How to Apply

for Employees’ Compensation in Fatal Cases
Introduction
This leaflet explains concisely the major provisions of the Employees' Compensation Ordinance on the compensation in fatal cases. It should be noted that the Ordinance itself remains the sole authority for the provisions of the law explained.

What is Compensation in Fatal Cases?
If an employee dies as a result of an accident (or a prescribed occupational disease) arising out of and in the course of employment, the employer shall be liable under the Ordinance to pay the compensation for death to his/her surviving members of the family. In addition, the employer is liable to reimburse the expenses of funeral of and medical attendance on the deceased employee.

How is the Compensation for Death Computed?

<table>
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<tr>
<th>Age of Deceased Employee</th>
<th>Amount of Compensation</th>
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<tr>
<td>Under 40</td>
<td>84 months’ earnings’ or minimum amount of compensation*, whichever is higher</td>
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<tr>
<td>40 to under 56</td>
<td>60 months’ earnings’</td>
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<tr>
<td>56 or above</td>
<td>36 months’ earnings’</td>
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*For accidents happened on or after 26 April 2019:
(a) Monthly earnings subject to a maximum for the purpose of calculating compensation for death: $30,530; and
(b) Minimum amount of compensation for death: $440,200.

For accidents happened on any date between 1 April 2017 and 25 April 2019:
(a) Monthly earnings subject to a maximum for the purpose of calculating compensation for death: $28,360; and
(b) Minimum amount of compensation for death: $408,960.

Who Shall be Entitled to Compensation?

Compensation for Death
The compensation for death shall be apportioned among the deceased employee’s eligible members of the family in the manner set out in the Ordinance (Schedule). Under the Ordinance, "members of the family" (whether by blood or an adoption recognised by law) of a deceased employee are:
- a spouse or cohabitee ("cohabitee" means any person who at the time of the accident concerned was living with the employee as the employee’s wife or husband);
- a child;
- a parent or grandparent; or
- a grandchild, stepparent, stepchild, brother, sister, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, child of a brother or sister of whole blood, half-brother and half-sister, any of whom shall be residing with the employee as a member of the same household for the period of 24 months immediately preceding the accident.
**Funeral and Medical Attendance Expenses**

Any person who has paid the expenses of funeral or medical attendance on the deceased employee is entitled to reimbursement of the expenses. The maximum amount of the funeral and medical attendance expenses reimbursable is:

- For accidents happened on or after 26 April 2019: $87,330.
- For accidents happened on any date between 1 April 2017 and 25 April 2019: $83,700.

**Determination by the Commissioner for Labour of Claims for Compensation in Fatal Cases**

**Applicability**

In accidents where the employer and all the parties to the claim have agreed, the Commissioner for Labour (the Commissioner) may determine the amount of compensation for death and/or funeral and medical attendance expenses payable, and the persons to whom such compensation shall be paid.

**Period for Submitting Claims**

| Application for determination on the compensation for death: | within 6 months from the date of death of the employee. |
| Application for reimbursement of the funeral and medical attendance expenses: | within 30 days from the day of cremation/burial of the employee or the day on which the Commissioner receives the employer's consent to the determination, whichever is later. |

**Determination and Issue of Certificates**

Upon receipt of an application, the Commissioner shall make determination for suitable accident cases and issue the relevant certificates to all the applicants and the employer, stating the amount of compensation payable and the eligible persons to whom payment shall be made.

Either the employer or an applicant may object to the determination made by the Commissioner. On receipt of the objection notice, the Commissioner will review his/her decision and issue a review certificate. Alternatively, any party to the claim may appeal to the District Court against the Commissioner's decision.

**Interim Payments**

If a claim for compensation for death is to be determined by the Commissioner, the spouse (not including the cohabitee) of the deceased employee may apply to the Commissioner for determination on the Interim Payments while awaiting determination on the compensation for death. Upon receipt of such an application, the Commissioner will issue a certificate giving details of his determination.

The Interim Payments shall be payable by the employer to the spouse of the deceased employee. Comprising an initial payment and subsequent monthly payments at the rate of 50% of the earnings of the deceased employee, the Interim Payments shall not in aggregate exceed 45% of the total amount of compensation for death payable. The aggregate amount paid shall be deductible from the share of compensation to which the spouse would be entitled.
**Determination by Court of Claims for Compensation in Fatal Cases**

If the Commissioner considers that a claim is not suitable for his/her determination, or if the employer or any claimant does not agree to submit the claim to the Commissioner for determination, the case shall be adjudicated by the Court. Claimants shall lodge the claim with the District Court within 24 months from the date of death of the employee.

If a claim shall be determined by the Court, the members of the family of the deceased employee may institute the legal proceedings by:

(a) applying to the Legal Aid Department for legal aid;
(b) applying to the District Court direct; or
(c) engaging a solicitor to represent them.

The Fatal Cases Office of the Labour Department will, upon request, assist the members of the family of the deceased employee by referring them to the Legal Aid Department or the District Court for the relevant procedures.

**How to Make a Claim for Compensation in Fatal Cases?**

**Any person** who wishes to claim for compensation in fatal cases should call at the Fatal Cases Office of the Labour Department with the following documents as soon as possible after the death of the employee:

(a) his/her own identity card;
(b) identity card of the deceased employee;
(c) certificate of death or certificate of order authorising burial/cremation of body of the deceased; and
(d) relevant documents certifying the relationship between the deceased and the applicant, e.g. marriage certificate, birth certificate or proof of residence.

