

For discussion  
on 19 December 2017

## **Legislative Council Panel on Manpower Review of Statutory Paternity Leave**

### **Purpose**

This paper reports on the outcome of the review of the implementation of statutory paternity leave (PL) and seeks Members' views on the proposed improvement.

### **Background**

2. Statutory PL has come into operation since 27 February 2015. An eligible male employee is entitled to three days' PL and PL pay at the rate of four-fifths of his average daily wages. The Government undertook to review its implementation one year after its coming into operation. The Labour Department (LD) has conducted the review on the basis of the scope and methodology endorsed by the Labour Advisory Board and the Manpower Panel of the Legislative Council in May 2016.

### **Scope and methodology for the review**

3. The review covers the following areas of statutory PL:
- (i) duration of PL;
  - (ii) rate of PL pay;
  - (iii) notification requirements for taking PL;
  - (iv) taking of PL;
  - (v) documentary proof for entitlement to PL pay;
  - (vi) submission of documentary proof and payment of PL pay; and
  - (vii) other implementation and operational issues.

4. In the period between July and December 2016, LD has conducted a total of three questionnaire surveys and eight discussion sessions with different groups of stakeholders. A summary of the surveys and discussion sessions conducted is at Annex.

## **Findings and observations**

### *(a) PL policy*

5. Employers and employees are in general supportive of the policy of statutory PL, which in their view a good family-friendly policy that goes a long way in facilitating male employees in taking up their family responsibility around the time of their child's birth.

### *(b) Duration of PL*

6. 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 (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 establishments, 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 when the circumstances arise.

7. On the other hand, results of questionnaire survey with employees having taken PL reveal that they tended to take additional leave on top of the statutory PL. Out of the 188 employee respondents, 125 (66.5%) took extra leave (mainly annual leave) in addition to statutory PL around the time of their child's birth. The number of days of extra leave taken varied from one to more than 15 days, with over 80% of them taking between one to eight days, and the spread among different number of days was quite evenly distributed.

8. 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.

9. As regards those employers showing support to increase the number of PL days, generally they had reservation on a substantial increase. Some found five days' statutory PL acceptable. While there were individual employers considering seven days' statutory PL acceptable, many preferred a progressive approach. There was also suggestion that in addition to paid PL, employees might be granted extra days of PL without pay.

10. In the survey with small and micro establishments, most respondent establishments expressed greater concern on manpower implications. It is observed that five days' PL seems manageable to the majority of small establishments although some employers (mainly from the catering, laundry, retails and manufacturing industries) indicated that they would have great difficulty in manpower deployment. 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 expressed great difficulty. .

11. Employees in general wish 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

12. 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.

13. 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<sup>1</sup> for work-related injury under the Employees' Compensation Ordinance (ECO). Some employers were concerned about the possible knock-on effect on other statutory benefits under EO and the affordability of SMEs should the amount of PL pay be raised. Some employers, while did not object 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.

14. 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 PL pay.

(d) Other areas of statutory PL

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

- (i) *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.
- (ii) *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 timeframe<sup>2</sup> was revealed.

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<sup>1</sup> 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.

<sup>2</sup> The employee may take PL at any time during the period between 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 employees may take all three days of PL in one go or on separate days.

- (iii) *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 were 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.
- (iv) *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 to introduce changes to this requirement.

## **Other relevant information**

### *(a) Cost impact assessment*

16. Based on the data of 2015, we conducted a broad-brush assessment of the cost impact<sup>3</sup> in the event of enhancing the statutory PL benefits. It is roughly estimated that if PL is increased to five days, the additional impact per annum would be around \$84 million if the rate of PL pay is maintained at four-fifths of an employee's wages as compared to the *status quo*, i.e. three days of PL with PL pay at four-fifths. The cost impact would increase to around \$137 million per annum if employers are required to provide full pay. If PL is 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.

### *(b) PL benefits of other economies*

17. LD has conducted an internet research on PL benefits of some other economies. For those with PL, the duration mainly range 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.

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<sup>3</sup> 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.

## **Recommendation**

18. Having considered the views of employees and the affordability of employers including SMEs and the operation of PL since 2015, it is recommended that –

- (i) statutory PL be increased from three to five days. An increase of PL by 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 child's birth. The potential resource and manpower implications brought about by the proposed increase in PL should be manageable to the majority of employers;
- (ii) the current statutory PL pay rate, i.e. four-fifths of the employee's average daily wages which is the same as the pay rate for maternity leave, be maintained; and
- (iii) 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.

## **Views of the Labour Advisory Board**

19. LD reported the outcome of the review of statutory PL to the Labour Advisory Board and consulted its views in November 2017. The employer and employee representatives reached a consensus to support the recommendations set out in paragraphs 18 above. Both sides also agreed that PL could be further reviewed at an appropriate time.

## **Views Sought**

20. Members are invited to note the outcome of the review and give views on the recommendation on improvement of statutory PL as set out in paragraph 18 above.

## **Review on the implementation of statutory paternity leave: Surveys and discussions conducted**

In the period between July and December 2016, the Labour Department (LD) conducted a total of three questionnaire surveys and eight discussion sessions with different groups of stakeholders on statutory paternity leave (PL) as follows:

- *Questionnaire survey with member establishments of LD's Human Resources Managers' Clubs (HRMCs)* – Questionnaires were sent to the 2 052 member organisations of LD's 18 HRMCs<sup>1</sup> in July and August 2016. A total of 425 completed questionnaires were subsequently returned to LD, representing a response rate of 20.7%.
- *Questionnaire survey with male employees having taken PL* – Based on the completed questionnaires received by LD aforementioned, there were 304 HRMC member establishments with their male employees having taken statutory PL. Questionnaires were then sent to these male employees via their respective establishments. A total of 188 completed questionnaires were subsequently returned to LD.
- *Questionnaire survey with small and micro establishments employing less than 20 employees* – There has been concern about the affordability of small and micro establishments should PL benefits be improved. A questionnaire survey was conducted with employers employing less than 20 employees. These employers were identified among those who had made use of LD's conciliation service in the period between late November and early December 2016. A total of 22 completed questionnaires were collected, among them 13 were from establishments employing 10 or less employees, i.e. micro establishments.

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<sup>1</sup> LD's 18 HRMCs draw its members from 16 industries/sectors, including banking, building services, catering, community and social services, construction, education, electronics, garment, hotel and tourism, information technology, logistics, manufacturing, retail, other services, trading as well as small and medium enterprises. Members attending HRMC meetings are mostly human resources personnel who in their daily work are conversant with the operation of employment benefits provided under the Employment Ordinance.

- *Focus group discussions to collect qualitative views of stakeholders on statutory PL* – A total of eight focus group discussions were organised from September to November 2016. Participants were mainly from members of LD’s industry-based Tripartite Committees<sup>2</sup>. 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.

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<sup>2</sup> LD sets up tripartite committees to strengthen industry-based tripartite cooperation. There are at present nine tripartite committees covering catering, construction, property management, retail, hotel and tourism, warehouse and cargo transport, printing, theatre as well as cement and concrete industries. These committees comprise some 260 members from employers’ association, trade unions, professional groups and business establishments. They meet regularly and conduct discussions on industry-specific issues, thereby having free exchanges among representatives of employers and employees.