Labour Department









A Concise Guide to the Employees' Compensation Ordinance

with Frequently Asked Questions on Common Employees' Compensation Issues

Oct 2019 (Batch 01/Oct 2019)

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(with Frequently Asked Questions on
Common Employees' Compensation Issues)



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October 2019 Edition

Table of Contents

			Page
Introduction			1 - 2
Part I	Chapter 1	Application of the Ordinance	3
	Chapter 2	Liability for Compensation for Work Injury and Occupational Disease	
		○ Injury by Accident	4 - 5
		○ Occupational Disease	5 - 6
	Chapter 3	Notification of Accidents	7
	Chapter 4	Settlement of Employees' Compensation Claims	8 - 10
	Chapter 5	Amount of Compensation	
		○ Fatal Cases	11
		○ Non-fatal Cases	
		Permanent Incapacity	11 -12
		Temporary Incapacity	12 - 13
		Medical Expenses	13 - 15
		Prostheses and Surgical Appliances	15 - 16
		Notes: Compensation Level of Various Items	17 - 18
	Chapter 6	Calculation of Earnings	19 - 20
	Chapter 7	Assessment of Permanent Loss of Earning Capacity	21 - 22
	Chapter 8	Compulsory Insurance	23 - 25
	Chapter 9	Miscellaneous	
		○ Medical Examination and Treatment	26 - 27
		○ Liability of the Principal Contractor	27 - 28
		○ Claims for Common Law Damages	28
		○ Contracting Out	29
		○ Employment Protection	29
Appendices	1. First Schedule - List of Injuries		30 - 33
	2. Second Schedule - List of Occupational Diseases		34 - 44
Part II	Frequently Asked Questions on Common Employees' Compensation Issues		45 - 59
	A list of commonly used prescribed forms under the Employees' Compensation Ordinance		60

Introduction

This guide, in its first part, sets out briefly the main provisions of the Employees' Compensation Ordinance, Chapter 282 of the Laws of Hong Kong. The Ordinance lays down the rights and obligations of employers and employees in respect of injuries or death caused by accidents arising out of and in the course of employment, or by prescribed occupational diseases under the Ordinance. While every care has been exercised in preparing this guide, the Ordinance remains the sole authority for the provisions of the law explained. The full text of the Ordinance has been uploaded to the Hong Kong e-Legislation of the Department of Justice (https://www.elegislation.gov.hk).

The second part is a question-and-answer section on some common employees' compensation issues which aims at explaining the procedures and administrative measures adopted by the Employees' Compensation Division of the Labour Department in handling and processing employees' compensation claims; as well as answering some frequently asked questions in relation to the Ordinance. It also lists out the commonly used prescribed forms under the Ordinance.

This guide and other publications related to employees' compensation have been uploaded to the Labour Department website (https://www.labour.gov.hk/eng/public/content2_7.htm).

If you have queries about the Ordinance, please call 2717 1771 (the hotline is handled by the "1823"). For enquiries on individual compensation claims, please approach the relevant office of the Employees' Compensation Division of the Labour Department:

Office of the Employees' Compensation Division, Labour Department [Work Injury Cases: according to place of accident Prescribed Occupational Disease Cases: according to place of employment]	Address
Employees' Compensation Division Operations – Team A • cases on Hong Kong Island, outlying Islands and outside Hong Kong	Rm 1605, 16/F, Southorn Centre, 130 Hennessy Road, Wanchai, Hong Kong
Employees' Compensation Division Operations – Team B • cases in Kowloon East and Kowloon West	Rm 1007, 10/F, Cheung Sha Wan Government Offices, 303 Cheung Sha Wan Road, Kowloon
Employees' Compensation Division Operations – Team C • 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
Employees' Compensation Division Operations – Team D • cases in Tseung Kwan O, Sai Kung, and cases involving government employees and seamen	Rooms 05-06, 23/F, KOLOUR • Tsuen Wan I, 68 Chung On Street, Tsuen Wan, New Territories
• cases in Shatin, Taipo, Fanling and North District	Room 239, 2/F, Shatin Government Offices, 1 Sheung Wo Che Road, Shatin, New Territories
Fatal Cases Office	Rm 601, 6/F, Harbour Building, 38 Pier Road, Central, Hong Kong

Office Hours:

Mondays to Fridays: 9:00 a.m. to 1:00 p.m.
2:00 p.m. to 6:15 p.m.

Saturdays, Sundays and Public Holidays: Closed

For the latest office address, please visit the Labour Department's website (https://www.labour.gov.hk) or call 2717 1771 (the hotline is handled by the "1823")

Chapter 1 Part I

Application of the Ordinance

The Ordinance applies to all full-time or part-time employees who are employed under contracts of service or apprenticeship.

The Ordinance also applies to employees employed in Hong Kong by local employers injured while working outside Hong Kong. Even if the employer is a person carrying on business outside Hong Kong, the Ordinance still applies if the employer submits to the jurisdiction of the Courts of Hong Kong and the employees have been recruited or engaged in Hong Kong.

The Ordinance also applies to crew members of a Hong Kong ship, and any person employed in any capacity on board of a Hong Kong ship. If the employee is a crew member of a foreign ship and have been recruited or engaged in Hong Kong, even if the accident causing the personal injury occurred outside Hong Kong, the Ordinance still applies if the employer submits to the jurisdiction of the Courts of Hong Kong.

The Ordinance **does not** apply to:

(a) casual employees (but still applies to part-time domestic helpers, employees employed either for the purposes of the employer's trade or business, or for the purposes of any game or recreation and are engaged or paid through a club); or

(b) outworkers; or

(c) members of the employer's family who live with him (but still applies if an employees' compensation insurance policy under this Ordinance is in force in respect of such family members).

Chapter 2

Liability for Compensation for Work Injury and Occupational Disease

Injury by Accident

If an employee sustains an injury or dies 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 this Ordinance even if the employee might have committed acts of faults or negligence when the accident occurred.

An accident to an employee resulting in injury or death is deemed to arise out of and in the course of his employment if it happens in the following circumstances:

(a) while travelling as a passenger to or from his place of work by a means of transport operated or arranged by his employer and other than as part of a public transport service;

(b) while travelling by a direct route between his residence and his place of work for the purpose of and in connection with his employment by driving or operating a means of transport arranged or provided by his employer;

(c) when typhoon signal No. 8 or above or a red /black rainstorm warning is in force, while travelling from his place of residence to his place of work by a direct route within a period of four hours before the time of commencement of his working hours for that day, or from his place of work to his place of residence within a period of four hours after the time of cessation of his working hours for that day; or

(d) while travelling, for the purpose of and in connection with his employment by any means of transport permitted by his employer, between Hong Kong and any place outside Hong Kong or between any other such places outside Hong Kong.

An employer is **not** liable to pay compensation in the following circumstances:

(a) the injury does not result in permanent incapacity nor incapacitate the employee from earning full wages at his normal work;

(b) the injury is a deliberate self-injury;

(c) the death or incapacity results from an injury (including a specified occupational disease) which the employee has falsely represented to his employer that he was free from; or

(d) the injury is caused by an accident directly attributable to the employee's addiction to drugs or his having been at the time of accident under the influence of alcohol and does not result in death or serious and permanent incapacity.

Occupational Disease

An employee suffering incapacity arising from an occupational disease 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 prescribed period immediately preceding the incapacity caused. The occupational diseases covered by the Ordinance and the prescribed period are specified in the Second Schedule annexed to the Ordinance (see Appendix 2).

If the employee has been employed by more than one employer during the prescribed period in the same or in a similar occupation, all the employers may be responsible for paying compensation, though not necessarily to the same extent.

Before employing an employee in a trade or industry in which an occupational disease is prone to be contracted by employees, the employer may, at his own cost, require the employee to be medically examined by a registered medical practitioner. An employee refusing to undergo the medical examination may forfeit his entitlement to compensation in the event of death or incapacity caused by an occupational disease.

An employee may still claim compensation under the Ordinance for a disease outside the Second Schedule if it is certified to be a personal injury by accident arising out of and in the course of employment.

If an employee suspects being contracted an occupation disease specified in Second Schedule of the Ordinance, he should seek medical treatment as soon as possible. He should describe to his treating doctor full details of the illness, as well as the occupation, to facilitate the doctor to make diagnosis.

Chapter 3
Notification of Accidents

Responsibility of an Employee

An employee should notify the employer when he sustains a work injury or when he is confirmed that he has contracted an occupational disease specified by the Ordinance as soon as possible. Failure to give prompt notice may jeopardize and delay the claim of employees' compensation. Notice may be given orally or in writing to the employer or to the employee's supervisor. The employer is presumed to have had notice of an accident if the employee dies on the employer's premises.

Responsibility of an Employer

According to section 15 of the Ordinance, an employer must notify the Commissioner for Labour of any accident or prescribed occupational disease in the following manners, **irrespective of whether the accident or the occupational disease gives rise to any liability to pay compensation:**

	Resulting in	Notice Period	Form
Work Injury	Incapacity for a period not exceeding 3 days	Within 14 days	Form 2B
	Incapacity for a period exceeding 3 days	Within 14 days	Form 2
	Death	Within 7 days	
Occupational Disease	Incapacity	Within 14 days	Form 2A
	Death	Within 7 days	

If the employer is not aware of the happening of the accident within the respective periods, he must notify the Commissioner for Labour within 7 or 14 days, as the case may be, after the accident came to his knowledge.

