

就致命個案及永久地完全喪失工作能力而須支付的補償額，由於是按僱員於意外發生時的年齡計算，金額因而有所不同。

倘若受傷僱員永久地喪失部分工作能力，計算補償的方式，是以僱員在永久地完全喪失工作能力的情況下須付的補償之中，按某百分率而定出的。該百分率是以因該項損傷以致喪失賺取收入能力的比例計算。

根據該條例，收入包括：

- 現金工資；
- 等同現金的津貼，例如食物、燃料及宿舍等；
- 屬固定性質的超時工作付款或花紅；
- 慣性地給予的小費。

該條例並無修改普通法的規則。倘若工傷是由於僱主的疏忽或錯誤作為引致的，僱員便有權向僱主提出訴訟。根據普通法裁定的損害賠償，會先扣減在該條例下支付的補償額。

ii) 普通法責任

僱主如有下列行為，可能須負上普通法責任：

- 個人疏忽行為；
- 未能挑選合適而又稱職的僱員；

- 未能提供或保持適當及安全的機器與設備；
- 未能提供或保持安全的工作地方；
- 未能提供或保持適當的系統、方法及工作制度；
- 未能遵從《職業安全及健康條例》、《工廠及工業經營條例》及其他條例所訂的法定責任。

在普通法下的補償並沒有限額。有關補償一般可分類如下：

- 疼痛及痛苦；
- 金錢損失；
- 未來收入損失；
- 提供護理。

「不受條款規限及有追償權」這項保單條款如何為僱員提供保障？

僱員的權益不會因僱主沒有遵守保單條款而受到影響。在一般情況下，如投保人違反保單條款，保險公司可拒絕履行賠償責任。不過，由於僱員補償保險在保單訂明「不受條款規限及有追償權」，保險公司必須向僱員支付補償，猶如僱主完全遵守保單條款一樣。



意外發生後僱主應怎樣做？

若僱員在受僱期間受傷，僱主應盡快向保險公司遞交所有病假證明書正本、勞工處表格，以及其他有關文件。任何不合理的延誤可令受保人的權利受損。僱主或需提供僱員的詳細資料、薪金及強制性公積金記錄，以確立其申索。

意外發生後僱員應怎樣做？

僱員應與僱主一同跟進有關事宜，確保僱主已採取適當的申索步驟。若僱員不獲發放補償，可根據該法例直接向保險公司提出申索，亦可徵詢勞工處有何補償措施。

僱員補償援助計劃

僱員補償援助計劃根據《僱員補償援助條例》實施，目的在於向以下人士發放補償：

- 因僱主沒有投保或不知所終或因保險公司無力償債而無法向其追討補償的受傷僱員；或
- 已向僱員發放補償卻因保險公司無力償債而受損的僱主。

補償基金的經費來自僱員補償保險保費的徵款。當局現正檢討徵款率及目前的分佈比例，使補償基金長遠的財政狀況更為穩健。

註：本季刊旨在向讀者提供有關保險的一般知識。專題文章內發表的意見是作者的個人觀點，並不一定代表保險業監督的立場。

Emloyees' Compensation ("EC") insurance is one of the major classes of general insurance business in Hong Kong. EC premiums reached HK\$2.9 billion in 2001, accounting for approximately 15% of the total gross premiums of general insurance business.

Under section 40 of the Employees' Compensation Ordinance ("Ordinance"), every employer is statutorily required to take out an EC insurance policy with an authorized insurer against his liability for his employees' accidental bodily injury in the course of employment. The objective is to ensure that employees, who have a valid claim against his employer, receive adequate compensation and protection.

The **minimum insurance cover** should be for an amount:

The Ordinance also applies to employees who are employed in Hong Kong but suffer injuries while working outside Hong Kong.

To better understand the meaning of "employees", it is important to distinguish a "contract of service" from a "contract for service" where the employer-employee relationship does not exist and the person concerned is merely performing certain agreed tasks for a fee. Court cases have provided a number of tests to help determine whether there is an employer-employee relationship:

- a. Employer's power in selection of his employees
- b. Payment of wages or other remuneration
- c. Employer's right to control the method of doing the work
- d. Employer's right of suspension or dismissal
- e. The risk-bearing of business venture



No. of Employees	Amount of Insurance Cover Per Event
Not more than 200	Not less than HK\$100 million
More than 200	Not less than HK\$200 million

An employer is required to meet both his liabilities under the Ordinance and the Common Law. The Ordinance only lays down the minimum insurance cover. According to his own insurance need, an employer may take out an EC insurance policy above the statutory minimum.

