

立法會 *Legislative Council*

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Bills Committee on Employment (Amendment) Bill 2018

Background brief prepared by the Legislative Council Secretariat

Purpose

This paper provides background information on the Administration's proposal to increase the provision of statutory paternity leave ("PL") from three to five days and summarizes the past discussions by the Panel on Manpower ("the Panel") on the related issues.

Background

2. Following the passage of the Employment (Amendment) Bill 2014 at the Council meeting of 18 December 2014, statutory PL has come into operation since 27 February 2015. An eligible male employee is entitled to three days' PL for each confinement of his spouse/partner at a rate of four-fifths of his average daily wages if he fulfils the following requirements:

- (a) he is the father¹ of a new born child or a father-to-be;
- (b) he has been employed under a continuous contract²; and
- (c) he has given the required notification.³

¹ The employee is not required to be married to the mother of the new born child for entitlement to statutory PL. There is also no restriction on the birthplace of the newborn.

² Under the Employment Ordinance, 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.

³ The employee must notify his employer of: (a) his intention to take PL at least three months before the expected date of delivery of the child (exact date of leave not required at this stage); and (b) the date of his PL before taking the leave. If the employee fails to give the aforesaid three months' advance notice to the employer, he must notify the employer of his date of PL at least five days before that date.

An eligible male employee may take PL at any time during the period from four weeks before the expected date of delivery of the child to 10 weeks beginning on the actual date of delivery of the child. He may take all three days of PL in one go or on separate days. An employer who fails to grant PL or PL pay to an eligible employee is liable to prosecution and, upon conviction, to a fine of \$50,000.

3. The Administration has undertaken to review the implementation of PL one year after its coming into operation and report to the Labour Advisory Board ("LAB"). At the Panel's meeting on 19 December 2017, the Administration briefed the Panel on the outcome of the review of the implementation of statutory PL conducted by the Labour Department in the period between July and December 2016 and the proposal to increase the statutory PL.

The Employment (Amendment) Bill 2018

4. The Employment (Amendment) Bill 2018 mainly seeks to amend the Employment Ordinance (Cap. 57) ("EO") to increase PL entitlement from three days to five days in respect of a child born on or after the commencement date to be appointed by the Secretary for Labour and Welfare for the enacted Ordinance if the Bill is passed.

Deliberations of the Panel

5. When the Panel was briefed on the outcome of the review of the implementation of statutory PL, members noted that having considered the views of employees and the affordability of employers and the operation of PL since 2015, the Administration recommended that (a) statutory PL be increased from three to five days; (b) the current statutory PL pay rate be maintained; and (c) no changes be made to the other areas of PL, including requirements on notification, the specified timeframe for taking PL and required documentary proof. The major views and concerns of members are summarized in the ensuing paragraphs.

Duration of statutory paternity leave

6. Members raised no objection to the Administration's proposal of increasing statutory PL from three to five days. Some members were in support of improving labour rights and benefits in a progressive approach. They also expressed concern about the difficulties in business operation, in particular manpower deployment, faced by micro- and small-sized enterprises, in the event that the number of PL days was further increased.

7. Some members, however, expressed disappointment at the slow progress in enhancing the statutory PL benefits. These members pointed out that as shown from the results of questionnaire survey with employees during the review of PL arrangements, of the 188 employee respondents, 125 (66.5%) took extra leave ranging from one to more than 15 days in addition to the statutory PL around the time of their child's birth, which revealed the inadequacy of the statutory PL days. They considered that the duration of statutory PL should be increased to seven days.

8. Noting that the employer and employee representatives on LAB agreed that PL could be further reviewed at an appropriate time, some members asked whether consideration would be given to specifying the timeframe for the review, with a view to further extending the duration of statutory PL. Alternatively, these members called on the Administration to consider working out a legislative timetable for progressively increasing the number of PL days, having regard to the fact that many employers had indicated in the review their preference for a progressive approach in enhancing the PL benefits. This could reduce the contention between the labour and business sectors as well as promote family-friendly employment practices. These members stressed that the Administration should not incline to the business sector's interest in considering the improvement of the PL benefits.