Any employer who, without reasonable excuse, delays or fails to give notice of an accident or makes or furnishes any false or misleading statement to the Commissioner for Labour is liable to prosecution and, upon conviction, to a maximum fine of $50,000.

Chapter 4

Settlement of Employees' Compensation Claims

1. Direct Payment by Employer

If the accident incapacitates the employee for not more than 3 days and does not result in 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. The employer should also pay the medical expenses concerned.

2. Determination of Compensation by Agreement according to the Ordinance

For the injury involving only temporary incapacity for a period exceeding 3 days but not more than 7 days, the employer may directly agree with the employee as to the compensation payable under the Ordinance and make such payment on the same days or before which wages would have been payable to the employee. The employer should also pay the medical expenses concerned.

3. "Certificate of Compensation Assessment" issued by the Commissioner for Labour

For other cases, the Commissioner for Labour will assess the compensation payable under the Ordinance and issue to the employer and the employee a Certificate of Compensation Assessment (i.e. Form 5) stating the amount of compensation payable. If the injury results in temporary incapacity only, the certificate will be issued after medical clearance. If in the opinion of the Commissioner that the injury would likely result in permanent total or partial incapacity, the employee concerned will be referred to the Employees' Compensation Assessment Board for assessment and Form 5 will be issued after the Certificate of Assessment (i.e. Form 7 or 8) is issued by the Assessment Board.

Any objection to the compensation assessment by either party must be made in writing to the Commissioner for Labour within 14 days after the issue of Form 5, with a copy of the objection notice sent to the other party. On receipt of the objection notice, the Commissioner for Labour will review its assessment and issue a Certificate of Review of Compensation Assessment (Form 6) to both parties.

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.

Note: Surcharge

Section 16A of the Ordinance provides that if the employer fails, without reasonable excuse, to pay to the employee the amount of compensation within 21 days after the issue of Certificate of Compensation Assessment (Form 5) or Certificate of Review of Compensation Assessment (Form 6), he is liable to pay to the employee a surcharge of $760^{(Note)}$ or 5% of the amount of compensation then remaining unpaid, whichever is the greater. The employer is liable to pay a further surcharge of $1,540^{(Note)}$ or 10% of the aggregate amount of compensation then remaining unpaid, whichever is the greater, if he still fails to pay within 3 months after the expiry of the payment period.

Any employer who, without reasonable excuse, fails to pay the compensation or a surcharge is liable to prosecution and, upon conviction, to a maximum fine of $100,000.

(Note) For work injuries caused by accidents happening or prescribed occupational diseases contracted on any date between 26 April 2019 and 14 April 2021, the surcharge and further surcharge are $710 and $1,430 respectively.

4. Determination by Court

For cases which should be settled by direct payment (i.e. cases involving temporary incapacity for a period not exceeding 3 days) but remain unsettled, the injured employee may recover the compensation from the employer in the Small Claims Tribunal. Other compensation claims which cannot be settled in the above ways shall be determined by the District Court.

IMPORTANT NOTE

Section 14(1) of the Ordinance stipulates that an application to the Court for employees' compensation has to be made within 24 months from the date of the accident causing the injury. Therefore, **if a case cannot be settled by the end of the 18th month from the date of accident, the employee concerned should contact the Employees' Compensation Division of the Labour Department as soon as possible.** Subject to the decision of the employee, the Division would assist the employee either to approach the Legal Aid Department for further assistance, or to register his claim direct at the District Court.

Chapter 5
Amount of Compensation

● Fatal Cases

If an employee dies as a result of an accident arising out of and in the course of employment (or a prescribed occupational disease), the employer shall be liable to pay compensation for death to his surviving members of the family. The amount of compensation payable is calculated with reference to the age and monthly earnings of the deceased employee as below (please refer to Chapter 6 for details of the "monthly earnings"):

Age of Deceased Employee	Amount of Compensation	
Under 40	84 months' earnings (Note 1)	or minimum amount of compensation (Note 2), whichever is higher
40 to under 56	60 months' earnings (Note 1)	
56 or above	36 months' earnings (Note 1)	

The compensation shall be apportioned among the eligible members of the family of the deceased employee in accordance with the apportionment schedule (the Seventh Schedule) stipulated in the Ordinance. The Commissioner for Labour or the Court may determine the amount of the compensation for death. The employer is also liable to reimburse funeral and medical attendance expenses, up to a maximum of $92,670(Note 3), to the person who has paid such expenses.

● Non-fatal Cases

Permanent Incapacity

Compensation payable for permanent **total** incapacity resulting from a work injury is calculated with reference to the age and monthly earnings of the injured employee at the time of accident as below:

Age of Injured Employee	Amount of Compensation	
Under 40	96 months' earnings (Note 1)	or minimum amount of compensation (Note 4), whichever is higher
40 to under 56	72 months' earnings (Note 1)	
56 or above	48 months' earnings (Note 1)	

Where permanent **partial** incapacity results from the injury, the amount of compensation is a percentage of the compensation payable for permanent total incapacity as is proportionate to the loss of earning capacity permanently caused by the injury.

Amount of compensation due to permanent total incapacity	X	Percentage of permanent loss of earning capacity

Employees' Compensation Assessment Boards are appointed by the Commissioner for Labour to assess the percentage of the loss of earning capacity caused by injuries.

If the injured employee suffers from permanent incapacity and is unable to perform the essential actions of life without the attention of another person, compensation for attention shall be payable. It should be:

(a) such an amount not exceeding $644,710[Note 5] as the Court considers necessary; or

(b) an amount of $644,710[Note 5] as specified by the Ordinance and set down in an agreement entered into by the employer and the injured employee and approved by the Commissioner for Labour.

Temporary Incapacity

Section 10 of the Ordinance stipulates that during the period of temporary incapacity, the employer shall pay the 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. An employer who, without reasonable excuse, fails to pay within 7 days after the due day is liable to prosecution and, upon conviction, to a maximum fine of $100,000.

IMPORTANT NOTE

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 having committed a fraudulent act.

A period of absence from duty certified to be necessary by a registered medical practitioner, a registered Chinese medicine practitioner, a registered dentist or an Employees' Compensation Assessment Board is deemed to be a period of temporary incapacity.

The employer shall pay compensation for death or permanent total or partial incapacity, as the case may be, in addition to any periodical payments previously due.

When the employee's temporary incapacity lasts more than 24 months or a further period that the Court may allow (that further period shall not be longer than 12 months), he shall no longer be entitled to periodical payments. The employee shall be regarded as having suffered permanent incapacity and compensation shall be assessed accordingly.

Medical Expenses

Section 10A of the Ordinance stipulates that unless an employer has provided adequate free medical treatment to the employee, the employer is liable to pay medical expenses (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) in respect of the period during which the employee receives medical treatment from a registered medical practitioner, a registered Chinese medicine practitioner or a registered dentist until the attending registered medical practitioner, registered Chinese medicine practitioner or registered dentist certifies that no further treatment is required.

An employer is liable to pay the medical expenses in respect of medical treatment of any description received by an employee unless the free medical treatment provided by the employer covers medical treatment of the same description. Medical treatment given by, or under the supervision of, a registered medical practitioner, a registered Chinese medicine practitioner or a registered dentist shall be payable under the Ordinance. The employer is also liable to pay to the injured employee medical expenses in respect of medical treatment given by, or under the supervision of, a registered physiotherapist, a registered occupational therapist or a registered chiropractor.

The daily maximum of medical expenses payable by the employer are as follows:

The medical expenses for each day of stay in the hospital where an employee is given medical treatment as an in-patient(Note 8)	$300
The medical expenses for each day on which an employee is given medical treatment other than as an in-patient in a hospital(Note 8)	$300
The medical expenses 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(Note 8)	$370

Where the medical expenses for the medical treatment of an employee include the cost of medicines, the medicines shall be prescribed by a registered medical practitioner, a registered Chinese medicine practitioner or a registered dentist and prescribed for the direct treatment of the relevant injury.

Unless the prescription contains a direction that the medicines are to be dispensed for a stated number of times and the medicines are dispensed in accordance with that direction, the employee shall not be reimbursed any cost of medicines relating to medicines dispensed pursuant to the same prescription on the subsequent occasions.

An employer should pay the injured employee medical expenses within 21 days after the employee has submitted a written request for the payment of medical expenses together with the receipts for payment of medical expenses. If payment is defaulted by the employer, the employee may recover the medical expenses from the employer in the Small Claims Tribunal or the District Court, depending on the defaulted amount.

An employer is also liable to pay the medical expenses for medical treatment given outside Hong Kong in respect of a work injury sustained by an employee outside Hong Kong and arising out of and in the course of that employee's employment. The daily maximum amount is the same as that for injuries sustained in Hong Kong. Where necessary, an employer or an employee may apply to the Commissioner for Labour for a certificate for determining the amount of medical expenses to be paid by the employer.

Prostheses and Surgical Appliances

According to the Ordinance, 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:

(a) the initial costs of supplying and fitting the prosthesis or surgical appliance, subject to a maximum amount of $44,300[(Note 6)]; and

(b) the probable costs of repair and renewal of such an item during a period of 10 years after the initial fitting of the item, subject to a maximum amount of $134,220[(Note 7)].

The employer would **not** be liable to pay for the costs of such prostheses or surgical appliances unless:

(a) the employee submits himself to treatment by a registered medical practitioner, a registered Chinese medicine practitioner or a registered dentist;

(b) the prostheses or surgical appliances are supplied and fitted to the employee; and

(c) the item so supplied and fitted is manufactured or on sale in Hong Kong, and is certified by the Prostheses and Surgical Appliances Board as necessary and reasonable in cost.

