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Panel on Manpower

**Information note prepared by the Legislative Council Secretariat
for the meeting on 15 June 2021**

Relationship between notified workplace deaths and work condition

As stipulated under section 13 of the Occupational Safety and Health Ordinance (Cap. 509), the person responsible for the workplace (i.e. the employer or the occupier of the workplace) should notify the accident which occurs at a workplace and causes the death of an employee to an occupational safety officer of the Labour Department ("LD") within 24 hours after the time when the accident occurred. Section 15 of the Employees' Compensation Ordinance (Cap. 282) ("ECO") also requires that notice of any accident which results in the death of the employee within three days after the accident shall be given to the Commissioner for Labour by the employer not later than seven days after the accident irrespective of whether the accidents give rise to any liability to pay compensation.

2. The Panel on Manpower ("the Panel") has not discussed specifically issues relating to employees' compensation for cases of sudden death at work. However, in the context of discussing the occupational diseases and occupational health performance in Hong Kong at various Panel meetings, members expressed grave concern about incidents of sudden death of employees suspected to be caused by overexertion at work. 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. Noting that some neighbouring places had prescribed sudden death at workplace caused by cardiovascular diseases and

cerebrovascular diseases as compensable diseases and drawn up relevant guidelines, some members enquired about the progress of LD's study on the workplace death cases with same causes. Some members also called on the Administration to consider introducing legislation to include "death from overexertion" in the list of statutory compensable occupational diseases.¹

3. According to the Administration, Hong Kong would follow international practices and make reference to the criteria adopted by the International Labour Organization in determining whether a disease should be prescribed as an occupational disease. Prescription of 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. 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. 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.

4. Members noted 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 three-year study on employees' sudden death at work. The study focused on the workplace death cases caused by cardiovascular diseases or cerebrovascular diseases, and sought to understand the possible causes (both work related or non-work related) leading to the sudden death of these employees from different perspectives mainly through interviewing the deceased workers' relatives, employers and colleagues. The study commenced in the first quarter of 2018 and would last till the third quarter of 2020. LD would consider if there was a clear basis to include "death from overexertion" as an occupational diseases under ECO subject to the study outcome and developments in the international arena.

¹ Currently, there are a total of 52 occupational diseases prescribed under the Employees' Compensation Ordinance (Cap. 282), the Occupational Deafness (Compensation) Ordinance (Cap. 469) and the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360).

5. According to the Administration, OSHC has completed the consultancy study on relationship between notified workplace deaths and work condition and submitted its report to LD in early 2021. The Administration will brief the Panel on the report at its meeting on 15 June 2021.

6. Two relevant questions raised by Members at the Council meetings of 27 February and 29 May 2019 and the Administration's replies are in **Appendices I and II** respectively.

Council Business Division 2
Legislative Council Secretariat
9 June 2021

Appendix I

Press Releases

LCQ4: Guarding against sudden deaths of employees caused by overexertion at work

Following is a question by the Dr Hon Fernando Cheung and a written reply by the Secretary for Labour and Welfare, Dr Law Chi-kwong, in the Legislative Council today (February 27):

Question:

In recent years, incidents of sudden deaths of employees suspected to be caused by overexertion at work (commonly known as "deaths from overexertion") have been heard from time to time, arousing public concern about overexertion at work. In this connection, will the Government inform this Council:

(1) of the number of cases, as recorded by the Labour Department (LD) in each year since 2013, in which employees suddenly died not as a result of an accident arising out of and in the course of the employment, together with a breakdown by the gender of the deceased, the age group to which the deceased belonged, the industry and job type in which the deceased was engaged before death, as well as the cause of death of the deceased (e.g. brain disease and heart disease);

(2) whether it knows which 10 industries had the highest median weekly working hours in each year since 2013, as well as the relevant distributions of working hours;

(3) given that LD has commissioned the Occupational Safety and Health Council to conduct a study on cases of employees' sudden deaths at work, of the progress of the study; and

(4) whether it will draw up a legal definition for "death from overexertion" and stipulate death from overexertion as one of the incidents in respect of which employers must pay compensation in accordance with the Employees' Compensation Ordinance (Cap. 282)?

Reply:

President,

My reply to the question raised by the Member is as follows:

(1) Occupational injury statistics published by the Labour Department (LD) are released on a quarterly basis and the latest available statistics are up to the first three quarters of 2018. The breakdown of the number of fatalities not caused by accidents (i.e. fatalities due to various non-occupational diseases) by sex, age, industry section and disease from 2013 to the first three quarters of 2018 are set out in Annex 1. LD does not keep the statistical breakdown by trade.

