

立法會
Legislative Council

LC Paper No. LS42/20-21

**Paper for the House Committee Meeting
on 26 February 2021**

**Legal Service Division Report on
Proposed Resolutions under the Employees' Compensation Ordinance,
the Pneumoconiosis and Mesothelioma (Compensation) Ordinance
and the Occupational Deafness (Compensation) Ordinance**

The Secretary for Labour and Welfare has given notice to move three motions at the Legislative Council ("LegCo") meeting of 17 March 2021 respectively under section 48A of the Employees' Compensation Ordinance (Cap. 282), section 40 of the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360) and section 39(2) of the Occupational Deafness (Compensation) Ordinance (Cap. 469) (collectively "the Three Ordinances"). The proposed resolutions seek to increase the amounts of 18 compensation items under the Three Ordinances with effect from 15 April 2021. These items were last increased in April 2019.¹

Proposed resolution under the Employees' Compensation Ordinance (Cap. 282)

2. Cap. 282 provides for the payment of statutory compensation to employees injured at work or suffering from prescribed occupational diseases or to their family members (in fatal cases). The proposed resolution under Cap. 282 seeks to amend the Sixth Schedule (Specified Amount of Compensation) to Cap. 282 to make the following revisions:

Item	Existing amount (\$)	Proposed amount (\$)	Increase (%)
(a) Ceiling of the monthly earnings for calculating compensation for death and permanent total incapacity	30,530	35,600	+16.61%
(b) Minimum compensation for death	440,200	473,610	+7.59%
(c) Minimum compensation for permanent total incapacity	499,840	537,780	+7.59%

¹ Please see LC Paper No. LS50/18-19 and L.N. 60 – L.N. 62 of 2019 published in the Gazette on 12 April 2019 for details.

Item	Existing amount (\$)	Proposed amount (\$)	Increase (%)
(d) Compensation for employees requiring attention by another person	599,230	644,710	+7.59%
(e) Minimum surcharge on late payment of compensation:			
(i) initial surcharge	710	760	+7.59%
(ii) further surcharge	1,430	1,540	+7.59%
(f) Maximum funeral expenses	87,330	92,670	+6.11%
(g) Maximum amount of the cost of supplying and fitting of a prosthesis or surgical appliance	41,750	44,300	+6.11%
(h) Maximum amount of the cost of the repair and renewal of a prosthesis or surgical appliance	126,490	134,220	+6.11%
(i) Minimum monthly earnings	4,500	5,310	+18%

Proposed resolution under the Pneumoconiosis and Mesothelioma (Compensation) Ordinance (Cap. 360)

3. Cap. 360 provides for the payment of statutory compensation to persons suffering from pneumoconiosis and/or mesothelioma or to family members of persons who died of the diseases. The proposed resolution under Cap. 360 seeks to amend the First Schedule (Amounts of Compensation) to Cap. 360 to make the following revisions:

Item	Existing amount (\$)	Proposed amount (\$)	Increase (%)
(a) Monthly compensation for pain, suffering and loss of amenities	5,330	5,660	+6.11%
(b) Compensation for bereavement	220,000	233,440	+6.11%

Item	Existing amount (\$)	Proposed amount (\$)	Increase (%)
(c) Minimum compensation for death ²	220,000	233,440	+6.11%
(d) Maximum funeral expenses	87,330	92,670	+6.11%
(e) Monthly compensation for care and attention	5,600	5,750	+2.68%

Proposed resolution under the Occupational Deafness (Compensation) Ordinance (Cap. 469)

4. Cap. 469 provides for the payment of statutory compensation to persons who suffer from noise-induced deafness by reason of employment in specified noisy occupations. The proposed resolution under Cap. 469 seeks to amend Schedule 5 (Amount of Compensation) and Schedule 7 (Limits of Direct Payment of Expenses and Reimbursement of Expenses) to Cap. 469 to make the following revisions:

Item	Existing amount (\$)	Proposed amount (\$)	Increase (%)
(a) Maximum sum for calculating compensation for permanent incapacity:			
(i) Age under 40	2,930,880	3,417,600	+16.61%
(ii) Age 40 to under 56	2,198,160	2,563,200	+16.61%
(iii) Age 56 and above	1,465,440	1,708,800	+16.61%
(b) Minimum sum for calculating compensation for permanent incapacity	499,840	537,780	+7.59%
(c) First-time financing limit for hearing assistive devices ("HADs")	19,000	20,160	+6.11%
(d) Aggregate financing limit for HADs	79,000	83,830	+6.11%

² Under section 5(3) of Cap. 360, the minimum compensation for death (item 3(c) above) must not be less than the amount of compensation for bereavement (item 3(b) above) specified in Part V of the First Schedule to Cap. 360. Hence, although item 3(c) is not specified in the First Schedule which the relevant proposed resolution seeks to amend, the operative effect of the proposed resolution, if passed, is that the amount under item 3(c), by virtue of section 5(3) of Cap. 360, would also be increased accordingly.

5. The proposed increases in the amounts of the compensation items under paragraphs 2 to 4 above range from 2.68% to 18%. According to paragraphs 4 to 13 of the LegCo Brief (with no file reference) issued by the Labour and Welfare Bureau and the Labour Department ("LD") in February 2021, of the 18 compensation items proposed to be adjusted, 16 are proposed to be adjusted in accordance with the established indicators or factors, including the wage movement as reflected by the Nominal Wage Index and the price movement as reflected by the Consumer Price Index (A) in the relevant period, i.e. 2018 and 2019. As for the remaining two adjustments, according to paragraphs 12 and 13 of the LegCo Brief, while the proposed increase on the maximum monthly earnings for calculating the compensation for death and permanent total incapacity under Cap. 282 (item 2(a) above) is a one-off arrangement made with reference to the wage level of non-fatal³ and fatal employees' compensation cases settled through LD in 2019, the maximum sum for calculating the compensation for permanent incapacity under Cap. 469 (item 4(a) above) is also proposed to be adjusted correspondingly.

Public consultation

6. According to paragraph 22 of the LegCo Brief, the Labour Advisory Board supported the above legislative proposals at its meeting on 25 November 2020.

Consultation with LegCo Panel

7. As advised by the Clerk to the Panel on Manpower, the Panel was consulted on the proposed resolutions at its meeting on 7 January 2021. Members in general supported the proposed resolutions, though some members expressed concern about the review mechanism of the levels of compensation (such as the frequency of the reviews, e.g. every 2 years instead of annually) under the Three Ordinances.

Concluding remarks

8. No difficulties in relation to the legal and drafting aspects of the proposed resolutions have been identified.

Prepared by
LEE Hoi-see, Evelyn
Assistant Legal Adviser
Legislative Council Secretariat
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³ Excluding cases with work injury sick leave not exceeding three days and not resulting in permanent incapacity.