

## **LEGISLATIVE COUNCIL BRIEF**

Employees' Compensation Ordinance  
(Chapter 282)

### **EMPLOYEES' COMPENSATION (AMENDMENT) BILL 2021**

#### **INTRODUCTION**

A At the meeting of the Executive Council on 9 February 2021, the Council ADVISED and the Chief Executive ORDERED that the Employees' Compensation (Amendment) Bill 2021 ("the Bill") at **Annex A** should be introduced into the Legislative Council ("LegCo") to extend the coverage of the Employees' Compensation Ordinance ("ECO") (Cap. 282) to the situation where an employee sustains an injury or dies as a result of an accident when commuting to or from work during the period of "extreme conditions".

#### **JUSTIFICATIONS**

##### ***The "Extreme Conditions"***

2. Following the experience with Super Typhoon Mangkhut in 2018, the Government has conducted an inter-departmental review of the handling mechanism to improve Hong Kong's preparedness, emergency response and recovery efforts for future super typhoons (or other natural disasters of a substantial scale). One of the new measures is that, if the situation warrants, the Chief Secretary for Administration ("CS"), having regard to the views of the Steering Committee for Handling Super Typhoons (or other natural disasters of a substantial scale) ("Steering Committee")<sup>1</sup>, may make a territory-wide "extreme conditions"

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<sup>1</sup> The Steering Committee is to be chaired by CS, with 14 Directors of Bureau and Heads of

announcement before the Hong Kong Observatory replaces Typhoon Warning Signal No. 8 (T8) with Typhoon Warning Signal No. 3. CS will specify in the announcement a period within which “extreme conditions” exist. The public, apart from the essential staff who have an agreement with their employers to be on duty when the “extreme conditions” exist, are advised to stay in the places they are currently in or safe places for two hours after cancellation of T8. During the first two-hour period when the “extreme conditions” exist, CS and the Steering Committee will continue to review the situation and CS will consider whether the period of “extreme conditions” should be extended, and if so, CS may, having regard to the views of the Steering Committee, make a further announcement to that effect. Apart from the situation of super typhoon, the “extreme conditions” announcement may also be made depending on the actual circumstances of other natural disasters of a substantial scale.

### ***Existing coverage of ECO***

3. The employees’ compensation (EC) regime under ECO follows the “no-fault” compensation principle, whereby compensation is payable by the employer regardless of whether the work injury, prescribed occupational disease or resultant death is due to the employee’s fault. 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. It enables them to receive compensation in an expeditious manner under the “no-fault” principle.

4. ECO also provides for EC protection to employees travelling to or from their places of work in specified situations. The basic principle to observe is that the employer is to be held responsible for circumstances related to the travelling in question and circumstances over which the employer can exercise control (such

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Department serving as standing members. The activation of the Steering Committee should not be a routine protocol but to be decided on a case-by-case basis by CS. Factors to be taken into account should include the anticipated force and the predictability of the super typhoons (or other natural disasters of a substantial scale), the duration that Hong Kong will likely be affected, the damage and disruption it would cause to Hong Kong, in addition to the anticipated time needed for recovery work.

as when the employee is travelling to or from the place of work by a means of transport operated or arranged by the employer). Other circumstances involving greater danger and substantial safety concerns where the employee is travelling to or from the place of work when T8 or above is hoisted or when the Red or Black Rainstorm Warning is in force are also covered by ECO.

5. According to section 5(4)(f) of ECO, an accident to an employee resulting in injury or death is deemed to arise out of and in the course of his employment if it happens to the employee whilst T8 or above or the Red or Black Rainstorm Warning is in force and the employee travels from his place of residence to his place of work by a direct route within a period of four hours before the time of commencement of his working hours for that day, or from his place of work to his place of residence within a period of four hours after the time of cessation of his working hours for that day. Hence, while the existing ECO provides protection for employees who have to be on duty and sustain work injury during the period of “extreme conditions”, it does not cover employees injured when travelling to or from their workplaces during the “extreme conditions”.

### ***The proposal***

6. Having considered that employees commuting to or from work during “extreme conditions” can be subject to more dangerous circumstances, similar to those under T8 or above or the Red or Black Rainstorm Warning, we consider it necessary and justified to accord adequate EC protection to them. We propose that ECO be amended to extend EC protection to employees travelling to or from their places of work under “extreme conditions”. This will afford EC protection to the relevant employees on par with that under T8 or above or when the Red or Black Rainstorm Warning is in force.

