

Where an employee has entered into concurrent contracts of service with 2 or more employers, in case an employee is working in his full time employment (full time employment means employment for not less than 40 hours during a minimum period of 5 days in any 1 week) at the time of the accident, the monthly earnings of such employee shall be his earnings in such full time employment. However, if the employee is working in his part time employment at the time of the accident, and he is incapacitated from performing the concurrent full time or other part time contracts, the employer should compute his monthly earnings by including his earnings under all such contracts.

## VII. Compensation under the Employees' Compensation Ordinance

In general, injured employees are eligible for the following compensation according to the ECO and as the case may be. For details, please refer to full text of the ECO or the Concise Guide:

### (i) 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 difference between the employee's monthly earnings at the time of the accident and his monthly earnings during the period of temporary incapacity. The periodical payments shall be payable on the same days as wages would have been payable to the employee. The employee is not entitled to claim sickness allowance under the Employment Ordinance from other employer(s) concurrently.

### (ii) Employees' Compensation Payment

For injury which would likely result in permanent incapacity, the Labour Department will, base on the assessment result, issue a Certificate of Compensation Assessment (Form 5) under Section 16A of the ECO after completion of the medical assessment. The certificate will state, among others, the compensation amount for the employee's permanent loss of earning capacity assessed, if any. 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 the amount of compensation unpaid.

### (iii) 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 in respect of the period during which the employee receives medical treatment from a registered medical practitioner, a registered Chinese medicine practitioner, a registered dentist, a registered physiotherapist, a registered occupational therapist or a registered chiropractor (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). The employer should pay the employee medical expenses within 21 days after the employee has submitted the receipts for payment of medical treatment. The daily maximum of medical expenses payable by the employer are as follows:

The medical expense for each day of stay in the hospital where an employee is given medical treatment as an in-patient	\$300
The medical expense for each day on which an employee is given medical treatment other than as an in-patient in a hospital	\$300
The medical expense 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	\$370

### (iv) Prostheses and Surgical Appliances

According to the ECO, if an employee sustains an injury by accident arising out of and in the course of employment and requires a prosthesis or surgical appliance, his employer is liable to pay the initial costs of supplying and fitting the prosthesis or surgical appliance, and the probable costs of repair and renewal of such an item during a period of 10 years after the initial fitting of the item.

## VIII. Enquiries

For enquiries on the ECO, please contact the Labour Department at 2717 1771 (the hotline is handled by the "1823"). For enquiries on individual employees' compensation cases, please approach the offices of the ECD of the Labour Department in person:

Branch Office	Address
Work injury cases : according to the place of accident Prescribed Occupational Disease cases : according to place of employment	
<b>Employees' Compensation Division Operations - Team A</b> - cases on Hong Kong Island, outlying Islands and outside Hong Kong	Room 1605, 16/F, Southern Centre, 130 Hennessy Road, Wanchai, Hong Kong
<b>Employees' Compensation Division Operations - Team B</b> - cases in Kowloon East and Kowloon West	Room 1007, 10/F, Cheung Sha Wan Government Offices, 303 Cheung Sha Wan Road, Kowloon
<b>Employees' Compensation Division Operations - Team C</b> - cases in Kwai Chung, Tsing Yi, Tsuen Wan, Tuen Mun and Yuen Long	6/F, Tsuen Wan Government Offices, 38 Sai Lau Kok Road, Tsuen Wan, New Territories
<b>Employees' Compensation Division Operations - Team D</b> -cases in Tseung Kwan O, Sai Kung, and cases involving government employees and seamen -cases in Shatin, Taipo, Fanling and North District	Rooms 05-06, 23/F, KOLOUR Tsuen Wan I, 68 Chung On Street, Tsuen Wan, New Territories Room 239, 2/F, Shatin Government Offices, 1 Sheung Wo Che Road, Shatin, New Territories

Employees' Compensation Division  
Labour Department  
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# Handling of Employees' Compensation Case Points to Note for Employees

