

**立法會**  
**Legislative Council**

LC Paper No. CB(2)1445/19-20  
(These minutes have been seen  
by the Administration)

Ref : CB2/PL/MP

**Panel on Manpower**

**Minutes of special meeting**  
**held on Tuesday, 28 April 2020, at 8:30 am**  
**in Conference Room 3 of the Legislative Council Complex**

- Members present** : Hon HO Kai-ming (Chairman)  
Hon CHU Hoi-dick (Deputy Chairman)  
Hon LEUNG Yiu-chung  
Hon WONG Kwok-kin, SBS, JP  
Hon Claudia MO  
Hon YIU Si-wing, BBS  
Dr Hon KWOK Ka-ki  
Hon KWOK Wai-keung, JP  
Hon Christopher CHEUNG Wah-fung, SBS, JP  
Dr Hon Fernando CHEUNG Chiu-hung  
Dr Hon Helena WONG Pik-wan  
Hon Elizabeth QUAT, BBS, JP  
Hon POON Siu-ping, BBS, MH  
Dr Hon CHIANG Lai-wan, SBS, JP  
Hon Andrew WAN Siu-kin  
Hon SHIU Ka-fai, JP  
Hon SHIU Ka-chun  
Dr Hon Pierre CHAN  
Hon LUK Chung-hung, JP  
Hon Jeremy TAM Man-ho  
Hon Vincent CHENG Wing-shun, MH, JP
- Members attending** : Hon Tommy CHEUNG Yu-yan, GBS, JP  
Hon Tony TSE Wai-chuen, BBS
- Members absent** : Hon CHUNG Kwok-pan  
Hon YUNG Hoi-yan, JP

**Public Officers attending** : Item I

Miss Mabel LI Po-yi, JP  
Deputy Commissioner for Labour (Labour Administration)

Mr Raymond LIANG Lok-man  
Assistant Commissioner for Labour (Labour Relations)

Ms Jade WONG Sin-yee  
Chief Labour Officer (Labour Relations)  
Labour Department

Miss Annet LAI Chau-mei  
Government Counsel  
Department of Justice

**Clerk in attendance** : Miss Betty MA  
Chief Council Secretary (2) 1

**Staff in attendance** : Mr Alvin CHUI  
Assistant Legal Adviser 3

Ms Rita LAI  
Senior Council Secretary (2) 1

Miss Lulu YEUNG  
Clerical Assistant (2) 1

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**I. Issues relating to the Employment (Amendment) Bill 2019**  
(LC Paper Nos. CB(2)604/19-20(02) to (04), CB(2)662/19-20(01)  
and LS34/19-20)

The Chairman suggested that the discussion arrangement on issues relating to the Employment (Amendment) Bill 2019 ("the Bill"), which was tabled at the meeting, be adopted by the Panel. Members agreed.

*(Post-meeting note: The above discussion arrangement was issued to members vide LC Paper No. CB(2)885/19-20 on 28 April 2020.)*

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2. The Chairman said that he would deal with members' proposed motions, if any, upon completion of deliberations on issues relating to the Bill in accordance with the discussion arrangement.

3. At the invitation of the Chairman, Deputy Commissioner for Labour (Labour Administration) ("DC for L (LA)") briefed members on the contents of the Bill, as detailed in the Administration's paper.

4. Members noted an updated background brief entitled "Proposal to increase the provision of statutory maternity leave" prepared by the Legislative Council ("LegCo") Secretariat.

Extension of the statutory maternity leave by four weeks and the maternity leave pay thereof

*Extension of statutory maternity leave*

5. Mr POON Siu-ping welcomed the proposal to extend the statutory maternity leave ("ML") under the Employment Ordinance (Cap. 57) ("EO") from the current 10 weeks to 14 weeks, which in his view had responded to the strong call from the labour sector over the years, and to fund the additional four weeks' maternity leave pay ("additional MLP") by the Government. Ms Elizabeth QUAT was in support of the proposal to extend the statutory ML.

