

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

Common Questions and Answers

Eligibility

Q1: Who are eligible for paid paternity leave?

A1: All male employees, including teachers, non-teaching staff, and specialist staff with not less than 40 weeks' continuous service immediately before taking the paternity leave, are eligible for paid paternity leave.

Q2: Are staff with less than 40 weeks' continuous service eligible for paid paternity leave?

A2: Staff with less than 40 weeks' continuous service are not eligible for paid paternity leave. However, if the concerned staff fulfills the requirements of paternity leave entitlement of male employees as stipulated in the Employment Ordinance, schools should grant him annual leave (if applicable) or no-pay leave on paternity ground.

Q3: Is paternity leave applicable to childbirth outside of marriage?

A3: Since childbirth within marriage and childbirth outside of marriage enjoy the same rights under the law, paid paternity leave is applicable to childbirth within and outside of marriage. Furthermore, the provision of paternity leave is a family-friendly measure with the aim of fostering family harmony, if the applicant can prove that he is the father of the child/child-to-be-born, he may be eligible to enjoy paternity leave. For issues related to approving of paternity leave for childbirth outside of marriage, please see Q9.

Q4: Is paternity leave applicable to the birth of a child outside Hong Kong?

A4: The need for a father/father-to-be to have some time off to take care of the newborn and his spouse is the same regardless of the place of childbirth. For details on the verification of documentary proof, please see Q10.

Q5: Will the staff still be eligible for paternity leave in the unfortunate event of loss of the baby?

A5: Where delivery has taken place of his spouse as affirmed by the medical practitioner in the form of a medical certificate, an eligible staff, even in the unfortunate event of stillbirth, may apply for paternity leave.

For miscarriage or termination of pregnancy on medical grounds where a delivery has not taken place, paternity leave is not applicable. Schools should sympathetically consider granting annual leave, special leave with pay (a maximum of 2 days per school year; applicable to teachers only) or no-pay leave to the male staff concerned if he submits an application.

Duration of and period for taking paternity leave

Q6: Will the duration of paternity leave be affected by the number of babies born on each occasion of childbirth?

A6: No. An eligible staff can be granted up to five working days of paternity leave irrespective of the number of babies born on each occasion (i.e. twins or triplets, etc.)

Q7: Eligible staff may choose to take paternity leave during the period from four weeks before the expected date of childbirth to ten weeks beginning on the actual date of childbirth. For the four weeks before the expected date of childbirth, should the expected date of confinement be counted? Similarly, for the ten weeks beginning on the actual date of childbirth, does it include the actual day of confinement?

A7: The four weeks ahead of the expected date of childbirth is counted excluding the expected day of confinement. For the **ten weeks beginning on** the actual date of childbirth, it includes the actual day of confinement. For illustration, please refer to the following examples:

Example 1: actual confinement date is the same as the expected date

- (a) expected date of confinement of a staff's spouse : 5 October 2015 (Monday)
- (b) actual confinement date of the staff 's spouse: 5 October 2015 (Monday)
- (c) period during which the staff may choose to take paternity leave:
 - i. from 7 September 2015 (Monday) (i.e. four weeks before the expected date of confinement (exclusive of 5 October 2015))
 - ii. to 13 December 2015 (Sunday) (i.e. ten weeks beginning on the actual day of confinement, counting from 5 October 2015 (Monday)).

Example 2: actual confinement date comes later than expected

- (a) expected date of confinement of a staff's spouse: 5 October 2015 (Monday)
- (b) actual confinement date of the staff's spouse: 11 October 2015 (Sunday)
- (c) period during which the staff may choose to take paternity leave:
 - i. from 7 September 2015 (Monday) (i.e. four weeks before the expected date of confinement (exclusive of 5 October 2015))
 - ii. to 19 December 2012 (Saturday) (i.e. ten weeks beginning on the actual day of confinement, counting from 11 October 2015 (Sunday)).

Example 3: actual confinement date comes earlier than expected

- (a) expected date of confinement of a staff's spouse: 5 October 2015 (Monday)
- (b) actual confinement date of the staff's spouse: 29 September 2015 (Tuesday)
- (c) period during which the staff may choose to take paternity leave :
 - i. from 7 September 2015 (Monday) (i.e. four weeks before the expected date of confinement (exclusive of 5 October 2015))
 - ii. to 7 December 2015 (Monday) (i.e. ten weeks beginning on the actual day of confinement, counting from 29 September 2015 (Tuesday)).

Approval and documentary proof

Q8: Who should be the approving authority of paternity leave in schools?

