

立法會
Legislative Council

LC Paper No. CB(2)913/98-99
(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 Tuesday, 27 July 1999 at 2:30 pm
in Conference Room A of the Legislative Council Building**

- Members Present** : Hon Andrew CHENG Kar-foo (Chairman)
Hon Cyd HO Sau-lan
Hon LEE Cheuk-yan
Hon LEE Kai-ming, SBS, JP
Hon Ronald ARCULLI, JP
Hon CHAN Wing-chan
Hon TAM Yiu-chung, GBS, JP
- Members Absent** : Hon HO Sai-chu, SBS, JP
Hon Michael HO Mun-ka
Dr Hon LUI Ming-wah, JP
Dr Hon LEONG Che-hung, JP
- Public Officers Attending** : Mr Franco KWOK
Acting Principal Assistant Secretary for Education and Manpower
- Mr LEE Kai-fat
Deputy Commissioner for Labour
- Dr LEUNG Lai-man
Occupational Health Consultant
Labour Department
- Ms Anastasia KWONG
Senior Government Counsel

Action

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

Staff in Attendance : Mr Arthur CHEUNG
Assistant Legal Adviser 5

Mr Stanley MA
Senior Assistant Secretary (2) 6

I. Meeting with the Administration

At the Chairman's invitation, Deputy Commissioner for Labour (DC for L) and Acting Principal Assistant Secretary for Education and Manpower (Ag PAS(EM)) highlighted the salient points in the Legislative Council Brief on the Factories and Industrial Undertakings (Medical Examinations) Regulation [File Ref. EMBCR 1/2961/95].

2. DC for L also made the following points -

- (a) the primary objective of the proposed Regulation was to enable early detection and prevention of occupational diseases, especially those with long latent periods, through a system of pre-employment and regular medical examinations;
- (b) the mandatory medical examinations in the 17 specified occupations in Schedule 1 to the proposed Regulation would be implemented by phases to allow sufficient time for necessary arrangements by employers and to ensure adequate supply of qualified doctors;
- (c) the Administration had noted workers' concern about loss of employment if found medically unfit for the specified occupations. The aim of the medical report was to strengthen protective measures against occupational diseases and would focus on the specified occupational diseases but not other health aspects of the worker. It would be very unlikely that a worker at the early stage of an occupational disease would be recommended permanent suspension from employment in the particular occupation;
- (d) where suspension of employment in a particular occupation was recommended, the employer should, subject to mutual agreement,

Action

re-deploy the worker to another post. The employer should not use the medical report as an excuse to dismiss the worker as this might constitute unlawful dismissal under the Employment Ordinance (EO) or unlawful discriminatory act under the Disability Discrimination Ordinance (DDO); and

- (e) workers who were found unfit, due to occupational diseases, for a designated occupation could seek compensation under the Employees' Compensation Ordinance, Pneumoconiosis (Compensation) Ordinance and Occupational Deafness (Compensation) Ordinance in the normal way. Workers who had their employment terminated were entitled to long service payments under the Employment Ordinance where appropriate.

Public consultation

3. Mr LEE Kai-ming welcomed the proposal to introduce regular medical checks for workers exposed to hazardous substance at the workplaces. He nevertheless expressed concern about the possibility of employees' losing their job as a result of the medical examination. In this connection, he queried the Administration for not consulting the LegCo Panel on Manpower and the Hong Kong Construction Industry Employees General Union (HKCIEGU) before introducing the Regulation to LegCo.

4. Ag PAS(EM) responded that the proposal was only endorsed by the Executive Council on 22 June 1999 and there had not been sufficient time to discuss with the Panel on Manpower beforehand. DC for L added that apart from those organizations listed in the LegCo Brief, the Administration had discussed with the Chairman of HKCIEGU. The Administration had also briefed members of HKCIEGU and representatives of the construction industry on the legislative proposal, through the arrangement of the Hong Kong Federation of Trade Unions.

5. In response to Mr Ronald ARCULLI, DC for L advised that the Hong Kong Construction Association (HKCA) and the Real Estate Developers Association of Hong Kong had been consulted on the main provisions of the legislative proposal. He added that the proposed Regulation had been distributed to parties concerned for information. Mr Ronald ARCULLI considered that the Administration should fully consult the affected industry on the detailed provisions and the implementation plan. In view of the wide implications of the proposed legislation, the Chairman suggested and members agreed that the Subcommittee should meet deputations to gauge their views.

