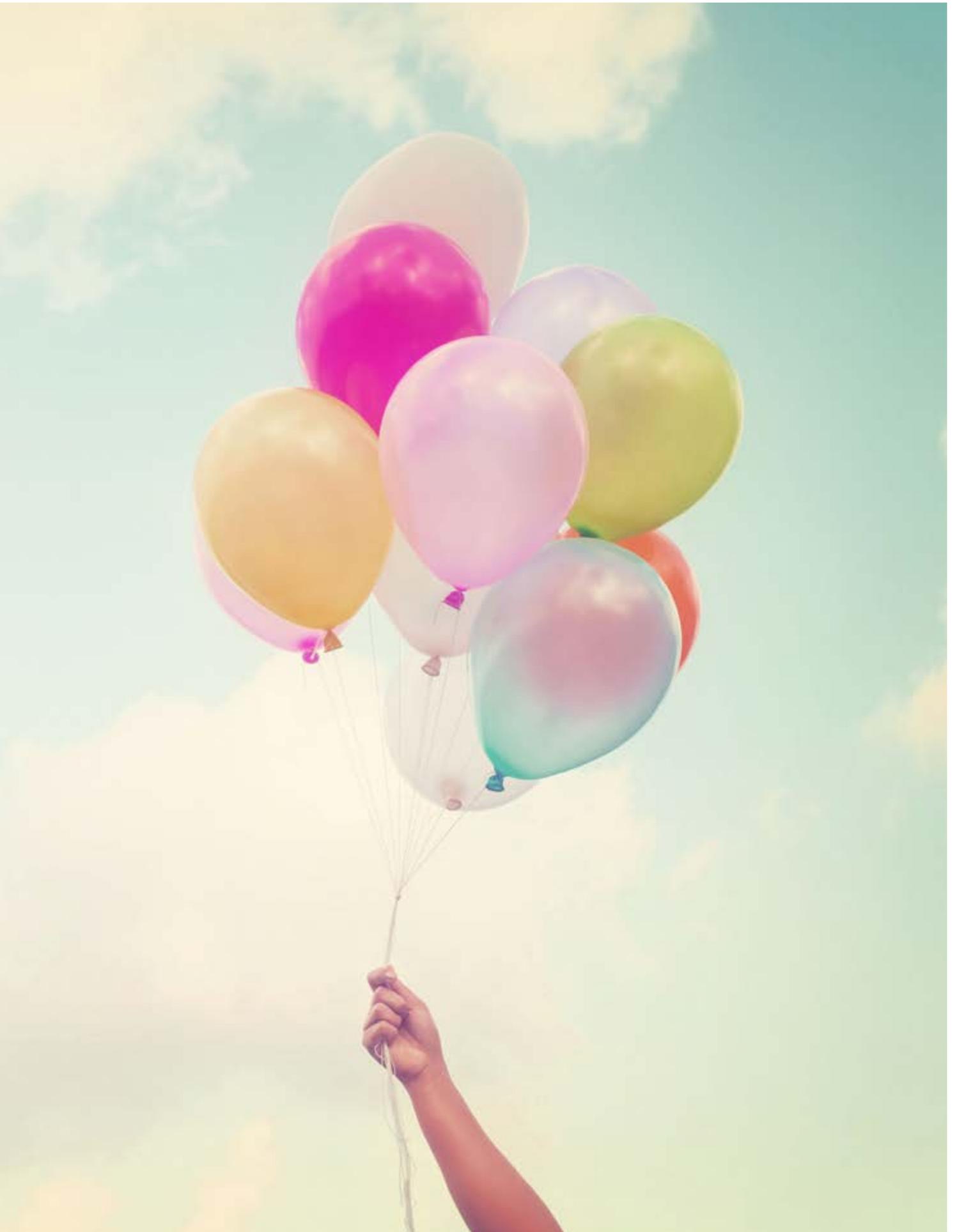


Family Friendly Employment Practices

家庭友善雇佣措施

Achieving a healthy “work-life balance” is a challenge for many professionals as most are expected to work longer and harder to meet various business targets. Employment lawyers from DLA Piper share with us their observations on the current state of “family friendly employment practices” in Hong Kong.

