

**FACTORIES AND INDUSTRIAL UNDERTAKINGS (MEDICAL EXAMINATIONS)
REGULATION**

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FACTORIES AND INDUSTRIAL UNDERTAKINGS (MEDICAL EXAMINATIONS) REGULATION

(Made under section 7 of the Factories and Industrial Undertakings
Ordinance (Cap. 59) subject to the approval of the
Legislative Council)

1. Commencement

This Regulation shall come into operation on a day to be appointed by the Commissioner for Labour by notice in the Gazette.

2. Interpretation and application

(1) For the purposes of the definition "proprietor" in subsection (2) (a) and, only for those purposes, "Authority" (訓練局) means the Construction Industry Training Authority as defined in section 2(1) of Industrial Training (Construction Industry) Ordinance (Cap. 317).

(2) For the purposes of sections 4 to 6 and, only for those purposes, "proprietor" (東主) -

(a) in the case of an industry, namely the construction industry, in which building works or construction works are carried out, means the Authority; and

(b) in the case of any other industry, means "proprietor" as defined in section 2(1) of the Factories and Industrial Undertakings Ordinance (Cap. 59).

(3) For the purposes of subsection (2), "building works", "construction industry" and "construction works" have the meanings assigned to them in section 2(1) of the Industrial Training (Construction Industry) Ordinance.

(4) This Regulation shall apply to any industrial undertaking in which persons are or are to be employed in an occupation listed in Schedule 1.

3. Prohibition against employment without being medically examined and certified

(1) A proprietor shall not employ any person engaged in an occupation listed in Schedule 1, without that person having been medically examined by an appointed medical practitioner in accordance with the requirements specified in Schedule 2 and certified fit to work in that occupation.

(2) If, immediately before the commencement of this section, a person engaged in an occupation listed in Schedule 1 was employed by a proprietor without that person having been medically examined in accordance with subsection (1) and that person is or remains so engaged on or after that commencement, the proprietor must, within 3 months after that commencement, ensure that that person is medically examined by an appointed medical practitioner as provided in that subsection.

4. Appointment of medical practitioner

The proprietor shall, for the purposes of this Regulation, appoint any suitable person as an appointed medical practitioner.

5. Training course for appointed medical practitioner

The proprietor shall not appoint any person as an appointed medical practitioner under section 4 without that person having undertaken a course of training approved, for the purposes of this Regulation, by the Hong Kong College of Community Medicine

recognized under the Hong Kong Academy of Medicine Ordinance (Cap. 419).

6. Proprietor to bear expenses of medical examination

All medical examinations required under this Regulation shall be arranged and conducted at the expense of the proprietor.

7. Employee not to be employed without medical examination

No person shall, unless he is exempted in writing by the Commissioner from having to comply with the requirements of section 3, take employment in an occupation listed in Schedule 1 without having been medically examined as provided in that section.

8. Employee to be periodically medically examined

Every person employed in an occupation listed in Schedule 1 shall, unless he is exempted in writing by the Commissioner from having to comply with the requirements of section 3, be medically examined by an appointed medical practitioner as provided in that section.

9. Report of medical examination

The result of a medical examination conducted under section 8 shall, within 14 days after the medical examination is conducted, be reported by the examining appointed medical practitioner to the proprietor in such form and manner as the Commissioner may require and a copy of that report and of any recommendation accompanying it under section 10, shall be provided to the employee in respect of whom it was made.

10. Report may be accompanied by recommendation as to limitations on or for suspension from employment in particular occupation

A report by the examining appointed medical practitioner to a proprietor under section 9 may, if that appointed medical practitioner is of opinion that the interests of the health and safety of the employee being the subject of the report so require, be accompanied by a recommendation in such form and manner as the Commissioner may require to the effect that the employee being the subject of the report -

- (a) should continue to be employed in his particular occupation subject to such conditions and limitations as that appointed medical practitioner may specify in the form;
- (b) should be suspended from employment in his particular occupation for such period as that appointed medical practitioner may specify in the form;
- (c) should be suspended from employment in his particular occupation until he is certified fit to work in that occupation in accordance with section 3; or
- (d) should be permanently suspended from employment in his particular occupation.

11. Employee to retain report

An employee shall, in relation to the copy of the report and recommendation, if any, provided to him under section 9 -

- (a) keep the copy of the report and of any recommendation until he is again medically examined by virtue of section 8;

- (b) upon service upon him of notice in writing from the Commissioner in that behalf, produce the report and any recommendation to the Commissioner for his inspection as soon as is reasonably practicable and in any case within 14 days after that service.

