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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

- 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 death 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.".

14(c) By deleting the proposed section 22(6) and substituting -

"(6) Subject to the provisions of this Ordinance, the Board may vary a determination under this section to take account of -

- (a) a person who becomes an eligible person on or after the date of the determination; or
- (b) the existence of an eligible person which was not known to the Board before that date."

17 (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 any judgement against

the other party in respect of
the claim to which the
notices relates,

shall, not less than 10 days before the date
of such agreement or 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
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."

19(b) By deleting the proposed section 28(4) and (5) and
substituting -

"(4) If an offer made under subsection (1)
is not accepted by a person, and in subsequent
proceedings in respect of the claim to which the
offer relates the person is awarded an amount not
more than the amount offered by the Board, then
the Board -

- (a) shall not be required to pay more
than the amount as awarded by the
court or tribunal concerned; and
- (b) shall not be liable to pay the
costs incurred by the person after
the date of the offer to which the

claim relates.".

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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."