



LAWS OF KENYA

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## **WORK INJURY BENEFITS ACT**

CHAPTER 236

Revised Edition 2012 [2007]

Published by the National Council for Law Reporting  
with the Authority of the Attorney-General

[www.kenyalaw.org](http://www.kenyalaw.org)



**CHAPTER 236**

**WORK INJURY BENEFITS ACT**

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**CHAPTER 236**

**WORK INJURY BENEFITS ACT**

[Date of assent: 22th October, 2007.]

[Date of commencement: 20th December, 2007.]

**An Act of Parliament to provide for compensation to employees for work related injuries and diseases contracted in the course of their employment and for connected purposes**

[Act No. 13 of 2007, L.N. 60/2007, L.N. 7/2003.]

**PART I – PRELIMINARY**

**1. Short title**

This Act may be cited as the Work Injury Benefits Act, 2007.

**2. Interpretation**

In this Act, unless the context otherwise requires—

“**accident**” means an accident arising out of and in the course and scope of an employee’s employment and resulting in personal injury;

“**Board**” means the National Labour Board;

“**capitalised value**” means the total anticipated allowance over a certain period;

“**compensation**” means compensation as provided for under this Act and includes medical aid and any benefit of any nature to which an employee or his dependants may be entitled to under this Act;

“**Council**” means the National Council for Occupational Safety and Health;

“**dependant**” means a person defined as a dependant in section 6;

“**Director**” means the Director of Occupational Safety and Health Services (Cap. 253);

“**earnings**” means the remuneration of an employee at the time of the accident calculated in the manner set out in section 37;

“**employer**” means a person defined as an employer in section 4 and includes a principal;

“**injury**” means a personal injury and includes the contracting of a scheduled disease;

“**medical advisory panel**” means a panel appointed from medical and occupational health and safety practitioners to advise the Director for purposes of this Act;

“**medical aid**” means any or all of the benefits specified in sections 45 and 47;

“**medical practitioner**” means a person appointed by the Director for purposes of section 48 entitled to practice in Kenya under the Medical Practitioners and Dentists Act;

“**Minister**” means the Minister for the time being responsible for labour matters;

“**periodical payments**” means a periodical payment of compensation in accordance with the provisions of this Act;

“**permanent disablement**” means permanent injury or disfigurement;

“**personal representative**” means the executor or other person lawfully appointed to take charge of the estate of a deceased employee and if there is no such person so appointed, any person specially appointed under this Act to make an application on behalf of the deceased employee’s dependants for compensation, and in other respects, to act as his personal representative for the purposes of this Act;

“**scheduled disease**” means any disease specified in the Second Schedule;

“**temporary disablement**” means, a condition of temporary nature caused by an accident which results in the loss of or diminution of wage-earning capacity in the work at which such employee was employed at the time of accident.

### 3. Application

This Act shall apply to all employees, including employees employed by the Government, other than the armed forces, in the same way and to the same extent as if the Government were a private employer.

### 4. Meaning of employer

(1) In this Act, “**employer**” means any person who employs an employee and includes—

- (a) the legal personal representative of a deceased employer;
- (b) any person controlling the business of an employer; and
- (c) the Government.

(2) If the services of an employee are temporarily lent or let on hire to another person by an employer, the employer is deemed to continue to be the employer of the employee while the employee is working for that other person.

(3) In the case of an employee employed by a club or an association of persons, the trustees of the club or association shall be deemed to be the employer.

(4) For the purposes of the giving or receiving of statements, notices or other documents under this Act, the term “**employer**” includes the manager, or other duly authorized employee or agent of the employer.

## 5. Meaning of employee

(1) In this Act, “**employee**” means a person who has been employed for wages or a salary under a contract of service and includes an apprentice or indentured learner.

(2) Subsection (1) applies irrespective of whether the contract is expressed or implied, is oral or in writing, and whether the remuneration is calculated by time or by work done and whether by the day, week, month or any longer period and whether the payment is in cash or recognised legal tender.

(3) The following persons shall not be regarded as employees for purposes of this Act—

- (a) a person whose employment is of a casual nature and who is employed otherwise than for the purposes of the employer’s trade or business;
- (b) any person employed outside Kenya save as provided in section 11 of this Act;
- (c) a member of the employer’s family dwelling in the employer’s house or cartilage thereof and not for the purpose of employment; or
- (d) a member of the Armed Forces as defined in the Armed Forces Act (Cap. 199).

(4) Any reference in this Act to an employee who has been injured shall, when the employee is dead, include a reference to the employee’s representative or dependants or to any other person to whom or for whose benefit compensation is payable.

## 6. Meaning of dependant

(1) In this Act “**dependant**” means—

- (a) the widow or widower of an employee;
- (b) a child of the employee who has not attained the age of eighteen years including a posthumous child, a stepchild and an adopted child, adopted prior to the accident, but excluding a child who is married or who is self-supporting;
- (c) a parent, step-parent or an adoptive parent who adopted such employee if he adopted prior to the accident or death;
- (d) a child of the employee not contemplated by paragraph (b);
- (e) a brother, sister, half-brother, half-sister or parent, grandparent, or grandchild of an employee; and
- (f) any other person who at the time of the accident was wholly dependent upon the employee for the necessities of life.

(2) In the case of an employee who leaves two or more widows, such widows shall be entitled to share such compensation as would be payable to a single widow of the deceased employee.

## PART II – OBLIGATIONS OF EMPLOYERS

**7. Employer to be insured**

(1) Every employer shall obtain and maintain an insurance policy, with an insurer approved by the Minister in respect of any liability that the employer may incur under this Act to any of his employees.

(2) The Minister may exempt from the provisions of subsection (1), an employer who provides and maintains in force a security which complies with the requirements of subsection (3), and any exemption under subsection (3) shall continue in force only so long as the security is maintained.

(3) For the purposes of subsection (2), a security shall consist of an undertaking by a surety approved by the Minister to make good, subject to any conditions specified in the security, any failure by the employer to discharge any liability which the employer may incur under this Act to any of its employees up to an amount approved by the Minister.

(4) Any employer who contravenes the provisions of subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand shillings or to imprisonment for a term not exceeding three months, or to both.

(5) If the contravention in respect of which an employer is convicted is continued after the conviction, the employer is guilty of a further offence and liable in that respect to a fine not exceeding ten thousand shillings for each day on which the contravention continues.

**8. Registration of employer**

(1) Every employer carrying on business in Kenya shall within the prescribed period and in the prescribed manner—

- (a) register with the Director;
- (b) furnish the Director with the prescribed particulars of their business; and
- (c) within a period determined by the Director furnish additional particulars as the Director may require.

(2) The particulars referred to in subsection (1) shall be furnished separately in respect of each business carried on by the employer.

(3) An employer shall, within thirty days of any change in the particulars so furnished notify the Director of such change.

(4) Where an employer carries on business in more than one workplace, or carries on more than one class of business, the Director may require the employer to register separately in respect of each place or class of business.

**9. Employer to keep records**

(1) An employer shall—

- (a) keep a register or other record of the earnings and other prescribed particulars of all employees;



- (b) at all reasonable times produce the register or record on demand to the Director for inspection; and
- (c) retain the register, record or reproduction referred to in paragraph (1)(a) for a period of at least six years after the date of the last entry in that register or record.

(2) An employer who fails to comply with any provision of this section commits an offence.

(3) Any employer registered under section 8 who ceases to carry on business for any reason, shall notify the Director before winding-up the business.

(4) An employer who keeps records of remuneration is deemed to keep records in accordance with this section.

### PART III – RIGHT TO COMPENSATION

#### **10. Right to compensation**

(1) An employee who is involved in an accident resulting in the employee's disablement or death is subject to the provisions of this Act, and entitled to the benefits provided for under this Act.

(2) An employer is liable to pay compensation in accordance with the provisions of this Act to an employee injured while at work.

(3) An employee is not entitled to compensation if an accident, not resulting in serious disablement or death, is caused by the deliberate and wilful misconduct of the employee.

(4) For the purposes of this Act, an occupational accident or disease resulting in serious disablement or death of an employee is deemed to have arisen out of and in the course of employment if the accident was due to an act done by the employee for the purpose of, in the interests of or in connection with, the business of the employer despite the fact that the employee was, at the time of the accident acting—

- (a) in contravention of any law or any instructions by or on behalf of his employer; or
- (b) without any instructions from his employer.

(5) For the purposes of this Act, the conveyance of an employee to or from the employee's place of employment for the purpose of the employee's employment by means of a vehicle provided by the employer for the purpose of conveying employees is deemed to be in the course of the employee's employment.

(6) For the purposes of this section, an injury shall only be deemed to result in serious disablement if the employee suffers a degree of permanent disablement of forty percent or more.

#### **11. Accident outside Kenya**

(1) If an employer carries on business chiefly in Kenya and an employee ordinarily employed in Kenya is injured in an accident while temporarily deployed outside Kenya, the employee is, subject to subsection (3), entitled to compensation as if the accident had happened in Kenya.

(2) The compensation contemplated in subsection (1) shall be determined on the basis of the earnings the employee would have received if the employee had remained in Kenya.

