

立法會
Legislative Council

LC Paper No. CB(2)1466/19-20
(These minutes have been seen
by the Administration)

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Panel on Manpower

Minutes of special meeting
held on Tuesday, 12 May 2020, at 8:30 am
in Conference Room 1 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
Dr Hon Fernando CHEUNG Chiu-hung
Dr Hon Helena WONG Pik-wan
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
Hon YUNG Hoi-yan, JP
Dr Hon Pierre CHAN
Hon LUK Chung-hung, JP
Hon Vincent CHENG Wing-shun, MH, JP
- Member attending** : Hon Tommy CHEUNG Yu-yan, GBS, JP
- Members absent** : Hon Christopher CHEUNG Wah-fung, SBS, JP
Hon Elizabeth QUAT, BBS, JP
Hon CHUNG Kwok-pan
Hon Jeremy TAM Man-ho

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 Rebecca CHAN Ka-pik
Senior Labour Officer (Labour Relations)
(Maternity Leave Policy)
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

Action

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),
CB(2)885/19-20(01), CB(2)929/19-20(01), CB(2)942/19-20(01)
and LS34/19-20)

The Chairman said that the meeting would continue discussion on item (a) "Extension of the statutory maternity leave by four weeks and the maternity leave pay thereof" of the discussion arrangement on issues relating to the Employment (Amendment) Bill 2019 ("the Bill"), and would then proceed to the rest of the items.

Action

2. At the invitation of the Chairman, Deputy Commissioner for Labour (Labour Administration) ("DC for L (LA)") briefed members on the Administration's response to the issues raised by members at the special meeting on 28 April 2020, as detailed in the Administration's reply dated 7 May 2020 (LC Paper No. CB(2)942/19-20(01)).

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

Maternity leave pay

3. Dr CHIANG Lai-wan sought clarification about the eligibility criteria for the additional four weeks' maternity leave pay ("additional MLP"), and whether self-employed persons would be entitled to the additional MLP to be borne by the Government.

4. DC for L (LA) advised that if an employee was entitled to the existing 10 weeks' MLP under the Employment Ordinance (Cap. 57) ("EO"), the employer, after the passage and commencement of operation of the Bill, would be required to pay the additional MLP to the employee concerned on the normal pay day as what the employer did now for payment of the current 10 weeks' MLP. The employer could seek reimbursement under the new Reimbursement of Maternity Leave Pay Scheme ("RMLPS") (which was not stipulated in the Bill as it was an administrative scheme) from the Government for the additional MLP paid to the employee subject to proof. The proposed cap of \$36,822 on the additional MLP (i.e. MLP for the 11th to 14th weeks) ("the cap") was equivalent to four-fifths of the wages of an employee with a monthly wage of \$50,000 in four weeks. Based on 2016 data, employees with a monthly wage of \$50,000 or below accounted for about 95% of female employees in Hong Kong.

5. Mr LEUNG Yiu-chung held the view that extension of the maternity leave ("ML") period from the current 10 weeks to 14 weeks should not be the ultimate goal, as the duration of ML was more than 14 weeks in a number of economies. Mr LEUNG was concerned about the Administration's long-term plan of further extending the ML period. With reference to the provision of 52-week ML in the United Kingdom, Mr LEUNG pointed out that employers could claim reimbursement for employees' wage payment during ML from the National Insurance. He called on the Administration to make reference to overseas practices and consider funding MLP by social insurance.

Action

6. DC for L (LA) said that employers were currently required to bear the 10-week MLP for their employees concerned. The Bill sought to, among others, extend statutory ML by four weeks. As explained earlier, the additional MLP would be funded by the Government on a reimbursement basis. DC for L (LA) advised that the suggestion of funding MLP by social insurance with contributions from employers, employees and/or government as adopted in some economies was totally different from the existing regime in Hong Kong under which provision of various employment benefits including MLP under EO was fully borne by individual employers. Given the varying economic situations and social systems, individual economies formulated their systems on maternity benefits according to their respective circumstances. Drawing reference to ML period of 14 weeks in Japan and 90 days in the Republic of Korea with part of MLP funded by social insurance, it was noteworthy that the ML period with funding from the insurance system was not necessarily longer.

7. Mr Andrew WAN held the view that an extended period of ML was a supporting measure for encouraging childbirth. Having regard to the low fertility rate in Hong Kong, Mr WAN was concerned that the extension of the current 10 weeks' ML to 14 weeks could only meet the minimum standard as recommended by the International Labour Organization ("ILO"). Mr WAN enquired whether the Administration had conducted any comparative analysis on the correlation between provision of employment support measures/maternity benefits and the fertility rate in Hong Kong and other economies.

