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EMPLOYEES COMPENSATION ASSISTANCE
(AMENDMENT) BILL 2002

COMMITTEE STAGE

Amendments to be moved by the Secretary for Education
and Manpower

Clause

Amendment Proposed

1(2)

By deleting the clause and substituting -

"(2) Subject to subsection (3), this Ordinance shall come into operation on 1 July 2002.

(3) Section 30, insofar as it relates to section 46A(2) to (8) of the principal Ordinance as amended by this Ordinance, and section 6 of the Schedule, shall come into operation on a day to be appointed by the [Secretary for Education and Manpower] by notice published in the Gazette."

3(b)

In the proposed definition of "eligible person" -

(a) in paragraph (a) -

(i) by adding "as determined by a court of competent jurisdiction in Hong Kong" after "non-fatal";

(ii) in subparagraph (ii), by adding
"whether before or" after "in the case
of the injured employee";

(b) in paragraph (b), by adding "as determined by a
court of competent jurisdiction in Hong Kong"
after "fatal".

7(d) In the proposed section 17(2), by deleting every thing
after "subsection (1)" and substituting "irrespective
of whether the notice concerned under section 20 is
published in the Gazette before, on or after the
commencement of this subsection.".

8(d) In the proposed section 18(2), by deleting every thing
after "subsection (1)" and substituting "irrespective
of whether the notice concerned under section 20 is
published in the Gazette before, on or after the
commencement of this subsection.".

12 (a) In the proposed section 20A, by adding -

"(4) Where -

(a) an eligible person falls
within paragraph (a)(ii) of
the definition of "eligible
person";

(b) the death of the injured
employee concerned occurs

before damages have been awarded; and

(c) any amount of damages for which the employer concerned is liable is unable to be recovered from the employer, then the eligible person shall be deemed to be an eligible person who falls within subsection (1) in respect of those damages notwithstanding that the eligible person -

(d) is not mentioned in the judgment or order concerned mentioned in subsection (2); and

(e) is unable to take any proceedings mentioned in subsection (3).".

(b) In the proposed section 20B, by adding -

"(1A) Subject to section 20A(2) and subsection (2), the aggregate amount of relief payment to one or more eligible persons who fall within section 20A(4) in the case of a particular injured employee shall be the amount of damages for which the employer concerned is liable to pay in relation to the accident concerned after that amount is reduced by -

- (a) the amount of compensation which has been paid or is payable under the Employees' Compensation Ordinance (Cap. 282) in respect of the injured employee in relation to that accident; and
- (b) the amount, if any, of those damages already paid by the employer."

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- (a) In the proposed section 25A -
 - (i) by deleting "(1) If" and substituting "If";
 - (ii) in paragraph (a) -
 - (A) by adding "to join in the proceedings as a party in accordance with Order 15, rule 6 of the Rules of the High Court (Cap. 4 sub. leg.) or Order 15, rule 6 of the Rules of the District Court (Cap. 336 sub. leg.), as the case may require," after "court";
 - (B) in subparagraph (iv), by adding "or" after "proceedings;"
 - (iii) in paragraph (b) -
 - (A) by deleting "third";

(B) by adding "or Order 15, rule 6 of the Rules of the District Court (Cap. 336 sub. leg.), as the case may require," after "(Cap. 4 sub. leg.)";

(iv) in paragraph (c) -

(A) by deleting "third";

(B) by adding "or Order 15, rule 6 of the Rules of the District Court (Cap. 336 sub. leg.), as the case may require," after "(Cap. 4 sub. leg.)";

(b) By deleting the proposed section 25B(3) and substituting -

"(3) A person who has served a notice under subsection (1) on the Board and who intends, within 45 days after the date on which the notice has been so served, to -

(a) enter into an agreement with the other party in respect of the settlement of the claim to which the notice relates;
or

(b) obtain a final judgement against the other party in respect of the satisfaction of the claim to which the

notices relates,
shall, not less than 10 days before the date of such agreement or final judgement, as the case may be, serve a notice in writing on the Board informing the Board that the person intends to enter into an agreement or obtain a final judgement, as the case may be, in respect of that claim within 45 days after the date on which the first-mentioned notice has been served on the Board."

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In the proposed section 36A -

- (a) in subsection (2), by deleting "subsection (3)" and substituting "subsections (3) and (3A)";
- (b) in subsection (3), by deleting "The" and substituting "Subject to subsection (3A), the";
- (c) by adding -

"(3A) Where -

- (a) an employer has contravened section 40(1) of the Employees' Compensation Ordinance (Cap. 282)("first contravention");
- (b) a notice in writing under subsection (5)(a) has been served on the employer in respect of the first

contravention; and

- (c) the employer has, not later than 24 months after the date on which that notice was so served, again contravened section 40(1) of that Ordinance ("second contravention"),

then, in the case of the second contravention, the amount of surcharge payable by the employer under subsection (1) by virtue of subsection (2) or (3) shall be multiplied by a factor of 2.";

- (d) by deleting subsections (6) and (7) and substituting -

"(6) An employer who is not satisfied with a determination of the Board as specified in a final notice under subsection (5)(b) may appeal against the determination to the District Court not later than 30 days after the final notice is served on the employer.

(7) The District Court may in a particular case extend the period specified in subsection (6) where it thinks fit to do so.

(7A) On an appeal under subsection (6),

the District Court may -

(a) by order confirm, vary or cancel the determination of the Board as specified in the final notice the subject of the appeal;

(b) make such order as to costs as it thinks fit.".

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In the proposed section 46A -

(a) in subsection (5), by deleting "31(b)" and substituting "31";

(b) by adding -

"(6A) Schedule 2 is repealed.".