

LCQ14: Protection for employees contracting Coronavirus Disease 2019

Following is a question by the Dr Hon Pierre Chan and a written reply by the Secretary for Labour and Welfare, Dr Law Chi-kwong, in the Legislative Council today (April 29):

Question:

Since the outbreak of the Coronavirus Disease 2019 (COVID-19) epidemic in Hong Kong in January this year, some labour groups have been urging the Government to amend the law to include COVID-19 as one of the occupational diseases specified in the Second Schedule to the Employees' Compensation Ordinance (Cap 282), so as to ensure that employees will be compensated for incapacity or death resulting from COVID-19. The Government indicated on February 10 that it had commenced a study on the proposal to amend the law, but that the law could be amended only when definite medical and epidemiological conclusion on the virus was available and, in such process, it was necessary to discuss the details with the various stakeholders. The Government also pointed out that if an employee contracted COVID-19 arising out of and in the course of his/her employment, he/she should inform the employer immediately so that the employer could notify the Labour Department (LD). In this connection, will the Government inform this Council:

(1) Of the work progress, since February 10 of this year, of its study on the aforesaid legislative exercise, including:

(i) The stakeholders it has met and those it has scheduled to meet, and set out in a table the names of such stakeholders, the meeting dates, the views collected, as well as the reasons for not having scheduled meetings with stakeholders (if applicable);

(ii) Whether it has drawn up a preliminary list of relevant trades which it intends to include in the Second Schedule to Cap 282; if so, of the details; if not, the reasons for that; and

(iii) The legislative timetable;

(2) Of the progress and the latest outcome of the medical and epidemiological studies conducted on COVID-19; and

(3) Of the number of cases received by LD so far in which the employers took the initiative to notify LD that their employees had contracted COVID-19 arising out of and in the course of their employment; how LD ensures that all employers will take the initiative to notify LD of such type of cases?

Reply:

President,

According to the definition of the International Labour Organization (ILO), occupational disease refers to a disease which has a causal

relationship with specific exposure in the working environment or work activity, and the incidence rate of the disease among the exposed workers is significantly higher than that in the rest of the population, so that the occupational origin of the disease in an exposed worker can be reasonably presumed.

In considering whether a particular disease should be prescribed as a statutory occupational disease, LD makes reference to the ILO criteria and adopts an evidence-based approach to assess objectively whether a definite causal relationship exists between a disease and a certain type of work, and whether the disease occurs among the exposed workers at a significantly higher rate than in the general population. This includes perusing relevant medical evidence and epidemiological information in order to make necessary assessment and recommendation.

My reply to the questions raised by the Dr Hon Pierre Chan is as follows:

(1) and (2) In prescribing a new occupational disease, the Labour Department (LD) has to clearly specify in the legislation what industries and processes in which the employees are engaged have definite risks posed by the disease and list out such prescribed industries or processes. Moreover, employees who have contracted the disease must have been employed in these industries or processes within a specified period. Employers have to compensate employees infected with an occupational disease during work in accordance with the law.

COVID-19 has been spreading quickly over the world. The World Health Organization (WHO) officially declared COVID-19 a pandemic on March 11, 2020. Based on the WHO Situation Report on April 20, there was a total of 2 314 621 confirmed cases globally, with 72 846 cases newly confirmed on the preceding day. The population worldwide is generally at risk of the infection. For an infectious disease that can transmit widely in the community, exposure to its infectious agent may not only occur in particular workplaces but generally in the community as well. In Hong Kong, as at April 21, a total of 1 029 cases have been confirmed. The infection of a vast majority of these cases was community-acquired.

As the outbreak situation of COVID-19 is still evolving and keeps changing in Hong Kong and globally, the primary task of LD is to keep a close watch on relevant medical and epidemiological data, especially the number of cases originated from work and their industry distribution, as well as the extent and risk of community infection, in order to make appropriate recommendations.

(3) According to the Employees' Compensation Ordinance (ECO), an employer must notify the Commissioner for Labour of any accident or prescribed occupational disease within a notice period. Although COVID-19 is currently not a compensable occupational disease prescribed under ECO, Section 36 of ECO stipulates that an employee contracting a disease not prescribed as an occupational disease may still claim compensation from the employer under ECO if it is an injury or death by accident arising out of and in the course of employment, and the employer is in general liable to pay compensation under

ECO.

As at April 17, LD has received a total of 21 cases with employees suspected to have contracted COVID-19 as reported by the employers under ECO.

LD has been proactively following up with employees' compensation claims with employees suspected to have contracted COVID-19 in employment based on the published information of the Centre for Health Protection of the Department of Health. LD also passes a bilingual note on employees' right and protection under ECO, as well as contact means of LD, to all confirmed COVID-19 patients through hospitals. If an employee contracts or suspects having contracted COVID-19 by accident arising out of and in the course of employment, the employee should inform the employer as soon as possible so that the employer can report the injury to LD. If the employee has doubt as to whether the employer has reported the injury to LD, the employee should approach the Employees' Compensation Division of LD for assistance direct.