Education Bureau ("EDB") his concern over the use of TRG for designated purposes as well as his request for increasing the allocation for TRG.</p> <p>The Administration further responded that where an increase of PL from three to five days had caused concern from primary or secondary schools over the possible operational difficulties this might bring, the worries of small and micro establishments over their manpower deployment should not be overlooked, as they had only a few employees.</p>	<b>Admin</b>
003021 - 003529	Chairman Mr SHIU Ka-chun Admin	<p>Mr SHIU Ka-chun's concerns/enquiries and the Administration's response that:</p> <ul style="list-style-type: none"> <li>(a) there were a total of 16 employment claims relating to PL arrangements since the implementation of statutory PL from February 2015;</li> <li>(b) the cost impact assessment in the event of enhancing the statutory PL benefits was conducted by the Office of the Government Economist based on the number of eligible male employees for PL benefits, i.e. number of working fathers in establishments other than the Government who were Hong Kong residents with their babies born in Hong Kong and recorded in the Birth Registry. The estimated additional cost for extending the duration of PL was a broad-brush assessment only. With the increase of statutory PL from three days to five days, it would be more likely for establishments to engage substitute workers; and</li> <li>(c) PL was formulated with reference to the provisions on maternity leave ("ML") and miscarriage did not apply. Noting the recent concerns over various issues connecting with miscarriage, the Administration would look into the definition of miscarriage under the Employment Ordinance (Cap. 57) ("EO") when conducting the review on ML.</li> </ul>	

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003530 - 003934	Chairman Dr Helena WONG Admin	<p>Dr Helena WONG's remarks that the Democratic Party welcomed the introduction of statutory PL in 2015 and had all along been in support of extending the duration of statutory PL. The Democratic Party would consider proposing the following amendments to the Bill:</p> <p>(a) extending the duration of statutory PL to seven days; and</p> <p>(b) increasing the PL pay rate to full pay.</p> <p>The Administration responded that the proposed increase of statutory PL from three days to five days was a hard-earned consensus between employer and employee representatives of the Labour Advisory Board ("LAB") which the Administration would respect. The current proposal in the Bill was considered as the only acceptable option and the Administration would not consider amendments proposed to the Bill.</p>	
003935 - 004633	Chairman Dr Fernando CHEUNG Admin	<p>Dr Fernando CHEUNG's views/concerns and the Administration's response that:</p> <p>(a) sharing the views on the various benefits brought about by an extended period of PL, including those relating to the male employees' partners, families as well as productivity and economic development and taking into account overseas research studies, the Administration therefore proposed to increase the duration of statutory PL from three days to five days; and</p> <p>(b) as mentioned earlier, the Administration was conducting a review of ML, including the definition of miscarriage under EO.</p> <p>Dr CHEUNG's query whether the cost impact assessment of increasing the PL days had been overestimated as small and medium-sized enterprises ("SMEs") seldom engaged substitute workers when their male employees took PL. That said, the additional cost impact of PL per annum represented only an insignificant proportion to the total staff cost per annum.</p>	

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004634 - 005125	Chairman Mr HUI Chi-fung Admin	<p>Mr HUI Chi-fung's support of extending the duration of statutory PL to seven days. His disappointment at the Administration's refusal to consider to further increase the number of PL days.</p> <p>Mr HUI's enquiries/concerns and the Administration's response that:</p> <p>(a) no amendments to the Bill would be considered acceptable. In considering the duration of PL, the Administration had made reference to the findings of the review of the implementation of statutory PL, the ability of employers including SMEs to afford an increase in PL duration, and the operation of PL since 2015. The proposal of increasing the statutory PL from three days to five days would help facilitate male employees in taking up their family responsibilities around the time of their children's birth; and</p> <p>(b) the Administration would encourage individual enterprises to offer more favourable PL and related benefits than those required by EO, having regard to their operational needs and own circumstances.</p>	
005126 - 005639	Chairman Mr LEUNG Yiu-chung Admin	<p>Mr LEUNG Yiu-chung's query about the representativeness of the employer and employee members on LAB and how LAB reached consensus on the proposal of increasing the number of statutory PL days to five days only. Mr LEUNG's suggestion of holding another meeting to receive public views on the Bill.</p> <p>Mr LEUNG's view that it was inappropriate to pitch the rate of PL pay at four-fifths of the employee's average daily wages as in the case of ML and sick leave, which had been in force for many years. The Administration should conduct reviews of the relevant pay rates.</p> <p>The Administration responded that the Labour Department ("LD") had conducted the review of the implementation of statutory PL on the basis of the scope and methodology endorsed by LAB. Having considered the views of employees and the affordability of employers including SMEs</p>	

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		and the operational experience of PL since 2015, it was recommended that except for the increase in the number of statutory PL days to five days, other features of the PL regime would remain unchanged, including the rate of PL pay.	
005640 - 010110	Chairman Mr HO Kai-ming Admin	<p>Mr HO Kai-ming considered that the proposed increase in the number of PL days to five days was still inadequate for fathers to take care of their newborns and partners. That said, the Hong Kong Federation of Trade Unions expressed support for the Bill in a bid to allow early implementation of the proposed increase in PL days. To further enhance the PL benefits, he would propose an amendment to the Bill to the effect that the Administration should review the PL days in one year's time after the coming into operation of the enacted Ordinance.</p> <p>Regarding Mr HO's proposed amendment, the Chairman's advice that the Administration could consider giving an undertaking to conduct a review of the PL days.</p> <p>The Administration advised that it would be difficult to provide a concrete timetable for the review of statutory PL after the coming into operation of the enacted Ordinance. That said, the Government had in fact been reviewing the labour legislation from time to time.</p>	
010111 - 010620	Chairman Mr YIU Si-wing Admin	<p>Mr YIU Si-wing's concern about the difficulties faced by SMEs and micro-enterprises in manpower deployment if the duration of statutory PL was extended to five days or even to seven days. Mr YIU was not in support of setting a review timetable for the duration of PL days. He called on the Administration to strike a balance in enhancing the PL benefits, having regard to employers' affordability and employees' interest.</p> <p>The Administration advised that while it could not confirm a date for further review of statutory PL, it would adopt an open mind in improving the labour rights and benefits whenever required.</p> <p>In response to Mr YIU's enquiry, the Administration assured members that it would</p>	

