

**How to Apply
for Employees' Compensation for Death**

Labour Department

(August 2010)

Introduction

This leaflet explains concisely the main provisions of the Employees' Compensation Ordinance (ECO) on the compensation for death. It should be noted that the Ordinance itself remains the sole authority for the provisions of the law explained.

What is Compensation for Death?

If an employee dies as a result of an accident (or a prescribed occupational disease) arising out of and in the course of employment, his/her employer shall be liable under the ECO to pay the compensation for death to his/her surviving members of the family.

In addition, the employer is liable to reimburse the reasonable expenses of funeral and medical attendance on the deceased employee, up to a maximum of \$35,000.

How is the Compensation for Death Computed?

Age of Deceased Employee	Amount of Compensation	
Under 40	84 months' earnings [*]	or the minimum compensation [*] , whichever is higher
40 to under 56	60 months' earnings [*]	
56 or above	36 months' earnings [*]	
<p>* For accidents happened on or after 1 August 2010:</p> <p>(a) The monthly earnings for calculating compensation for death are subject to a maximum of \$21,500; and</p> <p>(b) The minimum amount of compensation for death is \$310,000.</p> <p>For accidents happened before 1 August 2010:</p> <p>(a) The monthly earnings for calculating compensation for death are subject to a maximum of \$21,000; and</p> <p>(b) The minimum amount of compensation for death is \$303,000.</p>		

The compensation shall be apportioned among the deceased employee's eligible members of the family in the manner set out in Table 1.

Who Shall be Entitled to Compensation?

Compensation for Death

The compensation for death shall be payable to "members of the family" of a deceased employee. Under the ECO, the "members of the family" (whether by blood or an adoption recognised by law) of a deceased employee are:

- a spouse or cohabitee ("cohabitee" means any person who at the time of the accident concerned was living with the employee as the employee's wife or husband);
- a child;

- a parent or grandparent; or
- a grandchild, stepparent, stepchild, brother, sister, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, child of a brother or sister of whole blood, half-brother and half-sister, any of whom shall be residing with the employee as a member of the same household for the period of 24 months immediately preceding the accident.

Funeral Expenses and Medical Attendance Expenses

Any person who has paid the expenses of funeral of or medical attendance on the deceased employee is entitled to the reimbursement of the expenses.

Determination by the Commissioner for Labour

Applicability

In accidents where the employer and all the parties to the claim have agreed, the Commissioner for Labour (the Commissioner) may determine on the amount of the compensation for death and/or funeral and medical attendance expenses payable and persons to whom such compensation shall be paid.

Period for Submitting Claim

- Application for determination on the compensation for death:
within 6 months from the date of death of the employee.
- Reimbursement of the funeral/medical attendance expenses:
within 30 days from the day of the cremation/burial of the employee or the day on which the Commissioner receives the employer's consent to the determination, whichever is the later.

Determination and Issue of Certificate

Upon receipt of an application, the Commissioner will consider whether the case is suitable for his/her determination. If yes, the Commissioner shall make the determination and issue the relevant certificate to all the applicants and the employer, stating the amount of compensation payable and the eligible persons to whom payment should be made.

Either the employer or an applicant may object to the determination made by the Commissioner. In such cases, the Commissioner shall review his decision and issue a review certificate. Alternatively, any party to the claim may appeal to the District Court against the Commissioner's decision.

Interim Payments

If a claim for the compensation for death is to be determined by the Commissioner, the spouse (not including the cohabitee) of the deceased employee may apply to the Commissioner for determination on the Interim Payments while pending determination on the compensation for death. Upon receiving such an application, the Commissioner shall issue a certificate giving details of his determination.

The Interim Payments shall be payable by the employer to the spouse of the deceased employee. Comprising an initial payment and subsequent monthly

payments at the rate of 50% of the earnings of the deceased employee, the Interim Payments shall not in aggregate exceed 45% of the total amount of compensation for death payable. The aggregate amount of the Interim Payments paid shall be deductible from the share of compensation that the spouse would be entitled to.

Determination by Court

If the Commissioner considers that a claim is not suitable for his/her determination, or if the employer or any claimant does not agree to submit the claim to the Commissioner for determination, the case would have to be adjudicated by the District Court. Claimants shall lodge the claim with the Court within 24 months from the date of death of the employee.

If a claim has to be determined by the Court, the members of the family of the deceased employee may:

- (a) apply to the Legal Aid Department for legal aid;
- (b) apply to the District Court direct; or
- (c) engage a solicitor to represent them,

for instituting legal proceedings.

The Fatal Cases Office of the Labour Department will assist the members of the family of deceased employees by referring them to the Legal Aid Department or the District Court upon their request.

How to Make a Claim for Compensation for Death?

Any person who wishes to claim for compensation for death should call at the Fatal Cases Office of the Labour Department as soon as possible after the death of the employee.

