

31 August 2012

EDUCATION BUREAU CIRCULAR NO. 18/2012

Granting of Paternity Leave to Staff in Aided, Caput and Direct Subsidy Schools

[Note : This circular should be read by -

- (a) Supervisors/Heads of all aided schools (including special schools), caput schools and DSS schools -- for necessary action; and
- (b) Supervisors/Heads of schools other than (a) above and heads of sections -- for information]

SUMMARY

This circular announces that with effect from 1 September 2012, paternity leave will be provided for eligible male employees of aided and caput schools. It also sets out the administration of paternity leave. Eligible male employees of Direct Subsidy Scheme (DSS) schools can also benefit from the provision of paternity leave.

PATERNITY LEAVE

2. Paternity leave generally refers to leave taken by a father/father-to-be from his work around the time of the birth of his child. It is a family-friendly measure which enables a working father/father-to-be to have some time off to take care of the newborn and his wife before/after her confinement.

GENERAL ARRANGEMENTS

(a) Service criterion for paternity leave

3. Staff in aided and caput schools **with not less than 40 weeks' continuous service**¹ immediately before the expected or actual date of confinement of his wife, whichever is later, is eligible for paternity leave.

¹According to Employment Ordinance (Cap.57), an employee who has been employed continuously by the same employer for 4 weeks or more, with at least 18 hours worked in each week is regarded as being employed under a continuous contract.

(b) Duration and period for taking paternity leave

4. Up to **five working days** of paternity leave with full-pay may be granted to an eligible staff on each occasion of childbirth. Eligible staff may choose to take paternity leave during the period **from four weeks before the expected date of childbirth to eight weeks after the actual date of childbirth**. Any untaken paternity leave after the stated period will not be allowed to be encashed nor carried forward to a future childbirth.

(c) Mode of taking paternity leave

5. An eligible staff may take paternity leave in one stretch or in splits with half-day as the smallest unit. In this connection, schools should formulate a school-based mode of taking paternity leave in consultation with their staff as early as possible, and make the arrangements known to all staff. There is **no limit on the number or the place of childbirth** for the grant of paternity leave.

6. In the unfortunate event of stillbirth but where delivery has taken place as affirmed by a medical practitioner in the form of a medical certificate, an eligible staff may be granted paternity leave. In other circumstances where a delivery has not taken place (such as miscarriage) as indicated by the medical certificate, paternity leave is not applicable. However, upon application, schools should sympathetically consider granting special leave with pay/no-pay leave to the teacher concerned or annual leave/no-pay leave to the non-teaching staff concerned, to take care of his wife.

(d) Documentary proof

7. An applicant for paternity leave has a duty to submit documentary proof to substantiate his relationship with the mother of the new born (e.g. copy of a marriage certificate for childbirth within marriage) and the father-child relationship (e.g. copy of a birth certificate). The school may require the staff to produce the original copy of the documentary proof where necessary.

8. Where the relevant documentation is not available at the time of application (e.g. a copy of the birth certificate will not yet be available when paternity leave is taken before the expected date of childbirth or a few days immediately after the actual date of childbirth), paternity leave may be granted on a provisional basis pending the submission of documentary proof. The provisionally approved paternity leave will be rescinded if the applicant fails to produce documentary proof to the satisfaction of the school within 10 weeks after the childbirth or any extended period of time as determined by the school having regard to the justifications provided by the applicant. Where paternity leave is rescinded, the applicant will need to cover his absence by no-pay leave (applicable to teachers) or annual leave/no-pay leave (applicable to non-teaching staff) retrospectively.

APPLICATION FOR PATERNITY LEAVE

Childbirth within marriage

9. The approving authority for paternity leave in connection with childbirth within marriage is basically the same as the prevailing approving authority for the granting of leave. The Principal may approve paternity leave for childbirth within marriage. To facilitate manpower planning of the school, an applicant who plans to apply for paternity leave should notify his school **eight weeks in advance** of the expected date of childbirth. Where the aforesaid notice cannot be given due to special circumstances, such applicant should still notify his school of the expected childbirth or actual childbirth date as soon as reasonably practicable if he plans to apply for paternity leave.

Childbirth outside of marriage

10. Schools should establish a school-based mechanism for processing applications for paternity leave related to childbirth outside of marriage and the applications should be approved by the School Management Committee(SMC)/Incorporated Management Committee(IMC). The SMC/IMC should consider applications for paternity leave outside of marriage rigorously on a case-by-case basis having regard to all relevant factors, including but not limited to the following, and require the applicant to submit a written declaration when necessary:

- (a) whether the applicant is the father of the child; and
- (b) whether there is a stable family relationship between the applicant and the mother of the child.

11. In processing applications in connection with childbirth outside of marriage, the SMC/IMC should consider individual circumstances of the applicant, having regard to related legislation such as the Family Status Discrimination Ordinance (Cap.527)². Schools should keep a record of the related documents and results of the applications for checking by the Education Bureau (EDB) where necessary.

SUPPLY STAFF

12. The implementation of paternity leave shall adhere to the existing principles of leave arrangement³. No changes will be made to the standing rules and conditions guiding

² Under the Family Status Discrimination Ordinance, it is unlawful to discriminate on the ground of family status in the terms and conditions of employment or access to benefits, facilities or services.

³ For the granting of leave, please refer to EDB Circular No. 1/2006 and its Annex 'Guidelines for Granting of Leave'. For the employment of supply staff, IMC schools may refer to Section 13.11 of the *Code of Aid (CoA) for Aided Schools* and Section 7B of *Compendium to CoA for Aided Schools*. Schools which have not yet established an IMC may refer to Section 31, 32 and 34 of *CoA for Primary Schools*, Section 32 and 33 of *CoA for Secondary Schools*, and Section 35 to 40 of *CoA for Special Schools*.

the granting of leave in schools. Notwithstanding, IMC schools can use EDB Form No. 110 “Aided Schools with Incorporated Management Committee Claim Form for Reimbursement of Daily-Rated Supply Teacher Grant” at EDB Homepage to claim **reimbursement** of the salaries of the supply teachers substituting the teachers remunerated under Salaries Grant who are on paternity leave, on condition that the prevailing criteria for employing supply teacher (i.e. teachers on approved leave of 3 or more consecutive days) have been met. Schools which have not yet formed an IMC can handle matters relating to supply staff in accordance to the existing arrangements. For staff employed with other grants on paternity leave, schools have to follow the prevailing subvention policy of meeting the expenses of supply staff with the respective grants or Operating Expenses Block Grant/Expanded Operating Expenses Block Grant. Caput schools can follow the existing arrangement of recording the expenses of supply staff under the relevant account.

13. The EDB will include the expenses arising from implementing paternity leave in aided schools in the DSS unit subsidy. DSS schools are required to, by making reference to the administration arrangements set out in this circular, devise school-based arrangements in granting paternity leave with full-pay to eligible staff as appropriate.

FREQUENTLY ASKED QUESTIONS AND ENQUIRY

14. To enable schools and their staff better understand the measure, a set of frequently asked questions and answers on paternity leave has been uploaded to “[Guidelines on Granting of Leave](#)” on EDB homepage and will be updated where necessary. Schools should let their staff know about the arrangements of paternity leave as set out in this circular. For enquiries, please contact the respective Senior School Development Officer.

Miss Alice YU
for Permanent Secretary for Education