

EMPLOYERS GUIDE TO WORKMEN'S COMPENSATION

ACT 1977

The Workmen's Compensation Act No.13 of 1977 is the law relating to injuries and death of workmen for suffered in the course of their duties. The Act states that an Employer should insure his workmen and himself in respect of all liability which he may incur under the provisions of the Act. It further states that an employer who fails to insure will be found guilty of an offence and liable to a fine of M300.00 or 12 months imprisonment or both.

WHICH WORKERS ARE COVERED UNDER THE ACT

- Any person who has entered into a contract of employment with an employer whether oral or in writing.
- Any person who has entered into an apprenticeship with an employer.
- Person employed by Government.

WHICH WORKERS ARE NOT COVERED BY THE ACT

- Casual employees
- Sub-contractors
- Domestic servant
- Any person whose services are rewarded in kind according to custom.
- A member of the employer's family dwelling in the employers house.
- Any member of His Majesty's Armed Forces, the Lesotho Royal Mounted Police and Prison Service.
- A workman in the services of Government where in consequence of injury, a pension or gratuity is payable to him or in the case of his death to his dependants.
- Any classes of persons whom the Minister may by notice declare not to be workmen for the purposes of the Act.

WHEN IS AN EMPLOYER LIABLE FOR COMPENSATION?

1. If a worker is injured or dies in an accident arising out of and in the course of his/her employment.
2. If a worker gets on industrial disease or dies from such a disease.

PAYMENTS/COMPENSATION IS MADE FOR

- (a) Death
- (b) Permanent total incapacity
- (c) Permanent partial incapacity
- (d) Temporary incapacity

WHEN IS AN EMPLOYER NOT LIABLE FOR COMPENSATION

- (i) Where the injury does not incapacitate the workman for not more than three days from earning full wages at work.
- (ii) Where claims are made more than 6 months after the accident.
- (iii) Where the industrial disease is reported more than six months after diagnosis.
- (iv) Where the workmans own misconduct caused the accident. But the Court on consideration of all circumstances own misconduct caused the accident.
- (v) Where incapacity or death resulted from deliberate self-injury.
- (vi) Where a workman had represented to the employer that he was not suffering from that or a similar injury knowing that the representation was false.

DEATH

Compensation is paid if the workman dies from work related injury.

WHO CAN CLAIM COMPENSATION	WHAT COMPENSATION IS PAID
Dependants: wholly dependant on workman's earnings.	An amount not exceeding M72,000.00
Dependants partially dependant on workman earnings.	Sum not exceeding 48 months earnings or M12,000 whichever is less. Amount may be determined by Court as reasonable and proportionate. <u>ADDITIONAL</u> In addition the employer is to pay; <ul style="list-style-type: none">• the reasonable expenses of the burial of the deceased workman not exceeding M5,000.00.• reasonable expenses for the medical attention of the employee.

PERMANENT TOTAL INCAPACITY:

Permanent Total Incapacity means that a workman never fully recovers from the injury or sickness. The percentage or aggregate percentage of loss of earning capacity amounts to 100% or more e.g. when a workman is paralysed.

WHO CAN CLAIM	WHAT COMPENSATION IS PAID
The workman	<ul style="list-style-type: none">➤ 54 months earnings or M13,500 whichever is less.➤ No less than M,800.00 <p><u>ADDITIONAL</u></p> <p>In addition the employer is to pay:</p> <ul style="list-style-type: none">• an amount not exceeding M10,000 for medical, surgical and hospital treatment, skilled nursing services and the supply of medicine;• an amount not exceeding M5,000 for supply, maintenance, repair and renewal of articulated artificial limbs or any other artificial appendages;• an amount not exceeding one thousand five hundred maloti (1500.00) for transport charges incurred in transferring the workman to and from a place where treatment is available.



PERMANENT PARTIAL INCAPACITY

Permanent partial incapacity means that a workman's incapacity reduces his earning capacity in any employment which he is capable of undertaking e.g when a workman loses a finger.

