

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 26, 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 Economic Development and Labour by notice published in the Gazette.”

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In the proposed section 45A, by deleting “教育統籌局”.

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3(b)

(a) In the proposed definition of "eligible person",
in paragraph (a)(ii), by adding "whether before
or" after "in the case of the death of the injured
employee".

(b) By adding -

"prescribed monthly amount (extra)" (

) means the amount

specified in Part 1A of Schedule 4;

"severely injured relevant eligible person"

(), in relation to a

relief payment, means an eligible

person -

ALL PASSED

- (a) who falls within paragraph (a) (i) of the definition of "eligible person";
- (b) who suffers from paraplegia or quadriplegia as a result of the employment-related injury concerned such that he is unable to perform the essential actions of life without the care and attention of another person; and
- (c) in respect of whom a court of competent jurisdiction in Hong Kong has, in relation to the employment-related injury concerned, awarded expenses for care and attention by another person in respect of the period after the award is made;".

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."

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6(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."

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(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

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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.".

(c) In the proposed section 20C(2)(b), by adding

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“, together with, in the case of an eligible person who is a severely injured relevant eligible person, the prescribed monthly amount (extra)” after “higher”.

(d) In the proposed section 20D -

- (i) by renumbering it as subsection (1);
- (ii) in subsection (1), by adding “(other than a prescribed monthly amount (extra))” after “section 20C(2)(b)”;
- (iii) by adding -
 - “(2) A prescribed monthly amount (extra) under section 20C(2)(b) shall be payable until -

- (a) subject to section 20G, the amount of relief payment has been fully paid; or

- (b) the severely injured relevant eligible person entitled to receive such payment -

- (i) dies; or

- (ii) has been

- fully paid

- the amount

- to which he

- is entitled,

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whether as
relief
payment or
payment of
damages from
the employer
or insurer
concerned,
including
any
combination
thereof,

whichever is the earlier.”.

14(c)

By deleting the proposed section 22(6) and
substituting -

“(6) Subject to the provisions of this
Ordinance, the Board may vary a determination
under this section to take account of -

- (a) a person who becomes an eligible
person on or after the date of the
determination; or
- (b) the existence of an eligible
person which was not known to the
Board before that date.”.

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(a) In the proposed section 25A -

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- (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.)";

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(b) In the proposed section 25B -

- (i) in subsection (2), by adding ", or failed to," after "cannot";
- (ii) by deleting subsection (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 any judgement against the other party in respect of the claim to which the notices relates,

shall, subject to subsection (3A), not less than 10 days before the date of such agreement or

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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 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.

(3A) The Board may shorten the period of 10 days specified in subsection (3) in the case of a person who satisfies the Board, by notice in writing served on the Board, that there are good reasons why the person cannot, or failed to, comply with that subsection in relation to that period.”;

(iii) by deleting subclause (4) (a) and substituting -

“(a) separate notices are required under subsection (1) in respect of a claim for compensation and a claim for damages;”.

ALL PASSED

19(b)

By deleting the proposed section 28(4) and (5) and substituting -

"(4) If an offer made under subsection (1) is not accepted by a person, and in subsequent proceedings in respect of the claim to which the offer relates the person is awarded an amount not more than the amount offered by the Board, then the Board -

- (a) shall not be required to pay more than the amount as awarded by the court or tribunal concerned; and
- (b) shall not be liable to pay the costs incurred by the person after the date of the offer to which the claim relates."

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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

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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.

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(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."

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In the proposed Schedule 4, by adding, after Part 1, the following -

"PART 1A

PRESCRIBED MONTHLY AMOUNT (EXTRA)

\$10,000"

ALL PASSED