

Know More about Taking out Employees' Compensation Insurance





Why should an employer take out employees' compensation insurance (ECI)?

Under section 40 of the Employees' Compensation Ordinance (ECO), Chapter 282 of the Laws of Hong Kong, no employer shall employ any employee in any employment unless there is in force a policy of ECI to cover the employers' liabilities under the laws (including the common law), irrespective of the duration of employment contract or working hours, full-time or part-time employment, permanent or temporary status.

An employer who fails to comply with ECO to secure an ECI cover

- is liable to prosecution and, upon conviction, to a maximum fine of \$100,000 and imprisonment for two years;
- is liable to pay a surcharge to the Employees Compensation Assistance Fund Board under section 36A of the Employees Compensation Assistance Ordinance, Chapter 365 of the Laws of Hong Kong; and
- is still liable to bear the compensation liabilities under the laws (including common law) if his/her employee sustains an injury or dies as a result of an accident arising out of and in the course of employment or suffers from an occupational disease prescribed under ECO.



The consequence of failing to comply with the law is severe.

- ▶ A renovation works employer failed to take out ECI and pay periodical payments to his employee as required by ECO. He was sentenced to two months' imprisonment suspended for 18 months and fined a total of \$42,000 at the Magistrates' Courts.
- ▶ A proprietor of a transportation company was convicted at the Magistrates' Courts for failure to comply with the requirement of taking out ECI under ECO and was sentenced to six months' immediate imprisonment.
- ▶ After an inspection to a scaffolding worksite, the staff of the Labour Department detected a suspected case of false ECI policy. The Labour Department then referred the case to the police for investigation. Ultimately, a man was arrested, charged with using a false instrument and sentenced to 120 hours' community service order.

How to take out ECI?

An employer may take out an ECI policy directly from an insurance company authorised to carry on ECI business in Hong Kong, or approach an insurance intermediary (insurance agent or insurance broker) for arrangement.

What should an employer note when taking out an ECI policy?

ECI policy is a written contract made between an employer and an insurance company. The main purpose of ECI is to share employer's risk of paying employees' compensation for work-related injuries and fatalities. When taking out or renewing an insurance policy, an employer must disclose all material facts required and shall:

1

Provide accurate information on the number and the actual earnings of his/her employees and ensure all employees are covered, irrespective of the duration of employment contract or working hours, full-time or part-time employment, permanent or temporary status, work location, occupation or post when taking out an ECI policy;

2

Pay attention to the expiry date of the insurance policy and take action to renew it in advance to avoid loss of protection and contravention of the law once it lapses;

3

Give a detailed declaration to the insurance company within a stipulated period of time as required during the validity period of, or at the time of expiry or termination of the insurance policy, where such declaration should include the employment condition and all updates during the period of insurance (e.g. number of employees, actual earnings, occupations, etc.), and provide relevant documents (e.g. employees' salary records, Mandatory Provident Fund (MPF) contribution statements and accounting records) to facilitate the risk assessment and determination of premium by the insurance company and to ensure having proper insurance protection to meet the potential liability;

4

Check whether the information provided is accurately stated in the insurance policy and pay attention to the additional clauses stipulated in the insurance policy. The employer can also ask the insurance company (or insurance intermediary) directly if he/she is unsure whether to disclose a particular piece of information, or has any questions about taking out ECI or the policy terms, such as the information/documents that should be submitted to the insurance company (or insurance intermediary) for taking out/renewing an ECI policy; and

5

Be aware that failure in reporting material facts with accurate particulars at the time of taking out/renewing the ECI policy may leave the employer open to legal action by the insurer for recovery of monies previously paid by the insurer to indemnify any claim under the policy.

How to determine ECI premium?

