



Hong Kong General Chamber of Commerce
香港總商會1861

Consultation on the Guidelines on Prevention of Heat Stroke at Work (November 2022)

Submission by The Hong Kong General Chamber of Commerce (HKGCC)

1. HKGCC welcomes the opportunity to respond to this consultation paper.
2. While we support the objective of the proposed guidelines, namely to reduce the risk of employees suffering from heat stroke at work, we have serious concerns that the measures proposed in the guidelines are, to a large extent, impracticable for employers to comply with, overly- intrusive and inflexible, and unnecessary. Our concerns relate to both the form of the proposed guidelines, and their content. We are also concerned about the lack of a regulatory impact assessment for the proposed guidelines. We deal with each of these issues in turn.

Form of the Proposed Guidelines

3. Although the Government refers to these as “Guidelines”, the Occupational Safety and Health Ordinance (Cap 509) does not contain any reference to guidelines. It does refer to “codes of practice”,¹ and we assume that the proposed guidelines are intended to be a code of practice for the purpose of the Ordinance.
4. A code of practice is not legally-binding.² Its purpose is only to provide practical guidance to employers and employees.³ However, the proposed guidelines seem designed to impose *new requirements* rather than simply providing *guidance* on existing requirements. For example, the Consultation Paper (CP) states that the guidelines will “require” employers to take preventative measures, and that the CP will introduce the “main requirements” of the guidelines.⁴
5. Clearly guidelines (or, to use the terminology in the Ordinance, codes of practice) cannot impose requirements: only the Legislative Council, or the Secretary under powers delegated by statute, can do so. We would therefore welcome the Government’s clarification that the purpose of the guidelines is to provide guidance on the existing legislative requirements, and not to impose new requirements.

Content of the Proposed Guidelines

6. We are concerned that the measures proposed in the guidelines are unduly prescriptive and rigid, and do not give employers sufficient flexibility in assessing

¹ Section 40.

² Section 41(1).

³ Section 40(1).

⁴ CP paras 1 and 4.

how to comply with their statutory duty to ensure the safety and health of employees.⁵ Many of the proposed measures are also impracticable for employers to monitor, and to comply with. For example:

- For the purpose of calculating proposed rest breaks, the proposed guidelines give examples of jobs which would be classified as having light, moderate, heavy or very heavy workloads.⁶ This classification is overly-simplistic and inappropriate. A “transportation and delivery worker” (to take just one of these examples) is classified as having a “moderate” workload. However, in reality, a large proportion of such an employee’s workload may be light. Moreover, some workers may conduct different classes of work (light, moderate, heavy, very heavy) in a day. It is impracticable to arrange the rest time for different workers within a team depending on the class of workload.
- Similarly, the proposed guidelines prescribe particular rest times for employees in an “indoor working environment without air-conditioning”. However, in reality, many staff may spend most of their time working in an air-conditioned environment and the rest of their time in a non-air conditioned environment.
- The proposed time for heat acclimatization for new employees⁷ is too rigid and in many cases unnecessary: an employee may be new to a company but not new to the industry, and therefore may not need such time to acclimatize.
- The recommended rest times in the CP, depending on the classification of the employee according to workload and the prevailing Hong Kong Heat Index,⁸ are impracticable for employers to monitor and comply with, and unduly inflexible and intrusive. To take an example, for workers in the "Very Heavy Workload" category, it may seriously affect operations if 45 minutes of rest has to be provided after every 15 minutes of work, as the proposed guidelines recommend, when the HKHI is 32-34.⁹ Another example is concrete workers, who are placed in the "Heavy Workload" category.¹⁰ The proposed guidelines recommend that at least 30 minutes of rest is given in every hour, when the HKHI is 32-34. However, concreting is a process that requires continuous working and generally takes around a few hours to complete. Their work cannot be stopped until all concreting is completed.¹¹
- Expecting employers to implement such measures could have a crippling effect on business efficiency and thereby a detrimental effect on the Hong Kong economy. Employers should be left with the discretion to arrange appropriate rest breaks with employees according to their own needs and wishes, in accordance with the employer’s general statutory duty to ensure the safety and health of employees. For example, a fit and healthy employee may wish to dispense with one or more rest breaks in order to leave work early due

⁵ Section 6(1).

