

21 June 2000

Dr Hon LEONG Che-hung, JP
Chairman
House Committee
Legislative Council
Jackson Road
Central
Hong Kong

Dear Dr Hon Leong,

**Verbal Report of the Subcommittee
on Regulations relating to
Occupational Safety and Health**

I refer to the Report on Points of Interest at the LegCo House Committee meeting on 16 June 2000.

Under the verbal report of the Subcommittee on the Factories and Industrial Undertakings (Medical Examinations) Regulation, the Hon Cheng Kar-foo, Subcommittee Chairman, is reported to have said that the Administration had neglected the view of the Subcommittee that the Employment Ordinance did not cater for the suspension of an employee from work due to medical unfitness, that the Administration recognised the need to amend the principal ordinance first only recently, and that the delay in the implementation of the Regulation had resulted from staff movement in Education and Manpower Bureau. He said the Subcommittee expressed dissatisfaction with the way the Administration had handled the matter, and would move a motion of regret at the House Committee meeting on 23 June.

I am writing to you to convey the Administration's response to the above remarks, so that it will be taken into account when the House Committee considers the motion at the next meeting.

Subcommittee meeting on 13 June

According to the Administration's representative at the meeting on 13 June, the Administration responded to the concern which had been raised by the Hon Lee Cheuk-yan at the Subcommittee meeting held on 11 April, that an employee could be suspended for a lengthy period of time and this might conflict with section 31B of the Employment Ordinance. As detailed in the written response provided before the meeting, the Administration explained that, having sought legal advice, it had arrived at the view that whereas the Regulation is not in conflict with the Employment Ordinance in regard to the length of the period of suspension, the Employment Ordinance does not cater for the situation of an employee suspended from work by law due to medical unfitness. There exists, therefore, grey areas in regard to whether temporary suspension from employment under the Regulation would breach the continuity of employment. The Administration also concluded that, in order to clarify the legislative intent that the Regulation should not affect the rights and benefits of employees concerned, it would be necessary to provide in the Regulation that an employee is deemed to be continuing his employment during the suspension period and, therefore, is entitled to the same rights and benefits under the Employment Ordinance as any employee engaged in continuous employment. Since the Commissioner for Labour is not empowered to make such a regulation under the Factories and Industrial Undertakings Ordinance, the principal ordinance should be amended in the first place. It was also explained that if the Regulation were made without addressing the grey areas, disputes over employment terms would soon arise, which could defeat the good intention behind the Regulation, which is to protect the health of employees in designated occupations.

The Subcommittee did not express disagreement to the Administration's response. During the discussion, some Members noted that the Subcommittee had alerted the Administration at an early stage that there would be a problem with the Regulation as the Employment Ordinance does not cater for suspension of employees from work for medical unfitness. If the alert was addressed at the time it was first raised in 1999, the Regulation would have a much better chance of being made in the current legislative session. Whereas some Members said they were disappointed at not being able to make the Regulation in the current session, the Subcommittee on the whole supported the revised legislative approach. Some Members went on to suggest that the Administration should take the necessary steps, including conducting further consultation with employers and employees, before taking the Regulation forward again during the next legislative session.

Previous Subcommittee discussions

The Subcommittee Chairman expressed at the 13 June meeting his concern and dissatisfaction that the situation had been brought about by the change of responsible officer in Education and Manpower Bureau towards the end of the exercise. Having gone through the records, I wish to clarify the position as seen from the Administration's point of view.

At the meetings held on 27 September and 21 October 1999, the Subcommittee did express concern on the impact of temporary or permanent suspension on affected employees. The focus then was on whether compensation or ex-gratia payment is payable for the suspension, and for temporary suspension in particular, whether the employees affected would be entitled to paid sick leave. The Administration responded at the 21 October 1999 meeting that for permanent suspension, the affected employees are entitled to benefits and compensation under the Employment Ordinance and Employees Compensation Ordinance.

At the meeting held on 13 January 2000, the Subcommittee discussed the implications of temporary suspension and whether the Employment Ordinance provided appropriate protection, and if not, whether the affected employees should be granted paid sick leave during the period of suspension. The Administration responded at the 24 January 2000 meeting that entitlement to sick leave, sickness allowance and compensation for temporary incapacity of an employee is governed by the Employment Ordinance and the Employees Compensation Ordinance respectively, and it was not the intention of the Regulation to increase or reduce the rights and benefits of employees under the two Ordinances. The Administration further elaborated its views in a written response to questions by the Subcommittee on sickness, sick leave and sickness allowance.

According to our understanding, the possibility of amending the principal ordinance did not arise until after the Subcommittee meeting on 11 April.

When the Subcommittee met on 11 April 2000, the Hon Lee Cheuk-yan raised a fresh concern, in regard to temporary suspension,

about the possible conflict with section 31B of the Employment Ordinance. We then discussed the matter with the Department of Justice which has advised that grey areas would indeed exist given the existing provisions in the Employment Ordinance, to the extent that the continuity of employment would be brought into question. Our formal response in writing was made on 2 June, which was reflected at the Subcommittee meeting on 13 June.

Conclusion

It can be seen from the foregoing account of events, based on the Administration's records, that we have all along acted with due diligence and that the staff changes in the Education and Manpower Bureau has not delayed our response to the Subcommittee's queries. I do admit, as I believe, do many members of the Subcommittee, that the Regulation has turned out to be a complicated piece of legislation with wider implications beyond that of imposing a requirement of medical examination on employees. This explains why members of the Subcommittee raised different concerns during the relatively long period of deliberations.

I hope you will circulate this letter to Members so that they can be informed of the Administration's explanation and that they can rest assured that the Administration and the Education and Manpower Bureau have cooperated and will continue to cooperate fully with any LegCo Subcommittee formed to examine legislation or any other matters.

Yours sincerely,

(Joseph W P Wong)
Secretary for Education and Manpower

c.c. Hon CHENG Kar-foo