8. Sharing a similar concern and view, Dr Fernando CHEUNG said that in formulating policy on maternity benefits, it was imperative to collect relevant information on the arrangements in various economies and conduct a comparative study. Dr CHEUNG pointed out that provision of paternity leave ("PL") was up to one year in Japan, which was much longer than that in Hong Kong. Dr CHEUNG suggested that the Administration should conduct a study on the provision of ML, PL and parental leave in other economies.

9. DC for L (LA) advised that the Chief Executive announced in the 2018 Policy Address that the Government had completed the review of the statutory ML. To allow mothers more time to spend with and take care of their newborn babies, it was proposed to extend the statutory ML under EO from the current 10 weeks to 14 weeks. The review focused on the duration of ML and the Labour Department ("LD") did not have

Action

the information requested by Mr Andrew WAN. Moreover, childbirth was not necessarily related to provision of maternity benefits but subject to various considerations of individual families.

10. The Chairman supplemented that a fact sheet on parental leave and family-friendly employment policies in selected places had been prepared by the Research Office of the Legislative Council ("LegCo") (FS07/16-17).

Review of ML and related benefits

11. Mr LEUNG Yiu-chung said that he had advocated making improvement to maternity benefits since 1985. Mr LEUNG and Dr Fernando CHEUNG expressed disappointment at the slow progress in enhancing the statutory ML benefits over the years. Mr LEUNG sought information on the number of reviews on ML in the past years. Mr LEUNG and Dr CHEUNG were concerned that while it was stipulated in the Bill that the cap amount might be reviewed from time to time, there was no concrete review timetable. In their view, the Administration should specify a review timetable for ML and related benefits in the Bill, say, at specific intervals of every two to three years. Both members appealed to members belonging to different political affiliations/labour unions to support stipulating a review mechanism in the Bill.

12. DC for L (LA) advised that LD had reported the outcome of the review of ML to the Labour Advisory Board ("LAB") in November 2018 and the Panel on Manpower ("the Panel") in December 2018. Both LAB and the Panel were on the whole supportive of the proposal for extending the statutory ML by four weeks. In addition, LD had consulted the Women's Commission and the Family Council, both of which welcomed the proposal to extend ML. In fact, various major amendments to the maternity protection provisions under EO had been made in the past years. Assistant Commissioner for Labour (Labour Relations) ("AC for L (LR)") said that the amendments included, for instance, raising the MLP rate from two-thirds of wages to four-fifths of wages in 1995, relaxing the eligibility criteria for ML and prohibiting the assignment of heavy, hazardous or harmful work to pregnant employees by employers in 1997. DC for L (LA) said that LD would provide further information on amendments to the provisions on maternity protection under EO in the past years after the meeting.

Admin

Action

13. Dr Fernando CHEUNG was concerned that as members serving on LAB were in effect appointed by the Government, they would unquestionably render full support to the legislative proposal. The Chairman pointed out and DC for L (LA) affirmed that members of LAB included employee representatives elected by registered employee unions and employer representatives nominated by major employer associations. DC for L (LA) further advised that the Administration considered it appropriate to consult LAB on labour matters relating to employment benefits.

14. Mr POON Siu-ping noted from the examples provided by the Legal Adviser to the Panel that a review mechanism was stipulated in the Minimum Wage Ordinance (Cap. 608) and the Air Pollution Control Ordinance (Cap. 311). Mr POON asked about the Administration's stance in the event that amendments proposed by individual Members, say, to stipulate a review mechanism in the Bill was passed by LegCo.

15. Mr LUK Chung-hung considered that the legislative proposal had much room for improvement, such as further increasing the MLP rate and the cap on the Government's funding support for the additional MLP. With a view to making progressive improvement to maternity benefits, Mr LUK said that it was imperative to conduct regular reviews of the ML arrangement, say, every two to three years. As opposed to specifying a review mechanism in the Bill, Mr LUK asked whether the Administration would consider making an undertaking for the purpose. Mr LUK further enquired about the circumstances under which the review procedures could be kick-started.

16. DC for L (LA) advised that the nature of the Minimum Wage Ordinance and the Air Pollution Control Ordinance was different from EO. In this review, 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. After the coming into operation of the Bill, the Government would in line with the established arrangements conduct reviews from time to time on account of the actual circumstances upon the implementation of the policy, as well as the social changes and economic development of Hong Kong, etc. As compared to rigidly stipulating a timetable in the Bill for reviewing statutory ML and related benefits (including the cap of the additional MLP), the existing arrangement would be more flexible and responsive to the actual

Action

conditions of Hong Kong in reviewing statutory ML. As regards members' proposed amendments to the Bill, DC for L (LA) further advised that the Administration would consider appropriate actions as warranted.

