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Panel on Manpower

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 18 May 2021**

Occupational diseases and occupational health performance in Hong Kong

Purpose

This paper summarizes the past discussions by the Panel on Manpower ("the Panel") on occupational diseases and occupational health performance in Hong Kong since the Fifth Legislative Council ("LegCo").

Background

2. According to the International Labour Organization ("ILO"), occupational diseases are diseases having specific or strong relationship with occupations, generally with only one causal agent. The Employees' Compensation Ordinance (Cap. 282) ("ECO"), the Occupational Deafness (Compensation) Ordinance (Cap. 469) ("ODCO") and the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360) ("PMCO") prescribe a total of 52 occupational diseases, which are also specified in the Second Schedule to the Occupational Safety and Health Ordinance (Cap. 509) ("OSHO") as a notifiable occupational diseases. Medical practitioners are required to notify the Commissioner for Labour of cases of these occupational diseases.

3. According to the Administration, the number of confirmed cases of occupational disease was 442 in 2019. The common occupational diseases included occupational deafness, tenosynovitis of the hand or forearm and silicosis.

Deliberations of the Panel

List of compensable occupational diseases

4. Some members pointed out that as the service industry had become the mainstay in Hong Kong and the manufacturing sector was shrinking in recent decades, the Administration should review the scope and coverage of the list of compensable occupational diseases in the Second Schedule to ECO in view of the socio-economic changes. Some members took the view that musculoskeletal disorders, such as back pain, shoulder-neck pain, adhesive capsulitis, tennis elbow and osteoarthritis of knees, which were common work-related diseases among domestic helpers, information technology practitioners and employees working in the airport, should be prescribed as occupational diseases if they were resulted from the employers' failure to provide proper training and equipment for workers to perform their duties. Expressing the view that mental health of employees was equally important to their physical health, some members considered that emotional disorders arising from work pressure should be categorized as an occupational disease as well.

5. The Administration advised that the Labour Department ("LD") would review the list of compensable occupational diseases from time to time and had updated the list in the light of international standards. Since 1991, there had been addition of 13 new occupational diseases and expansion of the coverage of three occupational diseases. The Administration further advised that Hong Kong would follow international practices and make reference to the criteria adopted by ILO in determining whether a disease should be prescribed as an occupational disease. Prescription of a disease as an occupational disease was based on the criteria of whether workers engaged in a certain occupation in Hong Kong had a significant and recognized risk of contracting the disease; and whether a causal relationship between the disease and the occupation could be reasonably presumed or established in individual cases.

6. The Administration explained that the 52 occupational diseases specified in the relevant Ordinances were diseases having specific or strong relationship with occupations, and generally with only one causal agent. Musculoskeletal disorders, on the other hand, were diseases with multiple causal agents. Nonetheless, six musculoskeletal diseases, including tenosynovitis of the hand or forearm, had already been prescribed as occupational diseases. Other musculoskeletal disorders such as low back pain and shoulder-neck pain resulting from the interaction of multiple risk factors were commonly found in the general population and not limited to workers engaged in certain occupations. As these disorders could not satisfy the criteria for prescribing as occupational diseases, they were classified as work-related diseases instead. The

Administration further advised that emotional disorders did not satisfy the criteria for prescribing as occupational diseases as they could be caused by reasons other than work.

7. Some members expressed concern whether the Administration would consider lowering the threshold for prescribing a disease as an occupational disease such that an employee suffered from work-related disease or injury could apply for compensation under ECO. The Administration explained that once a disease was prescribed as an occupational disease, workers suffering from the disease could claim compensation if they were engaged in the designated occupations. Therefore, the causation criterion was particularly important in differentiating occupational diseases from work-related diseases. The Administration further advised that even if a disease was not prescribed as an occupational disease, an employee was protected by ECO and could apply for compensation under section 36(1) of ECO.

Coronavirus disease 2019

8. Taking into account the COVID-19 pandemic and the existence of a clear causal relationship between the disease and the working environment of some occupations, many members held a strong view that employees contracted COVID-19 at work should be entitled to receive employees' compensation. At its meeting on 21 April 2020, the Panel passed two motions urging the Administration to, among others, list COVID-19 in the Second Schedule to ECO as an occupational disease immediately, and require employers to provide their employees with sufficient personal protective equipment so as to enhance the occupational health and safety.

