

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.