实现健康的“工作与生活平衡”对许多专业人士而言是一种挑战，因为大多数的专业人士都需长时间及辛勤工作，以达到各种业务目标。欧华律师事务所的雇佣律师将在本文与我们分享他们对于现时香港的“家庭友善雇佣措施”的状况的观察。



The concept of work-life balance is becoming an increasingly popular topic for international organisations. Facebook has recently announced that it will offer 4 months' paid paternity leave to its male full-time employees (currently around 12,000 globally) together with paying US\$4,000 subsidies for their new born babies starting from January 2016. Mark Zuckerberg himself has announced that he will be taking two months off following the birth of his child, which most commentators regard as setting a valuable precedent.

This is in line with the trend seen in other global technology companies, such as Spotify (offering paid paternity leave and maternity leave of up to six months), Netflix (offering

unlimited paid paternity leave and maternity leave within the first year of birth) and Amazon (offering extended maternity leave from 8 weeks to 20 weeks, with paternity leave of up to 6 weeks).

The topic is also gaining traction in Hong Kong. In March 2015, a panel of government advisers commissioned a report which found that 23% of the working population currently works more than 51.5 hours a week. Long working hours and stressful working environment are often viewed as factors contributing to deterioration in relationships amongst working families, making it particularly difficult for new mothers to rejoin the workforce.

What are family friendly employment practices?

Family friendly employment practices ("FFEPs") are measures that promote work-life balance within an organisation. Measures can include:

- family leave benefits (such as marriage leave, parental leave, compassionate leave);
- flexible working arrangements (such as a five-day workweek, flexible working hours, work-at home arrangements);
- employee support measures and entitlements (such as



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工作与生活平衡的理念正在成为国际机构中日趋热门的话题。Facebook最近宣布，自2016年1月起，将为其男性全职雇员（目前全球约12,000名）提供四个月的有薪待产假，并为他们的新生儿支付4,000美元的补贴。扎克伯格本人也宣布他将在其孩子出生后休假两个月，大多数评论家均认为他这一举动开创了一个可贵的先例。

这趋势与在其他全球性技术公司看到的一致，如Spotify（提供最长达半年的有薪待产假和产假）、Netflix（于孩子出生的第一年内提供无限期的有薪待产假和产假）、以及

Amazon（提供从8周延长至20周的延长产假，及最长6周的待产假）。

这一话题在香港也正受到关注。2015年3月，政府顾问小组委托撰写的报告指出，目前23%的劳动人口每周工作超过51.5小时。长期的工作时间和紧张的工作环境往往被认为是导致工薪家庭关系恶化的原因，尤其是使得新妈妈们重新投入工作非常困难。

什么是家庭友善雇佣措施？

家庭友善雇佣措施（“FFEPs”）是促进机构内工作与生活平衡的措施。该些措施可包括：

- 家庭假期福利（如婚假、育婴假、丧假）；
- 弹性工作安排（如五天工作周、弹性工作时间、在家办公安排）；

medical coverage for employees and their family, child care services, counselling services, organising family recreational activities.); and

- enhanced business travel support (such as allowing new parents to bring their children and nanny on business trips).

To what extent are Hong Kong employers required to promote FFEPs?

In Hong Kong, there is currently no statutory requirement in Hong Kong for employers to promote FFEPs or provide enhanced family-friendly entitlements. The only current restrictions are indirect and contained in the anti-discrimination ordinances.

Anti-discrimination Ordinances

Under the Family Status Discrimination Ordinance, it is unlawful to discriminate against a person on the grounds of family status i.e. where an individual has responsibility for the care of an immediate family member. An "immediate family member" is a person who is related to the person by blood, marriage, adoption or affinity.

