

Chapter 6

Employees' Rights and Benefits

The Programme of Employees' Rights and Benefits

www.labour.gov.hk/eng/erb/content.htm

6.1 The objective of the Employees' Rights and Benefits Programme is to improve and safeguard employees' rights and benefits in an equitable manner. Our aim is to progressively enhance employment standards in a way which is commensurate with the pace of Hong Kong's economic and social developments and which strikes a reasonable balance between the interests of employers and employees. We achieve this by:

- Setting and refining employment standards in consultation with the Labour Advisory Board;
- Ensuring compliance with statutory and contractual terms and conditions of employment through inspection to workplaces, investigation into suspected breaches of the statutory provisions and prosecution of offenders;
- Processing employees' compensation claims;
- Maintaining close partnership with statutory bodies set up for protecting the rights and benefits of employees; and
- Providing customer-oriented information to ensure that employees and employers know their rights and obligations.

6.2 The principal legislation administered by this programme area includes the Employees' Compensation Ordinance (ECO), the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (PMCO), the Employment Ordinance (EO) and its subsidiary Employment of Children Regulations and Employment of Young Persons (Industry) Regulations, the Minimum Wage Ordinance (MWO) as well as Part IVB of the Immigration Ordinance.

6.3 The ECO establishes a non-fault, non-contributory employee compensation system under which individual employers are liable to pay compensation for work-related injuries or fatalities. The Ordinance requires all employers to possess valid insurance policies to cover their liabilities under the Ordinance and at common law.

- 6.4** The PMCO provides compensation to persons who suffer from pneumoconiosis and/or mesothelioma. Compensation is paid from the Pneumoconiosis Compensation Fund, which is administered by the Pneumoconiosis Compensation Fund Board.
- 6.5** The EO is the main piece of legislation governing conditions of employment in establishments outside the government sector. The Employment of Children Regulations made under the EO prohibit the employment of children below the age of 15 in industrial undertakings and regulate the employment of children who have attained the age of 13 but under 15 in non-industrial establishments. The Employment of Young Persons (Industry) Regulations set out requirements on the working time arrangements for young persons employed in the industrial sector and prohibit their employment in dangerous trades.
- 6.6** The MWO establishes a statutory minimum wage (SMW) system which provides a wage floor with a view to ensuring an appropriate balance between forestalling excessively low wages and minimising the loss of low-paid jobs, while sustaining Hong Kong's economic growth and competitiveness. Failure to pay the SMW amounts to a breach of the wage provisions under the EO.
- 6.7** The Labour Department also administers Part IVB of the Immigration Ordinance to combat illegal employment in order to protect the employment opportunities of local workers.

Our Work and Achievements in 2011

Key Indicators of Work

- 6.8** We stepped up our efforts to safeguard the rights and benefits of employees through various activities in 2011. Some key indicators of work of this programme area are shown in [Figure 6.1](#).

Amendments to the Protection of Wages on Insolvency Ordinance

- 6.9** In July 2011, an amendment bill was introduced into the Legislative Council to expand the scope of the Protection of Wages on Insolvency Fund to cover pay for untaken annual leave and untaken statutory holidays under the EO, so as to enhance the protection for employees affected by insolvency of their employers.

Proactive Efforts to Combat Wage Defaults

- 6.10** In 2011, the Labour Department continued to adopt a proactive strategy to tackle the problem of non-payment of wages at source through enhancing publicity and promotion, stepping up enforcement and prosecution, and making use of the early warning system set up in collaboration with trade unions to gather intelligence on non-payment of wages. We also proactively monitored selected sectors and establishments with a view to forestalling and detecting at an early stage cases of wages default and intervening early to tackle the problem.
- 6.11** In 2011, the department continued to step up prosecution against employers and responsible persons of companies for wage offences. We conducted territory-wide blitz operations and inspections to workplaces to detect wage offences. Labour inspectors actively interviewed employees during territory-wide routine inspections to combat wage offences and conducted investigation speedily into the suspected offences. The Employment Claims Investigation Division continued to vigorously conduct prompt investigation into suspected wage offences under the EO. Prosecutions were taken out against employers and company responsible persons whenever sufficient evidence was available.
- 6.12** In 2011, 1 142 summonses were heard in respect of wage offences. The number of convicted summonses was 876. During the year, two company responsible persons and two employers were jailed or given suspended sentences for wage defaults. In addition, community service orders were imposed on one company responsible person and two employers for committing wage offences. A company responsible person was fined \$110,000 in one prosecution case. In the year, the Labour Department secured convictions for 35 summonses relating to default of awards made by the Labour Tribunal or Minor Employment Claims Adjudication Board. One company responsible person and one employer were ordered to perform community service. These sentences sent a strong message to employers on the seriousness of wage defaults.