9. Members were advised that the Administration would make reference to the ILO criteria and adopt an evidence-based approach to assess whether a particular disease should be listed as an occupational disease for employees' compensation. For an infectious disease that could transmit widely in the community, exposure to its infectious agent might not only occur in particular workplaces but generally in the community as well. It was imperative that the link between the disease and the occupation could be reasonably presumed or established in individual cases. As the outbreak situation of COVID-19 was still evolving in Hong Kong and globally, the Administration was keeping a close watch on the relevant medical and epidemiological data in order to make necessary recommendations.

10. The Administration also advised that although COVID-19 was currently not a compensable occupational disease prescribed under ECO, section 36 of ECO stipulated that an employee having contracted a disease not prescribed as

an occupational disease could still claim compensation from the employer under the Ordinance if it was an injury or death by accident arising out of and in the course of employment, and the employer was in general liable to pay compensation under ECO.

Occupational deafness

11. Noting that there was a significant increase in the number of confirmed cases of occupational deafness from 177 in 2017 to 308 in 2019, some members were concerned about the Administration's effort in preventing employees from contracting such disease.

12. The Administration explained that occupational deafness was permanent hearing loss arising from at least five to 10 years of exposure to noisy environment at work in specified occupations. Given that occupational deafness was a chronic disease and its symptoms were not conspicuous at the early stage, the patients might not be aware of them. Moreover, the Occupational Deafness Compensation Board had strengthened its publicity and educational efforts in respect of preventing occupational deafness and promoting rights and benefits of persons suffering from the disease in recent years. This could also be the cause of increase in the number of applications for compensation.

Occupational health situation

Sudden death of employees at work

13. Some members expressed concern that sudden death of employees caused by overexertion at work was not covered in the list of 52 prescribed occupational diseases in the relevant ordinances. Noting that some neighbouring places had prescribed sudden death at workplace caused by cardiovascular diseases and cerebrovascular diseases ("CCVDs") as compensable diseases and drawn up relevant guidelines, these members enquired about the progress of LD's study on the workplace death cases with same causes and whether the Administration would consider introducing legislation to include workplace death cases in the list of compensable occupational diseases. Some members were concerned that in many cases of sudden death of employees who were caused by overexertion at work, family members of these deceased employees were not entitled to employees' compensation under the existing labour laws because the death was not caused by work accidents.

14. According to the Administration, the causes of sudden death not attributed to work accidents during the course of the employment were complex, and might involve a multitude of factors including personal health condition. In its reply to a written question raised at the Council meeting of 29 May 2019, the Administration advised that there was no internationally-accepted definition of "death from overexertion" and there was little experience among overseas jurisdictions in defining "death from overexertion" in terms of employees' compensation. LD had commissioned the Occupational Safety and Health Council ("OSHC") to conduct a study on employees' sudden death at work to understand the relationship between work situations and the death cases with focus on those caused by CCVDs. The study would analyze whether there was any possible relationship between the employees' death and their working condition as well as other personal factors, e.g. whether the working condition could have directly caused the death or whether there could be other relevant circumstances at the same time. The study commenced in the first quarter of 2018 and was expected to be completed in about three years. LD would consider if there was a clear basis to include "death from overexertion" as an occupational disease under ECO subject to OSHC's study outcome and developments in the international arena. The Administration further advised that if an employee died (including the case of sudden death) as a result of an accident arising out of and in the course of the employment, the existing ECO already required the employer to take up the liability to pay employees' compensation in accordance with the Ordinance.

Prevention of health hazards due to prolonged standing at work

15. Some members considered that strain and varicose veins of the lower limbs arising from standing for a prolonged period of time while at work, in particular those of employees in the catering and retail sectors, should be classified as an occupational disease. These members expressed disappointment at the Administration's refusal to do so, notwithstanding the increasing number of new cases of lower limb illnesses seeking clinical consultations at the two occupational health clinics ("OHCs"). They enquired about LD's plan in place to encourage employers to adopt preventive measures to safeguard OSH of employees whose work involved prolonged standing.

