

LEGISLATIVE COUNCIL BRIEF

Employees Compensation Assistance Ordinance (Cap. 365)

EMPLOYEES COMPENSATION ASSISTANCE ORDINANCE (AMENDMENT OF SCHEDULE 4) NOTICE 2021

INTRODUCTION

In accordance with section 45A of the Employees Compensation Assistance Ordinance (Cap. 365) (ECAO), the Secretary for Labour and Welfare has made the Employees Compensation Assistance Ordinance (Amendment of Schedule 4) Notice (Amendment Notice) to upwardly adjust the levels of the three relief payment items, namely the prescribed relief payment, the prescribed monthly amount and the prescribed monthly amount (extra). The Amendment Notice is at [Annex A](#).

JUSTIFICATIONS

2. For employees who have sustained injuries caused by accidents arising out of and in the course of employment, given that the court awards an amount of common law damages to be payable by the employer but the latter cannot pay the amount and does not have a valid employees' compensation insurance policy to cover his liability, hence rendering the injured employees or eligible persons unable to make recovery against the employer or any insurer, the employees and eligible persons may apply for relief payment from the Employees Compensation Assistance Fund (the Fund) under ECAO for the unrecovered sum.

3. According to ECAO, full amount of relief payment shall be paid to the employee (or eligible person) where the amount does not exceed the prescribed relief payment. Where the amount of a relief payment exceeds the prescribed relief payment, the employee (or eligible person) could receive a first payment equivalent to the prescribed relief payment, and then followed by monthly payments (an amount equal to the prescribed monthly amount or the monthly earnings of the employee at the time of the accident (whichever is the higher)).

If the employee is severely injured¹, he could receive the prescribed monthly amount (extra) at the same time. Schedule 4 of ECAO currently stipulates that the amount of prescribed relief payment is \$1,500,000 (i.e. the aforementioned “first payment”), the prescribed monthly amount is \$10,000 and the prescribed monthly amount (extra) is also \$10,000. The above levels of the three relief payment items have been put in place since 2002. We propose to amend Schedule 4 of ECAO so as to increase the levels of the three relief payment items.

THE PROPOSAL

4. Having studied and made reference to the applications of relief payment as well as prudently considered the following factors, we propose that the levels of prescribed relief payment, prescribed monthly amount and prescribed monthly amount (extra) be adjusted upwards by 300% on a one-off basis, from \$1,500,000, \$10,000 and \$10,000 to \$6,000,000, \$40,000 and \$40,000 respectively. The proposed revisions to the levels of relief payment items are set out at **Annex B**.

(a) The unique circumstances and needs of the injured employees

5. In general, the earning capacity of the injured employees would be affected after their injury and some have to receive regular medical treatments thus incurring additional expenses. As for the severely injured employees, since they are either paraplegic or quadriplegic with little or no earning capacity, a substantial sum would be needed to cover the adaptation costs (including expenses arising from the need for alternative accommodation (in the form of home modification or renting a suitable home), special transport arrangements, employment of a person to provide full-time care and attention, as well as medical fees and consumables required, etc.) to sustain their living. Therefore, besides adjusting the prescribed monthly amount, the prescribed monthly amount (extra) has to be adjusted upwards in order to meet the needs of the severely injured employees.

(b) Results of the projection of duration for receiving payment for applicants

¹ According to ECAO, “severely injured employee” means that an employee “who suffers from paraplegia or quadriplegia as a result of the employment-related injury concerned such that he is unable to perform the essential actions of life without the care and attention of another person; and in respect of whom a court of competent jurisdiction in Hong Kong has, in relation to the employment-related injury concerned, awarded expenses for the care and attention by another person in respect of the period after the award is made”.

based on existing applications receiving relief payment

6. We have also studied the applications approved for relief payment under the Employees Compensation Assistance Scheme for the period of 1 July 2015 to 30 June 2020. Under the existing manner of payment of relief payment, only around 71% of applicants could receive full sum of their relief payment in one go. However, if we adjust the prescribed relief payment to \$6,000,000, and both the prescribed monthly amount and prescribed monthly amount (extra) to \$40,000, around 96% of applicants could receive full sum of their relief payment in one go. For the remaining applicants, the number of years for them to receive their full payment could be significantly shortened by around 15 to more than 30 years. Also, the adjustment of the levels for the three relief payment items could raise the monthly payment to be received by the applicants by 103% to 184% so as to meet their daily and medical needs. Furthermore, there would be 42% to 300% of increase in the monthly payment to be received for those applicants who are currently receiving monthly payments upon commencement of the proposed amendments. The number of years for them to receive their full payment could be shortened by around a few months to 25 years.

(c) The financial situation and sustainability of the Fund

7. The current financial position of the Fund is healthy with stable income. The proposed increase in the levels of the three relief payment items above will not incur additional expenditure for the Fund because the total amount of payment received by the applicants would still be in accordance with the sum of common law damages awarded by the court. The Fund is financially capable in effecting the amended amount of relief payment to the applicants and has already reserved funds for this purpose. Despite the possible fluctuation in the levy income received from employees' compensation insurance policy premium by the Fund amidst the volatile economic environment, we anticipate small impact on the financial viability, sustainability and cash flow of the Fund.

