

Good News for Parents-to-be!

Statutory Paternity Leave in Hong Kong is On Its Way!

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The Employment (Amendment) Bill 2014 (“Bill”) seeks to introduce statutory paternity leave in Hong Kong.

Who is Eligible for Statutory Paternity Leave?

If the Bill is passed, every male employee who is employed under a “continuous contract” (i.e. satisfies the “418” rule) will be entitled to three days’ statutory paternity leave in respect of the birth¹ of each child² of which he is the “father”.

The term “father” is not defined in the Bill. It is, however, defined in section 5 of the Parent and Child Ordinance (Cap.429)³ which provides that a man is presumed to be the father of a child if:

- The father was married to the mother at the time of conception or birth; or
- He is registered as the father on the register of births.

¹ This does not apply to a miscarriage (being a pregnancy which fails within 28 weeks of conception).

² Multiple births (twins/triplets etc.) are treated as a single child for paternity leave purposes.

³ The Parent and Child Ordinance contains specific provisions to deal with sperm and egg donors.

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To be eligible for statutory paternity leave, the employee must give advance notice to his employer of his intention to take statutory paternity leave. However, the father does not need to provide any proof of pregnancy.

Should the employer require the father to provide the employer with a signed statement setting out the following, the father must do so by providing:

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

What are the Entitlements?

The Bill proposes:

- 3 unpaid statutory paternity leave days to a male employee who is employed under a “continuous contract”; and
- 3 statutory paternity leave days to a male employee who is employed under a “continuous contract” for a period of not less than 40 weeks immediately before that day (i.e. Paternity leave) with pay at 80% of the daily average of the wages earned by the employee during the 12 months preceding the commencement of the paternity leave. Where an employer requests a father to provide necessary proof of fatherhood, the employee must do so in order to be eligible for paternity leave pay.

When can the Statutory Paternity Leave be Taken?

Statutory paternity leave can be taken at any time during the period of 4 weeks prior to the expected birth and up to 10 weeks after the actual birth. The 3 days of statutory paternity leave can be taken consecutively or separately.

If the father has previously informed his employer of the impending birth at least 3 months prior to the expected date of delivery, then the father can take statutory paternity leave on only 2 days’ notice. However, if the father has not notified his employer of the impending birth at least 3 months prior to the expected date of birth, then 5 days’ notice for his intention to take paternity leave is required.

Implications for Employers

- An employer may receive a 5-day notice of paternity leave without any prior knowledge that the employee was to be a father;
- An employee does not need to prove he is the father in order to receive paternity leave and the employer cannot demand such proof;
- An employer can require an employee who seeks paternity leave to sign a statement that he is the father and naming the mother, but the employer cannot ask for further information concerning the mother (e.g. her address or identity card details);
- The employer has no right to see the birth certificate of the child unless the father claims paternity leave pay.

Conclusion

Employers should prepare for the introduction of statutory paternity leave by ensuring that they have the appropriate policies and procedures in place. For those employers who already provide paternity leave, they should ensure that what they offer do not fall below the statutory minimum.

The Bill was gazetted on 28 February 2014, and tabled in the Legislative Council on 26 March 2014. We are aware that there has been some proposed changes to the Bill at the Bill Committee’s stage. We will wait and see how the Bill develops.

