

(English translation by the
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for Members' reference only)

(Summary translation)

(Letterhead of the Hong Kong Occupational Deafness Association)

21 July 1999

**Our Views on the Factories and Industrial Undertakings
(Medical Examinations) Regulation**

**Strong Demand for the Enactment of a Regulation
which genuinely seeks to protect the interests of employees**

INTRODUCTION TO THE NEW REGULATION

In order to safeguard the safety and health of some 800 000 employees engaged in the industrial sector in Hong Kong, the Government has enacted the Factories and Industrial Undertakings Ordinance (FIUO) as well as its 27 pieces of subsidiary legislation. The Factories and Industrial Undertakings (Medical Examinations) Regulation (the new Regulation) is one of the pieces of subsidiary legislation proposed to be made under FIUO. Occupations to which the new Regulation applies include employment involving exposure to mines, tunnelling operations, compressed air work, asbestos, carcinogenic substances, lasers and excessive noise. It is predicted that some 170,000 employees, the largest group to be affected, are exposed to excessive noise at a level of 85 dB and above in the workplace. As a mutual aid organization whose members mainly come from noisy occupations, we are very concerned about the new Regulation. We would like to express our views and make proposals on the new Regulation.

The new Regulation provides that a proprietor shall be responsible for making the arrangement for all employees to undergo medical examinations and shall bear all the expenses entailed. Moreover, the proprietor shall not employ any person who has not been medically examined by an Appointed Medical Practitioner (AMP) and certified fit to work in a designated occupation. As for the AMP, he should have already undertaken a course of training approved, for the purposes of the new Regulation, by the Hong Kong College of Community Medicine recognized under the Hong Kong Academy of Medicine Ordinance.

The result of the medical examination shall be reported by the AMP to the proprietor within 14 days after the medical examination is conducted and a copy of that report shall be provided to the employee concerned. The AMP will

advise in the report whether the employee can continue to be employed in his occupation. If he is found to be unfit to work in that occupation, the AMP may recommend the employee be suspended from employment until he is certified fit to work in that occupation. The AMP may even recommend the employee be permanently suspended from employment in his occupation. However, the employee has a right to appeal against the result of the medical examination and the AMP's recommendation. The employee may, within 14 days of being informed of such recommendation, appeal to the Appeal Board which consists of two medical practitioners and the Occupational Health Consultant or a Senior Occupational Health Officer or an Occupational Health Officer.

SHORTCOMINGS OF THE NEW REGULATION

The new Regulation provides that an employee shall undergo pre-employment and periodic hearing examination within four months before commencing employment and once every year or every other year respectively, and that the AMP shall in turn submit a report and his recommendation to the proprietor. In fact, what purpose can the medical examination serve apart from proving whether the employee suffers from occupational deafness and hence is eligible for seeking compensation under the Occupational Deafness Compensation Fund?

If proved to be suffering from hearing loss, subject to the recommendation of the AMP, the employee may stand the risk of being suspended and even dismissed from employment. Whilst the requirement for statutory medical examination aims to protect the occupational health of employees, the new Regulation does not put in place any mechanism to eliminate potential hazards to the health of employees. Instead, it empowers the proprietor to dismiss employees who suffer from hearing loss as a result of their work. Moreover, it is unreasonable that the proprietor is not held responsible for negligent about the occupational health and safety of employee while the employee who has been victimized as a result of his employer's fault is rendered jobless.

Under the new Regulation, 195 000 employees engaged in 17 high-risk occupations are required to undergo pre-employment and regular medical examinations. According to the information provided by the Labour Department, 153 000 of them (almost 80%) are engaged in the construction industry, 16 000 in catering and 26 000 in manufacturing and other industries. Due to the unique characteristics of the construction industry, many employees are employed under a multi-layered sub-contracting system on a short-term contract and they have to change jobs frequently. As such, these employees are worried that upon the enactment of the new Regulation, their market value may be diminished and the proprietors may cut their wages on the ground that they are

suffering from hearing loss. In this case, not only their occupational health, but also their wages are not protected.

