

Maternity Protection

Foreword

This guide sets out in simple terms the main provisions of the Employment Ordinance (Cap. 57) on the part of maternity protection. It should be noted that the Ordinance itself remains the sole authority for the provisions of the law explained.

For details of the Ordinance, please refer to ‘A Concise Guide to the Employment Ordinance’ published by this Department or the full text of the Ordinance at the following websites:

A Concise Guide to the Employment Ordinance:

www.labour.gov.hk/eng/public/ConciseGuide.htm

Full text of the Employment Ordinance:

www.labour.gov.hk/eng/legislat/contentB2.htm



Labour Department

January 2024

Maternity Leave

A female employee employed under a continuous contract¹ immediately before the commencement of her maternity leave and having given notice of pregnancy and her intention to take maternity leave to the employer² is entitled to a continuous period of 14³ weeks' maternity leave.

Apart from the above 14 weeks, if confinement occurs later than the expected date of confinement, the employee shall enjoy a further period equal to the number of days from the day after the expected date of confinement to the actual date of confinement. The employee may enjoy an additional period of leave for not more than four weeks on the grounds of illness or disability due to the pregnancy or confinement.

Payment for Maternity Leave

An employee is eligible for maternity leave pay for a period of 14 weeks if:

1. she has been employed under a continuous contract for not less than 40 weeks immediately before the commencement of scheduled maternity leave⁴;
2. she has given notice of pregnancy and her intention to take maternity leave to her employer after the pregnancy has been confirmed. For example, the presentation of a medical certificate confirming her pregnancy to the employer^{2&5}; and
3. she has produced a medical certificate specifying the expected date of confinement if so required by her employer⁵.

Maternity leave pay should be paid on the normal pay day of the employee.

The daily rate of maternity 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

¹ An employee who has been employed continuously by the same employer for four weeks or more, with at least 18 hours worked in each week is regarded as being employed under a continuous contract.

² If confinement occurs before a notice of pregnancy is given to the employer or before the scheduled maternity leave, the employee should give notice of the date of confinement and her intention to take 14 weeks' maternity leave to her employer within seven days of her confinement. The employee shall, if so required by the employer, produce a medical certificate specifying the date of confinement.

³ Eligible employees whose confinement occurs before 11 December 2020 are entitled to a continuous period of 10 weeks' maternity leave.

⁴ For scheduled maternity leave, please refer to points 1 and 2 of the item "Taking of Maternity Leave" on p.4.

⁵ Please refer to Appendix II 'Medical Certificates/ Certificates of Attendance' in this booklet for the medical certificates concerned.

“first day of the maternity leave”. If an employee is employed for less than 12 months, the calculation shall be based on the shorter period. The 4-week maternity leave pay for the 11th to 14th week of the maternity leave is subject to a cap of \$80,000.

Reimbursement of Maternity Leave Pay

Employers, after payment of all maternity leave pay on the normal pay day, may apply to the Government for reimbursement⁶ of the 11th to 14th weeks’ maternity leave pay payable and paid under the Employment Ordinance. Employers can submit applications through the “Reimbursement Easy Portal” (“REP”), or by email, fax, post or in person. For details, please visit “REP” at www.rmlps.gov.hk.

POINT-TO-NOTE:

In calculating the average daily wages, an employer has to exclude (i) the periods for which an employee is not paid her wages or full wages, including rest day, statutory holiday, annual leave, sickness day, maternity leave, sick leave due to work injuries or leave taken with the agreement of the employer, and any normal working day on which the employee is not provided by the employer with work; together with (ii) the sum paid to the employee for such periods⁷.

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

Medical Examination, Medical Treatment and Miscarriage

When the employee’s absence from work to attend medical examination in relation to her pregnancy, post confinement medical treatment or miscarriage is supported by an appropriate medical certificate/ certificate of attendance⁸, any such day on which she is absent shall be counted as a sickness day and if she has accumulated sufficient number of paid sickness days, be paid sickness allowance at a daily rate equivalent to four-fifths of her average daily wages⁹.

⁶ The Reimbursement of Maternity Leave Pay Scheme is an administrative scheme of the Government.