6. Mr Tommy CHEUNG welcomed the Administration's proposal to fund the cost of the additional MLP. Mr SHIU Ka-fai said that to his understanding, the business sector did not have strong views on the Administration's proposal of extending the statutory ML by four weeks, having regard to its funding support for the additional MLP. In view of the ageing population and low fertility rate in Hong Kong, it was understandable that this would be a facilitating measure to encourage childbirth in Hong Kong.

7. Dr Helena WONG said that the Democratic Party was in support of extending the duration of ML and paternity leave ("PL") with full pay. While expressing support for the legislative proposal, she called on the Administration to make further improvements on provision of maternity benefits.

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8. Drawing reference to the findings of a ML study conducted by the International Labour Organization ("ILO") among its 185 members in 2014, Mr KWOK Wai-keung highlighted that Hong Kong was among the 27 places (i.e. 15%) providing ML of less than 12 weeks. In light of the consensus reached by the Labour Advisory Board ("LAB") on the extension of statutory ML to 14 weeks, Mr KWOK urged the Administration to implement the extended ML as soon as practicable.

9. Mr LEUNG Yiu-chung said that he had advocated making improvements to maternity benefits since 1985 and expressed disappointment at the slow progress in enhancing the statutory ML over the years. Pointing out that the duration of the extended statutory ML in Hong Kong would still lag behind those in many other places, such as the Mainland, Singapore, Australia, and the European countries following extension of the statutory ML to 14 weeks, Mr LEUNG expressed concern about the considerations for extending the ML period by four weeks in the current legislative proposal and called on the Administration to further extend the duration of statutory ML.

10. Dr Fernando CHEUNG welcomed the legislative proposal and considered it a win-win situation for both employers and employees. Dr CHEUNG added that it was a community consensus that the extended ML should be implemented as soon as practicable.

11. In response to members' views and concerns, DC for L (LA) advised that the Administration had briefed the Panel on the review outcome of statutory ML under EO and consulted members on the proposed amendments to the ML provisions in EO at the Panel meeting in December 2018. DC for L (LA) and Assistant Commissioner for Labour (Labour Relations) ("AC for L (LR)") recapitulated that the Administration had 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 and had come up with the recommendation to extend ML from the current 10 weeks to 14 weeks under EO. Notably, ML at full pay for eligible employees in some other places was financed by the public funds or social insurance with contributions from employers and employees as appropriate. AC for L (LR) further said that the proposed extension of the statutory ML would be a substantial increase in the duration of ML and it would meet the stipulation in ILO's Maternity Protection Convention, 2000 (No. 183) ("the Convention") that ML should not be less than 14 weeks.

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12. Dr Fernando CHEUNG pointed out that the Convention had been adopted by ILO's member states since 2000 and the maternity protection in these member states had been improving, including a female employee's entitlement to a ML period of not less than 14 weeks. Dr CHEUNG was gravely concerned that Hong Kong lagged far behind in the development of maternity protection as compared with many other economies, including 83% of the underdeveloped South African countries where 14-week ML was provided. Dr CHEUNG sought information on the development of maternity protection in the past two decades in Hong Kong.

13. DC for L (LA) advised that the Convention was not applied to Hong Kong. That said, the Administration reviewed the employment rights and benefits from time to time, taking into account the employees' interest and employers' affordability and having regard to the social and economic development in Hong Kong. Notably, the employment rights and benefits had been improving over the years, including the introduction of the Statutory Minimum Wage ("SMW") in 2011, the introduction of PL in 2015 and the increase in the number of days of PL in 2019, etc. A number of major amendments to the maternity protection provisions had also been made under EO in the past, such as amendments to prohibit the assignment of heavy, hazardous or harmful work to pregnant employees by employers in 1997.

