

Employees Compensation Assistance Fund Board

Employees Compensation Assistance Ordinance Frequently Asked Questions

1. *What is the Employees Compensation Assistance Fund?*

The Employees Compensation Assistance Fund (“the Fund”) is established under the Employees Compensation Assistance Ordinance (Cap 365) and is administered by the Employees Compensation Assistance Fund Board (“the Board”). The Fund is financed mainly by a levy payable by employers under the Employees’ Compensation Insurance Levies Ordinance (Cap. 411) when they secure employees’ compensation insurance cover.

2. *What kinds of assistance can be obtained from the Fund?*

Injured employees or eligible family members of deceased employees who are unable to receive employees’ compensation or common law damages for which the employer is liable after exhausting all legal and financially viable means of recovery from the employer (or insurer) concerned may apply to the Fund for assistance. The following categories of assistance are available from the Fund:

- (a) Unpaid employees’ compensation for work-related injuries or fatalities covered by the Employees’ Compensation Ordinance (Cap. 282) and the related interests;
- (b) Costs incurred in legal proceedings in claiming employees’ compensation; and
- (c) Unpaid common law damages awarded in respect of such injuries or fatalities, payable in the form of relief payments.

3. *Under what circumstances can an injured employee apply for assistance from the Fund?*

The primary obligation to pay injured employees or eligible persons employees’ compensation under the Employees’ Compensation Ordinance and/or common law damages rests with employers. If the court awards an amount of employees’ compensation/damages to be payable by the employer, but the employer does not have a valid insurance policy to cover his liability and defaults payment, the applicant should enforce the court order to recover the awarded sum from the employer by applying for a bankruptcy/winding-up order against the employer. For those injured employees or eligible persons who have established liability and quantum of their claims of employees’ compensation/damages against their employers but are unable to recover from them their entitlements after exhausting all legal and financially viable means of recovery, they may apply for assistance from the Fund of the unpaid amount.

4. *To preserve his right to apply for assistance from the Fund, what should an injured employee be aware of when claiming employees’ compensation or damages against the employer?*

Injured employees or eligible persons shall commence proceedings claiming employees’ compensation in the District Court and/or damages by a writ in the District Court or High Court. **Under section 25B(1) of the Employees Compensation Assistance Ordinance, a person who commences proceedings in respect of a claim for employees’ compensation or**

damages shall serve a notice of the proceedings on the Board and the insurer (if applicable). The notice shall be served on the Board by registered post no later than 30 days after the date on which the employees' compensation application or a writ is filed with the Court. Such notice shall be served in writing in a form specified by the Board, signed by the person and accompanied by a copy of the employees' compensation application or the writ. Separate notices in respect of the employees' compensation proceedings and damages proceedings will need to be served on the Board. **Any person who fails to serve the required notice(s) on the Board within the statutory 30-day period will not be entitled to any assistance payment from the Fund.** Under section 25B(2) of the Employees Compensation Assistance Ordinance, it is only in the exceptional circumstances when an applicant can satisfy the Board in writing that there are good reasons why he/she cannot, or has failed to serve on the Board a notice of the proceedings within the prescribed period then the Board may consider extending the said notification period.

Bringing an action for employees' compensation and/or damages at the court may involve technical legal knowledge and judicial procedures. To safeguard one's interest, a claimant should seek advice from the legal profession, and consider prudently whether it is desirable to instruct a solicitor at his/her own expenses or through legal aid.

5. *What is a "relief payment"?*

An injured employee who is awarded by the court an amount of common law damages and is successful in his application for assistance from the Fund would be granted a "relief payment" in lieu. The relief payment shall not exceed the aggregate sum of damages awarded by the court and shall not cover any interest on such damages and costs arising from proceedings in respect of damages. Where the amount of relief payment does not exceed \$6 million, it will be paid in full in a lump sum. If it exceeds \$6 million, an initial payment of \$6 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 \$40,000, whichever is the higher (in the case of an employee who is suffering from paraplegia or quadriplegia and has been determined as a "severely-injured relevant eligible person" under the Employees Compensation Assistance Ordinance, an additional monthly payment of \$40,000 as prescribed monthly amount (extra)), until the total amount of damages awarded by the court is paid off.

6. *What documents are required for making an application?*

For an application for unpaid employees' compensation under section 16 of the Employees Compensation Assistance Ordinance, the applicant shall provide copies of the following:

- (a) a judgment or order of a court of competent jurisdiction in Hong Kong;
- (b) Certificate(s) issued by the Commissioner for Labour in respect of compensation assessment, medical expenses and reimbursement of the expenses of the funeral of the deceased employee, etc.; and
- (c) other documents which may assist the Board in its investigation.