⁷ For the calculation method, please refer to Appendix 1 ‘A Guide to the Calculation of Relevant Statutory Entitlements on the Basis of the 12-Month Average Wages with Examples’ of ‘A Concise Guide to the Employment Ordinance’.

⁸ Please refer to Appendix II ‘Medical Certificates/ Certificates of Attendance’ in this booklet for the medical certificates/ certificates of attendance concerned. Certificate of attendance is not applicable to a medical examination in relation to pregnancy conducted before 11 December 2020.

⁹ Please refer to Chapter 5 ‘Sickness Allowance’ of ‘A Concise Guide to the Employment Ordinance’.

Notice of Pregnancy

In order to enjoy maternity protection, a female employee has to serve notice of her pregnancy and of her intention to take maternity leave to her employer after her pregnancy has been confirmed by a medical certificate issued by a registered medical practitioner, registered Chinese medicine practitioner or registered midwife. The employee shall, if so required by her employer, produce a medical certificate specifying the expected date of confinement.

Employees may serve their notice of pregnancy to their employers with the sample form at Appendix I of this booklet and retain a photocopy of the notice for necessary reference in future.

Taking of Maternity Leave

An employee should, as soon as possible, reach a mutual agreement with her employer on the commencement date of the maternity leave so that appropriate work arrangements during her absence can be made in advance.

1. With the agreement of her employer, a pregnant employee may decide to commence her maternity leave from two to four weeks before the expected date of confinement.
2. If the employee does not decide on the date, or fails to secure her employer's agreement, the employee shall commence her maternity leave four weeks before the expected date of confinement.

Maternity leave commences on the date of confinement if it occurs before the above scheduled maternity leave. In this case, the employee should give notice of the date of confinement and her intention to take 14 weeks' maternity leave to her employer within seven days of her confinement.

POINT-TO-NOTE:

Confinement means the delivery of a child; miscarriage means the expulsion of the products of conception which are incapable of survival after being born before 24¹⁰ weeks of pregnancy. If before 24 weeks of pregnancy an employee delivers a surviving child or the child prematurely dies after being born, it is not a case of miscarriage. A female employee, whose child is incapable of survival after being born at or after 24 weeks of pregnancy, is entitled to maternity leave if other conditions are met.

Employment Protection

An employer is prohibited from dismissing a pregnant employee from the date on which she is confirmed pregnant by a medical certificate to the date on which she is due to return to work upon the expiry of her maternity leave if:

1. the employee has been employed under a continuous contract, and
2. she has served a notice of pregnancy to the employer.

If a pregnant employee is dismissed by her employer before she has served a notice of pregnancy, she may serve such notice immediately after being informed of her dismissal. Under such circumstances, her employer must withdraw the dismissal or the notice of dismissal.

However, the employer is not prohibited from dismissing a pregnant employee under the following circumstances:

- the employee is summarily dismissed due to her serious misconduct; or
- where it has been expressly agreed that the employment is on probation, the employee is dismissed for reasons other than pregnancy during the probation period of not more than 12 weeks.

¹⁰ Before 11 December 2020, miscarriage means the expulsion of the products of conception which are incapable of survival after being born before 28 weeks of pregnancy.

Except for the circumstances provided above, it is an offence for an employer to dismiss a pregnant employee. The employer is liable to prosecution and, upon conviction, to a fine of \$100,000. Besides, the employer is required to pay the following sums of money to the dismissed employee within 7 days after the day of termination:

1. payment in lieu of notice;
2. a further sum equivalent to one month's average wages as compensation¹¹; and
3. 14¹² weeks' maternity leave pay if, but for the dismissal, she would have been entitled to such payment.

The employee may also claim remedies for employment protection against her employer if she is dismissed other than for a valid reason as specified in the Ordinance¹³.

POINT-TO-NOTE:

For employment protection, a female employee who has been employed under a continuous contract should get a medical certificate confirming her pregnancy¹⁴, serve a notice of pregnancy and of her intention to take maternity leave to her employer as soon as she has been certified pregnant.

