

**OCCUPATIONAL DEAFNESS (COMPENSATION)
(AMENDMENT) BILL 2009**

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A BILL

To

Amend the Occupational Deafness (Compensation) Ordinance to provide for compensation for monaural hearing loss, for further compensation for any additional hearing loss sustained as a result of continued employment in a noisy occupation, for an additional method of payment by the Occupational Deafness Compensation Board of expenses in respect of hearing assistive devices and for an increase in the maximum amount payable by the Board for those expenses; to amend the Employees' Compensation Insurance Levies Ordinance and the Employees' Compensation Insurance Levy (Rate of Levy) Order to reduce the overall rate of levy and adjust how the net resources of the Employees' Compensation Insurance Levies Management Board are to be distributed; and to provide for related matters.

Enacted by the Legislative Council.

PART 1

PRELIMINARY

1. Short title

This Ordinance may be cited as the Occupational Deafness (Compensation) (Amendment) Ordinance 2009.

2. Commencement

This Ordinance comes into operation on a day to be appointed by the Secretary for Labour and Welfare by notice published in the Gazette.

PART 2

AMENDMENTS TO OCCUPATIONAL DEAFNESS (COMPENSATION) ORDINANCE

3. Interpretation

(1) Section 2 of the Occupational Deafness (Compensation) Ordinance (Cap. 469) is amended, in the definition of “applicant”, by adding “direct payment of expenses or” after “application for”.

(2) Section 2 is amended, in the definition of “noise-induced deafness”—

(a) by repealing “means sensorineural hearing loss” and substituting—

“means—

(a) sensorineural hearing loss”;

(b) in the English text, by adding a comma after “one ear to noise”;

(c) by adding “or” after the semicolon;

(d) by adding—

“(b) monaural hearing loss;”.

(3) Section 2 is amended, in the Chinese text, in the definition of “聽力測驗中心”, by repealing the full stop and substituting a semicolon.

(4) Section 2 is amended by adding—

““device provider” (器具提供者), in relation to an application made under section 27B(1A), means the person from whom the applicant has acquired, or intends to acquire, the hearing assistive device mentioned in that section or the service for fitting, repair or maintenance of the hearing assistive device;

“direct payment of expenses” (直接支付開支) means the payment by the Board of the expenses mentioned in section 27B(1A) directly to the device provider on an application made under that section;

“monaural hearing loss” (單耳聽力損失) means sensorineural hearing loss amounting to not less than 40 dB in only one ear, where such loss is due to noise, and being the average of hearing losses measured by audiometry over the 1, 2 and 3 kHz frequencies;”.

4. Functions and powers of the Board

Section 5(1)(c) is amended by adding “, direct payment of expenses” after “compensation”.

5. Entitlement to compensation

(1) The heading of section 14 is amended by adding “**for the first time**” after “**compensation**”.

(2) Section 14(2)(d) is amended by repealing everything before “(“previous application”)” and substituting—

“(d) if he has previously made an application for compensation for which the entitlement arose under this section”.

(3) Section 14(2)(d)(i) is repealed.

(4) Section 14(2)(d)(ii) is amended by adding “on or after 6 March 1998” before “; and”.

(5) Section 14(2)(d)(iii) is amended, in the Chinese text, by repealing “被要求根據第 23(1) 條” and substituting “而根據第 23(1) 條被要求”.

(6) Section 14(5) is repealed.

6. Section added

The following is added—

“14A. Entitlement to further compensation for additional permanent incapacity resulting from noise-induced deafness

(1) Subject to sections 14(3), 17 and 29, after a person has been awarded compensation on an application under section 15, the person is entitled to further compensation for any additional permanent incapacity resulting from noise-induced deafness suffered if the Board is satisfied that the person fulfils the conditions specified in subsection (2).

