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

**Minutes of Meeting
held on Wednesday, 15 December 1999 at 8:30 am
in Conference Room A of the Legislative Council Building**

- Members Present** : Hon Andrew CHENG Kar-foo (Chairman)
Hon HO Sai-chu, SBS, JP
Hon Michael HO Mun-ka
Hon LEE Kai-ming, SBS, JP
Hon CHAN Wing-chan
Dr Hon LEONG Che-hung, JP
Hon TAM Yiu-chung, GBS, JP
- Members Absent** : Hon Cyd HO Sau-lan
Hon LEE Cheuk-yan
Dr Hon LUI Ming-wah, JP
Hon Ronald ARCULLI, JP
- Public Officers Attending** : Mr Herman CHO
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 Assistant Law Draftsman

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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

Mr Stanley MA
Senior Assistant Secretary (2) 6

I. The Administration's response to concerns raised at the meeting on 10 November 1999

[Paper No. CB(2)608/99-00(01)]

At the invitation of the Chairman, Principal Assistant Secretary for Education and Manpower (PAS(EM)) briefed members on the Administration's response.

Mandatory medical examinations for casual and replacement workers

2. Mr LEE Kai-ming expressed disappointment that the Administration had not addressed the problem relating to the medical examinations for casual and replacement workers in non-construction industries. Referring to the Government's estimate that medical examination costs for these workers would amount to only \$4 million, he asked what measures Government would propose to enforce section 6 of the Regulation in respect of casual and replacement workers. He pointed out that due to the high mobility of casual and replacement workers, most employers would be unwilling to pay the medical examination fees for these workers. He suggested that Government should consider imposing a levy, based on the number of workers in the 17 occupations affected by the Regulation, to provide the necessary funds for the medical examination of these workers.

3. In response, PAS(EM) said that there was no concrete figure on the number of casual and replacement workers in these industries and the annual estimate of \$4 million was based on the assumption that these workers would constitute about 20% of the 40 000 workers in the non-construction industries. As most casual workers worked for more than one employer and often engaged

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in different trades, they might be exposed to a number of hazardous substances and physical agents. The actual medical examination expenses for these workers might well exceed the estimated \$4 million. He explained that it would be difficult to justify and implement a central levy system solely for casual and replacement workers. As the nature and extent of exposure of harmful substance varied among industries and workplaces, it would be difficult to devise a fair and simple central levy system for the 17 occupations covered by the Regulation. He therefore considered that persons who worked as casual or replacement workers would have to pay the medical examination expenses. PAS(EM) added that the existing Employees' Compensation Insurance levy was contributed by all employers in both industrial and non-industrial sectors, and it would not be fair to use it to pay for the medical examinations of some 40 000 non-construction workers.

4. Mr LEE Kai-ming considered that the question was whether a proprietor should be responsible for the medical examination costs of all his employees including casual and replacement workers, as required under section 6 of the proposed Regulation. Mr CHAN Wing-chan expressed a strong view that section 6 of the Regulation should be enforced. He estimated that about 30% of the employees in Chinese restaurants were kitchen staff, and that Government could impose a levy on proprietors of Chinese restaurants based on such estimates.

5. PAS(EM) responded that the percentage of workers affected by the Regulation in industries other than the catering industry was less clear. There was a possibility that the actual medical examination costs would be much higher than the estimates. He said that the principle of the Regulation was that proprietors should be responsible for the medical examination fees for their employees including those long-term "casual" or daily-rated employees. However, those casual workers who worked for more than one employer on a part-time basis would have to pay for their medical examinations.

Appointed Medical Practitioners (AMPs)

6. Mr Michael HO expressed concern that the inadequate supply of AMPs might push up the medical examination fees. PAS(EM) said that as the Regulation would be implemented by phases, and since the majority of affected workers who were subject to excessive noise would be required to take the medical examination during the last phase, a sufficient number of AMPs would have been trained up by that time.

7. Occupational Health Consultant, Labour Department (OHC(LD)) supplemented that based on the current charging levels in private clinics, the medical examination fees including laboratory tests as required under Schedule 2 would range from \$200 to \$600. PAS(EM) said that the CITA would act as an

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agent to co-ordinate medical examinations for the 153 000 construction workers. It was expected that the CITA would sign service contracts with hospitals and AMPs to provide the service. With such arrangement, CITA could ensure a reasonable level of fees for the medical examinations for the construction industry.

8. Mr Michael HO maintained the view that the limited supply of AMPs in the market might bring about a "cartel" situation where the participants could collaborate and set high charges for the medical examinations. He asked whether the Administration had any information on the current charges of the private medical schemes and the monitoring measures to be taken by Government to ensure that reasonable fees would be charged by the AMPs or service providers.

