

For meeting on
19 March 2019

Legislative Council Panel on Manpower

A proposal to create a Chief Labour Officer post in the Labour Department to take forward various measures to enhance Statutory Maternity Leave

PURPOSE

The Labour Department (LD) proposes to create one permanent post of Chief Labour Officer (CLO)(D1) to take forward various new measures to enhance statutory maternity leave (ML). Members are invited to note, comment on and support this proposal.

JUSTIFICATION

Background

2. The Chief Executive announced in the 2018 Policy Address that the statutory ML under the Employment Ordinance (EO) be extended from the current 10 weeks to 14 weeks. Technical amendments relating to the definition of miscarriage and pre-natal medical examination will also be made to certain ML provisions under the EO. Details of the proposal (the ML proposal) are set out at **Annex A**.

3. We consulted the Labour Advisory Board (LAB) and this Panel on the ML proposal on 30 November 2018 and 18 December 2018 respectively. Both were in general supportive of the proposal.

Need for a Chief Labour Officer Post

4. The ML proposal is a major and unprecedented change to the existing employment benefits regime as public money will be used to subsidise employers in providing employment benefits to their employees as required under EO on a perpetual basis. Based on the data in 2016, it is estimated that some 31 000 female employees would benefit from the proposed extension of ML and hence their employers are entitled to seek reimbursement from the Government for the additional ML pay (MLP) at a total cost of around \$479 million per annum. To take forward this initiative, we have to introduce legislative amendments to EO and develop a mechanism for making reimbursement to employers from scratch. As LD is essentially a regulatory department and does not have the necessary administrative and information technology (IT) infrastructure for handing out public subsidies on such a large scale, understandably the design, setting up, and continuous monitoring of the MLP reimbursement regime are a major challenge to LD that calls for extensive and high-level policy co-ordination and meticulous implementation. Major tasks include-

- (a) spearheading the legislative amendments with the assistance of the Department of Justice (DoJ) to give legal effect to the new ML regime;
- (b) setting up a dedicated office for effective implementation of the new ML regime and the reimbursement mechanism;
- (c) developing the reimbursement mechanism, including a customised and scalable IT system, and mapping out the implementation arrangements by working with concerned government bureaux and departments;
- (d) working with the Treasury, Audit Commission and Independent Commission Against Corruption (ICAC) and DoJ, etc. on formulating the guidelines on case processing to facilitate the development of a user-friendly and flexible reimbursement mechanism while ensuring prudent and proper use of public funds;

- (e) overseeing and ensuring the effective implementation of the reimbursement mechanism including complaint handling and review, and reviewing the operational arrangements from time to time;
- (f) liaising with the Food and Health Bureau/Department of Health and organisations in the medical profession, where appropriate, on issues concerning miscarriage as well as appropriate documentary proof of having attended pre-natal medical examination;
- (g) launching territory-wide publicity campaigns as well as reaching out activities to promulgate the legislative requirements and operational arrangements of the new ML regime to employer and employee groups as well as the general public;
- (h) monitoring the evolvement of the labour relations scene after the implementation of the new ML regime, and reviewing the level of the cap on the additional four weeks' MLP¹ where necessary; and
- (i) engaging major stakeholders, including this Panel, LAB, major employer and employee groups, and women's groups, etc. in the process of delivering the above-mentioned tasks.

5. In view of the complexity of the multi-faceted tasks involved in the formulation and implementation of this new ML regime as outlined above, an officer of sufficiently senior position and with rich experiences in labour issues will be required to take charge of the matter. We therefore propose to create one permanent post of CLO at D1 level, underpinned by a dedicated office in LD, to spearhead the development of a holistic policy and implementation framework for the new ML regime. A preparatory team of three non-directorate posts², which will eventually form part of the dedicated office, will be set up to take forward the ML proposal at the initial stage. We will

¹ The cost for the additional four weeks' MLP (i.e. MLP for the 11th to 14th weeks) would be funded by Government, which should be subject to a cap of \$36,822 per employee. The cap is equivalent to four-fifths of the wages of an employee with a monthly wage of \$50,000 in four weeks.