*Maternity leave pay*

14. Mr LEUNG Yiu-chung, Dr Fernando CHEUNG and Mr SHIU Ka-chun held the view that eligible employees should receive full pay during the statutory ML period and considered it inappropriate to regard the nature of ML the same as sick leave, and pitch the rate of statutory MLP at four-fifths of the employee's average daily wages as in the case of sickness allowance. Given that the prevailing rates of MLP and sickness allowance had been in force for several decades, Mr LEUNG called on the Administration to conduct a review. Referring to the provision of ML benefits through compulsory social insurance or public funds as stipulated in the Convention for enhancement of maternity protection, Dr CHEUNG asked whether the Administration would consider funding MLP by the social insurance system, which, in his view, would have more extensive coverage to include self-employed persons and employees engaged under employment contracts with short duration or working hours. He sought information on the Government's research findings in this regard.

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15. Mr LUK Chung-hung said that the labour sector, including the Hong Kong Federation of Trade Unions, had called for provision of 14-week ML with full pay for more than 30 years. Having regard to the need for introducing supporting measures to boost childbirth in Hong Kong, Mr LUK expressed regret that the additional MLP rate would be maintained at four-fifths of their average daily wages in the current legislative exercise.

16. Dr Helena WONG expressed dissatisfaction that the prevailing statutory MLP rate had remained unchanged for a long period of time. Dr WONG held the view that the Administration should have sufficient fiscal reserve to fund the additional recurrent expenditure if ML and PL were granted at full pay and called on the Administration to conduct a review in this regard.

17. Mr Andrew WAN highlighted the low fertility rate in Hong Kong and the imminent need to encourage childbirth in view of the ageing population. Mr WAN asked whether the Administration would consider extending ML to 14 weeks with full pay so as to provide more incentive to boost childbirth.

18. In response to members' concerns and views, DC for L (LA) and AC for L (LR) said that MLP was provided at the rate of two-thirds of wages in 1981 and was raised to four-fifths of wages in 1995. The current MLP rate i.e. four-fifths of employees' average daily wages, which compared favourably with ILO's recommendation of no less than two-thirds of the employee's previous earnings, would continue to apply to the additional MLP. DC for L (LA) further advised that currently, employers were required to bear the full cost of the 10-week MLP. The Bill sought to extend the statutory ML by four weeks, whereas the additional MLP subject to a cap would be funded by the Government by way of reimbursement to employers. The Administration planned to seek funding approval from the Finance Committee ("FC") for the development of the new Disbursement Information System ("DIS"). It would be a substantial policy change if the rate of MLP was revised to full pay, which was not the subject matter of the Bill. Apart from the changes proposed in the Bill, other arrangements concerning maternity protection under EO would continue to operate as they currently did.

19. DC for L (LA) further said that the suggestion of funding MLP by the social insurance system with contributions from employers, employees and/or government was totally different from the existing

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regime in Hong Kong in which various employment benefits, such as sickness allowance, severance payment, long service payment, MLP and PL pay, under EO were fully borne by individual employers. DC for L (LA) further advised that given the varying economic situations and social systems in different places, individual economies had to formulate their own employment benefit standards according to their individual circumstances. It was also noteworthy that different rates of MLP applied to different periods of ML in some economies. DC for L (LA) said that the Labour Department ("LD") would provide information on payment of MLP by the social insurance system in some other economies after the meeting.

20. Mr Tommy CHEUNG expressed concern that employers, especially those in the catering sector, would likely need to hire substitute workers when their female employees taking an extended period of ML in future. This would give rise to additional staff cost and create an adverse impact on business operation.

21. Mr LUK Chung-hung sought information on the cost impact assessment of the extension of statutory ML by four weeks. To his understanding, it would be seldom for employers to hire substitute workers when their female employees taking ML and in effect relevant workload was shared among other staff members. As such, the additional staff cost arising from the extended ML period would not be significant.

22. DC for L (LA) responded that LD did not have information on the additional cost incurred from hiring substitute workers for female employees taking ML. As the additional MLP subject to a cap was to be fully borne by the Government by way of reimbursement to employers, it was envisaged that additional cost to be borne by the employers concerned should be insignificant. It was also noteworthy that the practice of hiring substitute workers varied among various enterprises, depending on the nature of business and manpower requirements of individual enterprises.

