

For information on
23 February 2010

Legislative Council Panel on Manpower

Review of the Levels of Compensation under the Employees' Compensation Ordinance and the Pneumoconiosis and Mesothelioma (Compensation) Ordinance

Purpose

This paper seeks Members' views on a proposal to increase the amounts of five compensation items under the Employees' Compensation Ordinance (Cap. 282) (ECO) in line with the findings of a biennial review on the levels of compensation under ECO and the Pneumoconiosis and Mesothelioma (Compensation) Ordinance¹ (Cap. 360) (PMCO) (known as the Pneumoconiosis (Compensation) Ordinance (PCO) prior to 18 April 2008).

Background

2. ECO provides for the payment of compensation to employees and family members of the deceased employees for occupational diseases, injuries or deaths caused by accidents arising out of and in the course of employment. PMCO provides for the payment of compensation to persons and their family members in respect of incapacity or death resulting from pneumoconiosis and/or mesothelioma.

3. It is an established practice to review the levels of compensation provided for under ECO and PMCO every two years. Broadly speaking, adjustments are made in the light of the wage movement as reflected by the Nominal Wage Index (NWI) or price movement as reflected by the Consumer Price Index (CPI)(A) in the intervening years. Some compensation items, e.g. minimum monthly earnings for the purpose of calculating compensation, are adjusted according to other relevant factors.

¹ The Pneumoconiosis (Compensation) Ordinance has been re-titled as the Pneumoconiosis and Mesothelioma (Compensation) Ordinance to reflect the extension in scope to cover cancerous mesothelioma starting from 18 April 2008.

4. Prior to 1998, the levels of compensation under ECO and PMCO had been adjusted upwards in line with the positive changes of the relevant indicators in the review periods during which Hong Kong experienced rapid economic growth. Since 1998, as Hong Kong underwent a prolonged period of deflation alongside with the downward adjustment of wages, the levels of compensation under the two ordinances have remained unchanged except for the maximum amounts of funeral and medical expenses as set out below –

- (a) With the enactment of the Employees' Compensation (Amendment) (No. 2) Ordinance 2000 to improve the settlement of fatal employees' compensation cases, the maximum amount of funeral expenses under ECO was raised from \$16,000 to \$35,000 with effect from 1 August 2000. To maintain the parity of the same compensation item under the two ordinances, the maximum for funeral expenses under PCO was also raised to \$35,000 from 1 January 2001.
- (b) The daily maximum levels of medical expenses under the two ordinances were increased to \$200 for cases requiring either hospitalisation or out-patient treatment, and \$280 for cases involving both hospitalisation and out-patient treatment on the same day with effect from 4 April 2003 to take into account the revised fee structure in the public health care system.

5. In the last four review exercises covering 1999 to 2006, both the wage and price indices either recorded negative changes in the review periods or their increases had yet to offset the cumulated rates of decrease since the last adjustment of compensation levels in 1998. Other expenses relevant to the compensation items had either decreased or remained static. If the amounts of compensation under ECO and PCO were adjusted in accordance with such changes, the levels of compensation for various items had to be reduced.

6. When the findings of these reviews were discussed at the Labour Advisory Board (LAB), Members, in a spirit of collaboration and mutual understanding, concurred that the amounts of various compensation items under the two ordinances should be maintained at their existing levels, in order not to affect the interests of the injured employees and pneumoconiotics. They also advised that the levels of compensation should not be revised upwards until the cumulative rates of decrease in wage or price movements had been offset by future increases. In the light of their consensual views, the levels of compensation under ECO and PMCO were kept unchanged.

7. Following the established mechanism, we have reviewed the changes in wage and price indices and other relevant factors in 2007 and 2008. Findings of the review are set out in the ensuing paragraphs.

Review Findings for 2007 and 2008

Compensation items to be adjusted according to wage movement

8. The levels of compensation for the following items under ECO are normally adjusted according to the wage movement as reflected by NWI –

- (a) ceiling of the monthly earnings for calculating compensation for death and permanent total incapacity;
- (b) minimum level of compensation for death;
- (c) minimum level of compensation for permanent total incapacity;
- (d) compensation for employees requiring attention; and
- (e) minimum amount of surcharge on late payment of compensation.

9. NWI increased by 2.4% in 2007 and further by another 3.2% in 2008 according to the Census and Statistics Department. The wage movement for 2007-2008 is therefore +5.68%. The increase has more than offset the cumulative negative change of 3.15% since the last adjustment of compensation levels between 1998 and 2006. Taking into account the wage movements in the years since 1998, the cumulative change in NWI up to 2008 would be +2.34%.

