

Employers' Rights and Obligations under the Employees' Compensation Ordinance



Labour Department

(August 2010)

Employers' Rights and Obligations under the Employees' Compensation Ordinance

Injury at Work

The Employees' Compensation Ordinance (ECO), Cap 282 of the laws of Hong Kong, stipulates that 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 Ordinance. An accident arising in the course of an employee's employment shall be deemed, in the absence of evidence to the contrary, also to have arisen out of that employment.

Section 15 of the ECO provides that **an employer must notify the Commissioner for Labour of any work accident by submitting Form 2, irrespective of whether the accident gives rise to any liability to pay compensation.** The notification must be given within 7 days for fatal cases and 14 days for injury cases after the accident has come to the employer's knowledge.

The employer should also notify the insurer (not the insurance broker) of the work accident according to the stipulated period and the specified format (in writing or by specified form) required by the insurer.

Liability of Employer

(A) Periodical Payments

According to Section 10 of the ECO, **an employer is obliged to pay his injured employee periodical payments at the rate of four-fifths of the employee's normal earnings* during the period of his temporary incapacity and 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 and 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 immediately 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 periodical payments to his injured employee within 7 days after the employee's normal pay day is liable to prosecution and upon conviction, to a maximum fine of HK\$100,000.

(B) Employees' Compensation Payment

For employees' compensation cases with sick leave exceeding 7 days, the Labour Department will issue a Certificate of Compensation Assessment under Section 16A of the ECO, after completion of the required sick leave clearance procedures or medical assessment. The certificate will state the amount of periodical payments and the compensation amount for the employee's permanent loss of earning capacity assessed. **The employer must pay the compensation amount stated in the certificate or any outstanding amount to the employee within 21 days from the date of issue of the certificate, or he must pay the employee a surcharge of \$500^(Note 1) or 5 % of the amount of compensation unpaid, whichever is the greater.** If the employer still fails to pay within 3 months after the expiry of the payment period, a further surcharge of \$1,000^(Note 1) or 10 % of the aggregate amount of compensation then remaining unpaid, whichever is the greater.

An employer who, without any reasonable excuse, fails to pay the compensation or the surcharge is liable to prosecution and, upon conviction, to a fine of HK\$100,000.

(C) Medical Expenses

Section 10A of the ECO stipulates that unless an employer has provided adequate free medical treatment to the injured employee, the employer 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 treatment of the same description.

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.

(Note 1) 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.

(Note 2) The recognition of certification by registered Chinese medicine practitioner only applies to the work injuries caused by accidents happening or prescribed occupational diseases contracted on or after 1 September 2008.

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
- ◆ 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

Liability of Principal Contractor

Section 24 of the ECO provides that when an employee of a sub-contractor is injured at work, the principal contractor shall be liable for any claim for employees’ compensation made by the injured employee. The principal contractor may, however, take action to recover from the sub-contractor any payment which he is required to make.

Criminal Prosecution

If an employer willfully breaches the payment provisions of the ECO, the Labour Department will consider taking out prosecution against the employer, after obtaining the employee’s consent to be a prosecution witness.

Civil Claims by Injured Employee

An employee could make an application to the Court for his employees’ compensation claim under the ECO if his employer fails to discharge his liability as required by the Ordinance. If the employee is injured due to the negligence or other wrongful act of his employer, the employee could also sue for damages under common law. If the employer is ruled to be held responsible for the work accident of his employee, the employer may have 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.

Rights of Employer

◆ **Medical Examination**

Section 16 of the ECO stipulates that an employee who has given notice of an accident shall submit himself to a free medial examination by a registered medical practitioner, a registered Chinese medicine practitioner^(Note3) 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 all 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.

Section 16 of the ECO stipulates that 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 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.

Section 16 of the ECO stipulates that 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. (Attention: Regarding

(Note 3) The medical functions of registered Chinese medicine practitioners under Section 16 of the Employees’ Compensation Ordinance only apply to the work injuries caused by accidents happening or prescribed occupational diseases contracted on or after 1 September 2008.

(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.

this medical examination, the employee may in writing request the employer to send to him, free of charge, a copy of the report. An employer commits an offence if he fails, without reasonable excuse, to send the employee a copy of the examination report.)^(Note 4)

◆ **Handling of Doubtful Employees' Compensation Cases**

If the employer is in doubt about the cause of an employee's injury or sick leave, he may conduct preliminary investigation, including interviewing the injured employee to obtain details of the accident, inquiring of the witnesses about the circumstances, assessing the possibility of the work environment leading to the accident, and requesting the attending registered medical practitioner, registered Chinese medicine practitioner^(Note 5) or registered dentist of the injured employee to provide a medical report for reference. On the other hand, the employer can contact the insurer for appropriate follow-up action, such as arranging the above-mentioned medical examination. The employer may also seek professional legal advice. On encountering a suspected fraudulent case, an employer may consider forwarding the evidence collected and other relevant information to the Police for action. If the employer is still in doubt about the work injury case, he may pass his views and the relevant information to the Labour Department. The Labour Department will give its views to both parties on the likelihood of the case being a work injury from the medical point of view and according to the provisions of the ECO. Please take note that 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 reach any settlement with the assistance of the Labour Department, the case shall be determined by the Court.

Formulation of guidelines for handling employees' compensation cases

Employers are encouraged to formulate company guidelines for handling employees' compensation cases which serve to remind the employees of the following:

- To inform the employer or the supervisor **immediately** after a work accident has occurred;
- To provide the employer with the date, time and place of occurrence of the accident and other relevant details;

(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.

(Note 5) The medical treatment and medical examination given by 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.

- To seek medical examination/treatment from hospitals or clinics;
- To submit the original copy of sick leave certificates to the employer; and
- To undergo sick leave clearance procedures at the Labour Department or attend medical assessment at hospitals as scheduled.

The guidelines could facilitate the employer to handle employees' compensation cases and enhance timely payment of periodical payments and employees' compensation payments as required by the law. It also helps to avoid unnecessary conflicts and disputes due to delay in handling employees' compensation cases.

(Attention: Employers are required to take out an employees' compensation (EC) insurance policy and take action to renew the EC policy in good time so as to make sure that the insurance cover is not interrupted. Since it may take some time to complete the necessary procedures, employers are strongly advised to arrange for taking out or renewing an EC policy well in advance.)

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>