

立法會
Legislative Council

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(These minutes have been seen
by the Administration and cleared
with the Chairman)

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

Minutes of Meeting
held on Tuesday, 13 June 2000 at 4:30 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 LEE Cheuk-yan
Hon CHAN Wing-chan
Dr Hon LEONG Che-hung, JP
Hon TAM Yiu-chung, GBS, JP

Non-Subcommittee Member

Hon CHAN kwok-keung

Member Absent : Hon Cyd HO Sau-lan
Hon Michael HO Mun-ka
Hon LEE Kai-ming, SBS, JP
Dr Hon LUI Ming-wah, JP
Hon Ronald ARCULLI, JP

Public Officers Attending : Mr LAM Kam-kwong
Principal Assistant Secretary for Education and
Manpower

Mr Samson LAI
Assistant Secretary for Education and Manpower
Dr LEUNG Lai-man

Occupational Health Consultant, Labour Department

Mr J D SCOTT
Senior Government Law Draftsman
Department of Justice

Ms Anastasia KWONG
Senior Government Counsel, Department of Justice

Attendance by : Hong Kong Construction Industry Employees General Union
Invitation

Mr POON To-chuen

Mr CHOI Chun-wa

Hong Kong Construction Industry Professional Plant-
Operators and Mechanics' Association

Mr CHAN Ngan-yau

Hong Kong Construction Industry Bar-bending Workers Union

Mr FUNG Kin-cho

Hong Kong and Kowloon Carpenters General Union

Mr FAN Hiu-cheung

Hong Kong and Kowloon Painters General Union

Mr CHOY Tang-hung

Hong Kong and Kowloon Brick-laying & Construction
Trade Workers' Union

Mr LEE Kam-ming

Hong Kong Plumbing General Union

Mr CHIU Fou-tong

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Hong Kong Construction Industry Formwork Workers Union

Mr CHOW Wai-man

Hong Kong and Kowloon Bamboo Scaffolding Workers Union (Tung-King)

Mr FUNG Wai-keung

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 Nos. CB(2)2226/99-00 and CB(2)2227/99-00]

The minutes of meetings held on 13 and 24 January 2000 were confirmed.

II. Meeting with deputation

[Paper No. CB(2)2311/99-00(01)]

2. The Chairman welcomed representatives of the Hong Kong Construction Industry Employees General Union (the Union) to the meeting. At the invitation of the Chairman, representatives of the Union said that the Union comprised 17 labour unions representing about 19 000 workers in the construction industry. The Union had conducted several consultation meetings with their members who had expressed much concern about the many grey areas in the Regulation. Their views were summarized below.

- (a) While the Union supported the principle of the Regulation to provide better safeguard to workers' occupational safety and health through medical examinations, the Union considered it equally important that the livelihood of workers should not be adversely

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affected. The workers had expressed particular concern about the suspension arrangement where no sick leave was granted.

- (b) As occupational illness often had a long latent period, workers were concerned about the prescribed periods in Second Schedule to the Employees' Compensation Ordinance regarding eligibility for compensation. For instance, a 10-year period was specified for eligibility of compensation in the case of primary epitheliomatous cancer of the skin as a result of engaging in an occupation involving the use or handling of, or exposure to tar, pitch, bitumen and creosote. Since most construction workers were casual workers who did not work for any particular employer, there would be difficulties to establish their service periods. These workers were worried that they might not be eligible for compensation if they did not have ten years service in that occupation immediately before they were found to have contracted the occupational illness.
- (c) The Union preferred deferment of the Regulation unless there was a safety net or a central fund to provide compensation for workers who were suspended from employment on grounds of occupational illness. The Union considered that the Regulation should be re-drafted with corresponding amendments made to the related ordinances.

3. At the request of the Chairman, Principal Assistant Secretary for Education and Manpower (PAS(EM)) responded that the legislative intent of the proposed Regulation was to protect the occupational safety and health of workers employed in the 17 designated occupations. It had never been the intention that the Regulation should adversely affect the employment rights and benefits to which employees were currently entitled. After careful consideration of the Government's legal advice on the compatibility of the proposed Regulation and the Employment Ordinance in response to members' concerns raised at the meeting on 11 April 2000, the Administration had now proposed to defer the proposed Regulation pending more detailed study on the matter and amendment to the Factories and Industrial Undertakings Ordinance (FIUO). The Administration would therefore respond to the Union' concerns at a later stage.

III. Meeting with the Administration

[Paper Nos. CB(2)1911/99-00(01) and CB(2)2210/99-00(01)]

4. The Chairman informed members that the Administration had provided written responses to the three outstanding issues raised at the meeting on 11 April 2000. In the latest written response from the Administration dated 5 June 2000, the Administration considered it necessary to amend section 7 of FIUO in order

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to clarify the legislative intent of the proposed Regulation. As amendment would have to be made to the principal ordinance in the first place, the Administration said that it would not be possible to introduce the proposed Regulation before the end of this session.