² Three non-directorate posts comprising one Senior Labour Officer, one Labour Officer and one Assistant Labour Officer I posts.

seek additional resources for the dedicated office for effective operation and monitoring of the reimbursement mechanism in accordance with the established mechanism at a suitable juncture.

6. The proposed CLO will lead the dedicated office to see through the policy formulation, legislative amendments and implementation of the new ML regime, including the arrangements for reimbursing employers for the additional four weeks' MLP (the reimbursement mechanism). Specifically, the CLO will provide strategic input in shaping ML policy, including the future review of the cap on the additional four weeks' MLP, taking account of Hong Kong's socio-economic circumstances and the interests of both employees and employers. He will be responsible for finalizing the drafting instructions for amending the relevant legislative provisions and work closely with DoJ and other relevant parties on the contents and technicalities of the bill to give effect to the proposed new ML regime. We aim at introducing the enabling bill to the Legislative Council (LegCo) before end-2019. The CLO will assist the Secretary for Labour Welfare in securing passage of the bill.

7. In parallel, the CLO will be tasked to oversee the whole development process that leads to the roll-out of the reimbursement mechanism as well as its smooth implementation. In developing the reimbursement mechanism, due consideration has to be given to the employers' expectation for user-friendliness, convenience and efficiency in the submission and processing of applications, while safeguarding the prudent use of public funds, minimising potential abuses and reducing the costs for administering the scheme as far as practicable. The CLO will have to weave all these competing parameters in the design and implementation of the mechanism, which requires strong administrative and political skills.

8. Hitherto LD does not have any IT infrastructure that supports the operation of the reimbursement mechanism. The CLO will have to lead the dedicated office in working closely with the IT specialists in developing the entire system infrastructure. In addition, close liaison with the Treasury, Audit Commission, ICAC and DoJ, etc. will be required in thrashing out various issues in connection with the processing of the voluminous applications for subsidies which are expected to be in the region of over 30 000 cases per annum. This will include verifying supporting documents, working out the accounting procedures, monitoring and checking the processed applications and ensuring speedy disbursement of government subsidies.

9. In reimbursing employers for the additional MLP, the CLO, supported by his office, will have to put in place a user-friendly and flexible mechanism which can accommodate different modes of wage components and calculation in the labour market for determining the exact amount of government subsidy for each and every application. The dedicated office is also expected to assist employers and employees to settle discrepancies of MLP uncovered in the course of processing the reimbursement applications, and ascertain the accurate amount of subsidy. Necessary safeguards should also be put in place to ensure prudent use of public funds and minimise potential abuses. Apart from daily supervision of the dedicated office, the CLO will be required to provide high-level steer to officers in the dedicated office in reviewing regularly the reimbursement arrangements, relevant operation guidelines, IT system, dispute handling mechanism, etc., in light of the actual operational experience garnered to ensure efficient and timely processing of the reimbursement applications.

10. Furthermore, as the new ML regime and use of public funds to subsidise employers in providing employment benefits to their employees are a major and unprecedented initiative, a carefully crafted territory-wide publicity campaign will have to be launched to enhance the public awareness and understanding of the new ML regime. Targeted educational and promotional efforts will be directed towards employers and employees on the details of the enhanced ML regime and reimbursement mechanism. All these major publicity and educational efforts would warrant a high-level steer and coordination from a directorate officer. The CLO will also be required to monitor closely the potential impact of extending the duration of ML from 10 weeks to 14 weeks on the labour relations scene, and review the level of cap of the Government's subsidy and put forth enhancement proposals where appropriate.

