

LEGISLATIVE COUNCIL BRIEF

Employment Ordinance
(Chapter 57)

EMPLOYMENT (AMENDMENT) BILL 2018

INTRODUCTION

At the meeting of the Executive Council on 5 June 2018, the Council ADVISED and the Chief Executive ORDERED that the statutory paternity leave (PL) should be increased from three to five days by way of introduction into the Legislative Council (LegCo) of the Employment (Amendment) Bill 2018 (the Bill) at Annex A.

JUSTIFICATIONS

2. The Government undertook to review the implementation of statutory PL, which has been made a statutory benefit for male employees since 27 February 2015, one year after its coming into operation. The Labour Department (LD) has conducted the review. During the review, LD conducted a total of three questionnaire surveys¹ and eight discussion sessions with different groups of stakeholders² between July and December 2016.

Major findings and observations of the review

(a) PL policy

3. Employers and employees are in general supportive of the policy of statutory PL, which in their view is a good family-friendly policy that goes a

¹ The three questionnaire surveys conducted were with (i) member establishments of LD's Human Resources Managers' Clubs (HRMC), (ii) male employees of HRMC member establishments having taken PL, and (iii) small and micro establishments employing less than 20 employees.

² Participants of the eight focus group discussions were mainly from members of LD's industry-based Tripartite Committees. Other participants included individual employers, human resources practitioners and concern groups, etc. There was also a focus group with participants being employees having taken statutory PL.

long way in facilitating male employees' taking up of their family responsibility around the time of their children's birth.

(b) Duration of PL

4. Results of the questionnaire survey with LD's Human Resources Managers' Clubs (HRMC) member establishments reveal that the great majority of employers (83.1%) provided three days' PL for employees, which is the statutory requirement as stipulated in the Employment Ordinance (Cap. 57) (EO). Another 15.5% of the employers provided four to five days and a few provided six days or more. Out of the 22 respondents in the survey with small and micro establishments (establishments with less than 20 employees), only one had granted statutory PL to its employee and it provided three days' PL for the employee. The other 21 establishments had never granted statutory PL to their employees, and they indicated that they would provide three days' PL to male employees should the circumstances arise.

5. In the focus group discussions with employers, quite a number of employers held that statutory PL should remain three days. Some of them considered that it was too early to review PL benefits as the legislation had just been implemented for around a year. Labour costs apart, they were concerned about the current tight manpower situation which affected their capability in securing substitute workers during their employees' PL. Some believed that the law should only prescribe the basic benefits of employees whilst the Government should continue to encourage employers to provide more favourable PL benefits to employees where practicable and affordable.

6. As regards those employers who supported increasing the number of PL days, generally they had reservations about a substantial increase. Some found five days' statutory PL acceptable. While there were individual employers who considered seven days' statutory PL acceptable, many preferred a progressive approach to enhancing statutory PL. There was also a suggestion that in addition to paid PL, employees might be granted extra days of PL without pay. Small and micro establishments tended to have greater concern about manpower implications. If statutory PL were extended to seven days, all of the responding small and micro establishments expressed various degrees of difficulty in manpower deployment, with 40.9% of them expressing great difficulty.

7. Employees in general wished to have longer duration of PL. Among those respondent employees who provided views on the duration of PL, 22.5% suggested that statutory PL should be at least five days; 50% suggested at least seven days; and 27.5% suggested 10 days, 14 days, or other duration of PL. Some employees also suggested alternative arrangements such as no pay PL.

(c) Rate of PL pay

8. From the questionnaire surveys, it is found that it is quite common for employers to provide full-pay PL for employees. According to the survey with HRMC member establishments, 247 (58.1%) respondents provided full-pay PL. Nevertheless, the survey with small and micro establishments reveals that the majority (77.3%) of them would provide PL pay at the minimum statutory rate, i.e. four-fifths of the employee's average daily wages.

9. During the focus group discussions where participants may provide more qualitative views, it is noted that most employers, including those who currently were providing full-pay PL, opined that statutory PL pay should remain four-fifths of the employee's average daily wages. They considered it appropriate to set statutory PL pay at the same rate as maternity leave pay and sickness allowance under EO, and also periodical payments for work-related injury under the Employees' Compensation Ordinance (ECO) (Cap. 282)³. Some employers were concerned about the possible knock-on effect on other statutory benefits under EO and the affordability of small and medium enterprises (SMEs) should the rate of PL pay be raised. Some employers, while not objecting to full-pay PL, opined that the rate of PL pay should not be raised unless maternity leave pay had been raised to full pay.

10. On the other hand, most trade union representatives opined that statutory PL should carry full pay, though there were also some sharing the view that the rate of PL pay should be set on par with maternity leave pay and considered the existing rate of PL pay reasonable. Male employees attending the focus group discussions however did not speak strongly on the issue. They mostly considered a longer duration of PL more important than a higher level of PL pay.