Proposal in brief

8. In sum, taking into account the above factors, we propose that the levels of prescribed relief payment, prescribed monthly amount and prescribed monthly amount (extra) under ECAO be adjusted upwards by 300% to \$6,000,000, \$40,000 and \$40,000 respectively.

EFFECTIVE DATE AND LEGISLATIVE TIMETABLE

9. Pursuant to the tentative legislative timetable below, we propose that the three new levels of relief payment items shall come into effect on 14 May 2021.

Publication in the Gazette	19 March 2021
Tabling at the Legislative Council	24 March 2021

IMPLICATIONS OF THE PROPOSAL

Financial implications for the Fund

10. The Employees Compensation Assistance Fund Board (ECAFB) considered that the proposal would bring minimal implications for the financial viability and long-term sustainability of the Fund in the foreseeable future.

Financial and staffing implications for the Government

11. The proposal would have minimal financial implications for the Government because the payments would only be effected to those injured employees or eligible persons who are unable to make recovery against the employer or any insurer which would be a non-issue in the context of the Government. Also, since the applications for the Fund are handled by ECAFB’s Secretariat being staffed by non-civil servants, there is no staffing implication for the Government either.

Family implications

12. The proposal has positive impact on the families concerned. As mentioned in paragraph 5 above, the earning capacity for injured employees would be affected and the extent of which would depend on the severity of injury sustained. The revised levels of prescribed relief payment items would help provide a substantial sum of first payment and enhanced monthly payments to sustain the living and meet the needs of the injured employees (especially those who are severely injured) and their family members.

Other implications

13. The proposed amendments will not affect the current binding effect of ECAO. The proposal is in conformity with the Basic Law, including the

provisions concerning human rights. It has no economic, environmental, sustainability or gender implications.

PUBLIC CONSULTATION

14. The proposal was discussed at the meeting of the Labour Advisory Board held on 25 November 2020. After deliberations, all Members present unanimously supported the proposal and requested early implementation of the relevant amendments so as to provide better protection promptly for injured employees or eligible persons.

15. The proposal was submitted to the LegCo Panel on Manpower for discussion at its meeting on 7 January 2021. Members supported the proposal and urged for its early implementation.

BACKGROUND

16. ECAO provides for the payment of relief payment² to protect the injured employees or eligible persons who have sustained injuries caused by accidents arising out of and in the course of employment, and are unable to make recovery against the employer or any insurer³.

PUBLICITY

17. A press release will be issued after the publication in the Gazette. A spokesperson will be available for answering media enquiries.

ENQUIRIES

18. Enquiries on this brief can be addressed to Mr Simon Li, Assistant

² Compensation payable under ECAO is made out of the Employees Compensation Assistance Fund which is mainly financed by a levy payable by employers on the premium of employees' compensation insurance policies.

³ Under the Employees' Compensation Ordinance, the liability to pay compensation as a result of work injuries and fatalities as well as prescribed occupational diseases rests with individual employers. The employer is required to take out employees' compensation insurance for his/her employees to cover his/her liabilities under the laws, including the common law.

Commissioner for Labour (Employees' Rights and Benefits), at 2852 4083 or Miss Christina Wong, Senior Labour Officer (Employees' Compensation Division) (Central Services Section 2), at 2852 3857.

Labour and Welfare Bureau
Labour Department
March 2021

**Employees Compensation Assistance Ordinance
(Amendment of Schedule 4) Notice 2021**

(Made by the Secretary for Labour and Welfare under section 45A of the
Employees Compensation Assistance Ordinance (Cap. 365))

1. Commencement

This Notice comes into operation on 14 May 2021.

2. Employees Compensation Assistance Ordinance amended

The Employees Compensation Assistance Ordinance (Cap. 365) is
amended as set out in section 3.

**3. Schedule 4 amended (prescribed monthly amount, prescribed
relief payment and prescribed surcharge)**

(1) Schedule 4, Part 1—

Repeal

“\$10,000”

Substitute

“\$40,000”.

(2) Schedule 4, Part 2—

Repeal

“\$10,000”

Substitute

“\$40,000”.

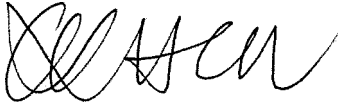
(3) Schedule 4, Part 3—

Repeal

“\$1,500,000”

Substitute

“\$6,000,000”.



Secretary for Labour and Welfare

9 March 2021

Explanatory Note

Under the Employees Compensation Assistance Ordinance (Cap. 365) (*Ordinance*), employees and other eligible persons may apply for relief payment from the Employees Compensation Assistance Fund in relation to unpaid damages for which employers are liable.

2. This Notice amends Schedule 4 to the Ordinance to increase the following amounts relating to relief payment—
 - (a) prescribed monthly amount;
 - (b) prescribed monthly amount (extra); and
 - (c) prescribed relief payment.

Annex B

Proposed changes in relief payment items under ECAO

Items under ECAO	Existing Level (\$)	Proposed % Change	Proposed Level (\$)	Amount of Change (\$)
1. Prescribed relief payment	1,500,000	+300%	6,000,000	+4,500,000
2. Prescribed monthly amount	10,000	+300%	40,000	+30,000
3. Prescribed monthly amount (extra)	10,000	+300%	40,000	+30,000