(2) According to Annual Earnings and Hours Survey undertaken by the Census and Statistics Department, the 10 industries with the highest employees' median weekly working hours and their respective distributions of weekly working hours during the period from May - June 2013 to May - June 2017 are set out in Annex 2.

(3) The causes of death of employees not caused by work accidents in the course of the employment are often complex, and may involve a multitude of factors including personal health condition, heredity, eating and living habits, work nature and environment, etc. In October 2017, LD commissioned the Occupational Safety and Health Council (OSHC) to conduct a study focusing on death of employees at workplace caused by cardiovascular diseases or cerebrovascular diseases. OSHC will look into the possible causes leading to the death of these employees from different perspectives, like working condition, personal health condition, living habits, etc., through interviewing the deceased workers' relatives, employers and colleagues. OSHC started the interviewing work in the first quarter of 2018 and expects to complete the study in about three years.

(4) As stipulated in the Employees' Compensation Ordinance (ECO) (Cap. 282), if an employee sustains an injury or dies (including the case of sudden death) as a result of an accident arising out of and in the course of the employment, the employer is liable to pay compensation in accordance with the Ordinance. To further expand the scope of ECO to cover all fatal cases that happen during the period of work irrespective of whether they are caused by work accidents would involve a significant change in the basic principle of employees' compensation, and employees' benefits as well as affordability of employers should also be taken into account.

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Breakdown of the number of occupational fatalities not caused by accidents by sex from 2013 to the first three quarters of 2018

Sex	2013	2014	2015	2016	2017*	First 3 quarters of 2018*
Female	3	16	13	15	16	11
Male	84	97	85	111	121	63
Total	87	113	98	126	137	74

Breakdown of the number of occupational fatalities not caused by accidents by age from 2013 to the first three quarters of 2018

Age group	2013	2014	2015	2016	2017*	First 3 quarters of 2018*
Below 40	4	8	6	8	9	4
40-49	20	20	11	17	30	12
50-59	29	52	46	55	54	30
60 or above	34	33	35	46	44	28
Total	87	113	98	126	137	74

Breakdown of the number of occupational fatalities not caused by accidents by industry section from 2013 to the first three quarters of 2018

Industry section	2013	2014	2015	2016	2017*	First 3 quarters of 2018*
Agriculture, forestry and fishing	0	0	0	1	0	0
Manufacturing	3	2	2	9	5	2
Electricity, gas and waste management	1	3	1	1	1	0
Construction	10	12	21	13	24	14
Import/export, wholesale and retail trades	7	12	9	22	14	4
Transportation, storage, postal and courier services	13	10	14	15	14	8
Accommodation and food services	9	7	7	9	18	8
Information and communications	2	1	0	1	1	2
Financing and insurance	2	7	0	0	1	0
Real estate	17	19	12	15	18	9
Professional and business services	20	27	16	26	27	14
Public administration, and social and personal services	2	10	12	14	14	9
Other industries	1	3	4	0	0	4
Total	87	113	98	126	137	74

Breakdown of the number of occupational fatalities not caused by accidents by disease from 2013 to the first three quarters of 2018

Disease	2013	2014	2015	2016	2017*	First 3 quarters of 2018*
Heart disease	45	63	58	74	76	46
Brain disease	16	21	18	23	27	15
Others #	26	29	22	29	34	13
Total	87	113	98	126	137	74

Notes: * The figures for 2017 and the first three quarters of 2018 are provisional figures as some cases are still under investigation.

Other cases are mainly related to multiple diseases, cancer, respiratory diseases, etc.

Distribution of weekly working hours⁽²⁾ in the 10 industries with the highest employees⁽¹⁾ median weekly working hours⁽²⁾ (May - June 2013 to May - June 2017)

May - June 2013

Industry (in descending order of median weekly working hours)	Weekly working hours		
	25th Percentile	Median	75th Percentile
1 Restaurants	48.0	54.0	60.0
2 Estate management, security and cleaning services	45.7	52.6	66.0
3 Construction	45.7	50.7	54.0
4 Accommodation ⁽³⁾ and other food service activities	47.8	49.9	54.0
5 Land transport	44.3	49.4	55.4
6 Miscellaneous activities ⁽⁴⁾	44.3	49.0	54.0
7 Retail trade	40.6	48.0	54.0
7 Manufacturing ⁽⁵⁾	42.5	48.0	51.0
9 Other transportation, storage, postal and courier services ⁽⁶⁾	40.6	45.7	50.4
9 Wholesale	41.1	45.7	49.4

