
From : CM/M(SS3) To : All HMs/PSMs in EMD Date : 7 December 2007

Estate Management Division Instruction No. M07/2007(S)

**Supplement to
Administration of Labour Protection Clauses
in Cleansing and Security Service Contracts
of HD Directly Managed Estates
(Hardline Approach towards Employment Related Irregularities)**

Status : Mandatory

Contact Point : Mrs. CHENG CHUNG Yuen-lan HM/Estate Services (Tel. : 2761 5912)
Mr. CHAU Yuen-leung HM/CMT (Tel. : 3162 0589)

PURPOSE

1. This instruction serves to supplement EMDI M07/2007 to inform estate management staff to implement the hardline approach towards employment related irregularities committed by contractors employing non-skilled workers in cleansing, security and property services contracts of HD properties

BACKGROUND

2. According to EMDI No. M07/2007, **Default Notice that Carries Demerit Point (DNNDP)** should be issued to contractors violating contractual obligations in respect of :-
 - (a) committed wages;
 - (b) working hours;
 - (c) signing of Standard Employment Contract; and
 - (d) wage payment by means of autopay.
3. In addition, **Default Notices which Do NOT Carry Demerit Points (DNNDP)** should also be issued for exploitation acts other than the four breaches mentioned at paragraph 2 above and other than those subject to conviction under the employment related ordinances. These irregularities include cross-region working, collection of charges such as fees for uniform, training, administration and equipment, etc. [For details on issuance of DNNDP, please refer to paragraph 13 of EMDI M07/2007. DNNDPs issued should be copied to SM/P2, SHM/EDS, SPSM/SS, DSHM/SPSM and RCM for record purpose (list of cc officers supersedes those suggested on the sample DNNDP letters attached at **Annex XI** of EMDI M07/2007)].

ACTION

Hardline Approach

4. With a view to further protecting the rights and benefits of non-skilled workers from exploitation by service contractors, it was endorsed during the **EMD meeting on 2.11.2007** that a **Hardline Approach** should be adopted against **ALL** employment-related irregularities.

Central Monitoring Mechanism

5. HM/CMT will oversee the follow-up actions taken by estate staff on suspected employment-related irregular cases in a specified time-frame. Starting from January 2008, a detailed report on irregular cases has to be submitted to EMD meeting by CMT on quarterly basis. A "*Flow Chart on Handling of Suspected Employment- related Irregular Cases*" is attached at **Annex A** with main actions to be taken by estate staff highlighted below for easy guidance:-
- (a) To inform CMT of complaint cases on exploitation received through various channels (e.g. CRMS) for recording and monitoring within seven working days.
 - (b) To take follow-up actions on the irregular cases within two months' time-frame.
 - (c) To inform CMT the progress monthly for cases not completed within two months.
 - (d) DSHM/SPSM's endorsement is required for each issue of DNNDP/DNNDP or non-issue of DN.
 - (e) To pass the fully completed cases, endorsed by DSHM/SPSM, to CMT for monitoring.
 - (f) In case there is disagreement on the outcome endorsed by DSHMs/SPSMs, RCM's clarification will be sought before making a conclusion.
6. Actions to be taken against any employment-related irregularities are at **Annex B** for reference.
7. Typical cases which warrant the issue of DNNDP/DNNDP, though not exhaustive, are attached at **Annex C** for easy reference. Moreover, supplementary information from CMT (FAQ and case study notes) can be viewed through the following path: e-Housing > EM > Tenancy Management > PHRM Sub-section > CMT Useful Information.

IMPLEMENTATION

8. The above guideline applies to service contracts of both HD-managed and PSA-managed estates. For irregular cases forwarded by HM/CMT to estates concerned as from 1 July 2007, estate management staff is required to adopt the hardline approach to critically examine these cases and issue DNNDP/DNNDP as appropriate. PSAs and cleansing/security contractors will be notified of the hardline approach by staff of SS1 and SS3 respectively.

ENQUIRY

9. For further enquiries, please call the following officers:-
- (a) Mr. C. W . LAU, AHM/ES(2) at 2716 5857 (for direct security contracts)
 - (b) Mr. K. K . WONG, AHM/ES(4) at 2761 5923 (for direct cleansing contracts)
 - (c) Mr. K. Y. LEUNG, BSE/SS1 at 2761 5910 (for PSA contracts)
 - (d) Mr. Y.L. CHAU, HM/CMT at 3162 0589

(Signed)
(K S LEE)
CM/M(SS3)