(3) This section does not apply to an employee who has been deployed outside Kenya—

- (i) for a continuous period of twelve months or longer; or
- (ii) for a shorter period, if the employment outside Kenya is expected to last for more than twelve months.

(4) If an employee ordinarily employed outside Kenya by an employer that carries on business chiefly outside Kenya, is injured in an accident while temporarily deployed in Kenya, the employee is not to be entitled to compensation under this Act.

(5) An employee deployed in Kenya for a continuous period of twelve months, shall be deemed to be ordinarily employed in Kenya.

## **12. Accidents during training for or performance of emergency services**

If an employee is injured in an occupational accident or contracts an occupational disease while the employee, with the consent of the employer, is engaged in any organized first aid, ambulance or rescue work, fire-fighting or other emergency service, the accident or disease is for the purposes of this Act, deemed to have arisen out of and in the course of the employee's employment.

## **13. Special circumstances in which Director may refuse award**

The Director may refuse to grant compensation under this Act to an employee if—

- (a) the employee at any time represented to the employer, knowing the information to be false, that he was not suffering from or had not previously suffered from a serious injury or occupational disease or any other serious disease, and such an accident or occupational disease was caused by, or the death resulted from or the disablement resulted from or was aggravated by, such injury or disease; or
- (b) in the opinion of the Director, the death was caused, or the disablement was caused, prolonged or aggravated by the unreasonable refusal or wilful neglect of the employee to submit to medical aid in respect of any injury or disease, whether caused by the accident or existing before the accident.

## **14. Special circumstances in which the Director may order compensation**

If in a claim for compensation under this Act it appears that the contract of service apprenticeship or learnership of the employee concerned is invalid, the Director may approve compensation for the claim as if the contract was valid at the time of the accident.

## **15. Employee requiring constant assistance**

(1) If an injury in respect of which compensation is payable causes disablement of such a nature that the employee is unable to perform the essential

functions of life without the constant assistance of another person, the Director shall grant an allowance in addition to any other benefit provided for under this Act, towards the cost of such help as may be required for a specified period, which allowance shall be reviewed from time to time.

(2) The Director may, upon the application of the employee and on good cause shown by the applicant, revise any order made in accordance with subsection (1).

#### **16. Substitution of compensation for other legal remedies**

No action shall lie by an employee or any dependant of an employee for the recovery of damages in respect of any occupational accident or disease resulting in the disablement or death of such employee against such employee's employer, and no liability for compensation on the part of such employer shall arise save under the provisions of this Act in respect of such disablement or death.

#### **17. Claims against third parties**

(1) If an occupational accident or disease in respect of which compensation is payable, was caused in circumstances resulting in another person other than the employer concerned (in this section referred to as the 'third party') being liable for damages in respect of such accident or disease—

- (a) the employee may claim compensation in accordance with this Act and may also institute action for damages in a court against the third party; and
- (b) the employer or insurer by whom compensation in respect of that accident or disease is payable may institute action in a court against the third party for the recovery of compensation that the employer or insurer, as the case may be, is obliged to pay under this Act.

(2) In awarding damages in an action referred to in subsection (1)(a) the court shall have regard to the compensation paid in accordance with this Act.

(3) In an action referred to in subsection (1)(b), the amount recoverable may not exceed the amount of damages, if any, which in the opinion of the court would have been awarded to the employee but for the provisions of this Act.

(4) For the purposes of this section, compensation includes the cost of medical aid already incurred and any amount paid or payable in accordance with the provision of section 15 and, in the case of an allowance, the capitalized value of the allowance, irrespective of whether a lump sum is at any time paid *in lieu* of the whole or a portion of such allowance.

#### **18. Threats and compulsion**

Any person who threatens an employee or in any manner compels or influences an employee to do something resulting in or directed at the deprivation of that employee's right to benefits in terms in accordance with this Act commits an offence.

**19. Compensation not to be alienated**

(1) Notwithstanding any provision to the contrary in any written law, compensation shall not be—

- (a) assigned or pledged;
- (b) capable of attachment or any form of execution under a judgment or order of a court of law; or
- (c) set off against any debt of the person entitled to the compensation.

(2) Any provision of an agreement in terms of which an employee assigns, purports to assign, relinquishes or purports to relinquish any right to benefits in accordance with this Act, shall be void.

**20. Compensation not to form part of deceased employee's estate**

Compensation paid under this Act for the death of an employee shall not form part of the employee's estate.

**PART IV – REPORTING OF ACCIDENTS****21. Notice of accident by employee to employer**

Written or verbal notice of any accident provided for in section 22 which occurs during employment shall be given by or on behalf of the employee concerned to the employer and a copy of the written notice or a notice of the verbal notice shall be sent to the Director within twenty-four hours of its occurrence in the case of a fatal accident.

**22. Notice of injury or accident by employer to Director**

(1) Subject to the provisions of this section, an employer shall report an accident to the Director in the prescribed manner within seven days after having received notice of an accident or having learned that an employee has been injured in an accident.

(2) For the purposes of this section, an accident includes any injury reported by an employee, to his employer, if the employee when reporting the injury, alleges that it arose out of and in the course of his employment and irrespective of the fact that the employer is of the opinion that the alleged accident did not so arise out of and in the course of employment.

(3) An employer shall, at the request of an employee or the dependant of an employee, furnish the employee, or dependants with a copy of the notice of the accident furnished by the employer to the Director in respect of a claim for compensation by such employee or dependant.

(4) An employer who fails to comply with subsection (1) commits an offence.

(5) The provisions of this section do not prevent an employee from reporting an occupational accident or disease to the Director at any stage.

**23. Inquiry by Director**

(1) After having received notice of an accident or having learned that an employee has been injured in an accident the Director shall make such inquiries as are necessary to decide upon any claim or liability in accordance with this Act.

(2) An inquiry made under subsection (1) may be conducted concurrently with any other investigation.

(3) An employer or employee shall, at the request of the Director, furnish such further particulars regarding the accident as the Director may require.

(4) A person who fails to comply with the provisions of subsection (3) commits an offence.

#### **24. Particulars in support of claim**

(1) An employee who is injured in an accident or his dependant, shall, when reporting the accident or thereafter at the request of the employer or Director, furnish such information and documents as may be prescribed or as the employer or Director may request.

(2) An employer shall, within seven days after having received a claim, medical report or other document or information concerning such claim, submit the claim, report, document or information to the Director.

#### **25. Employee to submit to medical examination**

(1) An employee who claims compensation or to whom compensation has been paid or is payable, shall when required by the Director or the employer as the case may be, after reasonable notice, submit himself at the time and place mentioned in the notice to an examination by the medical practitioner designated by the Director or the employer with the approval of the Director.

(2) If, in the opinion of any medical practitioner, an employee is not capable of travelling to be examined by the designated medical practitioner, the employee shall inform the party requiring the examination thereof or cause him to be so informed, and the designated medical practitioner shall then examine the employee at a time and place as agreed upon.

(3) An employee shall be entitled at his own expense, to have a medical practitioner of his choice present at an examination by a designated medical practitioner.

#### **26. Claim for compensation**

(1) A claim for compensation in accordance with this Act shall be lodged by or on behalf of the claimant in the prescribed manner within twelve months after the date of the accident or, in the case of death, within twelve months after the date of death.

(2) If a claim for compensation is not lodged in accordance with subsection (1), the claim for compensation may not be considered under this Act, except where the accident concerned has been reported in accordance with section 21.

(3) If an employer fails to report an accident or to provide information requested by the Director as specified in the request, the Director may—

- (a) conduct an investigation and recover the cost of the investigation from the employer as a debt due from the employer; or
- (b) levy a penalty on the employer.

(4) An employer or insurer against whom a claim for compensation is lodged by the Director under this section, shall settle the claim within ninety days of the lodging of the claim.

(5) The Director shall, within thirty days of receipt of the money claimed under subsection (1), pay the money to the employee who made the claim or his dependants.

(6) An employer or an insurer who fails to pay the compensation claimed under this subsection commits an offence and shall on conviction be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

## **27. Lapse of right to benefits**

(1) A right to benefits in accordance with this Act shall lapse if the accident is not reported to the employer within twelve months after the date of such accident.

(2) Notwithstanding the provisions of subsection (1), the failure to report an accident to an employer as required in subsection (1) is not a bar to compensation if it is proved that the employer had knowledge of the accident from any other source.

(3) Subject to section 26, failure to report an accident to an employer as required in subsection (1), or any error or inaccuracy in such a notice, is not a bar to compensation if—

- (a) the employer is not or would not be seriously prejudiced by such failure, error or inaccuracy if notice is then given or the error or inaccuracy is corrected; or
- (b) if such failure, error or inaccuracy was unforeseeable or was caused by the employee's absence from Kenya.

## **PART V – COMPENSATION**

### **28. Compensation for temporary total or partial disablement**

(1) An employee who suffers temporary total disablement due to an accident that incapacitates the employee for three days or longer is entitled to receive a periodical payment equivalent to the employee's earnings, subject to the minimum and maximum amounts fixed by the Minister from time to time, after consultation with the Council.

(2) Compensation for temporary partial disablement shall consist of a proportionate amount of the periodical payment calculated as specified in subsection (1).