The additional cost of medical examination will undoubtedly push up the operating cost, which may have a great impact on the financial situation of small firms. In a period of economic downturn, proprietors may resort to retrenchment and wage reduction in order to bring the operating cost down, and unscrupulous proprietors may readily take advantage of the new Regulation to achieve their end. It is once again the employees who will be victimized.

Under the new Regulation, employees suffering from occupational deafness may be deprived of the chance to live on their skills. Some employees may choose to work in non-skilled occupations and receive much lower wages. Those whose ages are relatively older may find it difficult to find another job due to age discrimination. For employees who eventually become jobless, they may have to depend on Comprehensive Social Security Assistance for a living, hence imposing a heavy financial burden on the society.

The new Regulation provides for the right of the employee to appeal to the Appeal Board against the recommendation made in respect of him by the AMP. However, the Board only consists of three medical practitioners. We opine that whilst medical practitioners can give professional advice on medical matters, they will not holistically look into the case by taking the employee's rights and benefits into consideration. We find it unacceptable that an employee can be dismissed simply upon the advice of the AMP.

OUR VIEWS ON THE NEW REGULATION

With the coming into force of the new Regulation, employees' state of hearing will be constantly monitored, which will facilitate early detection of occupational diseases. Apart from this merit, a more substantial effect of the new Regulation may be that employees will become alarmed upon knowing their state of health. In order to secure their jobs, they will pay more attention to hearing protection for fear that their hearing will get worse and worse, hence giving their employers an excuse to dismiss them.

We are in fact very supportive of the objective of the new Regulation which is to facilitate early detection, cure and prevention of occupational diseases by requiring employees to undergo periodic medical examination, hence avoiding permanent damage to their health. However, the new Regulation does not provide for any measures to help employees cure or prevent occupational diseases. Instead, plenty of provisions are proposed solely in the interests of proprietors.

Our major concern is that the new Regulation may subject employees to the risk of being dismissed, which will have an implication on their livelihood. Proprietors may get rid of those employees suffering from occupational diseases under the guise of protecting their health. Is it worth passing a regulation which can protect the health of employees but at the expense of their livelihood?

Given the above shortcomings, employees engaged in noisy occupations may be subject to the risk of unemployment under the new Regulation. In this connection, we would like to put forward the following proposals:

OUR PROPOSALS

1. The Appeal Board should consist of representatives from employees, employers and the Equal Opportunities Commission instead of merely medical practitioners, so that appeals can be handled in a holistic, fair and just way by taking account of the rights of employers and employees as well as the advice of the medical professionals.
2. For those employees found to be suffering from hearing loss in the medical examination, the Government should put in place a system to ascertain the relevance of the hearing impairment to their occupations. If proved to be relevant, the proprietors should be held responsible. Where necessary, prosecutions should be instituted and punitive measures adopted against the proprietors. In this way, they will be compelled to invest more on efforts to eliminate excessive noise in the workplace.
3. The new Regulation should require the AMP to state whether employees found to be unfit to work in his original occupation can perform other duties. The Government should also put in place a mechanism to guard against arbitrary dismissal of these employees and to make sure that their proprietors have taken all practicable steps to deploy them to more appropriate duties. A compensation fund should be set up to pay out a monthly subsistence allowance to people who are rendered jobless as a result of the medical examination in order to help them tide over financial difficulties.
4. Proprietors should shoulder the important responsibility of protecting the occupational health of their employers and providing a better working environment. In this regard, we urge the Labour Department to provide information on noise control to proprietors so that they can have a better understanding of how to improve the environment of the workplace. Moreover, the Government should set up a special fund and offer loans to proprietors of small firms with little financial resources. With these loans,

these proprietors can improve the environment of the workplace and meet the employees' costs of medical examination. Moreover, they will not resort to retrenchment and wage reduction readily on the excuse of financial difficulty, thereby affecting the livelihood of employees.

5. We urge the Government to amend Section 3(2) of the Factories and Industrial Undertakings (Noise at Work) Regulation to the effect that the need and frequency for a further noise assessment shall be determined with reference to the result of the medical examination made in respect of employees.

In conclusion, we support the objective of the new Regulation. However, we find a number of provisions unacceptable for they are made solely in the interests of the proprietors. We will object the passage of the new Regulation should those provisions are not amended.

The Hong Kong
Occupational Deafness Association