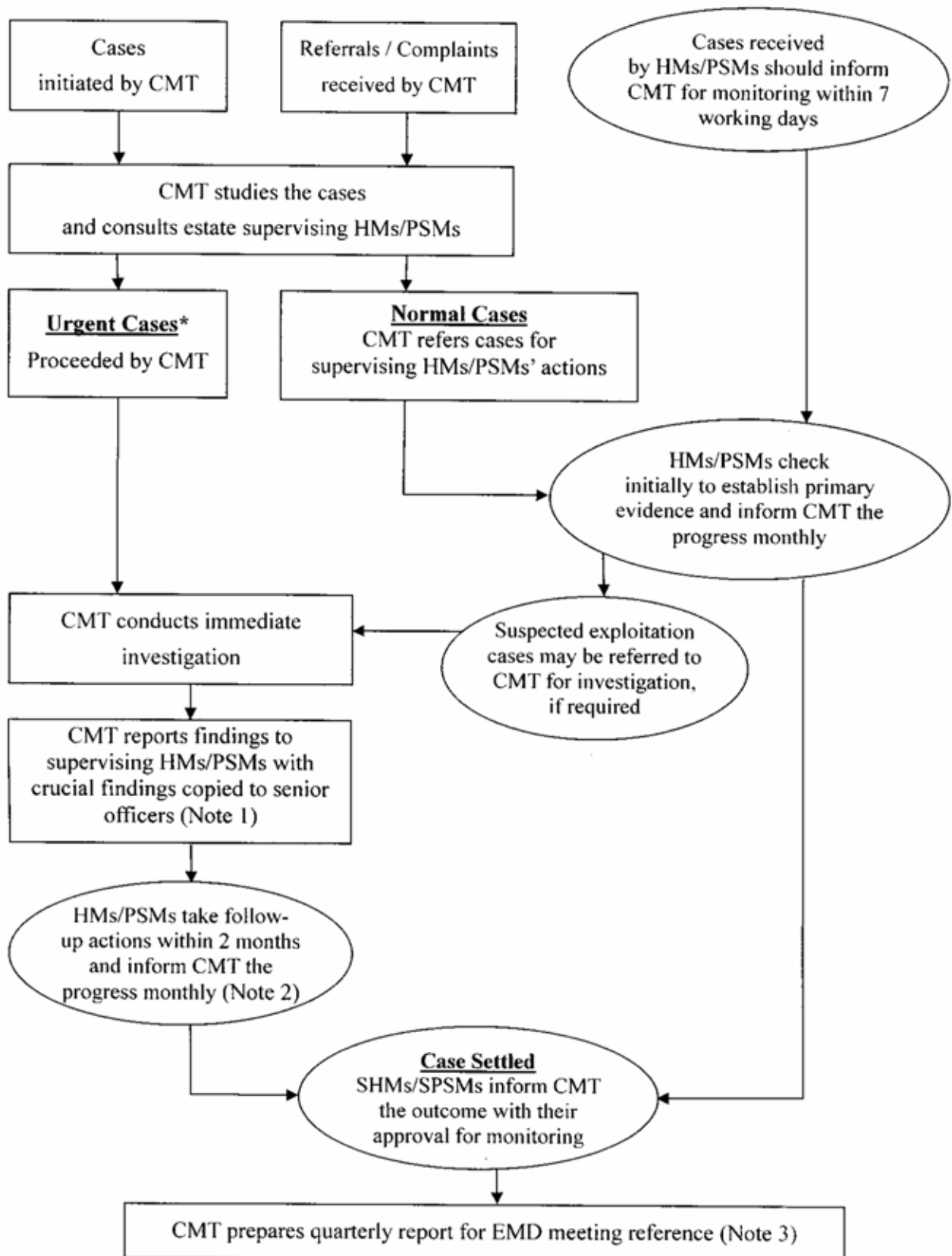
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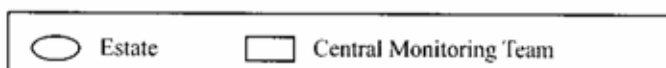
- Annex A - Flow Chart on Handling of Suspected Employment Related Irregular Cases**
- Annex B - Actions to be Taken Against Employment Related Irregularities**
- Annex C - Irregularities which Warrant the Issue of Default Notice**

Uncontrolled copy to - DD/EM, ADs/EM, H/CCR, AD/LS, SM/P2
All CMs, SHMs, SPSMs, HMs and PSMs in EMD

Flow Chart on Handling of Suspected Employment-related Irregular Cases



* Cases may attract public attention or require prompt response from HD.



Note 1 - For completion of investigation report, CMT will check the details of the service contract like non-skilled workers employment records for the past 3 to 4 months which will take about 2 months time. The said investigation period will be extended if the contractor cannot provide the requisite documents for CMT inspection.