11. Upon creation of the post, the CLO will assist the Assistant Commissioner for Labour (Labour Relations) in the legislative work. After the passage of the enabling legislation, the CLO will report to the Assistant Commissioner for Labour (Development) in respect of responsibilities concerning the establishment and operation of the reimbursement mechanism.

12. All in all, delivering the tasks mentioned above requires both long-term and high-level strategic planning and co-ordination work. The government subsidy to employers for the additional four weeks' MLP will be provided on a permanent basis. The continuous and efficient processing of over 30 000 reimbursement applications every year, which involves the disbursement of some \$500 million of public money, calls for close supervision and regular review of the modus operandi (including the MLP cap) by an officer at directorate level. Hence it is essential to create the CLO post on a permanent basis and as soon as possible if we are to meet the targets of submitting the enabling bill to LegCo before end 2019 and effecting the reimbursement mechanism by 2021. The job description of the proposed CLO post is at **Annex B** and the proposed organisation chart of the Labour Administration Branch of LD is at **Annex C**.

ALTERNATIVES CONSIDERED

13. We have critically examined the possibility of redeployment to absorb the duties of the proposed permanent post. There are currently only three permanent and one time-limited CLO posts in LD. They are respectively responsible for overseeing the statutory minimum wage regime, labour relations, trade union matters, abolition of using employers' mandatory contributions under the Mandatory Provident Fund System to offset severance payment and long service payment, and working hours policy. They have already been fully stretched coping with their own work and it is operationally not possible for them to take up the new and demanding duties of the proposed CLO post. As the Government aims at introducing the enabling bill into the LegCo by late 2019 and implementing the reimbursement mechanism in 2021, there is a pressing need to create the proposed CLO post to take forward this important initiative which would benefit over 30 000 female employees each year.

FINANCIAL IMPLICATIONS

14. The proposed creation of the permanent CLO post will bring about an additional notional annual salary cost at mid-point of \$1,836,600. The full annual average staff cost, including salaries and on-cost, is about \$2,493,000. For the three non-directorate permanent posts as set out in paragraph 5 above,

the notional annual salary cost at mid-point is \$3,286,620 and the full annual average staff cost, including salaries and on-cost, is about \$4,893,000.

15. We will include the necessary provision in the draft Estimates for 2019-20 to meet the cost of this proposal.

ADVICE SOUGHT

16. Members are invited to note and comment on this proposal. Subject to Members' views, we will seek the necessary funding approval from LegCo in accordance with the established mechanism.

Labour and Welfare Bureau / Labour Department
March 2019

Proposed enhancement of Statutory Maternity Leave

To allow mothers more time to spend with and take care of their newborn babies, it is proposed to extend the statutory maternity leave (ML) under the Employment Ordinance (EO) from the current 10 weeks to 14 weeks.

2. If an employee is entitled to statutory maternity leave pay (MLP), the employer may seek reimbursement from the Government for the additional four weeks' MLP paid to the employee. Two technical amendments to certain ML provisions relating to the definition of miscarriage and pre-natal medical examination under EO are also recommended. Main features of the recommendations are set out in paragraphs 3 and 4 below.

Maternity leave and its pay

3. It is recommended that ML be extended from the current 10 weeks to 14 weeks under EO with details as follows –

- (a) the proposed extension of ML by a continuous period of four weeks should take effect in one go to become the 11th to 14th weeks of statutory ML;
- (b) the rate of MLP in relation to the additional four weeks of ML should be maintained at four-fifths of the employees' average daily wages;
- (c) the cost for this additional four weeks' MLP (i.e. MLP for the 11th to 14th weeks) would be funded by the Government. If an employee is entitled to the existing 10 weeks' MLP under EO, the employer will be required to pay the additional four weeks' MLP to the employee on the normal pay day as what the employer does now for payment of the current 10 weeks' MLP. The employer may seek reimbursement from the Government subject to proof of payment; and
- (d) the additional four weeks' MLP should be subject to a cap of \$36,822 per employee. The cap is equivalent to four-fifths of the wages of an employee with a monthly wage of \$50,000 in four weeks.

