

**Employees' Rights to
Compensation under the
Employees' Compensation Ordinance**



Labour Department

(August 2010)

Injury at Work

If an employee sustains an injury or dies as a result of an accident arising out of and in the course of his employment, his employer is in general liable to pay compensation under the Employees' Compensation Ordinance (ECO)(Cap. 282).

An injured employee should give the employer (or his representative, e.g. the supervisor) notice of the accident verbally or in writing as soon as possible, and provide the original copy of his sick leave certificates to the employer. Failure to give prompt notice may delay the claim of employees' compensation or raise doubts about the work injury on the part of the employer.

Payment of Compensation for Injury at Work

(A) Periodical Payments

According to the ECO, the employer shall pay the injured employee periodical payments **at the rate of four-fifths of the employee's normal earnings***. The periodical payments are payable on the employee's normal pay days.

(* According to the ECO, "earnings" includes cash wages, overtime payments of a constant nature, customary tips, etc., but does not include items such as remuneration for intermittent overtime, casual payments of a non-recurrent nature, the value of travelling allowances or concession and the employer's contributions to provident funds. The "monthly earnings" is to be taken as the earnings for the month preceding the date of the accident, or the average monthly earnings for the previous 12 months of employment (or any lesser period if the employee has not been so long employed), whichever calculation is more favourable to the employee.)

An employer who, without reasonable excuse, fails to pay within 7 days after the normal pay day commits an offence and is liable on conviction to a fine of HK\$100,000.

Note: An employee should not work for another employer without the knowledge and consent of his employer during the period he receives periodical payments. Otherwise, the case could be

considered by the employer as a fraudulent act and legal action may be contemplated.

(B) Employees' Compensation Payments

According to the ECO, if the employee's period of sick leave exceeds 7 days, after completion of the required sick leave clearance procedures or medical assessment, the Labour Department will issue a Certificate of Compensation Assessment stating the amount of periodical payments payable and the assessed compensation for permanent incapacity. **Unless the employer pays to the employee the amount of compensation stated in the certificate or any outstanding amount within 21 days**, he is liable to pay to the employee a surcharge of \$500^(Note 1), or 5 % of the amount of compensation then remaining unpaid, whichever is the greater. The employer is liable to pay a further surcharge of \$1,000^(Note 1), or 10 % of the aggregate amount of compensation then remaining unpaid, whichever is the greater, if he still fails to pay within 3 months after the expiry of the payment period.

Any employer who, without reasonable excuse, fails to pay the compensation or a surcharge commits an offence and is liable upon conviction to a fine of HK\$100,000.

(C) Medical Expenses

The ECO stipulates that unless an employer has provided adequate free medical treatment to the employee, he is liable to pay medical expenses (including fees for consultation, any surgical or therapeutic treatment, cost of nursing attendance, hospital accommodation as an in-patient, medicines, curative materials and medical dressings, etc) in respect of the period during which the employee receives medical treatment. An employer is liable to pay the medical expenses in respect of medical treatment of any description received by an employee unless the free medical treatment provided by the employer covers medical

(Note1) For work injuries caused by accidents happening or prescribed occupational diseases contracted before 1 August 2010, the surcharge and further surcharge is \$490 and \$970 respectively.

treatment of the same description.

Medical expenses incurred for medical treatment given by, or under the supervision of, a registered medical practitioner, a registered Chinese medicine practitioner^(Note 2), a registered dentist, a registered physiotherapist, a registered occupational therapist or a registered chiropractor shall be payable under the ECO.

