

(Summary Translation prepared
by the LegCo Secretariat
for Members' reference only)

Comments of the HK Workers' Health Centre on the Factories and Industrial Undertakings (Medical Examination) Regulation

The HK Workers' Health Centre supports the Government's move to protect workers' occupational health by submitting the Factories and Industrial Undertakings (Medical Examination) Regulation ("the Regulation") to the Legislative Council. The Centre is of the view that the fundamental way to safeguard workers' occupational health is to improve their working conditions. Only through the elimination of occupational hazard from the setting of workplace, the utilization of raw materials, the design of work procedures and so on, can workers work in a safe and healthy working environment. The Centre has been, therefore, persistently urging the Government, through legislation and enforcement, to request and require employers to provide a safer and healthier working environment for their workers.

For certain hazardous occupations, medical examination is essential for the early detection and prevention of occupational diseases. Pre-employment and regular medical examinations can obviously help in providing protection for workers. Similarly, employers will benefit from savings in medical expenses and compensations for those workers exposed to the occupational hazard and in the longer term, form a healthier and more productive workforce.

However, there are certain shortcomings in the Regulation which are in breach of the legislation intent of the Regulation.

- (1) The Regulation only covers 3% employees in the local workforce.

Under the proposed Regulation, some 110,000 workers of 17 occupations are required to undergo medical examinations. It is considered grossly inadequate as they only represents 3% of the total workforce. As not only workers who work in factories and industrial undertakings are exposed to occupational hazard, instead of defining the occupations to which this Regulation applies, the occupations involving high risk procedures should be identified in the first place.

- (2) Under the Regulation, employers will not be held responsible for the negligence of occupational safety, on the other hand, the consequences of such negligence are to be borne by employees.

Under the Regulation, those employees found by the medical examinations to be unfit for a designated occupation should be suspended or permanently suspended from employment in his particular occupation. It also provides that such employees may be redeployed to other duties by the employers. In the case where consent can not be made between the both parties, employers may, in accordance with the Employment Ordinance, terminate the employment relationship with the employees. In other words, should the employee is found physically unfit in the regular medical examination, the Regulation empowers the employer to lay off the victim, i.e. his employee. Unreasonably, apart from bearing the pain caused by the negligence on the part of his employer, the victim will also lose his job.

(3) Inadequate protection for workers exposed to occupational hazard at work.

Under the Regulation, employees may seek compensation under the Employees' Compensation Ordinance, the Pneumoconiosis (Compensation) Ordinance and the Occupational Deafness (Compensation) Ordinance in the normal way.

However, the occupational diseases which are liable to compensation are presently limited to 47 kinds only. According to the annual statistics publicized by the Labour Department, around 500 incidents involving occupational diseases were granted compensation under those ordinances. It is anticipated that, upon enactment of the Regulation, those workers who are found physically unfit in the regular medical examinations will be terminated without any compensation.

(4) The Regulation fails to extend its coverage to local employees, it only seeks to provide additional protection to employers.

According to the above analysis, before and after the enactment of the Regulation, the number of people likely to be affected each year will be around 500 only. The Regulation fails to extend its coverage to cover more workers, but it obviously provides more protection to employers. Employers may, through conducting medical examinations, identify those worker who are fit for the job and those whose health starts to deteriorate, so that they can take early action to terminate those who are physically unfit. As a result, though the Regulation provides, in theory, protection to workers, they are exposed to the risk of unemployment.

In our opinion:

- (1) The Regulation should be introduced as a subsidiary legislation of the Occupational Safety and Health Ordinance, to provide that all employees should undergo pre-employment and regular medical examinations. If high risk work procedures are given priority for protection, all such procedures should be identified in various industries.
- (2) The Government should set up an effective mechanism to assist those people who are found unfit during the medical examination, to find out if his health problem is originated from his past employment. If that is the case, his former employer should be held responsible. And the Government should arrange suitable work for him to ensure that he is not being discriminated.
- (3) The employees should be duly compensated if he is found by the regular medical examinations that his health has been damaged by such occupational hazard at work.
- (4) There should be legislation to prohibit employers to lay off those employees who have health problems but are not given compensation under the existing legislation. If such employees are certified fit for continued employment, employers should arrange them to fill suitable posts until they reach the age of retirement.
- (5) The enterprises, whose employees are found to have health problems for exposure to occupational hazard, should be held responsible for negligence of their employees' safety under the Occupational Safety and Health Ordinance.