May - June 2014

Industry (in descending order of median weekly working hours)	Weekly working hours		
	25th Percentile	Median	75th Percentile
1 Restaurants	45.0	54.0	60.0
2 Estate management, security and cleaning services	46.5	51.9	66.0
3 Construction	44.3	49.4	54.0
4 Miscellaneous activities ⁽⁴⁾	44.3	48.2	57.0
4 Accommodation ⁽³⁾ and other food service activities	44.3	48.2	51.3
6 Retail trade	42.5	48.1	54.9
7 Land transport	40.6	48.0	55.1
7 Manufacturing ⁽⁵⁾	42.2	48.0	51.6
9 Travel agency, reservation service and related activities	41.8	46.2	48.5
10 Other transportation, storage, postal and courier services ⁽⁶⁾	40.6	45.7	49.8
10 Electricity and gas supply; sewerage, waste management and remediation activities	40.6	45.7	47.5

May - June 2015

Industry (in descending order of median weekly working hours)	Weekly working hours		
	25th Percentile	Median	75th Percentile
1 Restaurants	45.5	54.0	60.0
2 Accommodation ⁽³⁾ and other food service activities	45.8	49.9	54.0
3 Estate management, security and cleaning services	44.3	49.4	66.0
4 Retail trade	42.5	48.8	55.4
5 Miscellaneous activities ⁽⁴⁾	44.8	48.2	54.8
6 Construction	44.3	48.0	54.0
6 Land transport	42.0	48.0	55.4
8 Other transportation, storage, postal and courier services ⁽⁶⁾	40.6	45.7	49.9
9 Manufacturing ⁽⁵⁾	40.6	45.3	49.0
10 Wholesale	40.6	44.4	48.0

May - June 2016

Industry (in descending order of median weekly working hours)	Weekly working hours		
	25th Percentile	Median	75th Percentile
1 Restaurants	42.0	54.0	60.0
2 Estate management, security and cleaning services	44.3	48.7	66.0
3 Construction	42.5	48.0	54.0
3 Retail trade	41.5	48.0	55.5
3 Land transport	39.7	48.0	60.0
3 Miscellaneous activities ⁽⁴⁾	43.5	48.0	54.0
3 Accommodation ⁽³⁾ and other food service activities	44.3	48.0	52.6
8 Manufacturing ⁽⁵⁾	42.0	46.7	49.9
9 Other transportation, storage, postal and courier services ⁽⁶⁾	40.6	45.7	50.8
10 Human health activities; and beauty and body prettifying treatment	40.6	44.3	48.0
10 Other activities not classified above	39.3	44.3	48.0
10 Real estate activities ⁽⁷⁾	40.6	44.3	47.0
10 Wholesale	40.6	44.3	48.0
10 Travel agency, reservation service and related activities	41.3	44.3	48.0

May - June 2017

Industry (in descending order of median weekly working hours)	Weekly working hours		
	25th Percentile	Median	75th Percentile
1 Restaurants	42.0	54.0	60.0
2 Estate management, security and cleaning services	45.0	49.0	66.0
3 Construction	43.2	48.0	54.0
3 Retail trade	41.5	48.0	55.4
3 Land transport	42.4	48.0	62.9
3 Miscellaneous activities ⁽⁴⁾	44.3	48.0	54.5
3 Accommodation ⁽³⁾ and other food service activities	45.1	48.0	53.3
8 Manufacturing ⁽⁵⁾	42.0	47.0	49.4
9 Other transportation, storage, postal and courier services ⁽⁶⁾	40.6	45.7	53.2
10 Human health activities; and beauty and body prettifying treatment	40.6	44.4	48.0

Notes:

- (1) Excluding government employees, as well as student interns, work experience students and live-in domestic workers as exempted by the Minimum Wage Ordinance.
- (2) Working hours refers to contractual/agreed working hours and overtime hours worked at the direction of employers. Meal break is included in the working hours if it is regarded as working hours according to the employment contract or agreement with the employer, or if an employee has to be in attendance at a place of employment during his/her meal breaks in accordance with the employment contract or with the agreement or at the direction of the employer, irrespective of whether he/she is provided with work or not during the meal break period.
- (3) Accommodation services cover hotels, guesthouses, boarding houses and other establishments providing short term accommodation.
- (4) Including: (i) elderly homes; (ii) laundry and dry cleaning services; (iii) hairdressing and other personal services; (iv) local courier services; and (v) food processing and production.
- (5) Excluding food processing and production.
- (6) Excluding local courier services.
- (7) Excluding real estate maintenance management.

