

For information  
on 21 March 2017

## **Legislative Council Panel on Manpower**

### **Handling of Disputes in Work Injury Compensation Claims under the Employees' Compensation Ordinance**

#### **Purpose**

This paper briefs Members on the handling of work injury compensation claims by the Labour Department (LD) under the Employees' Compensation Ordinance (Cap. 282) (ECO) including cases involving dispute between employers and employees.

#### **Employees' Compensation Ordinance**

2. ECO accords protection to employees who sustain an injury or die as a result of an accident arising out of and in the course of their employment, and employees suffering from an occupational disease prescribed by ECO owing to the nature of their work, and enables them to receive compensation in an expeditious manner through a "no-fault" system. It applies to all full-time or part-time employees who are employed under contracts of service or apprenticeship. According to ECO, an employer must notify the Commissioner for Labour (the Commissioner) of any accident or prescribed occupational disease through a prescribed form (Form 2/ 2A/ 2B) within the statutory notice period. Upon receipt of the case, LD will take appropriate follow-up actions.

#### **Handling of Work Injury Compensation Claims**

3. For non-fatal cases in which the employer confirms the work accident and admits employees' compensation liability, LD will issue a Medical Clearance Notification<sup>1</sup> informing the employee the scheduled appointment to approach the

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<sup>1</sup> The Medical Clearance Notification does not cover the following two circumstances: (a) the employee's work injury sick leave does not exceed three days, there is no permanent incapacity and the employer has made direct payment of compensation to the employee in accordance with ECO; and (b) the employee's work injury sick leave exceeds three days but is not more than seven days, there is no permanent incapacity and the employee has directly agreed with the employer on the compensation payable under ECO. Regardless of which situation, LD will take follow-up actions if the case is in dispute.

Occupational Medicine Unit (OMU) of LD for medical clearance. OMU will continue to follow up the work injury sick leave periods of the employee and, if necessary, arrange him to attend the Employees' Compensation (Ordinary Assessment) Board (Assessment Board) for assessment of the percentage of loss of earning capacity permanently caused by the injury and the period of absence from duty necessary (i.e. the work injury sick leave). Upon completion of the assessment, the Assessment Board will issue to the employee and the employer a Certificate of Assessment (Form 7) stating the assessment result. Any objection to the assessment by the employee and/or the employer must be made in writing within 14 days after the issue of Form 7. On receipt of the objection notice, OMU will arrange the employee to attend a review assessment. The Assessment Board will issue to the employee and the employer a Certificate of Review of Assessment (Form 9) upon completion of the review stating the result of re-assessment. Further objection by either party shall be made to the District Court (the Court) within six months after the issue of Form 9.

4. After the assessment and (if applicable) re-assessment of an employee, the Commissioner will assess the compensation payable by the employer under ECO and issue a Certificate of Compensation Assessment (Form 5) to the employee and the employer stating the amount of compensation payable. Any objection to the compensation assessment by either party must be made in writing within 14 days after the issue of Form 5. On receipt of the objection notice, the Commissioner will review his assessment and issue a Certificate of Review of Compensation Assessment (Form 6). The employer shall pay the employee within 21 days from the date of issue of the certificate (i.e. Form 5 or Form 6) the amount of compensation stated on the certificate or any outstanding amount.

5. For compensation claims involving fatal cases, where written agreement from the family members of the deceased employee and the employer has been obtained, the Commissioner may determine the amount of compensation for death and/or other related expenses payable, the persons to whom such payment shall be made and the amount payable to each such person; and issue the relevant certificates. The employer shall effect payment of compensation and/or reimbursement of expenses not earlier than 42 days but not later than 49 days after the date of issue of such certificates. Any party who objects to the determination shall apply to the Commissioner within 30 days after the issue of the certificates, or appeal to the Court against the Commissioner's decision within 42 days. On receipt of the objection notice, the Commissioner will review his decision and issue a review certificate. If all parties have no further objection and handle compensation in accordance with the review certificate, the claims will be settled. If either party disagrees with the review result, an appeal shall lie to the Court within 42 days from the date of issue of the review certificate.

## **Handling of Dispute in Work Injury Compensation Claims**

6. In the course of the handling of work injury compensation claims, employers, employees and/or other relevant stakeholders may dispute the facts or the liability of the accident or occupational disease. For a dispute raised by the employer, he may generally make a declaration on the prescribed form for reporting the accident or raise it at a subsequent stage. The employee may also express views on various issues at different stages subject to the development of the case. The content of the dispute may involve various items, with some common ones as follows-

- employer-employee relationship;
- whether an accident has taken place;
- whether the accident arises out of employment;
- whether the accident arises in the course of employment (e.g. the accident happens outside working hours and/or the workplace); and
- whether the employee's injury and work injury sick leave granted are appropriate and related to the accident.