Technical amendments to EO

4. The following two technical amendments to EO are also recommended-

- (a) to update the definition of miscarriage in EO from before 28 weeks of pregnancy to before 24 weeks of pregnancy. According to EO, the current definition of miscarriage is “the expulsion of the products of conception which are incapable of survival after being born before 28 weeks of pregnancy”; and
- (b) to entitle an employee who has attended pre-natal medical examination in relation to her pregnancy¹ to sickness allowance² by producing, other than a medical certificate, relevant documentary proof of having attended such medical examination.

Other arrangements

5. Apart from the above proposed changes, the other arrangements concerning maternity provisions under EO shall continue to operate as they currently do.

¹ Currently section 33(3A) of EO stipulates that where a female employee who is pregnant and is required to attend a medical examination in relation to her pregnancy, any day on which she is absent from work for such examination shall be a sickness day. However, section 33(5)(a) provides that an employer shall not be liable to pay sickness allowance to an employee in respect of any sickness day, unless such day is a day specified in the appropriate medical certificate as a day on which the employee is unfit for work on account of sickness or injury.

² Subject to the employee having fulfilled the other required conditions for receiving sickness allowance.

**Job Description
for the proposed Chief Labour Officer**

Rank : Chief Labour Officer (D1)

Responsible to : Assistant Commissioner for Labour (Development)
[and at the initial stage also the Assistant Commissioner
for Labour (Labour Relations) in legislative work]

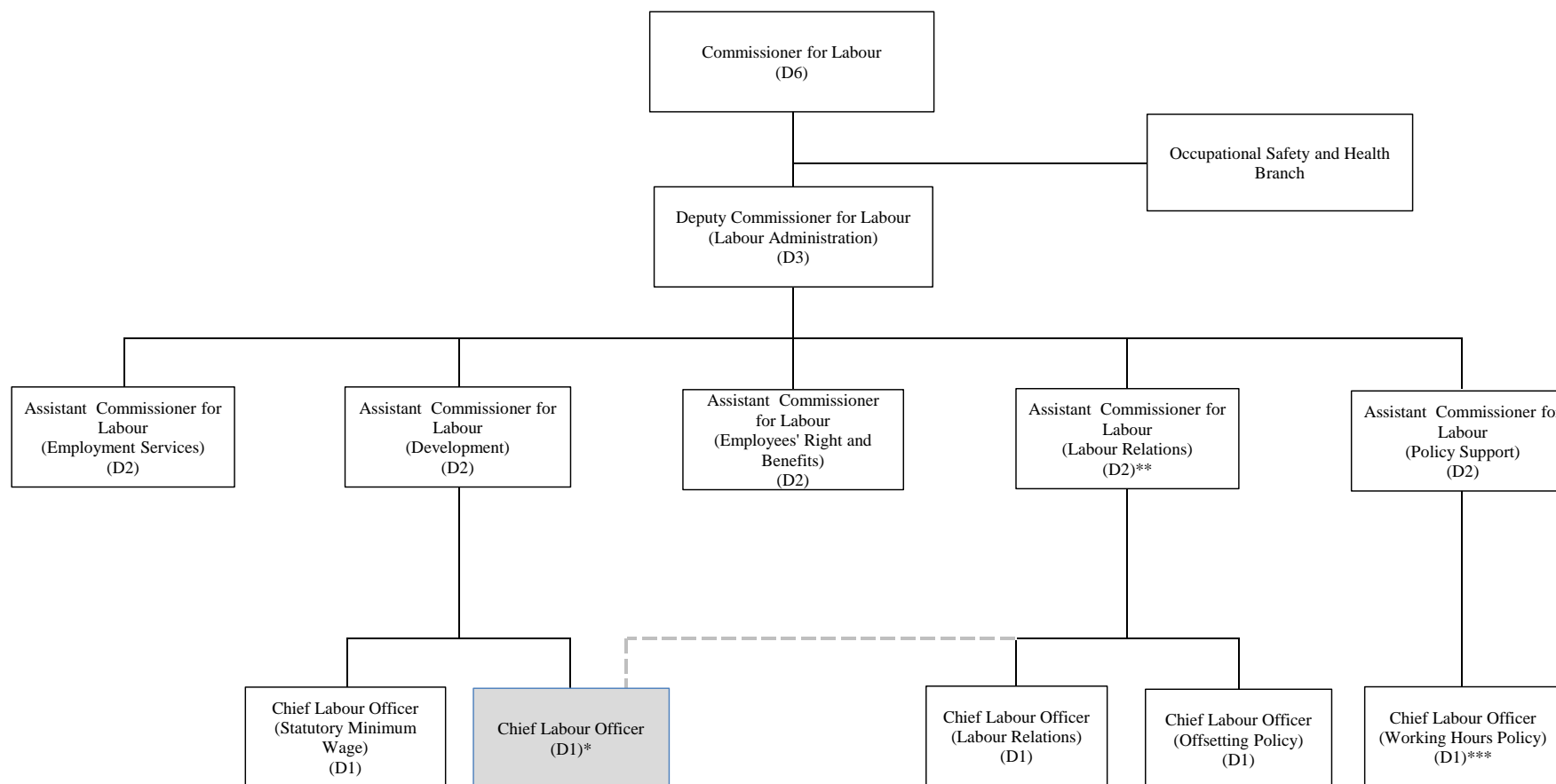
Main Duties and Responsibilities:

