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

**Minutes of Meeting
held on Monday, 27 September 1999 at 2:30 pm
in the Chamber 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 LEE Cheuk-yan
Hon Ronald ARCULLI, JP
Hon CHAN Wing-chan
Dr Hon LEONG Che-hung, JP
Hon TAM Yiu-chung, GBS, JP
- Members Absent** : Hon Michael HO Mun-ka
Hon LEE Kai-ming, SBS, JP
Dr Hon LUI Ming-wah, JP
- Public Officers Attending** : Mr Herman CHO
Principal Assistant Secretary for Education and Manpower
- Mr Samson LAI
Assistant Secretary for Education and Manpower
- Mr TSANG Kin-woo
Assistant Commissioner for Labour
- Dr W K LO
Occupational Health Consultant, Labour Department

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Mr J D SCOTT
Senior Assistant Law Draftsman

Ms Anastasia KWONG
Senior Government Counsel

Attendance by : Hong Kong Workers' Health Centre
Invitation

Dr IP Fu-keung
Board Chairman

Mr CHAN Kan-kam
Board Vice Chairman

The Hong Kong Occupational Deafness Association

Mr WONG Tam-kwai
President

Pneumoconiosis Mutual Aid Association

Mr HO Charn-ying
Vice-chairman

Construction Industry Training Authority

Mr Albert Y C TONG
Executive Director

The Hong Kong Occupational Safety and Health Association

Mr WONG Wai-yin
President

CityU SCOPE OSH Alumni Association

Mr Lawrence HO
Chairman of the Executive Committee

Occupational Safety & Health Council

Mr TANG Wah-shing
Executive Director

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The Hong Kong Small and Medium Business Association

Mr SHI Kai-biu
President

Society of Registered Safety Officers

Mr Eric C Y LEE
Vice President

Hong Kong Construction Industry Employees General Union

Mr CHOI Chun-wa
Vice-Chairman

The Chinese General Chamber of Commerce

Hon HO Sai-chu
Vice-chairman

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

Staff in Attendance : Mr Stanley MA
Senior Assistant Secretary (2) 6

I. Meeting with deputations and the Administration

[Paper Nos. CB(2)2629/98-99(01) and (02), CB(2)2638/98-99(01), CB(2)2855/98-99(01) to (12), CB(2)2883/98-99(01) to (04), CB(2)2896/98-99(01) to (03), and CB(2)2900/98-99(01) to (05)]

Members noted that 17 written submissions had been received and 11 organizations had requested to make oral representations to the Subcommittee on the proposed Factories and Industrial Undertakings (Medical Examinations) Regulation (the proposed Regulation).

2. At the Chairman's invitation, representatives of the 11 deputations presented their views to the Subcommittee.

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Hong Kong Workers' Health Centre (HKWHC)
[Paper Nos. CB(2)2629/98-99(01) and CB(2)2900/98-99(03)]

3. Dr IP Fu-keung of HKWHC made the following comments -
- (a) the proposed Regulation had not required employers to put in place a safe working environment to prevent occupational diseases;
 - (b) the recommendations to be made by the Authorized Medical Practitioners (AMPs) under section 10 of the proposed Regulation on workers' fitness to work should specify the improvement measures to be taken by employers and advise on the workers' fitness to work in other occupations. Workers suffering from loss of hearing should be allowed to continue to work; and
 - (c) arrangements should be made to avoid repeated pre-employment medical examinations for persons seeking employment in different occupations.

4. Mr CHAN Kan-kam of HKWHC added that HKWHC supported the proposed Regulation in principle but pointed out that the Regulation should be extended to non-industrial establishments and that there should be compensation to those workers whose employment was terminated on medical grounds. He said that such dismissal might constitute a discriminatory act under the Disability Discrimination Ordinance.

