

Employees' Compensation (Amendment) (No. 2) Bill 2000

**The Administration's response to concerns raised
at the meeting of the Bills Committee
on 23 May 2000
and queries by the Legislative Council Assistant Legal Adviser**

- 1. Whether the Administration would consider members' proposal for increasing the maximum amount of funeral and medical attendance expenses in all fatal cases to be paid by the employer from \$16,000 to \$50,000?**

After internal consultation, the Administration agrees with members' proposal. The draft Committee Stage Amendment will reflect this by proposing to amend the Sixth Schedule to the Employees' Compensation Ordinance (Cap. 282).

- 2. The queries raised by the Assistant Legal Adviser in his letter dated 24 May 2000 are dealt with point by point as follows -**

- (a) In the proposed definition of "co-habitee", would it be clearer to say that the person was living with the employee as if he (or she) were (instead of simply "as") the employee's spouse?**

The present wording is appropriate as it denotes the nature of their cohabitation and does not suggest that they are in fact husband and wife. Similar wording is used in paragraph (b) of the definition of "member of the family" in section 2 of the Pneumoconiosis (Compensation) Ordinance (Cap. 360).

- (b) Should amendments be made to section 4 of the principal ordinance to remove references to "Crown" and "Her Majesty"?**

It is not intended that changes to references to "Crown" and "Her Majesty" be effected by this Bill. Changes to this and similar provisions in other legislation will be considered and dealt with in a separate legislative amendment exercise.

- (c) With the proposed repeal of section 6(6) of the principal ordinance, how would a person who has paid funeral expenses recover the expenses if the employer fails to pay up?**

The Bill provides that claims for reimbursement of funeral expenses shall be made either to

- (1) the Commissioner (section 6E); or
- (2) the District Court (section 18A).

In (1), the Commissioner shall on determination issue a Certificate for Funeral and Medical Attendance Expenses which may be made an order of the Court (section 6E(15)) and in (2), a court order will be made. Payment of the expenses may be recovered by enforcement of the relevant order. The existing section 6(6) therefore becomes redundant.

(d) (1) In the proposed section 6B(1), how would "on application by the members of the family" be construed?

(2) Can the Commissioner proceed to a determination even if there is only one application from any one member of the family or does he have to wait until all members of the family have applied? In the former case, can he make the determination in respect of all eligible members?

(3) Has consent to be given in respect of each application or consent to any one application would suffice. In other words, can the Commissioner still proceed to determination if the employer consent to one but withhold his consent as to another? Proposed section 6B(4)(c) seems to require separate application.

(1) "On application by the members of the family" means on application by the members of the family made in accordance with section 6B(4).

(2) The Commissioner shall proceed to determination when the period specified for making applications (section 6B(4)(b)) expires. The Commissioner shall only be required to make a determination in respect of the family members who have made an application.

(3) "Consent" refers to consent to the Commissioner to make a determination, not consent to the making of an application.

(e) Under the circumstances listed in the proposed section of 6B(2),

should the Commissioner continue with his determination if there is only one claim and it is withdrawn?

No. There will be no determination if there is no application.

- (f) Does "certificate" in the proposed section 6C(1)(b) means a "Certificate of Interim Payment"? If so, should this be made clear?**

"Certificate of Interim Payment" is defined by reference to this section (see proposed definition of "Certificate of Interim Payment"). It is not appropriate to have this term specified in this paragraph.

- (g) In the proposed section 6C(3)(b)(i), is it necessary to say "the number of months that have elapsed"?**

No. This is the usual expression.

- (h) Section 4, if amended as proposed, of the principal ordinance would provide that the Ordinance shall not apply in the case of any Government employee if any of the members of his family is paid a pension or gratuity under any other ordinance. What would be the effect of proposed section 6C(16) if one of the family members gives up his rights as provided thereunder but another family member chooses to be paid such a pension or gratuity?**

It does not appear likely such a situation would arise. Section 6C deals with determination of interim payment and application therefor can only be made by the spouse. In addition, for entitlements to interim payments, in cases involving civil servants, the benefits payable under the pension-related ordinances and the statutory compensation payable under the Employees' Compensation Ordinance (ECO) are mutually exclusive, i.e. if any benefits were paid or payable under any pension-related ordinances, then the family members of a deceased civil servant would not be entitled to claim compensation under the ECO and vice versa. Therefore, before determining the eligibility for interim payments under section 6C, the Commissioner would ensure that all the relevant family members who would be entitled to claim benefit under the pension-related ordinances have explicitly agreed to relinquish their rights under those ordinances.

- (i) **Would it not be obvious from other proposed provisions that co-habitee is excluded from "spouse" as expressly provided in proposed section 6C(17). In what context might "spouse" be interpreted to include a co-habitee so as to make it necessary that the exclusive definition has to be made for the purpose of that section?**

The purpose of this provision is to clearly preclude a cohabitee from making a claim for interim payment.

- (j) **What is the difference between "legal personal representative" in the proposed section 6E(6) and 12(2) and "personal representative" in section 27?**

Consistent use of "legal personal representative" is preferred as the same reference appears in the "meaning of employee" (section 2(3)) and the definition of "employer" (section 3) of the Ordinance. The draft Committee Stage Amendment will reflect this by proposing to amend section 27.

- (k) **In the case of a death prior to the issue of a Review Certificate of Compensation Assessment for Fatal Case, is there any provision for that Review Certificate to be further revised?**

No. If a family member dies prior to the issue of a Review Certificate of Compensation Assessment for Fatal Case, his legal personal representative shall have no right to the compensation (proposed section 12(2)). This would be reflected in the Review Certificate.

- (l) **In the proposed new section 24(1A), should not "as if he was an employer" be "as if he were an employer"?**

The suggested version is acceptable. The draft Committee Stage Amendment will reflect the changes by proposing to amend section 24(1A).

- (m) **Would consideration be given to taking the opportunity to remove the word "or" from section 18A(1)(c)?**

It is our usual practice to retain the word "or" in the present situation.