It is also unlawful to discriminate against persons on the grounds of sex, marital status and pregnancy under the Sex Discrimination Ordinance. "Marital Status" is defined as the state or condition of being single, married, separated,

divorced or widowed. If an employer refuses an employee's request for flexible working and the employee can show that such policy has a disproportionate effect on female or married employees and this is to the employee's detriment, unless the employer can justify its decision for refusal, then the employee can have a claim in indirect discrimination under the Sex Discrimination Ordinance. Although there is no case law guidance in Hong Kong on this subject, the English case of *Hardy & Hansons plc v Lax [2005] EWCA Civ 846* suggests that commercial issues must be substantial to justify an employer's refusal on flexible working requests.



- 雇员支援措施和福利（如雇员及其家庭成员的医疗保险、托儿服务、辅导服务、举办家庭娱乐活动）；以及
- 增加商务差旅补助（如允许新任父母带孩子和保姆出差）。

在何种程度上香港雇主须推动家庭友善雇佣措施？

目前，香港并没有法律要求雇主推动家庭友善雇佣措施或提供增强的家庭友善雇佣权利。现时，唯一的限制只间接体现于反歧视条例中。

《反歧视法例》

根据《家庭岗位歧视条例》规定，因家庭岗位（即负有照顾直系家庭成员责任的岗位）而歧视一个人是违法的。而“直系家庭成员”是指与某人具有血缘、婚姻、领养或姻亲关系的任何人。

根据《性别歧视条例》规定，因性别、婚姻状况和怀孕而歧视他人也是违法的。“婚姻状况”指的是未婚、已婚、分居，离婚或丧偶的状况或情形。如果雇主拒绝雇员弹性工作的要求，而雇员可以证明该政策对女性或已婚雇员具有比例失衡的影响且并不利于雇员，除非雇主能有充分理由支持其作出拒绝之决定，否则雇员可以根据《性别歧视条例》就间接歧视进行申索。虽然香港还未有案例就这个问题还提供指引，但是英国案例 *Hardy & Hansons plc v Lax [2005] EWCA Civ 846* 表示，商业问题必须非常重大，才能构成充分理由支持雇主拒绝弹性工作要求的决定。



《反歧视条例》提供了一个保护雇员免受家庭岗位和性别歧视的良好基础，但对工薪家庭而言，工作条件距离理想仍然很远。特别是，虽然香港提供了有限的法定年假（7-14天）、产假（10周）、以及从上年开始的待产假（3天），这些权利持续的时间远远少于其他地方同等的保障。

因此，香港目前在此方面仍落后于许多其他发达国家。而且，香港也没有使员工能够弹性工作（除了通过与雇主协商）或者在紧急情况下请假照顾家人的正式安排。

政府在家庭友善雇佣措施方面的做法

2015年7月，立法会人力事务委员会汇报了香港政府目前在实施家庭友善雇佣措施方面的立场，包括鼓励企业采取家庭友善雇佣措施，如允许采用弹性工作时间、在工作场所为新妈妈设立育婴室等。但是，报告显示，尽管政府自2006年以来拨出大量资源以推动家庭友善雇佣措施，情况却并没有任何显著改善。而且，提倡的建议相当有限，也没有验证的方法来量度这些努力是否有效推动香港雇主作出改变。

委员会还讨论了与教育局合作，增加全日制幼儿园的名额，以鼓励女性家庭主妇重新就业。一些委员会成员评论到由政府牵头在公务员中实施这些政策以推动家庭友善雇佣措施的

The Anti-discrimination Ordinances provide a good grounding to protect workers from family status and sex discrimination, but working conditions are still far from ideal for working families. In particular, although Hong Kong provides for limited entitlements to statutory annual leave (7 to 14 days), maternity leave (10 weeks) and, as of last year, paternity leave (3 days), the duration of those entitlements fall well short of the equivalent protections in other locations.

As such, Hong Kong currently lags behind many other developed nations in this regard. There are also no formal arrangements to enable workers to able to work flexibly (other than through negotiations with their employer) or to take emergency time off to care for family members.

