

Safety Corner

What is a reportable accident for work place-related occupational injury?

There are several statutory requirements in Hong Kong for employers to report work place-related occupational injuries to the authority; namely, the Factories and Industrial Undertakings Regulation (F&IUR), Employees' Compensation Ordinance (ECO), and Occupational Safety and Health Ordinance (OSHO). The focus of this article is on the accounting of sick leave days under these three laws.

Both F&IUR and ECO require employers to report accident with injury that causes "incapacity for a period exceeding 3 days immediately following the accident", while OSHO requires "...if the incapacity prevents the victim from working for at least 3 days..." That is, OSHO requirement is 3 days or more, but F&IUR and ECO are 4 days or more.

The words "period" and "immediately" have caused some to interpret the requirements for the sick days being 4 consecutive days or more to satisfy the literal meaning of "a period", and the sick leave must start on the same day or the next day of the injury to satisfy the literal meaning of "immediately".

Both F&IUR and OSHO are deemed to be complied with if such reports of accident were made to the Labour Department (LD) in accordance with the provisions of ECO using Form 2 or Form 2B, as applicable, specified in ECO. Hence, the ECO practice dominates the reporting of workplace accident. It is industry practice to file Form 2 or Form 2B for workplace accidents for all three laws, and it is uncommon for employers to file separate reports to LD only for the fulfilment of F&IUR or OSHO instead of using ECO forms.

Under ECO, "period" is further defined as 24 months after an accident, and following court rulings, the ECO practice adopts the cumulative approach in counting sick leaves. This leads to the industry practice to count reportable accident as those with 4 days or more, cumulatively, within a 24 month period, with a Form 2 submitted to Labour department. Hence, as long as an employer submits a Form 2 within a 24-month period following a workplace injury, the injury is considered to be a reportable accident. Those insist on defining reportable accidents following the literal meaning of "a period" and "immediately" would need to read the three laws in conjunction, and follow court rulings on ECO cases.

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