

LCQ2: Labour protection for working under extreme weather and conditions

Following is a question by the Hon Kwok Wai-keung and a written reply by the Secretary for Labour and Welfare, Mr Chris Sun, in the Legislative Council today (November 22):

Question:

According to the Code of Practice in Times of Typhoons and Rainstorms (the Code) published by the Labour Department, employers should not require employees other than essential staff to report for duty during the period when (i) the Tropical Cyclone Warning Signal No. 8 or above or the Black Rainstorm Warning Signal is in force or (ii) "extreme conditions" exist. There are views pointing out that given the frequent occurrence of extreme weather in recent years, employees encounter enormous difficulties and even face extremely high risks while commuting to or from work during the period when such weather warning signals are in force or extreme conditions exist. In this connection, will the Government inform this Council:

(1) as it is learnt that some employers have not complied with the Code or have devised guidelines on their own, making it necessary for general employees who are originally not required to report for duty to report for duty when the aforesaid weather warning signals are in force or extreme conditions exists, whether it has assessed if such arrangement involves variation of employment contracts; if so, how the authorities ensure that the rights and interests of the employees concerned are protected; as the Code has no legal effect, how the authorities ensure compliance with the relevant guidelines by employers;

(2) given the absence of legislation at present to regulate the arrangements for employees to work under extreme weather or extreme conditions, whether the Government will study enacting legislation to strengthen the protection for employees when they commute to or from work under such circumstances; if so, of the details; if not, the reasons for that; and

(3) whether it will review if the scope of protection of employees' compensation insurance policies taken out by enterprises that operate as usual during the period when the aforesaid weather warning signals are in force or extreme conditions exist has comprehensively covered situations in which employees encounter accidents and are injured or die in their entire journey to or from work and in the course of work under such circumstances?

Reply:

President,

The Labour Department (LD) has published the "Code of Practice in Times of Typhoons and Rainstorms" to provide guidelines for employers and employees

in respect of work arrangements in times of tropical cyclones, rainstorms and "extreme conditions". Taking into account the operations of organisations, we encourage employers to make prior work arrangements which are reasonable and practicable and consult the employees during the process. The work arrangements should be given prime consideration of the safety of employees and the situation of travelling to and from home and the place of work, and be implemented flexibly.

My reply to the Hon Kwok's question is as follows:

(1) Whether employers' implementation of work arrangements in times of tropical cyclones, rainstorms and "extreme conditions" would involve a variation of the terms of employment contracts shall be subject to the facts of individual cases and cannot be generalised. If employers and employees have questions on relevant work arrangements, the Labour Relations Division of the LD is pleased to provide assistance. Besides, the Code reminds employers to comply with labour laws, including the Employment Ordinance, the Employees' Compensation Ordinance and the Occupational Safety and Health Ordinance, etc. If employees suspect that their employers have violated the relevant legislation, they can make a report to the LD. The LD will continue to enhance the publicity of the Code through various channels.

(2) According to the Employees' Compensation Ordinance, if an employee sustains an injury or dies as a result of an accident arising out of and in the course of his employment irrespective of the weather conditions under which the work is performed, his employer is in general liable to pay compensation under the Ordinance.

The Ordinance also protects employees in respect of compensation for accidents happened during traveling to and from work under adverse weather conditions. Specifically, an accident to an employee resulting in injury or death is deemed to arise out of and in the course of his employment if it happens when Tropical Cyclone Warning Signal No. 8 or above or a Red/Black Rainstorm Warning Signal is in force, or within the period (including any extended period) during which "extreme conditions" exists, while traveling from his place of residence to his place of work by a direct route within a period of four hours before the time of commencement of his working hours for that day, or from his place of work to his place of residence within a period of four hours after the time of cessation of his working hours for that day. The employer would be liable to pay compensation in the above circumstances under the Ordinance.

(3) The Ordinance specifies that no employer shall employ any employee in any employment unless there is in force a policy of insurance to cover his liabilities under the laws (including the common law) for injuries at work in respect of all his employees. Therefore, the policy of insurance taken out by employers must cover his liabilities under the Ordinance and the common law, including his liabilities for the work injury protection to employees who sustain injuries in accidents happened when Tropical Cyclone Warning Signal No. 8 or above or a Red/Black Rainstorm Warning Signal is in force, or within the period during which "extreme conditions" exists.