Compensation for Work-Related Injuries and Occupational Diseases
The Power of Integrity

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This publication is intended to be an outline of the law and procedures on this subject for the purpose of general reference only and cannot be relied upon as legal advice in any particular case. If any advice or assistance is needed, please contact this firm on 2810 1212 or email us at onc@onc.hk.

ONC Lawyers

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what is work-related injury?

If you sustain an injury as a result of an accident arising out of and in the course of your employment, your employer is liable to pay compensation under the Employees’ Compensation Ordinance. This is so even if the accident is caused by your own negligence.

The following are examples of work-related injuries that may be compensated:

a. A messenger hit by a car while delivering mail for the employer.

b. A security guard hurt by a robber while on duty.

c. A restaurant cleaner slipped in kitchen.

d. There was a case in which the court decided that the worker’s injury, which was inflicted on him by another worker when the two quarrelled over a work-related problem, was injury arising out of and in the course of employment.

what occupational diseases could be compensated?

The kinds of occupational diseases covered under the Employees’ Compensation Ordinance are set out in Schedule 2 of the Ordinance. If you are employed to do a particular kind of work and contract a specified occupational disease due to the nature of work in which
you were employed during the course of the employment or at any time within the prescribed period after you were employed, you are entitled to receive the same compensation as that payable to employees who sustain work related injury.

For example:

An employee suffering from cramp of the hand or forearm due to repetitive movements will be presumed to have contracted such illness if he/she has been involved in work that required prolonged periods of handwriting or typing within one year prior to appearance of cramp symptoms.

Other typical occupational diseases include those caused by physical, chemical or biological agents.

In addition to the occupational diseases prescribed in the Employees’ Compensation Ordinance, compensation may also be payable for three other kinds of occupational diseases. These are pneumoconiosis, mesothelioma and occupational deafness, which are covered under the Pneumoconiosis and Mesothelioma (Compensation) Ordinance and the Occupational Deafness (Compensation) Ordinance respectively.

**what types of workers are covered by the employees’ compensation ordinance?**

Most common types of employees, including domestic helpers, are covered by the Ordinance. The Ordinance
also extends to cover all employees who are employed under contracts of apprenticeship and employees employed by local employers in Hong Kong but injured while working outside Hong Kong.

However, the Ordinance does not apply to:

a  casual employees whose work is not directly related to the employer’s trade or business;

b  outworkers to whom articles or materials are given out to be done in his own home or on other premises not under the control or management of the person who gave our the articles or materials;

c  members of the employer’s family who live with him; and

d  independent contractor.

Sometimes an employer might try to avoid liability by engaging workers as “independent contractor” and paying the workers at daily or piece rates. It is important to note that the court will not determine the parties’ relationship merely by the expressions used in the engagement contract. If a dispute arises, the court will look at all employment conditions to determine whether the worker is an employee. The major considerations are the extent to which the engaging party has control over how the worker carries out the work and whether the worker has to assume financial risks in his work.
how should I report a work-related accident?

You should report the work-related accident to your employer as soon as possible. Delay in reporting might affect the investigation of the accident and hence the outcome of the claim. On the other hand, your employer is required by law to report to the Commissioner for Labour any work accident after having been informed of the accident within 7 days for fatal accidents and 14 days for other accidents.

If you find that your employer has not reported the work-related accident to the Labour Department, you may report the accident to the Employees’ Compensation Division of Labour Department. The Labour Department will investigate the accident and make a report. This report is very important for you to claim compensation.

what are the procedures of claiming compensation for work-related injury?

1. Your employer is required to pay periodical payments at the rate of four-fifths of your salary and medical expenses to you during the period of sick leave on normal payroll days.

2. You will be asked to attend the Employees’ Compensation Assessment Board, which will assess the percentage of your loss of earning capacity and
issue a Certificate of Assessment.

3. Any objection to assessment by either party must be made in writing to the Commissioner for Labour within 14 days after the issue of certificate. Then the Employees’ Compensation Assessment Board will review the assessment and issue a Certificate of Review of Assessment to both parties.

4. If any party objects to the outcome of the review, an appeal must be filed with the District Court within 6 months after the issue of Certificate of Review.

how to calculate the amount of compensation for a work-related injury?

You are entitled to the following heads of compensations:

a Compensation for permanent total or partial incapacity

The amount of compensation payable under this head varies with your age at the time of the injury and the extent of your loss of earning capacity.

