

**A Concise Guide  
to the  
Employees' Compensation Ordinance  
(with frequently asked questions on  
common employees' compensation issues)**



**Labour Department  
January 2003 edition**

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## 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. While every care has been exercised in preparing this guide, the Ordinance remains the sole authority for the provisions of the law explained.

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 and answering some frequently asked questions in relation to the Employees' Compensation Ordinance.

If you have queries about the Employees' Compensation Ordinance, please make use of the **24-hour Labour Department Telephone Enquiry Service (2717 1771)**. For enquiries on individual compensation claims, please approach the relevant office of the Employees' Compensation Division, Labour Department:

<b>Hong Kong Offices</b> (cases in Hong Kong and outlying Islands)	16/F, Southorn Centre, 130 Hennessy Road, Hong Kong
<b>Kowloon Offices</b> (cases in Kowloon and cases involving government employees)	10/F, Cheung Sha Wan Government Offices, 303 Cheung Sha Wan Road, Kowloon
<b>Tsuen Wan &amp; Kwai Chung Offices</b> (cases in Tsuen Wan, Kwai Chung and Western New Territories)	6/F, Tsuen Wan Government Offices, 38 Sai Lau Kok Road, Tsuen Wan, New Territories
<b>Shatin Office</b> (cases in Shatin and Northern New Territories)	2/F, Shatin Government Offices, 1 Sheung Wo Che Road, Shatin, New Territories
<b>Fatal Cases Office</b>	6/F, Harbour Building, 38 Pier Road, Central, Hong Kong

Labour Department's Web Site: <http://www.labour.gov.hk>

## PART I

### Chapter 1 Application of the Ordinance

The Ordinance applies to all full-time or part-time employees who are employed under contracts of service or apprenticeship, including domestic helpers, agricultural employees, crew members of a Hong Kong ship, and any person employed in any capacity on board a Hong Kong ship.

The Ordinance also applies to employees employed by local employers in Hong Kong injured while working outside Hong Kong. Even if the employer is a person carrying on business outside Hong Kong, or the employee is a crew member of a foreign ship, 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 is in force in respect of such family members).

### Chapter 2 Liability of the Employer

#### • 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 employee is deemed to have been injured in an accident arising out of and in the course of employment if he sustains an injury 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 (except 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 self-inflicted;

- (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 alcohol and does not result in death or serious and permanent incapacity.

- **Occupational Disease**

Occupational diseases covered by the Ordinance are specified in the Second Schedule annexed to the Ordinance (Appendix 2).

An employee who suffers incapacity arising from an occupational disease is entitled to receive the same compensation as that payable to employees injured in occupational accidents, 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 prescribed period is stated in the Second Schedule annexed to the Ordinance (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, an employer may require the employee to be medically examined at the cost of the employer. An employee who refuses to comply with such requirement may forfeit his entitlement to compensation in the event of death or incapacity caused by an occupational disease.

For a disease outside the Second Schedule, an employee may still recover compensation under the Ordinance if such a disease is a personal injury by an accident arising out of and in the course of an employment.

- **Responsibility of an employee**

An injured employee should give the employer notice of the accident as soon as possible. Failure to give prompt notice may delay the claim of employees' compensation. Notice may be given orally or in writing on Form 1 or Form 1A, as the case may be, 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 or near the employer's premises, or at the place where he was working.

- **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, fails to give notice of an accident or makes or furnishes any false or misleading statement to the Commissioner for Labour commits an offence and is liable to a fine of HK\$50,000.

## Chapter 4 Settlement of Claims

### 1. Direct Payment

If the accident incapacitates the employee for not more than 3 days and does not result in permanent incapacity, the employer should make compensation for temporary incapacity on the employee's normal pay day. The employer should also pay the medical expenses concerned.

### 2. Direct Settlement

For injuries 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 and make such payment on or before the employee's normal pay day. The employer should also pay the medical expenses concerned.

