

## **LEGISLATIVE COUNCIL BRIEF**

Industrial Training (Construction Industry) Ordinance  
(Chapter 317)

### **INDUSTRIAL TRAINING (CONSTRUCTION INDUSTRY) (AMENDMENT) BILL 2001**

#### **INTRODUCTION**

At the meeting of the Executive Council on 20 February 2001, the Council ADVISED and the Chief Executive ORDERED that the Industrial Training (Construction Industry) (Amendment) Bill 2001 (at Annex A) should be introduced into the Legislative Council.

#### **BACKGROUND AND ARGUMENT**

##### **General Background**

2. The Administration introduced the proposed Factories and Industrial Undertakings (Medical Examinations) Regulation (the proposed Regulation) into the Legislative Council on 14 July 1999. The proposed Regulation will extend the coverage of statutory medical examinations required under the various subsidiary legislation of the Factories and Industrial Undertakings Ordinance (Cap. 59) from the current four designated occupations to a total of 17.

3. The proposed Regulation requires that employees engaged in the designated occupations should undergo medical examinations, before employment and periodically during employment. Such medical examinations should be conducted by appointed medical practitioners (AMPs) who have qualifications in occupational medicine, and arranged at the expenses of the proprietors. If an employee is found by a medical examination to be unfit for a particular job, the AMP concerned may recommend that the employee to be temporarily or permanently suspended from his present occupation, as the case may be.

4. The proposed Regulation was introduced into the Legislative Council on 14 July 1999 for examination by the then Subcommittee on Regulations relating to Occupational Safety and Health (the Subcommittee). In response to an enquiry raised at the Subcommittee in April 2000, the Department of Justice advised that temporary suspension under the proposed Regulation may have the effect of breaking the continuity of employment of the employee concerned, and could disqualify the employee concerned from certain entitlements under the Employment Ordinance (Cap. 57). As this was not the

intention of the proposed Regulation and because of the impending closure of the legislative session, examination of the proposed Regulation could not be completed.

5. The Administration has since reviewed the issues related to temporary suspension under the proposed Regulation, and intends to re-introduce the proposed Regulation into the Legislative Council shortly.

### **Medical Examinations for Construction Workers**

6. The vast majority of the employees (153 000 out of 195 000) to be covered by the proposed Regulation are in the construction industry. Depending on the job nature, workers of the construction industry are exposed to hazards such as excessive noise, silica, tar, pitch, bitumen, lasers, lead, cadmium, manganese, compressed air and asbestos.

7. When consulted, the Hong Kong Construction Association (HKCA) indicated that individual proprietors in the construction industry would have difficulty in meeting the requirements under the proposed Regulation. This is due to the unique characteristics of the construction industry in having multi-layered sub-contracting system and a high mobility of construction workers. The HKCA proposed that an agency should be empowered to arrange medical examinations of construction workers on behalf of proprietors in the construction industry, and to pay for the cost of medical examinations which should be met through a levy on the construction industry.

### **The Proposal**

8. We propose to engage the Construction Industry Training Authority (CITA) as the agent for arranging medical examinations in the construction industry. At present, a levy of 0.4% on the value of all construction works exceeding \$1 million is imposed on contractors to meet the cost of services provided to construction industry by the CITA. It is therefore considered practical if the CITA is to be engaged as the agent for arranging medical examinations in the construction industry with the costs to be recovered by introducing a suitable increment to the existing levy rate. To this end, agreement has been reached between the HKCA and the CITA that the latter would act as the agent for contractors/proprietors in the construction industry to make the necessary administrative arrangements on medical examinations for their workers. To cover the cost involved, principally the cost of medical examinations and administrative charges, the existing levy (at 0.4%) collected from the construction industry by the CITA would be increased by 0.03%. This new role for the CITA and the collection of the levy increase would require amendments to the Ordinance (Cap. 317).

### **THE BILL**

9. Clause 3 will empower the CITA to make arrangements for, and to cover the costs of, the medical examinations of persons who are or are to be employed in certain prescribed occupations in the construction industry. These occupations will be prescribed in regulations, made by the Commissioner for Labour, subject to the approval of the Legislative Council, under the Factories and Industrial Undertakings Ordinance (Cap. 59), which provide for the mandatory medical examination of persons employed in work involving exposure to hazards or the use of hazardous substances and physical agents. The existing provisions which are being amended are at Annex B.

### **LEGISLATIVE TIMETABLE**

10. The legislative timetable will be -

Publication in the Gazette	2 March 2001
First Reading and commencement of Second Reading debate	14 March 2001
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

### **IMPLEMENTATION**

11. The Bill, if enacted, shall come into operation prior to the coming into effect of the proposed Regulation, ensuring the CITA has the requisite statutory authority to arrange and pay for medical examinations under the proposed Regulation. The 0.03% levy will be collected after the commencement of the proposed Regulation through the existing levy collecting mechanism of the CITA.

### **BINDING EFFECT OF THE LEGISLATION**

12. The amendments will not affect the current binding effect of the Industrial Training (Construction Industry) Ordinance (Cap. 317).

### **BASIC LAW IMPLICATIONS**

13. The Department of Justice advises that the proposed legislation does not conflict with those provisions of the Basic Law carrying no human rights implications.

### **HUMAN RIGHTS IMPLICATIONS**

14. The Department of Justice advises that the proposed legislation is consistent with the human rights provisions of the Basic Law.