Coverage of the Regulation

6. Responding to Mr CHAN Wing-chan, Occupational Health Consultant of Labour Department (OHC/LD) said that the proposed medical examination requirements would apply to the 17 occupations in Schedule 1 to the Regulation. At present, workers in the first four categories in Schedule 1 were already required to undergo regular medical examinations under existing legislation. The proposed Regulation would extend the statutory medical examinations to cover the remaining 13 categories (items 5 -17 in Schedule 1) affecting a total of 195 000 workers. However, the majority (182 000 workers) was within the category of exposure to excessive noise, of which about 16 000 workers were employed in the kitchens of Chinese restaurants. Mr LEE Kai-ming pointed out that a total of 23 main industries would fall within the 17 designated occupations according to Annex G of the LegCo Brief.

7. The Chairman inquired about the reasons for not extending the statutory medical examinations to workers working in the kitchens of western restaurants and karaoke establishments which were also subject to excessive noise. DC for L responded that the noise level in western kitchens was normally below 85dB and was less serious than that in Chinese kitchens. As regards karaoke establishments, they were currently outside the ambit of the Factories and Industrial Undertakings Ordinance (FIUO).

8. The Chairman then asked about the timetable for incorporating non-industrial undertakings in the occupational health and safety legislation. DC for L replied that this would involve detailed consultation with the various industries and organizations. As the Administration now focused its efforts on the 27 sets of Regulations under FIUO, no concrete timetable had yet been set for extending the occupational safety and health legislation to non-industrial undertakings which would be the subject of a separate review at a later stage.

9. In reply to Mr Ronald ARCULLI, DC for L advised that the proposed Regulation did not apply to civil servants who were subject to Civil Service Regulations. He added that Labour Department would arrange medical examinations for all government employees who were found to be exposed to hazardous substances at work.

Medical examinations and medical reports

10. In reply to Mr CHAN Wing-chan, OHC/LD said that the kitchen staff in Chinese restaurants would only be required to undergo simple hearing tests. The types of medical examinations required for different occupations were specified in Schedule 2 to the proposed Regulation. Ag PAS(EM) added that the medical checks were being conducted for items 1-4 of Schedule 1 under existing

Action

legislation; the proposed Regulation only required that such medical examinations be carried out by appointed medical practitioners (AMPs).

11. Mr Ronald ARCULLI expressed much concern about the arrangement for the medical examinations of some 153 000 workers in the construction industry which was characterized by its unique multi-layered sub-contracting system and a workforce of high mobility. He also enquired about the arrangement for payment of medical examination fees.

12. DC for L said that HKCA had reached an agreement with the Construction Industry Training Authority (CITA) that the latter would act as agent for contractors/proprietors in the construction industry to make medical examination arrangements for construction workers. The costs of the medical examinations would be met by a levy on the construction industry. Under the agreement, the principal contractors would ask their sub-contractors for a list of workers involved in the specified occupations. CITA would then invite tender for appointing qualified private medical practitioners to conduct medical examinations for the construction workers. The list of CITA appointed doctors and the prescribed fees would be publicized for general information.

13. With regard to the distribution and keeping of medical reports, DC for L explained that the worker himself would have a copy of the medical report while a copy would be given to the employer. When the worker changed to work for another contractor, he could produce his copy of medical report without having to undergo another medical check. If the worker had lost his copy, a replacement could be obtained from CITA which would maintain a central record of medical reports of construction workers. At the suggestion of Mr Ronald ARCULLI, DC for L said that the Administration would discuss with CITA on providing the replacement copy of the medical report to the worker free of charge.

Admin

14. On the recommendations to be included in the medical report, Mr CHAN Wing-chan opined that it would be impracticable for the kitchen staff to wear hearing protective devices as it would hamper the communication among kitchen staff. He suggested that the employer should be required to take noise abatement measures instead. DC for L responded that Labour Department officers would inspect the industrial undertakings and recommend the employers to take noise control and preventive measures under the FIU (Noise at Work) Regulation. He said that the medical report under section 10 of the proposed Regulation would include recommendations on protective measures to be taken to prevent the worker from further exposure to hazardous substance.

15. Mr TAM Yiu-chung stressed that the proposed Regulation was to enable early detection of occupational diseases through regular medical checks. It would also facilitate processing of compensation claims of employees who were diagnosed to suffer from the specified occupational diseases under the relevant

Action

legislation. While workers might have a loss in income temporarily if they required medical treatment, the existing compensation schemes and comprehensive social security assistance scheme could provide some relief and a safety net to these workers. Since the proposed legislation was to safeguard worker's health and safety, Mr TAM hoped that the proposed Regulation could be enacted as soon as possible.

