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Panel on Manpower

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 16 March 2021**

Enhancement of statutory maternity leave

Purpose

This paper sets out background information on the proposal to extend the statutory maternity leave ("ML") by four weeks and summarizes the past discussions by the Panel on Manpower ("the Panel") on the Administration's 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.

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. It was announced in the 2018 Policy Address that the Government had completed the review of the statutory ML and proposed to extend the statutory ML under EO from the current 10 weeks to 14 weeks. The Government would also fund the cost of the additional four-week ML pay ("additional MLP") by way of reimbursement to employers.

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.

4. 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 amended 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 Procedures that the Second Reading debate on the Bill be adjourned and the Bill be referred to 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. A report of the Panel on issues relating to the Bill was submitted to the Council at its meeting of 24 June 2020.

5. Following the passage of the Bill at the Council meeting of 9 July 2020, the Employment (Amendment) Ordinance 2020 ("Amendment Ordinance") was published in the Gazette on 17 July 2020. On 28 September 2020, SLW made the Employment (Amendment) Ordinance 2020 (Commencement) Notice² under section 1(2) of the Amendment Ordinance appointing 11 December 2020 as the day on which the Amendment Ordinance comes into operation.

Deliberations of the Panel

6. At its meeting on 19 March 2019, the Panel was consulted on the proposal to create one permanent post of CLO in LD to take forward various new measures to enhance statutory ML ("the staffing proposal"). Most members raised no objection in principle to the staffing proposal and its submission to the Establishment Subcommittee ("ESC") for consideration. The major views and concerns expressed by members are summarized in the ensuing paragraphs.

Responsibilities of the proposed CLO post

7. While expressing support for the proposal to extend the statutory ML, some members expressed reservation about the need for introducing a cap on the Government funding for the additional MLP. Some members also expressed disappointment that the proposal did not seek to change the rate of MLP given that the rate of MLP being equivalent to four-fifths of the employee's average daily wages had been in force since 1995. These members called on the Administration to conduct a review of the statutory MLP and

² A subcommittee was formed to study the Employment (Amendment) Ordinance 2020 (Commencement) Notice. The report of the Subcommittee was submitted to the House Committee on 20 November 2020.

expressed the view that the incumbent of the proposed CLO post should be tasked to follow up with these issues of concern.

8. The Administration 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. 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. It was also noted that ML was unpaid in some economies and the statutory minimum wage rate might apply in some other economies. Furthermore, MLP of some economies was subject to a ceiling and some others were only paid for a certain period of ML. Taking into consideration all relevant factors and upholding the principle of prudent use of public money, it was proposed that there would be a cap for the additional four weeks' MLP. To take forward the initiative, the Administration had to introduce legislative amendments to EO and develop a mechanism for making reimbursement to employers from scratch. The proposed CLO post, if created, would assist in the legislative work, and the establishment and operation of the reimbursement mechanism.

9. Some members expressed concern that the ML proposal could not provide sufficient protection for pregnant contract staff and temporary staff. They were concerned that some employers might opt not to renew the contracts of pregnant contract staff if the ML duration was extended to 14 weeks. These members considered that the proposed CLO post should be tasked to review the existing arrangements on employment protection for pregnant employees on contract term and study the feasibility of extending the period of employment protection for pregnant employees, say, six months to one year following the expiry of the statutory ML.

10. The Administration advised that the existing EO provisions accorded appropriate protection for pregnant employees on various aspects including ML, MLP, occupational health and employment protection, etc. Furthermore, under the Sex Discrimination Ordinance (Cap. 480) ("SDO"), it was unlawful for an employer to subject a woman to a disadvantage or dismiss her on the ground of her pregnancy, including dismissal during pregnancy or upon return from ML. The Administration had currently no plan to amend the relevant EO provisions on employment protection and entitlement to MLP. That said, the proposed CLO post would also be responsible for stepping up the publicity efforts on maternity benefits and protection.

