

**Employment (Amendment) Ordinance 2020**  
**(“Amendment Ordinance”)**

**Frequently Asked Questions with Answers**

<b>1.</b>	<p><b>What are the major amendments to the legislation?</b></p> <p>The Amendment Ordinance seeks to increase the maternity leave under the Employment Ordinance (Cap. 57) by four weeks, which should be taken by the employee continuously and immediately after the 10 weeks’ maternity leave, if so entitled. The current statutory rate of maternity leave pay (i.e. four-fifths of the employee’s average daily wages) will be maintained for calculating the additional statutory maternity leave pay in respect of the extension of the maternity leave, subject to a cap of \$80,000 per employee.</p> <p>The Amendment Ordinance also introduces two technical amendments to the Employment Ordinance, which include updating the definition of “miscarriage” from “before 28 weeks of pregnancy” to “before 24 weeks of pregnancy”<sup>1</sup> to entitle a female employee whose child is incapable of survival after being born at or after 24 weeks of pregnancy to the maternity leave if other conditions are met; and accepting a certificate of attendance issued by a medical professional as documentary proof for entitling an eligible employee to sickness allowance for any day on which the employee has attended a medical examination in relation to her pregnancy.</p>
<b>2.</b>	<p><b>What is the commencement date of the Amendment Ordinance? What kind of employees does it apply to?</b></p> <p>The Amendment Ordinance is in operation effective from 11 December 2020.</p> <p>The additional four weeks’ statutory maternity leave is applicable to an eligible female employee whose confinement occurs on or after the commencement date of the Amendment Ordinance (i.e. 11 December 2020). The updated definition of “miscarriage” is applicable to a female employee who suffers from miscarriage on or after the commencement date of the Amendment Ordinance. As for the acceptance of a certificate of attendance as a proof entitling an eligible employee to sickness allowance for a day on which she attends a medical examination in relation to her pregnancy, it is applicable to medical examinations conducted on or after the commencement date of the Amendment Ordinance.</p>

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<sup>1</sup> After updating, “miscarriage” means the expulsion of the products of conception which are incapable of survival after being born before 24 weeks of pregnancy.

<p><b>3.</b></p>	<p><b>Is an employee entitled to 10 weeks’ or 14 weeks’ statutory maternity leave in each of the following scenarios?</b></p> <p><b>(i) If the expected date of confinement of a pregnant employee is before the commencement date of the Amendment Ordinance (i.e. 11 December 2020), but the confinement of the employee finally occurs on or after the commencement date of the Amendment Ordinance</b></p> <p><b>(ii) If an employee has already commenced her maternity leave before the Amendment Ordinance commences but the confinement of the employee finally occurs on or after the commencement date of the Amendment Ordinance</b></p> <p>Whether an employee is entitled to 10 weeks’ or 14 weeks’ statutory maternity leave <u>depends on the actual date of confinement of the employee</u>. An eligible employee is entitled to 14 weeks’ maternity leave if her confinement occurs on or after the commencement date of the Amendment Ordinance. Conversely, an eligible employee is entitled to 10 weeks’ maternity leave if her confinement occurs before the commencement date of the Amendment Ordinance.</p> <p>If an employee’s expected date of confinement is close to the commencement date of the Amendment Ordinance, the employee and the employer should maintain communication about the employee’s actual date of confinement to confirm if the employee is entitled to 10 weeks’ or 14 weeks’ statutory maternity leave.</p>
<p><b>4.</b></p>	<p><b>Is there any change to the eligibility of female employees for statutory maternity leave and statutory maternity leave pay?</b></p> <p>The eligibility of female employees for statutory maternity leave and statutory maternity leave pay under the Employment Ordinance remains unchanged. For details, please refer to Chapter 6 “Maternity Protection” of “A Concise Guide to the Employment Ordinance”.</p>
<p><b>5.</b></p>	<p><b>Is there any change to the arrangement for commencement of statutory maternity leave for female employees?</b></p> <p>The arrangement for commencement of statutory maternity leave remains unchanged. For details, please refer to Chapter 6 “Maternity Protection” of “A Concise Guide to the Employment Ordinance”.</p>
<p><b>6.</b></p>	<p><b>How to calculate the additional four weeks’ statutory maternity leave pay?</b></p>

The rate at four-fifths of the employee's average daily wages is maintained for calculating the additional four weeks' statutory maternity leave pay, but subject to a cap of \$80,000 per employee.

