

EMPLOYEES' COMPENSATION FOR INJURIES AND FATALITIES

Executive Summary

1. Employees are protected by the Employees' Compensation Ordinance (ECO — Cap. 282), which provides for the payments of employees' compensation in respect of injuries or deaths caused by accidents arising out of and in the course of employment, or prescribed occupational diseases. The Labour Department (LD) is responsible for administering the ECO. The Employees' Compensation Division (ECD) of the LD handles employees' compensation claims and assesses the compensation payable by employers. To ensure that employers take out employees' compensation insurance to cover their liabilities both under the ECO and common law, the Labour Inspection Division (LID) of the LD conducts inspections to workplaces.

2. If an employee, or the eligible family member(s) in cases of fatalities, fails to receive from the employer employees' compensation under the ECO and/or common law damages for which the employer is liable after exhausting legal and financially viable means of recovery, the employee or the eligible family member(s) may apply for assistance payment (in relation to the unpaid compensation) and/or relief payment (in relation to the unpaid damages) from the Employees Compensation Assistance Fund (ECAAF). The ECAAF, established on 1 July 1991 under the Employees Compensation Assistance Ordinance (Cap. 365), is administered by the Employees Compensation Assistance Fund Board (ECAFB). In the period from 1 July 1991 to 31 March 2014, payments of \$1,115 million had been made to 2,270 applicants.

3. The Audit Commission (Audit) has recently conducted a review of the work of the LD and the ECAFB in protecting employees in cases of sustaining work injuries and fatalities.

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4. *Time taken for processing claims.* As at 30 September 2014, 7,470 (5%) of the 148,490 claims (excluding fatal claims) received by the ECD during the period from 1 January 2009 to 31 December 2013 were still not settled. Of the 7,470 outstanding claims, 1,776 (24%) were pending assessment by the Employees' Compensation (Ordinary Assessment) Board. The average time for attending the Board ranged from 6 to 17 weeks. In December 2013, the LD commenced a review to identify measures (such as increasing the Board's capacity) to shorten the time taken for processing claims. The LD needs to implement the measures identified as soon as practicable and to monitor the effectiveness of these measures. Moreover, in the period from January to September 2014, the no-show rate of the Board's appointments was 7%. The LD needs to explore measures to better utilise the unused appointment quotas (paras. 2.4, 2.6 and 2.8 to 2.10).

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5. *Processing time of ECAF applications.* Audit examined 20 cases assisted by the ECAFB. Audit noted that the average time taken by the ECAFB in processing an application was 5.7 months (ranging from 1.3 to 19.6 months) for assistance payment and 5.1 months (ranging from 0.1 to 21.1 months) for relief payment. The ECAFB did not require the Secretariat to report regularly the progress of all cases to the ECAFB. With a mechanism for periodic reporting of progress of applications by the Secretariat, the ECAFB could instruct the Secretariat to carry out follow-up actions more expeditiously (paras. 3.7, 3.10 and 3.11).

6. *Measures to help streamline the operations.* The hiring of in-house legal staff may help the ECAFB to monitor the progress of the cases more efficiently and effectively. Out-of-court settlement and mediation have the advantage of settling cases more quickly and could save legal costs. In the period from 1 April 2011 to 31 March 2014: (a) 13 (11%) of the 117 settled cases for assistance payment were settled out-of-court; and (b) 22 (28%) of the 80 settled cases for relief payment were settled either out-of-court or by mediation. The ECAFB needs to make better use of these measures to help streamline its operations (paras. 3.14 to 3.16).

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7. *Procurement practice for selecting retained lawyers.* Given the fact that the three retained lawyers of the ECAFB have been engaged for a long time, the ECAFB needs to devise a suitable mechanism (e.g. through open tendering) for selecting lawyers as retained lawyers (para. 3.18).

8. *Management of surplus funds.* In recent years, the ECAF has been operating in surplus. Its accumulated surplus had increased significantly from \$37 million as at 31 March 2009 to \$468 million as at 31 March 2014. The ECAFB needs to consider how the issue of increasing amount of accumulated surplus should be addressed (paras. 3.19 and 3.20).

Ensuring employees are covered by employees' compensation insurance

9. *Need to document the basis of selecting workplaces for inspection.* Under the ECO, employers are required to take out employees' compensation insurance and display a notice of insurance at the workplaces. The Labour Inspectors of the LID conduct inspections to enforce the ECO. According to the Operation Manual, the LID should adopt an offence-prone approach in selecting workplaces from the workplace database for routine inspection. Audit noted that there was no documentation showing that the offence-prone approach was adopted in selecting workplaces for routine inspections (paras. 4.2, 4.5 and 4.6).

