

April

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March

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A Concise Guide to Paternity Leave under the Employment Ordinance

Foreword

With the coming into operation of the Employment (Amendment) Ordinance 2014 on 27 February 2015, eligible male employees with child born on or after this date are entitled to paid paternity leave if they fulfil other requirements as stipulated in the law.

This Guide sets out in simple terms the key features of statutory paternity leave. The information provided is for reference only. The Employment Ordinance (Cap. 57) remains the sole authority for the provisions of the law explained.

This Guide and other more detailed information on this subject are also available at <http://www.labour.gov.hk/eng/news/EAO2014.htm>

A. Paternity Leave

An eligible male employee is entitled to 3 days' paternity leave for each confinement of his spouse/partner.

Who is eligible for paternity leave?

- A male employee is eligible for paternity leave if he –
 - (a) is the father¹ of a new-born child or a father-to-be;
 - (b) has been employed under a continuous contract²; and
 - (c) has given the required notification to the employer.

How should the required notification be given?

- The employee must notify his employer of –
 - (a) his intention to take paternity leave at least 3 months before the expected date of delivery of the child (exact date of leave not required at this stage); and
 - (b) the date of his paternity leave before taking the leave³.
- If the employee fails to give the abovementioned 3 months' advance notice to the employer, he must notify the employer of his date of paternity leave at least 5 days before that date.

¹ The employee is not required to be married to the mother of the new-born child for entitlement to paternity leave under the Employment Ordinance.

² Under the Employment Ordinance, an employee who has been employed continuously by the same employer for 4 weeks or more and has been working for at least 18 hours each week is regarded as being employed under a continuous contract.

³ The law does not stipulate how advance such notification should be given.

- If the employer so requests, the employee must provide his employer with a written statement signed by him stating –
 - (a) the name of the child’s mother;
 - (b) the expected/actual date of delivery of the child; and
 - (c) that he is the child’s father.

Sample Written Statement

I, _____ (name of employee) _____, state herewith that I am the father of the child to be delivered /delivered* by _____ (name of the child’s mother) _____.

The expected/actual* date of delivery of the child is _____.

(Signature of employee)
Date

*Delete as appropriate

When may paternity leave be taken?

- The employee may take paternity leave at any time during the period from 4 weeks before the expected date of delivery of the child to 10 weeks beginning on the actual date of delivery of the child.
- The employee may take all 3 days of paternity leave in one go or on separate days.

B. Paternity Leave Pay

The daily rate of paternity leave pay is a sum equivalent to four-fifths of the average daily wages⁴ earned by an employee in the 12-month period preceding the day of paternity leave. If an employee takes more than one day of paternity leave consecutively, the daily rate of paternity leave pay is a sum equivalent to four-fifths of the average daily wages earned by the employee in the 12-month period preceding the first day of paternity leave. If an employee is employed for less than 12 months, the calculation shall be based on the shorter period.

Who is eligible for paternity leave pay?

- A male employee is entitled to paternity leave pay if he –
 - (a) has been employed under a continuous contract for not less than 40 weeks immediately before the day of paternity leave; and

⁴ In calculating the average daily wages, the following are to be excluded:

- (i) the periods for which an employee is not paid his wages or full wages; and
- (ii) the sum paid to the employee for such periods.

- (b) has provided the required document to the employer within the following period (whichever period expires first) –
- (i) 12 months after the first day of paternity leave taken; or
 - (ii) if he ceases to be employed, within 6 months after cessation of employment.

What is the required document?

- **For birth in Hong Kong:** the birth certificate of the child on which the employee's name is entered as the child's father.
- **For birth outside Hong Kong:** the birth certificate of the child issued by the authorities of the place and on which the employee's name is entered as the child's father (or, if the authorities of the place do not issue birth certificates, any other document issued by the authorities that could reasonably be taken as proof that the employee is the child's father).

NOTE: Samples of birth certificates issued by the authorities of some places outside Hong Kong are available on the webpages of the Labour Department.

What if the child is born dead or dies after birth and no birth certificate has been issued in respect of the child?

- The employee must produce a medical certificate⁵ certifying the delivery of the child.
- If required by the employer, the employee must also provide a written statement signed by him stating that –
 - (a) he is the father of the child delivered by the woman named in the medical certificate; and
 - (b) the child is born dead or dies after birth, whichever is appropriate.

Sample Written Statement

I, _____ (name of employee) _____, state herewith that I am the father of the child delivered by _____ (name of child's mother as named in the medical certificate) _____. The child is born dead/dies after birth*.

(Signature of employee)

Date

*Delete as appropriate

⁵ For birth outside Hong Kong, the employee must provide a medical certificate or any other document issued by the authorities of the place that could reasonably be taken as proof of the delivery of the child.

When must paternity leave pay be paid to the employee?

- If an employee has provided the required document to the employer before the day on which paternity leave is taken, the employer must pay him paternity leave pay –
 - (a) not later than the day on which he is next paid his wages after the day of paternity leave; or
 - (b) if the employee has ceased to be employed, within 7 days after cessation of employment.
- If an employee provides the required document to the employer after taking paternity leave, the employer must pay him paternity leave pay –
 - (a) not later than the day on which he is next paid his wages after the document is provided; or
 - (b) if the employee has ceased to be employed, within 7 days after the document is provided.

C. Offences and Penalties

An employer who fails to grant paternity leave or paternity leave pay to an eligible employee is liable to prosecution and, upon conviction, to a fine of \$50,000.

D. Other Points to Note

Employers and employees are advised to observe their obligations under the Personal Data (Privacy) Ordinance (Cap. 486) in the disclosure and use of personal data of the mother of the employee's child for the purpose of granting or claiming paternity leave and paternity leave pay. Employers may wish to remind their employees to obtain the consent of the child's mother before disclosing her personal data. In case of queries, employers and employees may wish to consult the Office of the Privacy Commissioner for Personal Data.

Every employer must at all times keep a record setting out the wage and employment history of each employee covering the period of his employment during the preceding 12 months. Among others, the record must include particulars of the period(s) of paternity leave that the employee has taken together with details of payments made in respect of such period(s), if applicable.

Enquiries

Enquiry Hotline:

2717 1771

(the hotline is handled by “1823”)

Homepage Address:

<http://www.labour.gov.hk>

Enquiry in person to offices of the Labour Relations Division:

<http://www.labour.gov.hk/eng/tele/lr1.htm>