(3) Periodical payments shall be made for as long as the temporary disablement continues, but not for a period that exceeds twelve months.

(4) An employee is not entitled to receive a periodical payment during any period in which the employee is receiving full pay, as provided for in the Employment Act, or any other law or contract of service.

(5) The periodical payment of an employee who is receiving part payment of remuneration shall be reduced so that the employee does not receive more than the employee would otherwise have earned.

### **29. Expiry of compensation for temporary total or partial disablement**

(1) The right to compensation for temporary, total or partial disablement expires—

- (a) upon the termination of the disablement or if the employee resumes work;
- (b) if the employee resumes any other work at the same or greater earnings; or
- (c) if the employee is awarded compensation for permanent disablement.

(2) Notwithstanding the provisions of subsection (1), an employee may be awarded additional compensation for temporary, total or partial disablement if—

- (a) the disablement of the employee concerned recurs or the employer's health deteriorates; or
- (b) the employee receives further medical aid necessitating further absence from his employment, provided that such aid will reduce his disablement.

### **30. Compensation for permanent disablement**

(1) Compensation for permanent disablement shall be calculated on the basis of ninety-six months earnings subject to the minimum and maximum amounts determined by the Minister, after consultation with the Board, and set out in the Third Schedule.

(2) If an employee has sustained an injury specified in the first column of the First Schedule, the employee shall for the purposes of this Act, be deemed to be permanently disabled to the degree set out in the second column of the First Schedule.

(3) If an employee sustains an injury not specified in the First Schedule which leads to permanent disablement, the employee shall be paid such percentage of disablement in respect thereof as in the opinion of a medical doctor will not lead to a result contrary to the guidelines of the First Schedule.

(4) If an injury or serious disablement contemplated in paragraph (a) or (b) has unusually serious consequences for an employee as a result of the special nature of the employee's occupation, the Director may determine such higher percentage as the Director shall deem equitable.

(5) No payment for temporary disablement in accordance with the provisions of section 29 shall be deducted from compensation payable under this section.

### **31. Amendment of First Schedule**

The Minister may, on the recommendation of the Director and in consultation with the Council, amend the First Schedule by notice in the *Gazette*:

Provided that at least sixty days before any such amendment a notice shall be published in the *Gazette* stating—

- (a) the intention to amend the First Schedule and the proposed content of the amendment; and



- (b) inviting any person who wishes to comment on the proposed amendment to submit such comment in writing to the Director within the period specified in the notice.

### **32. Compensation for permanent disablement of employee in training**

If as a result of an accident an employee sustains permanent disablement and at the time of the accident was an apprentice or in the process of being trained in any trade, occupation or profession, the earnings of the employee shall be calculated on the basis of the earnings to which an employee would normally have been entitled if at the time of the accident the employee had been performing the same work as a person in the same occupation, trade or profession with five years experience.

### **33. Compensation to employee previously in receipt of compensation**

(1) In awarding compensation to an employee in respect of permanent disablement or in reviewing an award of compensation, the Director may take into account any compensation awarded to the employee in accordance with this Act or any other law, to the employee as a result of the permanent disablement.

(2) If an employee has received compensation for permanent disablement in accordance with this Act and is subsequently injured in an accident resulting in further permanent disablement in respect of which compensation is payable in accordance with this Act, compensation in respect of such further permanent disablement shall be calculated, where applicable, on the basis of the earnings that the employee received at the time of any of the accidents concerned, whichever earnings are more favourable to the employee.

(3) An employee shall not be paid compensation in respect of one or more accidents if it amounts to more than the compensation payable in respect of permanent total disablement.

### **34. Amount of compensation in case of death**

(1) If an employee dies as a result of an injury caused by an accident, compensation shall be paid to the dependants of the employee in accordance with the provisions of the Third Schedule, subject to the maximum and minimum amount determined by the Minister after consultation with the Council.

(2) No amount may be deducted from the compensation awarded under this section to a dependant in respect of any compensation awarded to the employee in respect of the same or any other accident.

(3) For the purposes of this section, a dependant is deemed to have been wholly financially dependent upon the employee at the time of the accident, unless the contrary is proved.

(4) In addition to the compensation payable under this section, the employer is liable to pay reasonable expenses for the funeral of the deceased employee subject to the maximum amount determined by the Minister, after consultation with the Council.



**35. Amendment of Third Schedule**

The Minister may, on the recommendation of the Director, and after consultation with the Board, amend the Third Schedule by notice in the *Gazette* in respect of the nature, extent, minimum and maximum amount of benefits:

Provided that at least sixty days before any such amendment a notice shall be published in the *Gazette*—

- (a) of the intention to amend and the proposed content of the amendment; and
- (b) inviting any person who wishes to comment on the proposed amendment to submit such comment in writing to the Director within the period specified in the notice.

**36. Payment of compensation**

(1) Compensation payable in accordance with the provisions of this Act may, for reasons deemed by the Director to be sufficient, be—

- (a) paid to the employee or the dependant of an employee entitled thereto, or to any other person on behalf of such employee or dependant, in instalments or in such other manner as the Director may deem fit;
- (b) invested or applied to the advantage of the employee or the dependants of an employee;
- (c) paid to the Public Trustee to be applied for the benefit of the dependants of a deceased employee; or
- (d) applied as specified in paragraphs (a), (b) and (c).

(2) On the death of an employee the unpaid balance of any compensation awarded to the employee does not form part of the employee's estate and shall be paid to the employee's dependants as specified in the Third Schedule.

(3) Where there is no dependant, the Director may authorise payment of the balance of the compensation to the estate of the deceased.

**37. Manner of calculating earnings**

(1) In order to determine compensation, the earnings of an employee are deemed to be the monthly rate at which the employee was being remunerated by the employer at the time of the accident, including—

- (a) the value of any rations, living quarters or both supplied by the employer to the employee to the date of the accident or report of disease;
- (b) allowances paid regularly; and
- (c) any overtime payment or other special remuneration of a regular nature or for work ordinarily performed,

but excluding—

- (i) payment for intermittent overtime;
- (ii) payment for non-recurrent occasional services;

- (iii) amounts paid by an employer to an employee to cover any special expenses; and
- (iv) *ex gratia* payments whether by the employer or any other person.

(2) If an employee's remuneration is not consistent or is determined in accordance with a rate calculated on the basis of work performed, the employee's earnings shall be calculated on the basis of average remuneration for similar work on the same conditions of remuneration for the period of twelve months prior to the accident.

(3) If by reason of the short duration of the service of an employee with his employer it is impracticable to calculate the employee's earnings in such service, the earnings shall, if possible, be calculated on the basis of the amount which—

- (a) the employee with similar work at the same conditions of remuneration earned with another employer during the twelve months immediately prior to the accident; or
- (b) during the twelve months immediately prior to the accident was earned by other employees of the first-mentioned employer with similar work and on the same conditions of remuneration, or would have been earned by the employee during the previous twelve months had the employee been so employed.

(4) If an employee has entered into contracts of service with two or more employers and has in terms of those contracts, worked at one time for one employer and at another time for another employer, the employee's earnings shall be calculated as if the earnings under all such contracts were earnings in the employment of the employer for whom the employee was working at the time of the accident.

(5) If in the opinion of the Director it is not practicable to calculate the earnings of an employee in accordance with subsections (2), (3) and (4), the Director may calculate those earnings in such manner as the Director may deem equitable, but with due regard to the principles laid down in those provisions.

(6) This section shall not be construed as prohibiting the calculation of earnings on a weekly basis, but where earnings are so calculated the monthly earnings shall be calculated, as equal to four and one-third times the amount of such weekly earnings.

## PART VI – OCCUPATIONAL DISEASES

### **38. Compensation in respect of scheduled and unscheduled diseases**

(1) Subject to the provisions of this Act, an employee is entitled to compensation in accordance with this Act, if the employee—

- (a) contracts a disease specified in the Second Schedule that arose out of and in the course of the employee's employment; or
- (b) contracts any other disease that arose out of and in the course of the employee's employment.

(2) An employee who contracts a disease in the circumstances contemplated in subsection (1) is deemed to have contracted an occupational disease and is entitled to compensation as if the disablement caused by the disease had been caused by an accident.

(3) If an employee who has contracted an occupational disease has also contracted a disease other than an occupational disease and the recovery of the employee is being delayed or the employee's temporary total disablement is being prolonged by reason of that other disease, the employee is entitled to medical aid for that other disease.

(4) If an employee has contracted an occupational disease resulting in permanent disablement and the disease is aggravated by another disease, a medical practitioner may, in determining the degree of permanent disablement have regard to that other disease if it is equitable to do so.

### **39. Presumption regarding cause of occupational disease**

If an employee who has contracted an occupational disease specified in the Second Schedule was employed in any work mentioned in that Schedule in respect of that disease, it shall be presumed, unless the contrary is proved, that the disease arose out of and in the course of his employment.

### **40. Calculation of compensation**

(1) Compensation for an occupational disease shall be calculated on the basis of the earnings of the employee calculated in accordance with the provisions of section 35—

- (a) at the time of the commencement of the disease; or
- (b) such earlier date as a medical practitioner may determine, if the employee was suffering from the disease at an earlier date, whichever earnings are more favourable to the employee.