### 3. Settlement by Certificate

For other cases, the Employees' Compensation Division of the Labour Department will issue to the employer and the employee a Certificate of Compensation Assessment (Form 5) stating the amount of compensation payable. If the injury results in temporary incapacity only, the certificate will be issued after sick leave clearance. If the injury is likely to result in permanent loss of earning capacity, the employee concerned will be referred to the Employees' Compensation Assessment Board for assessment and the certificate (Form 5) will be issued after the Certificate of Assessment (Form 7, 8, 9 or 10) is issued by the Assessment Board.

Any objection to the assessment by either party must be made in writing to the Commissioner for Labour within 14 days after the issue of certificate, with a copy of the objection notice sent to the other party. On receipt of the objection notice, the Employees' Compensation Division 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 \$490 or 5 % of the amount of compensation then remaining unpaid, whichever is the greater. The employer is liable to pay a further surcharge of \$970 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 commits an offence and is liable to a fine of HK\$100,000.

### 4. Settlement 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 Employees' Compensation 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 18<sup>th</sup> month from the date of accident, the employee concerned should contact the Employees' Compensation Division of the Labour Department as soon as possible. Staff of the Division would either refer the employee to the Legal Aid Department for further assistance, or assist him to register his claim at the District Court (whichever the employee wishes).

In some cases where the accident victim is able to show that another party was wholly or partly responsible for the accident causing the injury, a further claim may be made at court for common law damages. The Legal Aid Department is able to give advice and assistance concerning such common law claims as well as claims under the Employees' Compensation Ordinance.

**Chapter 5**

**Amount of Compensation**

• **Death**

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:

Age of Deceased Employee	Amount of Compensation in fatal cases #
Under 40	84 months' earnings (The maximum amount is \$1,764,000 and the minimum is \$303,000)
40 to under 56	60 months' earnings (The maximum amount is \$1,260,000 and the minimum is \$303,000)
56 or above	36 months' earnings (The maximum amount is \$756,000 and the minimum is \$303,000)

# Monthly earnings are subject to a maximum of \$21,000 for the purpose of calculating compensation.

The compensation shall be apportioned among the eligible members of the family of the deceased employee in accordance with the apportionment schedule stipulated in the Ordinance. The Commissioner for Labour or the Court may determine on the amount of the compensation for death. The employer is also liable to reimburse funeral and medical attendance expenses, up to a maximum of \$35,000, to the person who has paid such expenses.

- **Permanent Total/Partial Incapacity**

Compensation payable for permanent total incapacity resulting from a work injury varies with the employee’s age at the time of the accident. The amount of compensation payable is calculated with reference to the age and monthly earnings\* of the injured employee as below:

Age of Injured Employee	Amount of Compensation for permanent total incapacity #
Under 40	96 months’ earnings (The maximum amount is \$2,016,000 and the minimum is \$344,000)
40 to under 56	72 months’ earnings (The maximum amount is \$1,512,000 and the minimum is \$344,000)
56 or above	48 months’ earnings (The maximum amount is \$1,008,000 and the minimum is \$344,000)

# Monthly earnings are subject to a maximum of \$21,000 for the purpose of calculating compensation.

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 caused by the injury.

Amount of compensation due to Permanent Total Incapacity	x	Percentage of loss of earning capacity
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\*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.

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 HK\$412,000 as the Court considers necessary; or
- (b) an amount of HK\$412,000 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 are payable on the injured employee’s normal pay days. An employer who fails to pay within 7 days after the due day commits an offence and is liable on conviction to a fine of HK\$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, the case could be considered by the employer as a fraudulent act and legal action may be contemplated.

A period of absence from duty certified to be necessary by a registered medical 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 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 total or partial 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 in respect of the period during which the employee receives medical treatment from a registered medical practitioner or a registered dentist until the attending medical practitioner or dentist certifies that no further treatment is required.

The employer is also liable to pay to the injured employee medical expenses in respect of medical treatment given by a registered physiotherapist, a registered occupational therapist or a registered chiropractor.

An employer should pay the injured employee medical expenses within 21 days after the employee has submitted the receipts for payment of medical treatment. The daily maximum of medical expenses payable are as follows:

In-patient treatment	\$200
Out-patient treatment	\$200
Both in-patient and out-patient treatment on the same day	\$280

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, whichever is more appropriate.

