

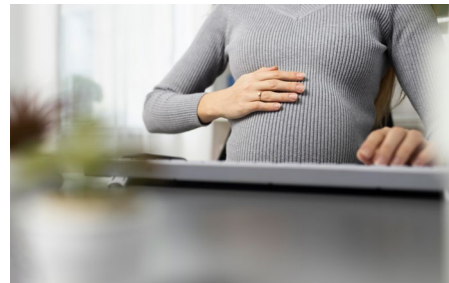
# Getting HR ready for 2021

*2020 was a year full of shift (yes you read that right) and we look at what HR needs to do to ensure they're all set for 2021*



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*HR Magazine spoke with Adam Hugill, Partner, Hugill & Ip for advice on what HR should be aware of legally in terms of the new requirements for paid statutory maternity leave, and handling leave during WFH, quarantine and in times of limited businesses.*



**With effect from 11 December 2020, the Hong Kong SAR Government has increased paid statutory maternity leave from 10 to 14 weeks—what are the key HR considerations around this change?**

The Employment (Amendment) Ordinance 2020 increased the paid statutory maternity leave period from 10 weeks to 14 weeks for a child born, or expected to be born, on or after 11 December 2020. Employees will continue to be paid four-fifths of their average daily wages for the first ten weeks of maternity leave. Employees will also be paid four-fifths of their average daily wages during the additional four weeks, but this will be capped at HK\$80,000 per employee.

The Hong Kong SAR Government will reimburse employers for the payment relating to the extended period of maternity leave, subject to a cap of HK\$80,000 per employee.

The prohibition against termination of employment of an employee on maternity leave will be extended to cover the additional four weeks' maternity leave.

The right to paid maternity leave only applies to employees that are employed under a continuous contract of employment for no less than 40 weeks. A continuous contract of employment is a contract for 18 hours or more per week for four or more continuous weeks. Employees who are not employed on continuous contracts of employment still have no right to any paid maternity leave.

Maternity leave does not apply to adoption. Hong Kong does not have in place any statutory requirements or formal government guidance relating to adoption leave, and there is no expectation that Hong Kong will implement laws relating to adoption leave at any time in the near future.



**In terms of leave, what should HR be aware of when drawing up new staff contracts, and how is this leave affected when staff are WFH/quarantined?**

Infamously, Hong Kong has a reputation for its employees working more unpaid overtime than anywhere else in the world. Working outside of contracted hours and during weekends, holidays, or annual leave is relatively normal. Even when an employer does not necessarily expect employees to work outside of office hours, they nevertheless ask employees to periodically 'check-in', i.e., read and reply to urgent messages and emails, outside of office hours.

WFH tends to blur the boundary between office and home life. While employers were initially concerned that employees would not work diligently outside of the office, studies have shown that WFH has created a culture of 'E-Presenteeism' with employees feeling compelled to be almost permanently logged on 24/7.

Out of sight means out of mind so that employers cannot observe the stress their employees are under who WFH. Continuously working 24/7, or even just having the feeling of being permanently on call without any downtime, is not healthy and is

ultimately unsustainable. It is a duty of all employers to provide a safe and healthy place of work—this includes promoting and protecting employees' mental health.

The mental health issues arising from WHF and lockdowns more generally have been widely documented and discussed during 2020, and studies will undoubtedly continue well into 2021 and beyond. HR must be as equally keen to ensure that WFH employees are 'logged-off' as they are to ensure that they are 'logged-on'. It should also not be forgotten that the laws relating to statutory rest days, statutory holidays and annual leave continue to apply whether employees are working in the office or WFH.

HR must ensure that employees are not asked to work on rest days or statutory holidays or—if they are required to work—that appropriate substituted or alternative days' leave are granted in the same way as they would be if the employee were called into the office on a rest day or statutory holiday. HR should also make it clear that if an employee is on a rest day, statutory holiday or annual leave they are not expected to be logged-on, indeed it would be advisable for HR to actively discourage employees from logging on during such leave days.

**Can HR mandate that staff take annual leave due to prevailing business circumstances?**

The Employment Ordinance actually envisages that it is the employer rather than the employee that dictates when annual leave is to be taken, and the onus is on the employer to ensure that each employee takes specific minimum periods of annual leave each year. Therefore, while most workplaces operate on the basis that an employee will apply for annual leave on their chosen days, which will then usually be approved by the employer, the employer can dictate when annual leave is taken subject to certain criteria being fulfilled.

Statutory annual leave accrues in one year to be taken in the next. Therefore, an employer cannot require an employee to take statutory annual leave in the same years as it accrues. This is most relevant for employees that have worked for less than one year (or one leave year).

Employers are also required to 'consult' with employees and provide at least 14 days' notice before requiring employees to take annual leave. Consultation does not, however, require the employees to consent (or even be happy with the arrangement).

Unpaid leave cannot be imposed unilaterally and must be agreed in advance with the employee. This being said, throughout 2020, we have often seen situations where employees are presented with the option of taking a period of unpaid leave or face having their employment terminated.

Employers should be reminded that during unpaid leave, employees are still entitled to be paid for statutory holidays (i.e., Christmas, New Year's Day, Chinese New Year etc.) and will still accrue and be able to take annual leave and paid sickness absence. ■

