



## **II. REPORT**

The date of First Reading of the Bill is 8 January 2020. Members may refer to the Legislative Council ("LegCo") Brief (File Ref.: LD LRD/12-1/1-16 (C)) issued by the Labour and Welfare Bureau on 24 December 2019 for further details.

### **Object of the Bill**

2. The main purposes of the Bill are to amend the Employment Ordinance (Cap. 57) to:

- (a) extend the statutory maternity leave ("ML") by four weeks;
- (b) introduce a cap on the maternity leave pay ("ML pay") in respect of the extension of ML;
- (c) shorten the period of pregnancy mentioned in the definition of "miscarriage";
- (d) allow a certificate of attendance to be accepted as proof in respect of entitlement to sickness allowance for a day on which a female employee attends a medical examination in relation to her pregnancy; and
- (e) provide for transitional and related matters.

### **Background**

3. Under Cap. 57, a female employee employed under a continuous contract<sup>1</sup> immediately before her ML commences is entitled to a continuous period of 10 weeks' ML. Under section 14 of Cap. 57, an eligible female employee is entitled to ML pay at the rate of four-fifths of her average daily wages if she, among others, has been employed under a continuous contract for a period of not less than 40 weeks immediately before the date of her commencement of ML ("40-week requirement"). Under section 15A(1) of

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<sup>1</sup> Under section 3 of and the First Schedule to Cap. 57, an employee who has been employed continuously under a contract of employment for four weeks or more and has been working for 18 hours or more each week is regarded as being employed under a continuous contract.

Cap. 57, an employer who fails to grant ML to an eligible female employee or pay her ML pay commits an offence and is liable on conviction to a fine at level 5 (\$50,000).

4. According to paragraph 3 of the LegCo Brief, the Labour Department conducted a review of ML with special focus on the duration of ML. Pursuant to the outcome of the review, the Administration has introduced the Bill to amend Cap. 57.

### **Provisions of the Bill**

5. The key provisions of the Bill are summarized in the ensuing paragraphs.

#### Extending the duration of maternity leave

6. Clause 4 of the Bill seeks to amend section 12(2)(a) of Cap. 57 to increase the existing 10 weeks' ML by a continuous period of four weeks. The effect of the proposed section 12(2)(a) is that an eligible female employee would be entitled to take a continuous period of 14 weeks' ML when the provision comes into operation after the Bill is passed by LegCo.

#### Additional maternity leave pay

7. While the Bill does not seek to change the existing ML pay rate under section 14 of Cap. 57, i.e. four-fifths of an employee's average daily wages, clause 6 seeks to, among others, amend section 14 of Cap. 57 to the effect that ML pay for the 11<sup>th</sup> to 14<sup>th</sup> weeks of ML ("additional ML pay") would be subject to a cap as specified in the newly added Schedule 1A. The cap proposed in the newly added Schedule 1A is \$36,822 per employee. The Commissioner for Labour would be empowered to amend the amount specified in the proposed new Schedule 1A by notice published in the Gazette. Such notice would be subsidiary legislation subject to the negative vetting procedure of LegCo.

8. According to paragraphs 6 and 7 of the LegCo Brief, the proposed cap of \$36,822 is essentially equivalent to four-fifths of the wages of an employee with a monthly wage of \$50,000 in four weeks. The Government has committed that for the amount of the additional ML pay that is required to be paid under Cap. 57 and has been paid by the employers, the employers may apply to the Government for reimbursement, which would be done by way of an administrative scheme.

### Amending the definition of "miscarriage"

9. Under section 2(1) of Cap. 57, "miscarriage" is defined to mean the expulsion of the products of conception which are incapable of survival after being born before 28 weeks of pregnancy. The Bill seeks to amend the definition of "miscarriage" by shortening the period of pregnancy to 24 weeks. The effect of the proposed amendment is that an eligible female employee whose child is incapable of survival after being born at or after 24 weeks of pregnancy would be entitled to ML.

### Allowing a certificate of attendance to be accepted as proof

10. Currently, a female employee who is absent from work for attending a medical examination in relation to her pregnancy and can produce an appropriate medical certificate issued by a registered medical practitioner, registered Chinese medicine practitioner or registered dentist would be entitled to sickness allowance under section 33 of Cap. 57. However, section 33 does not cover a certificate of attendance at a medical examination.

11. Clause 10 of the Bill mainly seeks to add a new subsection 5B to section 33 of Cap. 57 to the effect that a certificate of attendance may also be accepted as proof in respect of entitlement to sickness allowance for a day on which an eligible female employee attends a medical examination in relation to her pregnancy if the requirements specified in the proposed new section 33A are met. Under the proposed new section 33A, a certificate of attendance would be accepted for the purposes of the proposed new section 33(5B) if it is issued by a medical professional, i.e. a registered medical practitioner; a registered Chinese medicine practitioner; a midwife registered or deemed to be registered under the Midwives Registration Ordinance (Cap. 162) or a nurse registered or deemed to be registered under the Nurses Registration Ordinance (Cap. 164).

### Transitional and related matters

12. The Bill seeks to provide for transitional arrangements as set out in the proposed new section 78 and new Schedule 10. Among others, an eligible female employee who meets the 40-week requirement would be entitled to the 14 weeks' ML and the additional ML pay if notice of her pregnancy and of her intention to take ML under section 12(4) of Cap. 57 is given before the date on which the proposed amendments to sections 12(2)(a) and 14 of Cap. 57 come into operation, but her confinement occurs on or after that date.

13. The Bill also seeks to propose amendments to certain provisions of Cap. 57 consequential to the extension of ML to 14 weeks.

## **Commencement**

14. The Bill, if passed, would come into operation on a day to be appointed by the Secretary for Labour and Welfare by notice published in the Gazette.

## **Public Consultation**

15. According to paragraph 16 of the LegCo Brief, the Labour Advisory Board ("LAB") was consulted on 30 November 2018. LAB was on the whole supportive of the proposal for extending the statutory ML by four weeks. The Administration also consulted the Women's Commission and the Family Council, both of which welcomed the proposal to extend the statutory ML.

## **Consultation with LegCo Panel**

16. As advised by the Clerk to the Panel on Manpower, the Panel was briefed on the legislative proposal on 18 December 2018. While the Panel was generally supportive of the proposal, some members expressed concerns on various issues including the rationale for the Government to fund the cost of the additional ML pay, the need to impose a cap on the additional ML pay and the rate of ML pay.

## **Conclusion**

17. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. A further report will be issued, if necessary.

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17 January 2020

LS/B/7/19-20