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17. The Chairman said that to his understanding, no consensus had been reached by LAB on stipulating a review mechanism in the Bill. The Chairman appealed to the Administration to reconsider the matter and requested the Administration to provide information on the circumstances under which a review of the maternity benefits would be kicked start.

Admin

18. Mr LEUNG Yiu-chung considered that the consensus of LAB on a matter was not irrevocable. Referring to the Employment (Amendment) Bill 2016 which sought to amend the provisions on reinstatement or re-engagement order for unreasonable and unlawful dismissal, Mr LEUNG said that in the light of the relevant Bills Committee's views to raise the amount of the further sum for non-compliance with the relevant order as proposed in the Bill, LAB was invited to reconsider its earlier agreement on the amount. After considering the relevant Bills Committee's deliberations on the matter, LAB agreed to increase the amount of the further sum. Mr LEUNG enquired whether the Administration would seek LAB's view on the statutory ML and related benefits regularly, and reconsider the suggestion of specifying a review timetable in the Bill. At the request of Mr LEUNG and the Chairman, DC for L (LA) agreed to provide the Administration's written response to the suggestion of specifying a review timetable in the Bill after the meeting.

19. Dr Helena WONG sought clarification as to whether additional manpower would be required for conducting regular reviews of ML and related benefits. DC for L (LA) replied in the affirmative.

Updating the definition of miscarriage

20. At the invitation of the Chairman, DC for L (LA) briefed members on the proposal to update the definition of "miscarriage" under EO, as detailed in the Administration's paper.

21. The Chairman requested the Administration to respond to Mr Tommy CHEUNG's enquiry about the rationale for updating the definition of "miscarriage" under EO from "before 28 weeks of

Action

pregnancy" to "before 24 weeks of pregnancy", which was raised at the last special meeting on 28 April 2020. In response, DC for L (LA) said that the medical profession defined "stillbirth" as, among others, a baby born without sign of life at or after 24 weeks of gestation. The definition was stated in the guidelines issued by the Hong Kong College of Obstetricians and Gynaecologists ("the College"). To dovetail with the prevailing medical definition and practices, the Bill proposed, among others, to amend the definition of "miscarriage" to "before 24 weeks of pregnancy".

22. In response to Ms Claudia MO's enquiry about the meaning of "miscarriage", DC for L (LA) said that under EO, "miscarriage" currently meant "the expulsion of the products of conception which are incapable of survival after being born before 28 weeks of pregnancy". After updating the definition of "miscarriage" in EO from "before 28 weeks of pregnancy" to "before 24 weeks of pregnancy" as proposed in the Bill, a female employee whose child was incapable of survival after being born at or after 24 weeks of pregnancy would be entitled to ML, subject to other required conditions being met.

23. Dr Fernando CHEUNG and Dr Helena WONG were in support of updating the definition of "miscarriage" under EO from "before 28 weeks of pregnancy" to "before 24 weeks of pregnancy". Dr WONG considered that the proposed amendment was an improvement to the maternity benefits. Mr SHIU Ka-chun welcomed the Administration's proposal to update the definition of miscarriage under EO, which would dovetail with the prevailing definition and medical practices of adopting 24 weeks of pregnancy for lawful termination of pregnancy under the Offences Against the Person Ordinance (Cap. 212).

24. Drawing reference to provision of miscarriage leave in Taiwan, Mr SHIU Ka-chun asked whether the Administration would consider introducing a similar leave arrangement for female employees whose child was incapable of survival after being born before 24 weeks of pregnancy in the long run and conducting a review in this respect.

25. DC for L (LA) responded that under the existing EO, pregnant employees who suffered from miscarriage before 28 weeks of pregnancy would only be entitled to sick leave and sickness allowance upon production of the appropriate medical certificate and meeting other qualifying conditions. After the coming into operation of the Bill, an eligible female employee whose child was incapable of survival after

Action

being born at or after 24 weeks of pregnancy would be entitled to ML. The Administration had no plan of introducing miscarriage leave under EO which would require more in-depth discussion and consideration.

