

**立法會**  
**Legislative Council**

LC Paper No. CB(2)2227/99-00  
(These minutes have been seen  
by the Administration)

Ref : CB2/SS/4/98

**Subcommittee on  
Regulations relating to Occupational Safety and Health**

**Minutes of Meeting  
held on Monday, 24 January 2000 at 3:00 pm  
in Conference Room A of the Legislative Council Building**

- Members Present** : Hon Andrew CHENG Kar-foo (Chairman)  
Hon HO Sai-chu, SBS, JP  
Hon Cyd HO Sau-lan  
Hon Michael HO Mun-ka  
Hon LEE Cheuk-yan  
Hon LEE Kai-ming, SBS, JP  
Hon CHAN Wing-chan  
Dr Hon LEONG Che-hung, JP
- Member Absent** : Dr Hon LUI Ming-wah, JP  
Hon Ronald ARCULLI, JP  
Hon TAM Yiu-chung, GBS, JP
- Public Officers Attending** : Mr Herman CHO  
Principal Assistant Secretary for Education and Manpower
- Mr LAM Kam-kwong  
Principal Assistant Secretary for Education and Manpower  
(Designate)
- Mr Samson LAI  
Assistant Secretary for Education and Manpower

Action

Dr LEUNG Lai-man  
Occupational Health Consultant, Labour Department

Mr J D SCOTT  
Senior Government Law Draftsman

Ms Anastasia KWONG  
Senior Government Counsel

**Clerk in Attendance** : Mrs Constance LI  
Chief Assistant Secretary (2) 2

**Staff in Attendance** : Mr Arthur CHEUNG  
Assistant Legal Adviser 5

Miss Betty MA  
Senior Assistant Secretary (2) 1

---

**I. Confirmation of minutes**  
[LC Paper No. CB(2)913/99-00]

The minutes of meeting held on 27 July 1999 were confirmed.

**II. The Administration's response to concerns raised at the meeting on 13 January 2000**  
[Paper No. CB(2)942/99-00(01)]

2. At the Chairman's invitation, Principal Assistant Secretary for Education and Manpower (PAS(EM)) highlighted the main points in the Administration's response.

Suspension from employment in a particular occupation

3. On members' suggestion that paid sick leave should be granted to worker(s) on suspension from employment where the proprietor and the worker concerned could not agree on the redeployment arrangement, PAS(EM) said that the Administration considered the proposal inappropriate for the following reasons -

Action

- (a) entitlement to sick leave, sickness allowance and compensation for temporary incapacity of a worker was governed by the Employment Ordinance and the Employees' Compensation Ordinance respectively. It was not the intention of the proposed Factories and Industrial Undertakings (Medical Examinations) Regulation to increase or reduce the rights and benefits of employees under the two Ordinances; and
- (b) it was envisaged that many employees would opt to claim paid sick leave instead of redeployment, even if reasonable arrangement could be made for deploying the worker to a suitable alternative job.

PAS(EM) further said that the Administration maintained the view that there was little justification to provide additional ex-gratia payments under the Regulation for workers who were certified permanently unfit for a particular occupation.

4. Mr Michael HO inquired the practical arrangements for a worker who was certified unfit for a particular occupation but was not granted sick leave. PAS(EM) responded that the proprietor concerned should arrange a change of post for the worker subject to the latter's agreement.

5. Some members considered that if the Regulation did not include specific provisions on redeployment, most proprietors would not make such arrangements for the workers. These members expressed dissatisfaction that the Administration did not agree to include the redeployment arrangement in the Regulation. The Chairman suggested and members agreed with the Administration to hold an internal discussion after the Subcommittee meeting with the Administration on how to follow up the matter.

Qualifications for members of the Appeal Board

6. PAS(EM) said that the Administration had agreed to the Subcommittee's suggestion that the Regulation should specify that members of the Appeal Board must possess specialist qualifications. The proposed amendment was set out in paragraph (d) of the Administration's response. Dr LEONG Che-hung asked whether the Administration would specify in the Regulation the relevant specialties required of members of the Appeal Board. Occupational Health Consultant/Labour Department (OHC/LD) responded that section 13(2) was intended to provide flexibility for the Commissioner for Labour to appoint to the Appeal Board specialists from relevant fields according to the nature of the appeal case. Dr LEONG said that the Administration should spell out its intention clearly when introducing the revised Regulation into the Legislative Council to avoid misunderstanding.