Prohibition of Assignment of Heavy, Hazardous or Harmful Work

If a pregnant employee produces a medical certificate with an opinion as to her unfitness to handle heavy materials, work in places where gas injurious to pregnancy is generated, or do other work injurious to pregnancy, the employer may not allocate such work to the employee. If the employee is already performing such work, the employer shall within 14 days after receiving such request remove her from that work.

¹¹ For the calculation method, please refer to Appendix 1 'A Guide to the Calculation of Relevant Statutory Entitlements on the Basis of the 12-Month Average Wages with Examples' of 'A Concise Guide to the Employment Ordinance'.

¹² Eligible employees whose confinement occurs before 11 December 2020 or whose date of termination of the employment contract falls before 11 December 2020 are entitled to 10 weeks' maternity leave pay.

¹³ Please refer to Chapter 10 'Employment Protection' of 'A Concise Guide to the Employment Ordinance'.

¹⁴ Please refer to Appendix II 'Medical Certificates/ Certificates of Attendance' in this booklet for the medical certificates concerned.

Regardless of whether the medical certificate produced by the employee was issued by a registered medical practitioner or registered Chinese medicine practitioner, an employer may, within 14 days after receiving such medical certificate, at the employer's own expense, arrange for the employee to attend another medical examination conducted by a registered medical practitioner or registered Chinese medicine practitioner named by the employer to obtain a second opinion as to the employee's fitness to undertake the work at issue.

The Employment Ordinance provides that if the earnings of the employee is affected as a result of her transfer from heavy, hazardous or harmful work, the maternity leave pay or the payment for termination of employment shall be calculated on the basis of the average daily or monthly (as appropriate) wages earned by the employee in the 12-month period preceding the transfer¹⁵.

An employer who without reasonable excuse fails to comply with the above requirements is liable to prosecution and, upon conviction, to a fine of \$50,000.

Information on "Work Injurious to Pregnancy", "Physical Demands in Work for Pregnant Employees" and "Other Considerations in Work Arrangement of Pregnant Employees" is provided at Appendices III, IV and V respectively for reference.

¹⁵ For the calculation method, please refer to Appendix 1 'A Guide to the Calculation of Relevant Statutory Entitlements on the Basis of the 12-Month Average Wages with Examples' of 'A Concise Guide to the Employment Ordinance'.

Enquiries

Enquiry Hotline: 2717 1771 (the hotline is handled by “1823”)

Homepage Address: www.labour.gov.hk

Enquiry in person to Offices of the Labour Relations Division:
www.labour.gov.hk/eng/tele/lr1.htm

Pregnancy Notice

To: _____

(Name of Employer)

I, _____, hereby notify you according to section 12(4) of the Employment Ordinance (Cap.57) that I am certified pregnant by a *registered medical practitioner / registered Chinese medicine practitioner / registered midwife and I intend to take maternity leave.

Signature: _____

Date: _____

NOTE

1. Please give the original copy of this pregnancy notice to the employer and retain a photocopy for necessary reference in future.
2. With the agreement of the employer, a pregnant employee may decide to commence her maternity leave from 2 to 4 weeks before the expected date of confinement. The employee should, as soon as possible, reach a mutual agreement with the employer on the commencement date of the maternity leave so that appropriate work arrangements during her absence can be made in advance.

* Delete as appropriate.

Medical Certificates/ Certificates of Attendance

Employees shall submit medical certificates/ certificates of attendance issued by registered medical practitioners, registered Chinese medicine practitioners, registered midwives or registered nurses, if so required by employers where applicable, to be eligible for maternity protection. Please refer to the following table for details:

Certification pertaining to	Type of certificates	Issued by a registered medical practitioner	Issued by a registered Chinese medicine practitioner	Issued by a registered midwife	Issued by a registered nurse
Pregnancy and the expected date of confinement	Medical Certificate	✓	✓	✓	✗
Actual date of confinement		✓	✗	✓	✗
An additional period of not more than 4 weeks of maternity leave on ground of illness or disability due to pregnancy or confinement		✓	✓	✗	✗
Absence from work to attend a medical examination in relation to pregnancy or post confinement medical treatment, or by reason of miscarriage		✓	✓	✗	✗
Unfitness to handle heavy, hazardous or harmful work		✓	✓	✗	✗
Absence from work to attend a medical examination in relation to pregnancy	Certificate of attendance	✓	✓	✓	✓