16. The Administration advised that in light of the fact that the work of many employees in the retail and catering industries involved prolonged standing, LD had further intensified the promotional visits to these industries. In addition to conducting inspections at the shops of the major chain corporations of these two industries, LD also sent letters to retail and catering companies to call on the management to take preventive measures to protect OSH of employees whose work involved prolonged standing.

17. The Administration further advised that to further safeguard employees against the health risks of standing at work, LD was preparing a set of new guidelines. In addition to setting out the possible health hazards which might be caused by standing at work and the preventive measures, the new guidelines would also emphasize that employers had to, so far as reasonably practicable, provide suitable work chairs or chairs for occasional resting at the working locations to the employees who stood at work. Should there be non-compliant cases of the new guidelines, if sufficient evidence was obtained, LD would consider taking out prosecution against employers concerned under the general duties provisions in OSHO i.e. an employer was required to provide a safe working environment to his employees, so far as reasonably practicable. The "Guidance Notes on Standing at Work and Service Counter Design" was subsequently issued in December 2018. Members were also advised that since the issuance of the Guidance Notes, LD had conducted workplace inspections targeting at the industries of retail, catering, property management and hotel to check compliance. In general, employers' compliance with the Guidance Notes was satisfactory.

Prevention of heat stroke at work

18. Given that Hong Kong was getting increasingly hot during summer, some members were concerned about the high risk of heat stroke to workers undertaking manual work and those who needed to work outdoors, such as construction workers, outdoor cleansing workers and security guards. They called on the Administration to step up its inspection work and enforcement actions to ensure that employers had taken appropriate preventive measures against heat stroke at outdoor workplaces in order to safeguard employees' occupational health. Consideration should be given to including heat stroke at workplace as a compensable occupational disease under ECO.

19. The Administration advised that in addition to the publicity and promotion to enhance the awareness of employers and employees on the prevention of heat stroke at work, LD conducted inspections targeting at outdoor workplaces. If employers were found to have failed to adopt appropriate measures, LD would take appropriate enforcement actions, including taking out prosecution against suspected offenders where there was sufficient evidence.

Clinical consultation service of occupational health clinics

20. Members noted with concern that there were only two OHCs located in Kwun Tong and Fanling serving all employees in Hong Kong, which was inconvenient for employees residing in other districts to travel afar for seeking

clinical consultation. They considered that the Administration should set up more OHCs so as to meet the service needs. Some members were concerned about the establishment of the medical staff, usage and effectiveness of OHCs and called on the Administration to consider conducting a comprehensive review on the operation of OHCs and make necessary improvement.

21. The Administration responded that the two OHCs were located in proximity to various public transport means and were considered to be easily accessible from most areas. The medical staff of the Occupational Medicine Division (Clinical Services) of LD were responsible for conducting clinical consultations in the Kwun Tong and Fanling OHCs on a roster basis. They provided diagnosis and treatment in these two OHCs. According to the statistics kept by LD on the usage of OHCs, the average waiting time for new cases was around one to two weeks, which was considered acceptable. The Administration assured members that it would closely monitor the usage of OHCs, and would make appropriate adjustments if necessary.

Relevant papers

22. A list of the relevant papers on the LegCo website is in the **Appendix**.

Relevant papers on occupational health and diseases in Hong Kong

Committee	Date of meeting	Paper
Panel on Manpower	17.12.2013 (Item V)	Agenda Minutes
Panel on Manpower	17.6.2014 (Item V)	Agenda Minutes
Panel on Manpower	14.7.2015 (Item II)	Agenda Minutes
Panel on Manpower	15.3.2016 (Item V)	Agenda Minutes
Panel on Manpower	18.7.2017 (Item IV)	Agenda Minutes
Panel on Manpower	27.4.2018 (Item IV)	Agenda Minutes LC Paper No. CB(2)1990/17-18(01)
Legislative Council	29.5.2019	Official Record of Proceedings (Question 1)
Panel on Manpower	19.11.2019 (Item V)	Agenda Minutes
Panel on Manpower	21.4.2020 (Item V)	Agenda Minutes LC Paper No. CB(2)1381/19-20(02) (Annex C)