(2) The conditions referred to in subsection (1) are that—

(a) the person has had at least 5 years of employment in aggregate in any noisy occupation in Hong Kong after—

(i) the date of the person’s last successful application for compensation under section 15 (“the latest successful application”); or

(ii) if the latest successful application was made for compensation for which the entitlement arose under section 48(3), the date of the previous unsuccessful application mentioned in section 48(3)(b);

(b) the person has at any time been employed under a continuous contract in any noisy occupation in Hong Kong—

- (i) within the 12 months before the person makes an application for compensation based on an entitlement arising under this section; or
 - (ii) subject to subsection (3), within the 12 months before the date of the latest successful application; and
- (c) if the person has previously made an application for compensation for which the entitlement arose under this section and—
 - (i) the Board refused the application under section 22(1)(ab); and
 - (ii) the Board has not been requested to review the decision under section 23(1) or the Board has confirmed the decision under section 23(2),the person has had at least 24 months of employment in aggregate in any noisy occupation in Hong Kong after the date of the previous application or, if the person has made more than one such previous application in respect of which the facts mentioned in subparagraphs (i) and (ii) apply, after the date of the last such application.
- (3) The condition specified in subsection (2)(b)(ii) applies only if—
 - (a) the latest successful application was made for compensation for which the entitlement arose under section 48(3);
 - (b) the person cannot fulfil the condition specified in subsection (2)(b)(i); and
 - (c) the application for compensation based on an entitlement arising under this section is made within a period of 12 months beginning on the date when compensation was paid in respect of the latest successful application.”.

7. Application for compensation

- (1) Section 15(1) is repealed and the following substituted—

“(1) A person who wishes to apply for compensation must apply to the Board in the specified form and must submit, together with the application, such information as will satisfy the Board that he or she fulfils the conditions specified in section 14(2), 14A(2) or 48(1)(i) or (3).”.
- (2) Section 15 is amended by adding—

“(1A) A person who wishes to apply for compensation based on an entitlement arising under section 14A must also submit a certificate of determination of compensation under section 24(1) or (3), or a copy of a court order made under section 28(4), in relation to the latest successful application mentioned in section 14A(2)(a).”.

- (3) Section 15(2) is repealed and the following substituted—
“(2) Subject to section 48(4), upon confirmation by the Board that a claimant fulfils the conditions specified in section 14(2), 14A(2) or 48(1)(i), the claimant must undergo a hearing test at a hearing test centre or a medical examination, or both, arranged by the Board under section 16(1).”.

8. Determination of noise-induced deafness and permanent incapacity

(1) The heading of section 20 is amended by repealing “**and permanent incapacity**” and substituting “**, permanent incapacity and additional permanent incapacity**”.

(2) Section 20(1) is amended by repealing “The Board” and substituting “Subject to section 48(4), the Board”.

(3) Section 20(2) is amended by repealing everything before “in accordance with” and substituting—

“(2) In relation to a claimant suffering from noise-induced deafness other than monaural hearing loss, the Board must, on the basis of the noise-induced deafness of the claimant determined under subsection (1), determine,”.

(4) Section 20 is amended by adding—

“(2A) In relation to a claimant suffering from monaural hearing loss, the Board must, on the basis of the noise-induced deafness of the claimant determined under subsection (1) or section 48(4), determine the percentage of permanent incapacity of the claimant which is to be the percentage set out in subsection (2B).

(2B) The percentage mentioned in subsection (2A) is half of the percentage shown in Schedule 4 that correlates to—

- (a) the average hearing loss for the worse ear of the claimant; and
- (b) the average hearing loss shown in the first column for better ear as shown in Schedule 4.

(2C) In relation to a claimant applying for compensation based on an entitlement arising under section 14A, the Board must determine the percentage of additional permanent incapacity of the claimant which is to be calculated as follows—

$$A \quad - \quad B$$

where—

- (a) “A” means the percentage of permanent incapacity determined under subsection (2) or (2A);

(b) “B” means the percentage of permanent incapacity stated in the certificate of determination of compensation or the court order in relation to the latest successful application mentioned in section 14A(2)(a).

(2D) If the percentage of additional permanent incapacity is smaller than zero, the percentage is to be taken to be zero.”.

(5) Section 20(3) is amended by repealing “subsection (1) or (2)” and substituting “subsection (1), (2) or (2A) or section 48(4)”.

9. Section substituted

Section 21 is repealed and the following substituted—

“21. Determination of compensation for permanent incapacity and additional permanent incapacity

The Board must determine the amount of compensation payable to a claimant for permanent incapacity or additional permanent incapacity in accordance with Schedule 5 as in force on the date of the determination of the amount, irrespective of the date of the application under section 15 to which the determination relates.”.