If an employee sustains a work injury outside Hong Kong in an accident arising out of and in the course of his employment, and submits himself to medical treatment by or under the supervision of a person who is allowed to practise medicine, surgery or dentistry in the place where such medical treatment is given, the employer shall, if the Prostheses and Surgical Appliances Board approves, be liable to pay for the cost of supplying and fitting the prosthesis or surgical appliance required, subject to a maximum amount, which is the same as that for injuries sustained in Hong Kong.

An employer is obliged to grant the necessary leave of absence from work to an employee who is required to attend a Prostheses and Surgical Appliances Board for purposes of examination or assessment. If the employer is the same employer of the employee at the time of accident, then the employer must pay the employee his normal wages for such absence from work.

The Director of Health will take such steps as necessary to ensure the supply, fitting, repair and renewal of the prosthesis or surgical appliance to the injured employee. The Director may make claims from the employer for such costs.

An employer is required to pay the amount claimed by the Director of Health within one month after the receipt of the request for payment, unless he disputes his liability to pay or the necessity or cost of the initial fitting or supplying of the item. Any dispute shall be determined by the Court. However, an employer is required to deposit the amount of the costs with the Director of Health until such dispute is determined. On the other hand, an employer may not dispute the necessity for repair and renewal of the item.

Notes: Compensation Level of Various Items

(Note 1)	Monthly earnings are subject to a maximum for the purpose of calculating compensation for death and permanent total incapacity: • Work injuries caused by accidents happening or prescribed occupational diseases contracted on or after 15 April 2021: $35,600 • Work injuries caused by accidents happening or prescribed occupational diseases contracted on any date between 26 April 2019 and 14 April 2021: $30,530
(Note 2)	Minimum amount of compensation for death: • Work injuries caused by accidents happening or prescribed occupational diseases contracted on or after 15 April 2021: $473,610 • Work injuries caused by accidents happening or prescribed occupational diseases contracted on any date between 26 April 2019 and 14 April 2021: $440,200
(Note 3)	For fatal case that work injuries caused by accidents happening or prescribed occupational diseases contracted on any date between 26 April 2019 and 14 April 2021, any person who has paid funeral and/or medical attendance expenses is entitled to claim reimbursement from the employer of the deceased employee of such expenses not exceeding $87,330.
(Note 4)	Minimum amount of compensation payable for permanent incapacity: • Work injuries caused by accidents happening or prescribed occupational diseases contracted on or after 15 April 2021: $537,780 • Work injuries caused by accidents happening or prescribed occupational diseases contracted on any date between 26 April 2019 and 14 April 2021: $499,840

(Note 5)	For work injuries caused by accidents happening or prescribed occupational diseases contracted on any date between 26 April 2019 and 14 April 2021, the maximum amount of compensation for employees requiring attention is $599,230.
(Note 6)	For work injuries caused by accidents happening or prescribed occupational diseases contracted between 26 April 2019 and 14 April 2021, the maximum amount of initial costs of supplying and fitting the prosthesis or surgical appliance is $41,750.
(Note 7)	For work injuries caused by accidents happening or prescribed occupational diseases contracted between 26 April 2019 and 14 April 2021, the maximum amount of probable costs of repair and renewal of prosthesis or surgical appliance during a period of 10 years after the initial fitting of the item is $126,490.
(Note 8)	The daily maximum of medical expenses payable by the employer before 9 February 2018: • the medical expenses for each day of stay in the hospital where an employee is given medical treatment as an inpatient is $200; • the medical expenses for each day on which an employee is given medical treatment other than as an in-patient in a hospital is $200; • the medical expenses 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 is $280.

Chapter 6
Calculation of Earnings

For the purposes of the Ordinance, "earnings" includes:

(a) cash wages;

(b) the value of any privilege or benefit which can be estimated in cash, e.g. food, fuel or quarters supplied to the employee, if as a result of the accident he is deprived of any of them;

(c) overtime payments or other special remuneration, whether by way of bonus, allowance or otherwise, if it is of a constant nature; and

(d) customary tips.

Under the Ordinance, "earnings" does not include items such as remuneration for intermittent overtime, casual payments of a non-recurrent nature, the value of travelling allowances or concession and the employer's contributions to provident funds.

The "monthly earnings" is to be taken as the earnings for the month immediately preceding the date of the accident, or the average monthly earnings for the previous 12 months of employment (or any lesser period if the employee has not been so long employed), whichever calculation is more favourable to the employee. According to the Minimum Wage Ordinance(Note), if the wages payable to an employee in respect of any wage period are less than the minimum wage, he is entitled to be paid the difference (i.e. additional remuneration). The employer is required to include the amount of additional remuneration (if any) in calculating the monthly earnings for the purpose of employees' compensation.

(Note) The statutory minimum wage (SMW) comes into force on 1 May 2011. The Minimum Wage Ordinance does not apply to persons to whom the Employment Ordinance does not apply, live-in domestic workers (irrespective of their sex, race or nationality), specified student interns as well as work experience students during a period of exempt student employment. Should there be any enquiries on SMW, please call 2717 1771 (the hotline is handled by the "1823") or visit offices of the Labour Relations Division of the Labour Department.

According to section 11 of the Ordinance, where an employee suffers temporary incapacity for more than 12 (and 24) months after the date of accident, his monthly earnings should be adjusted for the purposes of calculating compensation at the end of the 12 (and 24) month period. Such an adjustment shall be made in accordance with the average rate of increase of the earnings in respect of other persons of similar earning capacity employed by the employer in similar employment. Where there is no such other persons, the rate of increase in the Consumer Price Index (A) at the end of the 12 (and 24) month period after the date of accident shall be used.

Where the injured employee was, at the time of the accident, under the age of 18 or employed as an apprentice, his monthly earnings shall, for the purposes of assessing compensation payable in the case of death or permanent incapacity, be assessed as if he were an adult employee or, in the case of an apprenticeship, as if he had completed his apprenticeship training.

For the purpose of assessing compensation payable, the minimum rate of earnings is deemed to be $5,310[(Note)] per month.

(Note) For work injuries caused by accidents happening or prescribed occupational diseases contracted before 15 April 2021, the minimum rate of earnings is deemed to be $4,500 per month.

Chapter 7

Assessment of Permanent Loss of Earning Capacity

The loss of earning capacity suffered by an injured employee permanently is assessed by a two-tier Employees' Compensation Assessment Board appointed by the Commissioner for Labour. As stipulated in section 16D of the Ordinance, the Employees' Compensation (Ordinary Assessment) Board, comprising 2 registered medical practitioners, registered Chinese medicine practitioners or registered dentists and a Labour Officer, is responsible for assessing the period of absence from duty necessary and the percentage of permanent loss of earning capacity permanently caused by the injury in accordance with the Ordinance. The First Schedule annexed to the Ordinance (see Appendix 1) specifies the percentage of loss of earning capacity for a number of injuries. In case the injury is not specified, the percentage shall be assessed having regard as far as possible to the First Schedule.

Where it appears to an Employees' Compensation (Ordinary Assessment) Board that such assessment is inadequate to reflect the loss of earning capacity permanently caused by the injury in the special circumstances of the injured employee, the claim may be referred to the Employees' Compensation (Special Assessment) Board which will make its assessment having regard to the special circumstances of the employee, such as the nature of injury in relation to the nature of the employee's former usual employment, qualifications, previous training and experience.

The Assessment Board will issue to the employee and the employer a Certificate of Assessment (i.e. Form 7 or 8) stating the assessment result. Any objection to the assessment by either party must be made in writing within 14 days after the issue of the certificate. On receipt of the objection notice, the Labour Department will arrange an Assessment Board to review its assessment. The Assessment Board will issue a Certificate of Review of Assessment (i.e. Form 9 or 10) upon completion of the review. Further objection by either party shall be made to the District Court within 6 months after the issue of the certificate.

When an employee has recovered or his medical condition is stabilized and is required by an Employees' Compensation Assessment Board to attend an assessment, the employer has to grant him the necessary leave of absence from work. If the employer is the same employer of the employee at the time of accident, the employer must pay the employee his normal wages for the said absence from work.

Chapter 8
Compulsory Insurance

According to section 40 of the Ordinance, no employer shall employ any employee in any employment unless there is in force a policy of insurance to cover his liabilities under the laws (including the common law) for injuries at work in respect of all his employees, irrespective of the length of employment contract or working hours, full-time or part-time employment. Should there be any enquiries on legal liability, employers should seek professional legal advice.

The minimum insurance cover should be for an amount:

No. of Employees	Amount of Insurance Cover per Event
not more than 200	not less than $100 million
more than 200	not less than $200 million

An employer who fails to comply with the Ordinance to secure an insurance cover is liable to prosecution and, upon conviction, to a maximum fine of $100,000 and imprisonment for two years.

Where a principal contractor has undertaken to perform any construction work, he may take out an insurance policy for an amount not less than $200 million per event to cover his liability and that of his sub-contractor(s) under the laws (including the common law). The principal contractor and his sub-contractor(s) of a project should clearly define their liability in this respect in writing.

A “group of companies” as defined in section 2 of the Companies Ordinance may take out an insurance policy for an amount not less than $200 million per event to cover the liability under the laws (including the common law) in respect of the companies in the group specified in the policy.