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. 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 HK\$33,000; 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 HK\$100,000.

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 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 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 on behalf of 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. An employer may not dispute the necessity for repair and renewal 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.

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 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 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 HK\$3,490 per month.

The loss of earning capacity suffered by an injured employee 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 medical practitioners or registered dentists and a Labour Officer, is responsible for assessing the period of absence from duty necessary and the percentage of loss of earning capacity permanently caused by the injury in accordance with the Ordinance. The First Schedule annexed to the Ordinance (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 so 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 employee's former usual employment, qualifications, previous training and experience.

The Ordinary or Special Assessment Board will issue to the employee and the employer a Certificate of Assessment (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 (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 returned to work 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, all employers (including contractors and sub-contractors) are required to take out insurance policies to cover their liabilities both under the Ordinance and at common law for injuries at work in respect of all employees (including full-time and part-time employees). 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 HK\$100 million
more than 200	not less than HK\$200 million

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

### **IMPORTANT NOTE:**

Although the Ordinance specifies the minimum amount of insurance cover, employers still bear the full liability under the Employees' Compensation Ordinance and at common law. An employer should therefore carefully assess the possible risk at work to which his employees may be exposed. Where necessary, he should take out an insurance policy for an amount more than the minimum under the Ordinance. Employers should consult their insurers for professional advice.

Where a principal contractor has undertaken to perform any construction work, he may take out an insurance policy for an amount not less than HK\$200 million per event to cover his liability and that of his sub-contractor(s) under the Ordinance and at common law.

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 HK\$200 million per event to cover the liabilities under the Ordinance

and at common law in respect of the companies in the group specified in the policy.

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 Ordinance or independently of the Ordinance (such as common law damages) in respect of a work injury to his employee, 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 in his own name, directly from the insurer the entitled amount, 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 commits an offence and is liable on conviction to a fine of HK\$10,000 and imprisonment for six months.

• **Statutory Time Limit for Application for Compensation**

Section 14(1) of the Ordinance states that an application for compensation by or on behalf of an employee should be made within 24 months of the accident causing the injury, or in the case of a fatal accident, 24 months of the death of the employee. (Please refer to the “Important Note” on Page 9.)

• **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 doctor named by his employer when this is offered within seven days of his giving notice. An employee who is receiving periodical payments from his employer shall submit himself for medical examination from time to time as required by his employer. If, however, any doctor considers the employee unfit to attend, the employer must be notified and the doctor named by him will arrange an alternative time for medical examination. The employer has to pay all the expenses for medical examination arranged by his doctor. The employee is entitled to have his own doctor present at the medical examination, but at his own expense.

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 medical practitioner must submit himself to free medical treatment if so required by his employer. Failure to do so or failure to follow the instructions of such medical practitioner may reduce any compensation payable.

• **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. The principal contractor may, however, take action to recover from the sub-contractor any payment which he is required to make.

Upon receipt of a written request from the injured employee, the sub-contractor must, within 7 days, supply to the injured employee the name and address of the principal contractor. An employer who fails to do so commits an offence and is liable on conviction to a fine of HK\$50,000.

• **Claims for Damages by Action at Common Law**

Against a third party	Against an employer
<p><u>By an employee</u></p> <p>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 compensation against the employer.</p> <p><u>By an employer</u></p> <p>Under similar situation, an employer who is liable to pay compensation may take action against a third party to recover the compensation, indemnity or any sum payable to the employee contractually.</p>	<p>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 compensation paid or payable under the Ordinance.</p>

• **Contracting Out**

Section 31 of the Ordinance stipulates that any contract or agreement which removes or reduces the employer’s liability to pay compensation under the Ordinance, unless authorised by the Commissioner for Labour, 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 commits an offence and is liable on conviction to a fine of HK\$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 has entered into an agreement under the Ordinance with the injured employee to settle the claim directly; 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

**Injury  
(First Schedule of the Employees’ Compensation Ordinance)**

Item	Percentage of loss of earning capacity
1. Loss of two 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)*

Note : \*Figures in brackets refer to percentage applicable to preferred hand.