Admin

Action

### Right of the Appeal Board to make new recommendations

7. In response to Dr LEONG Che-hung, PAS(EM) said that the Appeal Board should be empowered to make new recommendations to replace the original recommendation in some cases. For example, the Appeal Board might recommend temporary suspension in place of the original recommendation of permanent suspension. The Administration also considered it undesirable to allow further appeal against a recommendation of the Appeal Board whose decision should be final. An appellant could seek judicial review if he was aggrieved by the decision of the Appeal Board.

8. Dr LEONG Che-hung asked whether other appeal boards could also make new recommendations other than confirmation or revocation of the original recommendation. Assistant Legal Adviser 5 (ALA5) said that as far as he was aware, some other appeal boards also had similar powers to make new recommendations.

### Specification of medical examination fees

Admin

9. Responding to Dr LEONG Che-hung, PAS(EM) said that the Administration would compile information on the range of fees for each type of medical examinations required under Schedule 2 for inclusion in a reference guide for the proprietors and workers.

### Other issues

#### *Definition of "industry" in section 7*

10. ALA5 pointed out that the Factories and Industrial Undertakings Ordinance did not provide a definition of "industry" while reference to "industry" was made in section 2 of the proposed Regulation. ALA5 asked whether reference to "industry" in the Regulation should be substituted by "industrial undertaking" for consistency, if the two terms carried the same meaning.

11. Senior Assistant Law Draftsman (SALD) responded that although "industry" was not defined in the principal Ordinance (Cap. 59), there were references to the term in the Ordinance. For the purpose of this Regulation, "industry" referred to the industrial undertakings covered by the Regulation, i.e. construction industry (section 2(1)) and industries other than construction industry (section 2(2)).

Action

*Medical examination requirement in section 3*

12. ALA5 said that while the Administration stated in its previous response in September 1999 [LC Paper No. CB(2)608/99-00(01)] that section 3 did not apply to workers who were already in the employment of a designated occupation, it was unclear from the drafting of section 3 as to whether it applied only to new recruits. He also asked the Administration to clarify how exemption would apply to employees in sections 7 and 8. SALD responded that section 3 was to ensure that the proprietor would comply with the requirements for not employing any persons who were not medically examined, unless the proprietor had obtained an exemption from the Commissioner for Labour. He also requested ALA5 to provide his questions in writing for a response from the Administration. ALA5 agreed.

ALA5

**III. Clause-by-clause examination**

[File Ref: EMBCR 1/2961/95 and Paper No. CB(2)608/99-00(02)]

Schedule 1 to the Regulation

13. OHC/LD said that Schedule 1 set out the 17 occupations which were covered by the Regulation. Items 1 to 4 covered occupations which were already included in existing legislation, while items 5 to 17 were new occupations proposed for inclusion in the Regulation. Schedule 2 set out the types and frequency of the medical examinations required for different occupations.

14. Responding to Dr LEONG Che-hung, OHC/LD said that the Administration had consulted the relevant professional bodies and they considered the proposed medical checks reasonable.

Schedule 2 to the Regulation

15. Miss Cyd HO noted that under item 2 of Schedule 2, a worker who had suffered from a cold and other specified illness necessitating an absence from work for more than 3 consecutive days was required to undergo a fresh medical examination before he could resume duty in relation to compressed air work. She asked about the rationale for the requirement and whether this was enforceable.

16. OHC/LD explained that the medical check was to ensure that a worker who had suffered from the specified illnesses was medically fit to perform compressed air work. It was the proprietor's duty to ensure compliance with the requirements in the Regulation.

17. Mr Michael HO expressed doubt about the practicability of requiring the proprietor to comply with the item 2(b) of Schedule 2. Mr HO commented that

Action

the worker concerned should be in a better position to know whether he was capable of performing compressed air work. OHC/LD advised that the worker concerned was encouraged to inform the proprietor of his medical conditions in these circumstances so that a medical check could be arranged to ascertain his medical fitness.

18. Mr CHAN Wing-chan referred to item 4 of Schedule 2 and asked why the medical examination was to be conducted after commencing employment. OHC/LD explained that the purpose for the medical examination for carcinogenic substances under item 4 was to collect data for future comparison.

Admin

19. Dr LEONG Che-hung said that some persons suffering from other illnesses were not suitable to have contacts with carcinogenic substances. To better safeguard workers' health, the Administration might consider requiring medical examinations for carcinogenic substances to be conducted before commencing employment. OHC/LD said that the medical examination arrangement for item 4 was in line with the current practice. However, he agreed to consider whether pre-employment examination should be conducted before commencing employment.