*Age at time of accident       No. of months of compensation

| Under 40  | 96 |
| 40-55     | 72 |
| 56 or above | 48 |
However, the maximum claimable monthly income is HK$21,500. Hence the maximum compensation payable under this head is HK$21,500 x 96 months = HK$2,064,000.

For example:

A 42 years old construction worker earned HK$12,000 per month. He injured his leg and the Employees’ Compensation Assessment Board assesses the percentage his loss of earning capacity at 15%. The compensation he will receive under this head is HK$129,600 (HK$12,000 x 72 months x 15%).

b  Periodical payments

Periodical payments compensate your temporary loss of earning capacity during your sick leave period. Sick leave certificates issued by a registered medical practitioner, a registered Chinese medicine practitioner (Note) or a registered dentist are required. Your employer is required to pay the periodical payments to you on normal payroll days.

The amount of periodical payments is calculated as follows:-

(Monthly earnings at the time of accident – Monthly earnings, if any, during the period of temporary incapacity) x 4/5
However, if the employee’s temporary incapacity lasts for more than 24 months or a further period as may be permitted by the District Court (which shall be 12 months at maximum), he will no longer be entitled to periodical payments.

(Note) Sick leave certificates issued by registered Chinese medicine practitioners only apply to work-related injuries sustained or prescribed occupational diseases contracted on or after 1 September 2008.

c Medical expenses

Unless your employer has provided adequate free medical treatment to your, your employer is liable to reimburse your medical expenses within 21 days after receiving the relevant receipts. The maximum amount of medical expenses reimbursable is currently HK$200 per day.

d Costs of prostheses and surgical appliances

If you require a prosthesis or surgical appliance, your employer is liable to pay:

i. The initial costs of supplying and fitting the prosthesis or surgical appliance, subject to a maximum amount of HK$33,000; and

ii. The costs of maintenance or replacement of such items within a period of 10 years after the initial fitting, subject to a maximum amount of HK$100,000
e Compensation for requiring attention

If you suffer from permanent incapacity as a result of a work-related injury and require the attention of another person in your daily life, then you are entitled to additional compensation. The amount of such compensation shall be determined by the court or by an agreement entered into by the employer with you and approved by the Commissioner for Labour. The maximum amount of such additional compensation is HK$422,000.

**what compensation is payable for an accident causing death?**

If an employee dies as a result of an accident arising out of and in the course of employment (or a prescribed occupational disease), his/her employer shall be liable to pay the following compensation:

a Compensation for Death

The amount of compensation is calculated with reference to the age of the deceased employee at the time of accident and his/her monthly earnings.

<table>
<thead>
<tr>
<th><em>Age at time of accident</em></th>
<th>No. of months of compensation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Under 40</td>
<td>84</td>
</tr>
<tr>
<td>40-55</td>
<td>60</td>
</tr>
<tr>
<td>56 or above</td>
<td>36</td>
</tr>
</tbody>
</table>
However, the maximum claimable monthly income is HK$21,500. Hence, the maximum compensation payable under this head is HK$21,500 x 84 months = HK$1,806,000. The amount will be apportioned among the eligible members of the family in accordance with the schedule of apportionment in the Ordinance.

For example:

A 50 years old construction worker who earned HK$15,000 per month died as a result of a traffic accident arising out of and in the course of employment. The amount of compensation for death that his family member will receive is HK$900,000 (HK$15,000 x 60 months).

If the spouse (excluding any cohabitee) of the deceased employee has financial difficulties before the conclusion of the proceedings for the recovery of claim, he / she may apply for interim payments, which shall not exceed 45% of the total amount of compensation for death payable. The amount of the interim payment paid shall be deducted from the compensation that the spouse would be entitled to.

b Funeral and medical attendance expenses

The employer is liable to reimburse funeral and medical attendance expenses to the person who has paid such expenses, up to a maximum of HK$35,000.

Documentary evidence of medical treatment, loss of income, sundry expenses incurred, etc., are of great
assistance in establishing the extent of injuries and financial loss. All receipts should be carefully preserved.

**what if my employer is insolvent?**

Regardless of whether you are working full-time or part-time, your employer is compulsorily required under the Ordinance to have valid employees’ compensation insurance policies taken out to cover his liabilities both under the Ordinance and at common law for injuries at work in respect of every employee.

