

Senior judicial appointment: permanent judge of the Court of Final Appeal

The Chief Executive, Mrs Carrie Lam, has accepted the recommendation of the Judicial Officers Recommendation Commission (JORC) on the appointment of the Honourable Mr Justice Johnson Lam Man-hon (Mr Justice Lam), Vice-President and Justice of Appeal of the Court of Appeal of the High Court, as a permanent judge of the Court of Final Appeal. Subject to the endorsement of the Legislative Council, the Chief Executive will make the appointment under Article 88 of the Basic Law.

Mrs Lam said, "I am pleased to accept the JORC's recommendation on the appointment of Mr Justice Lam as a permanent judge of the Court of Final Appeal. Mr Justice Lam is an all-rounder appellate judge who possesses rich experience and expertise in handling civil cases of all types, including in particular public law and constitutional law cases. His judgments are well-reasoned and balanced. They are regularly reported in the law reports and cited in arguments and judgments. He also has extensive experience in steering reforms to improve on the administration of justice. He will be a great asset to the Court of Final Appeal."

Article 90 of the Basic Law provides that the Chief Executive shall obtain the endorsement of the Legislative Council on the appointment of the judges of the Court of Final Appeal. The Government will seek the endorsement of the Legislative Council of the recommended appointment in due course.

The curriculum vitae of Mr Justice Lam is at the Annex.

LCQ19: Issues of employees' rights and interests arising from the epidemic

Following is a question by the Hon Holden Chow and a written reply by the Secretary for Labour and Welfare, Dr Law Chi-kwong, in the Legislative Council today (May 12):

Question:

Under the law, persons placed under quarantine must not leave their place of quarantine within the quarantine period, and persons put under medical surveillance are also subject to certain restrictions on their itineraries within the surveillance period. The Labour Department (LD) has called on employers to grant paid sick leave to their employees who are absent from work on account of being placed under quarantine or medical

surveillance. However, some members of the public have pointed out that as "absence from work on account of being placed under quarantine or medical surveillance" is not the reason for taking sick leave under the Employment Ordinance (Cap 57) (i.e. "being unfit for work on account of injury or sickness"), some employers have asked such employees to take no pay leave or offset their absence with their paid annual leave entitlements. Regarding issues of employees' rights and interests arising from the Coronavirus Disease 2019 (COVID-19) epidemic, will the Government inform this Council:

(1) Whether those government employees to whom quarantine orders or medical surveillance notices have been issued will be regarded as being granted authorised absence from work for the relevant period;

(2) Whether LD will draw up relevant guidelines in respect of the aforesaid issues of employees' rights and interests to enhance protection for employees' rights and interests; if so, of the details; if not, the reasons for that; and;

(3) Given that since November 27 last year, eligible Hong Kong residents confirmed to have contracted COVID-19 locally and suffering from financial hardship may apply for a one-off allowance of \$5,000, whether the Government will extend the scope of the allowance to cover all persons to whom quarantine orders or medical surveillance notices have been issued, so as to compensate them for the relevant financial losses they have suffered; if so, of the details; if not, the reasons for that?

Reply:

President,

Having consulted the relevant policy bureaux, my consolidated reply to the Member's question is as follows:

Pursuant to the Prevention and Control of Disease Regulation (Cap 599A), if a health officer has reason to believe that a person is a contact, the health officer may, by order in writing, place the person under quarantine until a health officer considers that the person is not infectious; or the quarantine can be replaced by medical surveillance. During the quarantine period, a person shall not leave a place in which that person is placed under quarantine without written permission by a health officer. Those who contravene the requirement commit an offence and are liable on conviction to a fine of \$5,000 and to imprisonment for six months.

The Department of Health (DH) will arrange the relevant persons to undergo quarantine, medical surveillance and testing at designated quarantine centres. When they leave the quarantine centres upon completion of quarantine period, the DH would issue a document, which sets out the quarantine period and whether the person was infected by COVID-19, to prove that they stayed at the quarantine centres. Sick leave certificates will also be issued upon request.

