

**The Administration's response to concerns raised on the
Factories and Industrial Undertakings (Medical Examinations) Regulation
at the meeting of the Subcommittee on Regulations relating to
Occupational Safety and Health on 11 April 2000**

**Members are concerned that section 10 of the Regulation may conflict with
section 31B of the Employment Ordinance.**

The Administration holds the view that section 10 of the Regulation does not conflict with section 31B of the Employment Ordinance (EO). This is because section 31B of the EO imposes obligations on an employer who fails to provide sufficient work for his employees, whereas section 10 of the Regulation is concerned with protecting an employee's safety and health in regard of his working in a particular occupation.

Under section 31B(1) of the EO, an employer is liable to pay, among other things, an employee a severance payment if the employee has been employed under a continuous contract for a period of not less than 24 months ending with the relevant date and is laid off. The meaning of "laid off" for the purpose of section 31B(1) of the EO is provided for in section 31E(1). An employee whose remuneration depends upon his being provided by the employer with work of the kind he is employed for shall be taken as having been laid off in the case when -

- (a) the employer does not provide such work for him on at least a total of 12 normal working days in any period of four consecutive weeks; and
- (b) the employee is not entitled to any remuneration under the employment contract for such period.

Where an employee is suspended from work following a recommendation issued by an appointed medical practitioner (AMP) under section 10 of the Regulation, he ceases work in that particular occupation not because the proprietor concerned fails to provide work for him but because an AMP has recommended he be suspended from work in that particular occupation after considering his safety and health. It is not the intention that the employee concerned should be regarded as being laid off for the purpose of section 31B(1) of EO, and hence no conflict between the Regulation and EO would arise.

Notwithstanding the above, the Administration is aware of Members' concern regarding the statutory and contractual employment rights and benefits of an employee who is temporarily or permanently suspended from work under

section 10 of the Regulation. Our legislative intent is clear: the Regulation, which aims to protect occupational safety and health of employees employed in the 17 designated occupations, is not intended to and we believe does not affect the employment rights and benefits to which employees are currently entitled.

EO does not cater for the situation of an employee being suspended from work (temporarily or permanently) by law due to his medical unfitness to perform his duties. To clarify our legislative intent, we propose to provide in the Regulation that such an employee is deemed to be continuing his employment during the suspension period and, therefore, is entitled to the same rights and benefits under EO as any employee engaged in a continuous employment.

As the Commissioner for Labour is not empowered to make a regulation as such, section 7 of the Factories and Industrial Undertakings Ordinance should be amended in the first place.