IMPORTANT NOTE

The minimum amount of insurance cover specified in the Ordinance is not the maximum liability that the party concerned is required to bear under the laws (including the common law). The party concerned should therefore carefully assess the possible risk and consult insurers for professional advice on whether an insurance policy for an amount more than the minimum under the Ordinance should be taken out.

An insured employer is required to display, in a conspicuous place on each of his premises where any employee is employed, a notice in both English and Chinese, showing the name of the employer, the name of the insurer, the policy number, the issue date of policy, the commencement and expiry dates of the period of insurance, the number of employees insured and the amount of liability insured under the policy.

When an employer who has been insured becomes liable to pay any sum under the laws (including the common law) to his employee in respect of a work injury, such sum shall become due and payable by the insurer, notwithstanding anything to the contrary in the policy of insurance. However, the insurer's liability per event is only up to the amount insured under the policy.

An employee or any other person (e.g. the member of the family of an employee who sustained a fatal accident) having a claim against the employer, is entitled to recover directly from the insurer the entitled amount in his own name, as though he were a party to the insurance policy. An employee can take proceedings against the insurer, even without taking proceedings against the employer, if:

(a) the employer cannot be readily located in Hong Kong;

(b) the employer is insolvent; or

(c) the insurer has disclaimed liability.

An employer shall, within 10 days after receiving the written request of an injured employee, produce for inspection to the employee the policy of insurance and all other documents relating to the policy.

An employer shall not make any deduction from the earnings of an employee in order to defray the cost of insuring against his liability to pay compensation. An employer who contravenes this provision is liable to prosecution and, upon conviction, to a maximum fine of $10,000 and imprisonment for six months.

Chapter 9
Miscellaneous

Medical Examination and Treatment

Section 16 of the Ordinance stipulates that an employee who has given notice of an accident shall submit himself to a free medical examination by a registered medical practitioner, a registered Chinese medicine practitioner or a registered dentist named by his employer when this is offered within seven days of his giving notice. An employee who is in receipt of periodical payments from his employer shall submit himself for medical examination by a registered medical practitioner, a registered Chinese medicine practitioner or a registered dentist as required by his employer. If, however, any registered medical practitioner, registered Chinese medicine practitioner or registered dentist considers the employee unfit to attend medical examination, the employee must notify the employer, and the registered medical practitioner, registered Chinese medicine practitioner or registered dentist named by the employer will arrange an alternative time for medical examination. The employer has to pay all the expenses for medical examination arranged by his registered medical practitioner, registered Chinese medicine practitioner or registered dentist. If a medical examination is arranged for the injured employee, the examination shall be conducted by a practitioner from the medical treatment of the same description as that received by the employee.

The employee is entitled to have his own registered medical practitioner, registered Chinese medicine practitioner or registered dentist present at the medical examination, but at his own expense.

The registered medical practitioner, registered Chinese medicine practitioner or registered dentist named by the employer to conduct the examination shall prepare a report on the examination and send it to the employer at the employer's expense.

The employee may in writing request the employer to send to him, free of charge, a copy of the report. The employer is required to comply with such request before the later of the following –

- the expiry of 21 days after the employer receives the request; or
- the expiry of 14 days after the report concerned is received by the employer.

If an employer fails, without reasonable excuse, to send the employee a copy of the examination report, he is liable to prosecution and, upon conviction, to a maximum fine of $10,000.

If an employee fails to submit himself for such examination, his right to compensation shall be suspended until such examination has taken place; an employee who fails without reasonable cause to attend for medical examination within 15 days of being required to do so may lose his right to compensation.

An employee who is not attended by a registered medical practitioner, registered Chinese medicine practitioner or registered dentist must submit himself to free medical treatment given by a registered medical practitioner, registered Chinese medicine practitioner or registered dentist if so required by his employer. If the employee fails to submit himself for such treatment, or having submitted himself for such treatment disregards the instructions of the registered medical practitioner, registered Chinese medicine practitioner or registered dentist concerned, and the injury has been aggravated thereby, the compensation payable may be affected.

Liability of the Principal Contractor

Section 24 of the Ordinance provides that when an employee of a sub-contractor is injured at work, the principal contractor shall be liable for any claim of compensation made by the injured employee under the Ordinance. The principal contractor may, however, take action to recover from the sub-contractor any payment which he is required to make.

The injured employee employed by a sub-contractor may issue a written request to the sub-contractor to supply the name and address of the principal contractor. A sub-contractor who, without reasonable excuse, fails to supply the above information within 7 days after the date of issue of the written request is liable to prosecution and, upon conviction, to a maximum fine of $50,000.

The injured employee employed by a sub-contractor shall, before making any claim or application by virtue of section 24 of the Ordinance against a principal contractor, serve on the principal contractor a notice in writing stating –

(a) the name and address of the employee;

(b) the name and address of the sub-contractor by whom he is employed;

(c) the address of the place of employment of the employee;

(d) the particulars of the accident and the injury suffered; and

(e) the amount of compensation to be claimed.

Claims for Common Law Damages

Against a Third Party	Against an Employer
By an employee When an employee is injured in circumstances which create a legal liability in some person other than the employer, he may take proceedings to recover damages from the third party as well as claiming employees' compensation against the employer. **By an employer** Under similar situation, an employer who is liable to pay compensation may take action against a third party to recover the employees' compensation, indemnity or any sum payable to the employee contractually.	The Ordinance does not limit the civil liability of an employer. Thus, when an injury to an employee is caused by the negligence or other wrongful act of an employer, the employee may recover compensation and also sue for damages, but the damages awarded shall be reduced by the value of the employees' compensation paid or payable under the Ordinance.

Contracting Out

According to section 31 of the Ordinance, any contract or agreement which removes or reduces the employer's liability to pay employees' compensation under the Ordinance is null and void.

Employment Protection

Section 48 of the Ordinance stipulates that, without the consent of the Commissioner for Labour, an employer who terminates, or gives notice to terminate, the contract of service of an employee under the following circumstances, is liable to prosecution and, upon conviction, to a maximum fine of $100,000:

(a) **where the employee sustained an injury giving rise to temporary incapacity not exceeding 3 days:**

before the period of temporary incapacity has expired and the compensation has been paid; and

(b) **where the employee sustained an injury giving rise to temporary incapacity exceeding 3 days or permanent incapacity:**

(i) before the Commissioner for Labour has issued the Certificate of Compensation Assessment (Form 5); or

(ii) before the employer agrees with the injured employee as to the compensation payable under the Ordinance; or

(iii) before an Employees' Compensation Assessment Board has issued the Certificate of Assessment (Form 7 or 8) or the Certificate of Review of Assessment (Form 9 or 10),

whichever occurs first.

Appendix 1 List of injuries

(First Schedule of the Employees' Compensation Ordinance)

Item		Percentage of loss of earning capacity	
1.	Loss of 2 limbs	100	
2.	Loss of both hands or of all fingers and both thumbs	100	
3.	Loss of both feet	100	
4.	Total loss of sight	100	
5.	Total paralysis	100	
6.	Injuries resulting in being permanently bedridden	100	
7.	Paraplegia	100	
8.	Any other injury causing permanent total disablement	100	
9.	Loss of arm at shoulder	75	(80)*
10.	Ankylosis of shoulder joint —		
	in optimum position	35	
	in worst position	55	
11.	Loss of arm between elbow and shoulder	75	(80)*
12.	Loss of arm at elbow	75	(80)*
13.	Ankylosis of the elbow joint —		
	in optimum position	30	
	in worst position	50	
14.	Loss of arm between wrist and elbow	70	(75)*
15.	Loss of hand at wrist	70	(75)*
16.	Ankylosis of wrist joint —		
	in optimum position	30	
	in worst position	40	
17.	Loss of 4 fingers and thumb of one hand	70	(75)*
18.	Loss of 4 fingers of one hand	60	(65)*
19.	Loss of thumb —		
	both phalanges	30	(32)*
	one phalanx	20	(22)*
	guillotine loss of tip without loss of bone	8	
20.	Ankylosis of —		
	interphalangeal joint of the thumb	4	
	metacarpophalangeal joint of the thumb	8	
	all these 2 joints of the thumb	12	

*Figures in brackets refer to percentage applicable to preferred hand.

Appendix 1 (cont.)

Item		Percentage of loss of earning capacity	
21.	Loss of index finger —		
	3 phalanges	14	(15)*
	2 phalanges	11	(12)*
	one phalanx	9	(10)*
	guillotine amputation of tip without loss of bone	4	
22.	Ankylosis of —		
	distal interphalangeal joint of the index finger	2	
	proximal interphalangeal joint of the index finger	3	
	metacarpophalangeal joint of the index finger	4	
	all these 3 joints of the index finger	9	
23.	Loss of middle finger —		
	3 phalanges	12	
	2 phalanges	9	
	one phalanx	7	
	guillotine amputation of tip without loss of bone	2	
24.	Ankylosis of —		
	distal interphalangeal joint of the middle finger	2	
	proximal interphalangeal joint of the middle finger	2	
	metacarpophalangeal joint of the middle finger	3	
	all these 3 joints of the middle finger	7	
25.	Loss of ring finger —		
	3 phalanges	8	
	2 phalanges	6	
	one phalanx	5	
	guillotine amputation of tip without loss of bone	2	
26.	Ankylosis of —		
	distal interphalangeal joint of ring finger	1	
	proximal interphalangeal joint of ring finger	2	
	metacarpophalangeal joint of ring finger	2	
	all these 3 joints of the ring finger	5	
27.	Loss of little finger —		
	3 phalanges	7	
	2 phalanges	6	
	one phalanx	5	
	guillotine amputation of tip without loss of bone	2	

*Figures in brackets refer to percentage applicable to preferred hand.