On the other hand, the DH will also issue notice of medical surveillance

to persons exempted from compulsory quarantine under the Compulsory Quarantine of Certain Persons Arriving at Hong Kong Regulation (Cap 599C) and the Compulsory Quarantine of Persons Arriving at Hong Kong from Foreign Places Regulation (Cap 599E). The exempted persons must follow the instructions for medical surveillance, including wearing a mask, paying attention to health conditions and checking temperature on a daily basis. Certain groups of exempted persons are also required to conduct self-isolation and attend to tests.

(1) The Civil Service Bureau has issued guidelines that if a government employee is put under compulsory quarantine as ordered by the DH, authorised absence not counting as leave may be granted by respective department on a case-by-case basis.

(2) The Employees' Compensation Ordinance (Cap 282) and the Employment Ordinance (EO) (Cap 57) accord protection to employees who have contracted a disease (including COVID-19) by an accident arising out of and in the course of employment as well as those who have contracted a disease (including COVID-19) unrelated to their work respectively. In the latter case, though not work-related, should an employee be granted with an appropriate medical certificate (Note 1), the employer should pay sickness allowance to the employee who has fulfilled relevant conditions (Note 2) in accordance with the provisions of the EO or related terms of the employment contract. The Government also appeals to employers to be considerate and show understanding even if the employees cannot meet all the qualifying conditions for sickness allowance and make flexible arrangements, including granting paid leave to employees.

In addition, the EO stipulates clearly the provisions of paid annual leave, statutory holidays and rest days. Taking paid annual leave as an example, the time of the annual leave should be appointed by the employer after consultation with the employee or his/her representative, and confirmed by a written notice to the employee at least 14 days in advance unless a shorter period has been mutually agreed.

In view of the COVID-19 situation, the Labour Department (LD) has drawn up relevant information on the related obligations and rights of employers and employees under the EO. Employers and employees may make reference to relevant information through the LD's homepage (www.labour.gov.hk).

Note 1: An appropriate medical certificate means a medical certificate issued by a registered medical practitioner, registered Chinese medicine practitioner or registered dentist which should specify the number of days on which, and the nature of the sickness or injury on account of which, the employee is unfit for work.

Note 2: Under the EO, relevant conditions include an employee employed under a continuous contract whose sick leave is supported by an appropriate medical certificate; the sick leave taken by the employee is not less than four consecutive days and the employee has accumulated sufficient number of paid sickness days.

(3) The one-off ex-gratia cash allowance of \$5,000 currently provided by the

Government for eligible locally confirmed COVID-19 persons aims to remove the concern of potentially infected persons from coming forward to take COVID-19 tests that they would suffer from financial hardship whilst being hospitalised for COVID-19 treatment. Therefore, applicants should be Hong Kong residents who are currently employed but not entitled to paid sick leave or are self-employed, and are facing financial hardship arising from reduction in income whilst being hospitalised in public hospitals for COVID-19 treatment. Under this premise and after balancing various concerns, the Government has no plan to extend the coverage of the cash allowance to other persons at this stage.

LCQ14: Employees' compensation for contracting COVID-19 at work

Following is a question by the Hon Wong Kwok-kin and a written reply by the Secretary for Labour and Welfare, Dr Law Chi-kwong, in the Legislative Council today (May 12):

Question:

It is learnt that an employee had died after contracting Coronavirus Disease 2019 (COVID-19) at work, but his employer refused to admit the compensation liability and did not make a report to the Labour Department (LD) in accordance with the Employees' Compensation Ordinance (Cap 282). In respect of employees' compensation for contracting COVID 19 at work, will the Government inform this Council:

(1) Of the number of compensation claims under Cap 282 received by LD since January 2020 from employees for having contracted COVID-19 at work; among such claims, the respective numbers of those which (i) were fatal cases, (ii) were reported by employers on their own initiative and (iii) were reported by the employees or their family members; and

(2) Among the claims mentioned in (1), of the number of those in which the employers have admitted compensation liabilities and made compensation, as well as the details of such compensation, including (i) the average amount of compensation for fatal cases, and (ii) the maximum, minimum and average numbers of days of work injury sick leave granted to the employees in other claims?