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		duly consult the employers' and employees' groups and consider the implementation of the statutory PL if further legislative amendments were to be introduced to enhance the PL benefits in future.	
010621 - 011319	Chairman Dr KWOK Ka-ki Admin	<p>Dr KWOK Ka-ki's concerns/enquiries and the Administration's response that:</p> <p>(a) the current-term Government had to deal with a number of important and priority labour issues, including the abolition of the "offsetting" arrangement under the Mandatory Provident Fund System and the review of statutory ML. The Government did not have a review timetable for statutory PL after its enhancement to five days; and</p> <p>(b) SMEs might approach LD for employment services in case they needed to engage casual workers during PL taken by their employees.</p>	
011320 - 011943	Chairman Dr Fernando CHEUNG Admin	Dr Fernando CHEUNG's view that the Labour Party called for extending the PL duration to seven days under the current legislative proposal, and further increasing to 14 days eventually and the cost of the PL pay to be equally financed by employers and the Government. Dr CHEUNG drew members' attention to the practice of parental/family leave as well as extended period of PL in overseas countries and the benefits brought to the families concerned and career development/participation in the labour force according to some research studies.	
011944 - 012315	Chairman Mr IP Kin-yuen Admin	<p>Mr IP Kin-yuen's reiteration of the deficiency of TRG which was introduced in 2005.</p> <p>At Mr IP's request, the Administration agreed to relay his suggestions to EDB as follows:</p> <p>(a) to consider allocating additional funding specifically for schools to hire supply teachers when their male teachers take statutory PL; or</p> <p>(b) to consider increasing the allocation of TRG to meet the extra cost for hiring supply</p>	<b>Admin</b>

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		teachers upon implementation of the five-day PL and specify that the additional funding should be used for the designated purpose.	
012316 - 012711	Chairman Mr HO Kai-ming Admin	<p>Mr HO Kai-ming's enquiries/concerns and the Administration's response that:</p> <p>(a) while the Administration did not have information on the correlation between the duration of PL and labour force participation rate and fertility rate, the Administration however acknowledged the benefits and importance of extended PL brought to growth of children, family life and support to mothers as well as the community as a whole; and</p> <p>(b) regarding PL entitlement in miscarriage cases, while the purposes of PL were different from those of ML, the Administration would look into the definition of miscarriage under EO during the review of ML.</p>	
012712 - 012832	Chairman Dr Helena WONG	Members agreed that it was not necessary for the Bills Committee to receive public views on the Bill.	
012833 - 013048	Chairman Admin	<p><u>Clause-by-clause examination of the Bill</u></p> <p>Members raised no questions on clauses 1 to 3 of the Bill.</p>	
013049 - 013433	Chairman Deputy Chairman Admin	<p><u>Long title</u></p> <p>In response to the Deputy Chairman's enquiry about the drafting of the long title of the Bill, the Administration clarified that the words "15 June 2018" in the long title sought to state explicitly the version of EO that was in force when the Bill was gazetted. The Bill, if passed, would come into operation on a date to be appointed by the Secretary for Labour and Welfare by notice published in the Gazette.</p>	

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013434 - 014956	Chairman Dr Helena WONG ALA3 Admin Mr HO Kai-ming	<p>Dr Helena WONG's enquiry whether the drafting of the long title of the Bill, i.e. specifying increasing the PL entitlement from three to five days, would render individual members' proposed amendments to the number of PL days and PL pay outside scope of the Bill.</p> <p>Assistant Legal Adviser's advice that the admissibility of a proposed amendment to a bill was a matter to be decided by the President of Legislative Council ("LegCo"). In considering the admissibility of amendments proposed by individual members to a bill, the President would consider, among others, whether an amendment to a bill was relevant to the subject matter of the bill as laid down in rule 57(4)(a) of the Rules of Procedure. When considering the subject matter of the bill, the President would take into account the long title, the Explanatory Memorandum and the provisions of the bill, the LegCo Brief on the bill and other relevant factors.</p> <p>The Administration advised that it would, after consulting the Department of Justice, provide its views on individual members' proposed amendments, if any, to the Bill.</p>	
014957 - 015826	Chairman Mr LEUNG Yiu-chung Dr Helena WONG Dr Fernando CHEUNG Admin Dr KWOK Ka-ki Mr HO Kai-ming Mr HUI Chi-fung Deputy Chairman	<p>The Chairman's response to Dr KWOK Ka-ki's suggestion of receiving public views on the Bill.</p> <p>Discussion on how to deal with draft amendments proposed by members/motions to be moved by members.</p> <p>Legislative timetable.</p>	
015827 - 020039	Chairman Dr Helena WONG	Scheduling of next meeting.	