Meaning of Employees

Under the Ordinance, employees include any persons who either enter into or work under a contract of service or apprenticeship with an employer in any employment, whether the contract is expressed or implied; oral or in writing.

Classification of Employer's Liability

The EC insurance covers the employers' legal liability under both the Ordinance and the Common Law for their employees' injuries at work:

i) Statutory Liability

Under the Ordinance, the compensation should be payable regularly or one-off by the employer to an employee in respect of an injury arising out of and in the course of his employment:

Periodical Payment: It is payable regularly on the injured employees'

normal pay days for sick leaves connected with work injuries at the rate of four-fifths of their normal earnings.

Fatal case: It varies from 36 months' to 84 months' earnings subject to a minimum of HK\$303,000 and a maximum of HK\$1,764,000.

Permanent Total Incapacity: It varies from 48 months' to 96 months' earnings subject to a minimum of HK\$344,000 and a maximum of HK\$2,016,000.

The compensation payable for death or permanent total incapacity varies with the employees' age at the time of the accident.

If an injured employee suffers from permanent partial incapacity, the amount of compensation is a percentage of the compensation payable for permanent total incapacity and this percentage will be proportional to the loss of earning capacity caused by the injury.



Under the Ordinance, earnings include:

- a. cash wages;
- b. cash equivalent allowance such as food, fuel, quarters, etc;
- c. overtime payments or bonus of constant nature;
- d. customary tips.

The Ordinance does not modify the rules of the Common Law. The employee has the right to sue against the employer for damages if his injury is caused by the negligence or wrongful act of the employer. The Common Law damages would be reduced by the value of compensation payable under the Ordinance.

ii) Common Law Liability

The Common Law Liability of an employer may be caused by:

- His acts of personal negligence;
- His failure to select suitable and competent employees;
- His failure to provide or maintain suitable and safe plant and machinery;
- His failure to provide or maintain safe place of work;
- His failure to provide and maintain proper system, method and system of working;
- His failure to comply with statutory duties under, among others, the Occupational Safety and Health Ordinance and the Factories and Industrial Undertakings Ordinance.

There is no limit for the Common Law compensation. In general, the compensation award may be categorized under:

- pain and suffering;
- pecuniary loss;
- future loss of earnings;
- provision of care.

How does the policy condition of "Avoidance of Terms and Right of Recovery" protect an employee?

An employee will not be prejudiced by an employer's failure to comply with insurance policy provisions. Generally speaking, breach of a policy provision might enable an insurer to repudiate liability but because of the "Avoidance of Terms and Right of Recovery", the insurer has to settle the claim with the employees as if the employer has complied fully with the policy provisions.

What should an employer do after an accident?

If there is any employee injured during the course of employment, the employer should submit all original sick leave certificates, Labour Department Forms and other relevant documents to the insurer concerned as soon as possible. Any unreasonable delay may prejudice the rights of the insured. Details of staff, salary and Mandatory Provident Fund records may be required to substantiate the claim.

What should an employee do after an accident?

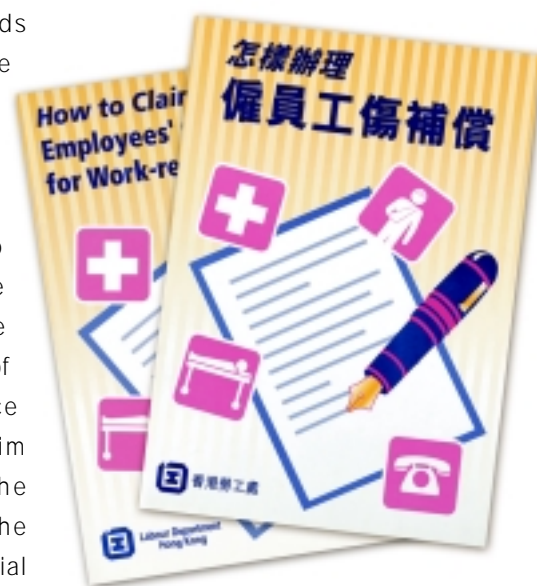
An employee should follow up with his employer to ensure that the employer has proceeded with the proper claim procedures. In case of any non-payments, the Ordinance enables the employees to claim against the insurer direct. The employees may also consult the Labour Department for any remedial measures.