10. Refusal of application

(1) Section 22(1)(a) is amended by repealing “or”.

(2) Section 22(1) is amended by adding—

“(ab) determines under section 20 that the percentage of additional permanent incapacity suffered by the claimant is zero; or”.

11. Certificate of determination of compensation, objection and review

Section 24(1)(a) is amended by adding “or additional permanent incapacity,” after “permanent incapacity”.

12. Part heading amended

The heading of Part VIIA is amended by adding “DIRECT PAYMENT OF EXPENSES OR” before “REIMBURSEMENT”.

13. Reimbursement of expenses in relation to hearing assistive devices

(1) The heading of section 27B is amended by repealing “**Reimbursement**” and substituting “**Direct payment of expenses or reimbursement**”.

(2) Section 27B is amended by adding—

“(1A) A person who fulfils the conditions specified in subsection (1)(a), (b) or (c) may apply to the Board for payment by the Board directly to the device provider of any expenses he or she may reasonably incur in the acquisition, fitting, repair or maintenance of a hearing assistive device used or to be used in connection with his or her noise-induced deafness.”.

(3) Section 27B(2) is amended by adding “or payable under subsection (1A)” after “under subsection (1)”.

(4) Section 27B(3) is amended by repealing “Expenses incurred in relation to a hearing assistive device that is a hearing aid shall not be reimbursed under subsection (1)” and substituting “Expenses in respect of a hearing assistive device that is a hearing aid must not be reimbursed under subsection (1) or paid under subsection (1A)”.

14. Section substituted

Section 27C is repealed and the following substituted—

“27C. Limits of direct payment of expenses and reimbursement of expenses

(1) If—

(a) a person applies for reimbursement of expenses or direct payment of expenses for the purpose of the acquisition and fitting of a hearing assistive device; and

(b) the application is the person’s first application for that purpose under this Part,

the amount of expenses that may be reimbursed to the applicant or paid directly to the device provider for the applicant as determined under section 27E must not exceed the amount prescribed for the purposes of this subsection in Schedule 7, as in force on the date of that determination.

(2) The aggregate of—

(a) any amount of expenses reimbursed to an applicant as determined under section 27E; and

(b) any amount of expenses paid directly to the device provider for the applicant as determined under that section, must not exceed the amount prescribed for the purposes of this subsection in Schedule 7, as in force on the date of the determination by the Board in respect of the applicant under that section.”.

15. Application for reimbursement of expenses

(1) The heading of section 27D is amended by adding “**direct payment of expenses or**” before “**reimbursement**”.

(2) Section 27D(1) is amended by adding “based on an entitlement arising under section 27B(1)” after “reimbursement of expenses”.

(3) Section 27D is amended by adding—

“(3) An application for direct payment of expenses under section 27B(1A) must be in a specified form and accompanied by—

(a) such documents relating to the expenses as may be reasonably required by the Board; and

(b) if the expenses relate to a hearing aid, the advice referred to in section 27B(3), unless the advice has already been sent to the Board.”.

16. Determination of application

(1) Section 27E(1)(a) and (b) is repealed and the following substituted—

“(a) if the application relates to reimbursement of expenses—

(i) whether the applicant is entitled to reimbursement of any expenses; and

(ii) if the applicant is so entitled, the amount of that reimbursement; or

(b) if the application relates to direct payment of expenses—

(i) whether the applicant is entitled to have any expenses paid by the Board directly to the device provider; and

(ii) if the applicant is so entitled, the amount of those expenses.”.

(2) Section 27E(4) is amended by adding “or to have any expenses paid by the Board directly to the device provider” after “expenses”.

17. Review of determination

(1) Section 27F(6) is amended by repealing everything after “any amount of” and substituting—

“expenses that—

- (a) have been reimbursed to, and received by, the applicant; or
 - (b) have been determined by the Board to be paid for the applicant directly to the device provider, if any of the events mentioned in subsection (7) happens.”.
- (2) Section 27F is amended by adding—
 - “(7) The events referred to in subsection (6)(b) are as follows—
 - (a) if the hearing assistive device is to be acquired by the applicant from the device provider, the hearing assistive device has been acquired by the applicant; and
 - (b) if the hearing assistive device is to be fitted, repaired or maintained by the device provider, the hearing assistive device so fitted, repaired or maintained has been returned to the applicant.”.