Following the new implementation of 《 Employment (Amendment) Ordinance 2007 》 on 13 July 2007, calculation for Holiday Day, Annual Leave Day, Sickness Allowance, Payment for Maternity Leave, End of Year Payment, Wages in lieu of Notice will depend on the worker's past twelve months average daily wages. In the circumstances, CMT may require a longer investigation time to complete the cases.

CMT will report the crucial points of the findings to senior officers for their attention when necessary.

Note 2 - CMT will oversee the progress and review the case monthly until full completion of the case by HMs/PSMs within 2 months with endorsement of their SHMs/SPSMs after considering the justification of the case. HMs/PSMs may consider to issue default notice (DN) with reference to the merits of individual case, standing instructions and guidelines. DN if so issued should be copied to HM/CMT for monitoring purpose.

CMT is appointed to oversee the follow-up action of irregular cases taken by estate staff.

Note 3 - For any case with outstanding period longer than 3 months (counting from receiving CMT investigation report or CRMS referrals), CMT will provide details in a case summary for reference.

Actions to be Taken Against Employment-related Irregularities

1. Referral to Government Departments/Statutory Authorities

Contractors who have been suspected of contravening the terms and conditions in the standard employment contract (SEC) in connection with the Employment Ordinance (Cap 57), Employees' Compensation Ordinance (Cap. 282), Immigration Ordinance (Cap 115) or the relevant sections of the Mandatory Provident Fund Schemes Ordinance (Cap 485) should be referred to concerned government departments/statutory authorities (as listed in Annex V(e) of the above EMDI) for considerations of legal sanctions.

2. Issue of Default Notice Attracting Demerit Point*

Under the Demerit Point System, a default notice attracting one demerit point (DNDP) should be issued to the contractor for each breach of the contractual obligations in respect of wages, daily maximum working hours, signing of SEC and payment of wages by means of autopay to its non-skilled workers.

3. Issue of Default Notice Not Attracting Demerit Point*

For breaches of other terms and conditions in the SEC not covered by relevant ordinances and the Demerit Point System, default notices not attracting demerit point (DNNDP) should be issued to the contractors.

4. Non-issue of DN

For exceptional cases when the breach was purely due to circumstances beyond the contractor's duty and control that the issue of DN may not be warranted, each of such exceptional cases should be considered on its own merits and are fully justified.

In any event, estate staff should thoroughly investigate each and every report or complaint of breach of contractual obligations and refer the cases to concerned departments / issue DNNP/DNNDP as appropriate when the breach of contractual obligations is fully substantiated. Where appropriate, advice from Labour Department should be sought so as to confirm whether the contractors are in breach of the relevant contractual obligations before issue of DN.

* Please refer to Annex C for cases which warrant the issue of DNDP/DNNDP.

Irregularities which warrant the issue of Default Notice

Irregularities which warrant the issue of Default Notice that Carries Demerit Point (DNDP)	Example
1. Wages ^(Note 1)	(a) underpayment of wages (e.g. fail to pay overtime allowance, miscalculation of overtime payment by using the calculation of deduction for absentee, etc.) (b) fail to pay employee working on rest days
2. Working Hours	(a) the working hour of cleansing worker exceeds the maximum limit stated in the contract (b) the working hour of security guard exceeds 8 hours in any 24-hour period
3. Standard Employment Contract (SEC)	(a) no Standard Employment Contract signed for employee working for more than 7 days (b) non-standard employment contract signed
4. Auto-pay	(a) wage payment not by auto-pay

Irregularities which warrant the issue of Default Notice that Carries No Demerit Point (DNNDP)	Example
1. Leave ^(Note 1)	(a) payment of wage/cash in lieu of rest days, statutory holidays or paid annual leave ^(Note 2) (b) fail to grant rest days, statutory holidays or paid annual leave to employee
2. Mandatory Provident Fund (MPF) ^(Note 1)	(a) late contribution of MPF (b) absence of contribution record
3. Admin / Uniform Charges	(a) collection of charges for uniform deposit/uniform, laundry, administration and training, etc.
4. Others	(a) fail to provide the duplicate copy of the SEC to employee (b) fail to issue salary statement to employee (c) arrange employee to work in cross-region

(Note 1) These irregularities may also be breaches in **Employment Ordinance**, **Employees' Compensation Ordinance** and **Mandatory Provident Fund Schemes Ordinance**. Upon the authorization of the worker concerned, Housing Manager/Property Services Manager should refer the case to relevant Departments for follow up action. If the worker refuses to authorize the referral, Housing Manager/Property Services Manager would, on discretion, consider to issue DNDP/DNNDP to the default contractor.

(Note 2) Employee may choose to accept payment in lieu of the part of his leave entitlement which exceeds 10 days.