

**立法會**  
**Legislative Council**

LC Paper No. CB(2)981/18-19(06)

Ref : CB2/PL/MP

**Panel on Manpower**

**Updated background brief prepared by the Legislative Council Secretariat  
for the meeting on 19 March 2019**

**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 contract<sup>1</sup> 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 ("MLP") at the rate of four-fifths of the employee's wages. An employer who fails to grant ML to a pregnant employee or fails to pay MLP 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 working women and the affordability of enterprises, and would deliberate the subject thoroughly by the Labour Advisory Board ("LAB").

---

<sup>1</sup> 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.

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 MLP 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 MLP were made in 1981 and 1995 respectively,<sup>2</sup> and thus the provisions in EO were outdated and could not meet the present needs of employees.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 MLP 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 MLP 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 employment rights and benefits, including ML benefits, would further increase the operation cost and undermine the business environment of MSMEs. These

---

<sup>2</sup> 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 MLP 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.

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. 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 MLP.

#### Latest proposal to extend the statutory maternity leave period

9. At its meeting on 18 December 2018, the Panel discussed and received public views on the Administration's proposal to improve the statutory ML regime. Members noted that the Administration proposed, among others, to extend the duration of statutory ML period from 10 weeks to 14 weeks, to fund the cost for the additional four weeks' MLP with a cap of \$36,822 per employee, as well as to 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. The Administration also proposed no change to the rate of MLP.

#### *Government subsidy for the extended statutory maternity leave period*

10. While most members welcomed the proposed extension of the statutory ML period, some members enquired about the rationale for the Government to fund the cost of the extra MLP and the financial implications.

11. The Administration advised that the maternity benefits in Hong Kong had been solely borne by employers over the past decades. However, having considered the standard of ML recommended by ILO, the practices of other economies and the operational experience in respect of the maternity provisions in EO, it was considered appropriate for the Government to assume the responsibility of financing the cost of the extra four-week statutory MLP. The Administration further advised that it 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. According to ILO's research findings, MLP in most of the countries/places was fully or partially financed by social insurance system with contributions from both employers and employees. It was also noted that ML was unpaid in some economies. The period of ML was in general shorter in places where individual employers needed to bear the full cost of MLP 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 MLP was to be fully borne by individual employers. It was estimated that the annual recurrent expenditure for the extended four-week MLP would be around some \$479 million.

*Cap for the extended four-week maternity leave pay*

12. Some members held the view that eligible employees should receive full pay during the statutory ML period. Noting that the Government's funding support for the extended four-week statutory MLP would 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 ("the cap"), some members considered that the proposed arrangement was unreasonable and unfair to the higher-paid female employees and expressed concern as to whether it would constitute discrimination against these employees. Moreover, the MLP rate of these employees in the additional four weeks' ML would be lower than that in the first 10 weeks' ML because of the cap. Some members also expressed strong dissatisfaction at the disparity of ML benefits between government female employees and non-government employees, given that the former were entitled to 14 weeks' ML with full pay. Pointing out that no consensus had been reached by LAB on imposing a cap on MLP for the extra four weeks, these members urged the Administration to seriously consider lifting the cap for the additional four weeks' MLP.

13. The Administration advised that in line with the existing labour legislation, the Administration proposed that 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. The Government had no intention to require employers to assume extra responsibility for the cost of additional four weeks' MLP. Nonetheless, employers were encouraged to offer employment terms, such as holiday entitlements and maternity benefits, that were more favourable than those stipulated under EO.

14. The Administration further advised that there was in general a cap for the amount of MLP 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 MLP, employers would be much concerned about their legal responsibility. The attention of members was also drawn to the fact that employees with a monthly wage of \$50,000 or below accounted for about 95% of female employees in Hong Kong. A substantial portion of the Government subsidy would be used to fund the extra MLP for the higher-paid female employees if there was no

upper limit for MLP, which was not proportionate to the number of eligible employees in this group. Given the wide spectrum of female employees' wages and the need to ensure the prudent use of public money, Government's funding support should only aim at covering the great majority of the cases but not those with exceedingly high pay. Taking into consideration all relevant factors, the Administration considered the proposed cap for the additional four weeks' MLP reasonable. That said, the funding amount might be adjusted from time to time.

#### *Implementation timetable*

15. Pointing out that Government female employees were already entitled to 14 weeks of ML with full pay and employees of some large enterprises had been provided with 16-week ML, most members urged for early implementation of the proposal to extend the statutory ML period to 14 weeks. They enquired about the implementation timetable for the proposal to extend the statutory ML period to all eligible employees.

16. 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 MLP to employers. Nonetheless, the Administration would proceed with the drafting of the legislative amendments with a view to introducing a bill into LegCo in late 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.

#### *Reimbursement mechanism*

17. Members held the view that the operation of the reimbursement mechanism for MLP for the additional four weeks of ML should be simple. The Administration advised that a new reimbursement mechanism would be developed for making MLP for the additional four weeks of ML to employers. To ensure timely payment, easy administration and prudent use of public money, it was proposed that the employer would be required to first pay the additional four weeks' MLP to the employee on the normal pay day like the first

10 weeks' MLP. Government funding support for the additional four weeks' MLP would be provided by way of reimbursement to the employer, subject to proof of payment, etc. The Administration would strive to streamline and simplify the reimbursement procedures as far as practicable.

*Related staffing proposal*

18. The Administration will brief the Panel on the proposal to create a Chief Labour Officer post to lead the various new enhancement measures connected with statutory ML at its meeting on 19 March 2019.

**Relevant papers**

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

Council Business Division 2  
Legislative Council Secretariat  
13 March 2019

**Relevant papers on statutory maternity leave**

<b>Committee</b>	<b>Date of meeting</b>	<b>Paper</b>
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)	<u>Agenda</u> <u>Minutes</u>
Panel on Manpower	16 October 2018 (Item III)	<u>Agenda</u> <u>Minutes</u>
Panel on Manpower	18 December 2018 (Item IV)	<u>Agenda</u> <u>Minutes</u>