WHO CAN CLAIM	WHAT COMPENSATION IS PAID
The Workman	<ul style="list-style-type: none">• In the case of an injury specified in the 2nd schedule, such percentage of 54 months earnings.• In the case of an injury not specified in the second schedule such percentage of 54 months earnings as assessed by a medical practitioner or medical board or where disputed as determined by the Court.
	<p>NOTE:</p> <p>Where there are more injuries than one caused by the same accident the amount of compensation shall be aggregated but shall not exceed the amount that would have been awarded if the accident has resulted in permanent total incapacity.</p> <p><u>ADDITIONAL:</u></p> <ul style="list-style-type: none">• In addition the employer is to pay; an amount not exceeding M10,000 for medical, surgical and hospital treatment, skilled nursing services and the supply of medicine;• an amount not exceeding M5,000.00 for supply, maintenance, repair and renewal of articulated artificial limbs or any other artificial appliances;• an amount not exceeding one thousand five hundred Maloti for transport charges incurred in transferring the workman to and from a place where treatment is available.

SECOND SCHEDULE

Loss	Per cent
Loss of two limbs	100
Loss of both hands or all fingers and both thumbs	100
Loss of both feet	100
Total loss of sight	100
Total paralysis	100
Injuries resulting in being bedridden permanently	100
Any other injury causing permanent total disablement	100
Loss of remaining eye by a one-eyed workman	100
Loss of remaining arm by a one-armed workman	100
Loss of remaining leg by a one-legged workman	100
Loss of arm at shoulder	90
Loss of arm between elbow and shoulder	80
Loss of arm at elbow	70
Loss of arm between wrist and shoulder	60/65
Loss of hand at wrist	60
Loss of four fingers and thumb of one hand	60
Loss of four fingers	35
Loss of thumb – both phalanges	35
Loss of thumb – one phalanx	10
Loss of index finger – three phalanges	10
Loss of index finger – two phalanges	8
Loss of index finger – one phalanx	4
Loss of middle finger – three phalanges	6
Loss of middle finger – two phalanges	4
Loss of middle finger – one phalanx	2
Loss of ring finger – three phalanges	5
Loss of ring finger – two phalanges	4
Loss of ring finger – one phalanx	2
Loss of little finger – three phalanges	4
Loss of little finger – two phalanges	3
Loss of little finger – one phalanx	2
Loss of metacarpals – third, fourth or fifth (additional)	2
Loss of leg at or above knee	75
Loss of leg below knee	40
Loss of foot	40
Loss of toes – all	15
Loss of toes – great, both phalanges	5
Loss of toe – great, one phalanx	2
Loss of toes – other than great, if more than one toe lost(each)	1
Loss of eye – eye out	30
Loss of eye – sight of	30
Loss of eye – lens of	30
Loss of eye – sight of, except perception of light	30
Loss of hearing – both ears	50
Loss of hearing – one ear	7

Total permanent loss of use of member shall be treated as loss of member.

The percentage of incapacity for ankylosis of any joint shall be reckoned as from 25 to 100 percent of the incapacity for loss of the part at that joint, according to whether the joint is ankylosed in a favourable or unfavourable position.

Where there is a loss of two or more parts of the hand, the percentage of incapacity shall not be more than for the whole hand.

Where there are two or more injuries, the sum of the percentages for such injuries may be increased, and, where such injuries are to the hand, the following basis of computing the increase shall be adopted, namely:-

- (a) where two digits have been injured, the sum total of the percentages shall be increased by 20 per cent of such sum total;
- (b) where three digits have been injured, the sum total of the percentages shall be increased by 30 per cent of such sum total;
- (c) where four digits have been injured, the sum total of sum total of the percentages shall be increased by 40 percent of such sum total.

TEMPORARY INCAPACITY

Temporary incapacity means that the worker recovers from the accident or sickness. Temporary disability can be partial or total. Total means that the workman has to stay completely off work for a while, and partial means the workman can go to work but has to do light work or work fewer hours.

WHO CAN CLAIM	WHAT COMPENSATION IS PAID
The workman	<p>Temporary total incapacity; monthly payments of an amount equal to 75% of the monthly earning of a workman. i.e.</p> $\frac{\text{Salary} \times 75}{100} = \text{compensation per month}$ <p>Temporary partial incapacity; if the workman earns less because of temporary partial incapacity he/she will earn 75% of the difference between the normal wage and reduced wage = $\frac{\text{difference} \times 75}{100}$ = compensation per month</p>
	<p><u>ADDITIONAL</u> In addition the employer is to pay:</p> <ul style="list-style-type: none"> • an amount not exceeding M10,000.00 for medical, surgical and hospital treatment, skilled nursing services and the supply of medicine; • an amount nor exceeding M5,000.00 for supply, maintenance, repair and renewal of articulated artificial limbs or any other artificial appliances; • an amount not exceeding one thousand five hundred Maloti (M1500.00) for transport charges incurred in transferring the workman to and from a place where treatment is available.