9. In response, PAS(EM) said that assuming that medical examinations were evenly spread out throughout the year and that all AMPs worked on a full-time basis, the Administration estimated that a total of 25 AMPs would be sufficient to perform the medical examinations for the 195 000 workers. At present, there were about 25 AMPs in the private sector and another 14 medical practitioners were taking the Diploma course in Occupational Medicine run by the Chinese University of Hong Kong (CUHK). The course could train a maximum of 30 doctors a year. It was anticipated that more doctors in the private sector would enrol in the course after enactment of the Regulation as it would increase the demand for AMPs. The CUHK would be prepared to organize full-time courses in occupational medicine to meet the increased demand. As regards the current charges by private medical schemes, OHC(LD) said that Government did not have ready information as employers were reluctant to release such information. However, he would try to obtain further information on the current charges.

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10. Dr LEONG Che-hung questioned whether 25 AMPs working full-time would be sufficient to meet the demand of 195 000 workers on an on-going basis. He agreed that after enactment of the Regulation, more medical practitioners would be interested to become AMPs. He therefore urged the Government to assist the two universities to provide more places in occupational medicine. PAS(EM) responded that Government would closely monitor the supply of AMPs. The Hong Kong College of Community Medicine, which was the approving authority for AMP qualifications, was prepared to assist other academic institutions to run similar occupational medicine courses to cope with the demand.

11. Dr LEONG Che-hung expressed concern about the possible "cartel" situation if the intention was to contract out all medical examinations to a few service providers. He urged Government to ensure an open market in order to keep the medical examination charges at a reasonable level. He also suggested

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Government to recommend a list of charges for each type of medical examination/test as required under Schedule 2 of the Regulation, in consultation with medical bodies and associations. Dr LEONG also worried that some proprietors might refuse to recognize certificates issued by AMPs other than those appointed by the proprietors. He also asked whether the Regulation could prohibit proprietors from requiring their employees to take medical tests other than those specified in Schedule 2 of the Regulation.

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12. Responding to Dr LEONG, PAS(EM) clarified that the arrangement for a central body to coordinate medical examinations only applied to the construction industry in view of the high mobility of construction workers. The CITA would be the agent for coordinating medical examinations for the construction industry, and the selection of service providers could be made by way of tender so that AMPs in the private sector could also participate. He undertook to relay Dr LEONG's concern to the CITA for consideration. Nevertheless, Government would not intervene in the decision of proprietors in the appointment of AMPs for providing medical examinations to their workers. He pointed out that the Regulation had provided an appeal mechanism for workers or employers who were not satisfied with the results of the medical examinations conducted by the appointed AMPs. OHC(LD) supplemented that Schedule 2 of the Regulation had specified the types of medical examinations and tests required, and that it was up to the employees whether to accept requirements for tests other than those specified in the Regulation.

Objectives of the Regulation

13. Mr Michael HO was worried that the proposed Regulation for mandatory medical examinations might lead to unemployment of workers who were found unfit for continued employment in designated occupations. He inquired the measures to be taken by Government to address the causes of occupational diseases when a worker was found unfit for employment in a designated occupation.

14. PAS(EM) emphasized that the Regulation was not intended to identify workers who were medically unfit in order to terminate their employment. The objective of the Regulation was to enhance the protection of workers' safety and health. He said that Labour Department would follow up those cases where occupational diseases were identified and would prosecute the proprietor for breaches of the legislative requirements on occupational safety and health. OHC(LD) added that the mandatory medical examinations would facilitate early detection of the adverse effects of harmful substances in work places and enable early treatment of the workers.

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The central levy proposal

15. The Chairman sought members' views on the proposal of a central levy system for providing free medical examinations to casual and replacement workers in the affected industries. He said that while the Administration was reluctant to introduce a central levy system, it might also be impractical for the Subcommittee to move an amendment if it would have a charging effect to the revenue or public moneys. In response to the Chairman, Assistant Legal Adviser 5 (ALA5) pointed out that the Factories and Industrial Undertakings Ordinance (FIUO) had not empowered the Commissioner for Labour to impose levies by way of subsidiary legislation. It was therefore not possible for such an amendment to be made under the proposed Regulation. Senior Assistant Law Draftsman (SALD) agreed with ALA5's interpretation.

16. The Chairman said that members were in support of the Regulation but were concerned about the medical examination arrangement for casual and replacement workers. Mr LEE Kai-ming reiterated that an additional levy on the employees' compensation insurance was a feasible solution. In view of members' concerns, the Chairman urged the Administration to reconsider Mr LEE's suggestion and provide a more realistic estimate on the number of casual/replacement workers by type of industry and the resource implications for providing the medical examination to these workers.

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17. PAS(EM) said he would try to obtain more information on the number of casual and replacement workers in the affected industries. He estimated that the medical examination costs would be around \$400 and that it was not unreasonable for casual and replacement workers to pay their medical examination fees if they did not work for any particular employer. Mr TAM suggested that the Administration should also explore other sources of funding to assist casual and replacement workers with financial difficulties to attend the medical examinations. PAS(EM) agreed to consider the suggestion.