12. Proprietor to act in accordance with recommendation

(1) Upon receipt of a recommendation under section 10 accompanying a report made under section 9, the proprietor shall as soon as is reasonably practicable and in any case within 14 days after that receipt -

- (a) take all reasonable and lawful means to implement the recommendation as are practicable;
- (b) provide all such particulars and information to the employee being the subject of the recommendation as are sufficient to ensure that the employee is fully and fairly informed both of the recommendation and of the means being or to be taken to implement it; and
- (c) inform the employee of the substance of section 13.

(2) All reasonable and lawful means taken under subsection (1) (a) by a proprietor to implement a recommendation shall be taken at the expense of the proprietor.

13. Employees' right to appeal against action to implement recommendation

(1) An employee who is aggrieved (the "appellant") by a recommendation made in respect of him by an appointed medical practitioner to a proprietor under section 10 may, within 14 days of being informed of it by virtue of section 12(b), appeal to a board (the "Appeal Board") to be appointed by the Commissioner for

that purpose, which shall consist of 2 medical practitioners and the Occupational Health Consultant or a Senior Occupational Health Officer or an Occupational Health Officer.

(2) Subject to this section, an appeal under subsection (1) shall be made in such form and manner as the Commissioner may require; and the practices and procedures to be applied in the consideration and determination of the appeal shall be such as the Appeal Board may determine.

(3) When an appeal is made to it under subsection (1), the Appeal Board shall review the recommendation in question and the report in respect of which it was made and may require the appellant to be again medically examined by virtue of section 8.

(4) Where an appellant, without reasonable excuse, fails to comply with a requirement made under subsection (3) that he be again medically examined, the appeal shall be treated as having been withdrawn.

(5) A recommendation that is appealed against under subsection (1) shall be suspended in its operation as from the day on which the appeal is made until such appeal is determined or withdrawn.

(6) After reviewing the decision and giving the appellant the opportunity of making written representations to it, the Appeal Board, in the determination of an appeal under subsection (1), may confirm or revoke the recommendation appealed against or substitute for that recommendation such other recommendation or, make such other recommendation as the Appeal Board may think fit.

(7) The Appeal Board shall cause notice of a determination under subsection (6) to be given to the appellant and to the proprietor with whom he is employed.

(8) A recommendation that is revoked under subsection (6) or in respect of which such other recommendation is substituted or such other recommendation is made shall be immediately invalidated with retroactive effect.

(9) Upon the invalidation of a recommendation by virtue of subsection (8), the proprietor shall -

- (a) take all such reasonable and lawful steps as are sufficient to secure that the appellant is put in the position that he would have been in but for the recommendation being the subject of the appeal; and
- (b) in the case where another recommendation is substituted for the recommendation appealed against or another recommendation is made, take all reasonable and lawful means to implement the recommendation as are practicable.

14. Offences

(1) A proprietor who contravenes section 3, 4, 5, 6, 12 or 13(9) commits an offence and is liable to a fine at level 5.

(2) For the purposes of subsection (1), "proprietor" (東主) does not mean the Authority.

(3) An employee who contravenes section 11 commits an offence and is liable to a fine at level 2.

15. Offence relating to false medical examination report

An appointed medical practitioner who having conducted any examination required under this Regulation delivers to the proprietor any report in respect of that examination or any recommendation accompanying the report which is to his knowledge

false as to a material particular commits an offence and is liable to a fine at level 5.

16. Forms

Every form required under this Regulation, not being a form prescribed in the Schedules, shall be in such form as the Commissioner may from time to time approve.

SCHEDULE 1

[ss. 2, 3, 7 & 8]

OCCUPATIONS TO WHICH THIS REGULATION APPLIES

1. Employment in mines, quarries and tunnelling operations.
2. Employment involving work in compressed air.
3. Employment involving the use or handling of or exposure to asbestos.
4. Employment involving the use or handling of or exposure to carcinogenic substances (controlled substances).
5. Employment involving the use or handling of or exposure to silica.
6. Employment involving the use or handling of or exposure to arsenic.
7. Employment involving the use or handling of or exposure to cadmium.