7. For a work injury compensation case in dispute, LD will scrutinise the case in detail, irrespective of whether the doubt is cast by the employer, or the information provided by the employer is disputed by the employee/family members of the deceased employee, or the sick leave periods or the injury part and its severity are queried by the employer or other relevant stakeholders during case processing. LD will explain the provisions of ECO to the employer and the employee and collect from them detailed information relating to the accident such as a detailed account of the accident, the accident investigation report prepared by the employer and copies of related sick leave certificates issued to the employee, etc. Where necessary, LD may request information like medical reports and police investigation reports from relevant Government departments and organisations with the written consent of the employee/family members of the deceased employee. Depending on the merits of the case, Occupational Health Officers of LD will provide expert advice from the medical point of view. Upon collation of all relevant information, LD will provide both parties with its views on the likelihood and relevance of the case being a work injury. If any employer, without reasonable grounds, refuses or delays payment of compensation under ECO such as periodical payments (i.e. sick leave payments) and medical expenses, LD will, in the course of handling the dispute, urge or warn him to pay relevant compensation to the employee promptly. LD will also take out prosecution against the offending employer when there is sufficient evidence.

8. If the dispute is resolved, LD will continue processing the case such as arranging medical clearance for the injured employee and, where necessary, medical assessment by the Assessment Board. For those cases which cannot be resolved at LD, the employee/family members of the deceased employee may seek adjudication from the Court. LD will assist them to apply for legal aid from the Legal Aid Department.

9. In 2016, there were 36 420 work injury compensation cases (including fatal cases) reported under ECO with incapacitation for a period exceeding three days. Among them, most of the non-fatal cases in dispute<sup>2</sup> were resolved after LD's follow-up. As at the end of 2016, 4 740 non-fatal cases involving dispute raised by employers, employees and/or other relevant stakeholders required LD's follow-up actions. In the same year, employees in 710 cases applied for legal aid or sought adjudication by the Court for various reasons which might not necessarily involve any dispute.

### **Enhancement of Support Services for Non-fatal Cases in Dispute**

10. LD attaches great importance to safeguarding employees' rights and benefits. Since May 2016, LD has on a pilot basis implemented enhanced support services for non-fatal cases in dispute in some branch offices of the Employees' Compensation Division. Through dedicated follow-up, early intervention, proactive contact and arrangement of face-to-face meetings, the enhanced support services facilitate communication between employers and employees, clarification of issues under dispute and timely resolution of differences so as to protect the rights and benefits of employees. Details of the enhanced support services are as follows-

- (a) Dedicated follow-up: To enhance the efficiency in processing dispute cases and streamline the communication with employers and employees, dedicated case officers are assigned to follow up dispute cases and handle the related procedures.
- (b) Early intervention: Upon receipt of a dispute case, the case officer initiates contact with the employer and the employee as early as practicable to understand the issues in dispute and explicate the relevant provisions of ECO to them, with a view to resolving dispute caused by misunderstanding of the law. For cases involving dispute of facts and requiring collection of further information for investigation, the case officer arranges speedy follow-up actions after gauging the

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<sup>2</sup> As the majority of work injury compensation claims handled by LD are non-fatal cases, the ensuing paragraphs of this paper focus on the details of handling dispute in such cases.

case details.

- (c) Proactive contact: The case officer proactively contacts the employer and the employee to explain the procedures in handling the dispute and the progress/results of investigation upon receipt of the dispute case and thereafter, with a view to furnishing to both parties as soon as possible an opinion on the likelihood and relevance of the case being a work injury.
- (d) Arrangement of meetings: Where necessary and with the consent of the employee and the employer, the case officer arranges meeting(s) to enable mutual communication and settle differences between both parties.

11. As at the end of 2016, under the enhanced support services for cases in dispute, LD initiated follow-up actions for 500 cases with major dispute, mainly on issues of principle such as whether the case was a work injury. Among the 274 cases concluded, 231 (84%) were resolved and 43 (16%) unresolved. The remaining 226 cases in dispute were being processed. For the 43 unresolved cases, employees in 24 cases applied for legal aid or sought adjudication by the Court whereas the remaining 19 were awaiting further advice from the employees.

## **Way Forward**

12. LD will continue to handle work injury compensation claims in accordance with ECO and strive to help resolve labour-management dispute so as to safeguard the rights and benefits of employees. The implementation of the pilot measure of enhanced support services for cases in dispute will be closely monitored.

Labour and Welfare Bureau  
Labour Department  
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