

LCQ1: Enhancing occupational safety and health protection for employees

Following is a question by the Hon Lam Chun-sing and a reply by the Secretary for Labour and Welfare, Mr Chris Sun, in the Legislative Council today (June 19):

Question:

On April 28 last year, the Government amended the legislation to increase the penalties for occupational safety and health (OSH) offences in order to enhance the deterrent effect of the relevant legislation. However, there are views that fatal industrial accidents have continued to occur frequently since the amendment to the legislation, which may not have a positive effect on further protecting OSH of employees. In this connection, will the Government inform this Council:

(1) of the respective numbers of fatal industrial accidents recorded by the authorities from the amendment to the legislation on April 28 last year up to the end of last year and since January this year; in respect of such accidents, whether the authorities have taken out prosecutions by indictment and summary proceedings by invoking the general duty provisions for employers, proprietors and occupiers of premises under the OSH legislation; if so, of the respective average sentences for convicted prosecution cases by indictment and summary proceedings;

(2) as it is learnt that the Labour Department (LD) will request the Department of Justice where necessary to apply for reviews or appeals with regard to the sentences handed down by the court if the LD considers that the sentences do not reflect the seriousness of the offences committed by duty holders, whether the authorities have applied for reviews or appeals with regard to the sentences of the aforesaid convicted cases since the amendment to the legislation last year; if so, of the details; if not, the reasons for that; and

(3) whether it will study promoting the industry's adoption of construction safety design by legislative means to reduce construction risks at source, so as to enhance OSH protection for frontline workers; if so, of the details; if not, the reasons for that?

Reply:

President,

The Government attaches great importance to occupational safety and health (OSH) of employees, and the Labour Department (LD) has been closely monitoring the level and trends of OSH risks of industrial accidents. Pursuant to the risk-based principle, the LD formulates and adjusts

strategies for inspection and enforcement, publicity and promotion, as well as education and training to uplift the OSH performance.

Having consulted the Development Bureau, our consolidated reply to the question raised by the Hon Lam Chun-sing is as follows:

(1) Industrial fatalities refer to deaths arising from industrial activities in industrial undertakings as defined under the Factories and Industrial Undertakings Ordinance (Cap. 59). 19 and 10 industrial fatalities were recorded between April 28, 2023, and the end of 2023, and between January 2024 and the end of May 2024, by the LD respectively.

The Occupational Safety and Occupational Health Legislation (Miscellaneous Amendments) Ordinance 2023 (OSH Amendment Ordinance) came into effect on April 28, 2023. As at May 31, 2024, the LD took out 111 prosecutions in total against the duty holders concerned under the OSH Amendment Ordinance in respect of eight fatal industrial accidents. There was one case in which court hearing was concluded. The case involved two proprietors of a non-construction industrial undertaking who were prosecuted for violation of the OSH Amendment Ordinance including the summary offence of general duty provisions. They were each fined \$50,000 by the court eventually.

In view of the recent serious industrial accidents, the LD will seek legal advice from the Department of Justice and consider taking out prosecutions against duty holders by way of indictment upon completion of relevant investigations.

(2) For the conviction case in reply (1), the Government had considered whether to file a review or appeal against the sentences. Upon careful deliberation of all the relevant circumstances of the case, the sentences were considered not wrong in principle or manifestly inadequate, and therefore no application to the court for a review or appeal was made eventually.

(3) The Government has been promoting the adoption of Design for Safety in public works projects and formulated guidance notes and worked examples on Design for Safety in 2006, with the aim of thoroughly considering construction and maintenance work safety during the design stage. The Government subsequently updated the guidance notes and worked examples in 2016 to clearly demarcate the roles and responsibilities of different stakeholders further at various stages of a works project and require public works projects with estimated construction cost exceeding \$500 million to implement Design for Safety. On private buildings, the Buildings Department formulated, pursuant to the Buildings Ordinance (Cap. 123) and relevant subsidiary legislation, the code of practice which stipulates that the design of new private buildings should provide adequate means of access to enable maintenance personnel to carry out maintenance and repair works outside the buildings safely.

To further promote the adoption of Design for Safety in private works

projects in the construction industry, the Construction Industry Council (CIC) promulgated the reference materials on Design for Safety in November 2022, providing guidance on incorporating safety elements during the design stage and the safety responsibilities of stakeholders during the construction stage. The CIC has also formulated and provided relevant training courses and material to the construction industry. The CIC has rolled out a pilot scheme on Design for Safety in 2024 with the aim of providing advice and assistance to developers of private works projects on implementing Design for Safety.

There was no consensus in the construction industry on regulating Design for Safety by legislative means. Some stakeholders indicated that it would be difficult to generalise architectural design as it would be affected by a number of factors including project nature, locations, project characteristics and current trends. Stakeholders are worried that legislative regulation would bring constraints to the design and hinder the development of the industry. In addition, stakeholders are worried about the criminal liabilities when inadvertently contravening the law in the design process. We therefore at this stage consider that a more pragmatic strategy is to continue working with the CIC and other stakeholders to promote a wider adoption of Design for Safety in the construction industry, instead of legislative means.