18. Payment of reimbursement of expenses

(1) The heading of section 27G is amended by repealing “**Payment of**” and substituting “**Direct payment of expenses and**”.

(2) Section 27G(1) is repealed and the following substituted—

“(1) Subject to section 30A, if an applicant is entitled to any amount pursuant to a determination made under section 27E(1)(a)(ii) or (b)(ii), the Board must—

- (a) if the application relates to reimbursement of expenses, pay the amount to the applicant within a period of 21 days beginning on the date of the notice issued to the applicant under section 27E(2);
- (b) if the application relates to direct payment of expenses, pay the amount directly to the device provider as soon as reasonably practicable after the date mentioned in subsection (3A) or the expiry of a period of 14 days beginning on the date of the notice mentioned in paragraph (a), whichever is the later.”.

(3) Section 27G(3) is repealed and the following substituted—

“(3) Subject to section 30A—

- (a) any amount payable to an applicant at the conclusion of a review must be paid within a period of 21 days beginning on the date of the notice issued to the applicant under section 27F(5); and

- (b) any amount that the Board must, at the conclusion of a review, pay for the applicant directly to the device provider must be paid as soon as reasonably practicable after the date of the notice issued to the applicant under section 27F(5) or the date mentioned in subsection (3A), whichever is the later.
- (3A) The date referred to in subsections (1)(b) and (3)(b) is—
 - (a) if the hearing assistive device is to be acquired by the applicant from the device provider, the date when the device provider satisfies the Board that the hearing assistive device has been acquired by the applicant; or
 - (b) if the hearing assistive device is to be fitted, repaired or maintained by the device provider, the date when the device provider satisfies the Board that the hearing assistive device so fitted, repaired or maintained has been returned to the applicant.”.

19. Offence

Section 30(1) is amended by adding “, direct payment of expenses” after “compensation”.

20. Priority of payment

(1) Section 30A(1) is amended by adding “, direct payment of expenses” after “compensation” where it twice appears.

(2) Section 30A(3) is amended by repealing “the compensation or reimbursement of expenses” and substituting “the amount of the compensation, direct payment of expenses or reimbursement of expenses”.

21. Compensation or reimbursement of expenses not to be assigned, charged or attached

(1) The heading of section 32 is amended by adding “, **direct payment of expenses**” after “**Compensation**”.

(2) Section 32 is amended by adding “, direct payment of expenses” after “compensation” where it twice appears.

22. Transitional

(1) Section 48(1)(ii) is amended by adding “, that is to say, 6 March 1998” after “the amending Ordinance”.

(2) Section 48(2) is amended by adding “, that is to say, 6 March 1998” after “the amending Ordinance”.

(3) Section 48(2)(a), (b) and (c) is amended by repealing “pre-amended Ordinance” wherever it appears and substituting “pre-amended 1998 Ordinance”.

(4) Section 48(3) is repealed and the following substituted—

“(3) Despite section 14(1) and subject to sections 14(3) and 29, a person is entitled to such compensation as is determined by the Board under this Ordinance if—

(a) the person fulfils the conditions specified in section 14(2)(a) and (c);

(b) the person has made one or more previous applications for compensation under the pre-amended 2009 Ordinance, and the previous application or the last of such previous applications was refused under section 22(1)(a) of that Ordinance on the ground that he or she suffered from sensorineural hearing loss of not less than 40 dB in only one ear (“previous unsuccessful application”); and

(c) there is no evidence proving that the sensorineural hearing loss was not due to noise.

(4) In relation to a claimant applying for compensation based on an entitlement arising under subsection (3), the Board must determine the noise-induced deafness of the claimant having regard to the result of the hearing test or medical examination as stated in the notice sent under section 22 in respect of the claimant’s previous unsuccessful application mentioned in subsection (3)(b).

(5) If before the commencement of the 2009 Amendment Ordinance, a claimant had applied for compensation under the pre-amended 2009 Ordinance but the Board had not at that commencement determined the noise-induced deafness of the claimant under section 20 of the pre-amended 2009 Ordinance, then, on or after that commencement, the Board must make the determination under this Ordinance.