ECI premium is determined by risk assessment. Insurance companies in general will calculate the insurance premium by taking into account the underwriting risks of different industries/ occupations, the total earnings of employees and the following factors:

- Claims history of the employer concerned;
- Occupational safety and health as well as risk prevention measures taken by the employer concerned;
- Accident rate and risks to be undertaken in respect of the industry or occupation concerned;
- Market condition (e.g. market trend, economic environment, social factors, etc.); and
- Underwriting guidelines, operational costs, risk management of the insurance company, etc.

The age of employees is not a major determining factor of ECI premium.

How can individual employers obtain premium discounts/ special offers?

An employer may consider strengthening the provision of necessary information, instruction, training and supervision, etc. to ensure that both sides duly implement occupational safety and health (OSH) measures, improving the working environment and promoting safety management, rehabilitation and return-to-work programmes, etc. with a view to reducing risks at work. Based on improvement in OSH performance, the insurance company may consider providing special premium offers. Possible improvement measures include:

- Acquiring sufficient and suitable equipment and relevant facilities that meet safety standards and ensuring their proper maintenance;
- Providing staff with various equipment and facilities and ensuring their proper use;
- Arranging employees to complete specified OSH courses and obtain the related certification;
- Conducting regular inspections of workplaces with a view to improving the OSH conditions; and
- Establishing and implementing a safety management system, such as devising improvement measures to address the causes of work-related casualties, to prevent recurrence of accidents.

When taking out an ECI policy, what information has to be given to the insurance company (or insurance intermediaries) by an employer for processing his/ her insurance/ renewal proposal?

An employer is responsible for providing the following information and/ or documents*:

- ☒ Company information (e.g. type of business, business registration information, etc.);
- ☒ Employees' information (e.g. occupations, number of employees, actual earnings, usual work locations, full-time/ part-time employment, requirement to work or take business trips outside Hong Kong, etc.);
- ☒ Recent MPF contribution records**;
- ☒ Relevant tax returns/ accounting records; and
- ☒ Past claims records.



* If employers have any occupational safety and health improvement measures in place, they should report them to the insurance companies as this may assist them in the related risk assessment and underwriting consideration.

** If a new company is unable to provide MPF contribution records, please allow additional time for taking out ECI policy, as insurer may ask for additional information.

What to do if there are difficulties in taking out ECI?

The insurance industry in Hong Kong has put in place the Employees' Compensation Insurance Residual Scheme as a market of last resort to assist employers who have difficulties in taking out ECI, with a view to ensuring that employers are able to acquire ECI. Employers having difficulties in taking out ECI may contact the Employees' Compensation Insurance Residual Scheme Bureau Limited.

How to settle employees' compensation (EC) disputes?



In case of dispute, the Labour Department may assist the employer and the employee in resolving the EC disputes. ECO does not empower the Labour Department to adjudicate on EC cases or issues arising from/relating to EC cases. Therefore, if the employer and the employee cannot reach any settlement agreement with the assistance of the Labour Department, the EC dispute will be determined by the Court.

Even after commencing proceedings under the ECO in Court, if the employer and the employee would like to adopt alternative dispute resolution means to settle the EC disputes, they may attempt mediation to resolve the dispute to save time and legal costs, thereby avoiding the litigation risks in the Court proceedings.

To know more about mediation, please visit the webpage "Legal and dispute resolution services" on the Department of Justice's website: (www.doj.gov.hk/en/legal_dispute/mediation.html).

Enquiries



Please consult your insurance companies (or insurance intermediaries) direct for any enquiries about taking out ECI policies or the policy terms. For enquiries about the contents of this leaflet, please contact the department/organisation(s) listed below for more information.

Labour Department

- @ www.labour.gov.hk
- ☎ 2717 1771 (handled by "1823")

Insurance Authority

- @ www.ia.org.hk
- ☎ 3899 9983

The Hong Kong Federation of Insurers

- @ www.hkfi.org.hk
- ☎ 2520 1868

The Employees' Compensation Insurance Residual Scheme Bureau Limited

- @ www.ecirsb.com.hk
- ☎ 2591 9316