For an application for relief payment in relation to unpaid common law damages under section 20A of the Employees Compensation Assistance Ordinance, the applicant shall provide copies of the following:

- (a) a judgment or order of a court of competent jurisdiction in Hong Kong; and
- (b) other documents which may assist the Board in its investigation.

7. *What follow up actions are required after submission of an application?*

Upon receipt of an application, the Board shall carry out such inquiries it considers necessary to make a determination. It is the duty of every applicant to assist the Board and to provide such information within the specified period as required by the Board. Failing that, the Board may determine that an applicant shall not be entitled to any payment from the Fund. In addition, the Board may also make such inquiries or seek such information from the employer, insurer and any other persons connected with the application as the Board considers necessary.

8. *Under what circumstances is an employer required to pay a surcharge to the Fund Board?*

According to section 40(1) of the Employees' Compensation Ordinance, all employers are required to take out employees' compensation insurance policies to cover their liabilities under the Ordinance and at common law for injuries at work in respect of all their employees. An employer who fails to comply with this commits an offence and is liable on conviction to a maximum fine of \$100,000 and imprisonment for two years.

Under section 36A of the Employees Compensation Assistance Ordinance, an employer who contravenes the above offence is also liable to pay a surcharge to the Employees Compensation Assistance Fund Board. The Board will serve a written notice ("Demand Notice") on the employer, advising the amount of the surcharge, the grounds therefor and the period within which the employer shall pay the surcharge.

9. *What is the amount of the surcharge payable by an employer who contravenes section 40(1) of the Employees' Compensation Ordinance?*

The amount of surcharge payable by an employer is three times the levy payable under the Employees' Compensation Insurance Levies Ordinance on the insurance premium paid.

Where an employer has contravened section 40(1) of the Employees' Compensation Ordinance and has, within 24 months from the service of the Demand Notice by the Board for the first contravention, again contravened section 40(1) ("second contravention"), the amount of surcharge payable by the employer in respect of the second contravention shall be two times of the surcharge calculated as if it were the first contravention (i.e., the levy payable x 3 times x 2 times).

In special circumstances, employers are required to pay a surcharge at the fixed amount as prescribed in Schedule 4 of the Employees Compensation Assistance Ordinance:

Category One

The Board may by a written notice require an employer to furnish within a specified period information which enables the Board to determine the amount of surcharge payable by the employer. If the employer fails to comply with the requirement and the Board is otherwise unable to obtain the necessary information, the employer is liable to pay to the Board a surcharge at the fixed amount of \$10,000 in accordance with section 36A(3)(a) of the Employees Compensation Assistance Ordinance; and

Category Two

Where an employer who has contravened section 40(1) of the Employees' Compensation Ordinance in failing to take out employees' compensation insurance policy, is due to special

reasons eventually not required to comply with section 40(1) by taking out an insurance policy to cause the cessation of the contravention (e.g. cessation of operation, no longer have the need to employ any employee in any employment, etc), the amount of surcharge payable by the employer is the fixed amount of \$5,000 in accordance with section 36A(3)(b) of the Employees Compensation Assistance Ordinance.

10. *How to apply for a review or lodge an appeal against the amount of surcharge payable?*

An employer may by written notice request the Board to review the amount of the surcharge or the grounds for imposing the surcharge within the period specified in the Demand Notice. The Board will carry out the review as requested and issue a written notice to the employer advising the result of the review. An employer who is not satisfied with the determination of the Board on the review may appeal to the District Court.

11. *Under what circumstances can an employer be exempted from paying the surcharge or the amount of the surcharge be reduced?*

The Board is not empowered to waive any payment of surcharge or reduce its amount. Unless the convicted employer is able to convince the court to overturn the conviction, he is statutorily liable to pay the Fund Board the surcharge in accordance with section 36A of the Employees Compensation Assistance Ordinance.

12. *Where can I obtain further information?*

Enquiries relating to the Employees Compensation Assistance Ordinance can be made to the Secretariat of the Board at:

Address : 33/F, Morrison Plaza, 9 Morrison Hill Road, Wanchai, Hong Kong
(MTR Causeway Bay Station Exit A, walk to Tin Lok Lane via Russell Street and Wan Chai Road)
Tel : 2116 5684
Fax : 2109 0310
Email : contact@ecafb.org.hk
Homepage : <http://www.ecafb.org.hk>

Points to Note

While every care has been exercised in preparing this Information Note, the Ordinances remain the sole authority for the provisions of the laws explained. The full text of the Ordinances has been uploaded to the Bilingual Laws Information System of the Department of Justice (<http://www.elegislation.gov.hk>).