

**Legislative Council Panel on Manpower
(Meeting on 24 April 2003)**

**Proposed Withholding of the Factories and Industrial Undertakings
(Medical Examinations) Regulation**

PURPOSE

This paper seeks Members' views on the Administration's proposal to withhold the proposed Factories and Industrial Undertakings (Medical Examinations) Regulation ("the Regulation") and the related Industrial Training (Construction Industry) (Amendment) Bill 2001.

BACKGROUND

2. At present, under various subsidiary legislation to the Factories and Industrial Undertakings Ordinance (Cap. 59) ("FIUO"), employees engaged in four designated hazardous occupations, namely, asbestos work, compressed air work, underground work and work with certain carcinogenic substances, are required to undergo pre-employment and periodic medical examinations.

3. The proposed Regulation aims to extend the coverage of statutory medical examinations from the current four occupations to a total of 17 occupations. A list is provided at Appendix. It is estimated that under this proposal, the number of employees affected would be increased from about 1 200 to 183 000, of whom 154 000 (84%) work in the construction industry. Proprietors are required to pay for the expenses of the required medical examinations. Employees who are certified medically unfit will be temporarily or permanently suspended from employment in their occupations.

4. In the case of the construction industry, the Construction Industry Training Authority (CITA) is intended to be the agent for proprietors in the industry to make administrative arrangements for the medical examinations of their employees. For CITA to take up this new role and to meet the costs involved, amendments to the Industrial Training (Construction Industry) Ordinance (Cap. 317) are required and the related Industrial Training (Construction Industry) (Amendment) Bill was, therefore, introduced into the Legislative Council in March 2001.

5. The proposed Regulation was introduced into the Legislative Council in June 1999 for examination by the then Sub-committee on Regulations relating to Occupational Safety and Health. The Sub-committee held a total of ten meetings in the 1999-2000 legislative session. In response to an enquiry raised by the Sub-committee in April 2000, the Department of Justice (D of J) advised that suspension under the proposed Regulation might have the effect of breaking the continuity of employment of the employee concerned, and could disqualify that employee from some of the 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.

6. The Administration has since reviewed the potential legal problems relating to suspension under the proposed Regulation. The D of J has advised the inclusion of a new provision in the proposed Regulation to provide that where an employee is suspended from employment, the suspension shall not break the continuity of employment, and shall not operate to frustrate the employment contract of the employee. The D of J has further advised that as the current FIUO has not empowered the Commissioner for Labour to make such a provision in the proposed Regulation, the FIUO will need to be amended in the first place. Given this legal advice, the Administration has proposed to enact the Factories and Industrial Undertakings (Amendment) Bill to give effect to the proposed amendment.

7. In a letter dated 29 October 2001 to the Chairman of the Panel, the Administration informed the Panel about the legal advice and the proposal to amend the FIUO, as detailed in paragraph 6 above.

THE WAY FORWARD

8. The Administration proposes to withhold the proposed Regulation and the related Industrial Training (Construction Industry) (Amendment) Bill 2001. The reasons are as follows:-

- (a) Under the proposed Regulation, employees who are certified medically unfit will be suspended, either temporarily or permanently, from employment in their occupations. Those suspended temporarily would suffer loss of pay even if they were granted paid sick leave, whilst those suspended permanently may lose their jobs if their employers cannot arrange for re-deployment. In addition, the latter may have difficulties in securing another job because of the current high unemployment rate. For these reasons, it is unlikely that employees will welcome the re-introduction of the proposed Regulation;

- (b) In the past few years, there has been a downturn in the local economy. This phenomenon had not been envisaged at the time when the proposed Regulation was first proposed in 1995. The construction industry, in which more than 80% of the employees covered by the proposed Regulation are employed, has been particularly hard hit. The unemployment and underemployment rates in the industry for the three-month period ending February 2003 are 18.6% and 12.1% respectively, which are far higher than the corresponding rates of 7.4% and 2.9% for the total workforce. If employees in the industry are suspended from work under the proposed Regulation, the outlook for re-deployment and re-employment in the industry is rather bleak; and

(c) It has been estimated that implementation of the proposed Regulation would entail a 0.03% increase in the total operating cost of main contractors in the construction industry and a 0.01% increase for proprietors in the other affected industries. Because of the cost implications, re-introduction of the proposed Regulation will not find favour with employers under the present economic climate.

9. The Administration will review the situation at the end of this year and consult the relevant trade unions and employer associations on the way forward. In the meantime, we will enhance our publicity efforts to promote voluntary medical examinations of employees engaged in the hazardous occupations, including the preparation of publicity materials and the organization of seminars, health talks and exhibitions. A guide will also be published for doctors for their reference.

Labour Department
April 2003

**Occupations Covered by the Proposed
Factories and Industrial Undertakings (Medical Examinations) Regulation**

- *1. Employment in mines, quarries and tunnelling operations
- *2. Employment involving work in compressed air
- *3. Employment involving the use or handling of or exposure to asbestos
- *4. Employment involving the use or handling of or exposure to carcinogenic substances (controlled substances)
5. Employment involving the use or handling of or exposure to silica
6. Employment involving the use or handling of or exposure to arsenic
7. Employment involving the use or handling of or exposure to cadmium
8. Employment involving the use or handling of or exposure to manganese
9. Employment involving the use or handling of or exposure to lead
10. Employment involving the use or handling of or exposure to mercury
11. Employment involving the use or handling of or exposure to organophosphates
12. Employment involving the use or handling of or exposure to tar, pitch, bitumen or creosote
13. Employment involving the use or handling of or exposure to raw cotton dust
14. Employment involving the use or handling of or exposure to benzene
15. Employment involving the use or handling of or exposure to methylenediphenyl diisocyanate or toluene diisocyanate
16. Employment involving the use or handling of or exposure to lasers (class 3B and 4)
17. Employment involving exposure to excessive noise (daily personal noise exposure of 85 dB(A) and above)

Note * Medical examinations already required under subsidiary legislation of the Factories and Industrial Undertakings Ordinance (Cap. 59)