*Introducing a cap on the additional maternity leave pay*

23. Mr Tommy CHEUNG said that introducing a cap on the Government's funding support for the additional MLP would provide employers with flexibility to provide more financial incentive to their employees by way of offering a higher level of MLP above the cap.

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24. Mr POON Siu-ping said that to his understanding, no consensus had been reached by LAB on the introduction of a cap on the additional MLP. Ms Elizabeth QUAT and Mr LUK Chung-hung expressed dissatisfaction that the additional MLP would be subject to the cap of \$36,822.

25. DC for L (LA) advised that the proposed cap of \$36,822 for the additional MLP was equivalent to four-fifths of the wages of an employee with a monthly wage of \$50,000 in four weeks. Employees with a monthly wage of \$50,000 or below accounted for about 95% of female employees in Hong Kong based on 2016 data. She added that the cap would be reviewed from time to time.

26. Mr LEUNG Yiu-chung, Ms Claudia MO, Dr Fernando CHEUNG and Ms Elizabeth QUAT held the view that introducing a cap on the additional MLP was unfair to the higher-paid female employees. Mr LEUNG considered that the higher-paid female employees were penalized under the proposed arrangement. Ms QUAT enquired whether the Administration had consulted the Equal Opportunities Commission and cautioned that the proposed arrangement might constitute discrimination against higher-paid female employees. Ms QUAT asked about the rationale for setting a cap covering 95% of female employees in Hong Kong only and the additional recurrent expenditure to be borne by the Government if there was no cap on the Government's funding support for the additional MLP.

27. Mr Tommy CHEUNG considered that employees with a monthly wage above \$50,000 would usually be those who were more mature with rich work experience. Hence, setting a cap covering 95% of female employees should be able to cover female employees at childbearing age. Mr CHEUNG asked about the sample selection of the survey on wage level of female employees.

28. DC for L (LA) explained that employees with a monthly wage of \$50,000 or below accounting for about 95% of female employees in Hong Kong was based on the wage data of female employees collected by the Census and Statistics Department in a relevant survey in 2016. AC for L (LR) added that to uphold the principle of prudent use of public money, the Government's funding support should only aim at covering the great majority of the cases. If there was no upper limit for the additional MLP, a substantial sum of Government funding might be used to fund the additional MLP for those female employees with exceedingly



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high pay, which was not proportionate to the number of eligible female employees in this group. DC for L (LA) and AC for L (LR) added that employers could offer MLP to their employees that was more favourable than that stipulated under EO. According to the crude estimation (based on data in 2018), the Government's annual recurrent expenditure for the additional MLP capped at \$36,822 would be around \$444 million. If there was no upper limit for the additional MLP, the Government's extra annual recurrent expenditure would be around \$31 million. The Administration had consulted the Women's Commission and the Family Council on the legislative proposal, both of which welcomed the proposal to extend the statutory ML period.

29. Ms Claudia MO and Ms Elizabeth QUAT were of the view that the Government should provide funding support for the additional MLP for all employees since the Government's extra annual recurrent expenditure of was around \$31 million only. Mr LEUNG Yiu-chung and Ms MO appealed to the Administration to reconsider the matter. AC for L (LR) reiterated that the Administration should uphold the principle of prudent use of public money.

30. Dr Fernando CHEUNG was of the view that the amount of the cap should be further increased so as to cover most of the eligible employees except those with exceedingly high pay. In response to Dr CHEUNG's enquiry on setting a cap covering 99% of all female employees, AC for L (LR) said that the corresponding monthly wage was about \$100,000 with reference to the crude estimation based on 2018 data. Dr CHEUNG considered that the cap should be increased to \$100,000.

31. Mr POON Siu-ping was concerned about whether the Administration would withdraw the Bill if any amendment concerning the cap on the additional MLP so proposed by Members was passed. DC for L (LA) said that the Administration would take appropriate action if warranted.

