



**LABOUR DEPARTMENT (Headquarters)**

**勞工處 (總部)**

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25 May 2020

Chairman  
Panel on Manpower  
Legislative Council  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong  
(Attn: Miss Betty MA  
Clerk to the Panel)

Dear Miss MA,

**Follow-up issues of the special meeting of  
the Panel on Manpower held on 12 May 2020**

Thank you for your letter of 12 May 2020. Our reply to the follow-up issues set out in your letter is provided as follows:

**(a) Information on previous reviews of the provisions on maternity protection under the Employment Ordinance**

Pursuant to the reviews of the provisions on maternity protection under the Employment Ordinance (EO) conducted in the past years, the major amendments to EO are set out in Annex 1.

**(b) and (c) The circumstances under which a review of the statutory maternity leave and related benefits would be kick-started, and Government's response to Members' suggestion of specifying a review timetable in the Employment (Amendment) Bill 2019**

All along, the Government has been conducting reviews of labour legislation in a timely manner, taking account of 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. Likewise, after the passage of the Employment (Amendment) Bill 2019 (the Bill), the Government will conduct reviews in a timely manner. As compared to rigidly stipulating a timetable in the Bill for reviewing statutory maternity leave (ML) and related benefits (including the cap of the additional four weeks' ML pay), this arrangement would be more flexible and responsive to the actual social conditions of Hong Kong in reviewing statutory ML.

**(d) Arrangements for leave entitlement of pregnant employees suffering from miscarriage in other economies**

The relevant information is provided in Annex 2.

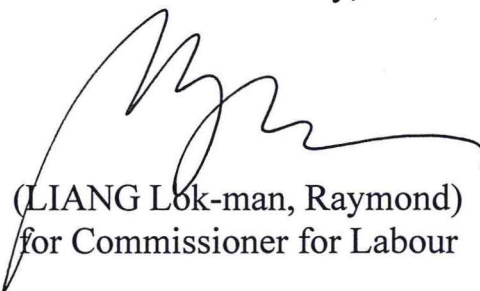
**(e) and (f) Statistics (if any) provided by the Hospital Authority in respect of cases of miscarriage occurring at or before 20 weeks of pregnancy, and justifications for the definition of "stillbirth" adopted by the Hong Kong College of Obstetricians and Gynaecologists in respect of the proposed amendment to the definition of "miscarriage" under EO from "before 28 weeks of pregnancy" to "before 24 weeks of pregnancy"**

According to the Food and Health Bureau, the Hospital Authority does not maintain statistics in respect of cases of miscarriage occurring at or before 20 weeks of pregnancy. As regards the definition of "stillbirth", it is based on the consensus of the medical profession on the gestational age and birth weight at which a baby is viable at birth. In Hong Kong, the medical profession has defined "stillbirth" as a baby born without sign of life at or after 24 weeks of gestation or with a birth weight of more than 500 grams when the gestational age is uncertain. This definition is stated in the guidelines issued by the Hong Kong College of Obstetricians and Gynaecologists. The same definition has also been adopted by other countries. To dovetail with the prevailing medical definition and practices, the Bill proposes to amend the definition of "miscarriage" from "before 28 weeks of pregnancy" to "before 24 weeks of pregnancy".

**(g) Government's response to Members' suggestion that the Amendment Ordinance will come into operation immediately after the passage of the Bill by the Legislative Council**

The Bill proposes that ML be increased by four weeks. The employer will be required to pay the additional ML pay to the employee on the normal pay day – same as what they are currently required to do in respect of the 10 weeks' ML pay. After the passage of the Bill, the Government will launch extensive publicity and promotional activities in the run-up to the implementation of the Amendment Ordinance to facilitate public awareness and understanding of the new provisions and employers to make arrangements necessary for compliance with the new requirements. This will be conducive to the smooth implementation of the new legislation like in previous amendment exercises of EO. Implementing the Amendment Ordinance instantly after the passage of the Bill by the Legislative Council (LegCo) would bring about immediate impact on the operation and manpower arrangements of employers, and the Government may have to consult the Labour Advisory Board again on the proposed extension of ML. Furthermore, the Government has committed to wholly fund the additional four weeks' statutory ML pay (subject to a cap) by reimbursing employers administratively. After paying to employees the additional ML pay as required under EO, employers may apply to the Government for reimbursement through the new Reimbursement of Maternity Leave Pay Scheme (RMLPS) under formulation. The Labour Department consulted this Panel on the proposal of developing the necessary Disbursement Information System (DIS) on 21 January 2020, and Members had no objection in principle to the Government's submission of the proposal to the LegCo Finance Committee for funding approval. Subject to the passage of the Bill and approval of funding for DIS within the current LegCo session, the Government aims to implement RMLPS by end-2021. Therefore, the Bill proposes that the Amendment Ordinance should commence on a day to be appointed by the Secretary for Labour and Welfare by notice published in the Gazette.

