

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 of the ECO specifies the occupational disease covered by the ECO and its prescribed period. If an employee suffers an occupational disease which is the one due to the nature of any occupation in which he was employed at any time within the prescribed period as specified in the Second Schedule immediately preceding the incapacity caused (i.e. the period before the first day of his absence from duty as certified by a registered medical practitioner, a registered Chinese medicine practitioner or a registered dentist with a sick leave certificate), 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.

II. Important information which the employee should pay attention to

- ✓ Notify the employer of the work injury/occupational disease immediately verbally or in writing.
- ✓ Submit the original sick leave certificates and receipts of medical expenses in relation to medical consultation to the employer as soon as possible. Remember to keep the copies until the case is concluded.
- ✓ Follow medical practitioners' instructions to recuperate and take rest during sick leave with a view to speeding up the recovery and making oneself easier to adapt when returning to work.
- ✓ To attend medical clearance interview at the Occupational Medicine Unit (OMU) if receiving the 'Medical Clearance Notification' issued by the Labour Department (LD).
- ✓ When necessary, the employer may, within 7 days from the time at which the notice of an accident/occupational disease 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 him. The employer may also require the employee who is in receipt of a periodical payment to undergo free medical examinations. If an employee fails to submit himself to such examinations without reasonable cause, his entitlement to employees' compensation would be suspended or even forfeited.
- ✓ An employee should not work for another employer without the knowledge and consent of his employer during his sick leave period. Otherwise, he might be considered as having committed a fraudulent act.

III. General procedures on handling employees' compensation 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 incurred so as to settle the case. There is no need for the employee to attend the medical clearance interview at the OMU.

(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 incurred. The employer should report the details in

Part H of the 'Notice of Accident/Occupational Disease' (Form 2/2A). There is no need for the employee to attend the medical clearance interview at the OMU.

(iii) Sick leave for over 7 days but without permanent incapacity — using the simple 'Paper Medical Clearance' (PMC) procedure to settle the case

The LD will issue a Medical Clearance Notification to the employee after the employer has reported the case and admitted the employees' compensation liability. The employee should approach the OMU according to the notification to register the sick leave period. To speed up the settlement of the employees' compensation case, the employer and the employee or either party may apply for the PMC to the LD to expedite the issue of the Certificate of Compensation Assessment (Form 5). The employee will not be required to attend the medical clearance interview in person at the OMU. However, the application for PMC must fulfill **all** of the following conditions: (1) there is no dispute over the case; (2) the period of sick leave should be 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/occupational disease does not lead to any permanent incapacity; (4) the injury/occupational disease does not involve any damage to teeth or the need for fitting of prostheses or surgical appliances; (5) all sick leave certificates are issued by registered medical practitioners, registered Chinese medicine practitioners and/or registered dentists; (6) the employee's sick leave has already come to an end; (7) the employer must provide copy of all relevant sick leave certificates; and (8) for occupational disease case, it should be the one specified in the Second Schedule of the ECO as advised by the Occupational Health Officer of the LD. The application form is available at all offices of the Employees' Compensation Division – Operations (ECD) and on LD's website: <https://www.labour.gov.hk/eng/index.htm>.

(iv) Sick leave for over 7 days and/or the injury/occupational disease would likely result in permanent incapacity

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

Upon completion of the medical clearance procedures or medical assessment, as the case may be, the LD 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 after the issue of the certificate the compensation amount, or any outstanding amount, stated in the certificate. The employer should also pay the medical expenses incurred.

Any objection to the assessment (Form 7) and/or compensation assessment (Form 5) by either party must be made **in writing** (such as completing the Objection Form) to the Commissioner for Labour within 14 days after the issue of the certificate, with a copy of the objection notice sent to the other party. On receipt of the objection notice, the LD will arrange the review of the assessment by the Board and/or to review the compensation assessment. The Board will issue a Certificate of Review of Assessment (Form 9) and/or the Commissioner for Labour to 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 review certificate.

IV. Procedures on handling doubtful cases/cases in dispute

The ECD will render assistance to the employer and the employee in resolving disputes over the case. The employer may undergo an internal investigation first if he has any doubts on the case. If the issue cannot be resolved, he may pass the information collected during investigation to the ECD for a third-party advice. The ECD will also collect further information from the employee, such as details of the accident/occupational disease and copy of relevant sick leave certificates. Depending on the merits of each case, the ECD may, with the written consent of the employee, request for information such as medical reports, police investigation reports from relevant departments or organisations. The Occupational Health Officer of the LD will also be consulted for professional opinion if necessary. The LD will give its views to both parties from the medical point of view.