(6) In this section—

(a) “pre-amended 1998 Ordinance” (《修訂前的1998年條例》) means this Ordinance as in force immediately before the commencement of sections 1 to 20 of the amending Ordinance, that is to say, 6 March 1998;

(b) “pre-amended 2009 Ordinance” (《修訂前的2009年條例》) means this Ordinance as in force immediately before the commencement of the 2009 Amendment Ordinance;

- (c) “2009 Amendment Ordinance” (《2009年修訂條例》) means the Occupational Deafness (Compensation) (Amendment) Ordinance 2009 (of 2009).”.

23. Amount of compensation

(1) Schedule 5 is amended, in section 1, by repealing “suffered by the claimant as determined by the Board under section 20(2)” and substituting “or additional permanent incapacity of the claimant determined under section 20”.

(2) Schedule 5 is amended, in section 3(*ba*), by adding “, that is to say, 6 March 1998” after “the amending Ordinance”.

(3) Schedule 5 is amended, in section 3A, by adding “, that is to say, 6 March 1998” after “the amending Ordinance”.

(4) Schedule 5 is amended, in section 4, by adding “subject to section 5,” after “In this Schedule,”.

(5) Schedule 5 is amended by adding—

“5. In calculating the amount of compensation payable to a claimant on the basis of the noise-induced deafness of the claimant determined under section 48(4) of this Ordinance, “relevant date of application” (提出申請的有關日期) means—

- (a) for the purposes of sections 1 and 3(*a*), the date of the previous unsuccessful application mentioned in section 48(3)(*b*) of this Ordinance; and
- (b) for the purposes of section 3(*c*), the date of the commencement of section 48(4) of this Ordinance.”.

24. Limits of reimbursement of expenses

(1) The heading of Schedule 7 is amended by adding “DIRECT PAYMENT OF EXPENSES AND” before “REIMBURSEMENT”.

(2) Schedule 7 is amended, in section 2, by repealing “\$18,000” and substituting “\$36,000”.

PART 3

AMENDMENTS TO EMPLOYEES' COMPENSATION INSURANCE LEVIES
ORDINANCE AND EMPLOYEES' COMPENSATION INSURANCE
LEVY (RATE OF LEVY) ORDER

Division 1—Employees' Compensation Insurance Levies Ordinance

25. Establishment of the Board

Section 3(2)(e) of the Employees' Compensation Insurance Levies Ordinance (Cap. 411) is amended, in the Chinese text, by repealing “職業安全健康促進局” and substituting “職業安全健康局”.

**26. Provisions with respect to the Board
and members thereof**

Schedule 1 is amended by repealing “[s. 3(4)]” and substituting “[ss. 3(4) & 27]”.

27. Schedule 2 substituted

Schedule 2 is repealed and the following substituted—

“SCHEDULE 2 [ss. 4, 6(3), 7(1)
& 27]

BODIES SPECIFIED FOR THE PURPOSES
OF SECTION 7(1)

Item	Specified body	Proportion of the net resources of the Board to be distributed for a relevant period
1.	The Occupational Safety and Health Council	20/58
2.	The Employees Compensation Assistance Fund Board	31/58
3.	The Occupational Deafness Compensation Board	7/58”.

**Division 2—Employees’ Compensation Insurance Levy
(Rate of Levy) Order**

28. Prescribed rate of levy

Paragraph 2(e) of the Employees’ Compensation Insurance Levy (Rate of Levy) Order (Cap. 411 sub. leg. A) is repealed and the following substituted—

- “(e) on or after 1 July 2002 and before the commencement of section 28 of the Occupational Deafness (Compensation) (Amendment) Ordinance 2009 (of 2009) is 6.3%;
- (f) on or after the commencement of section 28 of the Occupational Deafness (Compensation) (Amendment) Ordinance 2009 (of 2009) is 5.8%.”.

Explanatory Memorandum

The object of this Bill is to amend the Occupational Deafness (Compensation) Ordinance (Cap. 469) (“the principal Ordinance”) to improve the occupational deafness compensation scheme by—

- (a) extending the coverage of compensation to a person who has suffered from monaural hearing loss owing to exposure to noise in the person’s working environment;
- (b) providing for the payment of further compensation for additional hearing loss sustained as a result of continued employment in a noisy occupation;
- (c) increasing the maximum reimbursable amount for the expenses incurred in the acquisition, fitting, repair and maintenance of hearing assistive devices; and
- (d) providing for the direct payment of the expenses on a hearing assistive device for an eligible person to a supplier of the device or a person who provides maintenance services for the device, as an alternative to the existing reimbursement arrangement.