8. Employment involving the use or handling of or exposure to manganese.
9. Employment involving the use or handling of or exposure to lead.
10. Employment involving the use or handling of or exposure to mercury.
11. Employment involving the use or handling of or exposure to organophosphates.
12. Employment involving the use or handling of or exposure to tar, pitch, bitumen or creosote.
13. Employment involving the use or handling of or exposure to raw cotton dust.
14. Employment involving the use or handling of or exposure to benzene.
15. Employment involving the use or handling of or exposure to methylenediphenyl diisocyanate or toluene diisocyanate.
16. Employment involving the use or handling of or exposure to lasers (class 3B and 4).
17. Employment involving exposure to excessive noise (daily personal noise exposure of 85 dB(A) and above).

SCHEDULE 2

[s. 3]

EXAMINATION REQUIREMENTS

	Hazardous exposure	Nature of examination required	Frequency of periodic examination	
			Pre-employment	Periodic
1.	Mines, quarries and tunnelling operations	General, including examination of the lungs Chest x-ray	Within 1 month before commencing employment	Once every 12 months
2.	Compressed air work	General, including ear, nose, throat, chest, cardiovascular, neurological and gastrointestinal status Chest x-ray and lock test at pre-employment examination The frequencies	Within 3 days before commencing employment	Once every 3 months for pressures not exceeding 1 bar (14 pounds per square inch) gauge pressure Once every 4 weeks for pressures exceeding 1 bar (14 pounds per square inch) gauge pressure Not more than 3 days prior to re-employment in compressed air – (a) after an employee has not been

of radiological examination of shoulder, hip and knee joints are as follows:

For

pressures above 1 bar (14 pounds per square inch) gauge pressure, radiological examination should be undertaken within 3 months of initial exposure to compressed air to act as a

employed for more than 14 consecutive days;

(b) after an employee has suffered from a cold, chest infection, sore throat, earache or any illness or injury necessitating absence from work for more than 3 consecutive days

baseline for
reference

For

pressures
between 1 and 2
bar (14 and 28
pounds per
square inch)
gauge pressure,
radiological
examination
should be
repeated after a
maximum of 5
years of
exposure

For

pressures above
2 bar (28 pounds
per square

		inch) gauge pressure, radiological examination should be repeated after a maximum of 3 years of exposure		
3.	Asbestos	General, including examination of the lungs	Within 4 months before commencing employment	Once every 12 months
4.	Carcinogenic substances (controlled substances)	General, including exfoliative cytology of urine	Within 1 month after commencing employment	Once every 12 months
5.	Silica	General, including signs and	Within 4 months before	Once every 12 months

		Symptoms of silicosis Chest x-ray	commencing employment	
6.	Arsenic	General, including signs and symptoms of arsenic poisoning, skin cancer and lung cancer Chest x-ray Urine arsenic	Within 4 months before commencing employment	Once every 12 months
7.	Cadmium	General, including signs and symptoms of cadmium poisoning Blood cadmium Urine β 2-microglobulin	Within 4 months before commencing employment	Once every 12 months
8.	Manganese	General, including signs and	Within 4 months before	Once every 12 months

		symptoms of manganese poisoning Urine manganese	commencing employment	
9.	Lead	General, including signs and symptoms of lead poisoning For inorganic lead exposure, haemoglobin and blood lead For organic lead exposure, urine lead	Within 4 months before commencing employment	Once every 6 months
10.	Mercury	General, including signs and symptoms of mercury poisoning Urine mercury	Within 4 months before commencing employment	Once every 12 months

11.	Organophosphates	<p>General, including signs and symptoms of organophosphate poisoning</p> <p>Plasma cholinesterase or red blood cell acetylchol-inestrase</p>	<p>Within 4 months before commencing employment</p>	<p>Once every 6 months</p>
12.	<p>Tar, pitch, bitumen and creosote</p>	<p>General, including examination of skin</p>	<p>Within 4 months before commencing employment</p>	<p>Once every 12 months</p>
13.	Raw cotton dust	<p>General, including signs and symptoms of byssinosis and chronic bronchitis</p> <p>Lung function tests</p>	<p>Within 4 months before commencing employment</p>	<p>Once every 12 months</p>

