

立法會
Legislative Council

LC Paper No. CB(2)442/18-19(04)

Ref : CB2/PL/MP

Panel on Manpower

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 18 December 2018**

Review of statutory maternity leave

Purpose

This paper sets out background information on the provision of statutory maternity leave ("ML") in Hong Kong and summarizes the past discussions by the Panel on Manpower ("the Panel") on the subject since the Fifth Legislative Council ("LegCo").

Background

2. Under the Employment Ordinance (Cap. 57) ("EO"), a female employee employed under a continuous contract¹ for not less than 40 weeks immediately before the commencement of her ML and having given notice of pregnancy and her intention to take ML to the employer is entitled to a continuous period of 10 weeks' ML with ML pay at the rate of four-fifths of the employee's wages. The employee may also be granted an additional period of leave for not more than four weeks on the grounds of illness or disability due to the pregnancy or confinement. An employer who fails to grant ML to a pregnant employee or fails to pay ML pay to an eligible pregnant employee is liable to prosecution and, upon conviction, to a fine of \$50,000.

3. In the Policy Address delivered in October 2017, the Chief Executive ("CE") stated that the Government would embark on a study to look into possible ways to improve the statutory ML, taking account of the interests of

¹ According to EO, an employee who has been employed continuously by the same employer for four weeks or more, with at least 18 hours worked in each week is regarded as being employed under a continuous contract.

working women and the affordability of enterprises, and would deliberate the subject thoroughly by the Labour Advisory Board.

4. CE stated in her Policy Address delivered in October 2018 that the Government had completed the review of ML and proposed to extend the statutory ML from the current 10 weeks to 14 weeks. The Government would also fund the cost of the extra ML pay by way of reimbursement to employers.

Deliberations of the Panel

Review of statutory maternity benefits

5. Most members had time and again called for a review of the maternity benefits under EO. These members pointed out that the last revisions to pregnant employees' entitlement to statutory ML period and the rate of ML pay were made in 1981 and 1995 respectively,² and thus the provisions in EO were outdated and could not meet the present needs of employees. They considered that the Administration should conduct a comprehensive review of the ML provisions in EO without further delay, with a view to improving the maternity benefits for female employees.

6. Some members also pointed out that according to the findings of a ML study conducted by the International Labour Organization ("ILO") among its 185 members in 2014, 53% (98 places) provided ML of 14 weeks or more, while 32% (60 places) provided ML 12 to 13 weeks, and that only 15% (27 places) including Hong Kong provided ML of less than 12 weeks. Moreover, the ML pay in most overseas places was met by social insurance or by the Government. In the light of international practices, these members considered that the duration of statutory ML in Hong Kong should be increased from 10 weeks to at least 14 weeks with full pay. These members also called on the Administration to consider funding the additional cost of ML pay if the duration of ML was extended.

7. Some other members, however, expressed concern about the operation difficulties being faced by the micro-, small- and medium-sized enterprises ("MSMEs") and cautioned that progressive enhancement of various

² In 1970, statutory ML was first introduced under EO, but an employer was not required to pay for ML taken by the employee. Paid ML was introduced in 1981, whereby a pregnant employee under continuous employment for not less than 40 weeks was entitled to ML pay at the rate of two-thirds of her daily wages. In 1995, the statutory pay of ML was raised to four-fifths of the employee's daily wages.

employment rights and benefits, including ML benefits, would further increase the operation cost and undermine the business environment of MSMEs. These members also expressed concern about difficulties of MSMEs in manpower deployment if pregnant employees were entitled to a longer period of statutory ML.

8. The Administration advised that the existing maternity provisions in EO had struck a reasonable balance between employees' interests and employers' affordability, having regard to the fact that the responsibility of paying relevant maternity benefits was solely borne by employers. Moreover, with the agreement of the employer, the employee could take further leave and, in such situation, the continuity of her employment would not be affected. The Administration considered that the existing provisions in EO had accorded comprehensive protection for pregnant employees in the aspects of health, employment protection, ML and ML pay.

9. The Administration further advised that apart from safeguarding employee's rights and benefits through legislative means, employers were encouraged, having regard to individual circumstances of their enterprises, to adopt family friendly employment practices for their employees. According to the Administration, given the improved socio-economic conditions and the tight manpower situation in Hong Kong, it was noticed that there was an increasing number of employers who were willing to offer employment conditions, including maternity benefits, that were more favourable than those provided under EO.

Protection against pregnancy discrimination

10. Some members expressed concern that after the expiry of statutory ML, many female employees encountered difficulties in taking leave to take care of their newborns or faced unfavourable treatment in respect of job assignment and career advancement. These members considered that the employment protection period for pregnant employees against unreasonable dismissal should be extended to a specified period, say six months, beyond the expiry of ML.