Work Injurious to Pregnancy

Exposure to certain agents at work may be harmful to pregnancy. Pregnant employees should avoid such exposure, particularly in the first trimester. Examples of these agents and the occupations which may give rise to such exposure are given below:-

<u>Agent</u>	<u>Occupations</u>
Metals (e.g. lead, mercury)	Lead smelting, Car batteries manufacturing, Use of fumigant
Gases (e.g. carbon monoxide)	Garage (automobile exhaust)
Solvents	Dry cleaning, Electronic industry
Chemical disinfectants and sterilants	Health professions
Toxic chemicals (e.g. formaldehyde, Pesticides)	Laboratory, Beauty salon, Pest control
Sterilising gases (e.g. ethylene oxide)	Health professions
Anaesthetic gases (e.g. halothane, nitrous oxide)	Health professions
Radiation	Radiography, Gas mantle manufacturing
Heat	Glass manufacturing, Iron foundries
Noise	Construction work
Infectious agents (e.g. rubella virus, cytomegalovirus)	Health professions
Cancer treatment drugs	Health professions

*The above list is not exhaustive, pregnant employees who are concerned about work exposures that may be harmful to pregnancy should seek advice from a medical practitioner.

Pregnant employees who are concerned about work exposures that may be harmful to pregnancy should seek advice from a medical practitioner. If, in the opinion of the medical practitioner, a pregnant employee is exposed to certain agents at work that are injurious to pregnancy, the employee should be transferred to another job for a period as advised by the attending medical practitioner.

Through modification to a pregnant employee's work, most women should be able to continue working until the last few weeks of pregnancy if desired.

Physical Demands in Work for Pregnant Employees

It is generally recognised that pregnant women tend to experience fatigue more easily and are prone to non-specific backache. The women's bulk may also make certain tasks difficult or even dangerous.

In the case of pregnant women who have an otherwise normal and uncomplicated pregnancy course, slight adjustments in work procedures would enable them to continue working until the last few weeks of pregnancy. Such adjustments may include provision of a short rest time after lunch, shorter or flexible working hours, lessening of prolonged working in a fixed posture (e.g. continued standing) and avoidance of arduous work (e.g. repetitive lifting of heavy objects and ladder-climbing).

Pregnant women may avoid frequent stooping, bending, or squatting, and lessen lifting of heavy objects from the floor or any location that requires them to bend or reach, and lifting overhead. Mechanical assistance should be used and/or team lifting should be adopted for handling heavy weights whenever practicable to reduce the risk of injury. Under Section 23 of the Occupational Safety and Health Regulation (Cap 509A), the person responsible for a workplace (employer or occupier of the workplace as the case may be) is required to make a risk assessment of a manual handling operation before it is first undertaken at that workplace and take corresponding control measures. Individual capability of employees should be adequately addressed in the assessment. Pregnant employees with health problems should seek advice from their medical practitioners on their work fitness in particular manual handling tasks.

Other Considerations in Work Arrangement of Pregnant Employees

Special consideration must be given to other physical hazards inherent in the job. These include working at heights (ladders, platforms, poles) and the operation of certain types of heavy machine where an accident could cause serious damage to the pregnant woman or foetus.

From about mid-pregnancy onwards, the abdominal size of pregnant women would gradually increase, and some postural adjustments would also be necessary. This has implications for:

- (a) balance - problems of working on slippery, wet surfaces;
- (b) comfort - problems of working in tightly fitting workspaces;
- (c) working procedure - dexterity, agility, coordination, speed of movement, reach may be impaired because of increasing abdominal size.

Seating should be comfortable, and should allow for frequent changes in posture as well as free movements at the workstation.

Particular stages of pregnancy are associated with an increased likelihood of symptoms such as dizziness, nausea, swollen ankles, backache and fatigue. A considerate employer can help minimise or lessen these symptoms by making appropriate adjustments in work conditions or procedures. Conversely, ignoring suitable work arrangements may worsen those symptoms.