Compensation items to be adjusted according to price changes

10. The following items are normally adjusted by reference to price changes as reflected by CPI(A) –

- (a) maximum amount of the cost for the supply and fitting of prostheses and surgical appliances under ECO;
- (b) maximum amount of the cost for the repair and renewal of prostheses and surgical appliances under ECO;
- (c) maximum amount of funeral expenses under ECO and PMCO;

- (d) compensation for pain, suffering and loss of amenities under PMCO;
- (e) compensation for bereavement² under PMCO; and
- (f) minimum amount³ of compensation for death under PMCO.

11. CPI(A) increased by 1.3% in 2007 and further by another 3.6% in 2008 according to the Census and Statistics Department. The price movement for 2007-2008 is therefore +4.95%. Nevertheless, this is still not able to completely offset the cumulative negative change of 11.27% since the last adjustment of compensation levels between 1998 and 2006. Taking into account the price movements in the years since 1998, the cumulative change in CPI(A) up to 2008 should be -6.88%.

Compensation item to be adjusted according to the benefits provided under the Comprehensive Social Security Assistance Scheme (CSSA)

12. Section 11(5) of ECO provides that where an employee earns less than a specified amount per month, his monthly earnings shall be deemed to be that amount for the purpose of calculating compensation. The current specified amount is \$3,490, which is set by reference to the standard rate and other payments (i.e. rental allowance, water charges allowance and Long Term Supplement) for a single adult under CSSA at the time of the last adjustment in 1998.

13. In the light of the negative change in the Social Security Assistance Index of Prices which the Government referred to in deciding the payment level under CSSA, the payment for the same items of benefits under CSSA was revised downwards from \$3,490 to \$3,009 on 1 June 2003. Since then, the relevant payment has increased a few times up to \$3,165 on 1 August 2008. If the relevant CSSA payment rate in the present review exercise is adopted, the minimum monthly earnings under ECO should be adjusted correspondingly to \$3,165, which is 9.31% lower than the existing level of \$3,490.

² Where a person who was suffering from pneumoconiosis and/or mesothelioma dies and a relevant certificate for compensation has not been issued by the Pneumoconiosis Compensation Fund Board at the time of his death, his surviving family members will be entitled to the compensation for bereavement.

³ Under PMCO, the minimum amount of compensation for death is pegged to the amount of compensation for bereavement. Hence, the revision of the amount of compensation for bereavement will automatically adjust the minimum amount of compensation for death.

Compensation item to be adjusted according to the monthly wages and food provision for a foreign domestic helper

14. Section 11 of PMCO provides for the payment of compensation for care and attention to a person suffering from pneumoconiosis and/or mesothelioma if he is unable to perform the essential actions of life without the care and attention of other person. This compensation is currently payable in the form of a monthly payment at a rate of \$4,160, set by reference to the minimum allowable monthly wage and food provision for a foreign domestic helper at the time of the last adjustment in 1998. It is relevant to note that the person receiving the payment is not obliged to hire a foreign domestic helper.

15. The minimum allowable wage for a foreign domestic helper was revised six times (two downward and four upward adjustments) from 1998 to 2008. During the two-year period from 2007 to 2008, the monthly cost for hiring a foreign domestic helper would be \$3,880. This amount falls below the present level of \$4,160 by 6.73%.

Compensation items to be adjusted according to the costs of medical treatment at public hospital or clinic

16. Under both ECO and PMCO, a claimant who has received medical treatment as a result of a work injury or in connection with pneumoconiosis and/or mesothelioma may claim reimbursement of the actual amount of medical expenses incurred, subject to a daily maximum. The maximum amounts were set to cover the costs for consultation, injection and dressing, physiotherapy and hospitalisation on any one day in a public hospital or clinic.

17. The daily maximum rates for medical expenses under ECO and PMCO were last revised on 4 April 2003 to align with the revision of the fee structure of public health care services in 2003. During the review period, the charges in public clinics and hospitals for these treatments remained at the same level.

Observations

18. As can be seen from paragraphs 9 and 11 above, the wage and price movements as reflected by NWI and CPI(A) showed respective increases of 5.68% and 4.95% in 2007-2008. Offsetting the cumulative negative changes in wage and price movements since the last adjustment of compensation levels in 1998, NWI showed an increase of 2.34% while CPI(A) showed a decrease of 6.88% over the 10-year period from 1999 to 2008. As explained at paragraphs 13, 15 and 17, other expenses relevant to the compensation items have either decreased by 6.73% or 9.31%, or remained static.