Suspension from employment in a particular occupation

16. Mr LEE Cheuk-yan expressed support for the statutory medical examination for workers in the specified occupations. However, he expressed concern that the proposed Regulation did not contain provisions on the re-deployment of workers who were recommended temporary or permanent suspension from employment in the particular occupation under section 10. He also noted that the worker might suffer a lower pay when deployed to another post. He considered that the main controversy over the proposed Regulation was that there was inadequate protection to workers who were found medically unfit for continuing employment in the particular occupations.

17. DC for L responded that it would be unfair to impose a mandatory provision on employers for re-deployment of the employees who were recommended suspension of employment by a medical report under Section 10. He said that a statutory provision would have to be accompanied by provisions on offences and penalties and this could lead to enforcement difficulties. He reiterated that re-deployment should be made by mutual agreement between the proprietor and the worker since it might entail a change in wages and working conditions, and such arrangement was dependent on the availability of suitable jobs and acceptance by the worker. In this regard, Labour Department would publish guidelines on good management practices for employers to follow. DC for L also undertook to provide a written response on members' concern in paragraph 16.

18. Mr LEE Cheuk-yan asked whether suspension or termination of employment of a worker who was assessed by an AMP as physically unfit for his current job was in contravention with the spirits of DDO. He considered that the proposed Regulation must be made compatible with the provisions in DDO to protect the interest of some 195 000 workers affected.

19. OHC/LD envisaged that most workers would pass the medical examinations and very few of them would require prolonged medical treatment leading to suspension of employment in that particular occupation. The responsible AMP would monitor the health conditions of the employee through regular medical checks and make appropriate recommendations such as medical treatment, sick leave and preventive measures.

Action

20. DC for L supplemented that the Administration had consulted the Equal Opportunities Commission (EOC) whether the proposed Regulation would be in conflict with the existing discrimination ordinances. He said that EOC had accepted that the proposed Regulation aimed at protection of workers' health and that the employer should continue to employ the workers subject to certain protective measures.

Admin

21. In view of members' concern about the protection of employees' interest, the Chairman suggested the Administration to consider incorporating in the proposed Regulation provisions to protect employees suffering from the specified occupational diseases from discrimination in employment. Senior Government Counsel undertook to consider the suggestion.

Entitlement of paid sick leave

22. Mr LEE Kai-ming asked whether workers suffering from occupational diseases such as pneumoconiosis and occupational deafness would be entitled paid sickness days and whether these would be debited from the maximum entitlement of 120 paid sickness days under the Employment Ordinance.

23. OHC/LD responded that for workers suffering from occupational diseases at an early stage, they would not require hospitalization and long sick leave. Where treatment and sick leave were required for the occupational diseases, the employee would be granted statutory sick leave under the Employees' Compensation Ordinance. Such sick leave would not be counted towards the 120 days paid sickness days under the Employment Ordinance.

Composition of Appeal Board

24. Mr LEE Cheuk-yan queried that the proposed Appeal Board under section 13(1) of the Regulation only consisted of medical professionals without any worker representatives. He suggested that the Appeal Board should include representatives from Labour Department, employers' and employees' associations as well as professional bodies as they were more familiar with the operation and practices at workplaces.

Admin

25. DC for L responded that the Appeal Board was to adjudicate appeals concerning the recommendations in the medical reports, basically from a medical point of view on the health conditions of the worker concerned. There were other established mechanisms to deal with industrial relations and employment-related matters. With regard to Mr LEE Cheuk-yan's suggestion that the Appeal Board should include representative(s) of EOC, DC for L undertook to provide a written response.

Action

26. Mr Ronald ARCULLI considered that for equity reasons, employers should also have the right to appeal against the recommendations in medical reports.

27. OHC/LD explained that the recommendations in a medical report under section 10 would be confined to preventive measures and medical treatment for the worker concerned. The monitoring of work environment in industrial undertakings would be carried out by Labour Department Officers on receipt of notification of occupational diseases from the medical doctors. He added that mandatory medical examinations for workers in respect of the first four categories in Schedule 1 had been implemented for some time and employers had not indicated problems in compliance so far.

Admin

28. Mr ARCULLI considered that the scope of these medical reports should be specified in the proposed Regulation. DC for L undertook to consider the suggestion.

Written submissions

29. Members noted that three submissions had been received from the Hong Kong Workers' Health Centre, the Hong Kong Occupational Deafness Association and the Pneumoconiosis Mutual Aid Association.

Admin

30. At the request of the Chairman, DC for L undertook to provide a written response to the submissions.

II. Any other business

31. Members agreed to hold the next meeting at 2:30 pm on 27 September 1999 to meet deputations. The Chairman requested members to forward to the Clerk to Subcommittee names of organizations to be invited.

32. There being no other business, the meeting ended at 4:20 pm.

Legislative Council Secretariat
10 January 2000