

10A. Payment of medical expenses

- (1) Subject to this Ordinance, if, in any employment, personal injury is caused to an employee by accident occurring on or after the date on which this section comes into operation and arising out of and in the course of his employment his employer shall be liable to pay the medical expenses for the medical treatment in respect of such injury. (*Amended 76 of 1982 s. 8*)
- (1A) Medical expenses which an employer is liable to pay under subsection (1) shall, unless otherwise provided by agreement in writing entered into by the employer with the employee, not include those in respect of medical treatment given outside Hong Kong in relation to an accident occurring in Hong Kong. (*Added 1 of 1995 s. 6*)
- (2) Medical expenses which an employer is liable to pay under subsection (1) shall be payable in addition to any other compensation which the employer is liable to pay under this Ordinance. (*Replaced 76 of 1982 s. 8*)
- (3) Medical expenses which the employer is liable to pay under subsection (1) shall be payable in accordance with the Third Schedule in respect of the period during which the employee receives medical treatment until the attending registered medical practitioner, registered Chinese medicine practitioner or registered dentist certifies that in his opinion no further treatment is required. (*Replaced 76 of 1982 s. 8. Amended 16 of 2006 s. 14*)
- (4) An employer shall not be liable to pay medical expenses under subsection (1)—
 - (a) if the employer has provided adequate free medical treatment to the employee; or
 - (b) if, by a written undertaking given in accordance with subsection (5), the employer has agreed to provide adequate free medical treatment and the employee fails, without reasonable excuse, to submit himself for such medical treatment. (*Amended 16 of 2006 s. 14*)
- (5) Where an employer proposes to provide free medical treatment to an employee for personal injury caused to the employee by accident arising out of and in the course of his employment, he—
 - (a) shall give to the employee a written undertaking to—
 - (i) provide free medical treatment; or

- (ii) pay the medical expenses for the medical treatment;
 - (b) shall specify in such undertaking the description of the medical treatment; and
 - (c) shall not recover any part of the cost of the medical expenses from the employee. (*Amended 16 of 2006 s. 14*)
- (5A) Subsection (4) does not relieve an employer of the liability to pay medical expenses in respect of medical treatment of any description received by an employee unless the free medical treatment provided or agreed to be provided by the employer covers medical treatment of the same description. (*Added 16 of 2006 s. 14*)
- (5B) In subsections (5) and (5A), a reference to a description of medical treatment is a reference to any of the following—
 - (a) medical treatment given by, or under the supervision of, a registered medical practitioner;
 - (b) medical treatment given by, or under the supervision of, a registered Chinese medicine practitioner;
 - (c) medical treatment given by, or under the supervision of, a registered dentist;
 - (d) physiotherapy given by, or under the supervision of, a registered physiotherapist or registered medical practitioner;
 - (e) occupational therapy given by, or under the supervision of, a registered occupational therapist or registered medical practitioner;
 - (f) medical treatment given by, or under the supervision of, a registered chiropractor. (*Added 16 of 2006 s. 14*)
- (6) Where an employee has paid for any medical treatment received by him he shall be entitled to recover the medical expenses which his employer is liable to pay under subsection (1) from his employer by serving on the employer a request in writing for the payment of the medical expenses together with a receipt for the payment for the medical treatment.
- (7) If an employer does not pay an employee the medical expenses he is liable to pay under subsection (1) within 21 days after the date of receipt of a request for payment under subsection (6) or, where an application is made to the Commissioner under section 10B for the determination of a dispute, within 21 days after the date of determination of the

dispute, the medical expenses may be recovered by the employee from the employer—

- (a) as a civil debt in the Small Claims Tribunal established under the Small Claims Tribunal Ordinance (Cap. 338); or
 - (b) where the amount claimed exceeds the jurisdiction of the Small Claims Tribunal, as a civil debt in the District Court.
- (8) A claim for medical expenses in the District Court may be brought either independently of or in conjunction with any other claim for compensation which is, under this Ordinance, to be brought in the District Court.
- (9) *(Repealed 76 of 1982 s. 8)*

(Added 74 of 1977 s. 3. Amended 44 of 1980 s. 15)

[10A.01] Enactment history

Subsection (1) was substituted pursuant to s 8 of the Employees' Compensation (Amendment) Ordinance 1982 (76 of 1982), commencing 1 July 1983.

Subsection (1A) was added pursuant to s 6 of the Employees' Compensation (Amendment) Ordinance 1995 (1 of 1995), commencing 1 February 1995.

Subsections (2) and (3) were substituted pursuant to s 8 of the Employees' Compensation (Amendment) Ordinance 1982 (76 of 1982), commencing 1 July 1983.

The words 'registered medical practitioner, registered Chinese medicine practitioner or registered dentist certifies that in his opinion no further treatment is required.' in sub-s (3) were substituted pursuant to s 14(1) of the Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Ordinance (16 of 2006), commencing 1 September 2008. Subsection (4)(b) was amended pursuant to s 14(2) of the Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Ordinance (16 of 2006), commencing 1 September 2008.