5. The Chairman expressed disappointment with the Administration's response. He pointed out that the Subcommittee had repeatedly reminded the Administration to carefully consider the implications of the proposed Regulation on the current entitlements and benefits of employees. Several members including himself had also questioned at previous meetings that the proposed temporary and permanent suspension of employment on medical grounds might be incompatible with existing labour legislation such as the Employment Ordinance. The Chairman considered that had the Administration taken a serious view and addressed these issues earlier, there would be sufficient time to introduce the necessary amendments. He regretted that the Subcommittee's efforts in the scrutiny of the Regulation in the past year were now totally wasted.

6. Mr LEE Cheuk-yan shared the Chairman's disappointment. He commented that the policy bureau had not taken an overall view of the implications of the proposed Regulation on other employment related ordinances before introducing the legislative proposal. Referring to the Administration's written response, he noted that a worker who was recommended temporary suspension under the Regulation would not be regarded as laid off under section 31B(1) of the Employment Ordinance. He further noted that the Administration proposed to amend section 7 of FIUO to put it beyond doubt that the employee would be deemed to be continuing his employment during the period of suspension. In this connection, he asked whether the Administration had considered ways to assist these workers so that their livelihood would not be adversely affected. For example, consideration could be given to granting sickness allowance at four-fifths of the worker's daily wages during the period of temporary suspension.

7. PAS(EM) responded that the Administration had given very careful consideration to the matter and had obtained detailed legal advice from the Department of Justice after Mr LEE Cheuk-yan had raised the concern again at the meeting on 11 April 2000. The Department of Justice had advised that the Employment Ordinance did not cater for the situation of an employee being suspended from work by law due to his medical unfitness to perform his duties, and that the Commissioner for Labour (C for L) was not currently empowered to make a regulation as such under FIUO. At present, a proprietor did not have statutory responsibility to arrange re-deployment of a worker who was recommended temporary suspension of employment on grounds of medical unfitness. The Administration noted that if the proprietor did not arrange a change of post and did not terminate the employment of the worker during the period of suspension, the worker would be in a difficult position as he would not

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receive any wages or eligible for severance payment under the Employment Ordinance. To cater for such situation and to safeguard the worker's employment rights and benefits, it would be necessary to introduce a bill to amend FIUO in the first place. As there was no other viable alternative, the Administration had to take a painful decision to defer the proposed Regulation pending amendment to FIUO.

8. The Chairman remarked that the Administration's response was exactly what the Subcommittee had warned the Administration at previous meetings about the implications of the suspension arrangements. He was of the view that the Administration should consider not to transfer a public officer responsible for an important legislative proposal in order to provide continuity of the discussion of such proposals at the Legislative Council (LegCo).

9. Dr LEONG Che-hung commented that although omissions or oversight did occur sometimes in the preparation of legislative proposals, the loophole referred to in the Administration's written response had been pointed out by the Subcommittee at an early stage and he could not understand why the Administration only found it out lately. The belated acknowledgement of the loophole had wasted the time and efforts of the Subcommittee and that of deputations who had to take leave to give views to the Subcommittee. He therefore asked whether the Administration had explored other alternatives to enable enactment of the Regulation before the end of the current legislative session, subject to the condition that the provisions therein were fair to both employers and employees.

10. PAS(EM) responded that he had consulted the Department of Justice several times on the issue and was advised that there was no viable alternative other than amending the principal ordinance. While he appreciated the Subcommittee's feeling on the matter, he emphasized that the Administration had given careful consideration to the significant implications of the suspension arrangement on the employment rights and benefits of the employee concerned. If the Regulation was enacted now without amendment to FIUO, it could give rise to a situation where a worker under prolonged suspension without redeployment or sick leave might be forced to resign and give up his severance payments and other benefits under the Employment Ordinance.

11. With regard to entitlement to employee compensation, members noted that the Union representatives had expressed concern that some casual workers might not be able to get compensation because not all contractors took out insurance policies for their employees. Furthermore, the Union considered it difficult for casual workers to meet the temporary suspension period of 14 days in a month in order to be entitled to the severance payments under the Employment Ordinance. Mr LEE Cheuk-yan and Mr CHAN Wing-chan therefore sought

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further clarification as to whether all the designated occupations in the proposed Regulation had been covered by the existing employee compensation legislation.