(2) If an employee is no longer in employment at the time of the commencement of the disease, the earnings shall be calculated on the basis of the earnings that the employee would have been earning had the employee still been working.

### **41. Notice of occupational disease by employee and employer**

(1) An employee shall as soon as possible after the commencement of an occupational disease give written notice thereof to the employer or to the employer where the employee was last employed, and in the prescribed manner to the Director.

(2) An employer shall, within fourteen days after receiving notice or learning of the employee occupational disease, report such disease, in the prescribed manner to the Director, irrespective of whether the employer may be of the opinion that the employee did not contract such disease in employment or contracted it in the employ of a previous employer.

(3) An employer who fails to comply with the provisions of subsection (2) commits an offence.

### **42. Date of occupational disease**

(1) For purposes of this Act, the commencement of an occupational disease is deemed to be the date on which a medical practitioner diagnosed that disease for the first time or such earlier date as the medical practitioner may determine if it is more favourable to the employee.

(2) The provisions of this Act regarding an accident shall, where appropriate, apply *mutatis mutandis* to a disease referred to in subsection (1).

#### **43. Amendment of Second Schedule**

The Minister may, on the recommendation of the Council and in consultation with the Director, amend the Second Schedule by notice in the *Gazette*, in respect of the description of diseases and work:

Provided that at least sixty days before any such amendment a notice shall be published in the *Gazette*—

- (a) of the intention to amend the Second Schedule and the proposed content of the amendment; and
- (b) in which any person who wishes to comment on the proposed amendment or amendments is invited to submit such comment in writing to the Director within the period specified in the notice.

#### **44. Appointment of medical advisory panels**

(1) The Director may, after consultation with the Council and in consultation with the Director of Medical Services, appoint medical advisory panels which shall consist of such members as may be necessary to—

- (a) assist with regard to the diagnosis of occupational diseases in individual cases;
- (b) advise the Director regarding—
  - (i) the inclusion of occupational diseases in the Second Schedule; and
  - (ii) general policy concerning the diagnosis of, and disablement as a result of, occupational diseases.

(2) A member of a medical advisory panel shall be paid the prescribed remuneration, travelling and subsistence allowances out of the funds set aside for that purpose by Parliament.

(3) The Director shall designate a member of a medical advisory panel as chairman of the panel.

(4) The members of a medical advisory panel shall hold office for such period and on such terms as the Director, after consultation with the Minister may determine.

(5) The Director may, at any time after consultation with the Council, terminate the appointment of any member of a medical advisory panel who has been guilty of misconduct or neglect of duty, or is not able to perform his functions in accordance with the provisions of this Act.

### **PART VII – MEDICAL AID**

#### **45. First Aid**

(1) An employer shall provide and maintain such appliances and services for the rendering of first aid to his employees in case of any accident as may be prescribed in any other written law in respect of the trade or business in which the employer is engaged.

(2) Any employer who fails to comply with the provisions of subsection (1) commits an offence.

(3) The Minister may, after consultation with the Council, by notice in the *Gazette* exempt an employer or class of employers from application of this section.

#### **46. Conveyance of injured worker**

(1) If an employee is injured in an accident, which necessitates the employee's conveyance to a hospital medical facility or from a hospital or medical facility to the employee's residence, the employer shall make the necessary conveyance available.

(2) An employer or anyone in charge of the work in which the employee was employed at the time of the accident, who fails to comply with subsection (1) commits an offence.

#### **47. Medical expenses**

(1) Subject to the provisions of this section, an employer shall defray any expenses reasonably incurred by an employee as the result of an accident arising out of, and in the course of the employers employment in respect of the following matters—

- (a) dental, medical, surgical or hospital treatment;
- (b) skilled nursing services;
- (c) the supply of medicine and surgical dressing;
- (d) travelling and subsistence in connection with the employee's journey to and treatment in a place within Kenya where he was directed by his medical practitioner to go for treatment; and
- (e) the supply, maintenance, repair and replacement of artificial limbs, crutches, and other appliances and apparatus used by persons who are physically disabled.

(2) For the purposes of subsection (1), any damage to any appliance or apparatus specified in subsection (1)(e) is deemed to be an injury.

(3) The necessity, nature and sufficiency of any medical aid provided or to be provided in accordance with the provisions of this Part shall be determined by the Council.

#### **48. Submission of medical report**

(1) A medical practitioner who examines an employee shall within fourteen days after the first examination of the employee injured in an accident or within fourteen days after having diagnosed an occupational disease, furnish a medical report to the Director in the prescribed manner.

(2) Where the employee has at the time of the diagnosis of an occupational disease left employment, the medical report shall be made to the Director in a separate form as prescribed under this Act.

**49. Fees for medical aid to be prescribed**

The fees and charges for medical aid to an employee shall be in accordance with the scale prescribed by the Minister, from time to time, after consultation with the Council and such bodies or associations representing medical practitioners entitled to practice within Kenya as the Minister may think fit, and no claim for an amount in excess of a fee in accordance with that scale shall lie against any employer in respect of any such medical aid.

**50. Contributions by employees towards cost of medical aid prohibited**

(1) An employer who demands, receives, deducts or recovers from an employee a contribution towards the cost of medical aid supplied or to be supplied in accordance with the provisions of this Act, commits an offence.

(2) If an employer has been convicted of contravening subsection (1), the Director may in the prescribed form, issue an order against that employer for the payment of the amount received contrary to the provisions of subsection (1).

**PART VIII – APPEALS****51. Objections and appeals against decisions of the Director**

(1) Any person aggrieved by a decision of the Director on any matter under this Act, may within sixty days of such decision, lodge an objection with the Director against such decision.

(2) The objection shall be in writing in the prescribed form accompanied by particulars containing a concise statement of the circumstances in which the objection is made and the relief or order which the objector claims, or the question which he desires to have determined.

**52. Director's reply**

(1) The Director shall within fourteen days after the receipt of an objection in the prescribed form, give a written answer to the objection, varying or upholding his decision and giving reasons for the decision objected to, and shall within the same period send a copy of the statement to any other person affected by the decision.

(2) An objector may, within thirty days of the Director's reply being received by him, appeal to the Industrial Court against such decision.

**PART IX – MISCELLANEOUS PROVISIONS****53. Director**

(1) There shall be a Director of Work Injury Benefits who shall be responsible for the management of this Act.

(2) The Director of Work Injury Benefits shall perform the following functions—

- (a) register employers;
- (b) supervise the implementation of this Act;
- (c) ensure that all employers insure their employees;

- (d) receive reports of accidents and carry out investigations into such accidents; and
- (e) ensure that employees who are injured are compensated in accordance with the provisions of this Act.

(3) The Director of Work Injury Benefits shall be assisted in the performance of the functions, specified in subsection (1) by such other officers as are necessary, for the proper administration of the Act.

#### **54. False statements**

Any person who in connection with a claim for compensation in accordance with the provisions of this Act, or in any return, notice, report or statement to be given, made or furnished under this Act, makes or causes to be made any statement which is false in any material respect, knowing it to be false, commits an offence.

#### **55. General penalty**

A person convicted of an offence under this Act for which no other penalty is provided shall be liable to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding one year or to both.

#### **56. Regulations**

(1) The Minister may make regulations for the purpose of giving better effect to the provisions of this Act and, without prejudice to the generality of the foregoing power, the Minister may make Regulations—

- (a) prescribing procedure, forms and fees;
- (b) prescribing anything which is to be or may be prescribed under this Act; and
- (c) requiring employers and insurers carrying on in Kenya the business of insuring employers against their liabilities under this Act to make periodic or other returns as to such matters as the Minister may think fit, and prescribing a time limit for the making of such returns.

(2) Any person required to make a return by virtue of any regulation made under subsection (1) who—

- (a) fails to make such return within the time specified;
- (b) makes or causes to be made a return which the person knows to be false in any material particular; or
- (c) on being so required fails to give any information or explanation respecting the return which it is in the person powers to give,

commits an offence and shall, on conviction be liable to a fine not exceeding fifty thousand shillings, and, if the contravention in respect of which the person is convicted is continued after the conviction, he shall be guilty of a further offence and liable in respect thereof to a fine not exceeding ten thousand shillings for each day on which the contravention is so continued.

(3) Where a person convicted of an offence under this section is a company, the chairman, every director and every officer of the company shall be guilty of a like offence unless that person proves that the act or omission constituting the offence took place without the person’s knowledge or consent.

**57. Repeal of Cap. 236**

The Workman’s Compensation Act is repealed.

**58. Savings**

(1) Any regulation or other instrument made or issued under the Workmen’s Compensation Act and having effect before the commencement of this Act shall continue to have effect as if such regulation or other instrument were made or issued under this Act.

(2) Any claim in respect of an accident or disease occurring before the commencement of this Act shall be deemed to have been lodged under this Act.