The Hong Kong Occupational Deafness Association (HKODA)
[Paper Nos. CB(2)2629/98-99(02) and CB(2)2883/98-99(01)]

5. Mr WONG Tam-kwai of HKODA said that HKODA supported the proposed Regulation and suggested that -
- (a) Government should promote noise abatement measures in workplaces and to ascertain whether the employer should be held responsible for the hearing impairment of his workers; and
 - (b) Government should set up a monitoring mechanism to protect workers suffering from occupational diseases from unlawful dismissal and a compensation fund for provision of monthly subsistence allowance to workers who were rendered jobless as a result of the mandatory medical examinations.

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Pneumoconiosis Mutual Aid Association (PMAA)
[Paper Nos. CB(2)2638/98-99(01) and CB(2)2883/98-99(02)]

6. Mr HO Charn-ying of PMAA said that PMAA supported the proposed Regulation and made the following comments -

- (a) the proposed Regulation provided more protection to employers than to employees. Government should set up a mechanism to prevent workers who were assessed by AMPs as unfit for their current jobs from being unreasonably dismissed, and to assist employers in the redeployment of these workers;
- (b) Government should put in place a monitoring system to prevent abuse by employers and to provide monthly subsistence payments to those workers who were suspended from employment following mandatory medical examinations;
- (c) employers should arrange paid leave for workers to attend mandatory medical examinations; and
- (d) the Appeal Board should comprise representatives of employees, employers and the Equal Opportunities Commission.

Construction Industry Training Authority (CITA)
[Paper No. CB(2)2855/98-99(05)]

7. Mr Albert TONG of CITA said that CITA supported the proposed Regulation and the phased approach for implementation of mandatory medical examinations which would allow sufficient time for an adequate number of general practitioners to acquire the AMP qualification. As regards the medical examination arrangements for workers in the construction industry, CITA had discussions with the industry and that CITA was willing to make arrangements for the mandatory medical examinations of construction workers, with an additional levy of 0.03% from the construction industry. The Real Estate Developers Association of Hong Kong and the Hong Kong Construction Association had already indicated support for the arrangement.

The Hong Kong Occupational Safety and Health Association (HKOSHA)
[Paper No. CB(2)2855/98-99(06)]

8. Mr WONG Wai-yin of the HKOSHA said that HKOSHA supported the proposed Regulation in principle. However, as occupational diseases often had a long latent period, he suggested that the proposed Regulation should also address the following -

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- (a) Government should examine whether the proposed Regulation would lead to changes in employment conditions, and provide compensation for damages to workers' health;
- (b) Government should set up mechanisms to identify hazardous substances in workplaces and to monitor the safety standards and environmental hygiene in workplaces;
- (c) the proposed Regulation should include a provision requiring the AMPs or employers to report occupational diseases for statistical analyses;
- (d) operations in workplaces involving the use of hazardous substance and physical agents should require certification and periodic inspection by environmental hygiene professionals; and
- (e) consideration should be given to permitting occupational hygienists, nurses or other qualified professionals to conduct the auroscopic and audiometric examinations in order to reduce costs.

CityU SCOPE OSH Alumni Association (CUSOAA)
[Paper No. CB(2)2855/98-99(07)]

9. Mr Lawrence HO of the CUSOAA said that CUSOAA supported early implementation of the proposed Regulation which provided pre-employment and periodic examinations for workers in specified occupations. Mr HO also made the following points -

- (a) AMPs should have specialist training in occupational medicine and that there should be sufficient time for them to acquire the necessary training;
- (b) retrospective recognition should be given to medical examinations taken immediately before commencement of the Regulation;
- (c) a task force should be set up to take care of the welfare of workers suffering from occupational diseases; and
- (d) CUSOAA would welcome extension of the Regulation to other hazardous substances not covered in the Schedules.

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Occupational Safety & Health Council (OSHC)
[Paper No. CB(2)2855/98-99(08)]

10. Mr TANG Wah-shing of OSHC said that OSHC supported early implementation of the proposed Regulation. He said that the Occupational Health Advisory Committee under OSHC held the following views -

- (a) the mandatory medical examinations should be part of the Occupational Safety and Health Ordinance (OHSO) and apply to both industrial and non-industrial sectors;
- (b) AMPs should be specialized in occupational medicine, and Government should expedite the training programme to ensure sufficient supply of AMPs. The AMPs should work alongside with other occupational safety and environmental hygiene professionals to promote a safe working environment;
- (c) Government should assess the supply and demand for audiometric technical personnel and specify the training and qualification requirements;
- (d) employees should be allowed choices to select from a list of AMPs published by Government for the mandatory medical examinations; and
- (e) it would be appropriate for CITA to co-ordinate the mandatory medical examinations of construction workers, but there should be a fair and transparent system for the allocation of AMPs to conduct the medical examinations.

