



Paternity Leave

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With the Hong Kong government under pressure to introduce legislation to mandate paternity leave for all male employees in Hong Kong, we take a look at the background, highlight common practices and flag key considerations for employers.

What is paternity leave?

Paternity leave is an employee benefit that allows a father to take time off work in connection with the birth of a child. Paternity leave forms part of a group of employee benefits of family-care-related leave commonly referred to as parenting or family leave. This leave can include, for example, maternity, adoption, childcare, elder care, family and emergency family leave.

Parental leaves can be paid or unpaid, in-whole or in-part. If paid, the funding can come from one, or a combination, of three main sources:

- the state
- insurance
- the employer

At a localised level, parenting leaves typically arise from:

- local legislation
- employer policies
- collective bargaining agreements

Background:

The right and ability for an employed woman to take maternity leave from her employer on the birth of a child has become, to a very great extent, the global norm. Less so in relation to male employees.

i. Hong Kong Overview:

In Hong Kong, available data would tend to suggest that early years childcare is not an opportunity many male employees take up. The Women's Commission's report "Hong Kong Women in Figures 2011" shows little variation in men's workforce participation rates in the key child-bearing years.

ii. Global Overview:

Research by the International Labour Organisation ("ILO") states that even where parental leave is available to fathers, *"women are most often the ones who take parental leave after maternity leave. Generally, men's take-up rates are very low.....For this reason, some countries have introduced a paternity quota that can only be taken by the father and is lost if he does not use it"*.

And yet, despite this, there appears globally to be an accretive trend in favour of leaves which can be used by fathers around the time of childbirth. The same ILO 2010 research cites 48 countries where legislated family leave provisions can be used by fathers as paternity leave. Of these countries, 13 are in Africa, 19 in Europe, 6 in Asia, 8 in South America, 1 in the Middle East and 5 in Central and South-Eastern Europe.

iii. General Approach:

Parenting leaves are subject to each country's preferences and practices.

The length and payment structures of legislated parenting leaves open to fathers to use around the time of childbirth vary greatly. They can range from 3 employer-paid days off for married men in Taiwan, to up to 14 months of state-paid leave in Germany provided the parents:

- co-habit
- are employees
- live together with their child in one household and predominantly care for and raise the child.

Meanwhile, some countries provide for unpaid leave and yet others limit the number of times a father can take leave.

Do parenting leaves already exist in Hong Kong?

Maternity Leave:

Under the Employment Ordinance, a female employee is entitled to 10 weeks' maternity leave. That leave will be paid by the employer if the woman has completed at least 40 weeks' continuous employment with that employer by commencement of maternity leave.

Paternity Leave:

Starting 1 April this year, full-time, legally married, male government employees with no less than 40 weeks' continuous employment are eligible for paternity leave of 5 working days on full pay. This is a pilot scheme and a precursor to the government introducing legislated paternity leave.

Paternity Leave in the Private Sector:

There is a lack of "employer-wide" research readily available to demonstrate how many Hong Kong employers already provide paternity leave voluntarily. The following survey results indicate that a sizeable number of companies already do:

- I. Of the 2,500 member companies analysed in the Hong Kong Council of Social Services ("HKCSS") 2011-2012 Caring Company Yearbook:
 - 26% provide paternity leave
 - nearly 73% provide compassionate leave
 - nearly 24% provide emergency family leave

2. In February 2012, consulting firm Hay Group surveyed 130 local and multi-national companies across 11 industries in Hong Kong and found that 56% of the companies surveyed offer paternity leave benefits:
 - 42% provide 1-2 days
 - 36% provide 3-4 days
 - the rest up to 7 days
3. The 2009 Hong Kong Institute of Human Resources Management Benefits Survey found that 42.9% of the 75 companies surveyed provide fully paid paternity leave of between 2 and 3 days. Of those companies:
 - 37.6% were local companies
 - 50% were multi-nationals
 - 33.3% were Mainland-owned
4. A 2006 survey jointly commissioned by the Equal Opportunities Commission and the Women's Commission received just 137 responses to its 6,000 invitations to employers asking for feedback on their family friendly employment policies. Of note, and despite the small sample size, was that the most frequently adopted family leave policy was not paternity leave (at 16%) but family care leave at nearly 60%.