Admin

26. Dr Helena WONG sought information on pregnant employees' entitlement to ML/sick leave or sickness allowance in case of miscarriage in other places, such as Macao and Taiwan and asked whether the Administration considered the proposed amendment to the definition of "miscarriage" appropriate when compared with the relevant arrangements in these places. AC for L (LR) reiterated that the Administration had made reference to the practices of the medical profession in Hong Kong in proposing updating the definition of "miscarriage" under EO, which was considered appropriate. At Dr WONG's request, AC for L (LR) agreed to provide the above requisite information in writing after the meeting.

27. Dr Helena WONG further asked whether employees' entitlement to ML would be affected if the cessation of pregnancy occurring before 24 weeks was caused by abortion. DC for L (LA) said that under the proposed amendment to the definition of "miscarriage" in the Bill, an eligible female employee whose child was incapable of survival after being born at or after 24 weeks of pregnancy would be entitled to ML when other required conditions were met, irrespective of the reasons behind the cessation of pregnancy.

28. Referring to the adoption of "before 20 weeks of pregnancy" in definition of "miscarriage" in Taiwan, Dr Helena WONG asked whether the Administration would consider further shortening the period of pregnancy to 20 weeks in the definition of miscarriage. Ms Claudia MO called on the Administration to consider shortening the period of pregnancy to three months in the definition of miscarriage. In this connection, Dr WONG sought information on the number of cases of miscarriage/abortion occurring at or after 24 weeks of pregnancy in the past three years.

29. DC for L (LA) stressed that the proposal to update the definition of "miscarriage" in EO was drawn up after making reference to the guidelines issued by the College in defining "stillbirth" as, among others, a baby born without sign of life at or after 24 weeks of gestation. According to the statistics from the Hospital Authority, the respective numbers of stillbirth cases in public hospitals as defined under the aforesaid guidelines in 2017 to 2019 were 128, 99 and 106. At Dr

Action

Admin Helena WONG's request, DC for L (LA) agreed to obtain information from the Hospital Authority in respect of cases of miscarriage occurring at or before 20 weeks of pregnancy in the past three years, if available.

Admin 30. At Dr Helena WONG's further request, DC for L (LA) agreed to provide information on the justifications for the definition of "stillbirth" adopted by the College in respect of the proposed amendment to the definition of "miscarriage" under EO from "before 28 weeks of pregnancy" to "before 24 weeks of pregnancy".

Allowing a certificate of attendance to be accepted as proof for medical examination in relation to pregnancy

31. At the invitation of the Chairman, DC for L (LA) briefed members on entitling eligible employees who had attended medical examination in relation to pregnancy to sickness allowance if they were able to produce, other than a medical certificate, a certificate of attendance issued by professionally trained persons, viz. registered medical practitioners, registered Chinese medicine practitioners, registered midwives or registered nurses, as detailed in the Administration's paper. Members raised no question on the proposed amendments.

Transitional and commencement arrangements

32. DC for L (LA) then briefed members on the transitional and commencement arrangements of the enacted Amendment Ordinance ("Amendment Ordinance"), as detailed in the Administration's paper.

33. Expressing concern about the implementation date of the Amendment Ordinance, Dr Helena WONG asked about the soonest possible time for its coming into operation after the passage of the Bill.

34. Mr KWOK Wai-keung expressed concern that the scrutiny of the Bill was under a very tight legislative timetable if the Bill was to be passed within the Sixth LegCo which would soon expire.

35. DC for L (LA) advised that LD consulted the Panel on the proposal of developing the necessary Disbursement Information System ("DIS") on 21 January 2020, and Panel members had no objection in principle to the Government's submission of the proposal to the Finance Committee ("FC") for funding approval. Subject to the passage of the Bill and approval of funding for DIS within the current LegCo session, the

Action

Government aimed to implement the new RMLPS by the end of 2021. Therefore, the Bill proposed that the Amendment Ordinance would commence on a day to be appointed by the Secretary for Labour and Welfare ("SLW") by notice published in the Gazette.

36. On the understanding that the development of the proposed DIS would take an extended period of time, Ms Claudia MO sought information on its expected implementation date. In reply, DC for L (LA) said that it was expected that RMLPS would be implemented by the end of 2021 as set out in the LegCo Brief on the Bill.

37. Dr Helena WONG considered that the lead time for developing the proposed DIS could be shortened, in light of the relative simplicity of calculation work involved. Dr WONG urged the Administration to expedite the relevant work schedule and commence the preparatory work, such as inviting tender for development of the proposed DIS, as early as possible. In response to Dr WONG's suggestion of giving priority to submission of the proposed DIS to FC, DC for L (LA) said that LD would relay the suggestion to the Financial Services and the Treasury Bureau for consideration.

