

LCQ9: Protection for occupational injuries and deaths

Following is a question by the Hon Kingsley Wong and a written reply by the Secretary for Labour and Welfare, Mr Chris Sun, in the Legislative Council today (October 18):

Question:

According to the figures of the Labour Department, there were a total of 529 fatal cases of occupational injuries and deaths in 2021 and 2022. However, it is learnt that not all fatal cases were classified as "accidents", thus resulting in quite a number of fatal cases being not eligible for the compensation for death provided under the Employees' Compensation Ordinance (Cap. 282). Besides, there are views that as workers under "informal employment" (e.g. delivery workers, as well as practitioners in the transport and entertainment industries) have no clear employment relationship with the organisations they work for, coupled with the prevalence of "false self-employment", relevant practitioners can hardly obtain reasonable compensation for accidents encountered at work, and such cases will also not be included in the statistics on occupational injuries and deaths. In this connection, will the Government inform this Council:

(1) as some trade unions have relayed that while quite a number of occupational injuries and deaths involving non-industrial accidents were probably triggered by factors such as overexertion at work and heat stroke, the relevant injuries and deaths often happened only until lunch or rest breaks, whether the Government has conducted studies on the relevant cases with a view to improving occupational safety through targeted measures;

(2) whether it will amend the Employment Ordinance (Cap. 57) to prevent employers from evading their responsibilities by means of false self-employment, thereby protecting workers under informal employment;

(3) given that the Government indicated at the meeting of the Panel on Manpower of this Council held on February 21 this year that it would study whether and how data relating to injuries and deaths of self-employed persons at work could be kept, of the progress of the relevant study; and

(4) whether it will make reference to the more lenient approach adopted under the Traffic Accident Victims Assistance Scheme and set up a similar assistance fund, or launch an assistance programme under the Community Care Fund, so that all cases of injuries and deaths in the course of work can receive a certain amount of compensation, thereby improving the protection for occupational injuries and deaths in Hong Kong?

Reply:

President,

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

(1) In some of the occupational injury cases that are not caused by industrial accidents, occupational health issues may be involved. The Labour Department (LD) will conduct investigation on these cases in accordance with the Occupational Safety and Health Ordinance and the Factories and Industrial Undertakings Ordinance, and collect information (such as details of their work and environmental conditions, statements from relevant persons, medical and autopsy reports, etc.). If the investigation results indicate that there are irregularities in respect of occupational safety and health, appropriate follow up measures will be taken by the LD. This includes taking corresponding enforcement actions if there is violation of relevant provisions. Depending on the situation, the LD may also update relevant guidelines and codes of practice, etc.

(2) Employers cannot evade their obligations under labour laws by falsely labelling an employee as a "self-employed person". Whether an individual is genuinely an employee does not depend on which industry he is in, his occupation or job title, but rather on the specific work arrangements. If there exists in substance an employment relationship between the contractual parties, the employer must fulfil his liabilities under the Employment Ordinance and pay the employee the statutory employment benefits. Otherwise, the employer will be held criminally liable for relevant offences.

(3) Occupational injuries refer to injury cases in workplaces reported under the Employees' Compensation Ordinance (ECO), resulting in death or incapacity for work of over three days.

Industrial accidents refer to injuries and deaths arising from industrial activities in industrial undertakings as defined under the Factories and Industrial Undertakings Ordinance.

In response to Members' query at the Panel on Manpower in February 2023, the LD has conducted an assessment and studied the definitions of the relevant ordinances and the operational feasibility. We are of the view that it is not easy to define self-employment. There is no single conclusive test to distinguish whether a person is an employee or a self-employed person.

In view of the above, the statistics on occupational injuries and industrial accidents do not include a breakdown of self-employed persons.

(4) The current employees' compensation system is premised on a no-fault principle and employers' liability to pay compensation on the basis of the ECO.

Under the ECO, employers are liable to pay compensation to their injured employees (and family members of their deceased employees) for incapacities or fatalities resulted from accidents arising out of and in the course of employment or resulted from the prescribed occupational diseases. If injured employees/family members of deceased employees encounter financial difficulties, the LD will, taking account of their needs and wishes, refer them to the Social Welfare Department or related organisations for assistance

and/or support of relevant funds.

The Government at present has no plan to set up a separate programme or assistance fund on compensation for employees' work injuries outside the employees' compensation system.