9. The Administration advised that according to the outcome of the review, employees in general wished to have a longer duration of PL while some employers would prefer gradual improvement. It was the Government's policy to gradually improve employees' benefits in a way commensurate with the pace of Hong Kong's socio-economic development. The proposed increase in the number of PL days from three to five was considered appropriate, taking into account the interests of employees and affordability of employers, given that most of the enterprises in Hong Kong were of small-and medium-sized. The Administration further advised that it reviewed labour rights and benefits from time to time. Moreover, employers were encouraged to offer PL benefit above the statutory requirements, having considered their own circumstances.

Rate of PL pay

10. Some members considered it inappropriate to regard the nature of PL the same as maternity leave ("ML") and sick leave ("SL"), and pitch the rate of statutory PL pay at four-fifths of the employee's average daily wages as in the case of ML and SL pay. Some members also expressed concern about the disparity between the rate of PL pay for employees in the private sector and the civil service as government employees had already been granted five-day full pay PL. Given that the prevailing rates of ML pay and sickness allowances had been in force for several decades, these members called on the Administration to legislate for full paid PL and review the rates of ML pay and sickness allowance.

11. According to the Administration, it was LAB's view that, where appropriate, the relevant requirements and details of statutory PL should be aligned with those applicable to ML under EO. The Administration considered that PL, similar to SL and ML, was incidental to certain employees for meeting their personal needs and should therefore be remunerated at the same rate as that for the latter types of leave. The Administration also drew members' attention to the stipulations in the relevant International Labour Conventions which stated that ML pay should be pitched at not less than two-thirds of the employee's previous earnings. In many other places, PL pay was either not paid at full rate or subject to a cap, or both.

12. Some members suggested that the Administration should consider providing financial subsidy to employers to cover the additional cost arising from increasing PL to seven days with full pay to their eligible employees. The Administration considered that the proposal would involve a fundamental policy change. The Administration stressed that the legislation only set out a statutory threshold. It was noted that some employers had been offering PL benefits to their employees above the statutory requirements. That said, it would continue to encourage employers to offer their employees benefits more favourable than statutory provision having regard to their own business operation and affordability.

Cost impact assessment

13. Members noted that the Administration had conducted a cost impact assessment in the event of enhancing the statutory PL benefits. It was estimated that if PL was increased to five days, the additional impact per annum would be around \$84 million if the rate of PL pay was maintained at four-fifths of an employee's wages. The cost impact would increase to around \$137 million per annum if employers were required to pay full pay. If PL was increased to seven days, the additional cost impact per annum would be around \$168 million and \$242 million respectively for PL pay at four-fifths and full pay respectively. Some members pointed out that micro-, small- and medium-sized enterprises seldom engaged substitute workers when their male employees took PL. They raised query as to whether the cost implication had been overestimated. These members requested the Administration to conduct a survey on the actual cost of engaging temporary/substitute workers arising from male employees taking statutory PL.

14. The Administration explained that the cost impact assessment was conducted by the Government Economist based on the number of eligible male employees for PL benefits in 2015, i.e. 42 300 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. It was the prevailing practice in the civil service that no substitute workers would be hired

during ML, PL or annual leave taken by the government employees except under very special circumstances. Similar practice might be adopted in big establishments in the private sector while the actual manpower deployment would be decided and arranged by individual enterprises according to their operational needs. The cost impact assessment so conducted served to facilitate consideration of the proposal of enhancing PL benefits.

Relevant papers

15. A list of relevant papers on the website of Legislative Council is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
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Relevant papers on statutory paternity leave

Committee	Date of meeting	Paper
Panel on Manpower	20.6.2012 (Item IV)	<u>Agenda</u> <u>Minutes</u>
Legislative Council	17.10.2012	<u>Official Record of Proceedings</u> <u>(Question 6)</u>
Panel on Manpower	25.1.2013 (Item VI)	<u>Agenda</u> <u>Minutes</u>
Bills Committee on Employment (Amendment) Bill 2014	--	<u>Report</u>
Legislative Council	20.4.2016	<u>Official Record of Proceedings</u> <u>(Question 17)</u>
Panel on Manpower	17.5.2016 (Item IV)	<u>Agenda</u> <u>Minutes</u>
Panel on Manpower	23.1.2017 (Item III)	<u>Agenda</u> <u>Minutes</u>
Finance Committee	7.4.2017 (Eighth meeting - Labour)	<u>Agenda</u> <u>Minutes</u>
Panel on Manpower	--	<u>LC Paper No.</u> <u>CB(2)1651/16-17(01)</u>
Panel on Manpower	19.12.2017 (Item IV)	<u>Agenda</u> <u>Minutes</u>