

立法會
Legislative Council

LC Paper No. CB(2)336/20-21

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Paper for the House Committee meeting on 20 November 2020

**Report of Subcommittee on
Employment (Amendment) Ordinance 2020 (Commencement) Notice**

Purpose

This paper reports on the deliberations of the Subcommittee on Employment (Amendment) Ordinance 2020 (Commencement) Notice ("the Subcommittee").

Background

2. Under the Employment Ordinance (Cap. 57) ("EO"), a female employee employed under a continuous contract¹ immediately before her maternity leave ("ML") commences² is entitled to a continuous period of 10 weeks' ML. If the employee has been employed under a continuous contract for not less than 40 weeks immediately before the commencement of her scheduled ML and has given notice of pregnancy and her intention to take ML to the employer, she is further entitled to ML pay ("MLP") at the rate of four-fifths of the employee's average daily 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.

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.

² With the agreement of her employer, a pregnant employee may decide on the date of commencing her 10 weeks' ML provided that such date is within a period of not less than two weeks before, and not more than four weeks before, the expected date of confinement. If the employee does not exercise the above option to decide on the date of commencement of ML, or if she fails to secure her employer's agreement to her proposed ML schedule, the date of commencement of ML shall be four weeks immediately before the expected date of confinement. If confinement occurs before the date of commencement of ML as determined above, the commencement of ML would be the actual date of confinement.

3. The Secretary for Labour and Welfare ("SLW") introduced the Employment (Amendment) Bill 2019 ("the Bill") into the Legislative Council ("LegCo") on 8 January 2020. The Bill amends EO mainly to extend the statutory ML by four weeks, and to introduce a cap on MLP in respect of the extension of ML. SLW's motion moved under Rule 54(4) of the Rules of Procedure that the Second Reading debate on the Bill be adjourned and the Bill be referred to the Panel on Manpower ("the Panel") instead of the House Committee was passed at the Council meeting of 15 January 2020. The Panel held four special meetings between March and May 2020 to discuss with the Administration issues relating to the Bill.

4. The Employment (Amendment) Ordinance 2020 ("the Amendment Ordinance") was passed by LegCo at its meeting of 9 July 2020. The Amendment Ordinance mainly seeks to increase the statutory ML under EO by four weeks, which should be taken by the employee continuously after the 10 weeks' ML, if so entitled. The current statutory rate of MLP will be maintained for calculating the additional four weeks' MLP ("additional MLP") in respect of the extension of ML, subject to a cap of \$80,000 per employee. The employer would be required to pay the additional MLP to the employee on the normal pay day, i.e. same as what employers are currently required to do in respect of the first 10 weeks' MLP. As an administrative measure, employers may, by way of reimbursement, apply to the Government for full reimbursement of the additional MLP that is required to be paid and has been paid under the Amendment Ordinance.

The subsidiary legislation

5. The Employment (Amendment) Ordinance 2020 (Commencement) Notice ("the Commencement Notice") is made by SLW under section 1(2) of the Amendment Ordinance to appoint 11 December 2020 as the day on which the Amendment Ordinance comes into operation.

The Subcommittee

6. At the House Committee meeting on 16 October 2020, Members agreed to form a subcommittee to study the Commencement Notice. The membership list of the Subcommittee is in the **Appendix**. Under the chairmanship of Dr Hon Helena WONG, the Subcommittee has held two meetings.

7. To allow more time for scrutiny, the Chairman of the Subcommittee gave notice to move a motion at the Council meeting of 11 November 2020 to extend the scrutiny period of the Commencement Notice to 2 December 2020. However, the motion was not dealt with before adjournment of the said Council

meeting. As such, the period for amending the Commencement Notice expired at the Council meeting of 11 November 2020.

Deliberations of the Subcommittee

Implementation arrangements of the new maternity leave regime

8. Members generally welcome the coming into operation of the Amendment Ordinance on 11 December 2020. Some members have pointed out that during the deliberations of the Panel on issues relating to the Bill, despite members' repeated call for early implementation of the Bill, the Administration had reiterated that the implementation of the additional four weeks' ML would be subject to the Reimbursement of Maternity Leave Pay ("RMLP") Scheme. Taking into account the lead time required for the development of the disbursement information system, the RMLP Scheme and the extension of ML were at that time expected to come into operation by end of 2021. In view of the above, some members have enquired about the circumstantial changes that lead to the commencement of the Amendment Ordinance on 11 December 2020, which is one year ahead of the original schedule.

9. The Administration has advised that in response to the call for early implementation of the Bill, it has decided to outsource the administration of the RMLP Scheme to a private sector processing agent, instead of direct administration by the Labour Department ("LD") as originally planned, so as to speed up the implementation process. Notably, the duration for the necessary preparatory work for implementing the RMLP Scheme will be shortened.

10. Some members have enquired about the progress of appointing the processing agent to implement the RMLP Scheme. Some members have also expressed concern about the delineation of responsibilities between the Preparatory Office for Reimbursement of Maternity Leave Pay ("PORMLP") under LD and the outsourced processing agent in implementing the RMLP Scheme as well as the administrative costs of the RMLP Scheme, in particular the unit cost for processing a reimbursement application from an employer.

