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Panel on Manpower

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 21 January 2020**

Proposal to increase the provision of statutory maternity leave

Purpose

This paper summarizes the past discussions by the Panel on Manpower ("the Panel") on the Administration's proposal to increase the provision of statutory maternity leave ("ML") from the current 10 weeks to 14 weeks.

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 ("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").

4. CE stated in the 2018 Policy Address that the Government had completed the review of ML and proposed to extend the statutory ML from the current

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.

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

5. At its meeting on 18 December 2018, the Panel was briefed on the Administration's proposal to, among others, extend the duration of statutory ML period from 10 weeks to 14 weeks, and to fund the cost for the additional four weeks' MLP with a cap of \$36,822 per employee. At another meeting on 19 March 2019, the Panel was briefed on the staffing proposal to create one permanent post of Chief Labour Officer ("CLO") (D1) in the Labour Department ("LD") to take forward various new measures to enhance statutory ML. The deliberations of the Panel are summarized below.

Government subsidy for the extended statutory maternity leave period

6. Members welcomed and supported in general the Administration's proposal to extend the statutory ML period from the current 10 weeks to 14 weeks. Some members asked about the rationale for the Government to fund the cost of the additional four weeks' MLP and the financial implications of the proposal.

7. The Administration advised that the maternity benefits in Hong Kong had been solely borne by employers over the past decades. According to the International Labour Organization ("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. 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. 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. With regard to the financial implications, the Administration advised that the proposal 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. 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

8. 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. 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 concern as to whether the proposed arrangement would constitute discrimination against these employees. Given that no consensus had been reached by LAB on imposing a cap on MLP for the extra four weeks, some members urged the Administration to seriously consider lifting the cap for the additional four weeks' MLP.

9. The Administration advised that ML was unpaid in some economies and the statutory minimum wage rate might apply in some other economies. In addition, MLP of some economies was subject to a ceiling and some others were only paid for a certain period of ML. 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 (an estimate based on 2016 data). 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.

10. The Administration further advised that the ML proposal was a major and unprecedented change to the existing employment benefits regime as public money would be used to subsidize employers in providing employment benefits to their employees as required under EO on a perpetual basis. 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. Furthermore, the funding amount might be adjusted from time to time.

Rate of maternity leave pay

11. Some members held the view that eligible employees should receive full pay during the statutory ML period. Some members also expressed strong dissatisfaction at the disparity of ML benefits between female government employees and non-government employees, given that the former were entitled to 14 weeks' ML with full pay.

12. The Administration explained that in line with the existing labour legislation, it therefore 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. In effect, the rate of MLP at four-fifths of the employee's average daily wages under EO was more favourable than that stipulated in the relevant International Labour Conventions which was pitched at not less than two-thirds of the employee's earnings. 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.

Implementation timetable

13. Pointing out that female government 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.

14. 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 the Legislative Council ("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.

15. Members may wish to note that the Employment (Amendment) Bill 2019 was gazetted on 27 December 2019 and received its First Reading at the Council meeting of 8 January 2020.

Reimbursement mechanism

16. Members considered 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.

17. Members were also advised that upon the creation of the CLO post in LD to take forward various new measures to enhance the statutory ML, the incumbent officer would be responsible for, among others, setting up a dedicated office for effective implementation of the new ML regime and the reimbursement mechanism. In developing the reimbursement mechanism, due consideration would 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, minimizing potential abuses and reducing the costs for administering the scheme.

18. The Administration will update the Panel on the development of the new Disbursement Information System for implementing the proposed extension of statutory ML at the meeting on 21 January 2020.

Relevant papers

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

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)	<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>
Panel on Manpower	19 March 2019 (Item IV)	<u>Agenda</u> <u>Minutes</u> <u>LC Paper No. CB(2)1917/18-19(01)</u>