Yours sincerely,



(LIANG Lok-man, Raymond)  
for Commissioner for Labour

Annexes

c.c.: Secretary for Labour and Welfare (Attn: Mr Dominic CHOW)

**Major amendments to the maternity protection provisions  
under the Employment Ordinance in the past years**

<b>Year</b>	<b>Major amendments</b>
1970	<ul style="list-style-type: none"> <li>• To provide for 10 weeks' maternity leave (ML) and compensation against dismissal, etc. for pregnant employees</li> </ul>
1981	<ul style="list-style-type: none"> <li>• To provide for ML pay at the rate of two-thirds of wages for up to three children</li> <li>• To make dismissal of pregnant employees a criminal offence</li> <li>• To raise the compensation for dismissal of pregnant employees</li> <li>• To provide for sickness allowance for pregnant employees for absence from work due to medical examination in relation to pregnancy, post-confinement medical treatment or miscarriage</li> </ul>
1987	<ul style="list-style-type: none"> <li>• To remove the restriction on the period for employees to serve pregnancy notice on employers</li> </ul>
1995	<ul style="list-style-type: none"> <li>• To make late payment of ML pay a criminal offence</li> <li>• To raise ML pay to the rate of four-fifths of wages</li> </ul>
1997	<ul style="list-style-type: none"> <li>• To relax the eligibility criteria for ML</li> <li>• To remove the restriction on ML pay for up to three children only</li> <li>• To increase the flexibility for employees in scheduling the commencement of their ML</li> <li>• To raise the compensation for dismissal of pregnant employees</li> <li>• To prohibit the assignment of heavy, hazardous or harmful work to pregnant employees by employers</li> </ul>
2007	<ul style="list-style-type: none"> <li>• To enhance the method for the calculation of ML pay</li> </ul>
2018	<ul style="list-style-type: none"> <li>• To strengthen the protection for pregnant employees against unreasonable and unlawful dismissal</li> </ul>

**Arrangements for leave entitlement  
of pregnant employees suffering from miscarriage in other economies<sup>1</sup>**

Economy	Relevant arrangement <sup>2</sup>
Singapore	<ul style="list-style-type: none"> <li>• Up to 60 days' paid sick leave (SL) for miscarriage or abortion occurring before 28 weeks of pregnancy</li> <li>• 16 weeks' paid maternity leave (ML) for stillbirth occurring after 28 weeks of pregnancy</li> </ul>
Republic of Korea	<ul style="list-style-type: none"> <li>• Progressive increase in paid ML for miscarriage or stillbirth occurring at different number of weeks of pregnancy (ranging from 5 days' paid ML for miscarriage or stillbirth occurring before 11 weeks of pregnancy to 90 days' paid ML for miscarriage or stillbirth occurring after 28 weeks of pregnancy)</li> </ul>
Taiwan	<ul style="list-style-type: none"> <li>• 5 days' and 7 days' unpaid ML for miscarriage occurring within two months of pregnancy and between the second and third months of pregnancy respectively</li> <li>• 28 days' paid ML for miscarriage occurring at or after 3 months of pregnancy</li> </ul>
Japan	<ul style="list-style-type: none"> <li>• Eligibility to SL for miscarriage or stillbirth occurring before 85 days of pregnancy is not set out in the law</li> <li>• 14 weeks' paid ML for premature birth, miscarriage, stillbirth or abortion occurring at or after 85 days of pregnancy</li> </ul>
Mainland	<ul style="list-style-type: none"> <li>• 15 days' paid ML for miscarriage occurring before the fourth month of pregnancy</li> <li>• 42 days' paid ML for miscarriage occurring at or after the fourth month of pregnancy</li> </ul>
United Kingdom	<ul style="list-style-type: none"> <li>• Up to 28 weeks' paid SL for miscarriage occurring before 24 weeks of pregnancy</li> <li>• 52 weeks' ML (39 weeks of which are paid) for stillbirth occurring at or after 24 weeks of pregnancy</li> </ul>
Canada	<ul style="list-style-type: none"> <li>• Up to 17 weeks' SL (up to 15 weeks of which are paid) for termination of pregnancy, irrespective of the circumstances, occurring before 19 weeks of pregnancy</li> <li>• 17 weeks' ML (15 weeks of which are paid) for termination of pregnancy, irrespective of the circumstances, occurring at or after 19 weeks of pregnancy</li> </ul>
United States	<ul style="list-style-type: none"> <li>• 12 weeks' unpaid leave for family and medical reasons (miscarriage could be regarded as serious health condition for entitlement to the aforesaid leave)</li> </ul>

<sup>1</sup> Source of Information: Internet search conducted by the Labour Department in July 2018

<sup>2</sup> Female employees should fulfil relevant criteria in order to be eligible for maternity leave and pay for sick leave.