



LABOUR DEPARTMENT (Headquarters)

勞工處 (總處)

Your reference 來函編號： CB2/PL/MP
Our reference 本處檔案編號： LD HQ/715/11 Pt 2
Tel. number 電話號碼： 2852 4083
Fax number 傳真機號碼： 2117 0875

27 August 2013

Miss Betty Ma
Clerk to the Legislative Council Panel on Manpower
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Miss Ma,

Panel on Manpower

Thank you for your letter dated 1 August 2013 to the Secretary for Labour and Welfare requesting the Administration to provide responses to the following issues:

- (a) in his letter dated 21 June 2013 to the Panel Chairman, Hon. Tang Ka-piu opined that the scope of the Employees' Compensation Ordinance ("the ECO") should be extended to cover sudden death of employees while working and suggested that an item on "concern about the protection for sudden death of persons at work" be put on the Agenda of the Manpower Panel; and
- (b) in their letter dated 16 July 2013 to the Panel Chairman, Dr Hon Kwok Ka-ki and Hon Dennis Kwok suggested that an item on the scope of the Employees Compensation Assistance Scheme ("the Scheme") be put on the Agenda of the Manpower Panel.

Protection for Sudden Death of Persons at Work

The Administration attaches great importance to the compensation for employees who unfortunately are injured or die at work. The present ECO stipulates that if an employee sustains an injury or dies as a result of an accident

arising out of and in the course of employment, including sudden death which happened in the workplace and was caused by accident arising from work, his or her employer is liable to pay compensation in accordance with the Ordinance. In other words, cases of sudden death caused by work-related accidents are protected under the existing law.

As for other cases of claims made under the ECO, whether or not an employee who died suddenly at work was by accident arising out of and in the course of employment, depends on the facts and circumstances of the case. Upon receipt of notification by an employer, the Labour Department ("LD") will gather relevant information of the case, including investigation reports and medical reports, etc and seek the expert advice of the Occupational Health Officers, if necessary. LD will then provide to the employer and family members of the deceased employee its views on the likelihood of the case falling within the scope of the ECO, so as to help them in handling the claim for compensation under the ECO promptly. LD will endeavour to provide the appropriate assistance. Where any dispute remains unresolved, the case will need to be adjudicated by the court.

As stated in the Report on the Survey on Sudden Death at Work and Rights and Benefits for Industrial Injuries and Fatalities ("the Report") prepared jointly by Hong Kong Shue Yan University and the Employees' Safety, Training & Rehabilitation Services, there are many reasons leading to sudden deaths, most of which are related to heart diseases with coronary artery heart disease being the commonest problem. Numerous literatures have also pointed out that the causes of sudden death are complex and its incidence may be attributable to a number of interacting factors such as personal health condition, heredity, eating or living habits, work nature and environment, etc. It is, therefore, inappropriate to conclude that the case must fall within the ambit of the ECO just because the employee died suddenly in the course of work.

As regards the proposal of further extending the scope of the ECO to cover all cases of sudden death which happened at work, it involves a change of the fundamental principle underlying the ECO in providing compensation for injuries or deaths caused by accidents arising out of and in the course of employment. The system of employees' compensation in Hong Kong hinges on the rights and interests of employees as well as the affordability of employers. In determining the scope and level of compensation, it is necessary to balance the rights and benefits of both employers and employees. We consider that the existing ECO has provided the appropriate protection for sudden death of employees caused by work-related accidents. The provisions concerned are enacted after extensive

consultation and have struck a reasonable balance between employees' interests and the affordability of employers.

The Report also suggests strengthening the protection for self-employed persons, contractors and businessmen who die suddenly while working. The purpose of the ECO is to protect employees who sustain an injury or suffer from the prescribed occupational diseases in enabling them to claim for compensation from the employers. For the self-employed or independent contractors, their interests or obligations are defined by the terms of the service contracts or agreements drawn up with the other party in consideration of the services to be performed.

Self-employed persons, contractors and businessmen are not under the protection of the ECO. They should carefully assess the risk level of their work and their own health condition. Where necessary, they should take out the appropriate personal accident insurance to safeguard their interests. At present, there are relevant personal accident insurance plans available in the market from which policyholders may choose according to their needs.

We will continue to adopt an open mind when considering all concrete suggestions to improve the ECO, while continuing to monitor the situation in society and in various aspects, and listening to the views from all quarters. We will make timely reviews and improvements in the spirit of striking a balance between employees' rights and the affordability of employers, having regard to the overall interests of Hong Kong.

Scope of the Employees Compensation Assistance Scheme

As mentioned in the joint letter by Dr Hon KWOK Ka-ki and Hon Dennis KWOK, Hon Dennis KWOK raised a written question on the subject at the Legislative Council meeting held on 17 April 2013. We have already provided a response explaining that it is not opportune to consider making any legislative amendments to expand the scope of the Scheme. We now restate the relevant background information and the reasons in the ensuing paragraphs.

