

Bills Committee on the Employment (Amendment) Bill 2018

The Government's response to the the draft Committee Stage Amendments proposed by Members

On 20 June 2018, the Government introduced into the Legislative Council (LegCo) the Employment (Amendment) Bill 2018 (the Bill) to increase the statutory paternity leave (PL) from three to five days. Pursuant to the introduction of the Bill, six members of the Bills Committee have proposed a total of six draft Committee stage amendments (CSAs) to the Bill. Further to our preliminary response of LC Paper No. CB(2)1879/17-18(01) (preliminary response), this paper sets out the Government's detailed response to the draft CSAs.

2. The six draft CSAs can be classified into three groups, namely (a) the duration of paternity leave (PL); (b) the rate of PL pay; and (c) statutory requirements on reviewing PL. Having made reference to the Rules of Procedures (RoP) of the Legislative Council (LegCo), the Government is of the view that some of the proposed amendments are outside the scope of the Bill within the meaning of Rule 57(4)(a) of the RoP. Some of the CSAs may also have a charging effect. Our justifications are set out below.

The Scope of the Bill

3. The only objective of the Bill is to increase statutory PL under the Employment Ordinance (Cap. 57) from the existing three days to five days. This is clearly spelt out in the Bill and the LegCo Brief as follows:

- (i) The long title of the Bill states that the Bill is a bill to “[a]mend the Employment Ordinance to ***increase paternity leave entitlement*** under that Ordinance as in force on 15 June 2018 ***from 3 days to 5 days*** in respect of a child born on or after the commencement date appointed by the Secretary for Labour and Welfare for this Ordinance; and to replace a reference to a date in section 15E(5) of that Ordinance.” (emphasis added)
- (ii) Clause 3(1) of the Bill specifies that for a child born on or after the commencement date of the Employment (Amendment) Ordinance

2018 (i.e. the Bill if passed), an eligible employee is entitled to take leave for not more than 5 days, whether consecutive or not, for each confinement.

(iii) Paragraph 1 of the explanatory memorandum of the Bill states clearly that the main purpose of the Bill is to increase the PL entitlements from 3 days to 5 days. Paragraph 3 further explains that the current Bill amend the existing legislation to that effect.

(iv) Paragraph 15 of the LegCo Brief states that the Bill seeks to increase statutory PL from the existing three days to five days.

(a) Duration of PL

4. The CSAs proposed by Hon LEUNG Yiu-chung, Dr Hon Fernando CHEUNG Chiu-hung, Hon Gary FAN Kwok-wai, Hon HUI Chi-fung and Dr Hon Helena WONG Pik-wan (LC Paper No. CB(2)1879/17-18(03) to (07)) seek to extend the duration of statutory PL to seven days.

5. As having pointed out in our previous response, the proposed Bill is the outcome of a review of the implementation of statutory PL conducted by the Labour Department (LD). In formulating the proposal, the Government has already taken into account the views of employees, the affordability of employers (including small and medium enterprises), and the operation of PL since its inception in 2015. The proposal is a hard-earned consensus between the labour and business sectors as represented by the Labour Advisory Board (LAB), and is also supported by the Legislative Council (LegCo) Panel on Manpower. The Government considers that the proposed increase of PL from three days to five days is the only acceptable option. The proposed amendments which seek to change the increase in PL entitlement to more than five days obviously deviate from the sole purpose of the Bill.

(b) Rate of PL Pay

6. The CSAs proposed by Hon Gary FAN Kwok-wai, Hon HUI Chi-fung and Dr Hon Helena WONG Pik-wan (LC Paper No. CB(2)1879/17-18(05) to (07)) seek to increase the rate of PL to full pay.

7. As mentioned in paragraph 3 above, the only subject matter of the Bill is to increase the number of days of statutory PL under the Employment Ordinance from the existing three days to five days. Paragraph 5 of the Explanatory Memorandum of the Bill also makes it clear that the Bill makes no amendment in respect of other aspects of statutory PL. Any proposed amendments seeking to change the rate of PL obviously would not be relevant to the subject matter of the Bill.

8. Furthermore, the rate of PL pay is prescribed in the existing section 15I of the Employment Ordinance. As can be seen in the long title, the clauses and the explanatory memorandum of the Bill as well as the LegCo Brief on the Bill, amendment to the rate of PL pay is not a subject matter of the Bill. The respective amendments proposed by Dr Hon Helena WONG Pik-wan, Hon HUI Chi-fung and Hon Gary FAN Kwok-wai on section 15I on the PL pay are irrelevant to the subject matter of the Bill, hence outside the scope of the Bill within the meaning of Rule 57(4)(a) of the RoP and inadmissible. In addition, the proposal of Hon Gary FAN Kwok-wai to add a new clause 3(b)(iii) adding a new provision of full pay PL to the existing section 15E will be inconsistent with the existing section 15I (Rate of paternity leave pay) of the Employment Ordinance.

(c) Statutory requirements on reviewing PL

9. The CSAs proposed by Hon HO Kai-ming (LC Paper No: CB(2)1879/17-18(02)) aim at adding a clause to the effect that the Secretary for Labour and Welfare may from time to time review the number of days of PL and must also conduct a review within one year when the last review was finished. As explained by the Member at the Bills Committee meeting, the review period is meant to be the period of one year beginning from the day on which the previous review is completed.

10. The proposed amendment seeks to impose a statutory obligation on the Government to conduct reviews of the days of PL at specific intervals. Such reviews are not a subject matter of the Bill, nor are such requirements contained in the existing legislation. It would moreover be relevant to note that such statutory review requirement is not consistent with other employee leave/benefit provisions under the Employment Ordinance. These CSAs are clearly outside the scope of the Bill.

11. Moreover, the proposed amendment, if passed, may have a charging effect as it imposes a new and distinct function on the Government. If this proposed CSA is passed, the Government will be required to conduct annual reviews of the number of days of PL. Performance of this new and distinct function, which is not provided for under the existing law, will incur public expenditure. Making reference to the PL review conducted in 2016 which resulted in the Bill, we envisage that a substantial manpower cost will be incurred to the Government. Hence, Hon HO's amendment may have a charging effect.

12. The Government has been, from time to time, reviewing the labour legislation in the light of the socio-economic development in Hong Kong. The Secretary for Labour and Welfare will continue to review PL as with other employee benefits as and when appropriate. It is not necessary to achieve this objective by way of legislation.

Conclusion

13. To conclude, the Government is of the view that the proposed amendments seeking to confer the new entitlement on eligible fathers deviate from the primary objective of the Bill. Some of them are outside the scope of the Bill (RoP 57(4)(a)), with some others possibly having some charging effect on the Government.

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