## **THE BILL**

7. The main provisions are as follows:

- (a) Clause 1 sets out the short title and provides for commencement, which will be a day to be appointed by the Secretary for Labour and Welfare by notice published in the Gazette.
- (b) Clause 3 amends section 5(4)(f) of ECO to add a reference to the period specified in an “extreme conditions announcement” (“the specified period”), so that an accident that happens to an employee when the employee is travelling between the employee’s place of residence and place of work within the specified period and during the four-hour period before or after the working hours for that day, is deemed to arise out of and in the course of the employee’s employment (as in the existing case where the employee so travels within the duration of a gale warning or rainstorm warning). The clause also adds the definitions of “extreme conditions announcement” and “super typhoon”.

B 8. The existing provisions being amended are at **Annex B**.

### **LEGISLATIVE TIMETABLE**

9. The legislative timetable is as follows –

Publication in the Gazette	19 February 2021
First Reading and commencement of Second Reading debate	24 February 2021
Resumption of Second Reading debate, committee stage and Third Reading	To be notified

### **IMPLICATIONS OF THE PROPOSAL**

C 10. The economic, financial, civil service and family implications of the proposal are set out at **Annex C**. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It does not affect the current binding effect of ECO, and has no productivity, environmental and gender

implications. It has no sustainability implications other than those set out in the economic implications.

## **PUBLIC CONSULTATION**

11. The Labour Advisory Board was consulted at its meeting on 25 November 2020 for views on the proposal. After deliberation, all members present unanimously supported the proposal. The LegCo Panel on Manpower was consulted on 7 January 2021 on the proposal and members generally welcomed the introduction of the Bill so as to provide better protection for injured employees and family members of employees who die of work injuries.

## **PUBLICITY**

12. A press release will be issued on 19 February 2021. A Government spokesman will be available to handle enquiries.

## **ENQUIRIES**

13. Enquiries on this brief can be addressed to Mr Simon Li, Assistant Commissioner for Labour (Employees' Rights and Benefits), at 2852 4083 or Ms Kate Tam, Senior Labour Officer (Employees' Compensation) (Central Services 1), at 2852 4035.

**Labour and Welfare Bureau**  
**17 February 2021**

# A BILL

## To

Amend the Employees' Compensation Ordinance to provide that an accident that happens to an employee when the employee is travelling between the employee's place of residence and place of work within the period specified in an extreme conditions announcement is deemed to arise out of and in the course of the employee's employment, as in the case where the employee so travels within the duration of a gale warning or rainstorm warning (as provided in the Ordinance).

Enacted by the Legislative Council.

### 1. Short title and commencement

- (1) This Ordinance may be cited as the Employees' Compensation (Amendment) Ordinance 2021.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Labour and Welfare by notice published in the Gazette.

### 2. Employees' Compensation Ordinance amended

The Employees' Compensation Ordinance (Cap. 282) is amended as set out in section 3.

### 3. Section 5 amended (employer's liability for compensation for death or incapacity resulting from accident)

- (1) Section 5(4)(f)—  
**Repeal**

“, or of a rainstorm warning”

#### Substitute

“or rainstorm warning, or within the period (including any extended period) during which extreme conditions exist as specified in an extreme conditions announcement”.

- (2) After section 5(4)(f)(B)—

#### Add

- “(C) *extreme conditions announcement* (極端情況公布) means an announcement made by the Chief Secretary for Administration stating the existence of extreme conditions that arise from a super typhoon or other natural disaster of a substantial scale during the period (including any extended period) specified in the announcement;
- (D) *super typhoon* (超強颱風) means a typhoon that has a maximum sustained wind speed of 185 km/h or above near its centre;”.

### **Explanatory Memorandum**

Under the Employees' Compensation Ordinance (Cap. 282) (*Ordinance*), employers are liable to pay compensation to employees who suffer personal injury by accident arising out of and in the course of their employment.