Subsection (5) were substituted pursuant to s 14(3) of the Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Ordinance (16 of 2006), commencing 1 September 2008.

Subsections (5A) and (5B) were added pursuant to s 14(4) of the Certification for Employee Benefits (Chinese Medicine) (Miscellaneous Amendments) Ordinance (16 of 2006), commencing 1 September 2008.

Subsection (9) was repealed pursuant to s 8 of the Employees' Compensation (Amendment) Ordinance 1982 (76 of 1982), commencing 1 July 1983.

[10A.02] England

This section does not have an equivalent in the UK Acts.

[10A.03] Medical expenses

See s 3 above for the definition of medical expenses. Note Sch 3 below, which imposes a limit on the amount of medical expenses which the employee can claim.

Medical expenses incurred in Mainland China have been held to be not recoverable: see *Lee Kin Chuen v 王偉* [2015] HKCU 906 (unreported, DCEC 970/2014, 28 April 2015) (DC) and *Leung Chi Kin (梁子健) v Hung Ka Fai t/a Sign Square (洪嘉輝經營國健工程公司)* [2017] HKCU 1128 (unreported, DCEC 1947/2015, 8 May 2017) (DC) (Chinese judgment).

Future medical expenses are also not recoverable under this section since the Ordinance only allows claims for medical expenses that have been 'incurred': see *Riasat Ali v Kenwa Industrial (HK) Ltd* [2015] HKCU 664 (unreported, DCEC 809/202, 27 March 2015) (DC).

Additionally, expenses incurred in assessment and reports done by hospitals are not to be regarded as medical expenses as such expenses are not incurred for treatment purpose: see *Chan Sze Wan v Caritas Jockey Club Lai King Rehabilitation Centre operating by Caritas Hong Kong* [2010] HKCU 391 (unreported, DCEC 200/2008, 18 February 2010) (DC).

[10A.04] Subsection (1)

If part of the sick leave is disregarded by the court on account of exaggeration and expansion of symptoms, the court may also make a corresponding deduction to an employee's claim for medical expenses: see *Kan Wai Ming (簡偉明) v Hong Kong Airport Services Ltd (香港機場地勤服務有限公司)* [2010] HKCU 2163 (unreported, DCEC 1012/2009, 8 October 2010) (DC), which was overruled by the Court of Appeal but this part of the decision is left untouched.

Medical expenses not related to the accident being the subject matter of the employees' compensation proceedings will not be recoverable by the employee: see *Cheung Pei Tak v Wai Kwok Yau* [2018] HKCU 1881, [2018] HKDC 661 (DC).

[10A.05] Subsection (1A)

Medical expenses in respect of treatment given to the injured employee in the Mainland China was disallowed in pursuance of the provisions of this subsection in the case of *黃小春 訴 蔡榮全* [2011] HKCU 182 (unreported, DCEC 1553/2008, 3 January 2011) (DC) (Chinese judgment), in the absence of any written agreement between the employer and employee in this connection.

[10A.06] Hong Kong

This is defined in s 3 of the Interpretation and General Clauses Ordinance (Cap 1) to mean the Hong Kong Special Administrative Region.

[10A.07] Subsections (7) and (8): District Court

This is defined in s 3 of the Interpretation and General Clauses Ordinance (Cap 1) to mean the District Court of the Hong Kong Special Administrative Region.

[10A.08] Definitions

For 'employee', see s 2 above; for 'compensation', 'employer', 'medical expenses', 'medical practitioner', 'medical treatment' and 'registered dentist', see s 3 above and notes thereto.

10AA. Medical expenses for accidents occurring outside Hong Kong

- (1) This section applies to the liability imposed on an employer under section 10A, for the payment of medical expenses for medical treatment, given outside Hong Kong, in respect of personal injury caused to an employee by accident occurring outside Hong Kong and arising out of and in the course of that employee's employment.
- (2) An employer shall not be liable to pay medical expenses under section 10A(1)—
 - (a) in respect of medical treatment given outside Hong Kong to an employee in relation to an accident occurring—
 - (i) outside Hong Kong; and
 - (ii) before the commencement of the Employees' Compensation (Amendment) Ordinance 1995 (1 of 1995);
 - (b) in respect of medical treatment given outside Hong Kong to an employee, unless and until a certificate has been issued by the Commissioner under section 10B(1)(b) stating the amount of such medical expenses;
 - (c) if the employer has provided adequate free medical treatment outside Hong Kong to the employee; or
 - (d) if, by a written undertaking, the employer has agreed to provide adequate free medical treatment outside Hong Kong to the employee and the employee fails, without reasonable excuse, to submit himself for such medical treatment.

(Added 1 of 1995 s. 7)

[10AA.01] Enactment history

This section was added pursuant to s 7 of the Employees' Compensation (Amendment) Ordinance 1995 (1 of 1995), commencing 1 February 1995.