The Government's Approach to FFEPs

In July 2015, the Legislative Council Panel on Manpower reported on the Hong Kong Government's current stance on implementing FFEPs. This included encouraging businesses to adopt FFEPs such as allowing flexible working hours and the setting up of nursery rooms in the workplace for new mothers. However, it reported that whilst the Government has allocated considerable resources to promoting FFEPs since 2006, there have not



重要性。目前，一些政府当局或部门正推行弹性工作时间的政策，并为希望在家办公的雇员提供笔记本电脑。

总体来看，虽然政府似乎正在采取某些措施推动家庭友善雇佣措施，可是，立法会引进家庭友善法例的相应行动之进展可能会很缓慢。

雇主推动家庭友善雇佣措施的好处

家庭友善雇佣措施不是没有成本的。它们的代价是更高的管理成本、结构较不固定的工作模式，以及可能较为不稳定的雇员队伍。但另一方面，毫无疑问，家庭友善雇佣措施能为雇主带来一些好处。

许多企业看到允许雇员在家办公以节省办公空间及采用新的遥距工作技术，可以带来经济效益。这也有可能有利于鼓励雇员的士气和提高生产率。而从健康及安全的角度来看，提

供更多工作上的灵活性可能有助减少工作场所的紧张情绪。

通过提供弹性工作安排，雇主也可能接触到更广阔的人才库。这对那些业务性质需要雇员以非传统模式工作的雇主以及休假（如学习假、休假、旅行或生孩子之后）之后重返职场的人士而言，尤其有利。事实上，雇主日趋把重返职场的妈妈们视为一个相对未开发的人才库，能为他们带来丰富的专业知识和经验。

因此，雇主从未如此重视工作与生活平衡的情况不足为奇，特别是那些从事创新界别工作和/或吸引多元化的劳动人口（如Facebook，谷歌）的雇主。许多雇主均开始实施独立的家庭友善雇佣措施政策和/或推出特定的家庭友善雇佣措施教育方案。这不仅可以提高雇员士气、忠诚度和生产力，同时也有助于为企业文化带来更广泛的变化：一个尊重工作与家庭之间需求的平衡的企业文化。👉

been any notable improvements. The proposals advocated are also fairly limited and there is no empirical way to measure whether these efforts are working to promote change with Hong Kong employers.

The Panel also discussed working with the Education Bureau to increase the number of whole-day kindergarten places to encourage female homemakers to rejoin the workforce. Some members of the Panel commented on the importance for the Government to take the lead on promoting FFEPs through implementing these policies with civil servants. Currently, some Government bureaus or departments have flexi-time working policies and provide laptops to employees who wish to work from home.

Overall, although the Government seems to be taking certain steps to promote FFEPs, any corresponding action by the Legislative Council to introduce family-friendly legislation is likely to be slow-moving.

Advantages to Employers of Promoting FFEPs

FFEPs are not free. They come with a price tag to the tune of greater administrative costs, less structured working patterns and possibly less stable workforce. On the other

hand, there is also no doubt that FFEPs bring about a number of benefits for employers.

Many businesses see an economic benefit in allowing staff to work from home to save on office space and adopt new remote working technologies. There are also likely to be benefits to staff morale and increased productivity. From a health and safety perspective, additional flexibility may help reduce tension within the work place.

By offering flexible working arrangements, employers may also have access to a wider talent pool. This will be of a particular benefit where the nature of the employer's business requires individuals who work in less traditional shift paradigms, as well as individuals returning to the workforce after time off (for example study leave, sabbaticals, travel or after having children). Indeed, employers are increasingly viewing returning mothers as a relatively untapped talent pool, who bring with them a wealth of expertise and experience.

It is therefore no surprise that employers are taking the issue of work-life balance more seriously than ever before, particularly those who operate in innovative sectors and/or attract a diversified workforce (e.g. Facebook, Google). Many are starting to put in place a standalone FFEP policy and/or roll out specific FFEP education programmes. Not only does this improve staff morale, loyalty and productivity, it also contributes to bringing about a wider change in organisational culture: one which respects the competing demands between work and family.👉