How does Hong Kong compare internationally?

Hong Kong currently has no mandatory paternity leave. Around 50 countries have legislated family-friendly or family-focussed leaves.

Some countries take a holistic approach, mandating broad, family or parenting leaves which can be applied to a variety of family situations, including paternity.

The ILO's "Maternity at Work – A Review of National Legislation" (second edition 2010) provides an informative overview of what other countries offer by way of legislated parental leaves that can be used as paternity leave by fathers. Another useful resource for making comparisons is the "Parental Leave Policies in 21 Countries" published by the Centre for Economic and Policy Research in 2008.

Paternity and related parenting leaves available to male employees:

Many of these examples are taken, and in places adapted slightly, from the ILO 2010 report referred to above. Approaches vary and include:

Indonesia: 2 paid days when the wife gives birth

Taiwan: 3 working days for married men

South Korea: 5 days for married men of which 3 are paid

New Zealand: 2 weeks' unpaid paternity leave (1 week if only employed for 6 months)

United Kingdom: 2 weeks' paid Ordinary Paternity Leave. Plus up to 26 weeks' Additional Paternity Leave in certain circumstances

Brazil: male employees are entitled to 5 days of paternity leave paid by their employers

Philippines: all married male employees in the private and public sector are entitled to 7 days' paternity leave with full pay from their employer for the 4 first deliveries of the legitimate spouse with whom they cohabit

Finland: paternity leave benefits are paid from social insurance for a total of 18 working days. As of January 2010, a father can take 24 more days if he takes the last 12 week days of the parental leave period

Colombia: fathers are entitled to between 4 and 8 days of social insurance benefits (depending on whether or not both parents are insured)

Belgium: the first 3 days are paid by the employer at a rate of 100% of the preceding average remuneration, and the remaining 7 days are paid by the sickness and indemnity insurance scheme at 82%.

Spain: Paternity leave was initially introduced at 15 days of which 2 days were paid by the employer and 13 days by social security. In 2011, paternity leave increased to 4 weeks.

A notably family-inclusive and flexible example is Germany's approach to its State-paid 14-month parental leave. In addition to catering for parents, there are similar rights for other close relatives who can take parental leave under certain circumstances. The leave can be taken until the child is 3 years of age. And the parents can share the time, so each parent can take parental leave for parts of those 3 years.

Why legislate for paternity leave?

With more and more Hong Kong employers providing paternity and parenting leave benefits why would the government intervene by introducing legislation?

Why not continue to encourage and support broader family friendly employment practices being driven from within the business community and leave employees to vote with their feet?

At a Global Level:

The United Nations Maternity Protection Conventions exist and are, broadly speaking, globally ratified and enshrined in local legislation. Conversely, paternity and parenting leaves are not included in any Conventions. What does exist, however, is a series of ILO Recommendations regarding parental leaves. The key premise of the Recommendations is that some parental leave should be available for either parent without putting them at risk of losing their employment or employment rights. Unlike Conventions, Recommendations are not binding.

At a Local Level:

Key considerations in support of legislating for paternity (or indeed parenting leaves more generally) include:

1. To address a declining or low birthrate and a rapidly ageing population.

These were key drivers in the design and introduction of both Korea and Germany's parenting benefits. According to the CIA's World Fact Book data, detailing number of births per woman, Germany ranks at 197 and Korea at 217 out of the 222 countries reviewed. Hong Kong ranks even lower at 220 out of 222, with the third lowest number of births per woman in the world at just 1.09 children per woman. Below Hong Kong in terms of birth rate are only Macau (ranked 221) and Singapore (ranked bottom at 222).

2. To ensure that both parents have more, and more equal, opportunities to spend time with their children. Looking across sectors:

- i. The Hong Kong Administration has, since 2006, actively promoted and encouraged employers to embrace the concept of "Family Friendly Employment Practices". For example, in April 2011, the Family-Friendly Employers Award Scheme was launched by the Family Council.
- ii. The non-profit HKCSS introduced the Caring Company Award Scheme 10 years ago and now has around 2,500 members.