SCHEDULES

FIRST SCHEDULE

DEGREE OF DISABLEMENT

	Minimum degree of disablement (percentage)
<b>A. DEATH</b>	
Death as result of accident .....	100
<b>B. INJURY (GENERAL)</b>	
1. Loss of hand and foot above site of symes amputation .....	100
2. Injury resulting in the employee being permanently bed-ridden ...	100
NOTE: The loss of the thumb and four fingers of one hand is equivalent to the loss of a hand.	
<b>C. INJURY TO UPPER LIMB</b>	
1. Loss of both hands or loss of both arms at higher sites .....	100
2. Loss of remaining arm by one-armed workman .....	100
3. Loss at shoulder or below shoulder with stump of less than 20 centimetres from tip of acromion .....	70
4. Loss from 11 centimetres below tip of acromion to less than 20 centimetres from tip of olecranon.....	68
5. Loss from 11 centimetres below tip of olecranon .....	65
6. Loss of hand at wrist .....	60
7. Loss of four fingers and thumb on one hand.....	60
8. Loss of four fingers on one hand.....	40



FIRST SCHEDULE—*continued*

	Minimum degree of disablement (percentage)
9. Loss of thumb—	
both phalanges .....	25
one phalanx .....	10
10. Loss of index finger—	
three phalanges .....	25
two phalanges .....	10
one phalanx .....	4
tip and nail, no bone .....	2
11. Loss of ring finger—	
three phalanges .....	6
two phalanges .....	4
one phalanx .....	2
tip and nail, no bone .....	1
12. Loss of little finger—	
three phalanges .....	6
two phalanges .....	4
one phalanx .....	2
tip and nail, no bone .....	1
13. Loss of metacarpals—	
three phalanges .....	6
two phalanges .....	4
one phalanx .....	2
tip and nail, no bone .....	1
14. Loss of metacarpals—	
first or second (additional) .....	3
Third, fourth, or fifth (additional) .....	2
15 Ankylosis in optimum position—	
shoulder .....	35
elbow .....	35
wrist .....	25

NOTE: In the case of a right-handed employee, an injury to the left arm or hand and, in the case of a left-handed employee, to the right arm or hand, may in the discretion of the Director be rated at ninety *per centum* of the above percentages.

Where there are two or more injuries the sum of the percentages for such injuries may be increased, at the discretion of the Director.

FIRST SCHEDULE—*continued*

	Minimum degree of disablement (percentage)
<b>D. INJURY TO LOWER LIMB</b>	
1. Loss of both feet above site of symes amputation or loss of both legs at higher site.....	100
2. Loss of remaining leg by one-legged employee .....	100
3. Loss of leg at hip or below hip with stump not exceeding 18 centimetres in length measured from tip of great trochanter .....	70
4. Loss of leg below hip with stump exceeding 18 centimetres in length measured from tip of great trochanter but not beyond middle thigh .....	60
5. Loss of leg below middle thigh to 10 centimetres below knee .....	50
6. Loss of leg below knee with stump exceeding 10 centimetres .....	30
7. Modified symes operation—	
one foot .....	25
two feet .....	70
8. Loss of foot at tarso-metatarsal joint .....	25
9. Loss of all toes of both feet proximal to the proximal inter-phalangeal joint .....	25
10. Loss of all toes of both feet distal to the proximal inter-phalangeal joint .....	15
11. Loss of all toes of one foot proximal to the proximal inter-phalangeal joint .....	15
12. Loss of all toes of one foot distal to the proximal inter-phalangeal joint .....	10
13. Loss of great toe—	
both phalanges .....	5
one phalanx .....	2
14. Loss of toe other than great if more than one toe lost, each .....	1
15. Ankylosis in optimum position—	
hip .....	50
knee .....	25
ankle .....	15

	Minimum degree of disablement (percentage)
<b>E. INJURY TO EYES</b>	
1. Total loss of sight .....	100
2. Loss of remaining eye by one eyed employee .....	100
3. Loss of one eye, other being normal .....	30
4. Total loss of vision of one eye, other being normal .....	30

FIRST SCHEDULE—*continued*

5. Other degree of defective vision based on the visual defect as measured after correction with glasses—

when best visual acuity is in one eye	other eye	Minimum assessment (percentage)
6/6 or 6/9	6/24	15
6/6 or 6/9	6/36	20
6//6 or 6/9	6/60	20
6/6 or 6/9	3/60	30
6/12	Nil	30
6/18	6/18	15
6/18	6/24	30
6/18	6/36	40
6/18	6/60	40
6/18	3/60	40
6/18	Nil	40
6/24	6/24	30
6/24	6/36	40
6/24	6/60	50
6/24	3/60	50
6/24	Nil	70
6/36	6/36	50
6/36	6/60	60
6/36	3/60	60
6/36	Nil	70
6/36	6/60	80
6/60	3/60	80
6/60	Nil	90
3/60	3/60	80
3/60	Nil	80
Nil	Nil	100

6. For the purposes of this Schedule, a **one-eyed employee** means an employee who has no sight in one eye.

F. INJURY – LOSS OF HEARING	Minimum degree of disablement (percentage).
1. Total loss of hearing – both ears .....	50
2. Total loss of hearing – one ear.....	7

FIRST SCHEDULE—*continued*

## G. GENERAL

Except where otherwise expressly provided, the following conditions shall apply to all assessments in this Schedule—

- (a) total permanent loss of use of limb shall be treated as loss of limb;
- (b) when there are two or more injuries the sum of percentages for such injures may be increased;
- (c) the Director shall prescribe the compensation criteria for Musculoskeletal disorders and occupational injuries not elsewhere covered.

## SECOND SCHEDULE

[Section 38(1).]

## OCCUPATIONAL DISEASES

## PART I

DESCRIPTION OF DISEASE	DESCRIPTION OF WORK
	Any Occupation involving:
1. Poisoning by lead or a compound of lead	The use or handling of, or exposure to the fumes, dust or vapour of lead or a compound of lead or a substance containing lead.
2. Poisoning by manganese or a compound of manganese	The use or handling of, or exposure to the fumes, dust or vapour of manganese or substance containing manganese.
3. Poisoning by phosphorus or phosphine or poisoning due to organic phosphorus compound	The use, handling of, or exposure to the fumes, dust or vapour of the anti-cholinesterase action of phosphorus or a compound of phosphorus or a substance containing phosphorus.
4. Poisoning by arsenic or a compound of arsenic	The use or handling of, or exposure to the fumes, dust or vapour of arsenic, or a substance containing arsenic.
5. Poisoning by mercury or a compound of mercury	The use or handling of, or exposure to the fumes, dust or vapours of mercury or a substance containing mercury.
6. Poisoning by carbon bisulphide	The use or handling of, or exposure to the, fumes or vapour of, carbon bisulphide or a substance containing carbon bisulphide.
7. Poisoning by benzene or a homologue of benzene	The use or handling of, or exposure to the fumes of, or vapour containing benzene or any of its homologues.

SECOND SCHEDULE—*continued*

8. Poisoning by a nitro- or amino- or chloro-derivative of benzene or of a homologue of benzene or poisoning by nitrochlorobenzene	The use or handling of or exposure to the fumes of, or vapour containing a nitro- or amino or chloro-derivative of benzene or any of its homologues or nitrochlorobenzene.
9. Poisoning by dinitrophenol or a homologue or by substituted dinitrophenols or by the salts of such substances	The use, handling of, or exposure to the fumes of, or vapour containing dinitrophenol, or any of its homologues or any substituted dinitrophenols or the salts of such substances.
10. Poisoning by tetrachlorethane	The use or handling of, or exposure to the fumes of or vapour containing tetrachlorethane.
11. Poisoning by tri-cresyl phosphate	The use or handling of, or exposure to the fumes of, or vapour containing tri-cresyl phosphate.
12. Poisoning by tri-phenyl phosphate	The use or handling of, or exposure to the fumes of, or vapour containing tri-phenyl phosphate.
13. Poisoning by diethylene dioxide (dioxan)	The use or handling of, or exposure to the fumes of, or vapour containing diethylene dioxide (dioxan).
14. Poisoning by methyl bromide	The use or handling of, or exposure to the fumes of, or vapour containing methyl bromide.
15. Poisoning by chlorinated naphthalene	The use or handling of, or exposure to the fumes of, or dust or vapour containing chlorinated naphthalene.
16. Poisoning by nickel	Exposure to nickel carbonyl gas.
17. Poisoning by nitrous fumes	The use or handling of nitric acid or exposure to nitrous fumes.
18. Poisoning by <i>Gonioma Kamassi</i> (African boxwood)	The manipulation of gonioma kamassi or any process in or incidental to the manufacture of articles therefrom.
19. Anthrax	The handling of wool, hair, bristles, hides or skins or other animal products or residues, or contact with animals infected with anthrax.
20. Glanders	Contact with equine animals or their carcasses.
21. (a) Infection by leptospira interohaemorrhagiae	Work in places which are, or are liable to be, infected by rats.
22. Ankylostomiases	Work to do or about a mine.

