

## **Statutory Paternity Leave**

### **Frequently Asked Questions with Answers**

**1. Has 5 days' statutory paternity leave come into operation and to whom it is applicable?**

The Employment (Amendment) (No. 3) Ordinance 2018 commenced on 18 January 2019. Male employees with child born on or after the commencement date are entitled to 5 days' paternity leave for the confinement of their spouse/partner if they fulfil other requirements as stipulated in the law.

(Notes: An eligible male employee with child born on or after 27 February 2015 but before 18 January 2019 is entitled to 3 days' statutory paternity leave for each confinement of his spouse or partner if he fulfils other requirements as stipulated in the law.)

**2. Who is eligible for paternity leave?**

A male employee is entitled to paternity leave for each confinement of his spouse/partner if he meets the following requirements:

- (a) he is the father of a new-born child or a father-to-be;
- (b) he has been employed under a continuous contract (i.e., employed continuously by the same employer for 4 weeks or more and has been working for at least 18 hours each week); and
- (c) he has notified his employer in accordance with the law.

(Please refer to Q9 on the eligibility for paternity leave pay.)

3. **Assuming the expected date of delivery of a child is before the commencement of the Amendment Ordinance (e.g., 17 January 2019), but the child is actually born on the date when the Amendment Ordinance commenced (i.e., 18 January 2019), is the employee concerned entitled to 3 days or 5 days paternity leave?**

Whether an employee is entitled to 3 days or 5 days paternity leave depends on the actual date when his child is born. It is not related to the expected date of delivery of the child. Please refer to the following table for details:

<b>A child is born</b>	<b>No. of days of paternity leave entitled</b>
before the commencement date of the Amendment Ordinance	3 days
on or after the commencement date of the Amendment Ordinance	5 days

4. **How should an employee notify his employer for taking paternity leave?**

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 leave.

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.

If the employer so requests, the employee must provide his employer with a written statement signed by him stating the name of the child's mother, the expected/actual date of delivery of the child, and that he is the child's father.

\*Relevant sample written statement at [Appendix I](#).

**5. How many days' advance notice should be given to the employer for an employee to be entitled to paternity leave if his child is born on or shortly after the commencement of the Amendment Ordinance (i.e., 18 January 2019)?**

If an employee wishes to take paternity leave, he must give proper notice to his employer. If the employee has already notified his employer of his intention to take paternity leave at least three months before the expected date of delivery of the child, he may take paternity leave immediately after informing his employer of the actual dates of leave. But if the employee fails to give the three months' advance notice to the employer, he must notify the employer of his dates of paternity leave at least 5 days before taking leave.

During the transitional period, if an eligible employee has not given three months' advance notice to his employer of his intention to take paternity leave, even if he has notified his employer of his dates of paternity leave at least five days before taking leave before the commencement of the Amendment Ordinance (which in this case refers to the first three days of paternity leave), before taking the fourth and fifth day of the newly increased paternity leave, he would need to give at least five days' advance notice to his employer of the actual date.

Furthermore, if an employee needs to take paternity leave urgently under the above circumstances, we suggest the employer to

consider the employee's family needs and flexibly handle such requests by waiving all or part of the 5-day advance notice requirement.

**6. When may paternity leave be taken?**

An eligible male employee may take paternity leave at any time during the period from 4 weeks before the expected date of delivery of his child to 14 weeks beginning on the actual date of delivery of his child. He may take all 5 days of paternity leave in one go or on separate days.

\* If the child is born before 11 December 2020, it is up to 10 weeks beginning on the actual date of delivery of the child.

**7. Would an employee who enters into employment after the birth of his child be disqualified from taking paternity leave?**

An employee who intends to take paternity leave must have been employed under a continuous contract before the leave, which has to be taken during the period from 4 weeks before the expected date of delivery of his child to 14 weeks beginning on the actual date of delivery of his child. If an employee enters into employment with his new employer after the birth of his child, subject to when his employment begins, he may still be entitled to take paternity leave, only that he may be eligible for just one or two days rather than five days of paternity leave owing to his short service. For example, if an employee takes up employment shortly before the tenth week after his child is born and is able to establish a continuous contract just one or two days before the expiry of the 14-week postnatal period, depending on when he starts employment, he may only be entitled to take one or two days' paternity leave before expiry of the stipulated period for taking such leave. However, since he should have less than 40 weeks' continuous employment before taking

leave, he would not be entitled to paternity leave pay.