Appendix 1 *cont.*

Item	Percentage of loss of earning capacity
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
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

Note : \*Figures in brackets refer to percentage applicable to preferred hand.

Appendix 1 *cont.*

Item	Percentage of loss of earning capacity
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
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 —	

Appendix 1 *cont.*

Item	Percentage of loss of earning capacity
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
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

Note : \*Figures in brackets refer to percentage applicable to preferred hand.

Appendix 1 *cont.*

Item	Percentage of loss of earning capacity
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
has reflex regulation but no voluntary control	8 - 17
no reflex regulation and no voluntary control	18 - 25

<b>Occupational Diseases (Second Schedule of the Employees' Compensation Ordinance)</b>				<i>Item</i>	<i>Description of occupational disease</i>	<i>Nature of trade, industry or process</i>	<i>Prescribed period for purposes of section 32</i>
<i>Item</i>	<i>Description of occupational disease</i>	<i>Nature of trade, industry or process</i>	<i>Prescribed period for purposes of section 32</i>				
A. CAUSED BY PHYSICAL AGENTS				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.
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	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.
A2				B. CAUSED BY BIOLOGICAL AGENTS			
A2	Heat cataract	Any occupation involving frequent or prolonged exposure to rays from molten or red-hot material.	3 years.	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.
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.	B2	Glanders	Any occupation involving contact with equine animals or their carcasses.	1 month.
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.	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.
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.	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.
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.				

<i>Item</i>	<i>Description of occupational disease</i>	<i>Nature of trade, industry or process</i>	<i>Prescribed period for purposes of section 32</i>
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.
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.

<i>Item</i>	<i>Description of occupational disease</i>	<i>Nature of trade, industry or process</i>	<i>Prescribed period for purposes of section 32</i>
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.
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.
<b>C. CAUSED BY CHEMICAL AGENTS</b>			
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.
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.

<i>Item</i>	<i>Description of occupational disease</i>	<i>Nature of trade, industry or process</i>	<i>Prescribed period for purposes of section 32</i>
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.
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	1 year.

<i>Item</i>	<i>Description of occupational disease</i>	<i>Nature of trade, industry or process</i>	<i>Prescribed period for purposes of section 32</i>
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.
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,	Any occupation involving the production, use or handling of alpha-naphthylamine, beta-naphthylamine or methylene-bis-ortho-chloraniline, or diphenyl	20 years.

<i>Item</i>	<i>Description of occupational disease</i>	<i>Nature of trade, industry or process</i>	<i>Prescribed period for purposes of section 32</i>
	carcinoma-in-situ and invasive carcinoma	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.	
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.
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	Any occupation involving exposure to dust, liquid or vapour.	1 year.

<i>Item</i>	<i>Description of occupational disease</i>	<i>Nature of trade, industry or process</i>	<i>Prescribed period for purposes of section 32</i>
	mouth produced by dust, liquid or vapour		
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.
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 Is it necessary for an employer to take out an employees' compensation insurance policy for his part-time local domestic helper?

A1. The Employees' Compensation Ordinance stipulates that all employers are required to take out insurance policies to cover their liabilities both under the Ordinance and at common law for injuries at work in respect of all employees (including full-time and part-time employees). Hence, an employer must take out an employees' compensation insurance policy for his part-time local domestic helper as required by the law.

Q2 What should an employer take note of when taking out an employees' compensation insurance policy?

A2. When taking out an employees' compensation insurance policy, an employer should take note of the following statutory minimum insurance cover :

No. of employees	Amount of Insurance Cover per Event
Not more than 200	not less than HK\$100 million
More than 200	not less than HK\$200 million

(Please refer to the Important Note on page 19 )

The following points should also be borne in mind :

- ◆ No deduction should be made from the earnings of an employee for defraying the cost of taking out 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;
- ◆ Stating specifically those employees who are required to work outside Hong Kong or take business trips frequently;
- ◆ Listing out the usual work locations of employees; and
- ◆ Stating specifically whether any work is sub-contracted to sub-contractors and stating clearly whether the employees of the sub-contractors are covered by the policy.

