

LegCo Panel on Manpower

Direct Payment of Employees' Compensation by Insurers

Purpose

This paper informs Members of the Administration's views on the issue of imposing a requirement on insurers who underwrite employees' compensation insurance to make direct payment of employees' compensation, periodical payments in particular, to policyholders' employees who sustain an injury as a result of accidents arising out of and in the course of their employment.

Legislative Provisions

Responsibility of an employer to pay compensation

2. Under section 10 of the Employees' Compensation Ordinance (ECO), employers are liable to pay compensation for temporary incapacity (i.e. a period of absence from duty medically certified to be necessary) to employees who are injured at work. 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 accident and his monthly earnings, if any, during the period of temporary incapacity. The periodical payments are payable on the normal pay days of the injured employee.
3. Section 10A of the ECO stipulates that unless an employer has provided adequate free medical treatment to the employee, the employer is liable to pay medical expenses, subject to a daily maximum amount, in respect of the period during which the injured employee receives medical treatment in respect of the work injury.
4. Where an injured employee sustains permanent incapacity as a result of a work injury, he is entitled under section 7 (for permanent total incapacity) or section 9 (for permanent partial incapacity) of the ECO to compensation for the permanent loss of earning capacity caused by the injury. The amount of compensation is calculated with reference to the age of the employee at the time of accident, his monthly earnings, and the percentage of permanent loss of earning capacity suffered by the employee.

5. An employer who, without reasonable excuse, fails to pay compensation in accordance with the ECO commits an offence and is liable on conviction to a fine of \$100,000.

Compulsory Insurance

6. According to section 40 of the ECO, all employers are required to take out insurance policies to cover their liabilities under the ECO and at common law for injuries at work in respect of all their employees. When an employer has made payments to the employee, he is entitled to recover the amount of compensation from his insurer in accordance with the provisions of the insurance policy then in force.

7. To cater for exceptional situations where there are reasonable grounds to be satisfied that the employer cannot be readily located in Hong Kong or is insolvent; or the insurer has disclaimed liability under the insurance policy, section 44 of the ECO provides that an injured employee can take proceedings against the insurer without taking or having taken proceedings against his employer.

Other Safeguards

Employees Compensation Assistance Scheme

8. The Employees Compensation Assistance (ECA) Scheme, administered by the ECA Fund Board set up under the Employees Compensation Assistance Ordinance (ECAO), provides payment to employees injured at work in cases where the employers have failed to take out insurance policy and the employees are unable to receive their entitlements from their employers after exhausting legal and financially viable means of recovery. An injured employee who is unable to recover from his employer payment of an amount of compensation for which the employer is liable under the ECO may apply for payment of that amount from the Scheme under section 16 of the ECAO. If the employee is unable to recover from his employer payment of an amount of damages for which the employer is liable, he may apply for a relief payment of that amount from the Scheme under section 20A of the ECAO.

Employees Compensation Insurer Insolvency Scheme

9. With effect from 1 April 2004, the Employees Compensation Insurer Insolvency (ECII) Scheme established by the insurance industry has assumed

responsibility of meeting the liabilities arising from employees' compensation insurance policies in the event of the insolvency of the insurer. Employers who have made payments to injured employees under the ECO and independently of the ECO are entitled to recover the amounts from the Scheme in accordance with the provisions of the insurance policies if their insurers become insolvent.

Services of the Labour Department

10. When the Labour Department (LD) receives complaints from injured employees against their employers for non-payment or late payment of compensation, we will immediately contact the employers concerned by telephone to explain the statutory requirements on timely payment of compensation under the ECO and the penalty for non-compliance. We will urge the employers to clear any outstanding payments as soon as possible and to make future payments on time. Our advice will be confirmed in writing afterwards.

11. If an employer ignores our advice without a reasonable excuse, we will consider prosecution action where there is sufficient evidence to establish an offence.

12. Where there is a dispute between the parties concerned, including a dispute on the liability to pay compensation, and the dispute cannot be resolved through our assistance and voluntary negotiation, we will refer the injured employee to the Legal Aid Department (LAD) for assistance to pursue his claim under the ECO through civil means. In 2006, we made 489 referrals involving non-fatal work injury cases to the LAD for assistance. Among these cases, only 42 (8.6%) cases were related to non-payment of compensation for reasons including dispute on the liability to pay compensation and the identity of the employer was unknown.

13. In cases where the employers have become insolvent, or cannot be readily located, or are demonstrated to have acute financial difficulties, we will liaise with the relevant insurers with a view to making payments of compensation to the injured employees by the insurers direct. In 2006, we assisted the injured employees in 136 cases to seek direct payments of compensation by the insurers.