32. The Chairman sought clarification as to whether employers could seek full reimbursement from the Government if they paid the additional MLP to their eligible employees at a rate higher than four-fifths of employees' average daily wages and the actual amount had not reached the cap. AC for L (LR) said that the additional MLP would be calculated in accordance with the existing MLP rate under EO, but subject to a cap of \$36,822. Employers could seek reimbursement from

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the Government on the additional MLP by way of an administrative scheme which was not stipulated in the Bill. Members' views on the reimbursement arrangement would be conveyed to the Disbursement Office, which would be responsible for disbursing the additional MLP to employers, for consideration.

*Implementation timetable*

33. Dr KWOK Ka-ki said that given the proposal of extending the statutory ML was pledged in the 2018 Policy Address, the introduction of the Bill was overdue. Since there was little progress in improving employees' maternity benefits since the introduction of the 10-week ML in 1970, he urged the Administration to expedite the relevant legislative timetable and align the ML period with the international standard as soon as practicable. Mr SHIU Ka-chun said that a majority of Members were concerned that the extended ML would only be implemented by end of 2021.

34. DC for L (LA) advised that the Government had completed the review of statutory ML in 2018 and proposed to extend the statutory ML under EO from the current 10 weeks to 14 weeks. After having consulted the Panel on its proposal in December 2018, the Government published the Bill in the Gazette in December 2019 and then introduced the Bill into LegCo on 8 January 2020. On 21 January 2020, LD consulted the Panel on its proposal to develop a new DIS for implementing the proposed extension of statutory ML. With the support of the Panel, the Administration planned to seek funding approval from FC for the development of DIS. Subject to the passage of the Bill and securing of the funding approval from FC within the 2019-2020 session, it was estimated that the reimbursement scheme for the additional MLP would be put in place by end of 2021.

35. Mr SHIU Ka-fai was concerned whether the Bill could resume its Second Reading debate within the current session in accordance with requirements stated in the Rules of Procedure ("RoP") if the House Committee could not discharge its functions properly. DC for L (LA) said that the Administration would give the notice of resumption of the Second Reading debate on the Bill in accordance with RoP 54(5) after the Panel had completed its deliberations on the Bill.

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*Review of ML and related benefits*

36. Dr Fernando CHEUNG, Dr Helena WONG, Mr POON Siu-ping and Mr SHIU Ka-chun were concerned that while it was stipulated in the Bill that the cap amount of the additional MLP would be reviewed from time to time, there was no concrete review timetable. These members asked whether the Administration would consider specifying a review timetable in the Bill. Dr WONG further enquired how to kick start the review.

37. Dr KWOK Ka-ki said that as the 2018 wage data were used for estimating the proportion of female employees to be covered in setting the cap on the additional MLP, the corresponding monthly wage of eligible employees was stood at the 2018 level. There would be a three-year gap when the extended ML was to be implemented by end of 2021. Dr KWOK held the view that review of ML and related benefits should be conducted at specific intervals, say, every two years as in the case of SMW. Sharing a similar view, Ms Claudia MO said that the Administration would in general undertake to conduct a review on a new piece of legislation two years after its implementation. Mr LEUNG Yiu-chung was of the view that a comprehensive review of maternity protection, including the duration, MLP rate and the cap amount, should be conducted regularly.

38. Responding to members' views and concerns, DC for L (LA) advised that in the light of lack of relevant experience in implementing the extended ML, the Administration considered it appropriate not to specify a review period or review frequency in the Bill so as to maintain flexibility in this regard. As a matter of fact, the Administration had all along been conducting reviews of labour legislation in a timely manner, taking into account the social changes and economic development of Hong Kong as well as such practical needs as the actual circumstances upon the implementation of the policy, etc. In the course of reviews, the Administration would consult LAB with employees' and employers' interests duly represented by their respective representatives. Likewise, after the passage and implementation of the Bill, the Government would conduct reviews in a timely manner. As compared to rigidly stipulating a timetable in the Bill for reviewing the statutory ML and related benefits (including the cap on the additional MLP), the established review arrangement would be more flexible and responsive to the actual social conditions of Hong Kong in reviewing the statutory ML. AC for L (LR) supplemented that the Administration had been making improvements to

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the labour rights and benefits over the years with timely reviews conducted, such as the increase in the number of days of PL.