(d) Other areas of statutory PL

11. There is no major difficulty revealed in other areas of statutory PL. Major findings and observations are as follows –

- (a) Notification requirements – Employers and employees did not have great difficulty in the notification requirements for taking PL. There was no complaint over such requirements being unduly restrictive. It is also observed that employers were able to grant employees PL flexibly even if the notification requirements were sometimes not fully met.

³ Under ECO, the employer shall pay the injured employee periodical payments during the period of temporary incapacity at the rate of four-fifths of the difference between the employee's monthly earnings at the time of the accident and his monthly earnings during the period of temporary incapacity.

- (b) Taking of PL – Most employees took PL in one go and most of them took all or part of their PL after the birth of the child. No difficulty in respect of taking of PL within the specified timeframe⁴ was revealed.
- (c) Documentary proof – The requirement of producing birth certificates for local births was found reasonable by both employers and employees. For births outside Hong Kong, the number of such cases was limited and most of them were related to births in the Mainland. No special problems on submission of birth certificates to employers for entitlement to PL pay were identified.
- (d) Service requirement for entitlement to PL pay – Some trade union representatives considered the 40-week continuous service requirement for entitlement to PL pay too long. As this service requirement is no more stringent than that for maternity leave, there seems little justification for introducing changes to this requirement.

(e) PL benefits of other economies

12. LD has conducted internet research in PL benefits of some other economies. For those with PL, the duration mainly ranges from two days to two weeks. For economies where PL benefits are paid by individual employers as in the case of Hong Kong, the duration of PL is usually shorter. For example, the duration of PL in Korea and Taiwan is five days while that in Indonesia is two days.

Recommendations of the review

13. Having considered the views of employees, the ability of employers including SMEs to afford an increase in PL duration, and the operation of PL since 2015, it is recommended that –

- (a) statutory PL be increased from three days to five days. An increase in PL of two days, which represents a relatively substantial increase in percentage terms (66.6%), should help male employees better discharge their family responsibilities around the time of their children's birth. The potential resource and manpower implications brought about by the proposed increase in PL should be manageable to the majority of employers;
- (b) the current statutory PL pay rate, i.e. four-fifths of the employee's

⁴ The 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. The employee may take all three days of PL in one go or on separate days.

average daily wages, which is the same as the pay rate for maternity leave, 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 documentary proof, as employers and employees generally are agreeable to such arrangements.

14. The Chief Executive announced in the Policy Address in October 2017 that the Government initially proposes to increase statutory PL to five days. LD has consulted the Labour Advisory Board (LAB) and the LegCo Panel on Manpower (the Panel) on the outcome of the review and they are supportive of the proposal.

THE BILL

- B 15. The Bill seeks to increase statutory PL from the existing three days to five days. The existing provisions being amended are at Annex B.

LEGISLATIVE TIMETABLE

16. The legislative timetable is as follows –

Publication in the Gazette	15 June 2018
First Reading and commencement of Second Reading debate	20 June 2018
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

- C 17. The proposal has economic, financial and civil service, and family and gender implications as set out at Annex C. The proposal is in conformity with the Basic Law, including provisions concerning human rights. It does not affect the current binding effect of EO and has no productivity and environmental implications. The proposal should not have significant sustainability implications.

PUBLIC CONSULTATION

18. LD reported the outcome of the review of statutory PL to LAB and consulted its views on 30 November 2017. The employer and employee representatives reached a consensus to support the recommendations set

out in paragraph 13 above and agreed that PL could be further reviewed at an appropriate time. The outcome of the review of statutory PL and the views of LAB were reported to the Panel on 19 December 2017.

PUBLICITY

19. A LegCo Brief will be issued on 14 June 2018 before the Bill is published in the Gazette. A press release will also be issued on the day when the Bill is gazetted. A spokesperson from LD will be available to address media enquiries.

ENQUIRIES

20. Enquiries on this brief can be addressed to Ms Melody Luk, Assistant Commissioner for Labour (Labour Relations), on 2852 4099; Mr Raymond Liang, Chief Labour Officer (Labour Relations), on 2852 3457; or Ms Annie Chan, Senior Labour Officer (Labour Relations)(Policy Support), on 2852 3696.

Labour and Welfare Bureau
14 June 2018

A BILL

To

Amend 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.

Enacted by the Legislative Council.

1. Short title and commencement

- (1) This Ordinance may be cited as the Employment (Amendment) Ordinance 2018.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Labour and Welfare by notice published in the Gazette.

2. Employment Ordinance amended

The Employment Ordinance (Cap. 57) is amended as set out in section 3.