11. According to the Administration, EO prohibited an employer from dismissing an employee during her pregnancy or ML. Besides, if the employee had been unreasonably and unlawfully dismissed, she might seek remedies, including compensation or reinstatement/re-engagement in the Labour Tribunal. Apart from maternity protection under EO, the Sex Discrimination Ordinance (Cap. 480) also played an important role in protecting women from pregnancy discrimination in various areas including employment. Employees, who were being discriminated because of pregnancy or dismissed

after giving birth, could lodge a complaint with the Equal Opportunities Commission ("EOC"). EOC would provide assistance to complainants to seek redress as appropriate. In the view of the Administration, the suggestion of extending the employment protection period beyond the expiry of ML should be considered carefully in a wider context, having regard to its read-across implications on other provisions in EO such as sick leave.

Latest proposal to extend the statutory ML period

Government subsidy for the extended statutory ML period

12. At the policy briefing cum meeting of the Panel on 16 October 2018, members were briefed on the Administration's new initiatives to extend the statutory ML under EO from the current 10 weeks to 14 weeks, and amend the definition of miscarriage under EO so that an employee who suffered a miscarriage at or after 24 weeks of pregnancy could be entitled to ML. Members noted that under the proposed arrangements, if an employee was entitled to ML pay under EO, the employer should first, together with the current 10 weeks' statutory ML pay, provide her with ML pay for the additional four weeks' ML and apply to the Government afterwards for reimbursement of the additional ML pay. While most members welcomed the proposed extension of ML period, some members enquired about the rationale for the Government to fund the cost of the extra ML pay and the financial implications.

13. The Administration advised that it did not seek to solicit the support of employers for the proposed extension of statutory ML by providing subsidy to them. The proposal to fund the cost of the extra ML pay was not a transitional arrangement, but a long-term commitment by the Government to enhance protection of the employment and health of female employees after giving birth. The Administration further advised that according to ILO's research findings, the ML pay in most of the countries/places was fully or partially financed by social insurance system with contributions from both employers and employees. The period of ML was in general shorter in places where individual employers needed to bear the full cost of ML pay and the statutory minimum wage rate might sometimes apply. The research findings also showed that there was adverse impact on women's employment opportunities if the cost of ML pay was to be fully borne by individual employers. As the maternity benefits in Hong Kong had been solely borne by employers over the past decades, the Administration considered it appropriate to assume the social responsibility and finance the cost of the extra four-week statutory ML. It was estimated that the annual recurrent expenditure for the extended four-week ML pay would be around some \$479 million.

14. Members further noted that the rate of the additional statutory ML pay would be maintained at four-fifths of an employee's average daily wages, and be subject to a cap of \$36,822 which was equivalent to four-fifths of the wages of an employee with a monthly wage of \$50,000 in four weeks. Some members considered that the proposed subsidy arrangement was unfair to the higher-paid female employees.

15. The Administration advised that to uphold the principle of prudent use of public money, the reimbursable amount to employers of the extra ML pay should be set at a reasonable level. There was in general a cap for the amount of ML pay for eligible employees in most places, irrespective of whether it was fully or partially financed by a social insurance system with contributions from both employers and employees. If there was no upper limit for the ML pay, employers would be much concerned about their legal responsibility. Moreover, a substantial portion of the Government subsidy would be used to fund the extra ML pay for the higher-paid female employees, which was not proportionate to the number of eligible employees in this group.

Implementation timetable

16. Noting that Government female employees would be entitled to 14 weeks of paid ML immediately after the announcement of the CE's 2018 Policy Address, members enquired about the implementation timetable for the proposal to extend the statutory ML period to all eligible employees.

17. According to the Administration, the extension of the ML period to 14 weeks for female Government employees did not entail legislative amendments following the announcement in the CE's 2018 Policy Address. However, the implementation of the proposal to extend the ML period would necessitate complex legislative amendments, including the detailed arrangements for the reimbursement of the additional statutory ML pay to employers. Nonetheless, the Administration would proceed with the drafting of the legislative amendments with a view to introducing a bill into LegCo in 2019 and completing the necessary legislative process within the Sixth LegCo. In tandem, the Administration would proceed with the preparatory work for the reimbursement arrangements, which was expected to be completed in 18 months. The Administration further advised that as a number of enterprises had been providing their female employees with ML of more than 10 weeks, it would appeal to enterprises/employers to offer their employees with ML benefits more favourable than the statutory requirements of EO.

18. The Panel would receive public views on the latest proposal to extend the statutory ML period at its forthcoming meeting on 18 December 2018.

Relevant papers

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

Council Business Division 2
Legislative Council Secretariat
12 December 2018

Appendix

Relevant papers on statutory maternity leave

Committee	Date of meeting	Paper
Legislative Council	9 April 2014	<u>Official Record of Proceedings (Question 16)</u>
Legislative Council	26 November 2014	<u>Official Record of Proceedings (Question 3)</u>
Panel on Manpower	17 May 2016 (Item V)	<u>Agenda</u> <u>Minutes</u>
Legislative Council	18 May 2016	<u>Official Record of Proceedings (Question 17)</u>
Legislative Council	14 December 2016	<u>Official Record of Proceedings (Question 16)</u>
Panel on Manpower	18 April 2017 (Item IV)	<u>Agenda</u> <u>Minutes</u> <u>FS07/16-17</u>
Panel on Manpower	18 July 2017 (Item VI)	Agenda Minutes
Panel on Manpower	16 October 2018 (Item III)	<u>Agenda</u> <u>Minutes</u>