

Hong Kong Occupational Safety and Health Association

**Comments on the proposed addition of
subsection (3) under section 12 of the
FIU (Medical Examination) Regulation**

March 23, 2000

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

1. Background

1.1 The Association had presented its opinions on the captioned proposed Regulation in September 1999, and is further invited by the Subcommittee to comment on a proposal to add subsection (3) under section 12 of the proposed Regulation.

1.2 The proposed subsection (3) is reiterated below for reference :

“Where a proprietor is required to implement a recommendation under section 10(b) or (c), he shall as far as is reasonably practicable provide for the employee during the period of suspension employment other than in his particular occupation.”

2. Comments

2.1 We find that the subsection will convey the message to proprietors that they have the obligation to arrange a change of post for any employee who is found temporarily unfit for a particular occupation after medical examination. However, the subsection will not be enforceable for the containment of the easily escapable clause “as far as is reasonably practicable” and the lack of penalty provision for the subsection.

- 2.2 While the issues of employment are not of our major interest, we can foresee that the Regulation will not be separable from creating employment issues. It is due to the fact that medical examiners are not in a position to recommend for the improvement of the working environment or working process in which an “ill-health” worker is involved. Their recommendations will likely be of the kind to suspend a worker from the present occupation, or to reduce his hours of exposure per day to the health hazards. These would mean such things as sick leave, job transfer, shortening of working hours, etc.
- 2.3 As we have pointed out in our previous comments, the removal of a worker from a health hazardous workplace will not solve the problem of occupational health in the workplace. **The working environment, working process, and safety equipment must be improved.** We would view the medical examination process as a means to reveal or evidence that a workplace or work process is hazardous to the health of workers, rather than a process to reveal or evidence that a certain worker is not suitable for continuing in his present employment. We should bear in mind that if it were not the proposed Regulation, the worker will remain in his occupation anyway.
- 2.4 We are of the opinion that if the health condition of a worker is serious enough to justify a temporary suspension from his current employment, the medical examiner should grant him a sick leave, so that the worker may be kept away from the hazards, and may be compensated under the Employees Compensation Ordinance. If no sick leave is granted by the medical examiner, then his recommendation for the worker to be suspended from his current employment should be taken as a **preferable measure** for the benefit of the worker’s health, but not mandatory. In this case, the spirit of the proposed addition of subsection (3) under section 12 should be applied. That is, a proprietor on receiving such recommendation from the medical examiner should be required to arrange, as far as reasonably practicable, job transfer for the worker. If not practicable, then it will only mean that the worker will be kept in the current placement, instead of being expelled from the work and given no compensation.

3. Recommendations

From the above, we propose :

- 3.1 Amend Reg. 12 (2) as follows :”All reasonable and lawful means taken under subsection (1)(a) by a proprietor to implement a recommendation shall **include any measures, in respect of the improvement of the workplace environment, work process, and relevant safety equipment, required to reduce the health hazards related to the recommendation to a level which will not cause damage to the health of workers; and shall** be taken at the expense of the proprietor.
- 3.2 Amend the proposed subsection (3) under Reg. 12 as follows :”Where a proprietor is required to implement a recommendation under section 10 (b) or (c), he shall as far as is reasonably practicable provide for the employee during the period of suspension employment other than in his particular occupation. **In case it is not practicable for the proprietor to do so, he shall not suspend the employee from employment in his original occupation.**”

We trust that our proposal will be beneficial to both the employees and employers while achieving the purposes of protecting the health of employees at work and improving the health standards of workplaces.

W Y Wong

President