

A Response to the Submission made by the Hong Kong Occupational Deafness Association

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. 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.

The Association's concern that proprietors might use the result of a medical examination to reduce the wages of or dismiss a worker found medically unfit or fit to work with restrictions is noted, but insofar as occupational deafness is concerned, regular medical examination serves to detect hearing impairment at an early stage so that preventive and control measures can be **strengthened** to safeguard the workers' hearing from further deterioration. It is very unlikely that occupational deafness alone would constitute sufficient **medical** grounds for permanent unfitness for employment in work involving noisy processes. A likely exception may be a rapid and marked deterioration of the hearing capacity of a young worker despite the proper use of hearing protectors. However, proprietors who dismiss workers because they have hearing impairment but are still fully capable of performing their job might be contravening the provisions of the Disability Discrimination Ordinance.

Response to recommendations

1. The function of the Appeal Board is to review the recommendation of an appointed medical practitioner. As the issue under consideration is purely medical in nature rather than employment-related, the proposed composition, i.e. three doctors only, is considered appropriate. Matters relating to employment or disability discrimination could be referred to the court or the Equal Opportunities Commission respectively.
2. Upon receipt of a notification of an occupational deafness case, the Labour Department will investigate into the matter, advise the proprietor concerned on noise reduction measures, and initiate enforcement actions under the Factories and Industrial Undertakings (Noise at Work) Regulation as appropriate. As regards the proposal to tag insurance premium rate onto safety performance of individual employers, this is a pricing strategy for the insurance industry to consider.
3. A worker found medically unfit for employment in a designated occupation can be redeployed to another job. Such redeployment arrangement 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. Workers suffering from financial hardship because redeployment could not be arranged may seek social security assistance from the Social Welfare Department.
4. Proprietors will be given advice on noise reduction measures to be taken for the prevention of occupational deafness. As regards the proposal to set up a special fund to assist proprietors of small establishments in improving the working environment, it is our understanding that the Occupational Safety and Health Council is prepared to embark on a trial scheme, based on the Japanese and Korean model, to provide some form of financial incentive to assist small and medium establishments to implement workplace safety and health improvements.
5. Section 3(2) of the Factories and Industrial Undertakings (Noise at Work) Regulation requires proprietors to ensure that a further noise assessment is made if there has been a significant change in the work or they have

reasons to believe that the previous assessment is no longer adequate for achieving its purpose. The result of a medical examination is certainly one of the factors triggering off a further noise assessment. In this regard, the Government considers that the current provision has already incorporated the proposed mechanism, i.e. the need for and the frequency of noise assessment to be dependent on the result of medical examination, and therefore amendment to this section would not be necessary.