

立法會
Legislative Council

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by the Administration and
cleared with Chairman)

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**Bills Committee on
Employees' Compensation (Amendment) (No.2) Bill 2000**

**Minutes of Meeting
held on Tuesday, 23 May 2000 at 4:30 pm
in Conference Room A of the Legislative Council Building**

Members Present : Hon Kenneth TING Woo-shou, JP (Chairman)
Hon David CHU Yu-lin
Hon HO Sai-chu, SBS, JP
Hon LEE Kai-ming, SBS, JP
Hon CHAN Yuen-han
Hon CHAN Wing-chan
Hon LAU Chin-shek, JP
Hon Andrew CHENG Kar-foo
Hon Cyd HO Sau-lan

Members Absent : Hon LEE Cheuk-yan
Dr Hon LUI Ming-wah, JP
Hon Bernard CHAN
Hon LEUNG Yiu-chung

Public Officers Attending : Mr K K LAM
Principal Assistant Secretary for
Education & Manpower (7)

Mr William SIU
Assistant Commissioner for Labour
Employees' Rights and Benefits

Ms Anastasia KWONG
Senior Government Counsel

Mr LAI Yiu-kei, Samson
Assistant Secretary for Education and Manpower

Clerk in Attendance : Miss Flora TAI
Chief Assistant Secretary (2) 6

Staff in Attendance : Mr Arthur CHEUNG
Assistant Legal Adviser 5

Mrs Shirley NG
Senior Assistant Secretary (2) 9

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I. Election of Chairman

Mr Kenneth TING Woo-shou was elected Chairman of the Bills Committee.

II. Meeting with the Administration

[Legislative Council Brief issued by the Education and Manpower Bureau (ref. EMB CR 11/4/3231/77)]

2. Principal Assistant Secretary for Education and Manpower (7) (PAS(EM)7) explained to members that the existing provisions and arrangements for fatal compensation claims under the Employees Compensation Ordinance (Cap. 282) had a number of drawbacks as described in paragraph 4 (a) - (e) of the Legislative Council (LegCo) Brief. He then briefed members on the Administration's proposals to improve the system of settling compensation claims for fatal cases under the Ordinance as set out in paragraph 5(a) - (d) of the LegCo Brief.

Settlement mechanism of fatal compensation claims

3. Mr CHAN Wing-chan noted that the time for the Commissioner of Labour (the Commissioner) to process compensation claims of straightforward cases would be shortened from 18 - 24 months to nine - 15 months under the proposed mechanism. He asked whether the processing time could be further reduced in order to relieve the family members of the deceased employee from financial hardships. Assistant Commissioner for Labour (Employees' Rights and Benefits) (ACL/ERB) responded that it would be difficult to further reduce the processing time to less than nine months. He explained that the actual

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processing time was three months. The first six months were needed to allow time for the family members of a deceased employee to make application to the Commissioner. ACL/ERB pointed out that an application period of six months was considered reasonable because some or all of the family members of the deceased employee might not be in Hong Kong. Once a certificate of compensation assessment was issued by the Commissioner, the family members who had not made the claim within the six-month period could only apply to the court for compensation.

4. The Chairman asked whether the application period could be extended. ACL/ERB responded that the Commissioner could extend the period for making application if he deemed fit to do so. Mr HO Sai-chu remarked that the application period of six months was reasonable having regard to the fact that interim payment would be made to the family members under the proposed mechanism.

5. Members were generally in support of the proposals to improve the settlement mechanism of fatal compensation claims.

Funeral and medical expenses

6. Miss CHAN Yuen-han, Mr LEE Kai-ming and Mr CHAN Wing-chan said that the current maximum of \$16,000 for funeral and medical attendance expenses payable by the employer in all fatal cases was too low. They pointed out that the word "burial" in the existing Ordinance was changed to "funeral" in the Bill. According to Chinese custom, a funeral included burial, funeral service and a gathering after the burial. The estimated cost at prevailing prices would be about \$30,000. These members considered that a maximum of \$50,000 should be generally adequate for meeting funeral and medical attendance expenses. Mr LAU Chin-shek held a similar view. He further pointed out that it was inappropriate to calculate the funeral expenses based on cremation because family members of a person who died in an accident normally would prefer burial.