2. The main object of this Bill is to amend the Ordinance to provide that an accident that happens to an employee when the employee is travelling between the employee's place of residence and place of work within the period (including any extended period) specified in an extreme conditions announcement is deemed to arise out of and in the course of the employee's employment, as in the case where the employee so travels within the duration of a gale warning or rainstorm warning (as provided in section 5(4)(f) of the Ordinance).
3. Clause 1 sets out the short title and provides for commencement.
4. Clause 3 amends section 5(4)(f) of the Ordinance to add the reference to "extreme conditions announcement" to implement the object mentioned in paragraph 2. The clause also adds the definitions of *extreme conditions announcement* and *super typhoon* to that section.

**5. Employer's liability for compensation for death or incapacity resulting from accident**

- (1) Subject to subsections (2) and (3), if in any employment, personal injury by accident arising out of and in the course of the employment is caused to an employee, his employer shall be liable to pay compensation in accordance with this Ordinance.
- (2) No compensation shall be payable under this Ordinance in respect of—
  - (a) any injury, other than an injury which results in partial incapacity of a permanent nature, which does not incapacitate the employee from earning full wages at work at which he was employed; (*Amended 67 of 1996 s. 2*)
  - (b) any incapacity or death resulting from a deliberate self-injury;
  - (c) any incapacity or death resulting from personal injury if the employee has at any time represented to the employer that he was not suffering or had not previously suffered from that or a similar injury, knowing that the representation was false; or
  - (d) any injury, not resulting in death or serious and permanent incapacity, caused by an accident which is directly attributable to the employee's addiction to drugs or his having been at the time of the accident under the influence of alcohol.
- (3) In any proceedings under this Ordinance where it is proved that the injury to an employee is attributable to the serious and wilful misconduct of that employee, or that an injury by accident arising out of and in the course of his employment is deliberately aggravated by the employee, any compensation claimed in respect of that injury shall be disallowed; except that where the injury results in death or serious incapacity, the Court on consideration of all the circumstances may award the compensation provided by this Ordinance or such part thereof as it shall think fit.
- (4) For the purposes of this Ordinance—
  - (a) an accident arising in the course of an employee's employment shall be deemed, in the absence of evidence to the contrary, also to have arisen out of that employment;
  - (b) an accident to an employee shall be deemed to arise out of and in the course of his employment, notwithstanding that the employee was at the time when the accident happened acting in contravention of any statutory or other regulation applicable to his employment, or of any orders given by or on behalf of his employer, or that he was acting without instructions from his employer, if such act was done by the employee for the purposes of and in connection with his employer's trade or business;
  - (c) an accident to an employee shall be deemed to arise out of and in the course of his employment if it happens—
    - (i) while, with the consent of his employer, the employee is being trained in first aid, ambulance or rescue work or engaged in any competition or exercise in connection therewith;
    - (ii) in, at or about any premises other than his employer's while, with the consent of his employer, the employee is engaged in any first aid, ambulance or rescue work or in any competition or exercise in connection therewith; or
    - (iii) in, at or about his employer's premises while the employee is engaged in any first aid, ambulance or rescue work,



notwithstanding that in the case of rescue work the employee was acting in contravention of any statutory or other regulation applicable to his employment, or of any orders given by or on behalf of his employer, or that he was acting without instructions from his employer, if when such act was done the employee reasonably acted in order to rescue, succour or protect any other person who had suffered, or who was reasonably believed to be in danger of, injury, or to avert or minimize serious damage to property of the employer;