The Scheme was set up in 1991 under the Employees Compensation Assistance Ordinance ("the ECAO") to provide payment from the Employees Compensation Assistance Fund ("the Fund") to injured employees or family members of deceased employees who are unable to receive their entitlements of compensation and damages for work injuries from employers or insurers after exhausting legal and financially viable means of recovery. The Scheme is administered by the Employees Compensation Assistance Fund Board ("the Board").

The Scheme is financed by a levy payable by employers on the premium of employees' compensation ("EC") insurance policies taken out for their employees under the ECO. Since 1991, the rate of the levy distributed to the Scheme was revised a few times, from 1% to the present rate of 3.1%.

In the late 90s, the Fund was in financial difficulty owing to the rising number of large claims and escalating amount of common law damages awarded by the court. Coupled with a decline in the levy income, the Scheme had incurred annual operating deficits during the period between 1996-97 and 2005-06, and the deficit accumulated was not fully offset until 2008-09.

With a view to restoring the long-term financial viability of the Scheme, the Administration commissioned a consultancy review of the Scheme in 1999. The study concluded that there was significant imbalance between the Fund's income and expenditure so that it was necessary to increase the financial resources for the Fund and limit the scope of assistance under the Scheme. After consultation with the stakeholders, the Administration formulated a rescue package for the Scheme and the reform measures arising therefrom were given effect through enacting the necessary amendments to the ECAO in July 2002.

As a safety net, the revised Scheme continues to provide full protection of entitlements for statutory compensation under the ECO. To reduce the financial volatility brought about by the substantial amount of common law awards while providing reasonable protection for injured employees, an ex-gratia relief payment payable in lieu of common law damages has been introduced for employees awarded with common law damages by the Court on or after 1 July 2002. The relief payment shall not exceed the aggregate sum of damages awarded by the court and shall not cover any costs arising from proceedings in respect of damages. Where the amount does not exceed \$1.5 million, the relief payment shall be paid in full in a lump sum. If it exceeds \$1.5 million, an initial payment of \$1.5 million shall be paid and then followed by monthly payments calculated at the rate of the monthly earnings of the employee at the time of the accident or \$10,000, whichever is the higher, until the total amount of award is paid off.

To make both ends meet, the overall levy rate imposed on EC insurance premium was increased in July 2002 by 1 percentage point, from 5.3% to 6.3%. The Administration also provided a loan totalling \$280 million at a no-gain-no-loss interest rate to the Board so as to enable it to tide over the financial difficulty. The Board drew down the entire loan in phases between July 2001 and March 2005. Repayment of the loan plus interest would be made in 10 years from 2006 to 2015. As at the end of July 2013, the outstanding loan principal is around \$63 million.

Given the present financial situation of the Fund, the Administration considers that it is not opportune to initiate amendments to expand the scope of the Scheme to cover payment of costs and interests in damages awarded by the court. In fact, the Fund operated at deficits for years between 1996-97 and 2007-08. Although the Fund has started to gradually accumulate a surplus from 2008-09, it is required to make repayment of the \$280-million loan secured from the Administration in early years until the loan is fully paid off by 2015.

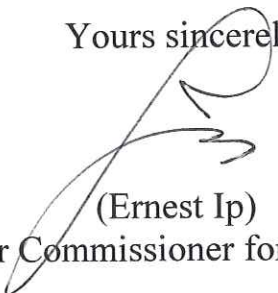
The financial position of the Fund is not the only factor for consideration. In deliberating the reform measures referred to earlier on, there were views that the Scheme, funded by a levy imposed on the premium of EC insurance paid by law-abiding employers, should not assume unlimited liability for the negligence of uninsured employers, and that the exclusion of legal costs arising from the proceedings of common law claims from the coverage of the Scheme would discourage any unnecessary and prolonged proceedings thus facilitating early settlement of the claims. It was accordingly decided that the Scheme should no longer be liable for the payment of common law damages or any related costs and interests.

The present arrangement under the Scheme is the consensus reached after prolonged discussions and negotiations in the community. It has aptly balanced the interests of injured employees, employers and the Board. While acknowledging the Fund as the last resort for injured employees and family members of deceased employees who fail to receive their entitlements from employers and insurers to obtain payments, we must ensure its long-term sustainability. The present Scheme allows for full payment in respect of statutory EC compensation and its associated interests and legal costs, as well as a reasonable coverage of common law damages in the form of a relief payment. Such arrangement has provided an effective safety net to injured employees and family members of deceased employees.

We will continue to closely monitor the stakeholders' concerns, the financial position of the Fund and the practical needs. We will conduct reviews in due course and make improvements to the protection of the ECAO as appropriate.

Should you have any queries on the above responses, please contact Ms Teresa Fong Yuk-sim, Senior Labour Officer of the Labour Department (telephone number: 28524035).

Yours sincerely,


(Ernest Ip)
for Commissioner for Labour