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**Panel on Manpower**

**Updated background brief prepared by the  
Legislative Council Secretariat for the meeting on 19 December 2017**

**Statutory paternity leave**

**Purpose**

This paper sets out background information and gives a brief account of the past discussions by the Panel on Manpower ("the Panel") and the Bills Committee on Employment (Amendment) Bill 2014 on the provision of statutory paternity leave ("PL").

**Background**

2. The Employment (Amendment) Bill 2014 ("the Bill"), which sought to make PL with pay a statutory benefit for male employees under the Employment Ordinance (Cap. 57) ("EO") was passed by the Legislative Council ("LegCo") at its meeting of 18 December 2014 and took effect on 27 February 2015. 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").

3. Under EO, a male employee is eligible for three days' PL for each confinement of his spouse/partner at a daily rate of four-fifths of the employee's average daily wages if he fulfils the following requirements:

- (a) he is the father<sup>1</sup> of a new-born child or a father-to-be;

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<sup>1</sup> The employee is not required to be married to the mother of the new born child for entitlement to PL under EO. There is also no restriction on the birthplace of the newborn.

- (b) he has been employed under a continuous contract<sup>2</sup>; and
- (c) he has given the required notification.<sup>3</sup>

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.

## **Past discussions by members**

### Duration of statutory PL

4. Most members considered that the three-day statutory PL was barely adequate for fathers to take care of their newborns and partners, particularly those who had undergone operations to give births and those who suffered from post-natal depression. Given that government employees had already been granted five-day full pay PL, these members expressed concern about the disparity in the PL entitlement between employees in the private sector and the civil service. They urged the Administration to consider extending the duration of statutory PL to the same level as that of government employees. Some members took the view that the duration of PL should be increased to seven days to further promote family-friendly employment practice ("FFEP").

5. The Administration advised that prior to the introduction of the Bill, the Labour Department ("LD") had conducted a survey on PL in 2012 of which the findings revealed that the majority of the respondent companies offered on voluntary basis one to three days of PL, and the average duration was three days. Having regard to the practice of voluntary provision of PL in the private sector and the consensus reached by LAB, the Administration considered three-day statutory PL an appropriate starting point.

6. The Administration further advised that it was not appropriate to make a direct comparison between the duration of PL for government employees and

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<sup>2</sup> Under EO, 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.

<sup>3</sup> 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.

that proposed in the Bill, as the former was provided by the Government in its capacity as an employer to its employees, having regard to such factors as affordability, its own manpower situation, etc; whereas the latter was a statutory requirement for all employers of varying sizes and was meant to be a minimum entitlement of PL for all employees. Employers were free to decide whether they would offer PL benefit above the statutory minimum entitlement upon its enactment, having considered their own circumstances.

#### Rate of PL pay

7. 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. Given that the prevailing rates of ML pay and sickness allowances had been in force for a long time, these members called on the Administration to legislate for fully paid PL and in tandem review the rates of ML pay and sickness allowance.

8. 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 around the world, PL pay was either not paid at full rate or subject to a cap, or both.

9. Regarding some members' suggestion of providing government subsidy to employers for meeting the additional staff cost of granting full pay PL 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. Some employers were already providing longer periods of PL to their employees on their own initiative. The Administration assured members that it would continue to encourage employers to offer their employees benefits favourable than statutory provision having regard to their own business operation and affordability.

#### Notification and documentary requirements

10. Some members questioned the need for an employee who intended to take PL to notify his employer at least three months before the expected date of delivery. Some other members, however, pointed out that employers, in particular small and medium-sized enterprises, would have operational difficulties in releasing their employees for PL upon short notice.

11. The Administration advised that the three-month notice period was requested by LAB's employer representatives for the purpose of enabling the employer to have early knowledge of the employee's intention to take PL, thus facilitating manpower deployment by the employer where necessary during the employee's PL. The notification requirement aimed to strike a balance between the interests of both employees and employers.

12. Members were advised that for the entitlement of PL pay, a male employee must provide his employer with the birth certificate of his newborn child, on which his name was entered as the child's father. In response to members' enquiry about the legal consequences to an employee who failed to provide the required documents in relation to taking PL, the Administration advised that it was up to the employer to decide whether to grant PL benefits to an employee who failed to provide the required documents owing to various reasons. Any disputes over documents required for PL entitlement would be dealt with in the same way as disputes concerning statutory entitlements under EO, i.e. by the conciliation service rendered by LD, or if no settlement could be reached, to be adjudicated by the Labour Tribunal or Minor Employment Claims Adjudication Board as appropriate. However, it was a criminal offence if the employee made or provided false document.

