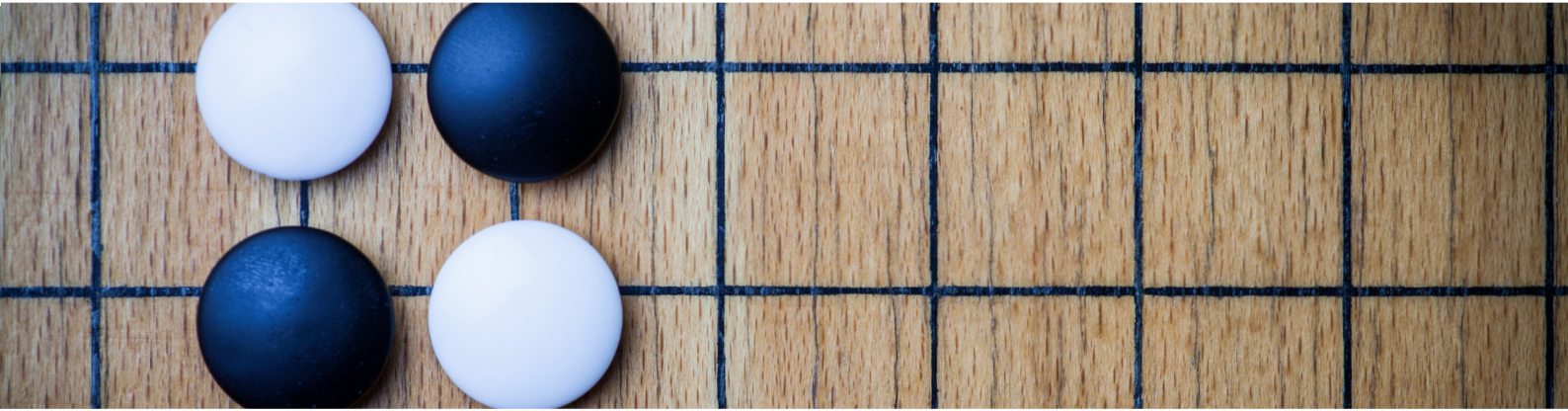


# GALL



---

**December 2020**

## **Employment Spotlight: Increased Maternity and Paternity Leave are Now in Effect**

The Employment (Amendment) Ordinance 2020 (the “Amendment”) has come into operation from today, 11 December 2020. Our previous update on its details can be viewed on our website.

A summary of the key provisions and the key takeaways from the Amendment are as follows:

### **1. Statutory Maternity Leave**

The period of statutory maternity leave is increased to a continuous period of 14 weeks (from 10 weeks) for female employees whose date of confinement is on or after 11 December 2020 (the “Amendment Date”). As a result, even if an employee had given notice of her pregnancy prior to the Amendment Date but her actual confinement (i.e. date of delivery of the child) occurs on or after the Amendment Date, her entitlement to statutory maternity leave is increased to 14 weeks.

### **2. Maternity Leave Pay**

The additional 4 weeks’ maternity leave pay (“MLP”) is calculated at the rate of four-fifths of the employee’s daily average wages even in respect of the additional 4-week period capped at HK\$80,000 per employee. Once the employer pays the MLP for the 14 weeks, the employer may apply for reimbursement from the Government under the Reimbursement of the Maternity Leave Pay Scheme (the “RMLP Scheme”) in respect of the MLP for the 11th to 14th weeks (i.e. the additional 4-week period). In order to apply under the RMLP Scheme, employers are expected to maintain records in accordance with the Employment Ordinance including:

a) Employers’ payment records such as salary slips, bank transaction records for the payment of 14 weeks’ statutory MLP;

# GALL

b) The pregnant employee's wage records of the 12 months preceding the commencement of maternity leave as this is relevant for calculating the daily average wage; and

c) Proof of pregnancy provided by concerned employees to the employers (such as medical certificates specifying the expected dates of confinement, medical certificates, or certificates of attendance for medical examinations in relation to pregnancy).

The Labour Department is working towards implementing an online portal for the submission of the application under the RMLP Scheme. Complete details of the implementation of the RMLP Scheme are expected in the first half of 2021.

### 3. Statutory Paternity Leave

The period in which a male employee is able to take paternity leave has increased from a 10-week period to a 14-week period. Accordingly, statutory paternity leave (of 5 days) can be taken anytime during the period beginning 4 weeks before the expected date of delivery and ending 14 weeks from the actual date of delivery if the child is born on or after the Amendment Date.

#### Key Takeaways

Employers should consider reviewing their employment contracts and employment policies to ensure that any relevant provisions do not contravene the statutory requirements. Human Resource teams ("HR") should keep abreast of the changes and the applicability of the Amendment. It is important that HR and accounts teams maintain records for applications for reimbursement of MLP for the additional period of maternity leave under the RMLP Scheme.

## Contacts



**Andrea Randall**  
Partner  
+852 3405 7630  
andrearandall@gallhk.com



**Nick Dealy**  
Partner  
+852 3405 7656  
ndealy@gallhk.com



**Kritika Sethia**  
Legal Analyst  
+852 3405 7654  
kritikasethia@gallhk.com

*All material contained in this article are provided for general information purposes only and should not be construed as legal, accounting, financial or tax advice or opinion on any specific facts or circumstances and should not be relied upon in that regard. Gall accepts no responsibility for any loss or damage arising directly or indirectly from action taken, or not taken, which may arise from reliance on information contained in this article. You are urged to seek legal advice concerning your own situation and any specific legal question that you may have.*