### **FINANCIAL AND STAFFING IMPLICATIONS**

15. There are no financial or staffing implications for Government.

### **ECONOMIC IMPLICATIONS**

16. The cost of medical examination per worker is about \$400 for those exposed to excessive noise and ranges from \$200 to \$600 for those exposed to the other hazards. The HKCA, the CITA and the Real Estate Developers Association of Hong Kong (REDA) have agreed that a levy increase of 0.03% of the value of all construction works exceeding \$1 million is to be imposed on contractors to meet the medical examination requirement. This is estimated to give rise to a marginal increase in the total operating cost of main contractors in the industry. Yet the employers concerned and society at large will benefit from savings in medical expenses and compensation of those workers exposed to the occupational hazards and, in the longer term, from a healthier and more productive workforce.

### **PUBLIC CONSULTATION**

17. When consulted on the proposed Regulation, the Labour Advisory Board expressed their support. The HKCA and the REDA were also consulted and indicated support for engaging the CITA as the agent for the construction industry and acceptance of the consequential adjustment to the levy rate.

18. The Legislative Council Panel on Manpower was briefed on the Administration's plan to take forward the proposed Regulations at its meeting on 15 February 2001 and related amendments to the Industrial Training (Construction Industry) Ordinance.

### **PUBLICITY**

19. A press release will be issued and a spokesman will be available to handle media enquiries.

Education and Manpower Bureau  
Subject Officer: Mr. K K Lam  
Telephone: 2810 3561  
28 February 2001

A BILL

To

Amend the Industrial Training (Construction Industry) Ordinance.

Enacted by the Legislative Council.

**1. Short title and commencement**

(1) This Ordinance may be cited as the Industrial Training (Construction Industry) (Amendment) Ordinance 2001.

(2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Education and Manpower by notice published in the Gazette.

**2. Long title amended**

The long title to the Industrial Training (Construction Industry) Ordinance (Cap. 317) is amended by adding "in respect of construction works; and to provide for matters relating to persons employed in the construction industry and to contractors" after "contractors".

**3. Functions of the Authority**

Section 5 is amended -

- (a) by renumbering it as section 5(1);
- (b) in subsection (1)(e), by repealing the full stop and substituting a semicolon;
- (c) in subsection (1), by adding -
  - "(f) to assist, including to assist by way of financial provision, in the arrangement for and the payment of the costs of the medical examination of persons who are or

who are to be employed in certain prescribed occupations in the construction industry.";

(d) by adding -

"(2) For the purposes of subsection (1)(f) the expression "certain prescribed occupations" (某些訂明職業) means such occupations as may be prescribed in regulations made by the Commissioner for Labour under section 7 of the Factories and Industrial Undertakings Ordinance (Cap. 59), subject to the approval of the Legislative Council; and which provide for the mandatory medical examination of persons who are or are to be employed in work, including work in the construction industry, involving exposure to and the use of hazardous substances and physical agents."

### **Explanatory Memorandum**

The object of this Bill is to empower the Construction Industry Training Authority to make arrangements for and to cover the costs of the medical examination of persons who are or are to be employed in certain prescribed occupations in the construction industry. These occupations will be prescribed in regulations, made under the Factories and Industrial Undertakings Ordinance (Cap. 59), which provide for the mandatory medical examination of

persons employed in work involving exposure to and the use of hazardous substances and physical agents.

2. Clause 2 amends the long title to the Industrial Training (Construction Industry) Ordinance (Cap. 317) so as to include the object of the Bill as one of the principal purposes of the Ordinance.

3. Clause 3, similarly, amends section 5 so as to include the object of the Bill as one of the statutorily authorized functions of the Construction Industry Training Authority.

Chapter: 317	Title: INDUSTRIAL TRAINING (CONSTRUCTION INDUSTRY) ORDINANCE	Gazette Number: 73 of 1999
	Heading: <b>Long title</b>	Version Date: 26/11/1999

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To provide for the establishment, functions and management of the Construction Industry Training Authority, for a levy to be paid by contractors in respect of construction works, and for connected purposes.

(Replaced 73 of 1999 s. 2)

[5 September 1975] *L.N. 215 of 1975*

(Originally 53 of 1975)

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Chapter: 317	Title: INDUSTRIAL TRAINING (CONSTRUCTION INDUSTRY) ORDINANCE	Gazette Number: 73 of 1999
Section: 5	Heading: <b>*Functions of the Authority</b>	Version Date: 26/11/1999

The Authority shall have the following functions-

- (a) to provide training courses for the construction industry;
- (b) to establish and maintain industrial training centres therefor;
- (c) to assist, including to assist by way of financial provision, in the placement of persons completing training courses; (Amended 73 of 1999 s. 4)
- (d) to make recommendations with respect to the rate of levy; (Amended 73 of 1999 s. 4)
- (e) to assess the standards of skills achieved by anyone in any kind of work involving or in connection with the construction industry, conduct examinations or tests, issue or award certificate of competence and establish the standards to be achieved in respect of such work. (Added 73 of 1999 s. 4)

\*Note: Section 5 was amended by section 4 of the industrial Training (Construction Industry) (Amendment) Ordinance 1999 (73 of 1999). Section 7 of that Ordinance provides as follows:

"7. Validation

(1) Every act or thing done by the Authority for or in connection with the assessment of the standards of skills achieved by anyone in any kind of work involving or in connection with the construction industry including, without limitation, the conduct of examinations or tests, the issue or award of certificates of competence and the establishment of the standards to be achieved in respect of any such work that would have been lawful if section 5(e) of the principal Ordinance, as added by section 4 of this Ordinance, had been in force at the time when it was done is validated and declared to have been lawfully done by the Authority.

(2) The expenditure by the Authority of any sum by way of financial provision to assist in the placement of persons completing training courses that would have been lawful if section 5(e) of the principal Ordinance, as amended by section 4 of this Ordinance, had been in force at the time when it was expended is validated and declared to have been lawfully expended by the Authority."