



Labour Department (Headquarters)

勞工處（總處）

Your reference 來函編號： LS/B/20/01-02
Our reference 本處檔案編號： 244/711/2 Pt. 4
Tel. number 電話號碼： 2852 4083
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10 January 2003

Miss Kitty Cheng
Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
Legislative Council Building
8 Jackson Road
Central
Hong Kong

Dear Miss Cheng,

Occupational Deafness (Compensation)(Amendment) Bill 2002

Thank you for your letter of 19 December 2002. Our reply to the questions is provided below.

Clause 2 – Long title

We have consulted the government counsel who drafts the captioned Bill and have been advised that the usage of the word “of” in “compensation and other benefits **of** persons” is fine. The drafting counsel has also drawn our attention to the fact that similar wording is used in the long title of Cap. 22 and Cap. 337.

Clause 7 – Determination of compensation

The reason for introducing the said amendment in section 21 is to bring consistency among relevant sections of the Ordinance on the determination of the level of compensation and reimbursement of expenses on hearing assistive devices. You may wish to note that in accordance with section 20(3) of the

Occupational Deafness (Compensation) Ordinance, which was a subsection added pursuant to the Occupational Deafness (Compensation)(Amendment) Ordinance 1998, the Occupational Deafness Compensation Board shall make a determination on the noise-induced deafness suffered by a claimant and the resulting degree of permanent incapacity in accordance with the provisions of the Ordinance as in force on the date of that determination, irrespective of the date of the application. That subsection was proposed as a result of the deliberation of the Labour Advisory Board which came to a consensus that the Board should apply the prevailing provisions of Schedule 4 of the Ordinance when determining claims for the purpose of reckoning the compensation payable under the Ordinance.

Under the amended section 21 of the Bill, which seeks to revise the maximum and minimum levels of compensation by amending Schedule 5 of the Ordinance, and the new section 27C, which purports to link the limits of reimbursement of expenses for hearing assistive devices to the Schedule 7 that is in force on the date of determination in respect of the application, we have adopted the same practice as provided for under section 20(3).

Clause 9 – Section 27B (Reimbursement of expenses in relation to hearing assistive devices)

Under section 14(3) of the Ordinance, the Board will not compensate a person who has been paid by the Government a pension or gratuity under any Ordinance in consequence of incapacity resulting from noise-induced deafness which arose in the course of his employment. If we do not put in section 27B(1)(c), the person concerned will not be able to benefit from the reimbursement of expenses in relation to hearing assistive devices.

From the operational perspective, we intend that the applicant should be responsible for producing evidence to substantiate that he has been paid a pension or gratuity by the Government in consequence of incapacity resulting from noise-induced deafness which arose in the course of his employment. This is in line with the current practice of the Board in processing applications for compensation whereby the claimants are required to produce evidence to prove that they fulfil the occupational requirements under the Ordinance for the purpose of claiming compensation.

The term “any Ordinance” in section 14(3) and the proposed section 27B(1)(c) refers to the Pensions Regulations 31(6) under the Pensions Ordinance (Cap. 89) and section 15 of the Pension Benefits Ordinance (Cap. 99).

Clause 12 – Priority of Payment

We have also sought the view of the drafting counsel on the suggestions in your letter of December 2002. The drafting counsel has opined that it is not desirable to replace “indicating” by “informing” as the latter term usually takes on an object. As regards the view that the word “indicating” connotes an inclination of the Board which can be persuaded to the otherwise, the drafting counsel is of the view that the word “indicating” means “showing” or “pointing out” and does not carry the connotation as suggested. Furthermore, he has pointed out that the new sections 30A(1) and (2) prescribe the manner in which payment shall be made in the special circumstances whilst the new section 30(A)3 provides for the manner in which the relevant information shall be communicated to the claimant. The new subsection (3) only provides for procedural matters and does not affect the Board’s obligation to make payment. After deliberation, we consider that it is appropriate to use the word “indicating” in the context of the new section 30A(3).

Yours sincerely,

(Mrs Jenny Chan)
for Commissioner for Labour

c.c. DoJ (Attn : Mr Sunny Chan)