2. Amendments are also made to the Employees’ Compensation Insurance Levies Ordinance (Cap. 411) and the Employees’ Compensation Insurance Levy (Rate of Levy) Order (Cap. 411 sub. leg. A) to—

- (a) reduce the overall Employees’ Compensation Insurance Levy rate; and

(b) adjust how the net resources of the Employees' Compensation Insurance Levies Management Board ("ECILMB") are to be distributed to the Occupational Deafness Compensation Board ("ODCB"), the Occupational Safety and Health Council ("OSHC") and the Employees Compensation Assistance Fund Board ("ECAFB") respectively.

3. The main provisions of the Bill are as follows—

- (a) clause 3 amends section 2 of the principal Ordinance to—
 - (i) amend the definition of "applicant";
 - (ii) include "monaural hearing loss" in the definition of "noise-induced deafness"; and
 - (iii) add the definitions of "device provider", "direct payment of expenses" and "monaural hearing loss";
- (b) clause 6 adds section 14A to the principal Ordinance to provide that a person having been awarded compensation under the principal Ordinance is entitled to further compensation for the additional permanent incapacity resulting from the person's additional hearing loss suffered ever since if the specified conditions are fulfilled;
- (c) clause 7 amends section 15 of the principal Ordinance to make the application procedure also applicable to an application for compensation based on an entitlement arising under section 14A or 48(3) of the principal Ordinance;
- (d) clause 8 amends section 20 of the principal Ordinance to—
 - (i) make the mechanism for determining permanent incapacity also applicable to the determination of additional permanent incapacity;
 - (ii) provide for the calculation of the percentage of permanent incapacity of a person suffering from monaural hearing loss; and
 - (iii) provide for the calculation of the percentage of additional permanent incapacity suffered by a person;
- (e) clause 9 amends section 21 of the principal Ordinance to make the mechanism for determining the amount of compensation also applicable to an application for further compensation for additional permanent incapacity;

- (f) clause 13 amends section 27B of the principal Ordinance to provide that a person who is entitled to compensation under the principal Ordinance may apply to ODCB for direct payment by ODCB of expenses relating to hearing assistive devices to another person supplying those devices or providing maintenance services for those devices;
- (g) clauses 15 to 18 amend sections 27D, 27E, 27F and 27G of the principal Ordinance respectively to provide for the application for direct payment of the expenses mentioned in section 27B of the principal Ordinance, the review of the determination of the application and the arrangement for payment of the expenses;
- (h) clause 22 amends section 48 of the principal Ordinance to provide for transitional arrangements as follows—
 - (i) a person whose previous application was refused on the ground that he or she only suffered from sensorineural hearing loss of not less than 40 dB in only one ear may make application for compensation again once he or she has fulfilled the specified conditions; and
 - (ii) for an application for compensation made under section 15 of the principal Ordinance in force immediately before the commencement of the Bill if enacted, if ODCB has not yet determined the noise-induced deafness of the claimant at that commencement, ODCB must make the determination in accordance with the principal Ordinance as amended by the Bill;
- (i) clause 23 amends Schedule 5 to the principal Ordinance to provide how the amount of compensation is calculated in a case relating to additional permanent incapacity;
- (j) clause 24 amends Schedule 7 to the principal Ordinance to increase the maximum amounts for reimbursement and direct payment by ODCB of expenses relating to hearing assistive devices to \$36,000 for each applicant for the reimbursement and direct payment;
- (k) clause 27 amends Schedule 2 to the Employees' Compensation Insurance Levies Ordinance (Cap. 411) to adjust the proportions of the net resources of ECILMB to be distributed to ODCB, OSHC and ECAFB to 7/58, 20/58 and 31/58 respectively;
- (l) clause 28 amends paragraph 2 of the Employees' Compensation Insurance Levy (Rate of Levy) Order (Cap. 411 sub. leg. A) to reduce the overall Employees' Compensation Insurance Levy rate to 5.8%.