

立法會
Legislative Council

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**Paper for the House Committee Meeting
on 15 February 2008**

**Legal Service Division Report on
Pneumoconiosis (Compensation) (Amendment) Bill 2008**

I. SUMMARY

- 1. Objects of the Bill** To amend the Pneumoconiosis (Compensation) Ordinance (Cap. 360) ("PCO") to provide that the benefits or compensation available to pneumoconiosis workers will apply to those suffering from malignant mesothelioma.
- 2. Comments** Although the Administration proposes to provide benefits or compensation to workers suffering from malignant mesothelioma, workers suffering from benign or non-cancerous mesothelioma are not covered in the Bill. A mechanism will be established to determine the degree of incapacity of a person suffering from mesothelioma or from both pneumoconiosis and mesothelioma; and if a person suffers from both pneumoconiosis and mesothelioma, the degree of incapacity to be determined by the Pneumoconiosis Medical Board in respect of that person shall not exceed 100%.
- 3. Public Consultation** The Pneumoconiosis Compensation Fund Board and the Labour Advisory Board were consulted on the legislative proposal on 18 September 2007 and 10 October 2007 respectively. Both supported the proposal. The Labour Advisory Board was of the view that the legislative exercise to implement the proposal should be accorded priority so that the benefits for people suffering from malignant mesothelioma can be improved as early as possible.
- 4. Consultation with LegCo Panel** The Panel on Manpower was consulted on 15 November 2007. Members generally supported the proposal. Some members, however, considered that the proposal should also cover benign or non-cancerous mesothelioma patients. They also considered that the Administration should reduce the burden of proof on the part of the mesothelioma workers with less than 5 years of residence in Hong Kong.
- 5. Conclusion** Since some members of the Panel on Manpower have raised concerns about the general policy of whether compensation should cover both benign and non-cancerous mesothelioma, member may wish to consider whether to set up a Bills Committee to examine these issues.

II. REPORT

Objects of the Bill

To amend the Pneumoconiosis (Compensation) Ordinance (Cap. 360) ("PCO") to provide that the benefits or compensation available to pneumoconiosis workers will apply to those workers (or their family members) suffering from malignant mesothelioma.

LegCo Brief Reference

2. LD CR94/706 II issued by the Labour and Welfare Bureau and dated 9 January 2008.

Date of First Reading

3. 30 January 2008.

Comments

4. The PCO provides a compensation scheme for persons or their family members in respect of incapacity or death resulting from pneumoconiosis, an illness of fibrosis of the lungs due to dust of free silica or asbestos or dust containing free silica or asbestos (section 2(1) of PCO). The compensation scheme is financed by a levy imposed on construction operations and quarrying products.

5. Malignant mesothelioma and pneumoconiosis have the following common characteristics -

- (a) both share a common cause, i.e. inhalation of asbestos dust;
- (b) both are progressive in nature;
- (c) both have long latent period and it is not possible to precisely identify the period of employment causing the diseases for the purpose of claiming compensation from individual employers; and
- (d) both cause permanent and irreversible damages as well as pain and suffering to the patients (para. 3 of the LegCo Brief).

6. Because of the above common characteristics, the Administration proposes to provide the same compensation or benefits to workers suffering from pneumoconiosis under PCO to workers suffering from malignant mesothelioma.

7. Part 2 of the Bill adds a definition of "mesothelioma", i.e. malignant

mesothelioma, which is a primary malignant neoplasm of the mesothelial tissue due to dust of asbestos or dust containing asbestos, whether or not such disease is accompanied by tuberculosis of the lungs or by any other disease cause by exposure to such dust (clause 4(6)).

8. The effect of the Bill is that the benefits or compensation provided in section 4 of PCO for workers suffering from pneumoconiosis will apply to those suffering from mesothelioma (clause 5). Clause 5 also provides that compensation in respect of mesothelioma shall only be payable to a worker where the date of diagnosis of his mesothelioma or the date of his death occurs on or after the date commencement of the Bill.

9. Under the Bill, the following benefits or compensation available to workers suffering from pneumoconiosis are sought to be made available to workers suffering from mesothelioma (clauses 6 to 14) -

- (a) compensation for death (by amending existing section 5),
- (b) compensation for bereavement (by amending existing section 5A),
- (c) funeral expenses (by amending existing section 5B),
- (d) compensation for incapacity subsequent to date of diagnosis (by amending existing section 6),
- (e) compensation for incapacity prior to date of diagnosis (by amending existing section 10),
- (f) compensation for constant attention (by amending existing section 11),
- (g) expenses for medical treatment (by amending existing section 12),
- (h) expenses for medical appliances (by amending existing section 12A),
- (i) claims for expenses for medical treatment and medical appliances (by amending existing section 12B).

10. Clause 10 seeks to add new provisions to set out the methods for calculating the compensation for incapacity prior to the date of diagnosis for persons suffering from both pneumoconiosis and mesothelioma, e.g. if the person has not previously received compensation under PCO and there are different earliest diagnosed dates (as defined in PCO) for the 2 diseases, the earlier of the 2 earliest diagnosed dates shall be taken as the earliest diagnosed date for both diseases (proposed section 10(2)(d)).

11. There are also new provisions which seek to resolve the problem that where a person who suffers from either pneumoconiosis or mesothelioma is subsequently found to be suffering from the other of the 2 diseases and wishes to claim compensation, instead of making another claim under section 14 of PCO, he shall make a request for a further medical examination under section 23A of PCO (clause 17(4)).

12. Clause 30 seeks to amend the Fourth Schedule to PCO to provide a mechanism to determine the degree of incapacity of a person suffering from mesothelioma, or from both pneumoconiosis and mesothelioma. Clause 22(7) seeks to provide that if a person suffers from both pneumoconiosis and mesothelioma, the degree of incapacity to be determined by the Pneumoconiosis Medical Board in respect of that person shall not exceed 100%.

Public Consultation

13. The Pneumoconiosis Compensation Fund Board and the Labour Advisory Board were consulted on the legislative proposal on 18 September 2007 and 10 October 2007 respectively and both supported the proposal. The Labour Advisory Board in particular advised that the legislative exercise to implement the proposal should be accorded priority so that the benefits for people suffering from malignant mesothelioma can be improved as early as possible (para. 10 of the LegCo Brief).

Consultation with LegCo Panel

14. At its meeting on 15 November 2007, the Panel on Manpower was consulted on the Administration's proposal to make mesothelioma a compensable disease under the PCO. Members were generally supportive of the Administration's proposal. Some members, however, considered that the coverage of the proposal should not be confined to malignant mesothelioma and cases of benign and non-cancerous mesothelioma should be included. They also considered that the Administration should reduce the burden of proof on the part of the mesothelioma workers with less than 5 years of residence in Hong Kong, and simplify the relevant claims procedure. A member suggested that the Administration should set out clearly the criteria under which compensation would be granted to claimants suffering from mesothelioma.

Conclusion

15. In view of the concerns of some members of the Manpower Panel about the general policy of whether compensation should cover both benign and non-cancerous mesothelioma, member may wish to consider whether to set up a Bills Committee to examine relevant issues.

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