### Example 1

#### *Assumptions*

- Remuneration: Monthly-rated at \$50,000 with paid rest days
- 12-month wages earned before the first day of maternity leave: \$600,000. No periods and wages have to be disregarded in the period.

*Calculating four-weeks' maternity leave pay on the basis of the 12-month average*

$$\frac{600,000 \text{ (\$)}}{365 \text{ (days)}} \times \frac{4}{5} \times 4 \times 7 = \$36,822$$

As the amount so calculated (\$36,822) is below the amount of the cap (\$80,000), the additional four weeks' maternity leave pay required to be paid by employer under the Employment Ordinance is \$36,822.

### Example 2

#### *Assumptions*

- Remuneration: Monthly-rated at \$110,000 with paid rest days
- 12-month wages earned before the first day of maternity leave: \$1,320,000. No periods and wages in the period have to be disregarded.

*Calculating four-weeks' maternity leave pay on the basis of the 12-month average*

$$\frac{1,320,000 \text{ (\$)}}{365 \text{ (days)}} \times \frac{4}{5} \times 4 \times 7 = \$80,998$$

	<p>As the amount so calculated (\$80,998) exceeds the amount of the cap (\$80,000), the additional four weeks' maternity leave pay required to be paid by employer under the Employment Ordinance is \$80,000.</p> <p><i>(Regarding calculation of the average daily wages earned in the 12-month period, please refer to Appendix 1 of "A Concise Guide to the Employment Ordinance".)</i></p>
<b>7.</b>	<p><b>When should employers pay the additional four weeks' maternity leave pay to employees?</b></p> <p>Same as what employers are currently required to do in respect of the first 10 weeks' maternity leave pay, they are required to pay the additional four weeks' maternity leave pay to the eligible employees on the normal pay day.</p>
<b>8.</b>	<p><b>Is the period during which a male employee may take paternity leave extended along with the additional four weeks' maternity leave?</b></p> <p>A male employee may take paternity leave at any time during the period from four weeks before the expected date of delivery of the child to 14 weeks beginning on the actual date of delivery of the child, if his child is born on or after the commencement date of the Amendment Ordinance (i.e. 11 December 2020).</p> <p>If the child is born before the commencement date of the Amendment Ordinance, the paternity leave may be taken at any time during the period from four weeks before the expected date of delivery of the child to 10 weeks beginning on the actual date of delivery of the child.</p> <p>The entitlement of a male employee to paternity leave is maintained at 5 days.</p>
<b>9.</b>	<p><b>Is a female employee, whose child is incapable of survival after being born at or after 24 weeks of pregnancy, entitled to maternity leave?</b></p> <p>The Amendment Ordinance has updated the definition of "miscarriage" from "before 28 weeks of pregnancy" to "before 24 weeks of pregnancy". Following this, a female employee whose child is incapable of survival after being born at or after 24 weeks of pregnancy and whose child is born on or after the commencement date of the Amendment Ordinance (i.e. 11 December 2020), is entitled to maternity leave if other conditions are met.</p>
<b>10.</b>	<p><b>What are the requirements for the certificate of attendance accepted as proof of medical examination in relation to pregnancy?</b></p>

	<p>The certificate of attendance should be issued by a registered medical practitioner, a registered Chinese medicine practitioner, a registered midwife or a registered nurse; and should state the eligible employee's attendance for a medical examination in relation to her pregnancy and the relevant date.</p>
<p><b>11.</b></p>	<p><b>Can employees still produce medical certificates for medical examination in relation to pregnancy?</b></p> <p>Both medical certificates and certificates of attendance are accepted as documentary proof for entitling an eligible employee to sickness allowance for any day on which the employee has attended a medical examination in relation to her pregnancy.</p>
<p><b>12.</b></p>	<p><b>Is there any change to the eligibility for entitling an employee who has attended a medical examination in relation to her pregnancy to sickness allowance?</b></p> <p>Apart from accepting a certificate of attendance as documentary proof for entitling an eligible employee to sickness allowance for any day on which the employee has attended a medical examination in relation to her pregnancy, the arrangements in relation to entitlement to sickness allowance under the Employment Ordinance remain unchanged. For details, please refer to Chapter 5 "Sickness Allowance" of "A Concise Guide to the Employment Ordinance".</p>

*[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 about the provisions of maternity leave, paternity leave and sickness allowance, please refer to the full text of the Employment Ordinance, or make reference to the relevant chapters of "A Concise Guide to the Employment Ordinance".]*