20. In response to ALA5, PAS(EM) agreed to improve the presentation of Schedule 2, for example, by amending the heading of column 3 (frequency of periodic examination) and to group all references to frequency of examination under column 3.

Factories and Industrial Undertakings (Carcinogenic Substances) (Amendment) Regulation 1999 and the Factories and Industrial Undertakings (Asbestos) (Amendment) Regulation 1999

21. Members noted that technical amendments were proposed by the Administration to the above two Regulations as set out in Annexes B and C to the Legislative Council Brief (File Ref. EMBCR 1/2961/95). Members raised no question on the amendments.

Factories and Industrial Undertakings (Amendment) (Regulation) 1999

22. Members also noted that the Administration had provided a revised version of the Amendment Regulation to rectify the inadvertent deletion of regulation 45(1)(c) (appendix to LC Paper No. CB(2)942/99-00(01)). The other amendments as set out in Annex E of the Legislative Council Brief were only technical.

Admin

23. ALA5 suggested that the Administration might consider amending the heading of clause 4 as "Penalty for contravention of regulations 24, 25, 33 and 36(1)". PAS(EM) agreed.

Action

Factories and Industrial Undertakings (Work in Compressed Air) (Amendment) Regulation 1999

24. OHC/LD said that a new section 28 was proposed to adjust the frequency for conducting radiological examination. At present, persons employed in compressed air environment were required to undergo annual radiological examination of his shoulder, hip and knee joints once every year. To better safeguard the workers' health, the frequency of such examination was adjusted as follows -

- (a) compressed air at a pressure exceeding 14 pounds per square inch - within 3 months after commencing employment;
- (b) compressed air at a pressure exceeding 14 pounds per square inch but not exceeding 28 pounds per square inch - once every 5 years; and
- (c) compressed air at a pressure exceeding 28 pounds per square inch - once every 3 years.

Consequential amendments

25. PAS(EM) said that the Construction Industry Training Authority would charge an additional levy of 0.03% for arranging construction works to undergo pre-employment and regular medical examinations as required by the Regulation. To effect the changes, the Administration would need to propose amendments to the Industrial Training (Construction Industry) Ordinance and the amendment bill would be introduced to the Legislative Council in the next legislative session. The Regulations now under examination would come into operation after the enactment of the amendment bill around early 2001.

Admin

26. At the request of the Chairman, PAS(EM) agreed to provide a complete set of revised Regulations to members of the Subcommittee.

27. The Chairman thanked representatives of the Administration for attending the meeting.

#### **IV. Any other business**

##### Internal discussion

28. The Chairman said that as members held a different view from the Administration with regard to section 10 of the Factories and Industrial Undertakings (Medical Examinations) Regulation, members would need to consider whether to move amendments to this section.

29. At the invitation of the Chairman, ALA5 drew members' attention to the following when considering proposing amendments to section 10 -

- (a) the granting of ex-gratia payments to the workers concerned was an administrative measure which did not necessarily require legislation for implementation; and
- (b) the entitlements of paid sick leave were stipulated in section 33 of the Employment Ordinance which specified that an employee was entitled to two paid sickness days for each completed month of employment for the first year of employment, and four paid sickness days for each month of employment thereafter. The sickness allowance would be four-fifths of the workers' daily wages.

30. ALA5 advised that members would have to consider if additional sick leave other than that provided under the Employment Ordinance was to be recommended under this Regulation, corresponding amendments would have to be made to the principal ordinance, i.e. the Factories and Industrial Undertakings Ordinance.

31. Mr LEE Cheuk-yan acknowledged the technical difficulties in proposing amendments to section 10 of the Regulation. He opined that consideration could be given to granting paid sick leave to a worker within his entitlement of paid sickness days accrued in accordance with section 33 of the Employment Ordinance, during the period of his temporary suspension from employment in a particular occupation. Alternatively, section 10 of the Regulation could be amended to expressly require a proprietor to arrange a change of posts, as far as was reasonably practicable, for the worker concerned subject to the consent of the worker, during the period of suspension.

32. Mr HO Sai-chu expressed a different view from the perspective of an employer. He said that for workers who were recommended temporary suspension but not granted sick leave, the proprietor would normally redeploy the worker concerned to lighter duties. Where no suitable alternative post existed, or a re-deployment arrangement could not be reached, the employment of the



Action

worker might be terminated and such cases could be covered by the Employment Ordinance. However, he had reservations about the feasibility of arranging redeployment for replacement workers or casual workers. Mr HO Sai-chu further said that he would object to imposing further obligations, or a criminal liability on the proprietors in this respect. He also questioned the need for having the requirement stated in the Regulation if the different scenarios were already covered by the Employment Ordinance.

