

Legislative Council of the Hong Kong Special Administrative region of the People's Republic of China

Panel on Manpower

Review of Statutory Maternity Leave

Meeting on Tuesday, 18 December 2018

2:30 pm to 5:30 pm

Conference Room 2 of the Legislative Council Complex

Link: <https://www.legco.gov.hk/yr18-19/english/panels/mp/agenda/mp20181218.htm>

Verbal Submission

By

Kay McArdle

CEO

PathFinders Limited

18 December 2018

Good afternoon, I am the CEO of PathFinders. The topic of maternity protection is of such importance to PathFinders, and to the babies, children and migrant mothers we serve that we asked to make 2 submissions today.

This Committee is empowered to reduce or even avoid the rising flood of avoidable, humanitarian heartbreak we see at PathFinders every day. Thank you in advance for hearing us out.

We make three recommendations:

First: This review of the Employment Ordinance provides you with an opportunity to add sections that address and assist the specific maternity employment vulnerabilities of female, migrant workers. We recommend that:

1. Provision be included for when the birth takes place overseas - this should be easy - section 15J of the Ordinance on paternity leave already does this;
2. We also recommend inclusion of a special provision allowing women from overseas to travel to their home country to give birth if they so choose and to elect to start that overseas maternity leave earlier than the current 2-4 weeks before birth. That way, there is a chance that they will still be able to obtain the 'fit to fly' certificate the airlines require for women who are over 6 months' pregnant.

Second: We recommend that, given the significant power imbalance in the employment relationship, there be introduced a **presumption that a termination of employment of a foreign domestic worker when pregnant be assumed unlawful unless/until rebutted by the employer and that the FDW's wages, visa and attendant public health and contractual benefits continue until the expiry of statutory maternity leave plus one month's wages**. The impact of the end of employment on a pregnant, foreign domestic worker is so draconian, so inhumane, so against every unborn child and pregnant woman's best interests that it demands special provision at law to protect the most vulnerable in our society. Under the current regime, once a pregnant foreign domestic worker is fired, she immediately becomes homeless and within 2 weeks she and her baby are excluded from the public healthcare they were entitled to while mum was employed. Too poor or too pregnant to fly, they exist in the shadows of Hong Kong, largely undocumented, unimmunised, underfed and homeless. Their babies are stateless and often sick. As they grow, they struggle to regularise their immigration status and to access housing, healthcare, education and social services. And instead of these women and babies being protected, which is surely what the law intends, they are instead prosecuted as immigration overstayers, despite the women themselves being the victims of the criminal offence of firing a pregnant woman. This is unacceptable.

Third: I reiterate my colleague's earlier recommendation that we urgently need policy guidelines to underpin the law setting out clearly how a migrant worker's, and specifically a foreign domestic worker's, pregnancy and statutory maternity leave are to be handled safely, happily and lawfully.

To conclude, we have three final remarks:

1. The news last Sunday about yet another foetus being found dead in a public bin was truly awful. It was also almost certainly avoidable had the appropriate law, policy guidance and education been in place;
2. In 2017, 84% of the biological fathers of the babies PathFinders helped lived here. The thousands of babies and children we help are born here. The mothers are invited by us to work here. Ensuring maternity leave and protection of the mothers is an issue Hong Kong needs to address;
3. And so, on behalf of the 6,000 babies, children and pregnant, migrant women PathFinders has helped, we hope you seize this opportunity to make the changes necessary to give the women (and ultimately their babies) the maternity and related humanitarian protections and support they, like every other working woman, deserve.

Thank you.