Item		Percentage of loss of earning capacity	
28.	Ankylosis of —		
	distal interphalangeal joint of little finger	1	
	proximal interphalangeal joint of little finger	1	
	metacarpophalangeal joint of little finger	2	
	all these 3 joints of the little finger	4	
28A.	In the case of a loss of a whole finger of one hand, the following percentages shall be awarded in addition to those provided for the loss of a single finger. In this item "finger" does not include "thumb". These additional percentages shall be awarded when 2 or more fingers of the same hand are lost in the same injury; or when one or more fingers of the same hand are lost in the same injury to a hand of which one or more fingers were lost in a previous injury, whether or not the previous injury was work related or whether compensation was paid or is payable for the loss —		
	loss of a second finger of the hand	6	(7)*
	loss of a third finger of the hand	6	(7)*
	loss of the last finger of the hand	7	(9)*
29.	Loss of metacarpals —		
	first (additional)	8	
	second, third, fourth or fifth (additional)	3	
30.	Loss of leg at hip	80	
31.	Loss of leg at or above knee	75	
32.	Ankylosis of hip joint —		
	in optimum position	35	
	in worst position	50	
33.	Loss of leg below knee	65	
34.	Ankylosis of knee joint —		
	in optimum position	25	
	in worst position	35	
35.	Loss of foot	55	
36.	Ankylosis of ankle joint —		
	in optimum position	15	
	in worst position	25	

*Figures in brackets refer to percentage applicable to preferred hand.

Item		Percentage of loss of earning capacity
37.	Loss of toes —	
	all of one foot	20
	great, both phalanges	14
	great, one phalanx	4
	other than great, for each one toe lost	3
38.	Loss of sight of one eye	50
39.	Loss of hearing of one ear	30
40.	Total loss of hearing, both ears	100
41.	Loss or deformity of outer ear	2
42.	Loss of entire nose	25
43.	Apparent deformity of nose	5
44.	Loss of spleen	5
45.	Loss of one kidney —	
	if the other kidney is normal	15
	if the other kidney is abnormal	65 - 90
46.	Urethral injury —	
	if urethral stricture requires dilation less frequently than once every 2 weeks	5
	if urethral stricture requires dilation once every 2 weeks or more frequently	10 - 20
	if urethra is severed	20
47.	Impairment of urinary bladder function —	
	impairment in form of urgency or other mild urinary bladder disorder	5 - 12
	good reflex activity without voluntary control	13 - 22
	poor reflex activity without voluntary control	23 - 37
	no reflex and no voluntary control	38 - 60
48.	Impairment of anorectal function —	
	limited voluntary control	0 - 7
	as reflex regulation but no voluntary control	8 - 17
	no reflex regulation and no voluntary control	18 - 25

Appendix 2 List of occupational diseases
(Second Schedule of the Employees' Compensation Ordinance)

Item	Description of occupational disease	Nature of trade, industry or process	Prescribed period for purposes of Section 32
A.	**CAUSED BY PHYSICAL AGENTS**		
A1	Inflammation, ulceration or malignant disease of the skin or subcutaneous tissues or of the bones, or blood dyscrasia, or cataract, due to electro-magnetic radiations (other than radiant heat), or to ionising particles	Any occupation involving exposure to electro-magnetic radiations other than radiant heat, or to ionising particles.	10 years.
A2	Heat cataract	Any occupation involving frequent or prolonged exposure to rays from molten or red-hot material.	3 years.
A3	Dysbarism, including decompression sickness, barotrauma and osteonecrosis	Any occupation involving subjection to compressed or rarefied air or other gases or gaseous mixtures.	1 year. In the case of arthritis – 5 years.
A4	Cramp of the hand or forearm due to repetitive movements	Any occupation involving prolonged periods of handwriting, typing or other repetitive movements of the fingers, hand or arm.	1 year.
A5	Subcutaneous cellulitis of the hand (Beat hand)	Any occupation involving manual labour causing severe or prolonged friction or pressure on the hand.	1 year.

Item	Description of occupational disease	Nature of trade, industry or process	Prescribed period for purposes of Section 32
A6	Bursitis or subcutaneous cellulitis arising at or about the knee due to severe or prolonged external friction or pressure at or about the knee (Beat knee)	Any occupation involving manual labour causing severe or prolonged external friction or pressure at or about the knee.	1 year.
A7	Bursitis or subcutaneous cellulitis arising at or about the elbow due to severe or prolonged external friction or pressure at or about the elbow (Beat elbow)	Any occupation involving manual labour causing severe or prolonged external friction or pressure at or about the elbow.	1 year.
A8	Traumatic inflammation of the tendons of the hand or forearm (including elbow), or of the associated tendon sheaths	Any occupation involving manual labour, or frequent or repeated movements of the hand or wrist.	1 year.
A9	Carpal tunnel syndrome	Any occupation involving repetitive use of hand-held powered tools whose internal parts vibrate so as to transmit that vibration to the hand, but excluding those which are solely powered by hand.	1 year.
B. CAUSED BY BIOLOGICAL AGENTS			
B1	Anthrax	Any occupation involving contact with animals infected with anthrax or the handling (including the loading and unloading or transport) of animal products or residues.	1 month.

Item	Description of occupational disease	Nature of trade, industry or process	Prescribed period for purposes of Section 32
B2	Glanders	Any occupation involving contact with equine animals or their carcasses.	1 month.
B3	Infection by leptospira	Any occupation involving - (a) work in places which are, or are liable to be, infested by rats, field mice or voles, or other small mammals; (b) work at dog kennels or the care or handling of dogs; (c) contact with bovine animals or their meat products or pigs or their meat products	3 months.
B4	Pulmonary disease due to the inhalation of the dust of mouldy hay or other mouldy vegetable produce, and characterized by symptoms and signs attributable to a reaction in the peripheral part of the bronchopulmonary system, and giving rise to a defect in gas exchange (Farmer's lung)	Any occupation involving exposure to the dust of mouldy hay or other mouldy vegetable produce by reason of employment - (a) in agriculture, horticulture or forestry; or (b) loading or unloading or handling in storage such hay or other vegetable produce; or (c) handling bagasse.	1 year.
B5	Infection by organisms of the genus brucella	Any occupation involving contact with - (a) animals infected by brucella, or their carcasses or parts thereof, or their untreated products; or (b) laboratory specimens or vaccines of, or containing, brucella.	1 year.

Item	Description of occupational disease	Nature of trade, industry or process	Prescribed period for purposes of Section 32
B6	Tuberculosis	Any occupation involving close and frequent contacts with a source or sources of tuberculosis infection by reason of employment - (a) in the medical treatment or nursing of a person or persons suffering from tuberculosis, or in a service ancillary to such treatment or nursing; (b) in attendance upon a person or persons suffering from tuberculosis, where the need for such attendance arises by reason of physical or mental infirmity; (c) as a research worker engaged in research in connection with tuberculosis; (d) as a laboratory worker, pathologist, or post-mortem worker, where the occupation involves working with materials which are a source of tuberculosis infection, or in any occupation ancillary to such employment.	6 months.
B7	Parenterally contracted viral hepatitis	Any occupation involving contact with - (a) human blood or human blood products; or (b) a source of viral hepatitis.	6 months.
B8	Infection by streptococcus suis	Any occupation involving contact with pigs infected by streptococcus suis, or with the carcasses, products or residues of pigs so infected.	1 month.
B9	Avian chlamydiosis	Any occupation involving contact with birds infected with chlamydia psittaci, their remains or untreated products.	1 month.

Item	Description of occupational disease	Nature of trade, industry or process	Prescribed period for purposes of Section 32
B10	Legionnaires' disease	Any occupation involving the repair, maintenance or service of - (a) cooling systems that use fresh water; or (b) hot water service systems.	1 month.
B11	Severe acute respiratory syndrome	Any occupation involving close and frequent contacts with a source or sources of severe acute respiratory syndrome infection by reason of employment – (a) in the medical treatment or nursing of a person suffering from severe acute respiratory syndrome, or in a service ancillary to that treatment or nursing; (b) in attending to a person suffering from severe acute respiratory syndrome, where the need for attendance arises by reason of the person's physical or mental infirmity; (c) in identifying, detecting, tracing, isolating, detaining, supervising or surveillance of a person suffering from severe acute respiratory syndrome; (d) as a research worker engaged in research in connection with severe acute respiratory syndrome, or in a service ancillary to that research; or (e) as a laboratory worker, pathologist, post-mortem worker or funeral services worker, where the employment involves the handling of any human body or other materials that are a source of severe acute respiratory syndrome infection, or in a service ancillary to that handling.	1 month.

Item	Description of occupational disease	Nature of trade, industry or process	Prescribed period for purposes of Section 32
B12	Avian influenza A	Any occupation involving close and frequent contacts with a source or sources of avian influenza A infection by reason of employment – (a) as a worker engaged in the handling of poultry or birds or their uncooked remains or residues, or their untreated products, that are a source of avian influenza A infection, or in a service ancillary to that handling; (b) as a research worker engaged in research in connection with avian influenza A, or in a service ancillary to that research; or (c) as a laboratory worker engaged in the handling of materials that are a source of avian influenza A infection, or in a service ancillary to that handling.	14 days.