14. If an injured employee encounters financial hardship, we will assist him to apply for an interest-free loan of up to \$15,000 under the Loan Scheme

for Employees Injured at Work and Dependants of Deceased Employees that is funded by the Government and administered by the LD. Depending on circumstances, we may also refer the injured employee for further assistance and follow-up services by the Social Welfare Department (SWD). In 2006, the LD approved a total of 12 applications under the Loan Scheme, and referred 62 injured employees to the SWD for further assistance.

The Administration's views

15. We have carefully examined the issues involved in requiring insurers underwriting employees' compensation insurance to make direct payment of employees' compensation, including periodical payments, to all employees injured at work. We have no plan to require insurers to make such direct payments for the following reasons:

- (a) It is Government policy that the responsibility to pay compensation for work-related injuries rests with the employers. The requirement for compulsory insurance helps ensure that an employer's liability is reasonably covered through the pooling arrangements of the insurer and reduce the risk of payments in default. While the insurance facilities enable employers to better manage the risks of exposure to compensation payments, we have no intention of transferring the liability to make such payments to the insurers.
- (b) The current system is working well. The rights of an injured employee to compensation are adequately safeguarded by the provisions of the ECO, the legal redress system, and the safety nets offered by the ECA Scheme and the ECII Scheme.
- (c) In the past few years, the majority of cases involving non-payment or late payment of compensation by employers were promptly rectified after our intervention. We have assisted injured employees to seek payments of compensation direct from the insurers in cases where the employers became insolvent, or could not be readily located, or were demonstrated to have acute financial difficulties.
- (d) Direct payment of compensation by insurers to injured employees in all circumstances may not be conducive to speedier settlement of compensation claims. Employers who have ready

access to the employment and wage records of the employees should be in the best position to calculate the employees' entitlement to periodical payments. Injured employees usually tender the medical certificates to their employers such that the latter can readily update the attendance record, adjust the work and manpower schedules, and calculate the compensation payable on the normal pay days. Injured employees will find it inconvenient if they are required to submit the medical certificates concurrently to their employers as well as the relevant insurers. There may also be delays on the part of the insurers in verifying the sick leave records and earnings of the injured employees. This may result in delay in compensation payments that are not in the interest of the injured employees.

- (e) In our operational experience, a significant proportion of cases of non-payment of compensation involve disputes over fundamental issues such as the employer's liability to pay compensation under the ECO. If the disputes are not resolved, insurers will unlikely make direct payments of compensation to the injured employees even if they are required to do so.
- (f) Given the large number of employment-related accidents (about 60 000 per year), a mandatory requirement for insurers to pay compensation direct to injured employees on a periodic basis will entail considerable administrative costs on the part of insurers. It may not be unreasonable for insurers to decline to pay such administrative costs out of their own pocket. Recovery of such costs from the employers will likely take the form of an across-the-board increase in employees' compensation insurance premium. This will add to the cost of doing business in Hong Kong.

Further Improvement Measures

16. The LD is committed to protecting the rights and benefits of employees injured at work. We have introduced the following measures to further improve the present system to assist injured employees to obtain compensation:

(a) Strengthening the capacity in investigation and prosecution

We have streamlined our investigation procedures to shorten the time for investigation of complaints and institution of prosecution action when sufficient evidence is available. We will widely publicise conviction cases with heavy penalties to send a clear message to employers that breaches of the law will not be tolerated.

We have set up a telephone hotline (tel. 2852 3708) for reporting of malpractices and lodging of complaints by injured employees.

(b) Education and publicity

We have published a new leaflet to spell out employees' right to timely payment of compensation, remind employees to report non-payment or late payment to the LD without delay, and encourage them to come forward as prosecution witnesses. The leaflets are widely distributed to injured employees, labour unions and relevant non-government organisations.

Another leaflet has been prepared to elaborate on the statutory requirements on employers in respect of timely payment of compensation and the penalties for contravening the provisions. Similar reminders have been incorporated into our acknowledgment letters to employers who have reported work accidents to the LD. A poster setting out the responsibility of employers to make timely payment of compensation has been printed for display in different locations.

We have organised a series of talks and seminars to brief employers, human resource practitioners, employees, labour unions and other interested parties about the relevant statutory requirements. We will make use of free columns in local newspapers to disseminate our publicity messages. We will upload all the publicity materials on LD's homepage for the easy reference of members of the public.

(c) Cooperation and coordination with the insurance industry

We will continue to work in close collaboration with the insurance industry and encourage the industry to develop new

initiatives to assist employers in fulfilling their legal obligations with respect to compensation for work injuries. We will foster our partnership with the industry to expedite the payment of compensation by insurers to injured employees in cases where the employers have become insolvent, or cannot be readily located, or are demonstrated to have acute financial difficulties.

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