**Members of the family of the deceased employee residing outside Hong Kong** are required to provide the following documents if they wish to claim for compensation:

(a) Documents of identity, e.g. Passport;
(b) Certificates/documents certifying the relationship with the deceased employee; and
(c) Letter of Authorisation of an attorney to act on their behalf in pursuing the claim.

The applicants should ensure that the documents are prepared in their native language with English translation (no translation is necessary if the documents are in Chinese or English), authenticated by their local authorities or Notary Public and endorsed by an officer of the Consular Department of the Ministry of Foreign Affairs of China (for family members residing in China) or by an overseas Chinese Consular Officer (for family members residing in countries/territories other than China).
What Should the Employer Do?
According to the Ordinance, an employer must notify the Labour Department of any fatal accident by submitting the prescribed form (Form 2/2A) within 7 days after the accident, irrespective of whether the death of the employee gives rise to any liability to pay compensation. An employer who, without reasonable excuse, fails to give notice of an accident or furnishes any false information to the Commissioner commits an offence and is liable to a maximum fine of $50,000 upon conviction.

If the employer does not dispute the liability to pay compensation arising from a fatal accident, he may give consent in writing to submitting the claim to be determined by the Commissioner. Upon the issue of certificates by the Commissioner, the employer shall effect payment of compensation and/or reimbursement of the funeral and medical attendance expenses in accordance with the certificates if no objection or appeal has been raised by any party.

An employer who, without reasonable excuse, fails to make payment in accordance with a Certificate/Review Certificate shall pay a surcharge in addition to the amount of compensation/payment stated on the Certificate/Review Certificate. He/She also commits an offence and is liable to a maximum fine of $100,000 upon conviction.

Where to Obtain Further Information?
Fatal Cases Office
Employees’ Compensation Division
Labour Department
6/F., Harbour Building
38 Pier Road,
Central,
Hong Kong
Tel: 2852 3994
Fax: 2854 4166

(The contents of this leaflet are also available at the Labour Department Homepagehttp://www.labour.gov.hk)
**Schedule: Apportionment of Compensation for Death**

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<tr>
<th>Family Members Eligible for Compensation</th>
<th>Apportionment of Compensation</th>
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<tr>
<td>1. Only spouse / cohabitee</td>
<td>100% to spouse / cohabitee</td>
</tr>
<tr>
<td>2. Only child(ren)</td>
<td>100% to child(ren)</td>
</tr>
<tr>
<td>3. Only parent(s) / grandparent(s)</td>
<td>100% to parent(s) / grandparent(s)</td>
</tr>
<tr>
<td>4. Only spouse / cohabitee and child(ren)</td>
<td>50% to spouse / cohabitee 50% to child(ren)</td>
</tr>
<tr>
<td>5. Only spouse / cohabitee and parent(s) / grandparent(s)</td>
<td>80% to spouse / cohabitee 20% to parent(s) / grandparent(s)</td>
</tr>
<tr>
<td>6. Only spouse / cohabitee, child(ren) and parent(s) / grandparent(s) (whether or not there is / are other eligible member(s) of the family)</td>
<td>45% to spouse / cohabitee 45% to child(ren) 10% to parent(s) / grandparent(s) Other member(s) of the family is / are not entitled to compensation</td>
</tr>
<tr>
<td>7. Only child(ren) and parent(s) / grandparent(s)</td>
<td>80% to child(ren) 20% to parent(s) / grandparent(s)</td>
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<tr>
<td>8. Only other member(s) of the family with no surviving spouse / cohabitee, child(ren) or parent(s) / grandparent(s)</td>
<td>100% to the other member(s) of the family</td>
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<tr>
<td>9. Only spouse / cohabitee and other member(s) of the family</td>
<td>95% to spouse / cohabitee 5% to other member(s) of the family</td>
</tr>
<tr>
<td>10. Only child(ren) and other member(s) of the family</td>
<td>95% to child(ren) 5% to other member(s) of the family</td>
</tr>
<tr>
<td>11. Only parent(s) / grandparent(s) and other member(s) of the family</td>
<td>95% to parent(s) / grandparent(s) 5% to other member(s) of the family</td>
</tr>
<tr>
<td>12. Only spouse / cohabitee, child(ren) and other member(s) of the family</td>
<td>50% to spouse / cohabitee 45% to child(ren) 5% to other member(s) of the family</td>
</tr>
<tr>
<td>13. Only spouse / cohabitee, parent(s) / grandparent(s) and other member(s) of the family</td>
<td>75% to spouse / cohabitee 20% to parent(s) / grandparent(s) 5% to other member(s) of the family</td>
</tr>
<tr>
<td>14. Only child(ren), parent(s) / grandparent(s) and other member(s) of the family</td>
<td>75% to child(ren) 20% to parent(s) / grandparent(s) 5% to other member(s) of the family</td>
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</tbody>
</table>

**Note 1:** If there are more than one eligible person in the same category, the amount of compensation shall be equally shared among them. However, where the deceased employee is survived by both parent(s) and grandparent(s), the amount of compensation payable to this category of family members shall be apportioned as follows: 70% to parent(s) 30% to grandparent(s)

**Note 2:** Other member(s) of the family include(s) grandchild, stepparent, stepchild, brother, sister, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, child of a brother or sister of whole blood, half-brother and half-sister, any of whom shall be residing with the employee as a member of the same household for the period of 24 months immediately preceding the accident.