⁶ CP Appendix 1.

⁷ CP para 11(e).

⁸ CP paras 11(c), 12-22, Appendices 2, 2A and 3.

⁹ CP Appendix 2(A).

¹⁰ CP Appendix 1.

¹¹ In addition, risk assessment usually is conducted at the beginning of the work shift, and it is to impracticable to keep checking the HKHI during the working day.

to family or other commitments. And workers performing their duties under shade may not need as much rest, even if the outdoor temperature is high.¹²

- It is unnecessary and unduly intrusive to prescribe the amount of drinking water per hour that should be provided to employees.¹³ The existing statutory requirement on employers to provide “sufficient” drinking water to employees provides an adequate safeguard, while providing appropriate flexibility.¹⁴

7. Even if the measures proposed in the guidelines are not legally-binding, they can still have an important legal effect. In a prosecution under the Ordinance, the prosecutor is entitled to use as evidence the fact that an employer has contravened a provision of a code of practice.¹⁵ It is therefore vitally important that any guidelines are both practicable to comply with, and sufficiently flexible, since this could affect an employer’s criminal liability. In our view the proposed guidelines do not meet these criteria.

8. By contrast, the existing guide on “Risk Assessment for the Prevention of Heat Stroke at Work” issued by the Labour Department in 2017, which the CP refers to,¹⁶ strikes the right balance of providing useful guidance to employers on practical steps they can take to minimise the risk of heat stroke, while allowing them sufficient flexibility to choose the precise measures that are appropriate for their own businesses. The usefulness of this guide is exemplified by the fact that the Construction Industry Council annexed it for reference to its own “Guidelines on Site Safety Measures for Working in Hot Weather”, issued in 2019. In our view this a suitable approach: using the 2017 guide as a basis, to be supplemented by industry bodies’ guidelines geared to the circumstances of the particular industry in question.

The absence of a Regulatory Impact Assessment

9. The concerns about the proposed guidelines that we have raised above could, we submit, have been avoided if a regulatory impact assessment had been conducted, in accordance with international best practice. No such assessment is evident from the CP. For example, it is not clear why the proposed guidelines are perceived as necessary, particularly given the existing 2017 guide. The CP merely states that “[t]here are opinions that the current guide to risk assessment does not have any specific requirements on heat stroke preventative measures”. It is not clear who holds these opinions, but in any event, as explained above, it is inappropriate for a code of practice to set out specific requirements: its purpose is to provide *guidance* on compliance with *existing* requirements, as the 2017 guide does. Moreover, it is not

¹² Certain details of the proposed guidelines- if they were to be implemented- are also unclear. For example, there appears to be a contradiction between para 11 (c) (15 minutes of rest every two hours) and para 12 (rest break every hour). Could employers agree with employees that rest breaks are unpaid, as permitted by the Employment Ordinance? Would compliance with the guidelines be monitored and enforced by the Labour Department (which we submit would be wholly inappropriate as they are not legally-binding)?

¹³ CP para 10.

¹⁴ Section 16(1) of the Occupational Safety and Health Regulations (Cap 509A).

¹⁵ Section 41(2)(b).

¹⁶ CP para 3.

clear how the measures in the proposed guidelines would reduce the incidence of heat stroke at work, as compared with the *status quo*.

10. While there is no clear benefit from the proposed guidelines, there are likely to be considerable potential costs for businesses and Hong Kong's economy if the proposed guidelines were to be implemented, as explained above.

Conclusion

11. For the reasons explained above, we are unable to support the proposed guidelines as currently drafted. We would support a consultation on a review of the 2017 guide, to see if further practical examples of good practice in the guide may assist employers in complying with their statutory obligation to ensure the health and safety of employees.

HKGCC Secretariat
January 2023