REQUIREMENTS FOR REPORTING AND COMPENSATION

STEP	WHAT THE ACT SAYS
<p>1. Workman informs employer</p> <p>2. Employer reports accident to Labour Commissioner</p>	<ul style="list-style-type: none"> • The Act says the workman can inform the employer or supervisor verbally or in writing. • The Employer should report the accident within three days of accident even if the employer does not believe the workman's story. • In the case of injury the employer fills in form W/C9 part 1 in triplicate and dispatches as follows:- <ul style="list-style-type: none"> -original to the Labour Commissioner, -duplicate and triplicate; to the medical practitioner attending or examining injured workman. • In the case of injury causing death Part 1 should be completed in duplicate and both should be dispatched to the Labour Commissioner. • If the workman fails to submit himself for medical examination within 15 days of notice no compensation shall be payable unless there is reasonable cause for such failure. • Workman is entitled to have his medical practitioner during examination but at his own expense. • During temporary total incapacity the employer shall arrange to submit the workman to medical treatment which shall include specialist treatment.

<p>3. Employer should arrange to have workman examined free of charge.</p> <p>The doctor fills the forms Part 2</p>	<ul style="list-style-type: none"> • If the workman fails to submit himself to examination when so required or fails to follow the instructions of the medical practitioner no compensation shall be payable. • The Doctor fills part II of the forms and dispatches as follows – one copy to the employer. One copy to the Labour Commissioner.
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WORKMEN'S COMPENSATION BOARD

Consists of:

1. a medical practitioner employed by Government
2. a medical practitioner not employed by Government.
3. a legal practitioner.

The Labour Commissioner is to refer disputes to the board relating to:

- (a) degree and duration of incapacity
- (b) the medical examination and treatment.
- (c) The necessity, character or efficiency of medical aid provided.
- (d) Any assessment to be made for injuries not specified in the second schedule.

COMPENSATION FOR INDUSTRIAL DISEASES

- Industrial diseases are diseases caused by conditions a worker is exposed to in the workplace.
- 15 categories are listed in the First schedule.
- The compensation is recoverable from the employer who last employed the workman during a period of 24 months.
- The workman or his dependants should furnish the employer with information as to other employers of the workman who employed him during the said 24 months.
- Calculations of compensation will be based on whether the occupational disease leaves the worker temporarily or permanently incapacitated and whether the permanent incapacity is partial or total.
- The date of diagnosis, for the purposes of compensation is the date of the happening of the accident.
- For the purpose of calculating compensation the earnings of a workman are his average monthly earnings at the date of his diagnosis or death.
- If he is unemployed at the time compensation is granted, the earnings are calculated on his earnings when he was last employed.

FIRST SCHEDULE

<i>Description of Disease</i>	<i>Description of Work</i>
1. Pneumoconiosis caused by silicogenic mineral dust (silicosis, anthracosilicosis, asbestosis) and silicotuberculosis, provided that silicosis is an essential factor in causing the resultant incapacity or death.	All work involving exposure to the risk concerned.
2. Disease caused by phosphorus or its toxic compounds.	All work involving exposure to the risk concerned.
3. Disease caused by beryllium or its toxic compounds.	All work involving exposure to the risk concerned.
4. Disease caused by chrome or its toxic compounds.	All work involving exposure to the risk of ionizing radiations.
5. Disease caused by manganese or its toxic compounds	All work involving exposure to the risk concerned.
6. Disease caused by arsenic or its toxic compounds.	“
7. Disease caused by mercury or its toxic compounds.	“
8. Disease caused by lead or its toxic compounds.	“
9. Disease caused by carbon bisulphide	“
10. Disease caused by the toxic halogen derivatives of hydrocarbons of the aliphatic series.	“
11. Disease caused by benzene or its toxic homologues.	“

- 12. Disease caused by nitro and amido - toxic derivatives of benzene or its hydrocarbons
- 13. Disease caused by ionising radiators
- 14. Primary epitheliomatous cancer of the skin caused by tar, pitch, bitumen, mineral oil, anthracene, or the compounds, products or residues of these substances.
- 15. Anthrax infection

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Work in connection with animals infected with anthrax.
 Handling of animal carcasses or parts of such carcasses including hides, hoofs and horns. Loading and unloading or transport of merchandise which may have been contaminated by animals or animal carcasses infected with anthrax.