

The Fatherhood Penalty

As more people shake off the shackles of traditional gender roles, child-rearing is no longer a woman's job alone. In Hong Kong, statutory paternity leave took effect in 2015, and was extended from three to five days in 2019. New fathers now have more time to learn the ropes of taking care of their newborns while providing emotional support to postpartum mothers.

The Complaint

Mr Ho was employed as a foreman at a construction company. When his wife got pregnant, he decided to apply for paternity leave so that he could help her look after the baby after it was born. When he first mentioned his plan to his employer, a manager told him he wasn't entitled to paternity leave since he was a contract worker. However, under the Employment (Amendment) Ordinance 2014, provided that notice has been given to the employer in accordance with the law, male employees are eligible if they have been employed under a "continuous contract", meaning that they have been employed by the same employer for four weeks or more, and have been working for at least 18 hours a week.

The terms of Mr Ho's employment met the requirements of a continuous contract. But before he had a chance to reason with his employer, the HR department informed him that his contract had been terminated since his performance had been unsatisfactory. He found this implausible, as he had just been given a pay raise not long ago. He believed the company had dismissed him because he had applied for paternity leave and taken up the responsibility to look after his wife and their soon-to-be-born child.

★ What the EOC did

Mr Ho lodged a complaint with the EOC against the construction company (the Respondent), alleging that they had discriminated against him on the ground of his family status. The case was settled through early conciliation. The Respondent agreed to pay Mr Ho a sum more or less equivalent to the paternity leave pay he would have received.

✦ Points to Note:

- Under the Family Status Discrimination Ordinance, a person with “family status” is someone who has responsibility for the care of an immediate family member, who can be anyone related to that person by blood, marriage, adoption or affinity. Examples include one’s biological mother, father, sister, brother, daughter, son, grandmother, grandfather, grandchild, aunt, uncle, cousin, niece and nephew; spouse; lawfully adopted children; and parents- and siblings-in-law.
- Unlawful family status discrimination occurs when an employer treats an employee less favourably on the ground of his/her family status, such as by terminating his/her contract.
- Granting paternity leave to eligible employees is not only a matter of legal obligation for employers, but also an integral part of a family-friendly corporate culture that can help boost employees’ morale and productivity. It is a win for all.