Source: Annual Earnings and Hours Survey, Census and Statistics Department

Press Releases

LCQ1: Protecting labour rights and interests of employees who work long hours or under high pressure

Following is a question by the Hon Shiu Ka-chun (Dr Hon Fernando Cheung to ask on his behalf) and a reply by the Secretary for Labour and Welfare, Dr Law Chi-kwong, in the Legislative Council today (May 29):

Question:

It has been learnt that employees who are older in age generally work longer hours, and there are relatively more cases in which such employees died in the course of work not as a result of accidents. It has been heard from time to time in recent years about press reports and study findings that employees fell ill or even died as a result of long working hours or high work pressure. Regarding protection of the labour rights and interests of such kind of employees, will the Government inform this Council:

(1) whether it will regard mental, emotional or physical illnesses triggered by long working hours or work pressure as occupational diseases covered by the Employees' Compensation Ordinance (the Ordinance), so that the employees concerned will be entitled to compensations by their employers; if so, of the details; if not, the reasons for that;

(2) whether it will expeditiously set up an independent committee comprising representatives from trade unions, employers' organisations, civic bodies and the Government to conduct studies on formulating under the Ordinance a legal definition for "death from overexertion" and the relevant obligations of employers in respect of compensations; if so, of the details; if not, the reasons for that; and

(3) given that the Government will roll out a total of 11 sets of sector-specific working hours guidelines in this year and the coming year, and that it will, three years from then, assess their effectiveness and further explore feasible ways for improving the working hours policy, whether the Government will commence preparatory work for establishing a statutory standard working hours regime so that the related legislative exercise could be launched immediately when those guidelines have been assessed as ineffective; if so, of the details; if not, the reasons for that?

Reply:

President,

My reply to the Member's question is as follows:

(1) According to the definition of the International Labour Organization (ILO), occupational diseases are diseases having specific or strong relationship with occupations of the patients. As such, we normally see a specific pairing relationship between an occupational disease with a specific type of work. For example, occupational deafness is related to work in a noisy environment, silicosis is related to work with exposure

to silica dust, tenosynovitis of the hand or forearm is related to work involving repeated movements. In considering whether a certain disease should be prescribed as an occupational disease under the Employees' Compensation Ordinance (ECO) (Cap 282), the Labour Department (LD) makes reference to the ILO criteria, and adopts an evidence-based approach to assess objectively whether a specific or strong causal relationship exists between a disease and a certain type of work. In doing so, LD will take into account whether there is sufficient medical evidence, as well as the relevant local research and disease data, etc.

There are no internationally-recognised criteria or medical evidence to establish that long working hours or the work stress so induced will directly cause a certain kind of mental, emotional or physical diseases such as cardiovascular and cerebrovascular diseases (CCVDs). In fact, these common diseases are not known to be attributed to certain specific work-related factors. To the contrary, mental diseases, emotional diseases or CCVDs may be associated with a multitude of complex personal, family and work-related factors, e.g. history of personal growth, health condition, family inheritance, family or life stresses, eating and living habits, work nature and environment, etc. Perhaps this also explains why a vast majority of countries do not categorise mental diseases, emotional diseases and CCVDs as occupational diseases. Nevertheless, we will continue to closely monitor developments in this area.

(2) As for "death from overexertion", there is also no internationally-accepted definition and there is little experience among overseas jurisdictions in defining "death from overexertion" in terms of employees' compensation. This notwithstanding, as we reported to the Panel on Manpower in April 2018, LD commissioned the Occupational Safety and Health Council (OSHC) in October 2017 to conduct a study focusing on death of employees at workplace caused by CCVDs. OSHC objectively studies the working condition of such employees during employment, their personal health condition and living habits, etc through interviewing the deceased employees' relatives, employers and colleagues. The purpose is to try to analyse whether there is 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. OSHC started the interviewing work in the first quarter of 2018 and expects to collect necessary data and complete the study in about three years. LD will consider if we have a clear basis to include "death from overexertion" as an occupational disease under the ECO subject to OSHC's study outcome and developments in the international arena.

At the same time, if an employee dies (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 requires the employer to take up the liability to pay employees' compensation in accordance with the Ordinance.

(3) Since the labour sector had strong views on the "contractual working hours" legislative proposal put up by the last-term Government and the business sector opposed legislating for standard working hours, the current-term Government, having regard to the diverse views among different sectors of the community and the absence of a broad-based consensus on any working hours legislative proposal, has decided to focus efforts on formulating working hours guidelines for 11 designated

sectors, so as to improve employees' working hours arrangements as soon as practicable. LD has been engaging its 11 industry-based tripartite committees, comprising representatives of LD, employers and employees, to formulate for these designated sectors guidelines with suggested sector-specific working hours arrangements, overtime compensation arrangements and good working hours management measures for reference and adoption of employers and their employees. The Government will review and assess the effectiveness of the sector-specific working hours guidelines and further explore feasible ways for improving the working hours policy three years after the release of all the 11 guidelines.

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