



July 2020

Employment Spotlight: Enhanced statutory maternity leave protection as the Legco passes the Employment (Amendment) Bill 2019

The Employment (Amendment) Bill 2019 (“Bill”) was passed by the Legislative Council on 9 July 2020. The Bill seeks to amend the Employment Ordinance (Cap. 57) “to extend the statutory maternity leave by 4 weeks; to introduce a cap on the maternity leave pay in respect of the extension of maternity leave; to shorten the period of pregnancy mentioned in the definition of miscarriage; to 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 to provide for transitional and related matters.” The details of the amendments to the Employment Ordinance (Cap. 57) have been discussed in our previous article which can be accessed [here](#).

1) What is the change in the period of the statutory maternity leave?

Section 12 of the Employment Ordinance would be amended to increase the statutory maternity leave from 10 weeks to 14 weeks. A female employee would continue to be entitled to a further period, not exceeding 4 weeks, on grounds of illness or disability arising out of the pregnancy or confinement.

2) What are the changes to the maternity leave pay?

The daily rate of maternity leave pay would continue to be calculated at the rate of four-fifths of the daily average wages. However, the maternity leave pay for the additional 4 weeks would be capped at HK\$80,000 per employee. The Government has committed to reimburse the employers who make the additional maternity leave payment. The details of the administrative scheme are not yet published. However, employers are not prohibited from paying amounts higher than the capped amount.

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3) What is the effect on the definition of miscarriage?

The definition of miscarriage under Section 2 of the Employment Ordinance has been amended such that period of pregnancy in the context of miscarriages has been shortened from 28 weeks to 24 weeks. This amendment has enhanced protection for women suffering miscarriages and a woman suffering miscarriage after 24 weeks of pregnancy will be entitled to maternity leave.

4) What is the change brought about with respect to proof of entitlement to sickness allowance?

The amendment will entitle a female employee to claim sickness allowance if she is able to produce a *certificate of attendance* from a professionally trained person such as a registered medical practitioner, registered Chinese medical practitioner, registered midwife or registered nurse.

5) What are the changes with respect to paternity leave entitlement?

Eligible employees are entitled to take paternity leave of 5 days anytime during the period commencing 4 weeks before the expected date of delivery of the child to 14 weeks of actual date of delivery of the child.

6) What are the transitional changes that employers and employees should be aware of?

Schedule 10 has been introduced for ease of transition into the amended law which provides as follows:

- Confinement on or after the amendments come into operation: If a female gives notice of pregnancy and the intention to take maternity leave before the date when the amendment comes into operation ("Amendment Date") but her confinement occurs on or after the Amendment Date, she would be entitled to maternity leave and maternity leave pay in accordance with the amended provisions.
- Paternity leave: If an eligible male employee's child is born on or after the Amendment Date, the amended laws would be applicable with respect to his paternity leave entitlements irrespective of the notification to take paternity leave being given at an earlier date.
- Effect on termination of employment: If the confinement of a pregnant employee, occurs on or after the Amendment Date, and the termination date of her employment contract falls on or after the Amendment Date, the employer shall be liable to pay to the employee maternity leave pay for 14 weeks.

7) Have the amendments been brought in force now?

No. The amendments are expected to come into operation by the end of 2020.

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The changes would have far reaching effects for employers and employees. Employers should be prepared to update their policies and procedures in light of the Bill.

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