SECOND SCHEDULE—*continued*

- |   |   |   |
|---|---|---|
| <p>23. (a) Dystrophy of the corneal (including ulceration of the corneal surface) of the eye</p> <p>(b) Localised new growth of the skin, papillomatous or keratotic</p> <p>(c) Squamous-celled carcinoma of the skin, due in any case to arsenic, tar, pitch, bitumen mineral oil (including paraffin), soot or any compound, product or residue of any of these substances.</p> | } | <p>The use or handling of, or exposure to, arsenic, tar pitch, bitumen, mineral oil (including paraffin) soot or any compound, product or residue of any of these substances.</p> |
| <p>24. Inflammation, ulceration or malignant disease of skin or subcutaneous tissues or of the bones, or cataract, due to electro-magnetic radiations (other than radiant heat), or to ionising articles.</p>   |   | <p>Exposure to electro-magnetic radiation other than heat, or to ionizing particles.</p>  |
| <p>25. Heat cataract</p>  |   | <p>Frequent or prolonged exposure to rays from molten or red-hot material.</p>  |
| <p>26. Decompression sickness</p>   |   | <p>Subjection to compressed or rarefied air.</p>  |
| <p>27. Cramp of the hand or forearm due to repetitive movements</p>   |   | <p>Prolonged periods of handwriting, typing or other movements of the fingers, hand or arm.</p>   |
| <p>28. Subcutaneous cellulites of the hand (beat hand).</p>   |   | <p>Manual labour causing severe or prolonged, friction or pressure on hand.</p>   |
| <p>29. Bursitis, or subcutaneous cellulites arising at or about the knee due to external friction or pressure at or about the knee (beat knee)</p>  |   | <p>Manual labour causing severe or prolonged external friction or pressure at or about the knee.</p>  |
| <p>30. Bursitis or subcutaneous cellulites arising at or about the elbow due to severe or prolonged external friction or pressure at or about the elbow (beat elbow)</p>  |   | <p>Manual labour causing severe or prolonged external friction or about the elbow.</p>  |
| <p>31. Traumatic inflammation of the tendons in the hand or fore-arm, or the associated tendon sheaths</p>  |   | <p>Manual labour, or frequent or repeated movements of the hand or wrist.</p>   |
| <p>32. Miner's sytagmus</p>   |   | <p>Work in or about a mine.</p>   |

SECOND SCHEDULE—*continued*

- |  |   |
|--|---|
| 33. Poisoning by beryllium or a compound of beryllium  | The use or handling of, exposure to the fumes, dust or vapour of beryllium or a compound of beryllium, or a substance containing beryllium.   |
| (a) carcinoma of the mucous membrane of the nose or associated air sinuses   | Work in a factory where nickel is produced by decomposition of a gaseous nickel compound.   |
| (b) Primary carcinoma of a lung  | Work which necessitates working in or about the building or buildings where that process or any other industrial process ancillary or incidental thereto is carried on.                               |
| 35. Tuberculosis   | Any occupation involving—<br>Close and frequent contact with a source or sources of tuberculosis infection by reason of employment—   |
|  | (a) in the medical treatment or nursing of a person or persons suffering from tuberculosis, or in a service ancillary to such treatment or nursing; or  |
|  | (b) in attendance upon a person or persons suffering from tuberculosis where the need for such attendance arises by reason of physical or mental infirmity;   |
|  | (c) or as a research employee engaged in research in connection with tuberculosis; or   |
|  | (d) as laboratory employee, pathologist or post-mortem employee where the occupation involves material which is a source of tuberculosis infection, or in an occupation ancillary to such employment. |
| 36. Primary neoplasm of the epithelial lining of the urinary bladder (Papilloma of the bladder), or of the epithelial lining of the pelvis or of the epithelial lining of the ureter | (a) Work in a building in which any of the following substances is produced for renal commercial purposes—  |
|  | (i) alphanaphthylamine;   |





SECOND SCHEDULE—*continued*

PART II

40. Silicosis, asbestos or other fibrosis of lungs caused by mineral dust      Any occupation in which workmen are exposed to the inhalation of silica dust, asbestos dust or other mineral dust other than a 'dusty occupation' as defined in the Grass Fires Act (Cap. 327).

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THIRD SCHEDULE

[Sections 30, 34, 35, 36.]

DEPENDANT'S COMPENSATION

- |                            |   |   |
|----------------------------|---|---|
| 1. One child               | — | 12.5% of workman's allowance                |
| 2. Two children            | — | 17.5% of workman's allowance                |
| 3. Three children          | — | 22.5% of workman's allowance                |
| 4. Four children           | — | 27.5% of workman's allowance                |
| 5. Five children           | — | 32.5% of workman's allowance                |
| 6. More than five children | — | At a rate to be determined by the Director. |
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**CHAPTER 236**

**WORK INJURY BENEFITS ACT**

SUBSIDIARY LEGISLATION

*List of Subsidiary Legislation*

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**CLASSES OF PERSONS DECLARED NOT TO BE WORKMEN,  
UNDER SECTION 2(1), PROVISO (VI)**

[G.N. 1163/1951, L.N. 179/1956, L.N. 273/1967.]

Any person who was in, or was selected for appointment to, the service of the Government before the 13th June, 1950, or the service of the High Commission before the 31st May, 1950, where, in consequence of injury received by such person in the discharge of his duties, a pension or gratuity which would not be payable if such injury were received otherwise is paid to him, or, in the case of his death, to any of his dependants, under any Act or regulation providing for the grant of any such pension or gratuity.

Any person engaged or employed in any of the following undertakings—

- Kenya Police Reserve,
  - Administration Police Reserve,
  - Special Farm Guards,
  - Kikuyu Guard and other Home Guards.
-



**OTHER COURTS IN WHICH PROCEEDINGS MAY BE BROUGHT, UNDER  
SECTION 3(1) (PROVISO TO THE DEFINITION OF "COURT")**

[L.N. 236/1964.]

In the North-Eastern Province, and the Marsabit, Isiolo, Tana River, Samburu and Turkana Districts proceedings under the Act may be brought in a subordinate court of the second class.

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*Work Injury Benefits*

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[Subsidiary]

**WORKMEN'S COMPENSATION (COMPULSORY INSURANCE) ORDER**

ARRANGEMENT OF ORDERS

*Order*

1. Citation.
  2. Application.
  3. Employers to insure.
-

[Subsidiary]

Orders under section 26

**WORKMEN'S COMPENSATION (COMPULSORY INSURANCE) ORDER**

[L.N. 213/1974, L.N. 223/1976.]

**1. Citation**

This Order may be cited as the Workmen's Compensation (Compulsory Insurance) Order.

**2. Application**

This Order shall apply to any employer in any undertaking or part of any undertaking which consists in the carrying on, for gain or reward, of one or more of the following activities, that is to say—

- (a) the construction, structural alteration, maintenance or repair of any building, the demolition of any building and the preparation for, and laying the foundation of, any intended building;
- (b) the construction of any railway line or siding, and the construction, structural alteration or repair or the demolition of any airfield, dock, harbour, wharf, quay, pier, in-land navigation works, road tunnel, bridge, viaduct, waterworks, dam, reservoir, pipeline, aqueduct, sewer, sewage works or latticework structure designed solely for the support of electric lines;
- (c) the carriage of passengers and goods, or either of them, by any motor vehicle whether or not required to be licensed as a public service vehicle under the Traffic Act (Cap. 403) or a road service licence, or public carriers licence or a limited carriers licence, under the Transport Licensing Act (Cap. 404):

Provided that this Order shall not apply to—

- (i) the Government of Kenya;
- (ii) any employer who provides and maintains in force a security consisting of an undertaking by a surety, approved by the Minister, to make good, subject to any conditions specified in such undertaking and up to an amount approved by the Minister, any failure by the employer to discharge any liability which he may incur under the Act to any workmen employed by him.

**3. Employers to insure**

Every employer to whom this Order applies shall insure and keep himself insured with an insurer carrying on business in Kenya as an insurance company, in respect of any liability which he may incur, under the Act, to each workman employed by him either exclusively or in part in any undertaking or in part of any under-taking referred to in paragraph 2.

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Work Injury Benefits

[Subsidiary]

Regulations under section 42

WORKMEN'S COMPENSATION REGULATIONS

[G.N. 1893/1953, L.N. 63/1956, L/N. 385/1962.]

1. These Regulations may be cited as the Workmen's Compensation Regulations.
2. The notice of an accident required by section 13 of the Act to be given by or on behalf of a workman shall be in the form L.D. Form 105/1 set out in the First Schedule.
3. The notice of an accident causing injury to a workman required by section 14 of the Act to be given by an employer shall be in the form L.D. Form 104/1 set out in the First Schedule.
4. The prescribed amount for the purposes of paragraph (a) of proviso (ii) to section 13 of the Act, and for the purposes of sub-section (1) of section 29 of the Act, shall be six hundred shillings per month.
5. The fees and charges payable for the forms of medical aid described in the second column of the Second Schedule to workmen in Kenya shall be the fees and charges specified in relation to such aid in the third column of that Schedule:

Provided that, where in the case of any form of such aid a fee or charge is described in that Schedule as a maximum fee or charge, such fee or charge only as is reasonable in the circumstances of the case shall be payable, not exceeding the specified fee or charge.

FIRST SCHEDULE

L.D. FORM 105/1

(r. 2)

NOTICE OF ACCIDENT BY OR ON BEHALF OF A WORKMAN

(For use in a claim for compensation on behalf of a workman or the dependants of a deceased workman)

To (1) .....