1. To spearhead the legislative amendments with the assistance of the Department of Justice (DoJ) to give legal effect to the new Maternity Leave (ML) regime.
2. To lead the setting up of a dedicated office for effective implementation of the new ML regime and the reimbursement mechanism.
3. To develop the proposed reimbursement mechanism, including a customised and scalable IT system, and map out the implementation arrangements by working with concerned government bureaux and departments.
4. To work with the Treasury, Audit Commission, Independent Commission Against Corruption and DoJ, etc. on formulating the guidelines on case processing to facilitate the development of a user-friendly and flexible reimbursement mechanism while ensuring prudent and proper use of public funds.
5. To oversee and ensure the effective implementation of the reimbursement mechanism including complaint handling and review, and to conduct necessary reviews on the operational arrangements from time to time.

6. To liaise with the Food and Health Bureau/Department of Health and organisations in the medical profession, where appropriate, on issues concerning miscarriage as well as appropriate documentary proof of having attended pre-natal medical examination.
7. To launch territory-wide publicity programmes as well as reaching out activities to promulgate the legislative requirements and operational arrangements of the new regime to employer and employee groups as well as the general public.
8. To monitor the evolution of the labour relations scene after the implementation of the new ML regime and review the level of the cap on the additional four weeks' ML pay (MLP)¹ where necessary.
9. To engage major stakeholders, including the Legislative Council Panel on Manpower, the Labour Advisory Board, major employer and employee groups, and women's groups, etc. in the process of delivering the above-mentioned tasks.

¹ The cost for the additional four weeks' MLP (i.e. MLP for the 11th to 14th weeks) would be funded by Government, which should be subject to a cap of \$36,822 per employee. The cap is equivalent to four-fifths of the wages of an employee with a monthly wage of \$50,000 in four weeks.

Proposed Organisation Chart of the Labour Administration Branch of the Labour Department



Note

- * Proposed permanent post of Chief Labour Officer to be created.
- ** Upon creation of the post, the CLO will at the initial stage assist Assistant Commissioner for Labour (Labour Relations) in the legislative work, while at the same time and the later stage reporting to the Assistant Commissioner for Labour (Development) on the establishment and operation of the reimbursement mechanism.
- *** The supernumerary CLO (Working Hours Policy) post will lapse on 1 April 2021.