3. Section 15E amended (entitlement to paternity leave)

- (1) Section 15E(2)—

Repeal paragraph (b)

Substitute

“(b) is entitled to take leave for not more than—

- (i) for a child born on or after 27 February 2015 but before the commencement date of section 3(1) of the Employment (Amendment) Ordinance 2018 (of 2018)—3 days; or
- (ii) for a child born on or after that commencement date—5 days,

whether consecutive or not, for each confinement.”.

- (2) Section 15E—

Repeal subsection (5)

Substitute

“(5) Subsection (1) does not apply in relation to—

- (a) a miscarriage; or
- (b) a child born before 27 February 2015.”.

Explanatory Memorandum

The main purpose of this Bill is to amend the Employment Ordinance (Cap. 57) (*Ordinance*) to increase paternity leave entitlement under the 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 the Employment (Amendment) Ordinance 2018 (if passed and enacted) (*Amendment Ordinance*).

2. Clause 1 sets out the short title and provides for commencement.
3. Clause 3(1) amends section 15E(2)(b) of the Ordinance to the following effect—
 - (a) for a child born on or after 27 February 2015 but before the commencement date of the Amendment Ordinance (*commencement date*), the paternity leave entitlement remains at 3 days; and
 - (b) for a child born on or after the commencement date, the paternity leave entitlement is increased from 3 days to 5 days.
4. Clause 3(2) makes minor amendments to section 15E(5) of the Ordinance to improve reader-friendliness, including replacing a reference to a description of a date with the actual calendar date.
5. The Bill makes no amendment in respect of other aspects of statutory paternity leave.

15E. Entitlement to paternity leave

- (1) A male employee is entitled to paternity leave in respect of the birth of a child if—
 - (a) he is the child's father;
 - (b) he has been employed under a continuous contract immediately before taking leave; and
 - (c) he has complied with all the requirements in section 15F.
- (2) For subsection (1), the employee—
 - (a) subject to section 15G, is entitled to take leave during the period specified in subsection (3) on the date or dates notified to the employer under section 15F(1); and
 - (b) is entitled to take leave for not more than 3 days, whether consecutive or not, for each confinement.
- (3) For subsection (2)(a), the period—
 - (a) begins 4 weeks before the expected date of the delivery of the child; and
 - (b) ends 10 weeks beginning on the actual date of the delivery of the child.
- (4) For subsection (2)(b), multiple births in one pregnancy are taken to be one confinement.
- (5) Subsection (1)—
 - (a) applies to a child born on or after the date* on which the Employment (Amendment) Ordinance 2014 (21 of 2014) comes into operation; and
 - (b) does not apply to a miscarriage.

Editorial Note:

* Commencement date: 27 February 2015.

Implications of the Proposal

Economic Implications

Having regard to Hong Kong's prevailing low birth rate and the consequential small number of working fathers eligible for PL per year relative to the size of the total working population, the impact of increasing statutory PL to five days is unlikely to be significant. A broad-brush assessment of the cost impact in the event of enhancing the statutory PL benefits¹ was conducted based on the data of 2015. It is roughly estimated that the additional cost for extending the duration of PL to five days with PL pay maintained at four-fifths of an employee's wages would be around \$84 million per year as compared to the *status quo*.

Financial and Civil Service Implications

2. Given that government employees are already entitled to five days' PL with effect from 1 April 2012, extending the duration of statutory PL to five days will have no additional financial implications for the Government. As increase in statutory PL will be applicable to subvented organisations and employers of outsourced government service, additional financial commitment from the Government in this respect may be incurred. However, given the small number of working fathers benefiting from PL as stated in paragraph 1 above, the financial impact on the Government of extending the duration of statutory PL to five days is unlikely to be significant.

3. LD will be responsible for implementing and enforcing the amended legislation (including promotion, conciliation, inspection and prosecution, etc.), and will absorb the additional workload generated therefrom. However, if there are any new initiatives under EO in future, the cumulative manpower implications resulting from such initiatives may be more significant and any additional manpower required, if it cannot be absorbed through internal redeployment, may then need to be sought with justifications in accordance with the established resource allocation mechanism.

Family and Gender Implications

4. In respect of the Hong Kong Special Administrative Region (HKSAR)'s 4th report under the United Nations Convention on the Elimination of All Forms of Discrimination against Women, the HKSAR was required to, inter alia, increase its efforts to promote the use of paternity leave to encourage men to participate equally in child care responsibilities. The proposed extension

¹ Owing to data limitations, the assessment has not taken into account those working fathers who were Hong Kong Residents and had their babies born outside Hong Kong, though they are also eligible for PL benefits.

of statutory PL will have a positive impact in this regard. The proposal is also conducive to a more supportive environment for forming and raising families and helps facilitate male employees in sharing with their spouse/partner their family responsibility.