The Hong Kong Small and Medium Business Association (HKSMBA)
[Paper No. CB(2)2900/98-99(02)]

11. Mr SHI Kai-biu of HKSMBA referred to his submission which was tabled at the meeting. He said that HKSMBA supported legislative proposals to enhance the protection of workers' safety and health, on the condition that it would not lead to substantial financial burden on small and medium enterprises. He suggested that Government should adopt a simple system whereby all such medical examinations would be carried out in public hospitals at a reasonable charge of no more than \$400 for each worker a year. He considered that priority should be given to workers suffering from hearing impairment while workers in the manufacturing industry could be included at a later stage.

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Society of Registered Safety Officers (SRSO)
[Paper No. CB(2)2896/98-99(02)]

12. Mr Eric LEE of the SRSO said that SRSO supported the proposed Regulation in principle and highlighted the following suggestions of SRSO-

- (a) the proposed Regulation should be extended to non-industrial sector, for example, the laboratories which were also exposed to hazardous substances;
- (b) Government should review what types of tests and medical examinations should apply to workers who were exposed to a number of hazardous substances and physical agents, and such requirements should be specified in the Schedules to the Regulation;
- (c) Government should specify whether certain additives and compound substances containing small amounts of hazardous substances such as benzene, cadmium and mercury should be included in the proposed Regulation; and
- (d) Government should carry out statistical analyses of the medical examination results for preventive measures against occupational diseases.

Hong Kong Construction Industry Employees General Union (HKCIEGU)
[Paper No. CB(2)2896/98-99(03)]

13. Mr CHOI Chun-wa of HKCIEGU said that HKCIEGU had widely consulted members of the construction industry and supported the proposed Regulation for the protection of workers' health. However, construction workers were generally concerned about the lack of protection to their employment. HKCIEGU also had the following views -

- (a) to avoid any perceived corroboration between employers and AMPs, there should be a fair and independent system to coordinate and conduct mandatory medical examinations for workers in the specified occupations;
- (b) employers should be required to arrange paid leave for workers to attend mandatory medical examinations; and
- (c) as workers recommended for temporary or permanent suspension of employment might not be able to find alternative employment,

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Government should examine ways to assist these workers in their medical costs and subsistence.

The Chinese General Chamber of Commerce (CGCC)

14. Mr HO Sai-chu said that CGCC supported the proposed Regulation which aimed to enhance the protection of workers' health. However, he emphasized that the non-industrial establishments should not be included in the proposed Regulation at this stage. He warned that the mandatory medical examinations might affect workers' employment and the additional costs might also dampen the incentive for further investment in the industry. He said that employers generally had the following concerns -

- (a) the additional costs for pre-employment and periodic medical examinations, and payments of compensation to employees who were assessed to be temporarily or permanently unfit for their occupations;
- (b) in view of the limited supply of AMPs and the large number of construction workers (153,000) requiring medical examinations, a longer grace period should be allowed for these workers to be examined; and
- (c) the detailed arrangements for CITA to arrange for the medical examinations and to keep the copies of medical reports.

Discussion

Impact on the workers' employment

15. Mr CHAN Wing-chan expressed concern that the mandatory medical examination might affect the workers' employment, and that the recommendation of temporary or permanent suspension of employment was made by the AMP alone according to section 10 of the proposed Regulation. As many workers in Chinese restaurant kitchens suffered some degree of occupational deafness but could continue to work, he asked whether the 153 000 construction workers who were also exposed to excessive noise level could continue employment in the industry.