- (d) an accident to an employee shall be deemed to arise out of and in the course of his employment if it happens to the employee while he is, with the express or implied permission of his employer, travelling as a passenger by any means of transport to or from his place of work and at the time of the accident, the means of transport is being operated—
- (i) by or on behalf of his employer or by some other person pursuant to arrangements made with his employer; and
  - (ii) other than as part of a public transport service;
- (e) an accident to an employee shall be deemed to arise out of and in the course of his employment if it happens to the employee while he is driving or operating any means of transport arranged or provided by or on behalf of his employer or by some other person pursuant to arrangements made with his employer between his place of residence and his place of work, travelling by a direct route—
- (i) to his place of work for the purposes of and in connection with his employment; or
  - (ii) to his place of residence after attending to those purposes;
- (f) an accident to an employee shall be deemed to arise out of and in the course of his employment if it happens to the employee when, within the duration of a gale warning, or of a rainstorm warning, he is travelling between his place of residence and his place of work— (*Amended 24 of 2000 s. 2*)
- (i) to his place of work, by a direct route within a period of 4 hours before the time of commencement of his working hours for that day or to his place of residence, within a period of 4 hours after the time of cessation of his working hours for that day, as the case may be; or
  - (ii) in such other circumstances as the Court thinks reasonable, (*Amended 24 of 2000 s. 2*)
- and for the purposes of this paragraph— (*Amended 24 of 2000 s. 2*)
- (A) ***gale warning*** (烈風警告) means a warning of the occurrence of a tropical cyclone in, or in the vicinity of, Hong Kong by the use of the tropical cyclone warning signals issued by the Director of the Hong Kong Observatory to the effect that any of the tropical cyclone warning signals commonly referred to as No. 8NW, 8SW, 8NE, 8SE, 9 or 10 is in force;
- (B) ***rainstorm warning*** (暴雨警告) means a warning of a heavy rainstorm in, or in the vicinity of, Hong Kong by the use of the heavy rainstorm warning signals issued by the Director of the Hong Kong Observatory to the effect that any of the heavy rainstorm warning signals commonly referred to as Red or Black is in force; (*Added 24 of 2000 s. 2*)
- (g) an accident to an employee shall be deemed to arise out of and in the course of his employment if it happens to the employee while he is, with the express or implied permission of his employer, travelling by any means of transport for the purposes of and in connection with his employment between Hong Kong and any place outside Hong Kong or between any place outside Hong Kong and any other such place.

(*Replaced 1 of 1995 s. 3*)

## Implications of the Proposal

### Economic Implications

The proposal of extending the coverage of ECO can provide employees with improved EC protection, should they have an agreement with their employers as such that they need to commute to or from work during the period of “extreme conditions”. On the other hand, depending on the frequency of the “extreme conditions” announcement to be made and the actual number of employees to be required to travel to and from work under “extreme conditions”, the proposal may exert certain upward pressure on the EC claim costs to be borne by employers, which may in turn lead to increases in the premiums of EC insurance<sup>1</sup>. While the potential increases in the premiums are difficult to quantify, they are unlikely to be significant as a proportion of employers’ total staff costs. The impact of the proposal on the overall labour market is likely to be insignificant, though some employers may have concern about their liabilities under ECO, such as reimbursement of medical expenses for which no time limit is set under ECO.

### Financial and Civil Service Implications

2. As government employees (including staff employed under Non-Civil Service Contract and Post-retirement Service Contract) will be covered by the extended protection under the proposal in accordance with ECO, the relevant pension legislation (Cap. 89 or Cap. 99) or the Civil Service Regulations, the proposal may have financial implications on the Government as an employer for any possible additional compensation to be paid to the government employees concerned. That said, such implications should be manageable for the Government as it is anticipated that the

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<sup>1</sup> The insurance sector has been consulted in this regard, yet the Accident Insurance Association of the Hong Kong Federation of Insurers (“HKFI”) replied that in view of the Competition Ordinance (Cap. 619), it is not in the position to advise on the possible impact of the proposal on EC insurance premium and claim costs. By way of background, the Government consulted HKFI in 1994 before the extension of the coverage of ECO to employees commuting to or from work when T8 or above or Red or Black Rainstorm Warning is in force. HKFI at that time advised that other than in very exceptional circumstances, the impact of the proposal on EC insurance premium would be fairly nominal, and the financial impact to employers would be dependent on the number and severity of such extreme weather incidents and the time of day at which they occur.

“extreme conditions” announcement would unlikely be frequent; the actual number of employees to be required to travel to and from work under “extreme conditions” would not be substantial; and the occurrence of an accident under such circumstances would not be common in the first place.

3. Similarly, in anticipation that the “extreme conditions” announcement would unlikely be frequent and the actual number of employees to be required to travel to and from work under “extreme conditions” would not be substantial, the proposal should have no staffing implications for the Government.

### **Family Implications**

4. The proposal to extend EC protection under ECO to cover the situation of “extreme conditions” has a positive impact on the families concerned. It helps enhance the protection for injured employees and family members of employees who die as a result of work injuries happened when the employees concerned travel to or from their workplaces during the “extreme conditions”, and provide financial support to their families for going through the difficult times.