What is work injury Important information injured employees must take note of Procedures on handling normal work injury cases Procedures on handling doubtful cases/cases in dispute Time limitation or application to the Court Calculation of earnings Compensation under the Employees' Compensation Ordinance Enquiry



Labour Department

# Handling of Employees' Compensation Case Points to Note for Employees

## I. What is work injury / occupational disease?

According to the Employees' Compensation Ordinance (ECO), if an employee sustains an injury 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 ECO even if the employee might have committed acts of faults or negligence when the accident occurred. Besides Second Schedule annexed to the ECO specified the occupational disease covered by the ECO and its prescribed period. If an employee suffering incapacity arising from an occupational disease, which is specified in the Second Schedule, he is entitled to receive the same compensation as that payable to an employee injured in an accident arising out of and in the course of employment, if the disease is one due to the nature of any occupation in which he was employed at any time within the period immediately preceding the incapacity caused as prescribed.

## II. Important information injured employees must take note of

- ✓ Notify the employer of the work injury / occupational disease immediately in verbal or in writing (e.g., using Form 1 or Form 1A).
- ✓ Submit to the employer originals of sick leave certificates and receipts for medical expenses in relation to medical consultation and follow-up treatment as soon as possible. Remember to keep copies for the reference of Labour Department.
- ✓ Follow the instructions of medical practitioners to recuperate and rest during sick leave so as to speed up recovery and to make it easier to accommodate on return-to-work.
- ✓ For cases with no dispute, to attend medical clearance at Occupational Medicine Unit according to the "Medical Clearance Notification" issued by the Labour Department.
- ✓ When necessary, the employer may, within 7 days from the time at which the notice of an accident is given, require the employee to undergo free medical examinations by a registered medical practitioner, a registered Chinese medicine practitioner or a registered dentist named by his employer. The employer may also require employee who is in receipt of periodical payment to undergo such examination. If an employee fails without reasonable cause to submit himself to a free medical examination, his entitlement to work injury compensation would be suspended or even forfeited.

## III. Procedures on handling normal work injury cases

### (i) Sick leave for not more than 3 days and with no permanent incapacity

The employer should make payment for temporary incapacity (i.e. periodical payment for the sick leave required) on the same days as wages would have been payable to the employee and also pay the medical expenses concerned so as to settle the case.

### (ii) Sick leave for over 3 days but not more than 7 days and with no permanent incapacity

The employer may directly agree with the employee as to the compensation payable under the ECO and make such payment on the same days or before which

wages would have been payable to the employee and also pay the medical expenses concerned. The employer should include relevant details in Part H of the "Notification of Accident" (Form 2).

### (iii) Paper Medical Clearance by agreement between employers and employees

To speed up the settlement of work injury cases, the employer and employee may agree to make use of the Paper Medical Clearance (PMC) to facilitate the issue of the Certificate of Compensation Assessment (Form 5). The injured employee is not required to approach Occupational Medicine Unit (OMU) for medical clearance in person. However, the application for PMC must fulfill the following conditions: (1) there is no dispute over the case; (2) the period of sick leave should last for more than 7 days (if the period of sick leave does not exceed 7 days, the case should be settled as per (i) or (ii) mentioned above); (3) the injury does not lead to any permanent incapacity; (4) the injury does not involve damage to teeth or the need for fitting of prostheses or surgical appliances; (5) all medical certificates are issued by registered medical practitioners, registered Chinese medicine practitioners or registered dentists; (6) the sick leave of the employee has already come to an end; (7) all medical certificates of the employee in respect of the employees' compensation case must be provided; (8) and for occupational disease case, it should be the one specified in the Second Schedule of the ECO in the opinion of the Occupational Health Officer of the Labour Department. The application form is available at all the offices of the Employees' Compensation Division (ECD).

