

Guide to the Employees Compensation Assistance Ordinance and Procedures for Applying for Payment from the Employees Compensation Assistance Fund

Introduction

The Employees Compensation Assistance Fund (“the Fund”) is established under the Employees Compensation Assistance Ordinance (Cap. 365) (“ECAO”). It is administered by the Employees Compensation Assistance Fund Board (“the Board”) and is financed mainly by a levy payable by employers under the Employees’ Compensation Insurance Levies Ordinance (Cap. 411) when they secure employees’ compensation insurance cover.

Payments from the Fund

The Fund provides for the protection of the entitlement of injured employees and eligible family members of deceased employees (“eligible persons”) to compensation and damages for work injury. Application can be made for payment of the following items from the Fund:

- (a) unpaid employees’ compensation for work injuries or fatalities payable to the employees or eligible persons under the Employees’ Compensation Ordinance (Cap. 282) (“ECO”) and the related interests;
- (b) costs incurred by the employees or eligible persons in legal proceedings claiming employees’ compensation; and
- (c) unpaid common law damages payable to the employees or eligible persons pursuant to an order of a court in Hong Kong for such injuries or fatalities.

Eligibility

For injury sustained on or after 1 January 1984 giving rise to the claim for employees’ compensation or damages, the injured employees or eligible persons who are entitled but unable to recover employees’ compensation and/or damages from employers after exhausting all legal and financially viable means of recovery, may apply for payment of the unpaid amount from the Fund.

How to Make an Application

Applications should be made in writing to the Board in the prescribed form and manner. Separate applications for payment in relation to the unpaid employees’ compensation and relief payment in relation to the unpaid damages would need to be made. After determining an applicant’s eligibility to apply and entitlement to payment from the Fund, the Board will inform the applicant and any interested person of its determination in writing.

Documents Required

- (1) In the case of an application for unpaid employees’ compensation under section 16 of the ECAO, an applicant shall provide copies of the following:
 - (a) a judgment or order of a court or tribunal of competent jurisdiction in Hong Kong; or
 - (b) a Certificate of Compensation Assessment (Form 5) or Certificate of Review of Compensation Assessment (Form 6) issued by the Commissioner for Labour; or
 - (c) a Certificate of Compensation Assessment for Fatal Case (Form 21) or Review Certificate of Compensation Assessment for Fatal Case (Form 22A) issued by the Commissioner for Labour; or
 - (d) in the case of an application for medical expenses, a certificate issued by the Commissioner for Labour under section 10B(1) or (2) of the ECO; or
 - (e) in the case of reimbursement of the expenses of the funeral of the deceased employee and expenses of the medical attendance on the deceased employee, a Certificate for Funeral and Medical Attendance Expenses (Form 25) or Review Certificate for Funeral and Medical Attendance Expenses (Form 26A) issued by the Commissioner for Labour; and
 - (f) other documents which may assist the Board in its investigation.
- (2) In the case of an application for relief payment in relation to unpaid common law damages under section 20A of the ECAO, an applicant shall provide copies of the following:
 - (a) a judgment or order of a court of competent jurisdiction in Hong Kong; and
 - (b) other documents which may assist the Board in its investigation.

Inquiries

Upon receipt of an application, the Board shall carry out such inquiries it considers necessary to make a determination. It is the duty of every applicant to assist the Board in carrying out inquiries and to provide such information within a specified period as required by the Board. Failing that, the Board may determine that an applicant shall not be entitled to any payment from the fund. In addition, the Board may also make such inquiries or seek such information from the employer, insurer and any other persons connected with the application as the Board considers necessary.

Dissatisfaction with the Board's Determination

An applicant who is dissatisfied with a determination of the Board in respect of his/her application for payment may commence court proceedings by a writ against the Board.

Special Circumstances

Where no policy of insurance is known to be in force in relation to the employee claiming compensation against an employer, the employee may apply to the court, on notice to the Board, for leave to issue proceedings for the claim against the Board as if it were his/her employer where:

- (a) the employer cannot be identified or, if identified, cannot be found;
- (b) the employer is insolvent;
- (c) the employer is dead or in the case of a company, has been dissolved, wound up or struck off the register;
or
- (d) the employer cannot be served with proceedings for any reason.

Notification of Proceedings

The injured employee or eligible persons can commence proceedings claiming employees' compensation in the District Court or damages by a writ in the District Court or High Court. However, bringing an action for compensation and/or damages for work injury at the court may involve many complicated legal procedures. The law, together with drafting and preparation of the necessary documents, can be highly technical. To safeguard one's interest, a claimant should carefully consider whether it is desirable to instruct a solicitor at his/her own expenses or through legal aid to pursue the claim on his/her behalf or alternatively, to seek advice from the legal profession.

Under section 25B of the ECAO, a person who commences proceedings in respect of a claim for employees' compensation or damages shall serve a notice of the proceedings on the Board and the insurer (if applicable). The notice shall be served on the Board by registered post no later than 30 days after the date on which the employees' compensation application or a writ is filed with the Court. Such notice should be served in writing in a form specified by the Board, signed by the person and accompanied by a copy of the employees' compensation application or the writ. As employees' compensation proceedings and damages proceedings are two legal actions, separate notices in respect of the two sets of proceedings will need to be served on the Board. A person who fails to serve the required notice on the Board within the statutory 30-day period will not be entitled to any payment from the Fund. It is only in the exceptional circumstances that an applicant can satisfy the Board in writing that there are good reasons why he/she cannot, or has failed to serve on the Board a notice of the proceedings within the prescribed period then the Board may consider extending the said notification period.

Subrogation

Where a payment has been made from the Fund to an applicant, all his/her rights and remedies with respect to his/her entitlements (to the extent of the amount of that payment) are transferred to and vested in the Board.

Offences

Any person who in providing information to the Board makes any statement or produces any document or record or makes any declaration which he/she knows to be false commits an offence and is liable to a fine and imprisonment.

Any person who, without reasonable excuse, fails to comply with any requirement, or respond to any inquiry made by the Board commits an offence and is liable to a fine and imprisonment.

Enquiries

Enquiries relating to the ECAO or the procedures for applying for payment from the Fund can be made to the Secretariat of the Board at:

Address : 33/F, Morrison Plaza, 9 Morrison Hill Road, Wanchai, Hong Kong
(MTR Causeway Bay Station Exit A, walk to Tin Lok Lane via Russell Street and Wan Chai Road)
Tel : 2116 5684
Fax : 2109 0310
Email : contact@ecafb.org.hk

Points to Note

The Employees Compensation Assistance Ordinance is the legal basis for application for payment from the Fund. For the full text of the Ordinance which has been uploaded to the Hong Kong e-Legislation of the Department of Justice, please refer to <https://www.elegislation.gov.hk/?lang=en>.