Address .....

NOTICE IS HEREBY GIVEN that (2) .....

..... Identity No. ....

on the (3) ..... day of ..... 20 .....

at (4) ....., met with an accident

causing his (5) .....

and that the cause of the injury / death was (6) .....

.....

.....

AND NOTICE IS HEREBY FURTHER GIVEN that in consequence thereof compensation is claimed from you under the Workmen's Compensation Act.

Dated this ..... day of ..... 20 .....

(7) .....

Insert at—

- (1) name and address of employer;
- (2) full name, address and identity particulars of workman;

Work Injury Benefits

[Subsidiary]

FIRST SCHEDULE, FORM L.D. 105/1—continued

- (3) date of accident;
- (4) place of accident;
- (5) whether disablement or death;
- (6) state in plain and ordinary terms the cause of the injury or death;
- (7) signature and address of person giving notice.

L.D. FORM 104/1

(r. 3)

NOTICE BY EMPLOYER OF ACCIDENT CAUSING INJURY TO, OR DEATH OF, A WORKMAN

PART I

1. EMPLOYER—

- (i) Name .....
- (ii) Address .....
- (iii) Industry or Business .....
- (iv) Name and address of insurance company, if insured against accident to workmen .....

2. WORKMAN—

- (i) Name .....
- (ii) Sex .....
- (iii) Age .....
- (iv) Occupation [Avoid the term "labourer" where possible] .....
- (v) Address .....
- (vi) Identity Card No. (or other identity particulars) .....

3. ACCIDENT—

- (i) Date and hour .....
- (ii) Place .....
- (iii) Cause of accident .....
- (iv) If caused by machinery—
  - (a) state name of the machine and part causing accident .....
  - (b) state whether it was moved by mechanical power at the time .....
  - (c) state exactly what the injured person was doing at the time .....

4. INJURY—

- (i) Was the injury fatal? .....
- (ii) Particulars (as known to employer) .....
- (iii) To what hospital or medical practitioner was the injured workman sent? .....

5. MONTHLY EARNINGS AT THE DATE OF THE ACCIDENT—

Cash wage (exclusive of overtime, bonus, etc., payments) .....	Sh. ....
Value of rations .....	Sh. ....
Value of housing .....	Sh. ....
Value of fuel .....	Sh. ....
Overtime payment or other special remuneration for work done, whether by way of bonus or otherwise, if of constant character, and for work habitually performed	Sh. ....
Total earnings per month	Sh. ....

Date .....

Signature of employer

Work Injury Benefits

[Subsidiary]

FIRST SCHEDULE, FORM 104/1—continued

Note.—In the case of injury to a workman involving incapacity for work for three or more consecutive days, it is requested that the employer complete Part I in triplicate and then despatch it immediately as follows—

original to the Labour Officer or District Commissioner of the district in which the accident occurred;

duplicate and triplicate to the medical practitioner attending or examining the injured workman.

In the case of an accident causing the death of a workman, Part I should be completed in duplicate and then despatched immediately as follows—

original and duplicate to the Labour Officer or District Commissioner of the district in which the accident occurred.

PART II

(For use by the medical practitioner attending or examining the injured workman)

Date admitted to hospital ..... Discharged .....

In-patient No. ....

Attendance as out-patient from ..... to .....

Out-patient No. ....

Nature of injury .....

.....

.....

\*Permanent incapacity ..... per cent.

\*Temporary incapacity: likely duration of absence from work (from date of accident) .....

weeks/months.\* Is a further examination required before final assessment of permanent incapacity

can be given? .....

If so, when .....

Date .....

Medical Practitioner

Note.—It is requested that this part be completed by the medical practitioner in duplicate, the form then being despatched as follows—

one copy to the employer;

one copy to the Labour Officer or District Commissioner of the district in which the accident occurred.

\* Delete as necessary.

PART III

(For use of Labour Officer / District Commissioner)

Compensation \*is / is not being claimed on behalf of the \*workman / dependants of the deceased workman.

District and Accident Register No. ....

Station .....

Date .....

Labour Officer / District Commissioner

\* Delete as necessary.

Work Injury Benefits

[Subsidiary]

SECOND SCHEDULE

[Rule 5.]

SCALE OF FEES AND CHARGES FOR MEDICAL AID

Item	Service	Fees and Charges	
		Sh.	cts.
1	Visit of patient to doctor .....	15	00
2	Visit of doctor to patient .....	30	00
	The fees for items 1 and 2 are not additional to the fees prescribed in item 3 in so far as the doctor consulted is concerned.		
3	Consultation between doctors .....	60	00
	The fees prescribed for item 3 is payable only to the doctor consulted, the consulting doctor being paid as for a visit.		
4	Assistance at major operation, that is any operation for which the fee prescribed in this Schedule is Sh. 600 or more under column 3.	10% of the scheduled fee for the operation with a minimum of Sh. 90.	
5	(a) Treatment of simple wounds (not requiring suture of tendons or nerves or ligature of large vessels) and simple burns	22	50
		per attendance with a maximum charge of Sh. 60.	
	(b) Treatment of second degree burns: maximum charge of .....	150	00
	(c) Treatment of third degree burns: maximum charge of .....	600	00
6	(a) Treatment of wounds involving suture of one or more tendons or ligature of one or more large vessels .....	240	00
	(b) Treatment of wounds involving suture of one or more nerves ..	600	00
7	Treatment of abscess—		
	(a) superficial .....	30	00
	(b) deep .....	180	00
8	Treatment of infections of the hand—		
	(a) pulp infection .....	60	00
	(b) suppuration in tendon sheath .....	240	00
	(c) suppuration (primary or secondary) of thenar, mid-palmar or forearm space .....	300	00
	(d) deep forearm suppuration following (a), (b) or (c) above .....	600	00
	When any two or more of the conditions mentioned in this item result, the fee for the final condition only shall be payable.		
9	Removal of bursa .....	120	00
10	Removal of foreign bodies (other than from the eye)—		
	(a) superficial foreign bodies not requiring incision .....	as under items 5 and 6.	
	(b) superficial foreign bodies requiring incision .....	60	00
		Subject to the provisions of items 6(a) and (b).	
11	Treatment of fractures—		
	(a) simple:		
	(i) bones of the hand and foot except oscalcis .....	180	00
	(ii) oscalcis .....	480	00

Work Injury Benefits

[Subsidiary]

SECOND SCHEDULE—continued

Item	Service	Fees and Charges	
		Sh.	cts.
	(iii) patella (non-operative treatment) .....	360	00
	(iv) upper arm, forearm, leg .....	480	00
	(v) femur .....	720	00
	(vi) rib or ribs .....	120	00
	(vii) spine .....	720	00
	(viii) pelvis .....	480	00
	(ix) clavicle .....	180	00
	(x) scapula .....	240	00
	(xi) jaw, upper or lower .....	360	00
	(b) compound or complicated .....	the above fees plus 50 per cent of the same.	
	(c) open operation, for treatment of fracture and its complications, including operations for mal-union and non-union .....	720	00
	Where the need for open operation super-venes after treatment under (a) or (b) of this item has already been given, the fee thereafter shall be payable in addition to the fee payable for the earlier treatment.		
12	Treatment of head injuries—		
	(a) trephining .....	600	00
	(b) osteoplastic operation .....	900	00
	(c) lumbar puncture .....	60	00
	(d) non-operative treatment .....	300	00
13	Treatment of dislocations—		
	(a) simple—		
	(i) phalanges .....	150	00
	(ii) metacarpal or metatarsal .....	225	00
	(iii) transverse mediotarsal .....	300	00
	(iv) intertarsal .....	300	00
	(v) talus .....	600	00
	(vi) semilunar .....	300	00
	(vii) knee .....	450	00
	(viii) hip .....	450	00
	(ix) elbow .....	225	00
	(x) shoulder .....	225	00
	(xi) wrist .....	225	00
	(xii) clavicle (either end) .....	300	00
	(xiii) patella .....	150	00
	(xiv) lower jaw .....	150	00
	(xv) spine .....	600	00
	(b) compound or complicated .....	the above fees plus 50 per cent of the same.	