\* If the child is born before 11 December 2020, it is up to 10 weeks beginning on the actual date of delivery of the child.

**8. What is the rate of paternity leave pay?**

The daily rate of paternity leave pay is a sum equivalent to four-fifths of the average daily wages 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.

**9. 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
- (b) has provided the birth certificate of his child, on which his name is entered as the child's father, to the employer within the stipulated period (Please refer to Question 10 for details).

**10. When should the employee provide the required document to the employer?**

The employee must provide the required document to the employer within the following period (whichever period expires first):

- (a) 12 months after the first day of paternity leave taken; or
- (b) if he ceases to be employed, within 6 months after cessation of

employment.

- 11. Should the employer pay the 5 days' paternity leave pay to the employee in one go? If the employee takes his paternity leave on separate days, should paternity leave pay be calculated at the same rate?**

Paternity leave pay should be paid to the employee after the employee has taken paternity leave and has provided the required document to the employer. If the employee provides the required document to the employer after he has taken paternity leave, paternity leave pay should be paid when the employee is next paid his wages after the document is provided. If the employee has provided the required document to the employer before taking paternity leave, paternity leave pay should be paid to the employee when the employee is next paid his wages after the day of paternity leave. As the 5 days of paternity leave may be taken on separate days, paternity leave pay should be paid having regard to when the employee takes his paternity leave and when he provides the required document.

The daily rate of paternity leave pay is a sum equivalent to four-fifths of the average daily wages earned by an employee in the 12-month period preceding the day of paternity leave. If an employee's paternity leave is taken in different wage periods, the paternity leave pay for individual days of paternity leave should be calculated in accordance with the above principle and may not be of the same rate.

Example:

Assuming the employee is monthly-rated and his monthly wages are paid at the beginning of the following month, if the employee took one day of paternity leave in March, provided the birth certificate of the child in April and took the remaining 4 days'

paternity leave in May:

- paternity leave pay for the paternity leave taken in March, together with the employee's wages for April, should be paid on the pay day in May (as the employee provides the birth certificate of the child in April), with a sum equivalent to four-fifths of the average daily wages earned by the employee in March of the preceding year to February this year.
- paternity leave pay for the 4 days' paternity leave taken in May, together with his wages for May, should be paid on the pay day in June (as the employee has already provided the birth certificate of his child in April), with a sum equivalent to four-fifths of the average daily wages earned by the employee in May of the preceding year to April this year.

- 12. If the employee has not been employed for 40 weeks when he takes his first day of paternity leave but has been employed for more than 40 weeks when he takes his remaining 4 days of paternity leave, is he eligible for paternity leave pay?**

An employee is entitled to paternity leave pay if he has been employed under a continuous contract for not less than 40 weeks immediately before the day of paternity leave and fulfils the other statutory requirements. Therefore, the above employee is not entitled to paternity leave pay for his first paternity leave day, but he is entitled to paternity leave pay for his remaining four days of paternity leave.

- 13. What documents should an employee provide to the employer for entitlement to paternity leave pay if the child is born outside Hong Kong?**

If his child is born in a place outside Hong Kong, the employee must provide 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. (If the authorities of that place do not issue birth certificates, the employee may provide any other document issued by the authorities of that place that could reasonably be taken as proof that the employee is the child's father).

\* [Samples of birth certificates issued by the authorities of some places outside Hong Kong.](#)

**14. Is the employee entitled to paternity leave pay if the child is born dead or dies after birth and no birth certificate has been issued in respect of the child?**

If the child is born dead or dies after birth and no birth certificate has been issued in respect of the child, the employee is also entitled to paternity leave pay if he can produce a medical certificate certifying the delivery of the child and, if required by the employer, a relevant written statement.

\* Relevant sample written statement if the child is born dead or dies after birth at [Appendix II](#).

[Note: The above information is provided for reference only. The Employment Ordinance remains the sole authority of the provisions of the law explained. For more details of statutory paternity leave, please refer to Chapter 7: Paternity Leave in "A Concise Guide to the Employment Ordinance" and the full text of the Employment Ordinance.]