A8: The approving authority of paternity leave in schools is basically the same as the prevailing approving authority for the granting of leave, that is by the Principal. For unusual cases, the applications should be considered by the School Management Committee (SMC)/ Incorporated Management Committee (IMC). Schools should keep a record of the related documents and results of the applications for checking by the EDB where necessary.

Q9: What kind of documentary proof should schools verify in processing applications for paternity leave outside of marriage?

A9: Whether an application for paternity leave is within marriage or outside of marriage, the applicant has a duty to provide information and/or relevant documents to prove that he is the father of the new born/child-to-be-born. Schools can consider the application on a case-by-case basis having regard to all relevant factors. Schools may request applicants to provide other documentary proof or written declaration if necessary.

Q10: How should schools verify the relevant documents in relation to paternity leave application arising from the birth of a child outside Hong Kong?

A10: Schools are expected to process those copies of documentary proof (such as birth certificates) issued outside Hong Kong in the same way as they do when they process non-local documents (e.g. medical certificates and dental certificates) in relation to other kinds of leave applications.

According to the Code of Practice on Employment under the Disability Discrimination Ordinance issued by Equal Opportunities Commission, employers should not just disregard overseas medical certificates provided by employees. If there are doubts about the authenticity and/or validity of an overseas medical certificate, an employer should make reasonable and appropriate enquiries for verification.

Q11: What is the prescribed period for the applicants to submit the documentary proof?

A11: The applicant should submit the documentary proof within 10 weeks after the childbirth or within 3 months after the first day on which the paternity leave is taken (whichever is later), or any extended period of time as determined by the school having regard to the justifications provided by the applicant. In any case, the documentary proof should be submitted before cessation of his employment. The provisionally approved paternity leave will be rescinded if the applicant fails to produce documentary proof to the satisfaction of the school within the period specified above. 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.

Q12: If an applicant needs to cover his absence by no-pay leave/annual leave due to failure of providing documentary proof within the prescribed period, must the school pay him the paternity leave pay/credit back the annual leave to him again when he can subsequently provide the documentary proof to the school?

A12: If the staff is still in employment with the school and he can provide documentary proof to the school within 12 months after the first day on which he takes the paternity leave, the school must pay him again the paternity leave pay equivalent to the amount of paternity leave pay that has been deducted. If the staff is paid out of Salaries Grant, the school should complete the 'Notification of Changes in Teacher's Personal Data'/'Notification of Changes in Non-teaching Staff Record' and return it to EDB. The forms could be downloaded from EDB Homepage (Home > School Administration and Management > Administration > About School Staff > Appointment Matters). If the absence has been covered by annual leave, the school must credit back to the staff the annual leave that has been deducted.

If the staff has ceased employment with the school and he can provide documentary proof to the school within 12 months after the first day on which he takes the paternity leave or within 6 months after the cessation of employment (whichever period expires first), the school must also pay him again the paternity leave pay equivalent to the amount of paternity leave pay that has been deducted. In the case that the paternity leave has been covered by annual leave, the school should convert the days of annual leave that have been deducted into wages and pay the staff back again.

Q13: In respect of Q12 above, if the school must pay the staff who has ceased employment the paternity leave pay again, how should the school handle the situation?

A13: If the staff has ceased employment with the school and he can provide documentary proof to the school within the prescribed period, the school should pay him the paternity leave pay not later than 7 days after the document is provided. If the staff is paid out of Salaries Grant, the school may claim reimbursement of the salaries paid to the staff by completing the claim form that has been uploaded onto EDB homepage (Home > School Administration and Management > Administration > About School Staff > Guidelines for Granting of Leave).

Supply staff

Q14: What is the arrangement of supply staff for school employees taking paternity leave?

A14: Schools should follow the existing principles regarding the employment of supply staff (e.g. supply staff can be employed when teachers are on approved leave for 3 or more consecutive days, or School Social Worker in special schools are on approved leave for one month or more, etc.) For details, aided 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 implementation of paternity leave shall not change the existing rules and conditions guiding 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” on 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 teachers (e.g. 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 with the existing arrangements. For staff on paternity leave who are employed with other grants, 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.

Q15: A teacher applying for paternity leave in an IMC school fails to produce documentary proof to the satisfaction of the school and has to cover his absence by no-pay leave retrospectively. What should the school do if it has already applied for reimbursement of the salary of the supply staff?

A15: Schools should ensure that the approved paternity leave of the teacher is confirmed before applying for the reimbursement of salary of the supply staff. If the approved paternity leave has to be rescinded but the school has, under unusual circumstances, already applied for reimbursement, the school has to pay the salary of the supply staff with Teacher Relief Grant, and the reimbursed salary shall be returned to the EDB in full.

Education Bureau
June 2016