16. Dr IP of HKWHC responded that HKWHC did not have statistical information on the occupational deafness of construction workers, but he believed that most of them could continue their present employment. He noted that workers who were assessed as unfit for their current occupations might have difficulties in finding alternative employment. He suggested that the appeal mechanism might include consideration of re-deployment of workers.

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17. Mr CHAN Kan-kam of HKWHC supplemented that the proposed Regulation had not empowered the AMPs to make recommendations on measures to improve the working environment or to prevent the worker from further exposure to hazardous substances. He agreed that many workers employed in restaurants or the construction industry had hearing impairment due to the noisy working environment. However, these workers should be allowed to continue employment if they followed the preventive and protective measures as advised by AMPs. He was worried that though the proposed Regulation was intended to enhance protection of workers' health, it might in practice put the employment of workers at risk.

Environmental monitoring in workplaces

18. Dr LEONG Che-hung said that some non-industrial establishments such as hospitals also involved the use of hazardous substances and physical agents, while the noise level in karaoke establishments often exceeded 85 dB. He asked whether the Administration had any plans or timetable to introduce legislation to improve the working environment in both industrial and non-industrial workplaces. Mr LEE Cheuk-yan also asked whether the results of medical examinations would give indications on the standards of environmental hygiene in workplaces.

19. Principal Assistant Secretary for Education and Manpower (PAS(EM)) responded that the proposed Regulation was prepared long before the enactment of OSHO in 1997 and had therefore not included the non-industrial sector. If the proposed mandatory medical examination regulation was to be placed under OSHO instead of the Factories and Industrial Undertakings Ordinance (FIUO) so as to cover the non-industrial sector, the Administration would have to start the consultation and drafting process all over again. This would certainly delay the implementation of the medical examination requirements for workers who were already exposed to hazardous substances in the workplaces. The Administration therefore considered it more appropriate to examine the feasibility of extending the scheme to non-industrial sector at a later stage. Moreover, this Regulation would cover some 195 000 workers, and the operational experience in implementation would provide useful reference for extending the arrangements to non-industrial establishments in future.

20. In reply to the Chairman, PAS(EM) confirmed that karaoke establishments were not industrial undertakings and were outside the ambit of FIUO.

21. On Government's follow up to medical examination results, PAS(EM) said that AMPs were required to notify the Commissioner for Labour the detection of occupational diseases. The Labour Department would then

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investigate and advise the proprietor concerned on preventive and improvement measures. Enforcement action would be taken against the proprietor if necessary.

22. Mr TANG Wah-shing of OSHC commented that apart from AMPs, other professionals such as environmental hygienists and nurses, as well as the employers and employees could contribute to improving environmental hygiene in the workplaces. He suggested that Government should set out the standard requirements of a safe and healthy working environment for employers to follow.

23. Mr WONG Wai-yin of the HKOSHA also expressed support for regular environmental monitoring in workplaces. He said that occupational diseases had a long latent period and that it was often difficult to pinpoint whether the present or previous employer was at fault. A monitoring system of the working environment would help eliminate health hazards at work.

24. Mr CHAN Kan-kam of HKWHC added that the AMPs in Singapore had wider power including the power to recommend improvement measures to be taken by employers to enhance the standards of environmental hygiene in workplaces.

25. Mr Ronald ARCULLI said that proprietors were concerned about the cost implications of the medical examinations and environmental monitoring. He pointed out that the replacement of old machines or production systems by environmentally friendly equipment and systems was costly.

26. Mr CHAN Kan-kam of the HKWHC responded that employers had the responsibility to protect their employees' health from being jeopardized by hazardous substances and physical agents at workplaces. He pointed out that a healthy workforce was an asset to the employers. Moreover, statistics collected from the medical examinations could help identify the causes of and preventive measures for occupational diseases. The arrangement would in the long run enhance productivity and save the medical expenses and compensations to workers.

Protection to employees

27. Mr CHAN Wing-chan expressed concern about the protection and compensation for workers who were assessed as temporarily or permanently unfit for continuing employment in particular occupations. He asked about the arrangements for medical treatment expenses and whether these workers would be entitled to paid leave during the period of suspension of employment. He also held a strong view that the Regulation should specify that workers would be given paid leave to attend mandatory medical examinations.

