

For information
on 18 February 2005

LEGCO PANEL ON WELFARE SERVICES

Supplementary Information on Employees' Compensation for Hospital Authority workers infected with SARS on Duty

PURPOSE

This paper provides the supplementary information requested by Members during the discussion of the papers on “Third Progress Report on the Trust for Severe Acute Respiratory Syndrome” (Ref : LC Paper No. CB(2)153/04-05(01)) and “Supplementary Information for the Third Progress Report on the Trust Fund for Severe Acute Respiratory Syndrome” (Ref : LC Paper No. CB(2)538/04-05(08)) at the meeting on 10 January 2005.

BACKGROUND

2. At the meeting of 10 January 2005, Members requested that the Administration provide further information on the latest position about employees' compensation (EC) for Hospital Authority (HA) workers infected with SARS whilst on duty. This note provides the requisite information.

EMPLOYEES' STATUTORY COMPENSATION CLAIMS

3. Under the Employees' Compensation Ordinance (ECO) (Cap.282), employees may claim compensation from their employers if they suffer personal injury by accident that arose out of and in the course of employment. The

compensation items include, inter alia, a lump-sum compensation for permanent incapacity and periodical payments during the period of injury related sick leave.

Compensation for Permanent Incapacity

4. The ECO provides for two possible routes for an employee to secure compensation for permanent incapacity under the Ordinance. They are :

- (a) if liability is not disputed, the compensation amount will be determined by the Labour Department (LD) after the statutory Employees' Compensation Ordinary Assessment Board has completed the assessment of permanent loss of earning capacity of the injured employee. LD will then issue a certificate of compensation assessment to the employee and his employer; and
- (b) an injured employee may make an application to the District Court for enforcing his claim for compensation, in particular when the liability issue has not been resolved as LD is not empowered to determine the liability for compensation.

Section 14 of the ECO provides that an application to the District Court has to be made within 24 months from the occurrence of the accident causing the injury. The District Court may allow the application to be made after 24 months if it is satisfied that there was reasonable excuse for the failure to make application within time.

5. As HA's EC liability towards its employees under the ECO is borne by its EC insurer, it is the EC insurer who decides whether or not liability in a case is established in principle and HA cannot admit liability without the written consent of its EC insurer. If HA admits liability without its EC insurer's written consent, its policy condition will be violated and HA shall have no recourse to its EC policy but has to pay compensation to its employees with public money.

Entitlements to Paid Sick Leave

6. Section 10(5) of the ECO provides that:

“An employee who has received periodical payments [i.e. paid sick leave] under this section for a period of 24 months from the date of commencement of the temporary incapacity or for such further period being not more than 12

months as the Court may allow in such any particular case shall no longer be entitled to any periodical payments under this section but shall be deemed to have suffered permanent incapacity...”.

7. This means that an injured employee could be entitled to periodical payments [i.e. paid sick leave] in respect of his injury related insured sick leave for a maximum of 24 months and the entitlement may be extended by a further period of 12 months with the Court’s permission. For HA, since the cost of paid sick leave for employees’ compensation is also borne by its EC insurer, HA can only make sick leave payment beyond 24 months with its EC Insurer’s written consent.

CONCERNS OF HA STAFF

8. As an application to the District Court for compensation for permanent incapacity under the ECO has to be made within 24 months from the occurrence of the accident, we appreciate that HA employees infected with SARS naturally would like to receive assurance on the admission of liability in respect of their compensation claims well before the expiry of the 24-month time limit, thus obviating the need to pursue their claims in court. They also wish to see an extension of their entitlement to paid sick leave beyond 24 months without having to seek the Court’s permission.

9. The HA has received altogether 333 cases claiming to have been infected with SARS whilst on duty. HA has reported these cases to the LD as soon as they were known. Moreover, as HA would like to resolve these cases speedily, it also started to provide information to its EC insurer as early as June 2003 in order to facilitate its processing of the cases. Since SARS is an unprecedented and complex disease, it has given rise to more difficulties than an ordinary employees’ compensation case and HA’s EC insurer has required more time for processing and resolution. The HA can only confirm liability, even if only in principle, after its EC insurer’s written consent.

ACTIONS TAKEN BY HA

10. As part of HA’s efforts to keep its staff informed of the latest development about this issue, HA has issued letters in early December 2004 to the staff concerned to explain to them that the assessment under the ECO in some cases could not commence earlier because the medical conditions of the employees concerned had not

yet stabilized. As a result, LD envisaged that the assessment in some cases could not be completed before the expiry of 24 months from the date of contraction of SARS. LD also wrote to inform HA staff of the time limit and the associated procedure on application to the District Court for compensation under ECO in early December 2004. Moreover, LD also set up and publicized a telephone hotline to handle questions from the affected staff. Forums have also been jointly held by HA and LD in December 2004 to brief HA employees on the handling of their EC claims and on the time limitation under the ECO.

11. In the meantime, after working intensively with its EC insurer and with the insurer's consent, as of 7 February 2005, we have admitted liability in respect of 297 cases. HA has also been able to secure the following for its employees :

- (a) employees may now lodge their employees' compensation application with the District Court after the 24 months but before the expiry of 36 months, subject to the Court's approval; and
- (b) paid sick leave beyond the 24 months, and up to 36 months, will be extended upon a medical certificate certifying the need of such extended sick leave, without the employees' having to seek the Court's permission.

The employees have been kept informed of the above latest development.

WAY FORWARD

12. HA and its EC insurer are working hard on the remaining cases so as to reach a decision on these cases as soon as possible.

ACTION REQUIRED

13. Members are invited to note the contents of the paper.

Health, Welfare and Food Bureau
Hospital Authority
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