Cases with doubt/in dispute take time to process. For instance, it takes around two to three months to obtain a medical report. As for a police report, it depends on the development and evidence collection of individual cases. For complicated cases, it may take even longer to acquire further information.

The ECD will give its views to the employer and the employee based on the information collected. Please note that the LD does not have the authority to adjudicate on any dispute of the case. The case shall be determined by the Court if both parties cannot reach any settlement with the assistance of the LD. Should the employee wish to know the case progress, he may contact the case officer for enquiry.

V. Time limitation for application to the Court

Section 14(1) of the ECO stipulates that application to Court for unresolved employees' compensation claim has to be made within 24 months from the date of accident (or the commencement date of incapacity in case of occupational disease). The Court may refuse any application which has not been made in due time. If the case remains unsettled by the end of the 18th month from the date of accident or incapacity, the employee is advised to contact the case officer immediately for referral to apply for legal aid or file his claim at the Court. Employee should seek legal advice and assistance to file the claim to the Court when necessary.

VI. Calculation of earnings

According to the ECO, the amount of employees' compensation payable (including temporary and permanent incapacity to the 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/occupational disease the 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 calendar month immediately preceding the date of accident (or the commencement date of incapacity in case of occupational disease), or the average monthly earnings for the previous 12 calendar months (or any lesser period if the employee has not been so long employed), whichever calculation is more favourable to the employee.

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/contracting occupational disease, 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/contracting the occupational disease, and he is incapacitated from performing the concurrent full-time and/or other part-time contracts, the employer should compute his monthly earnings by including all his earnings under such contracts.

VII. Compensation Payable under the ECO

In general, 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 visit LD's website for the Concise Guide to the ECO.

(i) Periodical Payments

According to section 10 of the ECO, an employer is obliged to pay his employee periodical payments at the rate of four-fifths of the difference between the employee's monthly earnings at the time of the accident/contracting occupational disease 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 work injury/occupational disease which would likely result in permanent incapacity, the LD will, based 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 the amount of compensation including the periodical payments and/or the compensation for the employee's permanent loss of earning capacity assessed. The employer must pay the amount of compensation stated in the certificate or any outstanding amount to the employee within 21 days after 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 employee, the employer is liable to pay medical expenses to the employee in respect of any 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) for the injury/occupational disease arising out of and in the course of employment. The employer should pay the employee medical expenses within 21 days after the employee has submitted a written request for the payment of medical expenses together with the receipts. 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	HK\$300
The medical expense for each day on which an employee is given medical treatment other than as an in-patient in a hospital	HK\$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	HK\$370

(iv) Prostheses and Surgical Appliances

According to the ECO, if an employee sustains an injury by accident/contracts occupational disease 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 call 2717 1771 (the hotline is handled by the “1823”). For enquiries on individual employees’ compensation cases or request of Notice of Accident/Occupational Disease (Form 2/2A/2B), please contact the following offices of ECD of LD:

Office of the ECD, LD	Address
Work Injury Cases	
<u>Submit relevant forms for reporting work injury cases or prescribed occupational disease cases:</u> <ul style="list-style-type: none">Employees’ Compensation Division Operations – Central Processing Team	Room 1007, 10/F, Cheung Sha Wan Government Offices, 303 Cheung Sha Wan Road, Kowloon
<u>Enquire reported work injury cases or prescribed occupational disease cases:</u> <ul style="list-style-type: none">Employees’ Compensation Division Operations – Team A	Room 1605, 16/F, Southorn Centre, 130 Hennessy Road, Wanchai, Hong Kong
<ul style="list-style-type: none">Employees’ Compensation Division Operations – Team B	18/F, One Mong Kok Road Commercial Centre, 1 Mong Kok Road, Kowloon
<ul style="list-style-type: none">Employees’ Compensation Division Operations – Team C	6/F, Tsuen Wan Government Offices, 38 Sai Lau Kok Road, Tsuen Wan, New Territories
<ul style="list-style-type: none">Employees’ Compensation Division Operations – Team D	Room 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
<ul style="list-style-type: none">Employees’ Compensation Division Operations – Team E	18/F, One Mong Kok Road Commercial Centre, 1 Mong Kok Road, Kowloon

Office hours

Mondays to Fridays: 9:00 a.m. - 1:00 p.m. and 2:00 p.m. - 6:15 p.m.
(Closed on Saturdays, Sundays and Public Holidays)

Employees’ Compensation Division – Operations
Labour Department

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