33. Mr LEE Kai-ming expressed concern about the protection of causal workers' interest if these workers were found unfit for a particular occupation. He suggested to seek further information from the Administration as to whether the 17 specified occupations in Schedule 1 to the Regulation were classified as occupational diseases under the employees' compensation laws.

34. On the granting of sick leave, Mr LEE Kai-ming asked whether the sick leave recommended by an occupational health officer or AMP was recognised under the Employment Ordinance. He expressed concern that the sick leave for occupational disease granted by an appointed medical practitioner (AMP) might exceed the worker's entitlement of 120 paid sickness days under the Employment Ordinance. In that case, the interest of the worker concerned might not be sufficiently safeguarded.

35. Mr CHAN Wing-chan shared Mr LEE Kai-ming's concern, as the livelihood of the workers concerned would be affected if no sickness allowance was granted during suspension of employment. Mr CHAN also expressed concern whether the granting of ex-gratia payments was enforceable if it was only an administrative measure.

36. ALA5 pointed out that there would be legal implications in Mr LEE Cheuk-yan's proposal that a proprietor should be required to arrange a change of post for a worker on suspension, and failing which to treat the period of suspension as paid sick leave. He pointed out that "sickness day" in the Employment Ordinance referred to occasions where a worker suffered from illness or disease which actually prohibited him from performing his duties. The consideration of an AMP in granting sick or recommending suspension from employment under the Regulation was however based on the occupational health of the worker, i.e. whether the worker was suitable to work in a particular occupation. Mr LEE's proposal would therefore have the effect of expanding the scope of the granting of paid sickness days under the Employment Ordinance, for which a corresponding amendment to the meaning of "sickness day" might be necessary. It was technically impossible to give effect to the proposal simply by making amendments to the Regulation.

37. Miss Cyd HO said that in view of the technical difficulties for the Subcommittee to propose amendments to the Regulation and the Employment

Action

Ordinance, the Subcommittee should urge the Administration to initiate the necessary amendments.

38. Mr LEE Cheuk-yan enquired whether the concept of sick leave in the Regulation could be amended in line with the meaning of "sickness day" in the Employment Ordinance, so that an employee could be entitled to paid sickness days if certified unfit for work on account of injury or sickness. Mr LEE also considered that the proposed Regulations on medical examinations should be consistent with relevant provisions in the compensation laws.

39. ALA5 advised that the crux of the question was whether the concept of "sickness day" for the purpose of granting paid sickness days under the Employment Ordinance could apply to occupational illness under the proposed Regulation. If the same criteria were adopted by an AMP or a medical practitioner in recommending sick leave for occupational disease and any other illnesses, there would be no need to amend the Regulation.

40. Miss Cyd HO then suggested seeking clarification from the occupational health professionals on the meaning of "sickness" and whether a worker recommended temporary suspension of employment in a particular occupation would normally be granted sick leave. The Chairman suggested and members agreed that the Administration should also be consulted on the interpretation of "sickness" for the purpose of granting paid sickness days under the Employment Ordinance.

Clerk

41. Mr HO Sai-chu remarked that based on his experience, it was uncommon for a worker to be recommended temporary suspension of employment without paid sickness days. He therefore suggested that the Regulation should be allowed to operate for some time to ascertain whether it would give rise to difficulties in relation to the granting of sick leave, before consideration was given to amending the Regulation.

42. With regard to members' views, Mr LEE Cheuk-yan revised his proposal and suggested that section 10 of the proposed Regulation should incorporate a requirement for the proprietor to arrange a change of post for a worker as far as practicable, if the worker was recommended temporary suspension of employment in a particular occupation. If redeployment proved not possible or not acceptable to the worker concerned, then the AMP should be consulted for recommendation of paid sick leave for the worker. Members agreed with the revised proposal and concurred not to deal with the question of criminal liability on the proprietor pending a response from the Administration and the professional bodies on the sick leave issue. The Chairman requested ALA5 to draft the amendments on behalf of the Subcommittee bearing in mind Article 74 of the Basic Law.

ALA5

Action

43. The Chairman informed members that the Administration would provide a response to Mr TAM Yiu-chung's earlier proposal of Occupational Safety and Health Council providing ex-gratia payments to workers affected by the Regulation. He also advised members to put forward any other proposals to the Subcommittee for the Administration's consideration.

44. The meeting ended at 5 pm.

Legislative Council Secretariat

26 May 2000