38. Dr CHIANG Lai-wan called on the Administration to keep RMLPS simple and efficient to facilitate timely disbursement of the additional MLP. DC for L (LA) responded that the proposed DIS would facilitate effective implementation of RMLPS, including providing an electronic platform for online submission of applications by employers and speedy processing of applications and reimbursement of MLP to employers.

39. In response to the further enquiry from the Chairman and Ms Claudia MO, AC for L (LR) advised that upon the coming into operation of the Amendment Ordinance on a day to be appointed by SLW by notice published in the Gazette, eligible employees with confinement occurring on or after the date of commencement of the Amendment Ordinance would be entitled to the extended ML. The Chairman appealed to members to give their support to the proposed development of DIS when the relevant funding proposal was considered by FC in order to facilitate the early implementation of the Amendment Ordinance.

40. Dr KWOK Ka-ki pointed out that the Administration's proposal for extending statutory ML by legislative amendments was pledged by the Chief Executive in the 2018 Policy Address. With a view to enabling

Action

employees to benefit from the extended ML entitlement as early as possible, Dr KWOK held the view that the Amendment Ordinance should come into operation immediately after the passage of the Bill while the Administration could retrospectively reimburse the additional MLP to employers upon implementation of RMLPS. Expressing support for Dr KWOK's suggestion, Dr Helena WONG was of the view that it would be affordable for employers to pay the additional MLP to eligible employees first and seek reimbursement from the Government afterwards. She appealed to the Administration to seriously consider the proposal.

41. Ms Claudia MO called on the Administration to consider conferring the entitlement to the extended ML on employees with confinement occurring before the commencement date of the Amendment Ordinance, say, one month, with retrospective effect.

[The Chairman directed that the meeting would be extended by 15 minutes.]

42. Responding to members' views and concerns, DC for L (LA) said that the Bill proposed, among others, that statutory ML be increased by four weeks. In addition, the Government had committed that for the amount of additional MLP that was required to be paid under EO and had been paid by the employers, the employers might apply to the Government for reimbursement. The reimbursement would be done by way of an administrative scheme which was not stipulated in the Bill. After having consulted the Panel, the Government published the Bill in the Gazette in December 2019 and then introduced the Bill into LegCo on 8 January 2020. Subject to the passage of the Bill and securing of the funding approval from FC for the development of DIS within the 2019-2020 session, it was estimated that RMLPS would be put in place by the end of 2021.

43. DC for L (LA) further advised that similar to the implementation arrangement of the statutory five-day PL entitlement, eligible employees would be entitled to new statutory ML benefits for each confinement falling on or after the commencement date of the Amendment Ordinance. Also, if the Amendment Ordinance was to take immediate effect from the date of gazettal, this would, among others, impact on employers with employees taking ML. Dr KWOK Ka-ki urged the Administration to reconsider the matter and said that he might consider proposing amendments to this effect under his own name. To facilitate his

Action

Admin

consideration, Dr KWOK requested the Administration to advise its stance in writing before the next special meeting to be held on 18 May 2020.

Funding for the additional maternity leave pay

44. Assistant Legal Adviser 3 ("ALA3") noted that the Government had committed that for the amount of the additional MLP that was required to be paid under EO and had been paid by the employers, the employers might apply to the Government for reimbursement, which would be done by way of an administrative scheme. Referring to section 4 of the Public Finance Ordinance (Cap. 2) ("PFO") which stipulated that no expenditure should be charged on the general revenue except as provided by or under PFO or any other enactment, ALA3 sought clarification as to whether there would be any other legislative amendment(s) to give effect to the implementation of the above reimbursement scheme; and whether the Administration intended to charge the expenditure relating to the reimbursement scheme on the general revenue, and if so, the legal basis for doing so.

45. Referring members to the Administration's reply dated 18 February 2020 to ALA3's concerns, DC for L (LA) advised that all government expenditures should follow the requirements as stipulated under PFO. Following the established practice, the Government would seek for funding to meet the operating expenditure relating to RMLPS by including in the estimates of revenue and expenditure of LD for approval from LegCo through the Appropriation Bill according to Part II of PFO. The Government would apply for the funding in due course after the passage of the Bill.

46. In concluding the discussion, the Chairman said that the Panel had completed deliberations of policy issues relating to the Bill. The next special meeting would be held on 18 May 2020 at 8:30 am to consider individual members' proposed amendments to the Bill, if any.

47. There being no other business, the meeting ended at 10:49 am.