

Insights

EXPANSION OF MATERNITY BENEFITS IN HONG KONG

Jul 15, 2020

On 9 July 2020, the Hong Kong Legislative Council passed the Employment (Amendment) Bill 2019 (**the Bill**). The Bill introduces amendments to the Employment Ordinance (Cap 57) to extend the statutory maternity leave (**ML**) by four weeks – from the current 10 weeks to 14 weeks - and introduce certain technical amendments to enhance the current statutory ML regime.

Major amendments

A summary of the major amendments are as follows:

1. Extended period of ML - Under the current regime, a female employee employed under a continuous contract immediately before her ML commences is entitled to a continuous period of 10 weeks' ML. The period of ML is now extended to 14 weeks under the Bill¹.
2. Additional ML pay - Under the current regime, if a female employee has been employed under a continuous contract for not less than 40 weeks immediately before the commencement of the scheduled ML, she further is entitled to ML pay at the rate of four-fifths of her average daily wages. Under the Bill, the additional ML pay in respect of the additional 4 weeks' of ML is calculated on the same basis as the employer's payment of the current 10 weeks' ML pay (i.e. four-fifths of her average daily wages), but subject to a cap of HK\$80,000 per employee. The additional ML pay would be funded by the Hong Kong Government on a reimbursement basis by way of an administrative scheme.
3. Amendment of the availability of cover for "miscarriage" - Under the current regime, a female employee who suffers a miscarriage at or after 28 weeks of pregnancy may be entitled to ML. This period is shortened to 24 weeks under the Bill.
4. Attendance of medical examination - Under the current regime, a female employee who is absent from work to attend a medical examination in relation to her pregnancy would be entitled to sickness allowance if she is able to produce an appropriate medical certificate. This medical certificate must be issued by a registered medical practitioner or registered Chinese medicine practitioner, specifying the number of days on which the employee is unfit for work and the nature of the sickness or injury. Under the Bill, a female employee only is required to produce a certificate

of attendance at such examination rather than a medical certificate. The certificate of attendance can be issued by various professionally trained persons, namely registered medical practitioners, registered Chinese medicine practitioners, registered midwives or registered nurses.

Notes for Employers

The Bill is not yet in force and will come into operation on a day to be appointed by the Secretary for Labour and Welfare by notice published in the Gazette.

Employers are advised to update their human resources policies and internal guidelines to bring them in line with the latest amendments to the Employment Ordinance.

¹The employee also may take an additional period of leave for not more than four weeks on illness or disability arising out of the pregnancy or confinement. This entitlement is unchanged under the Bill.

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