



LABOUR DEPARTMENT (Headquarters)

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Chairperson
Establishment Subcommittee
Legislative Council
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong
(Attn: Ms Connie SZETO
 Clerk to the Subcommittee)

5 July 2019

Dear Ms SZETO,

**Follow-up issues of the meeting of
the Establishment Subcommittee held on 28 May 2019**

At its meeting of 28 May 2019, the Establishment Subcommittee of the Legislative Council (LegCo) endorsed the creation of one permanent post of Chief Labour Officer (CLO) in the Labour Department (LD) for the purpose of taking forward various new measures to enhance statutory maternity leave (ML). At the meeting, Members requested the Government to provide supplementary information. Our reply is stated below.

(a) Extending ML (i.e. extending from 10 weeks to 14 weeks) by public bodies

The terms of employment of employees in public bodies are subject to the statutory requirements stipulated in the Employment Ordinance (EO) (Cap. 57). However, public bodies are free to offer employment benefits above the statutory requirements. Based on the information provided by relevant bureaux/departments, many public bodies have already taken the lead to extend ML to 14 weeks as listed at Annex.

(b) Implications on paternity leave (PL) consequential to the amendment to the definition of “miscarriage” under the EO

According to the current provisions of the EO, “miscarriage” is defined as “the expulsion of the products of conception which are incapable of survival after being born before 28 weeks of pregnancy”. In the enabling legislative instrument being drafted, we will propose to amend the definition of “miscarriage” above from “before 28 weeks of pregnancy” to “before 24 weeks of pregnancy”. As to PL, when the PL legislation was enacted in 2014, we had made it clear that “[i]n the case of a miscarriage a female employee is entitled to sick leave rather than maternity leave. On the other hand, an employee who gives birth to a dead child is eligible for maternity leave. Mirroring the same arrangements applicable to maternity leave, the statutory PL should not apply to a miscarriage, but to a stillbirth”¹. Along this approach, upon the passage of the proposed amendments in the enabling legislative instrument being drafted, a male employee would be entitled to statutory PL if his child is born dead and it is not a “miscarriage” under the amended definition of the EO provided the other required conditions are met.

(c) Information on the creation of permanent directorate posts for the implementation of publicly-funded policies in the past

According to the information provided by the Civil Service Bureau, a meaningful comparison could hardly be made as the actual circumstances, such

¹ Paragraph 10 of the LegCo Brief for the Employment (Amendment) Bill 2014

as the policy purview, work nature and scope of duties, involved in the creation of each permanent directorate post vary in different policy bureaux/departments. Reference may be made to the creation of one post of CLO (D1) in the LD approved by the Finance Committee in January this year. The post is responsible for tasks in relation to the abolition of the “offsetting” of severance payment and long service payment with employers’ mandatory contributions under the Mandatory Provident Fund System. Both the above post and the present proposed one are at CLO level with similar responsibilities for multi-faceted and complex tasks, which include preparing legislative amendments, developing a brand new and dedicated reimbursement system, overseeing the operation of the system, leading the setting up of a dedicated office, liaising with stakeholders and launching comprehensive publicity programmes, etc.

(d) The Government’s response to the following concern and suggestion – implementation of new statutory ML would result in non-renewal of contracts for employees engaged on a short-term basis due to pregnancy and the Government should amend the law to plug the loophole

A fixed-term contract is among the many forms under which employers engage employees. During the contract period, both parties should fulfil their obligations as agreed, and their respective obligations would cease upon the expiry of the contract. Both employers and employees may, having regard to their own considerations, discuss whether to renew a contract or enter into a new one upon its expiry. In Hong Kong, the standard employment contracts for foreign domestic helpers are also fixed-term contracts.

In general, employees engaged under fixed-term contracts are no longer entitled to employment benefits upon the expiry of the contracts. Extending employment benefits beyond the expiry of the contract period is a highly complicated and controversial issue that warrants a comprehensive study and consultation with various stakeholders. In the current proposal to enhance statutory ML, we are of the view that the focus should be placed on expediting the passage of the proposed amendments instead of sidetracking the efforts into addressing another complicated subject. Apart from this, the extra

cost of statutory ML pay arising from the additional four weeks' ML would be funded by the Government, hence it would not create additional financial burden to employers. Moreover, subjecting a woman to unfair treatment at workplace due to pregnancy is a breach of the Sex Discrimination Ordinance (Cap. 480). We believe that the proposal to enhance statutory ML would unlikely affect the contract renewal of pregnant employees engaged under fixed-term contracts.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Melody LUK', written over a large, faint circular stamp or watermark.

(Ms Melody LUK)
for Commissioner for Labour

c.c.: Secretary for the Civil Service (Attn: Mr Alvin WONG)
Secretary for Labour and Welfare (Attn: Mr Dominic CHOW)

Public bodies which have extended ML to 14 weeks

Airport Authority Hong Kong
Beat Drugs Fund Association
City University of Hong Kong
Community Care Fund Secretariat
Competition Commission
Employees Compensation Assistance Fund Board
Employees Retraining Board
Equal Opportunities Commission
Financial Services Development Council
Fish Marketing Organization
Hong Kong Baptist University
Hong Kong Deposit Protection Board
Hong Kong Institute for Monetary Research
Hong Kong Mortgage Corporation Limited (and its subsidiaries and subsidiary undertakings)
Hong Kong Note Printing Limited
Hong Kong Productivity Council
Hong Kong Science and Technology Parks Corporation
Hong Kong Trade Development Council
Hospital Authority
Housing Authority
Independent Police Complaints Council
Insurance Authority
Legal Aid Services Council
Legislative Council Secretariat
Lingnan University
Mandatory Provident Fund Schemes Authority
MTR Corporation Limited
Office of The Ombudsman
Office of the Privacy Commissioner for Personal Data
Prince Philip Dental Hospital
The Chinese University of Hong Kong
The Education University of Hong Kong
The Hong Kong Council for Accreditation of Academic and Vocational Qualifications

The Hong Kong Examinations and Assessment Authority
The Hong Kong Polytechnic University
The Hong Kong University of Science and Technology
The Open University of Hong Kong
The University of Hong Kong
Urban Renewal Authority
Vegetable Marketing Organization
Vocational Training Council
West Kowloon Cultural District Authority
All public sector primary and secondary schools and Direct Subsidy Scheme schools
(Total number of schools: 980)

Note:

The above list has been compiled based on information up to mid-June 2019 as provided by relevant bureaux/departments and may not be exhaustive. Some of the organisations may limit the coverage to permanent staff. The organisations are listed in alphabetical order.