Reply:

President,

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

(1) For employees who have contracted diseases (including COVID-19) but the infections have not arisen out of and in the course of employment, and the employees have been granted sick leaves supported by appropriate medical certificates (Note), the employers should pay the employees sickness allowance in accordance with the Employment Ordinance and the relevant employment contract terms. These cases are not required to be reported to the Labour Department (LD) in accordance with the Employees' Compensation Ordinance.

During January 2020 to April 28, 2021, the LD received a total of 541 employees' compensation cases with employees suspected to have contracted COVID-19 arising out of and in the course of employment and, among them, two fatal cases were involved. Of these 541 cases, employers reported 528 cases to the LD on their own initiative and the LD followed up on the remaining 13 cases upon notification by the employees.

At the time of reporting to the LD, the majority of the above cases were unable to confirm whether the employees had contracted COVID-19 while at work or the infections were linked to other sources. Hence, the employers needed time to conduct investigation on their own or seek the LD's assistance to provide views on the likelihood of the cases being work injuries after obtaining medical reports and other relevant information.

Note: An appropriate medical certificate refers to that issued by a registered medical practitioner, a registered Chinese medicine practitioner or a registered dentist. It should specify the number of days on which, and the nature of the sickness or injury on account of which, the employee is unfit for work.

(2) Among the 541 cases in part (1), the employees in 115 cases withdrew their claims/did not pursue their claims further owing to various reasons or the employers were confirmed to have no liability of compensation under the Employees' Compensation Ordinance. Most of the employees who withdrew their claims/did not pursue their claims further have informed the LD that they had fully recovered after taking sick leaves and thus needed not pursue their claims.

Besides, there were 79 cases which were confirmed to be work injury cases and the employers concerned were required to take up the employees' compensation liability. Of these 79 cases, 63 cases were pending the completion of sick leave clearance process and/or the assessment of loss of earning capacity permanently caused by the injuries after the employees' medical conditions became stable; employees in five cases withdrew their claims/did not pursue their claims further owing to various reasons (these five cases are included in the 115 cases mentioned in the paragraph above); and 11 cases (no fatal case was involved) were settled after the employers had made payments in accordance with the Certificate of Compensation Assessment issued by the Commissioner for Labour. For the 11 settled cases, the period of absence from duty as a result of the injuries ranged from zero to 40 days, with an average period of 23 days.

The LD is actively following up/processing the remaining 352 cases

(including the two fatal cases).

Missing man in Wong Tai Sin located

A man who went missing in Wong Tai Sin has been located.

Yeung Hon-wah, aged 67, went missing after he was last seen at a mall in Tsz Ching Estate on March 23 afternoon. His family made a report to Police on May 1.

The man returned to his residence yesterday afternoon (May 11). He sustained no injuries and no suspicious circumstances were detected.

Employers and employees should take precautions against heat stroke

As the Hong Kong Observatory has issued the Very Hot Weather Warning, the Labour Department (LD) reminds employers and employees to take appropriate precautions to prevent heat stroke when working in a hot or humid environment.

Heat stroke could occur if an employee works in a hot or humid environment for prolonged periods of time, as the body may fail to regulate its temperature by effective heat dissipation through sweating.

The symptoms of heat-related illnesses include feeling thirsty, fatigue, nausea, vomiting, headache, dizziness, muscle spasm or even mental confusion, and loss of consciousness or convulsion in severe cases.

Construction workers, cleaning workers, kitchen workers and porters, for example, are more prone to heat stroke as they may be working for long hours in such an environment, especially if appropriate preventive measures have not been taken.

The LD reminds employers to arrange for a suitable assessment of the risk of heat stress in the work environment and take appropriate preventive measures. The LD has produced two leaflets entitled "Checklist for Heat Stress Assessment at Construction Sites" and "Checklist for Heat Stress Assessment at Outdoor Cleansing Workplaces" respectively. Employers engaged in construction or outdoor cleaning work are advised to refer to these

checklists in assessing the risk of heat stress at their workplaces. As for heat stress assessment at a workplace in general, employers can refer to a booklet entitled "Risk Assessment for the Prevention of Heat Stroke at Work" produced by the LD.