C. CAUSED BY CHEMICAL AGENTS

C1	Poisoning by lead or a compound of lead	Any occupation involving the use or handling of, or exposure to the fumes, dust or vapour of, lead or a compound of lead, or a substance containing lead.	2 years. In the case of nephritis – 4 years.
C2	Poisoning by manganese or a compound of manganese	Any occupation involving the use or handling of, or exposure to the fumes, dust or vapour of, manganese or a compound of manganese, or a substance containing manganese.	2 years.

Item	Description of occupational disease	Nature of trade, industry or process	Prescribed period for purposes of Section 32
C3	Poisoning by phosphorus or an inorganic compound of phosphorus or the anti-cholinesterase or pseudo anti-cholinesterase action of organic phosphorus compounds	Any occupation involving the use or handling of, or exposure to the fumes, dust or vapour of, phosphorus or a compound of phosphorus, or a substance containing phosphorus.	3 years.
C4	Poisoning by arsenic or a compound of arsenic	Any occupation involving the use or handling of, or exposure to the fumes, dust or vapour of, arsenic or a compound of arsenic, or a substance containing arsenic.	1 year.
C5	Poisoning by mercury or a compound of mercury	Any occupation involving the use or handling of, or exposure to the fumes, dust or vapour of, mercury or a compound of mercury, or a substance containing mercury.	2 years.
C6	Poisoning by carbon bisulphide	Any occupation involving the use or handling of, or exposure to the fumes, or vapour of, carbon bisulphide or a compound of carbon bisulphide, or a substance containing carbon bisulphide.	1 year.
C7	Poisoning by benzene or a homologue of benzene	Any occupation involving the use or handling of, or exposure to the fumes of, or vapour containing, benzene or any of its homologues.	1 year.
C8	Poisoning by a nitro- or amino- or chloro-derivative of benzene or of a homologue of benzene, or poisoning by nitro-chlorobenzene	Any occupation involving the use or handling of, or exposure to the fumes of, or vapour containing, a nitro- or amino- or chloro-derivative of benzene or nitro-chlorobenzene.	1 year. In the case of neoplasm - 10 years.

Appendix 2 (cont.)

Item	Description of occupational disease	Nature of trade, industry or process	Prescribed period for purposes of Section 32
C9	Poisoning by dinitrophenol or a homologue or by substituted dinitrophenols or by the salts of such substances	Any occupation involving the use or handling of, or exposure to the fumes of, or vapour containing, dinitrophenol or a homologue or substituted dinitrophenols or the salts of such substances.	1 year.
C10	Poisoning by halogen derivatives of hydrocarbons of the aliphatic series	Any occupation involving the use or handling of, or exposure to the fumes of, or vapour containing, halogen derivatives of hydrocarbons of the aliphatic series.	1 year.
C11	Poisoning by diethylene dioxide (dioxan)	Any occupation involving the use or handling of, or exposure to the fumes of, or vapour containing, diethylene dioxide (dioxan).	1 year.
C12	Poisoning by chlorinated naphthalene	Any occupation involving the use or handling of, or exposure to the fumes of, or dust or vapour containing, chlorinated naphthalene.	1 year.
C13	Poisoning by oxides of nitrogen	Any occupation involving the use or handling of, or exposure to the fumes of, or dust or vapour containing, oxides of nitrogen.	1 year.
C14	Poisoning by beryllium or a compound of beryllium	Any occupation involving the use or handling of, or exposure to the fumes, dust or vapour of, beryllium or a compound of beryllium or a substance containing beryllium.	1 year.
C15	Poisoning by cadmium	Any occupation involving the use or handling of, or exposure to the dust or fumes of, cadmium.	1 year.

Item	Description of occupational disease	Nature of trade, industry or process	Prescribed period for purposes of Section 32
C16	Dystrophy of the cornea (including ulceration of the corneal surface) of the eye	Any occupation involving the use or handling of, or exposure to, arsenic, tar, pitch, bitumen, mineral oil (including paraffin), soot or any compound, product, (including quinone or hydroquinone) or residue of any of these substances.	1 year.
C17	Primary epitheliomatous cancer of the skin	Any occupation involving the use or handling of, or exposure to, arsenic, tar, pitch, bitumen, mineral oil (including paraffin), soot or any compound, product, or residue of any of these substances.	10 years.
C18	Chrome ulceration including perforation of nasal septum	Any occupation involving the use or handling of chromic acid, chromate or bichromate of ammonium, potassium, sodium or zinc, or any preparation or solution containing any of these substances.	1 year.
C19	Primary neoplasm of the epithelial lining of the urinary tract, (renal pelvis, ureter, bladder and urethra) including papilloma, carcinoma-in-situ and invasive carcinoma	Any occupation involving the production, use or handling of alpha-naphthylamine, beta-naphthylamine or methylene-bis- ortho-chloraniline, or diphenyl substituted by at least one nitro or primary amino group or by at least one nitro and primary amino group (including benzidine) and any of the above substances if further ring substituted by halogeno methyl or methoxyl group and the salts of any of the above substances and the production of auramine and magenta.	20 years.
C20	Peripheral poly-neuropathy	Any occupation involving the production, use or handling of, or exposure to, any physical form of or any preparation or solution containing n-Hexane or methyl-n-butyl ketone.	1 year.

Item	Description of occupational disease	Nature of trade, industry or process	Prescribed period for purposes of Section 32
C21	Localised new growth of the skin, papillomatous or keratotic	Any occupation involving the use or handling of, or exposure to, arsenic, tar, pitch, bitumen, mineral oil (including paraffin), soot or any compound, product or residue of any of these substances.	10 years.
C22	Occupational vitiligo	Any occupation involving the use or handling of, or exposure to, paratertiary-butyl phenol, paratertiary-butyl catechol, para-amyl-phenol, hydroquinone or the monobenzyl or monobutyl ether of hydroquinone.	1 year.
D.	**CAUSED BY MISCELLANEOUS AGENTS**		
D1	Inflammation or ulceration of the skin produced by dust, liquid or vapour (including the condition known as chloracne but excluding chrome ulceration)	Any occupation involving exposure to dust, liquid or vapour, capable of irritating the skin.	1 year.
D2	Inflammation or ulceration of the mucous membrane of the upper respiratory passages or mouth produced by dust, liquid or vapour	Any occupation involving exposure to dust, liquid or vapour.	1 year.
D3	Carcinoma of the nasal cavity or associated air sinuses (nasal carcinoma)	Any occupation involving the manufacture or repair of wooden goods or the manufacture or repair of footwear or components of footwear made wholly or partly of leather or fibre board.	10 years.

Item	Description of occupational disease	Nature of trade, industry or process	Prescribed period for purposes of Section 32
D4	Byssinosis	Any occupation involving exposure to raw cotton dust.	1 year.
D5	Occupational asthma	Any occupation involving the use or handling of, or exposure to, any of the following agents which may irritate or sensitise the respiratory system – (a) isocyanates; (b) platinum salts; (c) fumes or dusts arising from the manufacture, transport or use of hardening agents (including epoxy resin curing agents) based on phthalic anhydride, trimellitic anhydride or triethylenet-etramine; (d) fumes arising from the use of rosin as a soldering flux; (e) formaldehyde; (f) proteolytic enzymes; (g) animals or insects used for the purposes of research or education or in laboratories; (h) dusts arising from the sowing, cultivation, harvesting, drying, handling, milling, transport or storage of barley, oats, rye, wheat or maize, or the handling , milling, transport or storage of meal or flour made therefrom. (i) any other sensitising agent inhaled at work.	1 month.

Part II

Frequently Asked Questions on Common Employees' Compensation Issues

(I) Compulsory Insurance

Q1 What should an employer take note of when taking out an employees' compensation insurance policy?

A1 When taking out an employees' compensation insurance policy, apart from ensuring the minimum insurance cover meets the statutory requirements, employers should also take note of the followings:

- No deduction should be made from the earnings of an employee for defraying the cost of taking out employees' compensation insurance policies;
- Ensuring that all employees are covered by the insurance policy and that when the number of employees increases, the employer should notify the insurer accordingly as soon as possible;
- Giving a detailed declaration to the insurer on the annual earnings and job duties of individual employees;
- Listing the usual work locations of employees;
- Stating specifically those employees who are required to work outside Hong Kong or take overseas business trips;
- Stating specifically whether any work is sub-contracted to sub-contractor and stating clearly whether the employees of the sub-contractor are covered by the policy; and
- Bewaring of the expiry date of the insurance policy and taking action to renew the insurance policy in advance to ensure that the insurance cover is not interrupted and to avoid contravention of the Ordinance.

Q2 Is an employer required to notify his insurer when his employee sustains a work injury?

A2

- The employer must notify the Commissioner for Labour of any work accident or prescribed occupational disease by Form 2, Form 2A or Form 2B, as the case may be. Work injury cases in general should be reported in 14 days' time while the fatal cases in 7 days' time;
- The employer should notify the insurer (not the insurance broker) as soon as possible, within the stipulated period and in the specified format (in writing or by specified form) required by the insurer;
- The employer should also keep a record of the periodical payments (i.e. payments for sick leaves for work injury) paid to the injured employee, the original copies of the Certificate of Compensation Assessment (Form 5) issued by the Labour Department and / or the Certificate of Assessment (Form 7) issued by the Employees' Compensation Assessment Board, medical certificates and receipts in respect of medical expenses properly; and submit the relevant documents to the insurer within the stipulated period and in the specified format required by the insurer for indemnifying the amount of compensation already paid to the injured employee; and
- On receiving any legal documents, including an order or a summons issued by the Court, the employer should notify his insurer the soonest possible or seek legal advice.