14.	Benzene	<p>General, including signs and symptoms of benzene poisoning</p> <p>Complete blood picture</p> <p>Peripheral blood film</p> <p>Urine phenol</p>	<p>Within 4 months before commencing employment</p>	<p>Once every 12 months</p>
15.	<p>Methylene-diphenyl diisocyanate (MDI), Toluene diisocyanate (TDI)</p>	<p>General, including signs and symptoms of asthma and dermatitis</p> <p>Lung function tests</p>	<p>Within 4 months before commencing employment</p>	<p>Once every 12 months</p>
16.	<p>Lasers (Class 3B and 4)</p>	<p>General, including ophthalmoscopic examination</p> <p>Visual acuity for far and near vision</p>	<p>Within 4 months before commencing employment</p>	<p>Once every 12 months</p>

17.	Excessive noise (daily personal noise exposure of 85 dB(A) and above)	General, including auroscopic examination Audiometric examination	Within 4 months before commencing employment	For daily personal noise exposure between 85dB(A) and 89dB(A), once every 24 months For daily personal noise exposure of 90dB(A) and above, once every 12 months
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Commissioner for Labour

1999

Explanatory Note

This Regulation provides for the mandatory medical examination of persons employed in work involving exposure to and the use of hazardous substances and physical agents.

2. Section 1 is a commencement provision.
3. Section 2 is an interpretation and application provision. The Regulation applies to any industrial undertaking in which persons are or are to be employed in an occupation listed in Schedule 1. In the case of the construction industry, that is,

any industry in which building works or construction works are carried out, the objectives of the Regulation, as reflected in sections 4 to 6, will be implemented by the Construction Industry Training Authority as defined in the Industrial Training (Construction Industry) Ordinance (Cap. 317). In the case of every other industry, those objectives will be implemented by the proprietor of each particular industrial undertaking to which the Regulation applies.

4. Section 3 prohibits the employment, by a proprietor, of any person engaged in an occupation listed in Schedule 1 without that person having been medically examined and certified fit to work in that occupation as provided in Schedule 2.

5. Section 4 provides for the appointment of medical practitioners to carry out medical examinations for the purposes of the Regulation.

6. Section 5 prohibits the appointment of any person as an appointed medical practitioner unless that person has undertaken an approved course of training.

7. Section 6 requires that proprietors bear the expenses of medical examinations.

8. Section 7 prohibits any person from taking employment in an occupation listed in Schedule 1 without having been medically examined.

9. Section 8 requires a person employed in an occupation listed in Schedule 1 to be medically examined from time to time as provided in Schedule 2.

10. Section 9 requires that the result of every medical examination shall be reported to the proprietor and the employee in respect of whom the report was made within 14 days of the examination.

11. Section 10 provides that if the appointed medical practitioner is of opinion that the interests of the health and safety of the employee so require, the report shall be accompanied by a recommendation that the employee -

- (a) should continue to be employed in his particular occupation subject to such conditions and limitations as the appointed medical practitioner may specify;
- (b) should be suspended from employment in his particular occupation for such period as the appointed medical practitioner may specify;
- (c) should be suspended from employment in his particular occupation until he is certified fit to work in that occupation; or
- (d) should be permanently suspended from employment in that occupation.

12. Section 11 requires an employee to retain a copy of the report and of any accompanying recommendation and to produce it for inspection by the Commissioner when requested.

13. Section 12 requires a proprietor to take action in accordance with the recommendation and to take all reasonable and lawful means to implement it as are practicable. The employee concerned is to be fully informed of the means to be taken and of his right under section 13 to appeal to an Appeal Board against the recommendation.

14. Section 13 makes provision for appeals to an Appeal Board comprised of 2 medical practitioners and the Occupational Health Consultant or a Senior Occupational Health Officer or an Occupational Health Officer. A recommendation that is appealed against shall be suspended in its operation as from the day on

which the appeal is made until such appeal is determined or withdrawn. On an appeal, the Appeal Board may review the report and recommendation and confirm or revoke the recommendation, substitute another recommendation for it or make another recommendation.

15. A recommendation that is revoked under or in respect of which such other recommendation is substituted or such other recommendation is made shall be immediately invalidated with retroactive effect and upon that invalidation, the proprietor shall take all such reasonable and lawful steps as are sufficient to secure that the appellant is put in the position that he would have been in but for the recommendation being the subject of the appeal.

16. Sections 14 and 15 deal with offences.

17. Section 16 provides for forms.

18. Schedule 1 sets out the occupations to which the Regulation applies.

19. Schedule 2 sets out the nature of the examination that is required in respect of each occupation involving hazardous exposure and the frequency with which they are to be conducted.