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28. Mr HO Sai-chu representing CGCC responded that monthly-paid employees in the construction industry would normally be granted paid leave to attend mandatory medical examinations, but not the daily-rated workers or casual workers. Mr SHI Kai-biu of HKSMBA also shared the views of Mr HO that employers would wish to retain experienced staff rather than to terminate workers' employment.

Arrangements for AMPs to conduct medical examinations

29. Dr LEONG Che-hung enquired whether there would be sufficient AMPs to carry out the mandatory medical examinations for some 195 000 workers covered by the Regulation. As there were only 20 to 30 qualified AMPs in the private sector, and since specialist training would take time, he asked whether general medical practitioners would be allowed to perform medical examinations for assessment of occupational diseases. In this connection, he asked about the reasons for appointing specialist to conduct such medical examinations.

30. PAS(EM) responded that the requirement of specially trained AMPs to conduct medical examinations for occupational diseases was proposed by the Expert Working Group on Occupational Health Services and accepted by the Government after consultation. The Expert Working Group considered it essential that AMPs should have specialist qualification and experience in occupational medicine. General medical practitioners generally did not possess the necessary expertise and skills in diagnosing and recommending treatment of the various kinds of occupational diseases.

31. Mr TANG of OSHC said that the Occupational Health Advisory Committee of OSHC supported the proposal that AMPs should have specialist training in occupational medicine.

32. Dr LEONG Che-hung and Mr TAM Yiu-chung asked about the training programme for medical practitioners to acquire the necessary qualifications as AMPs. Occupational Health Consultant of Labour Department replied that the Diploma in Occupational Medicine of the Chinese University of Hong Kong was an eight-month programme consisting of half-day sessions each week. An intensive course of shorter duration could be organized, if necessary, to train more qualified doctors to meet the demand. He said that in addition to qualified doctors in public hospitals, there were about 25 qualified doctors in the private sector, and ten were receiving training. As regards the implementation of mandatory medical examinations for the other 13 categories in Schedule 1 (items 5-17) to the Regulation, PAS(EM) said that it would depend on the supply of AMPs and the Administration could adjust the commencement dates.

33. Dr LEONG Che-hung expressed concern that there might be possible conflict of interest if employers could select the AMPs for conducting medical

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examinations for their employees. He also had reservation about the proposed arrangement for the CITA to appoint a service provider to arrange medical examinations for some 150 000 construction workers. The existence of a commercial relationship between the employers and the AMPs or service provider could lead to suspicion about the independence of the AMPs conducting the medical examinations. He suggested that workers should be allowed to choose the doctor from a list of AMPs published by the Government.

34. PAS(EM) clarified that under the proposed arrangements for construction workers to attend medical examinations, it would be the CITA instead of individual companies or proprietors who would select the AMPs or service providers. The initial thinking of the CITA was to invite tender for service providers to provide medical examinations for construction workers. These service providers should ideally be medical institutions with the necessary equipment and qualified medical, nursing and allied medical personnel.

35. On the arrangement for other industries, PAS(EM) said that Labour Department would provide employers with a list of AMPs which should be circulated to employees for information. He stressed that AMPs would make objective and professional assessments and recommendations as they should abide by the professional code of ethics of the Medical Council. He added that workers who were aggrieved by the AMPs' recommendations could make appeals to the Appeal Board to be established by the Commissioner for Labour.

Conclusion

36. In concluding the discussion, the Chairman said that the Subcommittee would follow up with the Administration the views expressed by deputations and members.

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37. The Chairman requested and the Administration agreed to provide written responses to members' concerns and the views expressed for discussion at the next meeting. The Chairman also asked the Administration to consider including karaoke establishments in the Regulation.

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Date of next meeting

38. The Chairman requested the Clerk to inform members of the date of next meeting by circular.

(Post-meeting note : The date of next meeting was subsequently scheduled for 21 October 1999 at 10:45 am.)

II. Any other business

39. There being no other business, the meeting ended at 4:40 pm.

Legislative Council Secretariat

2 May 2000