

Statutory paternity leave legislation in Hong Kong

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At the end of last year, the Legislative Council passed the long-awaited Employment Amendment Bill 2014, granting three days' paid paternity leave to eligible employees. From 27 February 2015, male employees in the private sector are entitled to enjoy three days' paternity leave at 80% of their average daily wage.



The legislation was recommended by the Labour Advisory Board a non-statutory body that advise on labour matters, comprising both employer and employee representatives. Lawmakers previously proposed that the period of paternity leave should be increased to seven days with full pay. However, this proposal was rejected by the Legislative Council.

What do the paternity leave provisions say?

Fathers working in the private sector are entitled to a statutory benefit of three days' paternity leave, with pay at 80% of the employee's daily wages. These three days may be taken consecutively or separately at any time from

four weeks prior to the expected delivery date, to up to 10 weeks after the birth.

To qualify, the father of a newborn child, or a father-to-be, must be employed under a continuous contract and must have given advance notice to his employer. A “continuous contract” means the employee must have worked for the same employer for at least 18 hours in each of the previous four weeks.

In terms of notification requirements, if the employee notifies his employer of his intention to take paternity leave at least 3 months before the expected delivery date, he must give his employer advance notice of his intended date of paternity leave before taking it. If the employee has not given 3 months’ notice, he must notify his employer at least five days in advance of the date he is intending to take his paternity leave .

In addition, on the request of the employer, the employee must sign a written statement confirming:

- he is the child’s father; and
- the name of the child’s mother; and
- the expected or actual date of delivery.

The father will also be entitled to paternity leave pay if he has been continuously employed for a minimum of 40 weeks before taking the paternity leave, and has submitted the child’s birth certificate to his employer as proof of fatherhood. This supporting documentation should be provided to the employer within twelve months of the first day on which the employee takes paternity leave, or if the employee has ceased employment, within 6 months of the cessation of his employment.

What can employers do?

An employer who without reasonable excuse fails to provide statutory paternity leave or statutory paternity pay commits an offence and is liable on conviction to a fine at level 5, currently HK\$50,000.

The Government has in fact been promoting various family-friendly practices, – paternity leave being only part of the initiative. Employers, especially international companies in Hong Kong, may therefore wish to take this opportunity to review their relevant policies and employee benefits as a whole in response to society’s greater emphasis on family-friendly employment practices.

In terms of market trends, since 2012, eligible full-time government employees in Hong Kong have enjoyed five working days’ paternity leave and many companies currently offer, on a voluntary basis, an average of three days’ paternity leave. Looking at our neighbouring Asian economies as reference, the paternity leave period is five days in Korea, three days in Taiwan and seven days in Singapore (state-funded). Paternity leave rights in Asia are still far behind those enjoyed by employees in Western developed economies.

In light of the new statutory paternity leave provisions, companies in Hong Kong should review their paternity leave policies and procedures. This should include, for example, preparing the prescribed form for employees who intend to take paternity leave, and reviewing the company’s policies on paternity leave to ensure that the companies do not offer less than the statutory requirements. Companies may also consider whether to provide “top-up” benefits to employees, beyond the statutory requirements. As paternity leave is only part of the family-friendly employment practice initiative promoted by the Hong Kong Government, companies may also consider reforming the relevant employee benefits as a whole. Some possible recommendations include family leave, flexible working arrangements and family support facilities (e.g. child care, breastfeeding facilities etc.).

What issues should employers be aware of when formulating family-friendly

practices?

Paternity leave policies and other family-friendly employment practices are likely to relate to an employee's gender and/or marital status. Employers should therefore ensure compliance with the Sex Discrimination Ordinance and the Family Status Discrimination Ordinance (which are currently under review by the Hong Kong Equal Opportunities Commission).

In order to avoid discrimination on the basis of marital status, any paternity leave benefits offered by the company should apply to fathers of a child born both in and out of wedlock. Companies should ensure that their paternity leave policies treat married and unmarried fathers / fathers-to-be equally.

In terms of sex discrimination, the Equal Opportunities Commission has noted that paternity leave and maternity leave are similar in nature. Company policies should reflect this and any inconsistencies in the treatment of mothers and fathers should be justified and reasonable. A special point to note is that in many countries where paternity leave is offered, fathers often do not take advantage of their entitlement for fear of being stigmatised or penalised in the workplace. Companies may therefore consider putting in place complementary measures (such as clear and open guidelines as to the eligibility criteria and procedure for taking paternity leave, and/or other family-friendly measures) to combat any possible negative stereotypes in the office.

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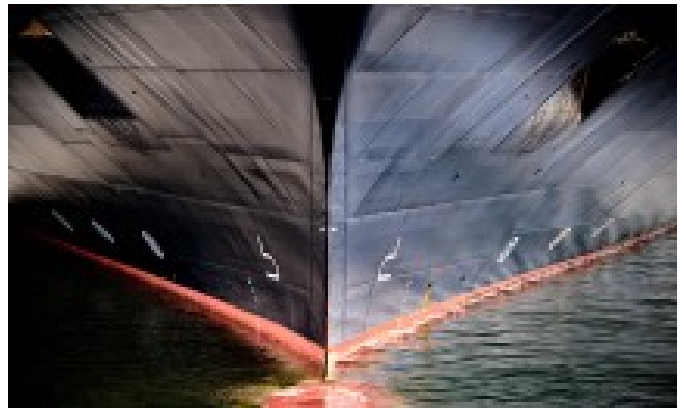
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