Vigorous Enforcement to Protect Employees' Rights and Benefits

- 6.13** We continue our vigorous enforcement efforts to ensure that the statutory rights of employees under labour legislation are well protected.
- 6.14** In 2011, labour inspectors carried out 138 395 workplace inspections to establishments in different trades to enforce labour laws ([Figure 6.2](#)), of which 24 027 inspections were conducted during May to December 2011 to check compliance with the MWO.
- 6.15** We conducted routine inspections and trade-targeted operations to enforce the compulsory requirement of taking out employees' compensation insurance policy under the ECO. In the year, a total of 62 752 inspections were conducted to enforce the statutory requirement. Employers failing to comply with the requirement were prosecuted.
- 6.16** In the year, we continued to work closely with government departments in monitoring their service contractors to ensure that non-skilled employees of the contractors enjoyed their statutory rights and benefits. A total of 709 inspections were conducted to the workplaces of such workers and 2 584 workers were interviewed to check contractors' compliance with labour laws.
- 6.17** To ensure compliance with the conditions under the Supplementary Labour Scheme, we investigated 44 complaints and cases on suspected irregularities involving imported workers, such as allegations of long working hours and late payment of wages.

Processing Employees' Compensation Cases

- 6.18** Under the current no-fault employees' compensation system, compensation is payable to injured employees or family members of deceased employees for any work-related injuries or deaths. Claims for compensation involving fatality are determined by the courts or the Commissioner for Labour under the improved settlement mechanism introduced in August 2000.
- 6.19** In 2011, 56 996 employees' compensation cases, including 15 944 minor cases which involved sick leave of not exceeding three days, were received. At year-end, among the 41 052 fatal cases or non-fatal cases involving sick leave exceeding three days, 25 537 cases were settled. The amount of employees' compensation involved was \$209 million. The remaining cases are awaiting expiry of sick leave, assessment of permanent incapacity or court judgement. ([Figures 6.3](#) and [6.4](#))

- 6.20** In 2010, 58 791 employees' compensation cases, including 16 165 minor cases which involved sick leave of not exceeding three days were received. As at the end of 2011, among the 42 626 fatal cases or non-fatal cases with sick leave exceeding three days, 39 329 cases were settled. The amount of employees' compensation involved was \$638 million. The number of working days lost was 1 210 188. The remaining cases are awaiting expiry of sick leave, assessment of permanent incapacity or court judgement. ([Figure 6.5](#))
- 6.21** The Loan Scheme for Employees Injured at Work and Dependents of Deceased Employees provides temporary relief to victims of work accidents. Under the scheme, an interest-free loan up to \$15,000 in each case will be made to eligible applicants.

Briefings and Promotional Campaigns

- 6.22** In 2011, we arranged five briefings for government departments and 37 briefings for imported workers to publicise the rights and obligations of the parties concerned.
- 6.23** Extensive publicity campaigns were launched to publicise our complaint telephone hotline (2815 2200) through press releases, posters, and advertisements on tram body, inside MTR stations and compartments etc. to encourage employees to report suspected breaches of employment rights.

