

## A Guide to Employees' Compensation Insurance

According to Section 40 of the Employees' Compensation Ordinance, all employers (including contractors and sub-contractors) are required to take out insurance policies to cover their liabilities both under the Ordinance and at common law for injuries at work in respect of all their employees, irrespective of the length of employment contract or working hours, full-time or part-time, permanent job or temporary employment. Should there be any enquiries on legal liability, employers should seek professional legal advice.

The minimum insurance cover should be for an amount:

No. of Employees	Amount of Insurance Cover per Event
not more than 200	not less than HK\$100 million
more than 200	not less than HK\$200 million

An employer who fails to comply with the Ordinance to secure an insurance cover commits an offence and is liable on conviction to a maximum fine of HK\$100,000 and imprisonment for two years.

### **IMPORTANT NOTE**

The minimum amount of insurance cover specified in the Ordinance is not the maximum liability that an employer is required to bear under the Employees' Compensation Ordinance and at common law. An employer should therefore carefully assess the possible risk at work to which his employees may be exposed and whether he should take out an insurance policy for an amount more than the minimum under the Ordinance. Employers should consult their insurers for professional advice.

Where a principal contractor has undertaken to perform any construction work, he may take out an insurance policy for an amount not less than HK\$200 million per event to cover his liability and that of his sub-contractor(s) under the Ordinance and at common law. The principal contractor and his sub-contractor(s) of a project should clearly define their liability in this respect in writings.

A "group of companies" as defined in Section 2 of the Companies Ordinance may take out an insurance policy for an amount not less than HK\$200 million per event to cover the liability under the Ordinance and at common law in respect of the companies in the group specified in the policy.

An insured employer is required to display, in a conspicuous place on each of his premises where any employee is employed, a notice in both English and Chinese, showing the name of the employer, the name of the insurer, the policy number, the issue date of policy, the commencement and expiry dates of the period of insurance, the number of employees insured and the amount of liability insured under the policy.

When an employer who has been insured becomes liable to pay any sum under the Ordinance or independently of the Ordinance (such as common law damages) in respect of a work injury to his employee, such sum shall become due and payable by the insurer, notwithstanding anything to the contrary in the policy of insurance. However, the insurer's liability per event is only up to the amount insured under the policy. An employee or any other person (e.g. the member of the family of an employee who sustained a fatal accident) having a claim against the employer is entitled to recover in his own name, directly from the insurer the entitled amount, as though he were a party to the insurance policy.

An employee can take proceedings against the insurer even without taking proceedings against the employer if :

- (a) the employer cannot be readily located in Hong Kong;
- (b) the employer is insolvent; or
- (c) the insurer has disclaimed liability.

Moreover, under the Employees' Compensation Assistance Ordinance, Chapter 365 of the Laws of Hong Kong, an employer who fails to comply with the compulsory insurance requirement is liable to pay a surcharge to the Employees Compensation Assistance Fund Board.

An employer should take note of the following when his employee sustains a work injury:

- He should notify the insurer as soon as possible, within the stipulated period and in the specified format (in writing or by specified form) required by the insurer;
- He should also keep a record of the periodical payments paid to the injured employee and submit to the insurer the original copies of the Certificate of Compensation Assessment (Form 5) and the Certificate of Assessment (Form 7) issued by the Labour Department, medical certificates and medical payment vouchers for indemnifying the amount of compensation already paid to the injured employee; and
- On receiving any legal documents, including an order or a summons issued by the court, he should notify his insurer the soonest possible or seek legal advice.

**Notice of Insurance:**

Having taken out an insurance policy, an employer must display, in a conspicuous place on each of the premises where his employees are employed, a notice in both English and Chinese giving details of the insurance cover. The notice form is available free of charge at all branch offices of the Employees' Compensation Division and the Labour Inspection Division of the Labour Department (Form no. LD375(S)).

An employer shall, within 10 days after receiving the written request of an injured employee, produce for inspection to the employee the policy of insurance and all other documents relating to the policy.

**Domestic Helper:**

An employer of a full-time or part-time domestic helper (no matter local or foreign) is also required to take out an insurance policy to cover his liability. While he is not required to display the notice of insurance, he is required, upon the request of his employee, to produce the insurance policy and any related documents for the inspection of his employee.

**Inspection:**

The Commissioner for Labour and his authorized officers are empowered to enter and inspect premises (other than domestic premises) to take copies of records and to require information to be given to ensure that an employer has taken out an insurance policy for an amount specified under the Ordinance. An employer is required to produce for inspection the insurance policy and other related documents on receiving a written notice from the Commissioner.

**Cost of Insurance:**

An employer must bear the full cost of the insurance policy. He is not allowed to deduct this cost from the earnings of his employees.

An employer shall not make any deduction from the earnings of an employee in order to defray the cost of insuring against his liability to pay compensation. An employer who contravenes this provision commits an offence and is liable on conviction to a maximum fine of HK\$10,000 and imprisonment for six months.

**Insurer:**

An insurer means a company authorized to carry on accident insurance business in Hong Kong.

**An employer should also bear the following points in mind:**

- Ensuring that all employees are covered by the insurance policy and that when the number of employees increases, the employer should notify the insurer accordingly as soon as possible;
- Giving a detailed declaration to the insurer on the annual earnings and job duties of individual employees;
- Listing out the usual work locations of employees;
- Stating specifically those employees who are required to work outside Hong Kong or take business trips frequently;
- Stating specifically whether any work is sub-contracted to sub-contractors and stating clearly whether the employees of the sub-contractors are covered by the policy; and
- Bewaring of the expiry date of the insurance policy and taking action to renew the insurance policy in advance to ensure that the insurance cover is not interrupted and to avoid contravention of the Ordinance.

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