



2019年12月

劳资事务焦点动态：产假相关更新

劳工及福利局（“劳福局”）最近公布了将香港法定产假由10周延长至14周的相关措施。

劳福局将于 2019年12月27日在公报上发布有关产假修订的2019年雇佣(修正案)条例法案

（“法案”），并于 2020年1月8日将法案提交立法委员会。此举目的就是在 2021 年底之前实施提出的各项措施。

Whilst details of the Bill have not yet been made public, the Bureau has previously in December 2018 set out in a Review of Statutory Maternity Leave (the “**Review**”) the proposals regarding the extension:-

- The proposed extension of statutory maternity leave shall take effect in one go;
- The rate of the maternity leave pay for the additional 4 weeks shall be maintained at four-fifths of the employee’s average daily wages;
- The Hong Kong Government shall bare the cost for the additional 4 weeks maternity leave pay. The employer will pay the additional 4 weeks maternity leave pay and may then seek reimbursement from the Government subject to proof of payment;
- The additional 4 weeks maternity leave pay shall be subject to a cap of HK\$36,822 per employee.

The Review further proposes 2 technical amendments to the Employment Ordinance (Cap.57) (“EO”):

- To update the definition of “miscarriage” so that women who suffer miscarriage any time from 24 weeks after conception shall be eligible for maternity leave.
- To include a certificate of attendance as being sufficient documentary proof for women to be entitled to sickness allowance for attending pre-natal examination (in contrast with the current position which requires a medical certificate).

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Employers are reminded that the other maternity provisions under the EO shall continue to operate. The material provisions are as follows:-

- Employees who intend to take maternity leave must give notice of her pregnancy to her employer and her intention to take maternity leave after her pregnancy is confirmed by a medical certificate to be afforded the protections under the EO.
- Maternity leave is a statutory entitlement for female employee who is employed under a continuous contract of employment immediately before taking any maternity leave.
- To be eligible for maternity leave pay, the pregnant employee has to be employed by the same employer for at least 40 weeks immediately before the expected date of commencement of maternity leave.
- An employer who fails to grant maternity leave and/or maternity leave pay to an eligible pregnant employee shall be liable upon conviction, a fine at HK\$50,000.
- An employer must not terminate the employment of a pregnant employee under a continuous contract of employment after she has served a notice of pregnancy, until the date of expiry of her maternity leave or the date of cessation of pregnancy. Any termination of a pregnancy employee in the above circumstances will amount to an offence, the employer shall be liable upon conviction, a fine at HK\$100,000.

Employees should be familiar with the rights and entitlements under the EO and its amended version once it becomes effective. While employers should take note and ensure compliance of the amended EO as soon as it becomes law.

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