11. The Administration further advised that there was no evidence in the labour market showing that employers had evaded the legal liabilities of

providing ML to their employees through the adoption of fixed-term contracts. Based on LD's daily operational experience, it was uncommon for employers to engage employees by way of fixed-term contracts for the purpose of evading the liabilities of providing maternity protection to their female employees. Regarding the proposed extension of statutory ML from the current 10 weeks to 14 weeks, the extra cost of statutory MLP arising from the additional four weeks' ML would be funded by the Government, hence it would not create additional financial burden to employers. Moreover, subjecting a woman to unfair treatment at workplace due to pregnancy was a breach of SDO. It was believed that the proposal to enhance statutory ML would unlikely affect the contract renewal of pregnant employees engaged under fixed-term contracts. The proposal was also conducive to a more family-friendly environment.

Need for the proposed CLO post

12. Members also examined the need for the proposed CLO post. The Administration advised that in view of the complexity of the multi-faceted tasks involved in the formulation and implementation of the new ML regime, an officer of sufficiently senior position and with rich experience in labour issues would be required to take charge of the matter. The Administration therefore proposed to create one permanent post of CLO at the D1 level, who would be underpinned by a dedicated office in LD, to spearhead the development of a holistic policy and implementation framework for the new ML regime. It was essential to create the CLO post on a permanent basis and as soon as possible so as to meet the targets of submitting the enabling bill to LegCo before end 2019 and effecting the reimbursement mechanism by 2021.

13. Some members expressed concern about the impact on the work of enhancing statutory ML if the proposed creation of the CLO post was not supported. According to the Administration, the Assistant Commissioner for Labour (Labour Relations) was currently underpinned by a preparatory team comprising one Senior Labour Officer and one Labour Officer to work on the ML proposal. It was anticipated that the work of enhancing statutory ML would be delayed if the proposed creation of the CLO post was not supported. Given that LD was handling a number of important labour issues, including the ML proposal and abolishing the "offsetting" arrangement under the Mandatory Provident Fund System, LD's existing resources were already fully stretched and hence there was a pressing need to create the CLO post.

Latest development

Implementation arrangements of the new maternity leave regime

14. During the deliberations of the Subcommittee on Employment (Amendment) Ordinance 2020 (Commencement) Notice, members noted that

the Administration had decided to outsource the administration of the Reimbursement of Maternity Leave Pay ("RMLP") Scheme to a private sector processing agent, instead of direct administration by LD as originally planned, so as to speed up the implementation process. The main functions of the outsourced processing agent would 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. The Administration aimed to appoint the processing agent by the end of 2020 and implementing the RMLP Scheme as soon as practicable in the first half of 2021. Members were also advised that LD set up the Preparatory Office for Reimbursement of Maternity Leave Pay ("PORMLP") in the second quarter of 2020 to coordinate and commence the preparatory work for the RMLP Scheme. PORMLP would, 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.

Staffing proposal

15. ESC considered the staffing proposal at its meeting on 28 May 2019 and agreed to recommend the item to the Finance Committee for consideration. The Finance Committee considered the staffing proposal at its meeting on 3 July 2020, but the proposal was not passed.

16. The Administration plans to submit again the relevant staffing proposal to ESC for consideration in the 2020-2021 session. It will brief the Panel on the proposal to create a CLO post in LD to take forward various measures to enhance statutory ML at its meeting on 16 March 2021.

Relevant papers

17. 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
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>
Panel on Manpower	21 January 2020 (Item VI)	<u>Agenda</u> <u>Minutes</u>
Panel on Manpower	12 March 2020 (Item II)	<u>Agenda</u> <u>Minutes</u>
Panel on Manpower	28 April 2020 (Item I)	<u>Agenda</u> <u>Minutes</u>
Panel on Manpower	12 May 2020 (Item I)	<u>Agenda</u> <u>Minutes</u>
Panel on Manpower	18 May 2020 (Item I)	<u>Agenda</u> <u>Minutes</u>
Establishment Subcommittee	28 May 2020 EC(2019-20)2	<u>Agenda</u> <u>Minutes</u>
Finance Committee	3 July 2020 Item 10 (FCR(2020-21)14A)	<u>Agenda</u> <u>Voting result</u>
Panel on Manpower		<u>Report of the Panel on Manpower on issues relating to the Employment (Amendment) Bill 2019 for submission to the Legislative Council</u> <u>(LC Paper No. CB(2)1219/19-20)</u>

Committee	Date of meeting	Paper
Subcommittee on Employment (Amendment) Ordinance 2020 (Commencement) Notice		<u>Report</u> <u>(LC Paper No. CB(2)336/20-21)</u>

Council Business Division 2
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