

職業性失聰補償管理局的信頭  
**Letterhead of Occupational Deafness Compensation Board**

Our Ref.: MTG/ODCB

Paper No. CB(2) 1497/99-00(03)

Mrs Constance Li  
Clerk to Subcommittee  
Legislative Council Subcommittee on Regulations  
relating to Occupational Safety & Health  
3/F Citibank Tower  
3 Garden Road  
Hong Kong

20 March 2000

Dear Mrs Li,

**Factories & Industrial Undertakings  
(Medical Examinations) Regulations**

Thank you for your letter of 9 March 2000.

On behalf of the Occupational Deafness Compensation Board, I wish to express comments on the proposal to include a provision in the above Regulations to require the employer to re-deploy a worker to another occupation during the period of suspension of employment when the latter is certified to be temporarily unfit for employment in his particular occupation after medical examination. The concern of the Subcommittee about the welfare of the employee if found medically unfit for the present employment is well appreciated. However, in our view, there are three important questions that need to be answered when considering the introduction of legislation to include a provision as proposed in the above Regulations. These questions are firstly, what is the purpose of the proposal? Whether such proposal is enforceable if introduced into the legislation? And thirdly, whether there are better alternatives to achieve the objective without relying on legislation.

It is the Board's view that there would be practical difficulties in implementing the additional provision as proposed. In Hong Kong, large majority of the establishments are SMEs employing less than 20 employees. It would not be easy for the employer to arrange suitable alternative employment for the worker during his period of suspension of employment.

Usually, mutual agreement between the worker and the employer on the redeployment arrangements involves a long and complicated process. Furthermore, if the redeployed occupation is perceived by the worker as less favourable than the original post, be it the terms and conditions of employment, location of employment or status attached to the post title, the worker may refuse to accept. He may claim that the employer has unilaterally altered the fundamental terms of employment and the change constitutes a de facto termination of the original contract. Lots of conflicts and arguments may

follow when the worker pursues compensation benefits associated with dismissal by the employer who has never intended the provision of alternative employment as a termination of service.

The proposed addition of a redeployment clause will therefore pose enforcement problem. It will create more problems than solutions. The employer's duty to provide alternative occupation as far 'as is reasonably practicable' (as drafted in the Regulations) in our view in most of the circumstances is unlikely to be practicable and will be open to a wide variety of interpretations and invite arguments.

A better and practicable approach as we would like to suggest is for the Labour Department to issue a Code of Practice which gives guidance to employers and employees in handling temporary suspension of employment arising from medical examinations. Instead of prescribing a legal provision on the employer's obligation to provide redeployment, it is more appropriate for the employer as good labour management practice and the employee to determine their own arrangements according to the particular circumstances at the workplace.

I hope the above comments would be useful to the Subcommittee in its further deliberation of the above Regulations.

Yours sincerely,

(Professor LEE Shiu-hung)

Fellow of Australian Faculty of Occupational Medicine, FAFOM(Aust),

Fellow of Occupational Medicine, United Kingdom, FFOM(UK)

Board Chairman

Occupational Deafness Compensation Board

bcc

Dr W K Lo

Occupational Health Consultant

Labour Department