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II. Clause-by-clause examination

[Paper Nos. CB(2)608/99-00(01) and (02)]

18. Members noted that the Administration had provided a revised draft of the Regulation (dated 13 December 1999) and responses to members' concerns on sections 3 and 6 of the Regulation [Paper No. CB(2)608/99-00(01)].

Section 3 - Prohibition against employment without being medically examined and certified

19. Mr CHAN Wing-chan opined that occupational deafness would not normally affect the work of kitchen staff. He therefore asked about the level of

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occupational deafness that would be considered by AMPs as not suitable for employment as a kitchen worker. OHC(LD) responded that it was very unlikely that kitchen workers would be recommended to discontinue employment as a result of suffering from a certain level of occupational deafness. He said that unless the worker could no longer perform his duties or his continued employment in that particular occupation would endanger the safety and health of himself or others, the kitchen worker concerned would normally be allowed to stay in the job. PAS(EM) supplemented that under Schedule 2 of the Regulation, workers exposed to excessive noise would be required to attend hearing tests every 24 months. Kitchen workers who were found suffering from a certain degree of deafness would be advised to wear appropriate hearing protective equipment.

20. In response to Dr LEONG Che-hung, PAS(EM) said that both new and existing workers would need to take the same medical examinations applicable to their occupations, but existing workers were not required to take pre-employment medical examinations.

21. ALA5 suggested to add "pre-employment" before "the requirements" in section 3(1) to clarify that section 3 did not apply to workers already in employment in a designated occupation before the Regulation became effective. PAS(EM) undertook to consider ALA5's suggestion.

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22. Referring to the Administration's response that the meaning of "certified fit" would be elaborated in the guidance note, the Chairman expressed concern about the scope of the Administration's guidance note in this respect. SALD explained that when certifying a worker's medical fitness for an occupation, the AMP would consider whether the disease had caused any mental or physical defects to the worker rendering him unfit to work in the designated occupation. He believed that the contents of the guidance note would be based on expert advice of specialists in occupational medicine. OHC(LD) added that the guidance note would provide examples to explain that workers could still continue his employment subject to certain conditions such as wearing of protective equipment.

Section 10 - Report may be accompanied by recommendation as to limitations on or for suspension from employment in particular occupation

23. Mr CHAN Wing-chan expressed concern about the livelihood of workers who were recommended temporary or permanent suspension from employment in their designated occupations because of incapacity arising from occupational diseases. He urged the Administration to devise a monitoring mechanism to ensure that workers would not be unreasonably dismissed as a result of the medical examination. He also suggested that Government should consider

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imposing a levy on the industries concerned to set up a special Fund for ex-gratia payments to workers who were permanently suspended from employment.

24. PAS(EM) responded that workers who were recommended temporary or permanent suspension would in most cases be granted sick leave and these workers could also seek compensation under the relevant compensation ordinances if so entitled. While these workers were on paid sick leave and receiving compensation payment, the proprietors concerned were prohibited under the Employment Ordinance and the Employees' Compensation Ordinance to terminate the employment of these workers.

25. Mr LEE Kai-ming asked whether occupational disease that might be contracted in all the 17 occupations in Schedule 1 were included in the existing compensation ordinances. PAS(EM) replied in the affirmative.

26. Mr Michael HO enquired whether the Labour Department had any performance pledges for following up reports of occupational disease. He also asked whether Labour Department would require all workers of the same industrial undertaking to attend appropriate medical examination if any of them was found to have contracted an occupational disease.

27. OHC(LD) responded that Labour Department would follow up reports of occupational diseases by examining the causes of the diseases and requiring the proprietor to take appropriate remedial measures to improve the work environment. As all workers in the same workplace were required to attend medical examinations under the Regulation, and if some of them were also found to have contracted the same occupational disease, Labour Department would inspect the industrial undertaking concerned within 24 hours. The Chairman asked the Administration to provide a written response on the performance pledge of Labour Department in following up medical reports of occupational diseases.

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28. In summing up the discussion, the Chairman said that the Administration should consider to provide for some form of compensation or ex-gratia payments to those workers who were recommended temporary or permanent suspension from employment under section 10 of the Regulation. Mr CHAN Wing-chan expressed support for the Chairman's suggestion.

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Section 13 - Employees' right to appeal against action to implement recommendation

29. Dr LEONG Che-hung asked why the membership of the Appeal Board comprised two general practitioners but not AMPs. He also enquired about the definition and qualifications of occupational health consultant/officer and senior occupational health officer. PAS(EM) undertook to provide a written response.

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Date of next meeting

30. Members agreed to hold the next meeting at 10:45 am on 13 January 2000.

III. Any other business

31. There being no other business, the meeting ended at 10:40 am.

Legislative Council Secretariat

23 May 2000