Where the medical expenses for the medical treatment of an employee include the cost of medicines, the medicines shall be prescribed by a registered medical practitioner, a registered Chinese medicine practitioner^(Note 2) or a registered dentist and prescribed for the direct treatment of the employees' personal injury. Unless the prescription contains a direction that the medicines are to be dispensed for a stated number of times and the medicines are dispensed in accordance with that direction, the employee shall not be reimbursed any cost of medicines relating medicines dispensed pursuant to the same prescription on the subsequent occasions.^(Note2)

An employer should pay the injured employee medical expenses within 21 days after the employee has submitted the receipts for payment of medical expenses. The daily maximum of medical expenses payable by the employer are as follows:

the medical expenses for each day of stay in the hospital where an employee is given medical treatment as an in-patient: \$200

the medical expenses for each day on which an employee is given medical treatment other than as an in-patient in a hospital: \$200

(Note 2) An employer is liable to pay medical expenses for medical treatment given by a registered Chinese medicine practitioner in respect of the work injuries caused by accidents happening or prescribed occupational diseases contracted on or after 1 September 2008.

the medical expenses for each day on which an employee is given medical treatment both as an in-patient in a hospital and other than as an in-patient in a hospital: \$280

ATTENTION

◆ Medical Examination and Treatment

Section 16 of the Ordinance stipulates that an employee who has given notice of an accident shall submit himself to a free medical examination by a registered medical practitioner, a registered Chinese medicine practitioner^(Note 3) or a registered dentist named by his employer when this is offered within seven days of his giving notice. An employee who is receiving periodical payments from his employer shall also submit himself for the above-mentioned medical examination as required by his employer. If, however, any registered medical practitioner, registered Chinese medicine practitioner^(Note 3) or registered dentist considers the employee unfit to attend medical examination, the employee must notify the employer, and the registered medical practitioner, registered Chinese medicine practitioner^(Note 3) or registered dentist named by the employer will arrange an alternative time for medical examination. The employer has to pay all the expenses for medical examination arranged by his registered medical practitioner, registered Chinese medicine practitioner^(Note 3) or registered dentist. The employee is entitled to have his own registered medical practitioner, registered Chinese medicine practitioner^(Note 3) or registered dentist present at the medical examination, but at his own expense.

If a medical examination is arranged for the injured employee, the examination shall be conducted by a practitioner from the medical treatment of the same description as that received by the employee. For example, if the employee is attended by a registered Chinese medicine

(Note 3) The medical functions of registered Chinese medicine practitioners only apply to the work injuries caused by accidents happening or prescribed occupational diseases contracted on or after 1 September 2008.

practitioner, the employer shall name a registered Chinese medicine practitioner to conduct the medical examination, and so on.^(Note 4)

If an employee fails to submit himself for such examination, his right to compensation shall be suspended until such examination has taken place; an employee who fails without reasonable cause to attend for medical examination within 15 days of being required to do so may lose his right to compensation.

The registered medical practitioner, registered Chinese medicine practitioner or registered dentist named by the employer to conduct the examination shall prepare a report on the examination and send it to the employer at the employer's expense. The employee may in writing request the employer to send to him, free of charge, a copy of the report.
(Note 4)

In case an employer fails to pay compensation to the employee as required by the Ordinance

◆ A report should be immediately made to the Labour Department

If an employer fails to pay compensation to his employee as required by the ECO, **the employee should make a report to the Labour Department at once.** The Labour Department, upon receipt of his report, will immediately help the employee contact his employer and urge the employer to settle in full the compensation payments in default as required by the Ordinance. Besides, under special circumstances of individual cases, the Labour Department will help the employee contact his employer's principal contractor or insurance company, requesting them to pay the compensation to the employee direct. The Labour Department will also issue written warning(s) to the employer concerned

for failing to pay compensation. If there is sufficient evidence and the employee is willing to act as a prosecution witness, the Labour Department will consider whether to institute criminal prosecution against the employer.

◆ The employee could make civil claims

The Labour Department does not have the authority to make adjudication on any dispute of the case. If the employer and the employee could not settle their dispute with the assistance of the Labour Department, or the employee wishes to recover damages from his employer or the third party, the case shall be determined by the Court.