#### Scope and methodology of the review

13. At the Panel meeting on 17 May 2016, members were advised that the Administration would embark on the review of the implementation of the legislation on PL. Specifically, LD would conduct a survey with member establishments of Human Resource Managers' Clubs ("HRMCs") on various implementation issues experienced by the employers on PL and another survey with employees having taken PL employed by the member establishments of HRMC.

14. Some members took the view that the Administration should put forward specific proposal on enhancing the PL entitlement in its review. These members also cast doubt about the need for conducting a survey on PL with member establishments of LD's 18 HRMCs, given that human resources managers would represent the interest of employers. Some members suggested that the Administration should conduct a survey with all stakeholders on the appropriate number of days of PL.

15. The Administration advised that an evidence-based approach would be adopted in the review. LD would conduct in July to November 2016 two surveys to gauge views on the implementation of statutory PL since February 2015. With regard to the survey with member establishments of HRMCs, the Administration pointed out that members attending HRMC meetings were mostly human resources personnel who in their daily work were conversant

with the operation of employment benefits provided under EO. It would help LD understand the relevant data and various implementation issues experienced by the employers on granting statutory PL. As for the survey with male employees having taken PL, LD would obtain information and their comments on their experiences of taking PL. LD would also organize focus group discussions with relevant stakeholders with a view to conducting qualitative reviews of PL and related issues. Views so collected would be consolidated and analyzed for the purpose of making recommendations on the future direction of statutory PL.

### Review timetable

16. Some members were gravely concerned about the timetable for the review. They urged the Administration to compress the work schedule so as to complete the review as early as practicable. According to the Administration, while some members of LAB urged an early completion of the review, some other members did not consider it necessary to commence a review within 2016 since statutory PL had taken effect just over a year. Members of LAB generally did not object to the Administration's proposed review methodology and timeline. Given that the two surveys would cover various areas of statutory PL, it was necessary to allow sufficient time for some 2 000 HRMC member organizations to respond. The organization of the focus group discussions would also need time. The Administration had commenced the relevant preparatory work and would expedite the review process as far as practicable. Following the completion of the review and analysis of the information gathered, LD would report the outcome and recommendations on the future direction of PL to LAB and then the Panel.

### Recent development

17. At the policy briefing cum meeting of the Panel on 17 October 2017, members were advised that LD had completed the review of the implementation of statutory PL and initially proposed to increase the number of statutory PL days from the current three days to five days. Subject to the support of LAB and the Panel, LD would proceed with preparing the enabling legislation. The Administration will brief the Panel on the review of PL at the meeting on 19 December 2017.

### **Relevant papers**

18. A list of relevant papers on the website of LegCo is in the **Appendix**.

## Relevant papers on statutory paternity leave

Committee	Date of meeting	Paper
Legislative Council	29.10.2008	<a href="#">Official Record of Proceedings (Question 15)</a>
Legislative Council	21.4.2010	<a href="#">Official Record of Proceedings (Question 16)</a>
Legislative Council	2.3.2011	<a href="#">Official Record of Proceedings (Question 9)</a>
Panel on Manpower	20.6.2012 (Item IV)	<a href="#">Agenda Minutes</a>
Legislative Council	17.10.2012	<a href="#">Official Record of Proceedings (Question 6)</a>
Panel on Manpower	25.1.2013 (Item VI)	<a href="#">Agenda Minutes</a>
Bills Committee on Employment (Amendment) Bill 2014	--	<a href="#">Report</a>
Legislative Council	20.4.2016	<a href="#">Official Record of Proceedings (Question 17)</a>
Panel on Manpower	17.5.2016 (Item IV)	<a href="#">Agenda Minutes</a>
Panel on Manpower	23.1.2017 (Item III)	<a href="#">Agenda Minutes</a>
Finance Committee	7.4.2017 (Eighth meeting - Labour)	<a href="#">Agenda Minutes</a>
Panel on Manpower	--	<a href="#">LC Paper No. CB(2)1651/16-17(01)</a>