Q3 Is an employer required to notify his insurer when his employee sustains a work injury?

- A3
- ◆ An employer should notify the insurer as soon as possible, within the stipulated period and in the specified format (in writing or by specified form) required by the insurer, when his employee sustains a work injury;
  - ◆ The employer should also keep a record of the periodical payments paid to the injured employee and submit to the insurer the original copies of the Certificate of Compensation Assessment (Form 5) and the Certificate of Assessment (Form 7) issued by the Labour Department, medical certificates and medical payment vouchers for indemnifying the amount of compensation already paid to the injured employee; and
  - ◆ On receiving an order or a summons issued by the court, the employer should notify his insurer the soonest possible.

**(II) Notification of Accident**

Q4 How should a work injury or prescribed occupational disease be reported to the Commissioner for Labour?

A4 Responsibility of the employee

The injured employee should notify the employer of the accident or the prescribed occupational disease as soon as possible. Notice may be given orally or in writing on Form 1 or Form 1A, as the case may be, to the employer or the employee’s supervisor. The employer is presumed to have had notice of the accident or the prescribed occupational disease if the employee dies on or near the employer’s premises or at the place where he was working.

Responsibility of the employer

The employer must notify the Commissioner for Labour of any accident or prescribed occupational disease by Form 2, Form 2A or Form 2B, as the case may be. Injury case should be reported in 14 days’ time and fatal cases in 7 days’ time (Please refer to the specified forms on page 6 ).

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 report his case to the Employees’ Compensation Division branch office of the Labour Department responsible for handling employees’ compensation claims arising from the area where his work injury occurred. The Employees’ Compensation Division branch office, upon receipt of his notification, will ask the employer in writing to report the work injury or the prescribed occupational disease according to the requirement of the Employees’ Compensation Ordinance, if such notification has not yet been received from the employer.

**(III) Employer’s Liability to Pay Compensation**

Q5 Should an employer be liable to pay compensation in accordance with the Employees’ Compensation Ordinance if the employee sustains an injury / dies whilst in the course of employment outside Hong Kong?

A5 The answer is affirmative if the employee’s contract of employment is entered into in Hong Kong with the employer who is a person carrying on business in Hong Kong, provided that the employee sustains an injury or dies due to an accident arising out of and in the course of employment.

**(IV) Calculation of Earnings**

Q6 What should be taken as the monthly earnings of an injured employee working in the construction industry which features with an irregular pattern of working days?

A6 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.

**(V) Procedures for Sick Leave Clearance and Assessment of Permanent Loss of Earning Capacity**

Q7 How would an injured employee go through the procedures for sick leave clearance and arrangement for assessment of the permanent loss of his earning capacity?

A7 For work injuries with period of temporary incapacity not exceeding 7 days and with no permanent incapacity involved, the case should be settled by “direct payment” or “direct settlement”. Sick leave clearance or arrangement for assessment on the loss of earning capacity is not required for such cases.

For any other cases, the procedure is as follows:

The Employees’ Compensation Division of the Labour Department, upon receipt of the work-accident notification from the employer, will issue a sick leave clearance form and other related information to the injured employee. The employee should approach the Occupational Medicine Unit of the Labour Department in person 2 weeks after expiry of the sick leave (and in case of prolonged sick leave, 1 month after the accident) with the photocopies of all sick leave certificates and all relevant consultation cards for sick leave clearance. Where it appears that permanent incapacity results 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 the assessment board as scheduled. A certificate of assessment will be issued to the employer and the employee soon after the assessment.

**(VI) Paper Sick Leave Clearance by Agreement**

Q8 What is “Paper Sick Leave Clearance Scheme”?

A8 To speed up the processing of work injury cases by employers and employees, the Employees’ Compensation Division of the Labour Department operates a scheme of paper sick leave clearance, which expedites settlement by allowing for paper sick leave clearance to shorten the time for issuing the Certificate of Compensation Assessment (Form 5).