11. The Administration has advised that LD set up PORMLP in the second quarter of 2020 to coordinate and commence the preparatory work for the RMLP Scheme. After making reference to other government subsidy schemes, PORMLP has issued the tender documents for engaging the processing agent. Pending the appointment of the processing agent, the Administration is currently unable to provide an estimate of the overall administrative costs of the RMLP Scheme. The Administration has further advised that the main functions of the outsourced processing agent will include developing, operating

and maintaining a disbursement information system, vetting applications from employers and calculating the amount of reimbursement, and handling enquiries by applicants, etc. As for PORMLP, it will, among other functions, oversee the policy and implementation of the RMLP Scheme, monitor and check the performance of the processing agent, handle complaints lodged by applicants and members of the public against the processing agent, effect reimbursement payments, formulate publicity campaigns and conduct regular tender exercises, etc.

12. Members have enquired about the exact timing for employers to seek reimbursement from the Government for the additional MLP. The Administration has advised that under EO, employers would be required to pay the additional MLP to the employee on the normal pay day, i.e. same as what they are currently required to do in respect of the first 10 weeks' MLP. Employers may afterwards apply to the Government for reimbursement of the additional MLP paid under EO. Members' attention is drawn to the fact that upon the close of tender on 6 November 2020, the Administration is evaluating the tender bids with a view to appointing the processing agent by the end of 2020 and implementing the RMLP Scheme as soon as practicable in the first half of 2021. LD will launch relevant publicity to enhance public understanding of the reimbursement arrangements in due course.

13. Some members have raised concerns as to whether employers can still seek full reimbursement of the additional MLP from the Government in the event that their business is closed down after they have paid MLP to their employees. The Administration has advised that generally speaking and subject to fulfilment of the relevant requirements, employers will be eligible for reimbursement of the additional MLP that has been paid to their employees under the Amendment Ordinance.

Employment protection of pregnant employees

14. Some members take the view that following the announcement in the 2018 Policy Address that the Government would extend the statutory ML from 10 weeks to 14 weeks, Government female employees are currently entitled to 14 weeks' ML with full pay. All female employees should be entitled to ML with full pay. They have called on the Administration to further improve the maternity benefits of female employees under EO.

15. Some members have also expressed concern that after the commencement of the Amendment Ordinance, some employers may opt not to renew the fixed-term contracts of pregnant employees as the ML duration is extended to 14 weeks. The Administration has advised that the existing EO provisions accord appropriate protection for pregnant employees on various aspects including ML, MLP and employment protection, etc. LD would duly

follow up suspected cases of breaching EO. Furthermore, under the Sex Discrimination Ordinance (Cap. 480), it is unlawful for an employer to subject a woman to a disadvantage or dismiss her on the ground of pregnancy.

Recommendation

16. The Subcommittee raises no objection to the Commencement Notice and will not make amendment to the Commencement Notice.

Advice sought

17. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 2
Legislative Council Secretariat
19 November 2020

**Subcommittee on Employment (Amendment) Ordinance 2020
(Commencement) Notice**

Membership list*

Chairman (Vacant)

Members Hon Abraham SHEK Lai-him, GBS, JP
Hon KWOK Wai-keung, JP
Hon POON Siu-ping, BBS, MH
Hon LUK Chung-hung, JP
Hon Vincent CHENG Wing-shun, MH, JP

(Total : 5 members)

Clerk Miss Betty MA

Legal adviser Mr Alvin CHUI

* Changes in membership are set out in Annex to Appendix

**Subcommittee on Employment (Amendment) Ordinance 2020
(Commencement) Notice**

Changes in membership

Member	Relevant date
Hon Claudia MO	Up to 4 November 2020
Hon SHIU Ka-chun	Up to 4 November 2020
Hon LAM Cheuk-ting	Up to 8 November 2020
Hon HUI Chi-fung	Up to 8 November 2020
Prof Hon Joseph LEE Kok-long, SBS, JP	Up to 10 November 2020
Hon IP Kin-yuen	Up to 10 November 2020
Hon Jeremy TAM Man-ho	Up to 11 November 2020
Hon James TO Kun-sun	Up to 12 November 2020
Hon WU Chi-wai, MH	Up to 12 November 2020
Dr Hon Helena WONG Pik-wan (Chairman)	Up to 12 November 2020
Hon Andrew WAN Siu-kin	Up to 12 November 2020
Hon KWONG Chun-yu	Up to 12 November 2020
Hon LEUNG Yiu-chung	Up to 15 November 2020
Dr Hon Fernando CHEUNG Chiu-hung	Up to 18 November 2020

According to the announcement made by the Hong Kong Special Administrative Region Government on 11 November 2020 pursuant to the Decision of the Standing Committee of the National People's Congress on Issues Relating to the Qualification of the Members of the Legislative Council of the Hong Kong Special Administrative Region, Kenneth LEUNG, KWOK Ka-ki, Dennis KWOK Wing-hang and Alvin YEUNG were disqualified from being a member of the Legislative Council on 30 July 2020.