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EMPLOYEES COMPENSATION ASSISTANCE  
(AMENDMENT) BILL 2002

**COMMITTEE STAGE**

Amendments to be moved by the Secretary for Education  
and Manpower

Clause

Amendment Proposed

1(2)

By deleting the clause and substituting -

"(2) Subject to subsection (3), this Ordinance shall come into operation on 1 July 2002.

(3) Section 30, insofar as it relates to section 46A(2) to (8) of the principal Ordinance as amended by this Ordinance, and section 6 of the Schedule, shall come into operation on a day to be appointed by the [Secretary for Education and Manpower] by notice published in the Gazette."

3(b)

In the proposed definition of "eligible person" -

(a) in paragraph (a) -

(i) by adding "as determined by a court of competent jurisdiction in Hong Kong" after "non-fatal";

(ii) in subparagraph (ii), by adding  
"whether before or" after "in the case  
of the injured employee";

(b) in paragraph (b), by adding "as determined by a  
court of competent jurisdiction in Hong Kong"  
after "fatal".

7(d) In the proposed section 17(2), by deleting every thing  
after "subsection (1)" and substituting "irrespective  
of whether the notice concerned under section 20 is  
published in the Gazette before, on or after the  
commencement of this subsection.".

8(d) In the proposed section 18(2), by deleting every thing  
after "subsection (1)" and substituting "irrespective  
of whether the notice concerned under section 20 is  
published in the Gazette before, on or after the  
commencement of this subsection.".

12 (a) In the proposed section 20A, by adding -

"(4) Where -

(a) an eligible person falls  
within paragraph (a)(ii) of  
the definition of "eligible  
person";

(b) the death of the injured  
employee concerned occurs

before damages have been  
awarded; and

(c) any amount of damages for  
which the employer concerned  
is liable is unable to be  
recovered from the employer,  
then the eligible person shall be deemed to  
be an eligible person who falls within  
subsection (1) in respect of those damages  
notwithstanding that the eligible person -

(d) is not mentioned in the  
judgment or order concerned  
mentioned in subsection (2);  
and

(e) is unable to take any  
proceedings mentioned in  
subsection (3).".

(b) In the proposed section 20B, by adding -

"(1A) Subject to section 20A(2) and  
subsection (2), the aggregate amount of  
relief payment to one or more eligible  
persons who fall within section 20A(4) in the  
case of a particular injured employee shall  
be the amount of damages for which the  
employer concerned is liable to pay in  
relation to the accident concerned after that  
amount is reduced by -

- (a) the amount of compensation which has been paid or is payable under the Employees' Compensation Ordinance (Cap. 282) in respect of the injured employee in relation to that accident; and
- (b) the amount, if any, of those damages already paid by the employer."

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- (a) In the proposed section 25A -
  - (i) by deleting "(1) If" and substituting "If";
  - (ii) in paragraph (a) -
    - (A) by adding "to join in the proceedings as a party in accordance with Order 15, rule 6 of the Rules of the High Court (Cap. 4 sub. leg.) or Order 15, rule 6 of the Rules of the District Court (Cap. 336 sub. leg.), as the case may require," after "court";
    - (B) in subparagraph (iv), by adding "or" after "proceedings;"
  - (iii) in paragraph (b) -
    - (A) by deleting "third";

(B) by adding "or Order 15, rule 6 of the Rules of the District Court (Cap. 336 sub. leg.), as the case may require," after "(Cap. 4 sub. leg.)";

(iv) in paragraph (c) -

(A) by deleting "third";

(B) by adding "or Order 15, rule 6 of the Rules of the District Court (Cap. 336 sub. leg.), as the case may require," after "(Cap. 4 sub. leg.)";

(b) By deleting the proposed section 25B(3) and substituting -

"(3) A person who has served a notice under subsection (1) on the Board and who intends, within 45 days after the date on which the notice has been so served, to -

(a) enter into an agreement with the other party in respect of the settlement of the claim to which the notice relates;  
or

(b) obtain a final judgement against the other party in respect of the satisfaction of the claim to which the

notices relates,  
shall, not less than 10 days before the date of such agreement or final judgement, as the case may be, serve a notice in writing on the Board informing the Board that the person intends to enter into an agreement or obtain a final judgement, as the case may be, in respect of that claim within 45 days after the date on which the first-mentioned notice has been served on the Board."

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In the proposed section 36A -

- (a) in subsection (2), by deleting "subsection (3)" and substituting "subsections (3) and (3A)";
- (b) in subsection (3), by deleting "The" and substituting "Subject to subsection (3A), the";
- (c) by adding -

"(3A) Where -

- (a) an employer has contravened section 40(1) of the Employees' Compensation Ordinance (Cap. 282)("first contravention");
- (b) a notice in writing under subsection (5)(a) has been served on the employer in respect of the first

contravention; and

- (c) the employer has, not later than 24 months after the date on which that notice was so served, again contravened section 40(1) of that Ordinance ("second contravention"),

then, in the case of the second contravention, the amount of surcharge payable by the employer under subsection (1) by virtue of subsection (2) or (3) shall be multiplied by a factor of 2.";

- (d) by deleting subsections (6) and (7) and substituting -

"(6) An employer who is not satisfied with a determination of the Board as specified in a final notice under subsection (5)(b) may appeal against the determination to the District Court not later than 30 days after the final notice is served on the employer.

(7) The District Court may in a particular case extend the period specified in subsection (6) where it thinks fit to do so.

(7A) On an appeal under subsection (6),

the District Court may -

(a) by order confirm, vary or  
cancel the determination of  
the Board as specified in the  
final notice the subject of  
the appeal;

(b) make such order as to costs  
as it thinks fit.".

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In the proposed section 46A -

(a) in subsection (5), by deleting "31(b)" and  
substituting "31";

(b) by adding -

"(6A) Schedule 2 is repealed.".