

*Occupational safety and health*

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The Audit Commission ("Audit") conducted a review of the Labour Department ("LD")'s work in occupational safety and health.

2. Occupational safety and health is regulated mainly through the Factories and Industrial Undertakings Ordinance (Cap. 59) ("FIUO") and the Occupational Safety and Health Ordinance (Cap. 509) ("OSHO"). FIUO applies to industrial undertakings (e.g. factories, construction sites and catering establishments) to provide safety and health protection for workers in the industrial sector, while OSHO extends the safety and health protection of employees to the majority of economic activities and covers almost all workplaces. LD's work is important in ensuring that risks to the safety and health of people at work are properly managed by legislation, enforcement, education and publicity efforts. For 2017-2018, the estimated expenditure of LD on occupational safety and health amounted to \$510 million. In 2016, the number of occupational injuries was about 36 000.

3. The Committee noted the following findings from the Director of Audit's Report:

- according to FIUO, the proprietor having the management or control of a Notifiable Workplace<sup>1</sup> should give the Commissioner for Labour notification of the workplace before commencement of operation. However, according to the Construction Sites (Safety) Regulations (Cap. 59I) made under FIUO, notification of construction work was only required to be submitted within seven days after commencement of the work. As such, there was a seven-day gap between commencement of the construction work and the submission of notification to LD;
- Audit examined 20 accident cases that occurred in 2016 at Notifiable Workplaces and found that the proprietor of eight (40%) Workplaces had not submitted the required statutory notifications to LD before the LD's investigation, and no prosecution had been taken against the non-compliance of the notification requirement from January 2012 to July 2017;

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<sup>1</sup> Notifiable Workplaces means (i) any factory, mine or quarry; and (ii) any premises or place in which a Dangerous Trade or Scheduled Trade under FIUO is carried on or is proposed to be carried on.

- inspection priorities were given to workplaces of 23 hazardous non-building and engineering construction trades, which were identified by LD according to the assessment of the prevailing risks. However, the list of hazardous trades drawn up in January 2013 had not been reviewed until July 2017;
- as at 31 March 2017, there were 6 074 backlog cases of inspection<sup>2</sup> on inactive non-building and engineering construction workplaces (i.e. construction sites where works were carried out intermittently or sites under defects liability period), and 23 414 backlog cases on non-building and engineering construction workplaces. Audit examined 80 inspections carried out by LD in the period from 1 April 2016 to 31 March 2017 and found that 24 (30%) inspections were conducted more than 90 days after the workplace files were brought up;
- inspecting officers only documented the irregularities identified during inspections, but not the details of inspection work carried out, such as the work processes examined and the results of such examinations;
- if an inspection was conducted jointly by more than one inspecting officer, LD counted the number of inspecting officers involved, but not the number of workplaces inspected, as the number of inspections conducted;
- the highest amount and the average amount of fines under the five most common offences<sup>3</sup> of FIUO and OSHO were significantly below the maximum amount stipulated in the legislation;

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<sup>2</sup> LD had a bring-up system for workplace files to be brought up for inspections. If the file was not brought up and assigned to an inspecting officer on the scheduled date, it was counted as a backlog.

<sup>3</sup> These five most common offences were: (i) failure to ensure that suitable and adequate access to and egress from the construction site is provided and properly maintained; (ii) failure to take adequate steps to prevent any person on the construction site from falling from height (for contractor responsible for the construction site); (iii) failure to take adequate steps to prevent any person on the construction site from falling from height (for contractor who has direct control over the construction work); (iv) failure to maintain in good condition and free from obstruction the means of escape from the workplace in case of fire; and (v) failure to ensure that all means of escape from the workplace are maintained in a safe condition and kept free from obstruction.

- in 2016, of LD's 225 inspections on 146 providers on mandatory safety training courses,<sup>4</sup> 182 (81%) were conducted at a time when there was no course session and thus many aspects of the courses could not be observed;
- in 2009, LD conducted a review to devise improvement measures on recognition and monitoring of mandatory safety training courses. In April 2011, LD proposed to the Legislative Council Panel on Manpower a two-phase approach to implement the improvement measures. Two of the three Phase One improvement measures had not been fully implemented up to August 2017, and there was also no timetable to implement these measures and the Phase Two measures;
- it was stipulated in the Factories and Industrial Undertakings (Safety Officers and Safety Supervisors) Regulations (Cap. 59Z) and the Factories and Industrial Undertakings (Safety Management) Regulation (Cap. 59AF) that the contractors or proprietors of some workplaces were required to employ a Registered Safety Officer ("RSO") to assist in the promotion of the occupational safety and health of employees, and/or a Registered Safety Auditor ("RSA") to audit the safety management system. One of the qualifications for registering as an RSA was that the person should be an RSO. Prior to June 2002, the designation of an RSO was valid for life. However, according to the amendments made under the Factories and Industrial Undertakings (Safety Officers and Safety Supervisors) Regulations in 2002, the registration of RSOs should be valid for a period of four years subject to renewal or revalidation. Under the renewal/revalidation requirement for RSOs, there was a possibility that some RSAs who ceased to be RSOs after they had become RSAs;
- the Kwun Tong Occupational Health Clinic could carry out 30 medical examinations for workers prone to exposure to radiation in each session reserved for such examinations. From 2012 to June 2017, the average number of no-show cases ranged from 11% to 15%, the average number of booked examinations in each session decreased from 27.8 to 22.9, and the number of sessions in which not more than 20 examinations were carried out increased from 17% to 56% of the total number of sessions. Moreover, the law stipulated that the

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<sup>4</sup> Every person engaged in specific high risk sectors, activities or machine operations is required to complete the relevant mandatory safety training course organized by a training course provider.

examinations carried out for the workers' first employment would be provided free of charge, but it did not stipulate whether the periodic examinations after the workers' first employment should be provided free of charge. Audit noted that workers and their employers were not required to pay any fee for the periodic examinations;

- LD did not monitor the number of outstanding inspections on occupational health and the delay in carrying out such inspections after they were brought up. Audit reviewed 24 inspections on occupational health conducted from July 2016 to June 2017 and discovered delays in 13 (54%) of the inspections ranging from four days to three years; and
- in 2016, LD reported in the Controlling Officer's Report the number of "investigations/surveys/examinations/assessments/clinical consultations" without the breakdown information.

4. The Committee did not hold any public hearing on this subject. Instead, it asked for written responses regarding the enforcement of the notification requirement for Notifiable Workplaces; the review of the list of hazardous trades and the maximum amount of fines under FIUO and OSHO; measures to clear the outstanding inspections on occupational safety and health and to address the shortcomings that some RSAs were not RSOs; inspections and improvement measures on mandatory safety training courses; arrangements for medical examination of radiation workers; and the reporting of performance indicators in the Controlling Officer's Report. The consolidated replies from **Commissioner for Labour** and **Director of Health** are in *Appendix 39*.

5. The Committee wishes to be kept informed of the progress made in implementing the various recommendations made by Audit.