10. *Many workplaces not inspected for over three years.* In its response to an assignment report of May 2007 on the Labour Inspections Procedures of the LD issued by the Independent Commission Against Corruption, the LD stated that a workplace would be inspected once every two to three years. Audit, however, noted that up to 17 December 2014, 127,039 (37%) of the 344,172 workplaces in the LID's workplace database had not been inspected for over three years (from 3 to 10 years) (para. 4.8).

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11. *Need to improve measures to ensure proper display of notice of insurance.* The LID conducts inspections to check the employers' compliance with the requirement of displaying, in a conspicuous place, a notice of insurance at the workplaces. Under the existing practice, only employers who had been given the warning for more than two times regarding the same offence within three years would be referred to the Prosecutions Division of the LD. Audit noted that in the three-year period from 2011 to 2013, of the 196,586 workplaces inspected, only 2,416 (1.2%) had been inspected for three times or more. This implies that employers of 194,170 (98.8%) workplaces would not be prosecuted even if they failed to display the notice of insurance throughout the period. The LD needs to review its existing practice of enforcing the display of notice of insurance (paras. 4.2, 4.15 and 4.16).

12. *Monitoring of inspections.* Supervisory inspection (i.e. a Senior Labour Inspector re-inspects on a monthly basis a workplace inspected by a Labour Inspector) is an effective means to ensure the consistency and quality of inspections. Audit, however, noted that in the period from 1 January 2013 to 31 December 2014, some Senior Labour Inspectors had not conducted supervisory inspections as frequently as required (paras. 4.19 and 4.20).

13. *Not all offence-prone workplaces were included in the database.* According to the Operation Manual, new concerns are offence-prone workplaces, and the Labour Inspectors have to keep a close watch on new workplaces in their course of inspections and the workplace database will be updated once new workplaces are noted. In January 2015, Audit visited 39 workplaces on Russell Street in Causeway Bay. Eight of the 39 workplaces visited had been in operation on Russell Street but had not been detected by the Labour Inspectors for some time (from more than one year to 14 years) (paras. 4.28 and 4.29).

14. *Performance information.* The LD reported in its Controlling Officer's Report a key performance indicator "Inspections to workplaces". Audit found that in the years from 2009 to 2013, the number of inspections reported in the Controlling Officer's Reports included 393,203 inspections conducted by the LID. However, 163,519 (41.6%) of the 393,203 inspections were conducted on removed, locked or vacant workplaces and therefore no enforcement work (i.e. ensuring that employers have taken out employees' compensation insurance) had been carried out (paras. 4.34 to 4.36).

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Audit recommendations

15. **Audit recommendations are made in the respective sections of this Audit Report. Only the key ones are highlighted in this Executive Summary. Audit has *recommended* that the Commissioner for Labour should:**

Processing of employees' compensation claims by the Labour Department

- (a) expedite the processing of the outstanding employees' compensation claims (para. 2.11(a));**
- (b) continue to monitor the time taken for processing employees' compensation claims and, where warranted, take appropriate measures to address the issue (para. 2.11(b));**

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- (c) take measures to improve the existing inspection strategies (para. 4.17);**
- (d) take measures to ensure that supervisory inspections are conducted in accordance with the Operation Manual (para. 4.23(a));**
- (e) take measures to enhance the integrity of the workplace database (para. 4.32); and**
- (f) review the performance indicators of the LID so that inspections where no enforcement work is carried out are excluded or separately reported in the Controlling Officer's Report (para. 4.38(a)).**

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16. Audit has also *recommended* that the ECAFB should:

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- (a) take measures to shorten the time taken for processing ECAF applications (para. 3.24(a));
- (b) consider the feasibility of hiring in-house legal staff (para. 3.24(b));
- (c) where appropriate, explore the possibility of settling cases out-of-court or by mediation (para. 3.24(c));
- (d) devise a suitable mechanism for selecting lawyers as retained lawyers (para. 3.24(d)); and
- (e) monitor the issue of increasing amount of accumulated surplus funds of the ECAF, and when necessary, take appropriate measures to address the issue (para. 3.24(e)).

Response from the Government and the ECAFB

17. The Commissioner for Labour and the ECAFB agree with the audit recommendations.