



EMPLOYMENT (AMENDMENT) BILL 2014 SUBMISSION

1. The Employment (Amendment) Bill 2014 (“the Bill”) proposes to amend the Employment Ordinance (Cap.57) by, inter alia, adding a new Part IIIA to provide a statutory paternity leave and paternity leave pay mechanism for male employees of up to 3 days with pay at a daily rate of four-fifths of the employee’s average daily wages.
2. The Law Society has reviewed the Bill and has the following comments.

Definition of “paternity leave”

3. Under the Bill, the Administration proposes that the relevant requirements and details of paternity leave should be aligned with those applicable to maternity leave under the Employment Ordinance (Cap.57) (“EO”) as the cause and nature of paternity leave was similar to that of maternity leave¹.
4. According to section 2 of the EO, maternity leave means *absence from work ... by a female employee because of her pregnancy or confinement*.
5. Under the Bill, “paternity leave” is proposed to be defined as “*the paternity leave provided for in Part IIIA*” (**Proposed section 3(1)**). This definition of paternity leave is very different in structure from that of “*maternity leave*”. Would the Administration clarify such a difference in drafting?

¹ See paragraph 2 of the LegCo Brief (LD LRD/12-1/2-31/1(C))

Meaning of the term “father”

6. Under the proposal, a male employee who is the father of a newborn or a father-to-be will be entitled to paternity leave (if he satisfies certain conditions specified in the Bill) (**Proposed section 15D(1)(a)**). The meaning of the term “father” is important in the operation of the Bill, but notably it has not been defined (in the Bill or the EO). The Law Society suggests that a definition should be provided for under the Bill for this term and proposes that the term “father” could be defined with reference to the Parent and Child Ordinance (Cap.429).

Notification requirement

7. It is proposed that a male employee who intends to take paternity leave is required to notify his employer at least 3 months before the expected date of delivery of the child and at least 2 days before the day on which paternity leave is to be taken (**Proposed section 15E(1)(a)(i)**).
8. The Law Society suggests that the 3 months’ notice period be measured to the first day of paternity leave instead of the expected date of confinement.

Written Statement of the Employee

9. Under the Bill, if the employer so requires, a male employee is required to give the employer a written statement signed by him stating that he is the child’s father and the name of the child’s mother and the expected date of the delivery or the actual date of the delivery of the child (**Proposed section 15E(2)**).
10. The Law Society suggests that the production of such written statement should be made as a mandatory condition of paternity leave. The employee should produce such written statement at least on the first day of paternity leave.

Calculation of the average daily wages

11. The proposed drafting of section 15H(3) on the calculation of the average daily wages is different from section 14(3B) of the EO, the equivalent provision of maternity leave.
12. Section 14 (3B) of EO provides that, for the purpose of maternity leave:

In calculating the daily average of the wages earned by a female employee during the period of 12 months or the shorter period –

- (a) any period therein for which the employee was not paid her wages or full wages by reason of –*
 - (i) any maternity leave, rest day, sickness day, holiday or annual leave taken by the employee;*
 - (ii) any leave taken by the employee with the agreement of her employer;*
 - (iii) her not being provided by her employer with work on any normal working day; or*
 - (iv) her absence from work due to temporary incapacity for which compensation is payable under section 10 of the Employees' Compensation Ordinance (Cap.282); and*
- (b) any wages paid to her for the period referred to in paragraph (a),*

are to be disregarded.

13. Under the **proposed section 15H(3)**,

The average daily wages are to be calculated without regard to—

- (a) any period (excluded period) during the 12-month period or shorter period for which the employee was not paid wages or full wages because of—*
 - (i) any paternity leave, rest day, sickness day, holiday or annual leave taken by the employee;*
 - (ii) any leave taken by the employee with the agreement of the employer;*
 - (iii) the employee's not being provided with work by the employer on a normal working day; or*

- (iv) *the employee's absence from work due to temporary incapacity for which compensation is payable under section 10 of the Employees' Compensation Ordinance (Cap. 282); and*
- (b) *any wages paid to the employee for the excluded period.*

14. It appears that the EO is moving away from “disregarded periods” to “excluded periods”. Would the Administration explain why the drafting of the proposed section 15H(3) is different from section 14(3B) of the EO?

Amendment Section (sick allowance)

15. The proposed repeal of the Chinese text “《醫院、療養院及留產院登記條例》” for Section 33 of the EO (**Section 9**) is wrong as there is no such Chinese text in the existing section 33(6)(a) of the EO.

The Law Society of Hong Kong
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