(II) Notification of Accident

Q3 What should an employee do if he suspects the employer has not yet reported his work injury or prescribed occupational disease to the Commissioner for Labour?

A3 If the injured employee has doubt as to whether his employer has reported the work injury or the prescribed occupational disease to the Commissioner for Labour, he could notify the Employees' Compensation Division of the Labour Department. Its branch offices handle employees' compensation claims according to the area where the work injury occurred, or according to the place of employment for prescribed occupational disease (see "Introduction"). As for fatal cases, family members of the deceased employee may approach the Fatal Cases Office. If it is found that the notification from the employer has not yet been received by the office, the office will, upon receipt of the notification of the injured employee or family members of the deceased employee, write to the employer to explain the requirement of the Ordinance and ask the employer to report the work injury or the prescribed occupational disease as soon as possible.

(III) Fatal or Non-Fatal Cases outside Hong Kong

Q4 If an employee sustains a work injury outside Hong Kong, would he be covered by the Ordinance?

A4 According to the Ordinance, if an employee sustains an injury or dies **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 this Ordinance even if the employee might have committed acts of faults or negligence when the accident occurred.

The Ordinance applies to employees employed in Hong Kong by local employers injured while working outside Hong Kong. Besides, an accident to an employee resulting in injury or death is deemed to arise out of and in the course of his employment if it happens while the employee is travelling, for the purpose of and in connection with his employment by any means of transport permitted by his employer, between Hong Kong and any place outside Hong Kong or between any other such places outside Hong Kong.

Even if the employer is a person carrying on business outside Hong Kong, or a crew member is working on a foreign ship, the Ordinance still applies if the employers submit to the jurisdiction of the Courts of Hong Kong and the employees / crew members have been recruited or engaged in Hong Kong.

Q5 In respect of the employees' compensation, are there any differences between employees who suffered work injury within and outside Hong Kong?

A5 No difference basically, but employees injured outside Hong Kong should take note of the followings:

- **Foreign compensation:** compensation payable under the Ordinance to an employee shall be reduced by the amount of any foreign compensation paid to him in respect of the same injury.

- **Periodical Payments:** the employer shall pay the injured employee, during the period of temporary incapacity, 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. Temporary incapacity refers to a period of absence from duty certified to be necessary by a registered medical practitioner, a registered Chinese medicine practitioner, a registered dentist or an Employees' Compensation Assessment Board is deemed to be a period of temporary incapacity. For employees receiving medical treatment outside Hong Kong, the temporary incapacity shall be determined by the Assessment Board. Paper Medical Clearance is inapplicable for such cases.

- **Medical Expenses:** an employer is also liable to pay the medical expenses for medical treatment given outside Hong Kong in respect of a work injury sustained by an employee outside Hong Kong and arising out of and in the course of that employee's employment. The

daily maximum amount is the same as that for injuries sustained in Hong Kong. The medical treatment shall be the treatment given by, or under the supervision of, a person who is allowed to practise medicine, surgery, dentistry, chiropractic, physiotherapy or occupational therapy in the place where such medical treatment is given. Where necessary, an employer or an employee may apply to the Commissioner for Labour for a certificate for determining the amount of medical expenses to be paid by the employer.

- **Cost of Prostheses and Surgical Appliances:** if an employee sustains a work injury outside Hong Kong in an accident arising out of and in the course of his employment, and submits himself to medical treatment by or under the supervision of a person who is allowed to practise medicine, surgery or dentistry in the place where such medical treatment is given, the employer shall, if the Prostheses and Surgical Appliances Board approves, be liable to pay for the cost of supplying and fitting the prosthesis or surgical appliance required, subject to a maximum amount, which is the same as that for injuries sustained in Hong Kong.

Q6 What should employer and employee take note of if an employee sustains a work injury outside Hong Kong and receives medical treatment at the place of accident?

A6 **<u>Points to Note for employers</u>**

- The employer must notify the Commissioner for Labour of any work accident or prescribed occupational disease by Form 2, Form 2A or Form 2B, as the case may be. Work injury cases in general should be reported in 14 days' time while the fatal cases in 7 days' time;

- The employer should notify the insurer (not the insurance broker) as soon as possible, within the stipulated period and in the specified format (in writing or by specified form) required by the insurer;

- The employer should also keep a record of the periodical payments (i.e. payments for sick leaves for work injury) paid to the injured employee, the original copies of the Certificate of Compensation Assessment (Form 5) issued by the Labour Department and / or the Certificate of Assessment (Form 7) issued by the Employess' Compensation Assessment Borad, medical certificates and receipts in respect of medical expenses properly; and submit the relevant documents to the insurer within the stipulated period and in the specified format required by the insurer for indemnifying the amount of compensation already paid to the injured employee;and

- On receiving any legal documents, including an order or a summons issued by the Court, the employer should notify his insurer the soonest possible or seek legal advice.

Points to note for employees

- Notify the employer/supervisor/human resources department of the work injury immediately regardless of whether it is serious or not, and submit to the employer originals of medical certificates and receipts for medical expenses in relation to medical consultation and follow-up treatment as soon as possible. Remember to keep copies.

- When receiving medical treatment outside Hong Kong, remember to state clearly to the attending medical staff the cause and course of the injury and keep all medical records, including attendance slips, appointment slips, referral letters, medical certificates, admission slips and medical reports etc. This will on one hand facilitate medical staff to make proper diagnosis and offer appropriate treatment, and on the other hand assist the process of medical clearance and assessment by Occupational Medicine Unit of the Labour Department and the Assessment Board respectively.

- If necessary, receive medical treatment from registered medical practitioner, registered Chinese medicine practitioner or registered dentist in Hong Kong, and provide the medical information to the Labour Department for follow up.

(IV) Suspected Cases of Prescribed Occupational Disease

Q7 What should an employee do if he suspects he has contracted an occupational disease specified by the Ordinance?

A7 If an employee suspects being contracted an occupation disease specified in Second Schedule of the Ordinance, he should seek medical treatment as soon as possible. He should describe to his treating doctor full details of the illness, as well as the occupation, to facilitate the doctor to make diagnosis. If the treating doctor finds or reasonably believes that the employee's illness is one of the occupational diseases specified in Second Schedule of the Ordinance, and believes that such illness was or may have been attributable to an occupation specified in the Schedule in which he was employee at any time within the prescribed period, he should notify the Commissioner for Labour the employees' medical condition by filling in the LD483. The Occupational Health Service (OHS) of the Labour Department will study the LD483 and relevant information and take follow up action. (The LD483 is available by calling OHS Office at 2852 4041, or by downloading from https://www.labour.gov.hk/eng/form/oh/ld483.PDF).

Q8 What should an employee do if it is confirmed that he has contracted an occupational disease specified by the Ordinance?

A8 The employee should receive treatment as advised by his treating doctor and submit to his employer relevant confirmation document and original copy of medical certificates, with personal copies, as soon as possible. He should also remind his employer to notify the Commissioner for Labour, within 14 days in prescribed form (Form 2A), of any prescribed

occupational disease that comes to his knowledge, irrespective of whether the occupational disease gives rise to any liability to pay compensation. If the employer fails to do so, the employee may, according to his place of employment, approach the relevant office of the Employees' Compensation Division of the Labour Department (see "Introduction") for assistance. Upon receipt of employee's information and having ascertained that the employer has yet reported the occupational disease to the Labour Department, the Employees' Compensation Division will issue a letter requesting the employer to report the disease in accordance with the Employees' Compensation Ordinance. Upon receipt of Form 2A submitted by the employer, the Employees' Compensation Division will follow up promptly.

(V) Calculation of Earnings

Q9 What should be taken as the monthly earnings of an injured employee working in individual industry (such as the construction industry) which features an irregular pattern of working days?

A9 The "monthly earnings*" is to be taken as the earnings for the month immediately preceding the date of the accident, or the average monthly earnings for the previous 12 months of employment (or any lesser period if the employee has not been so long employed), whichever calculation is more favourable to the employee.

If the employee in question is daily rated, and that he actually worked for 19 days in the month immediately preceding the date of the accident, the employee's earnings for the one month immediately preceding the date of the accident will be:

Earnings of the employee for the month immediately preceding the date of the accident = daily wages x 19 days

Suppose that the employee had only worked for the employer for 4 months before the date of the accident, the average monthly earnings of the employee in the less-than-12-month period is as follows:

$$\text{Average monthly earnings of the employee in the less-than-12-month employment} = \frac{\text{Actual total earnings of the employee in the past 4 months}}{4}$$

Note: * Please refer to Chapter 6 for the definition of "earnings".

(VI) Calculation of Medical Expenses

Q10 Can an employee receive medical treatment outside Hong Kong if he sustains a work injury in Hong Kong?

A10 According to the Ordinance, unless the employer has entered into an agreement in writing with the employee, the employer is not liable to pay the employee medical expenses in respect of medical treatment given outside Hong Kong in relation to an accident occurring in Hong Kong.

Q11 Would the employer still be liable to pay the medical expenses if the injured employee purchases medicines pursuant to the same prescription on a second or subsequent occasions by himself?

