

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;
- Processing applications for the Protection of Wages on Insolvency Fund (PWIF);
- 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), the Protection of Wages on Insolvency Ordinance (PWIO) as well as Part IVB of the Immigration Ordinance.

- 6.3** The ECO establishes a no-fault, non-contributory employees' compensation system so that 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. 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 SMW amounts to a breach of the wage provisions under the EO.
- 6.7** The PWIO establishes the PWIF to provide timely relief in the form of ex gratia payment to employees affected by their insolvent employers.
- 6.8** The Labour Department 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 2012

Key Indicators of Work

- 6.9** We stepped up our efforts to safeguard the rights and benefits of employees through various activities in 2012. Some key indicators of work of this programme area are shown in [Figure 6.1](#).

Amendments to the ECO, PMCO and the Occupational Deafness (Compensation) Ordinance (ODCO)

- 6.10** In 2012, the ECO, PMCO and ODCO were amended to raise the amount of a total of 15 compensation items payable in cases involving death, permanent incapacity or occupational deafness. The revised levels of compensation have taken effect from 21 July 2012.
- 6.11** In addition, the levy rate under the PMCO imposed on construction operations and quarry products was lowered with effect from 20 August 2012.

Amendments to the PWIO

- 6.12** In 2012, the PWIO was amended to expand the scope of the PWIF 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. The amendments have taken effect from 29 June 2012.

Proactive Efforts to Combat Wage Defaults

- 6.13** In 2012, 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 relevant intelligence. We also proactively monitored selected sectors and establishments with a view to forestalling and detecting cases of wages default at an early stage and intervening early to tackle the problem.
- 6.14** In 2012, the department continued to step up prosecution against employers and responsible persons of companies for wage offences. We conducted territory-wide blitz inspections to workplaces to detect wage offences. Labour inspectors actively interviewed employees during inspections 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.

6.15 In 2012, 713 summonses were heard in respect of wage offences. The number of convicted summonses was 525. During the year, one employer was given suspended sentence for wage default. In addition, community service orders were imposed on two employers for committing wage offences. A company and its responsible person were fined a total of \$320,000 in one prosecution case. In the year, the Labour Department secured convictions for 75 summonses relating to default of awards made by the Labour Tribunal or Minor Employment Claims Adjudication Board. One employer was 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

6.16 We continue our vigorous enforcement efforts to ensure that the statutory rights of employees under labour legislation are well protected.

6.17 In 2012, labour inspectors carried out 143 680 workplace inspections to establishments in different trades to enforce labour laws ([Figure 6.2](#)), of which 36 807 inspections were conducted to check compliance with the MWO.

6.18 We conducted inspections and trade-targeted operations to enforce the ECO's compulsory requirement of taking out employees' compensation insurance policy. In the year, a total of 69 900 inspections were conducted to enforce the statutory requirement. Employers failing to comply with the requirement were prosecuted.

6.19 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 698 inspections were conducted to the workplaces of such workers and 2 401 workers were interviewed to check contractors' compliance with labour laws.

6.20 To ensure compliance with the conditions under the Supplementary Labour Scheme, we investigated 48 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

6.21 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.

- 6.22** In 2012, 56 763 employees' compensation cases, including 16 266 minor cases which involved sick leave of not exceeding three days, were received. At year-end, among the 40 497 fatal cases or non-fatal cases involving sick leave exceeding three days, 24 909 cases were settled. The amount of employees' compensation involved was \$214 million. The remaining cases are awaiting expiry of sick leave, assessment of permanent incapacity or court judgment. ([Figures 6.3](#) and [6.4](#))
- 6.23** In 2011, 56 996 employees' compensation cases, including 15 944 minor cases which involved sick leave of not exceeding three days were received. As at the end of 2012, among the 41 052 fatal cases or non-fatal cases with sick leave exceeding three days, 37 559 cases were settled. The amount of employees' compensation involved was \$665 million. The number of working days lost was 1 173 163. The remaining cases are awaiting expiry of sick leave, assessment of permanent incapacity or court judgment. ([Figure 6.5](#))
- 6.24** 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

- 6.25** In 2012, we arranged three briefings for government departments and 41 briefings for imported workers to publicise the rights and obligations of the parties concerned.
- 6.26** 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.
- 6.27** During the year, we organised various publicity activities to familiarise employers and employees with the SMW legislation. These activities included: conducting seminars on the MWO for employers, employees, stakeholder groups and the public; publishing new posters for wide distribution and display; inserting promotional message in water bills; promoting through different channels such as public transports, publications of target organisations, newspapers and internet platforms; and holding roving exhibitions, etc.



A seminar on the Minimum Wage Ordinance

6.28 We continue to promote employers' statutory obligation on timely reporting of work accidents and to take out employees' compensation insurance policies through electronic media, leaflets, departmental homepage and seminars on the ECO. In the year, we held seven talks on the ECO.



A seminar on the Employees' Compensation Ordinance

Partnership with Statutory Bodies

6.29 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 (PWIFB)

6.30 The PWIFB is established under the PWIO and is responsible for administering the PWIF. Employees who are owed wages, wages in lieu of notice, severance payment, pay for untaken annual leave and untaken statutory holidays by their insolvent employers may apply to the PWIF for ex gratia payment in accordance with the PWIO. It is financed by a levy on the business registration certificates.

6.31 We provide administrative support to the PWIFB, verify applications and approve payment from the fund. We received 2 976 applications in 2012. A breakdown of applicants by economic sector is shown in [Figure 6.6](#). During the year, we processed 3 374 applications, leading to payment of \$64 million and the PWIF recorded a surplus of \$528 million.

6.32 By providing a safety net for employees affected by business closures, the PWIF plays an important role in maintaining harmonious labour relations and social stability. Both the department and the PWIFB attach great importance to protecting the fund from possible 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

6.33 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 2012, 1 702 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 \$145 million.

Employees Compensation Assistance Fund Board

6.34 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 2012, the ECAFB approved 70 applications, leading to payment of \$40.67 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

6.35 Established under the ODCO, the Occupational Deafness Compensation Board (ODCB) provides 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 launching educational and publicity programmes for the prevention of occupational deafness, and providing rehabilitation programmes for those suffering from occupational deafness. In 2012, the ODCB approved 173 applications for compensation with a total compensation payout at \$9.23 million and 524 applications for payment of expenses on hearing assistive devices with a total payout at \$1.82 million. The ODCB also provided 290 rehabilitation programmes for people with hearing impairment caused by their employment in specified noisy occupations.



An educational and publicity activity organised by the Occupational Deafness Compensation Board to promote the message of prevention of occupational deafness