He/she should bring along the following documents:

- (a) his / her own identity card;
- (b) identity card of the deceased employee;
- (c) certificate of death or certificate of order authorizing burial/cremation of body of the deceased; and
- (d) relevant documents certifying the relationship between the deceased and the applicant, e.g. marriage certificate, birth certificate or proof of residence.

Family Members Residing outside Hong Kong

Members of the family of the deceased employee residing outside Hong Kong are required to provide the following documents if they wish to claim for compensation:

- (a) Documents of identity, e.g. Passport;
- (b) Certificate / documents certifying the relationship with the deceased employee; and
- (c) Letter of Authorization of an attorney to act on their behalf in pursuing the claim.

The applicants should ensure that the documents are prepared in their native language with English translation (no translation is necessary if the documents are in

Chinese or English), authenticated by their local authorities or Notary Public and endorsed by an officer of the Consular Department of the Ministry of Foreign Affairs of China (in case family members residing in China) or by an overseas Chinese Consular Officer (in case family members residing in countries / territories other than China).

What the Employer should Do?

The employer must notify the Labour Department of any fatal accident by submitting the prescribed form (Form 2 / 2A) within 7 days after the accident, irrespective of whether the death of the employee gives rise to any liability to pay compensation. An employer who, without reasonable excuse, fails to give notice of an accident or furnishes any false information to the Commissioner, commits an offence and is liable to a maximum fine of \$50,000 upon conviction.

If the employer has no dispute on the liability to pay compensation arising from a fatal accident, he may give consent to submitting the claim to be determined by the Commissioner. Upon the issue of certificates by the Commissioner, the employer should effect payment of compensation or reimbursement of the funeral and medical attendance expenses in accordance with the Certificates if no objection or appeal has been raised by any party.

An employer who, without reasonable excuse, fails to make payments in accordance with a Certificate/ Review Certificate shall pay a surcharge in addition to the amount of the compensation/payments stated in the Certificate/Review Certificate. He also commits an offence and is liable to a maximum fine of \$100,000 upon conviction.

Where to Obtain More Information?

Fatal Cases Office
Employees' Compensation Division
Labour Department
Room 601, 6/F., Harbour Building
38 Pier Road,
Central,
Hong Kong
Tel: 2852 3994 Fax: 2854 4166

(The contents of this leaflet are also available on the Labour Department Homepage at <http://www.labour.gov.hk>)

Employees' Compensation Division
Labour Department
August 2010

Table 1: Apportionment of Compensation for Death

Family Members Eligible for Compensation	Apportionment of Compensation
1. Only spouse / cohabitee	100% to spouse / cohabitee
2. Only child(ren)	100% to child(ren)
3. Only parent(s) / grandparent(s)	100% to parent(s) / grandparent(s)
4. Only spouse / cohabitee and child(ren)	50% to spouse / cohabitee 50% to child(ren)
5. Only spouse / cohabitee and parent(s) / grandparent(s)	80% to spouse / cohabitee 20% to parent(s) / grandparent(s)
6. Only spouse / cohabitee, child(ren), and parent(s) / grandparent(s) (whether or not there is any other eligible members of the family)	45% to spouse / cohabitee 45% to child(ren) 10% to parent(s) / grandparent(s) other member(s) of the family is / are not entitled to compensation
7. Only child(ren) and parent(s) / grandparent(s)	80% to child(ren) 20% to parent(s) / grandparent(s)
8. Only other member(s) of the family with no surviving spouse / cohabitee, child(ren) or parent(s) / grandparent(s)	100% to the other member(s) of the family
9. Only spouse / cohabitee and other member(s) of the family	95% to spouse / cohabitee 5% to other member(s) of the family
10. Only child(ren) and other member(s) of the family	95% to child(ren) 5% to other member(s) of the family
11. Only parent(s) / grandparent(s) and other member(s) of the family	95% to parent(s) / grandparent(s) 5% to other member(s) of the family
12. Only spouse / cohabitee, child(ren) and other member(s) of the family	50% to spouse / cohabitee 45% to child(ren) 5% to other member(s) of the family
13. Only spouse / cohabitee, parent(s) / grandparent(s) and other member(s) of the family	75% to spouse / cohabitee 20% to parent(s) / grandparent(s) 5% to other member(s) of the family
14. Only child(ren), parent(s) / grandparent(s) and other member(s) of the family	75% to child(ren) 20% to parent(s) / grandparent(s) 5% to other member(s) of the family

Note 1: If there are more than one eligible person in the same category, the amount of compensation shall be shared among them equally. However, where the deceased employee is survived by both parent(s) and grandparent(s), the amount of compensation payable to this category of family members shall be divided as follows: 70% to parent(s)
30% to grandparent(s)

Note 2: Other member(s) of the family includes grandchild, stepparent, stepchild, brother, sister, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, child of a brother or sister of whole blood, half-brother and half-sister, any of whom shall be residing with the employee as a member of the same household for the period of 24 months immediately preceding the accident.