



Labour Department (Headquarters)

勞工處 (總處)

Your reference 來函編號 :

Our reference 本處檔案編號 : LD OHS/ 14-01/10

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17 July 2008

Clerk to the LegCo Panel on Manpower
Legislative Council Building
8 Jackson Road
Central
Hong Kong
(Attn: Ms Janet Shum)

Dear Ms Shum

**LegCo Manpower Panel Meeting on 20.3.2008
Follow-up Issues**

I refer to the discussion at the Manpower Panel meeting held on 20 March 2008 and write to provide additional information as requested by Members on :-

- (a) the appeal mechanism for diagnosis of occupational diseases with reference to international practice;
- (b) the latest position of the International Labour Organization in respect of occupational musculoskeletal disorders;
- (c) the need to include other musculoskeletal disorders of the hand or forearm in the list of occupational diseases prescribed in the Employees' Compensation Ordinance (Cap. 282); and
- (d) the progress of the Administration's follow-up on the issue of overnight work.

(a) Appeal mechanism for diagnosis of occupational diseases

At present, 48 occupational diseases are prescribed under the Employees' Compensation Ordinance (ECO). Employers are required to notify cases of these occupational diseases to the Commissioner for Labour. When a notification is received, the Labour Department (LD) will process the compensation claim in accordance with the ECO, including referring the case to an Ordinary Assessment Board for assessment of loss of earning capacity arising from the occupational disease, if necessary.

If there is dispute between the employer and employee as to whether the disease that the latter is suffering from is a prescribed occupational disease under the ECO, the LD will refer the case to its Occupational Health Service (OHS) for medical opinion. The LD will then pass the medical opinion onto the employer and employee concerned to help them resolve the dispute. If any new information arises during the conciliation process, e.g. information on work practice, the LD will refer it to the OHS for a review of the medical opinion. In any case, if the dispute could not be resolved through conciliation, the aggrieved party will have to resort to the District Court for a judgement.

In other jurisdictions where a list of occupational diseases has been prescribed for compensation purpose, if disputes could not be resolved through review and conciliation, the cases will be referred to a commission, tribunal or court for hearing depending on the arrangement in individual jurisdiction. In Singapore, New Zealand and some states of Australia and Canada, such dispute cases are directly referred to the court for a judgement, as is in the case of Hong Kong. As such, there is already in place an appeal mechanism in Hong Kong for handling disputes on diagnosis of occupational diseases and which is comparable to international practice.

(b) Occupational musculoskeletal disorders as defined by the International Labour Organization (ILO)

The ILO, in its latest List of Occupational Diseases Recommendation 2002, defines occupational musculoskeletal disorders as "musculoskeletal diseases caused by specific work activities or work environment where particular risk factors are present". Examples of such risk factors are rapid or repetitive motion, forceful exertion, vibration and awkward postures.

(c) Whether necessary to include other musculoskeletal disorders of the hand or forearm in the list of occupational diseases prescribed in the ECO

Following international practice, the LD has all along adopted the following criteria for determining whether a disease should be prescribed as an occupational disease under the ECO: -


- i. the disease imposes significant and recognized risk to workers engaged in a certain occupation in Hong Kong; and
- ii. the relationship between the disease and the occupation can be reasonably presumed or established in individual cases.

Based on the ILO's definition of occupational musculoskeletal disorders and the above set of criteria, altogether five musculoskeletal disorders of the hand or forearm, namely tenosynovitis, carpal tunnel syndrome, bent elbow, bent hand and cramp, have already been prescribed as occupational diseases under the ECO. At present, the number of occupational musculoskeletal disorders of the hand or forearm prescribed in Hong Kong is comparable to, if not more than, that prescribed in other jurisdictions such as the UK, Canada and Australia. The need to add other musculoskeletal disorders of the hand or forearm to the prescribed list of occupational diseases under the ECO remains to be established.

(d) Progress of follow-up on the issue of overnight work

Regarding the issue of shift work involving overnight shift, the LD is preparing a guide on shift work for reference by employers and employees when making arrangements for shift work. Consultation on the draft is in progress.

Yours sincerely



(Dr L M Leung)

for Commissioner for Labour