Section 14 of the ECO stipulates that an application to the District Court for employees' compensation has to be made within 24 months from the date of the accident causing the injury. The Court may refuse any application submitted beyond the time limit. As it takes time to go through legal formalities, **if a case cannot be settled by the end of the 18th month from the date of accident, the employee concerned should contact the Employees' Compensation Division of the Labour Department as soon as possible.** Subject to the decision of the employee, staff of the Division would assist the employee either to approach the Legal Aid Department for further assistance, or to register his claim direct at the District Court.

If an employer is ruled to be held responsible for the work accident of his employee, the employer has to pay for the cost of proceedings and the interest on the compensation, on top of the amount of compensation awarded to the employee by the Court.

◆ Employees should come forward to testify

If any employer is suspected of breaching the ECO for failing to pay compensation to an employee and the employee concerned agrees to be prosecution witness, the Labour Department will consider instituting criminal prosecution against the employer. The Labour Department will invite the employee to give a witness statement and submit documentary evidence. The Labour Department will also arrange an interview with

(Note 4) This stipulation only applies to the work injuries caused by accidents happening or prescribed occupational diseases contracted on or after 1 September 2008.

the employer or his representative to inform him of the details of the suspected offences, and to hear his defence. The information gathered will be submitted to the Prosecutions Division of the Labour Department to examine whether prosecution will be instituted against the employer.

Criminal cases involving breaches of the ECO will normally be heard at the Magistrates' Courts. The standard of proof required of the prosecution is one beyond reasonable doubt. For complicated cases, the Labour Department will seek the legal advice of the Department of Justice. Hence, whether the employer will be prosecuted depends on whether there is sufficient evidence, and whether there is reasonable chance that the employer will be convicted of the offences.

If the employer pleads guilty at the fresh hearing on the offence at the Magistrates' Court, the employee will not need to attend the court hearing as prosecution witness. If, however, the employer pleads not guilty, the Prosecutions Division of the Labour Department will arrange for the employee to testify at subsequent hearings.

In criminal proceedings, it is the Labour Department that would take out prosecution against the employer for contravening labour legislation. Penalties will be imposed on the employer upon conviction. The employer will also have a criminal record. If a fine is imposed, the sum will be payable into the Government Revenue. **In order to uphold the rule of law and take out prosecution against employers in breach of the Ordinances, we now call upon employees who have been owed compensation payments to come forward and act as a prosecution witness.**

Hotline for complaints against employers who fail to pay compensation for injuries at work:

① 2852 3708

Enquiries:

① 24-hour Telephone Enquiry Service: 2717 1771 (the hotline is handled by "the 1823 Call Centre")

- 🖨 Homepage Address: <http://www.labour.gov.hk>
- 📍 Enquiry in person to district offices of the Employees' Compensation Division:

Branch Office of the Employees' Compensation Division, Labour Department [Place of Accident (Form 2, 2B) / Place of Employment (Form 2A)]	Address
Hong Kong Offices (cases in Hong Kong Island, outlying Islands and outside Hong Kong)	Rm 1605, 16/F, Southorn Centre, 130 Hennessy Road, Hong Kong
Kowloon Offices (cases in Kowloon, Sai Kung and cases involving seamen and government employees)	Rm 1007, 10/F, Cheung Sha Wan Government Offices, 303 Cheung Sha Wan Road, Kowloon
Tsuen Wan & Kwai Chung Offices (cases in Kwai Chung, Tsing Yi, Tsuen Wan, Tuen Mun and Yuen Long)	6/F, Tsuen Wan Government Offices, 38 Sai Lau Kok Road, Tsuen Wan, New Territories
Shatin Office (cases in Shatin, Taipo, Fanling and Northern District)	Rm 239, 2/F, Shatin Government Offices, 1 Sheung Wo Che Road, Shatin, New Territories
Fatal Cases Office	Rm 601, 6/F, Harbour Building, 38 Pier Road, Central, Hong Kong