



HONG KONG

An update on Hong Kong's Maternity Leave Employment (Amendment) Ordinance 2020

Hong Kong, SAR in Brief

As one of the financial and commercial capitals of the world, Hong Kong is also one of the most densely populated with a density of 6,777 per km².

With limited natural resources, Hong Kong's economy is dominated by the service sector, generating almost 92.7% of its total economic output with tourism accounting for 5% of GDP.

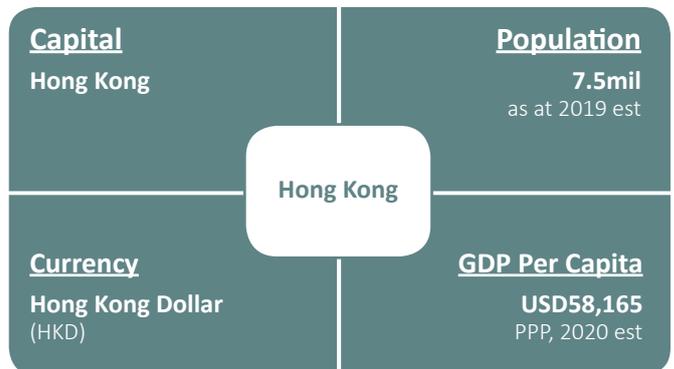
Overview

Under new measures passed by the Hong Kong Legislative Council on 9 July 2020, female employees in Hong Kong will now be entitled to a longer maternity leave and pay. These features in the Employment (Amendment) Bill 2019 will take effect 11 December 2020.

The law is part of the government's commitment to implement the recommendations of the "Family Friendly Employment Policy."

Highlights of these changes include :

- Maternity leave will increase to 14 weeks — up from 10.
- Maternity pay for the additional four weeks of leave will be the same — four-fifths of the employee's daily average wage during the previous 12-month period — but the amount will be capped at HK\$80,000 per employee. Employers may apply to the government for reimbursement of the additional four weeks of leave.
- Employees who suffer a miscarriage at 24 weeks or later will be entitled to maternity leave — down from 28 — subject to meeting other eligibility criteria.
- Female employees will be entitled to paid time off for pregnancy-related medical examinations. Employers must accept a certificate of attendance (issued by the medical professional) as proof of entitlement to paid time off.
- Paternity leave for male employees will be extended to 14 weeks after the birth — up from 10.



Summary of Amendments

Description	Current	Revision
Period of statutory maternity leave	<p>A female employee employed under a continuous contract is entitled to a continuous period of 10 weeks of statutory maternity leave.</p> <p>The employee may also take a further period of leave of not more than 4 weeks on illness or disability arising out of the pregnancy or confinement.</p>	<p>The statutory maternity leave period is extended to 14 weeks.</p> <p>The employee still has the option to take a further period of leave of not more than 4 weeks on illness or disability arising out of the pregnancy or confinement.</p>
Maternity leave pay	<p>If the employee has been employed under a continuous contract for not less than 40 weeks immediately before her maternity leave commences, she is entitled to maternity leave pay equal to four-fifths of her average daily wages.</p>	<p>The current statutory rate of maternity leave pay is maintained for calculating the maternity leave pay in respect of the additional 4 weeks' maternity leave, subject to a cap of \$80,000 per employee. Note also an employer is not prohibited from paying an amount higher than the cap under the contract of employment.</p> <p>The Government would fund the additional pay and employers who have paid out the additional maternity leave pay to employees may seek reimbursement from the Government by way of an administrative scheme, subject to the cap of \$80,000 per employee.</p>
Definition of 'miscarriage'	<p>'Miscarriage' is defined in the Ordinance as 'the expulsion of the products of conception which are incapable of survival after being born before 28 weeks of pregnancy'.</p>	<p>The period of pregnancy is shortened to 24 weeks in the amended definition of 'miscarriage'.</p>
Pre-natal medical examination	<p>A female employee who is absent from work for the purpose of attending a medical examination in relation to her pregnancy would be entitled to sickness allowance if she is able to produce a medical certificate issued by a registered medical practitioner or registered Chinese medicine practitioner.</p>	<p>A female employee is entitled to sickness allowance if she is able to produce a certificate of attendance issued by a professionally trained person, i.e., a registered medical practitioner, registered Chinese medicine practitioner, registered midwife or registered nurse as proof.</p>
Paternity leave	<p>An eligible male employee is entitled to take paternity leave of 5 days during the period beginning 4 weeks before the expected date of the delivery of his child and ending 10 weeks from the actual date of the delivery.</p>	<p>The period in which an eligible male employee may choose to take paternity leave begins 4 weeks before the expected date of the delivery of his child and ends 14 weeks from the actual date of the delivery of his child.</p>

Transitional Arrangements

In addition, the following transitional arrangements as provided for in the new Schedule 10 of the Ordinance shall apply :

Description	Where Amendments do not apply	Where Amendments apply
Statutory maternity leave and maternity leave pay	An eligible female employee whose confinement (i.e. the delivery of a child) occurs before the Commencement Date is entitled to maternity leave and maternity leave pay following the old regime.	If an eligible female employee's confinement occurs on or after the Commencement Date, even though notice of her pregnancy and of her intention to take maternity leave is given before such date, she is nonetheless entitled to the 14 weeks' maternity leave and the additional maternity leave pay.
Statutory paternity leave	An eligible male employee whose child is born before the Commencement Date is entitled to paternity leave following the old regime.	If an eligible male employee's child is born on or after the Commencement Date, even though he gives notification for taking paternity leave in respect of the birth of his child before the Commencement Date, the Amendments would apply in relation to his entitlement to paternity leave.
Termination of employment	Where an eligible pregnant employee's contract of employment is terminated by her employer, if her confinement occurs before the Commencement Date, even though the date of termination falls on or after the Commencement Date, the employer shall be liable to pay to the employee, among others, maternity leave pay for 10 weeks.	If an eligible pregnant employee's confinement occurs on or after the Commencement Date, and the date of termination of her contract of employment falls on or after the Commencement Date, the employer shall be liable to pay to the employee, among others, maternity leave pay for 14 weeks.

Conclusion

- The extension of maternity leave will bring Hong Kong in line with the minimum standards for maternity leave set by the International Labour Organisation, at 14 weeks.
- The Government will bear the cost of the extra four weeks of maternity leave, capped at HK\$80,000 per employee.
- Employers will need to adjustments including other maternity provisions in preparation for these changes.
- Employees are also required to take note of these changes and ensure their employment obligations are met.

Source :

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