Paper sick leave clearance is applicable to cases which meet the following criteria :

- The period of sick leave exceeds 7 days but not exceeding 30 days;
- The injury does not lead to any permanent incapacity;
- The injury does not involve damage to teeth or the need for the fitting of prostheses and surgical appliances;
- All the sick leave certificates are issued by registered medical practitioners or registered dentists;
- The injury was not caused by a prescribed occupational disease; and
- The sick leave of the employee has ended.

In addition, both the employer and the employee have to agree beforehand for adopting the scheme of paper sick leave clearance to settle the case. To utilize this scheme, the employer should complete an application form available at all the offices of the Employees’ Compensation Division and send it with the relevant information to the appropriate Employees’ Compensation Division branch office. In such a case, the employee is not required to approach the Occupational Medicine Unit in person for sick leave clearance.

**(VII) Paper Sick Leave Clearance for Outstanding Cases**

Q9 What can an employer do if an injured employee has repeatedly failed to complete the procedures for sick leave clearance or attend the medical assessment and the case remains unsettled?

A9 If an employees’ compensation case is unsettled due to the employee’s failure to complete the sick leave clearance procedure or medical assessment long after recovery and resumption of work, his employer may attempt to settle the case through the paper sick leave clearance scheme for outstanding cases. In such circumstances, the Employees’ Compensation Division of the Labour Department will issue a final reminder of sick leave clearance to the employee. If the employee does not respond in a reasonable period, it will be

presumed that he does not suffer any permanent incapacity or has abandoned his claim for compensation for permanent incapacity, and a Certificate of Compensation Assessment (Form 5) will be issued to the employer and the employee accordingly.

Paper sick leave clearance scheme for outstanding cases may apply to cases which meet the following criteria :

- The work injury case remains unsettled as the injured employee fails to complete the procedure for sick leave clearance or medical assessment despite repeated requests from the Labour Department;
- The employer can provide evidence that payment of periodical payments has been made; and
- The employer can produce the sick leave certificate(s) of the employee.

To utilize the paper sick leave clearance scheme for outstanding cases, an employer should write to the appropriate Employees' Compensation Division branch office, enclosing all the required documents.

#### **(VIII) Employees' Compensation after Resignation of Injured Employee**

Q10 An employee has resigned after a work-related accident, but the case has not yet settled. Is the employer still liable to pay periodical payments and other compensation to the ex-employee who is granted further sick leave due to the work injury?

A10 If the ex-employee can produce sick leave certificates 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, irrespective of whether there is still an employer-employee relationship. The employer is also liable to pay the medical expenses and compensation for permanent total or partial incapacity as stipulated in the Employees' Compensation Ordinance.

#### **(IX) Doubtful Employees' Compensation Case**

Q11 How should an employer handle a doubtful employees' compensation case?

A11 If the employer is in doubt about a work injury case (e.g. whether the accident is work-related), he may submit the relevant information to the Employees' Compensation Division of the Labour Department for investigation and notify the insurer as soon as possible. In reporting an injury at work, the employer should inform the Labour Department of his query about the case. On encountering a suspected fraudulent case (e.g. an employee deceives his employer by fabricating a work injury case, or works for another employer during the period of temporary incapacity without the consent and knowledge of the employer while receiving periodical payments from the employer), an employer and his insurer may consider forwarding the evidence collected and other relevant information to the Police for action.

Should the employer and the employee have any dispute on the employees' compensation claim, the Labour Department may, with the consent of the employee, call for medical reports from the hospitals concerned. Where necessary, information may also be gathered from the witnesses in question for reference. 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 Employees' Compensation Ordinance. Please take note that the Labour Department is not empowered to make adjudication on any dispute of the case. If the employer and the employee could not reach any settlement, the case shall be determined by the Court.

Q 12 If an employer considers that he is not obliged to take up any statutory obligation to pay for any compensation in relation to a work-related accident, is he still required to notify the Commissioner for Labour of the accident?

A 12 According to Section 15 of the Employees' Compensation Ordinance, an employer is required to notify the Commissioner for Labour of any work-related accident in the manner set out in the Ordinance, irrespective of whether the accident gives rise to any liability to pay compensation. Thus, the employer has to report the accident to the Commissioner for Labour.