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Legislative Council

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**Paper for the House Committee Meeting
of the Legislative Council
on 3 March 2000**

**Legal Service Division Report on
Employees' Compensation
(Amendment) (No. 2) Bill 2000**

Object of the Bill

To revise the scheme of statutory compensation payable by the employer where his employee dies from injury by accident arising out of and in the course of employment.

LegCo Brief Reference

2. EMB CR 11/4/3231/77, issued by the Education and Manpower Bureau in February 2000.

Date of First Reading

3. 1 March 2000.

Comments

4. At present, the Employees' Compensation Ordinance (Cap. 282) provides that the employer is liable to pay compensation not exceeding a specified maximum to the dependants of an employee who dies from injury by accident arising from or in the course of employment. If the employee leaves no dependants, then the employer only needs to pay the reasonable expenses of his burial and of medical attendance on him.

5. It is further provided that the apportionment of compensation among dependants of the deceased employee has to be made by the court, which has to determine who the dependants are, their dependency and their share of the compensation.

6. According to the Administration, the current scheme is unsatisfactory because -

- (a) compensation to dependants has to be settled by the court in all cases with legal cost incurred and the average time taken ranging between 18 and 24 months;
- (b) the amounts of compensation vary according to how successfully the dependants or employer argue for or against the actual level of dependency;
- (c) even close family members may be excluded if dependency cannot be established;
- (d) immediate financial relief is not available while settlement is pending in the court; and
- (e) dependants cannot claim for funeral expenses.

7. The Bill proposes some fundamental changes to the present scheme as follows -

- (a) to allow the Commissioner for Labour to settle the compensation payable to dependants in non-contentious cases, subject to a right of review by the Commissioner and a right of appeal to the court;
- (b) to make compensation payable to the family members of the deceased instead of to his dependants and the full amount of compensation to be apportioned according to a schedule; and
- (c) to require interim payments pending the completion of assessment by the Commissioner and payment of funeral expenses by the employer in all cases.

8. The Bill also makes amendments to 2 other aspects of the principal ordinance to -

- (a) revise the level of fines for certain offences which have not been reviewed for a long time and to express the monetary penalty

provisions in terms of levels of fines as prescribed by the Criminal Procedure Ordinance (Cap. 221);

- (b) clarify the liability of a principal contractor as an "employer" where he is liable to pay compensation to the employees of his sub-contractors.

Public Consultation

9. According to the LegCo Brief, the Labour Advisory Board has been consulted and endorsed the proposals.

Consultation with LegCo Panel

10. The Bill was introduced to the Panel on Manpower at its meeting on 24 February 2000.

Recommendation

11. As major changes are proposed in the Bill to the present statutory scheme of employees' compensation in fatal cases, the setting up of a Bills Committee should be considered for scrutiny of its details.

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