### (iv) Sick leave over 7 days or the injury would likely result in permanent incapacity

After the employer has reported the case and admitted the employees' compensation liability, the Labour Department will issue a notification letter to the injured employee. The employee should approach the OMU for medical clearance according to the notification letter. If it is likely that permanent incapacity may result from the injury, medical assessment will be arranged after the injured employee's medical conditions have stabilized. The Employees' Compensation Assessment Board will assess the period of absence from duty necessary and the percentage loss of earning capacity permanently caused by the injury in accordance with the ECO. After completion of the assessment, the Board will issue to the employee and the employer a Certificate of Assessment (Form 7) stating the assessment result.

Upon completion of medical clearance procedures by OMU or medical assessment, as the case may be, the Labour Department will issue to the employer and the employee a Certificate of Compensation Assessment (Form 5) stating the amount of compensation payable under the ECO. The employer should pay the employee within 21 days from the date of issue of the certificate the amount of compensation, or any outstanding amount, stated in the certificate. The employer should also pay the medical expenses concerned.

Any objection to the assessment (Form 7) or/and compensation assessment (Form 5) by either party must be made **in writing** to the Commissioner for Labour within 14 days after the issue of certificate, with a copy of the objection notice sent to the other party. On receipt of the objection notice, the Commissioner for Labour will arrange the review assessment by Assessment Board or review its compensation assessment, as the case may be. The Assessment Board will issue a Certificate of Review of Assessment

(Form 9) or/and the Commissioner will issue a Certificate of Review of Compensation Assessment (Form 6) to both parties as appropriate. An appeal against the review assessment may be made to the District Court within 6 months from the date of issue of the certificate.

## IV. Procedures on handling doubtful cases/cases in dispute

The ECD of the Labour Department assists employer and employee in resolving disputes. If the employer is still in doubt about the work injury case and/or medical conditions of the employee after internal investigation, he may pass the relevant information to ECD for advice. However, please note that according to the ECO, the Labour Department does not have the authority to adjudicate on any dispute of the case. If the employer and the employee could not reach any settlement with the assistance of the Department, the case shall be determinate by the Court.

In handling cases with doubt/in dispute, ECD will normally collect further information, e.g., details of the accident, copy of medical certificates arising from the accident etc. from the injured employees. Depending on the merits of each case, ECD may, with the written consent of the employees, request for information such as medical reports, police investigation reports from relevant departments or organisations. If necessary, the professional opinion of Occupational Health Officer of the Department will also be consulted. The Department will give its views to both parties on the likelihood of the case being a work injury from the medical point of view.

Please note that handling of cases with doubt/in dispute takes time. For instance, it takes around two to three months to obtain a medical report. As for police report, it depends on the development and evidence collection of individual cases. Further acquisition of supplementary information may also be required for some cases. The Labour Department will give its views to both parties upon completion of investigation. Should the employee wish to know the investigation progress, he may approach the handling office of ECD for enquiry when necessary.

## V. Time limitation for application to the Court

Section 14(1) of the ECO stipulates that application to Court for employees' compensation has to be made within 24 months from the date of the accident causing the injury. Injured employee should seek legal advice and assistance to file the claim at Court when necessary. If the case remains unsettled by the end of the 18th month from the date of the accident, the injured employee is advised to contact the handling office of the ECD immediately for referral to apply for legal aid or file his claim at the Court.

## VI. Calculation of earnings

According to the ECO, the amount of employees' compensation payable (including temporary and permanent incapacity to the injured employee) is calculated with reference to his "monthly earnings". "Earnings" includes cash wages; the value of any privilege or benefit which can be estimated in cash (e.g. food), if as a result of the accident the injured employee is deprived of any of them; overtime payments or other special remuneration, whether by way of bonus, allowance (but not travelling allowance) or otherwise, if it is of a constant nature; and customary tips. "Monthly earnings" is to be taken as the earnings for the month immediately preceding the date of accident, or the average monthly earnings for the previous 12 months (or any lesser period if the employee has not been so long employed), whichever calculation is more favourable to the employee.