You can take proceedings against the insurer directly if your employer is insolvent or cannot be readily located in Hong Kong.

If the employer fails to take out the employees’ compensation insurance policy or if the insurance company is also insolvent, you may seek compensation form the Employees’ Compensation Assistance Fund.

**if I make a claim against my employer, can he terminate my employment?**

If your sick leave period as a result of a work-related injury does not exceed 3 days, your employer shall not terminate your employment before the period of sick leave has
expired and the compensation has been paid.

If your sick leave period as a result of a work-related injury exceeds 3 days, or if your suffer from permanent incapacity as a result of a work-related injury, your employer shall not terminate your employment before the Commissioner for Labour issues the Certificate of Assessment (or Certificate of Review of Assessment, if either party has objected to the assessment) or before you and your employer have entered into an agreement under the Ordinance to settle the claim directly.

If your employer dismisses you or terminates your employment contract by notice without the consent of the Labour Department, he / she shall be guilty of an offence and shall be liable to a fine at level 6, which is HK$50,001 to HK$100,000 at present.

**is there any time limited for application for work-related injury compensation?**

Claims for employees’ compensation must be brought to the court within two years from the date of the accident causing the injury.

If you are able to show that your employer or another party was wholly or partly responsible for the accident causing the injury, then in addition to a claim for employees’ compensation, a further claim may be brought under common law for personal injury damages. A claim for
personal injury damages must be brought within three years from the date of the accident.

**what should I do if I want to make a claim for employee’s compensation?**

You should consult a lawyer immediately. Some law firms will provide free initial consultation. If you delay in bringing the claim, not only could you be barred by the time limit, but you may also miss the chance of collecting valuable evidence for your case. If you do not have the means to pursue your claim, you may apply for legal aid.

Some recovery agents may offer to pursue the claim for you on a “no win, no fee” basis, and then take a chunk of the client’s compensation in the end. Their practice might constitute the offences of “champerty” or “maintenance”. You are strongly advised against engaging any recovery agents.
memorandum of bringing work-related injury and occupational diseases claims

1. Notify the employer immediately.

2. Seek medical diagnosis from a public hospital, a registered doctor or registered Chinese medicine practitioner (bonesetter not recognised).

3. Obtain a written report and sick leave certificate from the doctor. A copy should be kept by the employee and the original should be submitted to the employer as soon as possible.

4. The employer must report the case to the Labour Department within 14 days (or 7 days for fatal cases).

5. Consult the Labour Department or a solicitor on the procedures of bringing a claim and the calculation of compensation. Consider engaging a solicitor to deal with the claim procedures.

6. Under normal circumstances, a claim for employees’ compensation must be brought to the court within 2 years from the date of the accident, and the time limit for claims brought under common law (for negligence) is 3 years.

7. Regardless of whether your injury is work-related, if your accident was partly or wholly caused by the negligence of your employer or another party, you may take out civil litigation against him for compensation.
under common law. Even if you have already brought a claim in employees’ compensation, you may still sue for additional compensation under common law (for negligence).

8. Keep the following documents:

- proof of income before and after the accident (including basic salary, allowances, tips and overtime payment)
- receipts of all medical costs (including Chinese medicine and bone-setting)
- receipts of medical equipment or supplies
- receipts of all other extra expenses (such as reasonable travelling expenses of family members taking care of you in the hospital and their loss of income)

The above memorandum only sets out the general procedures. For details, please refer to the content of this booklet. If you have any specific questions, please consult the Labour Department or your solicitor.
contact us

For enquiries, please contact our Insurance & Personal Injury department.

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Ray is the head of Insurance and Personal Injury Department. He has been specializing in personal injuries and insurance-related litigation since he started his legal career. He has extensive experience in acting for claimants as well as insurance companies in employees’ compensation and personal injuries claims. He also advises insurance companies on policy disputes including motor vehicles third party risks policies, employees’ compensation policies, contractors’ all risks policies and public liability policies.

Ray has handled a number of claims involving multiple parties, claims by incapacitated persons (including minors and mentally incapacitated persons) and paralytic or paraplegic claims involving damages of over HK$20 million. He also has experience in advising on structured settlement. In addition to personal injuries and insurance-related litigation, Ray has considerable experience in family and matrimonial matters, employment disputes, and civil and criminal litigation.
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