- iii. In the private sector:

Employer of Choice: an employer with sound work-life and diversity policies is perceived as an "Employer of Choice" and therefore more likely to attract and retain the best and brightest, especially when it comes to the new work generation which expects and actively discusses these topics on-line when deciding which employer to work for. Mercer Hong Kong's 2011 "What's Working" survey provides an employee perspective with around 40% of those interviewed citing employer benefits as a significant factor in motivating them to both join and stay with their employer.

Business Case and Profitability: The Great Places to Work Institute has gathered together research which links a company's commitment to employee benefits and work-life directly to increased stock market returns.

3. To Ensure Consistency:

This will likely involve ensuring that any non-employer funding for paternity or parenting leave is applied and reviewed fairly, consistently and in a transparent manner. For example, if funding were to come, either in whole or in part, from government, the eligibility, application procedures, tool-kits, communications, broader administration and tax treatment of any payments would need to be outlined in detail.

What are the key considerations for paternity leave?

In broad terms, several of the policy design considerations are similar to those for maternity leave.

The overall intention and length of the leave should be clearly articulated as should the length of the leave. For example: “to bond with the newborn child for a period of up to 10 working days.”

Beyond this, some other key drafting considerations are listed as questions below:



Eligibility:

Married or not:

Will the benefit apply only to legally married or to all male employees who become fathers? If paternity leave is limited to births within marriage, is there a date by which the parents must be legally married? Is it by conception, birth or by the time the leave is taken? If the male employee is not married, is he required to be co-habiting with the mother in order to be eligible? What evidence of co-habitation is acceptable?

Tenure:

How long does the employee need to be employed in order to qualify for the leave? 6 months, 40 weeks?

Frequency:

Is there a maximum number of times the employee can take paternity leave? Or will leave be available for every birth?

Proof:

How will fatherhood be proved? Or will it be left to trust? Will a copy of the birth and/or marriage certificate be required? If so, at what point? If the leave can be taken before the birth certificate is issued then how can an employee prove he is the father?

Location:

Must the child be born in Hong Kong? Must both the child and mother be living in Hong Kong?

Adoption and Surrogacy:

Will the leave apply to fathers adopting a child? Or to parents of a surrogate child? How about foster care?



Timing:

- Can the leave be used before the birth or only after the birth? And is it to be used before, during or after maternity leave?
- If after the birth, up to what point in time? e.g. one month after the child's birth or up until the child's first birthday?
- Can the leave be taken in increments - for example half-day increments or by taking some days in the first week after childbirth and the rest within a certain period?
- Is the leave in addition to annual leave?
- How many months/weeks notice of intention to take the leave must be given?



Payments:

- Will the leave be paid or unpaid?
- Will wages be paid in full or at a reduced level?
- Who will pay for that leave?
- How will leave payments be treated for tax purposes?
- In the event that legislation is introduced, how will employer-provided and state-provided paternity leaves and payments (if any) interact?
- Will the employer continue to pay pensions and health benefits during paternity leave?
- Will the employer or employee be expected to take out insurance to cover paternity leave pay?



Continuous Employment:

- What impact will taking paternity leave have on an employee's continued and continuous employment?



Special Situations:

- Will special rules apply in the event of multiple or difficult births? Will a doctor's certificate be required?
- Is it possible to take this leave in the event of miscarriage or still birth? At what point?
- What happens in the event of the death of the mother? Will the father still be able to take leave?
- If a surrogate baby is born to a couple then can 2 fathers take PL (the biological and the assumed father)? If only the biological can take PL then this is of no assistance to the mother.
- What if it transpires that the person claiming to be the father is not the father - does he suffer any penalty?
- Will the employer have a right to contact the father, if needed, during the paternity leave?
- Will there be any requirement (or even express expectation) that the father actually assist the mother with the new baby? There is no such requirement of mothers within Hong Kong's maternity leave laws.
- Must the paternity leave be taken in Hong Kong? How China or elsewhere if that is where the baby was born and is living at the time the paternity leave is taken?
- What if both the mother and father work for the same employer?
- Will the leave apply to domestic helpers?

Do employers have a choice?

Currently, yes. With the exception of the legally mandated maternity leave, employers in Hong Kong are free to choose whether or not to introduce paternity or any other family or parenting leaves voluntarily. This will change if paternity leave legislation is introduced, as anticipated, later this year. Watch this space for updates.