



Labour Department (Headquarters)

勞工處 (總處)

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Tel. Number 電話號碼 : 2852 4070

Fax number 傳真機號碼 : 2544 3271

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Ms Betty MA
Clerk to Panel on Manpower
Legislative Council Complex,
1 Legislative Council Road,
Central,
Hong Kong

**Concern on Implementation of
the “Guidance Notes on Prevention of Trapping Hazard of Tail Lifts”**

Dear Ms MA,

Thank you for your letter of 14 April 2016 to the Secretary for Labour and Welfare attaching the Honourable TANG Ka-piu’s letter dated 13 April 2016 to the Panel on Manpower of the Legislative Council in which he expressed concern over the implementation of the “Guidance Notes on Prevention of Trapping Hazard of Tail Lifts” (the “GN”). I am authorized to reply.

The Labour Department (“LD”) is highly concerned about the occupational safety and health (“OSH”) of workers/employees involved in operating tail lifts mounted on goods vehicles (“TLGV”). According to the general duties provisions (“GD Provisions”) of the OSH legislation, proprietors/employers shall provide and maintain systems of work and plant that are, so far as is reasonably practicable, safe and without risks to health, and shall provide the necessary information, instruction, training and supervision. TLGV falls within the meaning of plant in the aforesaid provisions and hence its safe operation is regulated by those provisions.

The three fatal accidents involving unsafe operation of TLGV that occurred in recent years have aroused concern of the public and the industry. Investigation by LD revealed that the majority of these accidents were attributed

to the lack of safety devices and failure to implement safe systems of work and necessary precautionary measures for prevention of trapping hazards associated with tail lifts. With a view to preventing recurrence of similar accidents and safeguarding the safety of workers, LD issued the first edition of the “Guidance Notes on Prevention of Trapping Hazard of Tail Lift” in July 2013 to assist relevant duty holders in complying with the GD Provisions. It has come to our attention that the compliance condition of the industry has been unsatisfactory since the issue of GN in 2013. In order to further strengthen the safety awareness of proprietors/employers and workers for prevention of accidents as well as to address the concerns of the community including members of the Legislative Council, workers’ unions and the media on tail lift safety, LD revised the GN in October 2015 after consulting the relevant government departments and collecting views of the industry.

The requirements of safety devices stipulated in the 2015 version of the GN are generally the same as those of the 2013 version. The 2015 version provides specific guidance on the safety standards of the safety devices and clearly states that the respective safety devices should conform to internationally recognized safety standards. The requirements imposed by the Transport Department concerning operation of TLGV have also been incorporated. The GN sets out relevant safety standards of the tail lift safety devices but does not restrict proprietors/employers’ choice of source of origin or manufacturer of the products. Individual proprietors/employers may choose among various tail lift safety devices according to their business decision as appropriate, and the requirements of the GN are deemed to be complied with as long as the products have fulfilled the principles and objectives of the safety specifications/safe operations as stipulated in the GN. The GN does not require the replacement of the whole tail lift but clearly requires the installation of respective safety devices. Under normal circumstances, it is not necessary to replace the whole tail lift in retrofitting the required safety devices in order to achieve the safety goal.

To publicise the hazards of tail lift operation and the precautionary measures to be adopted, LD has launched several Tail Lift Safety Seminars for the industry since 2013. Among others, at the seminar in November 2015 organized in collaboration with the Occupational Safety and Health Council and the Hong Kong Productivity Council (“HKPC”), TLGV equipped with a full set of safety devices was exhibited to demonstrate its operation and functions in order to facilitate the industry’s understanding of and compliance with the requirements of the GN and relevant legislation. In addition, LD continues to seek collaboration with major stakeholders of the industry to publicise and further explain the requirements of the GN to them, listen to their views and follow up on issues of concern.

LD notices that there are contractors providing services of installation of these safety devices in the local market. To address the concerns of the industry about the supply and technology of the respective safety devices, HKPC, in coordination with LD, has been providing support to the industry (including enterprises using tail lifts and tail lift suppliers/contractors) by offering guidance and consultancy services in technical and engineering dimensions. Such efforts help the industry fulfil the legislation and enhance tail lift safety.

LD is now in active collaboration with HKPC to coordinate potential safety device service providers/contractors, providing them with further technical support, including organizing specific training courses and tendering advice, with a view to raising the technical standards of such installation work and increasing service supply.

Like other workplaces and/or plant/tools/equipment provided to employees by proprietors/employers, it is the proprietors/employers' statutory responsibility to comply with OSH legislation and to safeguard the safety of workers/employees and personnel involved in tail lift operations. As it is a matter of life and death, the industry should make immediate improvements to eliminate such imminent work risks without further delay. LD takes enforcement actions pursuant to the requirements set out in the relevant legislation and the GN. In taking enforcement actions, LD makes reference to the GN and takes into account all relevant factors, including the supply situation in respect of the installation services of the safety devices and the safety measures adopted by the duty holders, as appropriate.

As regards employees' compensation, according to the Employees' Compensation Ordinance ("ECO"), if an employee, irrespective of his/her occupation, sustains an injury or dies as a result of an accident arising out of and in the course of his/her employment, his/her employer is generally liable to pay compensation under ECO even if the employee might have committed acts of faults or negligence when the accident occurred. ECO also stipulates that no employer shall employ any employee in any employment unless there is in force a policy of insurance to cover his/her liabilities both under ECO and at common law. When an employer who has been insured becomes liable to pay any sum (including the employees' compensation and common law damages) to his/her employee in respect of a work injury, such sum shall become due and payable by the insurer, notwithstanding anything to the contrary in the policy of insurance.

LD will continue to follow up on the matters regarding tail lift safety. LD will maintain its communication with the industry and provide due assistance to the industry.

Yours sincerely,



(WU Wai-hung)
for Commissioner for Labour