6.24 We also organised extensive publicity activities to familiarise the community with the SMW legislation. These activities included: conducting briefings and seminars on the MWO for employers, employees, stakeholder groups and the public; issuing general reference guidelines and industry-specific guidelines on the SMW; broadcasting television and radio Announcements in the Public Interest and a set of mini-programmes on television; publishing leaflets and posters for wide distribution and display; inserting promotional message in electricity and water bills; placing advertisements in various media; holding roving exhibitions; and launching the Minimum Wage Reference Calculator at the department's homepage, etc.

6.25 We strengthen promotion on employers' statutory obligation on timely reporting of work accidents and to take out insurance policies through electronic media, leaflets, departmental homepage and seminars on the ECO. In the year, we held 10 talks on ECO, and made announcements on employers' statutory obligation on timely reporting of work accidents and to take out insurance policies via outdoor electronic media.



Snapshot of a seminar on Employees' Compensation Ordinance

Partnership with Statutory Bodies

6.26 We maintain close partnership with various statutory bodies that are set up for implementing the different schemes for the protection of the rights and benefits of employees.

Protection of Wages on Insolvency Fund Board

- 6.27** The Protection of Wages on Insolvency Ordinance (PWIO) provides for the establishment of the Protection of Wages on Insolvency Fund and its administration by a board. Employees who are owed wages, wages in lieu of notice and severance payment by their insolvent employers may apply to the fund for ex gratia payment in accordance with the PWIO.
- 6.28** We provide administrative support to the Protection of Wages on Insolvency Fund Board, verify applications and approve payment from the fund. We received 3 729 applications in 2011. A breakdown of applicants by economic sector is shown in [Figure 6.6](#). During the year, we processed 4 439 applications, leading to payment of \$74 million and the fund recorded a surplus of \$477 million.
- 6.29** By providing a safety net for employees affected by business closures, the fund plays an important role in maintaining harmonious labour relations and social stability. Both the department and the fund board attach great importance to protecting the fund from abuse. To this end, stringent vetting procedures are in place to process all applications. An inter-departmental task force has been formed by representatives of the Labour Department, Commercial Crime Bureau of the Police Force, Official Receiver's Office and Legal Aid Department to take concerted actions against suspected fraudulent cases.

Pneumoconiosis Compensation Fund Board

- 6.30** The Pneumoconiosis Compensation Fund Board (PCFB) is established under the PMCO to provide compensation to persons suffering from pneumoconiosis and/or mesothelioma. The PCFB is financed by a levy collected from the construction and quarrying industries. Under the PMCO, the Labour Department is responsible for determining whether an applicant is entitled to compensation. As at the end of 2011, 1 759 eligible persons were receiving compensation in the form of monthly payments from the PCFB. In the year, the PCFB made a total compensation payment of \$147 million.

Employees Compensation Assistance Fund Board

6.31 The Employees Compensation Assistance Fund Board (ECAFB) is set up under the Employees Compensation Assistance Ordinance (ECAO). The ECAFB is responsible for running the Employees Compensation Assistance Scheme which provides payment to injured employees who are unable to receive their entitlements for employment-related injuries from their employers or insurers. In 2011, the ECAFB approved 55 applications, leading to payment of \$50.83 million. With effect from April 1, 2004, the Employees Compensation Insurer Insolvency Bureau established by the insurance industry has taken over from the ECAFB the responsibility of meeting the liabilities arising from employees' compensation insurance policies in the event of the insolvency of the relevant insurers.

Occupational Deafness Compensation Board

6.32 The Occupational Deafness Compensation Board (ODCB) is established under the Occupational Deafness (Compensation) Ordinance to provide compensation and reimbursement of expenses incurred in purchasing, repairing and replacing hearing assistive devices to those persons who suffer from noise-induced deafness due to employment in specified noisy occupations. The ODCB also has an important role in providing educational and publicity programmes for the prevention of occupational deafness, and providing rehabilitation programmes for those suffering from noise-induced deafness by reason of employment. In 2011, the ODCB approved 322 applications for compensation with a total compensation payout at \$25.29 million and 620 applications for payment of expenses on hearing assistive devices with a total payout at \$2.29 million. The ODCB also provided 517 activities under its rehabilitation programmes for people having occupational deafness.