

A Response to the Submission made by the Hong Kong Workers' Health Centre

General response

The purpose of the proposed Factories and Industrial Undertakings (Medical Examinations) Regulation is to detect absorption of hazardous substances in the workers' body and any other occupational diseases covered in the law, particularly those with long latent periods, at an early stage. It is estimated that about 195,000 workers (i.e. about 6% of the total workforce), including 153,000 construction workers, will benefit from the medical examination scheme provided by the proposed regulation. Once the workers concerned know that their health problems are work-related, they should receive medical treatment until they are fit for work again, and thereafter take appropriate measures, e.g. the use of personal protective equipment, to prevent recurrence. This can prevent the diseases from further deterioration to such an extent as to affect the workers' capacity to take up employment.

Upon detection of an occupational disease, appointed medical practitioners are required under the existing legislation to notify the Commissioner for Labour who will conduct investigations into the matter, advise the proprietor concerned on preventive and control measures, and initiate enforcement actions where appropriate.

Workers suffering from an occupational disease or injury may claim compensation under the Employees' Compensation Ordinance, the Pneumoconiosis (Compensation) Ordinance and the Occupational Deafness (Compensation) Ordinance if they are so entitled. It must be emphasized that occupational diseases or injuries arising from exposure to the 17 hazardous substances and physical agents specified in the proposed regulation are **all compensable** under the various compensation ordinances. At present, 49 occupational diseases, including Carpal Tunnel Syndrome and Legionnaires' Disease which were added recently, have been prescribed for compensation purposes. Over the past three years, 2,025 occupational diseases had been reported to the Labour Department and confirmed subsequently. For the first half of 1999, the figure was 389.

Response to recommendations

1. The medical examination scheme under the Factories and Industrial Undertakings (Medical Examinations) Regulation to be made under the Factories and Industrial Undertakings Ordinance (FIUO) was first proposed by the Expert Working Group on Occupational Health Services in 1992. The subsequent consultation process was completed long before the enactment of the Occupational Safety and Health Ordinance (OSHO) in 1997. If the proposed regulation is to be made under the OSHO which has a broader scope than the FIUO, the whole consultation process as well as the law drafting process have to be done all over again. This will certainly cause **significant delay** to the legislative timetable. In order that workers engaged in hazardous processes in factories and industrial undertakings can benefit from the proposed medical examination scheme as soon as possible, the Government considers it more appropriate to proceed with the original proposal expeditiously. The feasibility of extending the proposed scheme to cover similar hazardous processes in the non-industrial settings will be examined at a later stage when the proposed regulation, if passed, is fully implemented. It would also be useful to gain some operational experience under the FIUO before it is fully extended to cover the non-industrial sector where the problem is less complicated.
2. Upon receipt of a notification of an occupational diseases, the Labour Department will investigate into the matter, advise the proprietor concerned on preventive and control measures, and initiate enforcement actions under the Factories and Industrial Undertakings Ordinance and Regulations as appropriate.

A worker who is found to have contracted an occupational disease, e.g. occupational deafness, in a pre-employment medical examination, but is considered medically fit for a job, e.g. engaged in a noisy process, despite the health problem, may still be employed in that occupation. Employers refusing to accept him on health ground alone may be contravening the provisions of the Disability Discrimination Ordinance.

3. Workers found to have occupational diseases or injuries through the proposed statutory medical examinations may claim compensation under the Employees' Compensation Ordinance, the Pneumoconiosis (Compensation) Ordinance and the Occupational Deafness (Compensation) Ordinance if they are so entitled.

4. A worker found medically unfit for employment in a designated occupation can be redeployed to another job. Such redeployment arrangements may or may not entail a change in wages, subject to the experience and skills of the worker and the availability of a suitable job. In this regard, mutual agreement between the worker and his employer on the redeployment arrangement is of paramount importance from the labour relations point of view. As a good management practice, employers will be advised to make redeployment arrangements as far as practicable, and many of them will probably do so as a caring employer.

5. During the investigation of an occupational disease case, the Labour Department will take enforcement actions against proprietors who are found violating any provisions of the health and safety laws.