39. Dr Helena WONG remained concerned about the lack of a concrete review timetable for the cap amount in the Bill. The Chairman said that in accordance with clause 6(4) of the Bill, the cap amount might be amended by the Commissioner for Labour. Members could consider proposing amendments to the Bill under their own names. Dr WONG invited the legal adviser to the Panel's view as to whether it was in order to stipulate in the Bill a review timetable for the cap amount.

40. Assistant Legal Adviser 3 ("ALA3") advised that the admissibility of a proposed amendment to a bill was a matter to be decided by the President of LegCo, including whether it was in compliance with RoP 57(4)(a) and RoP 57(6) if the proposed amendment was opposed by the Administration on the grounds that it was not relevant to the subject matter of the Bill and the amendment had a charging effect within the meaning of RoP 57(6). From the drafting perspective, Dr Helena WONG's proposal to impose a statutory duty on the Government to conduct a regular review of the cap on the additional MLP could be effected by amending clause 6(4) of the Bill. However, there was no available information on whether Dr WONG's proposal would have a charging effect within the meaning of RoP 57(6). In this connection, members might wish to seek the Administration's views as to whether the proposal would have any financial and manpower implications.

41. Dr Helena WONG said that to her knowledge, it was stipulated in the Minimum Wage Ordinance (Cap. 608) that the SMW rate had to be reviewed at least once in every two years. In response to Dr WONG's request, ALA3 agreed to provide examples of existing legislation under which a review mechanism was spelt out expressly in the Ordinance for members' reference after the meeting. Dr WONG further said that she was considering proposing an amendment to clause 6(4) of the Bill in order to impose a statutory obligation on the Government to review the level of the cap regularly after the commencement of the enacted Amendment Ordinance.

*(Post-meeting note: The requisite examples provided by the legal adviser to the Panel were circulated to members vide LC Paper No. CB(2)929/19-20 on 6 May 2020.)*

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42. At Dr Helena WONG's request, the Administration agreed to provide response to the suggestion of specifying in the Bill a review timetable for the statutory ML and related benefits after the meeting.

Updating the definition of miscarriage

43. Mr Tommy CHEUNG asked about the rationale for updating the definition of "miscarriage" under EO from "before 28 weeks of pregnancy" to "before 24 weeks of pregnancy" and asked whether there were any medical justifications. Referring to the discussion arrangement tabled at the meeting, the Chairman requested the Administration to provide a response to Mr CHEUNG's concern when the Panel discussed item (b) "Updating the definition of miscarriage" at the next special meeting.

*Other concerns*

44. Drawing reference to the adoption of shared parental leave in many overseas countries, Dr KWOK Ka-ki asked whether the Administration had any plan to extend PL with a view to bringing more benefits to the families concerned. Mr LEUNG Yiu-chung shared a similar view and considered that it could promote parenthood.

45. Mr KWOK Wai-keung called on the Administration to increase the number of days of statutory PL to seven days and to finance the cost of the additional PL days with government subsidy as in the case of additional MLP upon its implementation.

46. As regards the shared parental leave arrangement in certain western economies, DC for L (LA) drew members' attention to the fact that the pay for ML and PL in some places was financed by the social insurance system with contributions from both employers and employees whereas the cost for ML and PL was solely borne by employers in Hong Kong.

47. In closing, the Chairman said that the next special meeting of the Panel would be held on Tuesday, 12 May 2020, at 8:30 am to continue discussion on item (a) "Extension of the statutory maternity leave by four weeks and the maternity leave pay thereof" of the discussion arrangement, and thereafter proceed to the rest of the items.

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48. There being no other business, the meeting ended at 10:35 am.

Council Business Division 2  
Legislative Council Secretariat  
20 August 2020