The LD also reminds employers and employees to take the following precautions to prevent heat stroke:

Employers

- (1) Take heed of the weather report and adopt shift work arrangements for employees to reduce their exposure to the hot environment, or arrange appropriate rest breaks for them during very hot periods;
- (2) Avoid working under direct sunlight and set up temporary sunshade wherever possible;
- (3) Provide cool potable water for employees at all times during work. If necessary, provide drinks containing electrolytes for employees to replenish loss of salt during profuse sweating;
- (4) Minimise physical demands by using tools or mechanical aids at work;
- (5) Increase air flow by enhancing ventilation or air-conditioning as appropriate;
- (6) Isolate heat-generating facilities at the workplace and use insulating materials to minimise heat dissipation to the other work areas; and
- (7) Provide relevant information and training for employees on heat stroke such as preventive measures and first aid treatment.

Employees

- (1) Wear clothing made of suitable materials (for example, cotton) that is loose-fitting and light-coloured to help heat dissipation, minimise heat absorption and allow sweat evaporation;
- (2) Wear a wide-brimmed hat when working outdoors;
- (3) Drink plenty of water or appropriate beverages with electrolytes to replenish the fluids and salt lost through sweating; and
- (4) Whenever there are any symptoms of heat-related illnesses, rest in a cool or shady place and drink water, and inform supervisors to take appropriate action immediately.

The LD also urges employers to provide for employees as far as practicable covered space with good ventilation for rest and meals. Furthermore, some employees may have difficulty in adapting to a hot working environment owing to their own health conditions. Employers should take this into account and consider the recommendations of their doctors when assigning work to these employees.

In addition to the publications on risk assessment, the LD has produced a leaflet entitled "Prevention of Heat Stroke at Work in a Hot Environment" for the public. The publications can be obtained free of charge from the offices of the Occupational Health Service of the LD, or downloaded from the department's webpage at www.labour.gov.hk/eng/public/content2_9.htm.

The LD organises occupational health talks in public places and at its own training venues regularly to raise employers' and employees' awareness of occupational health. Details of health talks on the prevention of heat stroke at work in a hot environment from May to July are as follows:

(A)

Dates: May 17; June 1, 10 and 25 (am)

May 24; June 4 and 16 (pm)

Time: Half-day

Venue: Occupational Safety and Health Training Centre of the Labour Department,

13/F, KOLOUR·Tsuen Wan I, 68 Chung On Street, Tsuen Wan, New Territories

(B)

Dates: May 12 and June 22

Time: Half-day (am)

Venue: Occupational Safety and Health Centre of the Labour Department, G/F, Kwun Tong Community Health Centre Building, 60 Hip Wo Street, Kwun Tong (MTR Kwun Tong Station Exit A1)

(C)

Date and Time: May 24 (2.30pm to 4pm)

June 4 (6.45pm to 8.15pm)

Venue: Lecture Theatre, Hong Kong Central Library, 66 Causeway Road, Causeway Bay, Hong Kong

(Opposite Victoria Park, MTR Tin Hau Station Exit B)

(D)

Date: July 15

Time: 3.30pm to 5pm

Venue: Lecture Hall, Hong Kong Space Museum, 10 Salisbury Road, Tsim Sha Tsui, Kowloon

(MTR Tsim Sha Tsui Station Exit E)

For enrolment or enquiries about these occupational health talks, please call 2852 4040 or 2361 8240 (for talks organised at the Occupational Safety and Health Centre). Moreover, the LD also provides an outreach health education service and occupational health nurses will, on invitation, disseminate occupational health information at workplaces at a convenient time. Please contact the nursing officer at 2852 4062 for details. All these health talks are free of charge.

Infection control measures taking into account the latest COVID-19 epidemic developments will be adopted at the venues. All the occupational health public talks must be pre-registered.