

How to Apply for Employees' Compensation in Fatal Cases



Labour Department

Introduction

This leaflet explains concisely the major provisions of the Employees' Compensation Ordinance (ECO) on compensation in fatal cases. It should be noted that ECO itself remains the sole authority for the provisions explained.

I. Applicability of ECO and Types of Compensation

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 ECO i) to pay compensation for death to his / her surviving members of the family; and ii) to reimburse expenses of funeral of and medical attendance on the deceased employee.

(i) Compensation for Death

Eligible Family Members

The compensation for death shall be apportioned among the deceased employee's eligible members of the family in the manner set out in ECO (Please refer to "Schedule" for details). Under ECO, "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 has been residing with the employee as a member of the same household for the period of 24 months immediately preceding the accident.

How is the Compensation for Death Computed?

Age of Deceased Employee	Amount of Compensation	
Under 40	84 months' earnings*	or minimum amount of compensation*, whichever is higher
40 to under 56	60 months' earnings*	
56 or above	36 months' earnings*	

*** For accidents happened on or after 15 April 2021:**

(a) Monthly earnings subject to a maximum for the purpose of calculating compensation for death: \$35,600; and

(b) Minimum amount of compensation for death: \$473,610.

For accidents happened on any date between 26 April 2019 and 14 April 2021:

(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.

(ii) Funeral and Medical Attendance Expenses

Reimbursement of reasonable expenses of the funeral of and medical attendance on the deceased employee shall be paid by the employer to any person who has paid the expenses. The maximum amount of the funeral and medical attendance expenses reimbursable is:

- For accidents happened on or after 15 April 2021: \$92,670.
- For accidents happened on any date between 26 April 2019 and 14 April 2021: \$87,330.

II. Determination of Claims for Fatal Compensation

(i) Determination by the Commissioner for Labour

Applicability

Upon receipt of written consent of the employer of a fatal case and applications of the claimants for determination by the Commissioner for Labour (the Commissioner), the Commissioner may, if in his / her opinion the claim for fatal compensation is suitable for his / her determination, 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.

Application Periods

Compensation for death:	within 6 months from the date of death of the employee.
Reimbursement of 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 written consent to determination, whichever is later.

Determination and Issue of Certificates

Upon making determination of claims for compensation for death and / or funeral and medical attendance expenses, the Commissioner shall issue a certificate to all the claimants and the employer, stating the amount of compensation payable and the eligible persons to whom payment shall be made.

Either the employer or a claimant may object to the determination made by the Commissioner. On receipt of an 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 of the Interim Payments while awaiting determination of 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 monthly 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 of the Interim Payments paid shall be deductible from the compensation for death payable to the spouse.

(ii) Determination by the Court

The Commissioner is not empowered to make adjudication over disputes on points of law or fact between the employer and the claimants of a fatal case. In the event that the disputes are not resolved, or the employer does not give consent to the Commissioner determining the claim for fatal compensation, or the Commissioner is of the opinion that the claim is not suitable for his / her determination, if the claimants still wish to continue to pursue their claim under ECO, they must lodge their claim with the District Court within 24 months from the date of death of the employee. For the purpose of filing their claim with the District Court, the claimants may:

- (a) apply to the Legal Aid Department for legal aid;
- (b) lodge their claim with the District Court direct; or
- (c) engage a solicitor to represent them.

The Fatal Cases Office of LD (FCO) will, upon request, assist the claimants by referring them to the Legal Aid Department or the District Court respectively to apply for legal aid or lodge their claim direct.

III. How to Apply for Determination by the Commissioner?

Claimants who wish to apply for determination of fatal compensation by the Commissioner should make an appointment for an interview with FCO and bring the following documents with them to the scheduled interview:

- (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 claimants, e.g. marriage certificate, birth certificate or proof of residence.

Claimants residing outside Hong Kong who could not approach FCO in person to make application for determination may consider to authorize a representative to make application on their behalf and are required to provide the following documents:

- (a) A copy of documents of identity of the claimants, e.g. identity card, passport;
- (b) Certificates / documents certifying the relationship between the deceased employee and the claimants; and
- (c) A power of attorney setting out the identity of the person who has been authorized to pursue fatal compensation under ECO on behalf of the claimants.

If the document was not issued by the HKSAR government / public institutions, the documents (and its English translation if they are not in Chinese or English) must be authenticated by the issuing local authorities or notaries public and endorsed by an

officer of the Consular Department of the Ministry of Foreign Affairs of China (for documents issued by authorities in mainland China) or by an overseas Chinese Consular Officer (for documents issued by other countries).

IV. What Should Employers Do?

ECO prescribes that notice of any accident which results in the death of the employee of a fatal case shall be given in the prescribed form (i.e. Form 2 / Form 2A) to the Commissioner by the employer not later than 7 days after the accident irrespective of whether the accident 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 fatal compensation under ECO, he / she may give consent in writing to the Commissioner determining the claim. Upon the issue of the relevant certificates by the Commissioner, the employer shall effect payment of compensation for death 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. The employer also commits a criminal offence and is liable to a maximum fine of \$100,000 upon conviction.

V. 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 Homepage
<http://www.labour.gov.hk>)

Labour Department
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Schedule: Apportionment of Compensation for Death

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

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 has been residing with the employee as a member of the same household for the period of 24 months immediately preceding the accident.