A11 According to the Ordinance, medical expenses include the cost of medicines prescribed by a registered medical practitioner, a registered Chinese medicine practitioner or a registered dentist for the direct treatment of the relevant injury. Unless the prescription contains a direction that the medicines are to be dispensed for a stated number of times and the medicines are dispensed in accordance with that direction, the employee shall not be reimbursed for the same prescription on the subsequent occasions. And the amount of medical expenses the employee may recover is subject to the daily maximum of medical expenses payable.

(VII) Procedures for Medical Clearance and Assessment of Permanent Loss of Earning Capacity

Q12 How would an injured employee go through the procedure for medical clearance?

A12 (i) For the work injury with a period of temporary incapacity not exceeding 7 days and with no permanent incapacity involved, the case should be settled by "direct payment" (employer to submit Form 2B) or "determination of compensation by agreement according to the Ordinance" (employer to submit Form 2 and complete Part H "direct settlement"). Employer pays periodical payments and medical expenses to the employee. Medical clearance or arrangement for assessment on the loss of earning capacity is not required for such cases.

(ii) For any other cases, the Employees' Compensation Division of the Labour Department, upon receipt of the notification of accident from the employer, will issue a "Medical Clearance Notification" and other related information to the injured employee. The employee should approach the Occupational Medicine Unit of the Labour Department for medical clearance according to the "Medical Clearance Notification". When approach the Occupational Medicine Unit, the employee should bring along the photocopies of all medical certificates, relevant appointment slips and all other related documents.

Q13 Will an injured employee be arranged with medical assessment?

A13 An injured employee may not be arranged with medical assessment. Where it appears that permanent incapacity may result from the injury, the Occupational Medicine Unit will arrange the injured employee to attend the Employees' Compensation (Ordinary Assessment) Board for assessing the percentage of loss of earning capacity permanently

caused by the injury. The employee should attend as scheduled. The Assessment Board will issue and send a certificate of assessment to the employer and the employee separately by mail soon after the assessment. If it could be substantiated that the injury sustained by the employee, including injuries to limbs and body parts, functional impairment of organs and mental impairment, etc, are related to the work accident and have caused temporary and/or permanent incapacity, the amount of employees' compensation would be assessed accordingly.

(VIII) Settlement of Employees' Compensation Cases by Paper Medical Clearance

Q14 Under what circumstances that an employees' compensation case can be settled by "Paper Medical Clearance"?

A14 To speed up the settlement of employees' compensation cases, the employer and employee may agree to adopt the "Paper Medical Clearance" to facilitate the issue of the Certificate of Compensation Assessment (Form 5).

The application must fulfill **all of** the following conditions:

- there is no dispute over the case;
- the period of sick leave should last for more than 7 days (if the period of sick leave does not exceed 7 days, the employer and the employee should settle the case via direct payment by employer or determination of compensation by agreement in accordance with section 10(11) or section 16CA of the Ordinance respectively);
- the injury does not lead to any permanent incapacity;
- the injury does not involve damage to teeth or the need for fitting of prostheses or surgical appliances;

- all medical certificates are issued by registered medical practitioners, registered Chinese medicine practitioners or registered dentists;
- the employee's sick leave has already come to an end;
- the employer must provide copy of all of the employee's medical certificates in respect of the employees' compensation case; and
- for occupational disease case, it should be one specified in the Second Schedule of the Ordinance as advised by the Occupational Health Officer.

If the case meets the above requirements, an employer, with the agreement of an employee, may submit an application to the office of Employees' Compensation Division to settle the employees' compensation case by "Paper Medical Clearance". If the application is approved, the employee will not be required to attend the medical clearance in person at the Occupational Medicine Unit of the Labour Department. The application form is available at the offices of the Employees' Compensation Division (see "Introduction").

Q15 What should an employer do if the employee fails to complete medical clearance or assessment procedure?

A15 In case an employees' compensation case remains unsettled due to the employee's failure to complete medical clearance or assessment procedure long after he has recovered or returned to work, an employer may consider applying for "Paper Medical Clearance".

In addition to the conditions mentioned in A14 above, it is also required to fulfill the following two conditions:

- the case cannot be settled due to failure of the injured employee to complete the medical clearance / assessment procedure despite repeated requests made by the Labour Department; and

- the employer has proof on the clearance of all periodical payments.

If the case meets the above requirements, an employer may, together with relevant documents, submit an application to the case handling office of the Employees' Compensation Division. The Employees' Compensation Division would send a final reminder on medical clearance to the injured employee where appropriate. If the injured employee still fails to act accordingly, the Employees' Compensation Division would consider presuming that the injured employee has not suffered any permanent incapacity or has given up his rights to claim compensation for permanent incapacity and issue a Certificate of Compensation Assessment (Form 5) to employer and employee so as to settle the case. The application form is available at the offices of the Employees' Compensation Division (see "Introduction").

(IX) Employees' Compensation after Resignation of Injured Employee

Q16 An employee resigned after a work-related accident, but the case has not yet settled. Is the employer still liable to pay periodical payments and other compensations to the ex-employee who is granted further sick leave by a registered medical practitioner, a registered Chinese medicine practitioner or a registered dentist due to the work injury?

A16 If the ex-employee can produce medical certificates issued by registered medical practitioners, registered Chinese medicine practitioners or registered dentists certifying that a further period of absence from duty is necessary in relation to the work injury (i.e. the period of temporary incapacity), the employer is still liable to pay him periodical payments for the sick leave so granted and taken, irrespective of whether the employment relationship still exists. The employer is also liable to pay the medical expenses and compensation for permanent total or partial incapacity as stipulated in the Ordinance.

(X) Doubtful Employees' Compensation Case

Q17 How should an employer handle a doubtful employees' compensation case?

A17 If the employer is in doubt about the cause of an employee's injury or sick leave, he should conduct preliminary investigation as soon as practicable, including interviewing the injured employee to obtain details of the accident, inquiring of the witnesses about the circumstances, assessing the possibility of the work environment leading to the accident, and requesting the attending registered medical practitioner, registered Chinese medicine practitioner or registered dentist of the injured employee to provide a medical report for reference. On the other hand, the employer can contact the insurer for appropriate follow-up action, such as arranging a medical examination to be conducted by a registered medical practitioner, registered Chinese medicine practitioner or registered dentist named by the employer for the injured employee. The employer may also seek professional legal advice. On encountering a suspected fraudulent case, an employer may consider forwarding the evidence collected and other relevant information to the Police for action. If the employer is still in doubt about the work injury case, he may pass his views and the relevant information to the Labour Department. The Labour Department will give its views to both parties on the likelihood of the case being a work injury from the medical point of view and according to the provisions of the Ordinance. Please take note that the Labour Department does not have the authority to make adjudication on any dispute of the case. If the employer and the employee could not reach any settlement with the assistance of the Labour Department, the case shall be determined by the Court.

Q18 If an employer considers that he is not obliged to take up any statutory obligation to pay any compensation in relation to an accident, is he still required to notify the Commissioner for Labour of the accident?

A18 According to section 15 of the Ordinance, an employer is required to notify the Commissioner for Labour of any accident in the manner set out in the Ordinance, irrespective of whether the accident gives rise to any liability to pay compensation. If employer is in doubt about whether a work injury is work-related or cannot reach a decision over admission of liability, he should inform this department of his query in reporting the injury at work, either by making a note in the Form 2, or attaching a full account of relevant information available to the employer. The Employees' Compensation Division of the Labour Department would then tender our advice and assistance as appropriate.

(XI) Others

Q19 What should an injured person do when being approached by recovery agents peddling claims recovery service?

A19 If approached by recovery agents peddling claims recovery service, an injured person should not disclose to them any personal particulars, discuss with them his injury case or sign any document, so as to avoid his personal information being abused or he may face unanticipated legal consequences and financial liabilities. The Department of Justice holds that the activities of recovery agents may constitute offences of champerty and maintenance, and the interests of the victims of personal injury cases may be jeopardized as their rights to compensation may not be fully protected. Recovery agents may draw up agreements with victims in work or traffic accident requiring the latter to share a substantial portion of the compensation recovered. Under the laws of Hong Kong, unlawfully maintaining or sharing the benefits of legal proceedings may constitute criminal offences, which are subject to a fine and up to seven years' imprisonment on conviction. The injured in any accident, including work accident and traffic accident, should seek proper legal advice, or assistance from solicitors or government departments such as the Legal Aid Department, the Labour Department and the Social Welfare Department. Anyone who feels being harassed should contact the Police immediately for assistance.

List of Commonly Used Prescribed Forms under the Employees' Compensation Ordinance

Form	Name	Content
Form 2	Notice by Employer of the Death of an Employee or of an Accident to an Employee Resulting in Death or Incapacity	To report work accident
Form 2A	Notice by Employer of the Death or Incapacity of an Employee due to Occupational Disease	To report Occupational Disease
Form 2B	Notice by Employer of an Accident to an Employee resulting in Incapacity for a Period Not Exceeding 3 Days	To report work accident (sick leave not exceeding three days)
Form 5	Certificate of Compensation Assessment	To specify the amount of compensation
Form 6	Certificate of Review of Compensation Assessment	To specify the amount of review of compensation
Form 7	Certificate of Assessment - Employees' Compensation (Ordinary Assessment) Board	To specify the result of review of assessment
Form 8	Certificate of Assessment - Employees' Compensation (Special Assessment) Board	To specific the result of assessment
Form 9	Certificate of Review of Assessment - Employees' Compensation (Ordinary Assessment) Board	To specify the result of review of assessment
Form 10	Certificate of Review of Assessment - Employees' Compensation (Special Assessment) Board	To specify the result of review of assessment