7. Mr LAU Chin-shek also informed members that according to the record of the Association for Rights of Industrial Accident Victims, the amount paid by employers for funeral expenses averaged between \$80,000 and \$100,000 in the past two to three years. The Hong Kong Confederation of Trade Unions (HKCTU) had originally requested that the funeral and medical attendance expenses payable by an employer should be increased to \$100,000. HKCTU had eventually agreed to support that the amount be increased to \$50,000. Mr LAU added that Mr David CHU had also indicated his support to the proposed amount.

8. Mr HO Sai-chu asked and ACL/ERB replied that the funeral and medical attendance expenses would not be deductible from the total amount of

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compensation payable by an employer. Mr HO further asked whether the funeral and medical attendance expenses would affect the expenses of similar nature payable under other ordinances. ACL/ERB responded that the amount of funeral and medical attendance expenses as prescribed in the Ordinance was applicable to all industrial fatal cases. The Administration had no intention to review all similar expenses at the same time. PAS(EM)7 and ACL/ERB supplemented that funeral and medical expenses were also provided for under the Pneumoconiosis (Compensation) Ordinance (Cap. 360). The proposed increase of funeral and medical expenses would have an effect on the ex-gratia payments payable by the Government or financed by the Pneumoconiosis Compensation Fund under this Ordinance. It was estimated that an additional amount of several million dollars per year would be incurred if the proposed increase was implemented.

9. Mr HO Sai-chu expressed concerned that the proposed amount of \$50,000 would pose financial hardship to the small business owners. Mr LAU Chin-shek pointed out that the proposed increase would not cause too much hardship to the employer because the payment could be covered by insurance if the amount was prescribed in the Ordinance.

10. PAS(EM)7 said that the Administration needed to conduct internal consultation on the proposed increase. He undertook to revert to members on the Administration's position at the next meeting.

Cost impact of insurance of employees' compensation

11. Members noted that the Bill proposed to make it mandatory for employers to provide insurance coverage for making compensation for death payable in full to the family members of deceased employees; and to require the employer to pay funeral and medical attendance expenses in all fatal compensation cases subject to a maximum amount.

12. The Chairman reminded members that when the proposals were first put forward for consultation some time ago, it was estimated that the proposals would lead to an increase of 1% to 2% in the cost of insurers underwriting employees' compensation insurance. He asked about the insurance cost impact if the funeral and medical attendance expenses were to be increased to \$50,000. PAS(EM)7 and ACL/ERB responded that according to informal consultation with the insurers, the insurance cost would be increased to 5%. They informed members that according to a recent report, the insurance industry had lost \$1 billion on employees' compensation business last year. The increase in insurance cost to 5% could have taken into account the loss as well. Mr HO Sai-chu said that it was his understanding that the loss of \$1 billion last year was a result of the price war among insurance companies during the past two years. ACL/ERB confirmed that the Administration had already requested the insurance industry to estimate the cost impact in writing.

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13. Mr LAU Chin-shek and Miss CHAN Yuen-han said that the Administration should set up a central insurance system in order to fundamentally address the concern about financial burden of employees' compensation insurance cost on the employers.

Levels of fine

14. Members noted that the Bill proposed to increase the levels of fine for failure to comply with the requirements relating to compulsory insurance from \$50,000 upon conviction by indictment and \$25,000 upon summary conviction to \$100,000 in both circumstances. The Chairman asked about the average number of prosecutions and convictions per year for failure to comply with the requirements relating to compulsory insurance, and whether there was an increase or decrease in the figures in recent years. ACL/ERB responded that the numbers of prosecutions and convictions were 923 and 861 respectively in 1999, and the average level of fine was \$2,700.

15. The Chairman and Mr HO Sai-chu were of the view that the proposed levels of fine should be further increased in order to achieve adequate deterrent effect. They pointed out that the Employees' Compensation Assistance Fund was financed by a levy on employees' compensation insurance premium payable by employers. It was unfair that the Fund had to effect payments because some employers had failed to take out insurance coverage for their employees and thus were unable to provide compensation. PAS(EM)7 responded that it was expected that the average level of fine would be adjusted upwards after the proposed level of fine had been substantially increased.

Way forward

16. Members agreed that the Bills Committee would not conduct clause-by-clause examination of the Bill and that the Assistant Legal Adviser would raise queries on the drafting of the Bill with the Administration in writing. PAS(EM)7 agreed that the Administration would provide a written response to any queries raised in writing before the next meeting.

III. Date of next meeting

17. Members agreed that the next meeting would be held on 30 May 2000 at 4:30 pm at Conference Room B to discuss the Administration's response.

18. The meeting ended at 5:25 pm.

Legislative Council Secretariat
21 July 2000