19. In the four review exercises covering 1999 to 2006, both NWI and CPI(A) either recorded negative changes in the review periods or their increases had yet to offset the cumulated rates of decrease since the last adjustment of compensation levels in 1998. However, the current review exercise is the first time when NWI, over the 10-year period from 1999 to 2008, did not move in tandem with CPI(A), with the former having moved up 2.34% and the latter having gone down by 6.88%.

20. If the review findings are to be strictly applied to adjust the compensation levels, the amounts for five items should be increased by 2.34% while four items should be reduced by 6.88% or 9.31% under ECO. As for PMCO, the compensation levels of five items would be reduced, with one by 6.73% and four by 6.88%.

Impact on Employees

21. If the amounts of compensation under ECO and PMCO are adjusted downwards by 6.73-9.31% in accordance with the negative changes in the relevant indicators, it would affect the interests of employees earning low income and persons with pneumoconiosis or mesothelioma and thereby causing hardship to them. On the other hand, the levels of compensation under ECO to be adjusted upwards by 2.34% according to the cumulative increase in NWI are essentially concerned with items of compensation for fatal or permanent incapacity cases. The increase in compensation would provide better financial relief to the injured employees or family members of the deceased.

Impact on Employees' Compensation Insurance (ECI) Premium

22. We have consulted the Hong Kong Federation of Insurers (HKFI) on the impact on the ECI premium, if the levels of compensation for the five relevant items under ECO would be adjusted upwards in accordance with the review findings. Based on actuarial studies engaged by HKFI, the combined impact of a 2.34% increase in the compensation levels for the five relevant items under ECO would result in an increase of insurance claims costs by between 0.189% and 0.25%, which may in turn translate into an increase of a similar magnitude in the EC insurance premium.

Consultation with the Labour Advisory Board (LAB)

23. In light of the review findings, we have first consulted the LAB Committee on Employees' Compensation (LABCEC) on whether, and if so, how the levels of compensation under ECO and PMCO should be revised. Having met twice to discuss the review findings and the implications on employers and employees, Members of LABCEC unanimously agreed on a package of proposals as set out in paragraphs 24 to 26 below.

24. LABCEC was of the view that as a matter of principle, the established mechanism of reviewing the levels of compensation under ECO and PMCO by reference to the wage or price movements or other relevant factors should be followed. Nevertheless, in order to avoid causing hardship to employees, it considered that the amounts of compensation under ECO and PMCO should be kept unchanged at their existing levels in respect of those items which, according to the review findings, would have to be adjusted downwards. In line with past practice, the cumulative negative price movement since the last adjustment in 1998 should be taken into account in future reviews. In other words, the levels of compensation for the relevant items under the two ordinances would not be revised upwards until the cumulative rate of decrease in price movement had been offset by future increase.

25. On the other hand, LABCEC also recommended that the levels of compensation for the five relevant items under ECO (as mentioned in paragraph 8 above) could be adjusted upwards by 2.34% in accordance with the review findings since these items were essentially concerned with compensation for fatal or permanent incapacity cases, and the impact on the EC insurance premium would be minimal. The revised levels of compensation, rounded off to the nearest thousand or hundred dollar where appropriate, are given at **Appendix**.

26. Notwithstanding the above, LABCEC considered that the arrangements as agreed should not be regarded as a precedent. For subsequent reviews, it would be necessary to carefully examine the review findings and take into account the prevailing economic situation before deciding on the way forward.

27. At its meeting held on 12 January 2010, Members of LAB unanimously endorsed the package of proposals as recommended by LABCEC above.

Way Forward

28. The levels of compensation may be revised by a resolution of the Legislative Council. Subject to the endorsement of this Panel, we will submit a proposal to the Legislative Council to effect the proposed changes.

Labour and Welfare Bureau
Labour Department
February 2010

Appendix

**Changes in levels of compensation under ECO
if adjusted according to the 2.34% increase in NWI between 1999 and 2008**
(rounded off to the nearest thousand or hundred dollar where appropriate)

Item under ECO	Existing Level (\$)	Proposed Level (\$)
1. Ceiling of monthly earnings for calculating compensation for death and permanent total incapacity	21,000	21,500
2. Minimum compensation for death	303,000	310,000
3. Minimum compensation for permanent total incapacity	344,000	352,000
4. Compensation for attention	412,000	422,000
5. Minimum amount of surcharge on late payment of compensation		
➤ initial surcharge	490	500
➤ further surcharge	970	1,000