12. Occupational Health Consultant, Labour Department (OHC/LD) advised that those occupational diseases related to the 17 specified occupations in the Regulation were already covered by the Employees' Compensation Ordinance, the Occupational Deafness (Compensation) Ordinance or the Pneumoconiosis (Compensation) Ordinance.

13. On the prescribed periods in the Second Schedule to the Employees' Compensation Ordinance, OHC/LD clarified that an employee would be eligible for compensation if the employee had worked in that particular occupation during the prescribed period immediately before he was found to have contracted the occupational illness. OHC/LD stressed that the prescribed period in the Second Schedule to the Employees' Compensation Ordinance was not the minimum service period in order to be eligible for compensation. The length of service in the particular occupation was irrelevant as long as the worker had actually worked in that occupation during the period.

14. Senior Assistant Law Draftsman, Department of Justice supplemented that the primary objective of the proposed Regulation was to protect the health of workers' in designated occupations. Compensation for workers on grounds of occupational illness was separately provided for under the Employees' Compensation Ordinance and related ordinances. Section 7 of FIUO did not enable C for L to make regulation on employment issues related to suspension, dismissal, termination, redundancy, compensation, sickness days and redeployment. It was therefore necessary to amend section 7 of FIUO to give effect to the proposed Regulation that an employee was deemed to be continuing his employment during the suspension period and was entitled to the same rights and benefits under the Employment Ordinance as any employee engaged in a continuous employment.

15. Dr LEONG Che-hung commented that he and other occupational health professionals had strived for many years to have pre-employment and periodic medical examinations for the protection of workers' health, and many workers also wanted early implementation of the Regulation. He therefore asked when the Administration would be ready to re-submit the Regulation to LegCo.

16. PAS(EM) assured members that the Administration would re-introduce the Regulation into LegCo as early as possible in the next term, after resolving the various issues raised by members and affected parties.

17. Mr CHAN Wing-chan said that while he shared the feeling that the Subcommittee' efforts in the scrutiny of the Regulation had been wasted, he supported withdrawal of the proposed Regulation as many issues had yet to be

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resolved. He requested the Administration to reconsider the suggestion of granting ex gratia payments to workers who were recommended permanent suspension from employment in a particular occupation. He also reminded the Administration to widely consult the industries and workers affected by the legislative proposal before re-submission to LegCo.

18. Mr HO Sai-chu said that he welcomed the Administration's decision to withdraw the Regulation in the light of members' concerns and comments. He said that proprietors had pointed out previously that the proposed Regulation would have far-reaching implications on the employment rights and benefits of the workers concerned. However, the proprietors were still willing to shoulder additional responsibility and pay the medical examination fees for the benefit of workers' health. To ensure that the future legislative proposal was fair to both employers and employees, he urged the Administration to conduct detailed consultation with the industry and workers' associations beforehand. The Administration should also make clear to proprietors their commitments and the extra costs involved in implementing the mandatory medical examinations. He added that Members belonging to the Liberal Party would be prepared to support a legislative proposal which was to be modelled on the Regulation now shelved.

19. The Chairman said that Members belonging to the Democratic Party were of the view that if the Administration had addressed the Subcommittee's concerns about the temporary suspension arrangements at an early stage, the Administration would have sufficient time to make the necessary amendments. He therefore invited members' views as to whether the Subcommittee should move a motion of regret on the Administration.

20. Mr LEE Cheuk-yan said that while he shared the Chairman's disappointment, he did not consider it necessary for the Subcommittee to move a motion of regret. He hoped the Administration could learn from the case and make thorough assessment on the compatibility of all legislative proposals with, and their implications on, other ordinances. He considered that such assessment should be included in the Brief for the Executive Council and LegCo.

21. Mr CHAN Kwok-keung expressed support for the Administration's withdrawal of the proposed Regulation in view of the grey areas yet to be resolved. He urged the Administration to address workers' concerns when re-introducing the legislative proposal into LegCo.

22. Mr HO Sai-chu said that although he was also disappointed with the delay in the enactment of the Regulation, he expressed appreciation that the Administration had taken a responsible decision and had acknowledged the need for further amendments to FIUO. He would therefore suggest acceptance of the Administration's withdrawal of the Regulation.

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23. The Chairman noted the different views expressed by members. In concluding the discussion, the Chairman said that the Subcommittee had no option but to accept the Administration's proposal to defer the introduction of the proposed Regulation. He said that the Subcommittee would make a report to the House Committee on its deliberations. He urged the Administration, when making a legislative proposal in future, to examine carefully its implications on related legislation. He also remarked that the Administration should avoid changing the subject officer of a legislative proposal in the midst of scrutiny by LegCo.

IV. Any other business

24. There being no other business, the meeting ended at 5:35 pm.

Legislative Council Secretariat
24 July 2000