Employees Compensation Assistance Scheme

The operation of the Employees Compensation Assistance Scheme ("ECAS") is governed by the Employees Compensation Assistance Ordinance. Its aim is to provide compensation to:

- an injured employee who is unable to recover compensation from his employer because the employer is uninsured or untraceable, or the employer's insurer has become insolvent; or
- an employer who has paid compensation to his employees but the concerned insurer has become insolvent.

The compensation fund is financed by a levy on the premiums payable in respect of EC insurance policies. The rate of levy and the current proportion of distribution are currently under review to strengthen the long-term financial position of the compensation fund.



Note: This newsletter aims to provide readers with the general knowledge on insurance. Any views expressed in the feature article represent the personal views of the writer, which may not be necessarily shared by the Insurance Authority.



中國保險市場與WTO 國際高峰會議

在 中國加入世界貿易組織 (WTO) 前夕，中國保險監督管理委員會於2001年11月22至23日在北京主辦了「中國保險市場與WTO國際高峰會議」。為期兩天的高峰會提供了一個機會，讓國際上的保險業監管者及專業人士，互相交流了他們對開放中國保險市場的意見。

保險業監理專員鄧國斌先生獲邀出席是次高峰會，並以「有效規管香港保險市場」為題發表演說。在會議舉行期間，鄧先生與數名外國保險業監管者一起獲國務院副總理溫家寶先生接見。

亞太經合組織專題研討會： 管理人壽保險及退休金的規管 改革

在 2001年11月8至9日，澳洲亞太經合組織研習中心在北京舉行了「管理人壽保險及退休金的規管改革」專題研討會。是次專題研討會屬於一系列「管理規管改革」活動的第二次會議，與會者都是亞太地區的保險業高級監察人員。

助理保險業監理專員（長期業務）代表保監處發表了兩篇文章，題目為「香港的規管理念和改革的實施」及「進行規管改革所面對的阻力」。

國際保險會議

以 「亞洲保險業在千禧年代所面對的挑戰和機遇」為題的國際保險會議於2001年11月8日及9日在澳門舉行。會議由澳門特區行政長官致開幕辭，與會者包括中國內地、香港、澳門、葡萄牙、新加坡及菲律賓的保險業監督。會上，保險業監理專員鄧國斌先生就香港保險業及保險規管的發展，發表了演說。

際此機會，保監處及澳門金融管理局就相互協助及資訊交換簽署了諒解備忘錄，以加強雙方今後的合作。

國際保險監督聯會（聯會）

由 於美國受到恐怖襲擊，聯會會議雖然如期在去年九月舉行，但所有決議案均押後至會員大會續會處理。保監處代表於2002年1月9日出席了聯會在日本東京舉行的會員大會續會。

隨後，保監處代表亦出席了於2002年1月10日及11日舉行的「東京行政人員保險規管及監管研討會」。助理保險業監理專員(政策及發展)就香港在符合保險核心原則的自我評估，發表了講話。

粵、港、澳、深四地保監聯席會議

為 了加強合作，廣州、香港、澳門、深圳四地的保險業監管機構已同意舉行定期會議，探討監管功能與架構、市場發展、近期工作，及大家共同關心的課題。

第一次會議於2002年2月28日在廣州舉行，四地的保險業監管機構都熱烈參與討論和交流。第二次會議將於年底在香港舉行。

China's WTO Insurance Summit

With China's imminent entry into the WTO, the China Insurance Regulatory Commission organized "China's WTO Insurance Summit" in Beijing on 22-23 November 2001. The two-day Summit provided an opportunity for international insurance regulators and professionals to exchange their views on the opening up of China's insurance market.

The Commissioner of Insurance, Mr. Benjamin Tang, was invited to the Summit. He delivered a keynote speech on "Effective Regulation of the Hong Kong Insurance Market". Mr. Tang, together with a number of other overseas insurance regulators, were received by Vice-Premier Wen Jiabao during the Summit.

APEC Symposium for Managing Regulatory Change in Life Insurance and Pensions

On 8-9 November 2001, Symposium for Managing Regulatory Change ("MRC") in Life

