

**立法會**  
***Legislative Council***

LC Paper No. LS72/17-18

**Paper for the House Committee Meeting  
on 22 June 2018**

**Legal Service Division Report on  
Employment (Amendment) Bill 2018**

**I. SUMMARY**

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| <b>1. The Bill</b>                      | The main purpose of the Bill is to amend the Employment Ordinance (Cap. 57) to increase paternity leave ("PL") entitlement for male employees 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. |
| <b>2. Public Consultation</b>           | The Labour Advisory Board was consulted on 30 November 2017, and the employer and employee representatives reached a consensus to support increasing the statutory PL from three days to five days and agreed that the statutory PL could be further reviewed at an appropriate time.  |
| <b>3. Consultation with LegCo Panel</b> | The Panel on Manpower was consulted at its meeting on 19 December 2017 on the Administration's proposal to increase the statutory PL from three days to five days. Members raised no objection to the proposal. Some members, however, considered that the duration of statutory PL should be increased to seven days with full pay.             |
| <b>4. Conclusion</b>                    | No difficulties in the legal and drafting aspects of the Bill have been identified. Members may wish to consider whether a Bills Committee should be formed to study the policy aspects of the Bill.   |

## **II. REPORT**

The date of First Reading of the Bill is 20 June 2018. Members may refer to the Legislative Council ("LegCo") Brief (File Ref.: LD LRD/12-1/2-31/4 (C)) issued by the Labour and Welfare Bureau on 14 June 2018 for further details.

### **Object of the Bill**

2. The main purpose of the Bill is to amend the Employment Ordinance (Cap. 57) to increase paternity leave ("PL") entitlement for male employees 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 ("SLW") for the enacted Ordinance if the Bill is passed.

### **Background**

3. The Employment (Amendment) Ordinance 2014 was enacted in 2014 to provide for a statutory PL for male employees. With the commencement of the Employment (Amendment) Ordinance 2014 on 27 February 2015, a male employee is eligible under Part IIIA of Cap. 57 for three days' PL for each confinement if he:

- (a) is the father of a new-born child;
- (b) has been employed under a continuous contract<sup>1</sup> immediately before taking PL; and
- (c) has given the required notification to his employer.<sup>2</sup>

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<sup>1</sup> Under section 3 of and the First Schedule to Cap. 57, an employee who has been employed continuously under a contract of employment for four weeks or more and has been working for 18 hours or more each week is regarded as being employed under a continuous contract.

<sup>2</sup> Under section 15F(1) of Cap. 57, an employee who intends to take paternity leave in respect of the birth of a child must (a) notify the employer (i) of his intention at least three months before the expected date of the delivery of the child; and (ii) of the intended date of his leave before taking the leave; or (b) (if he does not notify the employer in accordance with paragraph (a)(i)) notify the employer of each intended date of his leave at least five days before that date.

4. Under section 15H of Cap. 57, an eligible employee is entitled to pay at the daily rate of four-fifths of his average daily wages ("PL pay") in respect of each day on which he has taken PL if he:

- (a) has been employed under a continuous contract for a period of not less than 40 weeks immediately before that day ("40-week requirement"); and
- (b) has provided his employer with the required documentary proof (including the birth certificate of the new-born child) in respect of the birth of the child.

5. Under section 15M of Cap. 57, an employer who without reasonable excuse fails to grant the statutory PL to an eligible employee or pay him PL pay commits an offence and is liable on conviction to a fine at level 5 (HK\$50,000).

6. According to paragraphs 2 and 13 of the LegCo Brief, the Labour Department conducted a review of the implementation of statutory PL in 2016. Having considered the views of employees, the ability of employers including small and medium enterprises to afford an increase in PL duration, and the operation of PL since 2015, the Administration proposes to increase the statutory PL from three days to five days.

### **Provisions of the Bill**

7. The Bill seeks to increase the PL entitlement for male employees under Cap. 57 from three days to five days by amending section 15E(2) of Cap. 57 to the effect that an eligible employee would be entitled to take five days' PL in respect of a child born on or after the commencement date to be appointed by SLW for the enacted Ordinance if the Bill is passed. The entitlement to PL pay would remain unchanged, i.e. the employee would continue to be entitled to have PL pay (four-fifths of his average daily wages) during his five days' PL if he meets the 40-week requirement and has provided his employer with the required documentary proof.

8. The Bill also seeks to make minor technical amendments to section 15E(5) of Cap. 57, including replacing the reference to "the date on which the Employment (Amendment) Ordinance 2014 (21 of 2014)" with "27 February 2015" which is the actual commencement date of that Ordinance.

## **Commencement**

9. The Bill, if passed, would come into operation on a day to be appointed by SLW by notice published in the Gazette.

## **Public Consultation**

10. According to paragraph 18 of the LegCo Brief, the Labour Advisory Board was consulted on 30 November 2017, and the employer and employee representatives reached a consensus to support increasing the statutory PL from three days to five days and agreed that the statutory PL could be further reviewed at an appropriate time.

## **Consultation with LegCo Panel**

11. As advised by the Clerk to the Panel on Manpower, the Panel was consulted on 19 December 2017 on the Administration's proposal to increase the statutory PL from three days to five days. Members raised no objection to the proposal. Some members, however, considered that the duration of statutory PL should be increased to seven days with full pay.

## **Conclusion**

12. No difficulties in the legal and drafting aspects of the Bill have been identified. Members may wish to consider whether a Bills Committee should be formed to study the policy aspects of the Bill.

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