Work Injury Benefits

[Subsidiary]

SECOND SCHEDULE—continued

Item	Service	Fees and Charges	
		Sh.	cts.
14	Treatment of joint injuries (other than dis-locations)—		
	(a) ligamentous injuries of large joints .....	180	00
	(b) penetrating wounds of large joints .....	480	00
	(c) operation for internal derangement of knee joint .....	600	00
	(d) aspiration of joint .....	60	00
	(e) mobilization of joint under anaesthetic .....	60	00
15	Amputations—		
	(a) finger or toe .....	120	00
	(b) forearm or arm and partial amputation of hand .....	480	00
	(c) below the knee (including foot at tarso-metatarsal joint) .....	480	00
	(d) through shoulder joint .....	600	00
	(e) through the thigh .....	480	00
	(f) through the hip joint region .....	900	00
16	Paracentesis of chest .....	60	00
17	Intra-abdominal operation .....	900	00
18	Intra-thoracic operation (excluding resection of rib for empyema) .....	900	00
19	Resection of rib for empyema .....	240	00
20	Repair of hernia—		
	(a) single .....	480	00
	(b) double .....	720	00
21	Treatment of injuries to the urinary tract—		
	(a) open operation for rupture of kidney, bladder, urethra or ureter .....	900	00
	(b) treatment of rupture of urethra without open operation .....	360	00
22	Eye—		
	(a) examination per visit, including ordinary treatment .....	30	00
	(b) treatment of corneal ulcer .....	180	00
	(c) operation for traumatic cataract .....	720	00
	(d) intra-ocular magnet operation .....	600	00
	(e) needling .....	360	00
	(f) iridectomy .....	480	00
	(g) enucleation .....	480	00
	(h) paracentesis .....	360	00
	(i) plastic operation .....	480	00
	(f) removal of superficial foreign body .....	30	00
23	Ear, nose and throat—		
	(a) examination, pervisit, including ordinary treatment .....	as for items 1 and 2	
	(b) operation for mastoiditis—		
	(i) simple .....	360	00
	(ii) radical .....	900	00
	(c) paracentesis of ear—		
	(i) one ear .....	180	00
	(ii) two ears .....	240	00
	(d) treatment of fracture of nasal bone .....	240	00



Work Injury Benefits

[Subsidiary]

SECOND SCHEDULE—continued

Item	Service	Fees and Charges	
		Sh.	cts.
	(e) intra-nasal dacryocystotomy .....	600	00
	(f) all other intra-nasal operations .....	300	00
	(g) maxillary antrum—		
	(i)  proof puncture .....	120	00
	(ii) radical operation .....	480	00
	(h) external frontal (radical) antrum operation .....	600	00
	(i) tracheotomy .....	480	00
	(j) laryngectomy .....	1,200	00
	(k) oesophagoscopy, including removal of foreign body .....	360	00
	(l) bronchoscopy, including removal of foreign body .....	600	00
	(m) laryngofissure or thyrotomy .....	720	00
	(n) endolaryngeal operation .....	600	00
24	Radiological—		
	(a) for X-Ray examinations, including screening where necessary—		
	(i)  screen examination only .....	90	00
	(ii) hand, wrist, forearm, ankle or part of foot .....	45	00
	(iii) shoulder, foot, knee .....	67	50
	(iv) any long bone .....	67	50
	(v) urinary tract .....	67	50
	(vi) urinary tract with uro section .....	135	00
	(vii) skull—		
	fracture of vault .....	67	50
	fracture of base .....	135	00
	foreign bodies in .....	135	00
	(viii) antra .....	67	50
	(ix) pelvic bones .....	90	00
	(x) chest .....	90	00
	(xi) one section of spine .....	90	00
	(xii) whole spine .....	180	00
	(xiii) gall bladder area .....	67	50
	(xiv) gall bladder area with dye .....	135	00
	(xv) stomach with barium meal .....	135	00
	(xvi) gastro-intestinal tract with barium meal .....	225	00
	(xvii) lower bowel with barium meal .....	90	00
	(xviii) eye-localization of foreign body .....	135	00
	(xiv) teeth—		
	one film .....	22	50*
	upper or lower jaw .....	67	50*
	full set, upper and lower .....	90	00*

\* Medical practitioner or dentist

Work Injury Benefits

[Subsidiary]

SECOND SCHEDULE—continued

Item	Service	Fees and Charges	
		Sh.	cts.
	(b) Where, as a result of any one accident X-ray examination of different parts of the body is necessary, the highest prescribed fee for any one of the examinations carried out shall, subject to the provisions of section 32 of the Act be paid in full and the prescribed fee in respect of any other examination shall be reduced by 50 per cent.		
	(c) Where, as a result of any one accident, repeated examination of any part of the body is necessary, examinations subsequent to the first and carried out by the same practitioner, dentist or hospital as the first examination within a period of three months therefrom shall be paid for at the rate of 50 per cent of the prescribed fee.		
25	Administration of anaesthetics: the anaesthetic fee shall be 25 per cent of the scheduled fee for the operation, subject to a minimum of Sh. 90 for a general anaesthetic or Sh. 45 for a local anaesthetic, plus the cost of the anaesthetics if these are supplied by the anaesthetist.		
26	Hospital fees—		
	(a) the charges for services (other than medical or surgical attendance) rendered by any hospital or nursing home to any in- or out-patient shall be at the standard rate: Provided that in any case of doubt the matter shall be referred to the Labour Commissioner for decision by the Director of Medical Services;		
	(b) theatre fee shall be the standard theatre fee of the hospital or nursing home concerned, except that, in the case of Government hospitals, it shall be 10 per cent of the surgical fee, with a minimum charge of Sh. 25;		
	(c) special drugs and dressings at prevailing prices.		
27	Charges for skilled nursing outside hospitals will not be payable unless the attending practitioner can satisfy the Labour Commissioner that treatment, including nursing outside a hospital was essential for the patient's proper care, and will cease to be payable as soon as conditions permit. When payable the fee shall be: per visit per hour .....	12	50
	Visits in excess of 4 hours and up to 12 hours day duty .....	60	00
	Visits in excess of 4 hours and up to 12 hours night duty .....	66	00
28	Physiotherapy—		
	(a) superficial therapy: per treatment .....	22	50
	(b) massage combined with electrical treatment: per treatment .....	30	00
	(c) electrical reactions of muscles: per investigation .....	45	00
	(d) half the fees mentioned in this item shall be payable for all treatments in excess of 20 .....		
	(e) the fees prescribed herein in respect of treatment administered by a hospital shall be payable solely in those cases where the workman has been referred for such treatment by a medical practitioner .....		
29	Treatment of scheduled diseases—		
	(a) visit of patient to doctor .....	as for item 1.	
	(b) visit of doctor to patient .....	as for item 2.	
	(c) electro-therapeutic treatment: per treatment .....	30	00
	(d) surgical treatment of primary epithelioma .....	450	00

Work Injury Benefits

[Subsidiary]

SECOND SCHEDULE—continued

Item	Service	Fees and Charges	
		Sh.	cts.
30	Dentistry—		
	(a) examination where no subsequent dental treatment is given ...	15	00
	Where subsequent dental treatment is given, the fee for examination is to be regarded as being included in the fee for such treatment;		
	(b) extractions		
	(i) one .....	22	50
	(ii) each additional extraction .....	15	00
	(iii) full upper or lower jaw .....	150	00
	(iv) maximum fee for extractions .....	225	00
	(c) fillings, permanent: plastic, porcelain amalgam or synthetic porcelain .....	30	00
	(d) crowns .....	150	00
	(e) bridge work (per tooth) .....	150	00
	(f) devitalization and root fillings .....	60	00
	(g) dentures (acrylic only)		
	(i) full upper and lower jaw .....	900	00
	(ii) full upper or lower jaw .....	450	00
	(iii) partial (one tooth) .....	90	00
	(iv) each additional tooth .....	45	00
	(v) maximum charge .....	450	00
	(vi) repairs		
	per denture .....	37	50
	for each new tooth added .....	15	00
	maximum charge for one repair .....	60	00
	(h) other charges—		
	(i) scaling .....	30	00
	(ii) gum treatment .....	15	00
	(iii) minor surgical operations .....	30	00
		to	
		150	00
31	Drugs and dressings—		
	Where drugs or dressings are necessarily and actually supplied by the attending private practitioner, they may be paid for at prevailing prices; but subject in special cases to the provisions of item 36		
32	(a) Vaccine and sera—		
	Where, in the course of the treatment of any injury or scheduled disease, it is necessary to administer vaccines or sera, the net cost thereof may be added to any fees payable under this Schedule.		
	(b) Intravenous infusions—		
	(i) blood transfusion .....	150	00
	(ii) other intravenous infusions .....	60	00

## Work Injury Benefits

[Subsidiary]

SECOND SCHEDULE—*continued*

Item	Service	Fees and Charges
		Sh.      cts.
33	Travelling— (a) a fee of Sh. 2 for each mile travelled shall be allowed to a medical practitioner called upon to travel to a place more than three miles from his surgery; no fee shall be payable where the place visited is not more than three miles from the surgery; no detention fee shall be payable in respect of such a journey; (b) a medical officer, when called upon to attend an injured workman in the capacity of a private practitioner, shall not receive mileage allowance in cases where a Government car has been used; (c) transport of an injured workman by ambulance: at the standard rate.	
34	Attention subsequent to item for which fee is prescribed— the cost of all necessary attention sub-sequent to any operation, in respect of which a fee is prescribed in this Schedule, for a period of six weeks after the operation shall be regarded as being included in such fee, but this does not apply to additional special treatment; if attention or treatment is given after the period mentioned above, the case may be referred to the Labour Commissioner for assessment by the Director of Medical Services.	
35	Multiple operations and treatment— (a) where, as a result of any one accident, more than one operation or treatment, for which a special fee in respect of each is prescribed in this Schedule, is performed or carried out by the same medical practitioner during the same session, the highest prescribed fee for any such operation or treatment shall, subject to the provisions of section 32 of the Act be paid in full and the other prescribed fees shall be reduced by 50 per cent; (b) where secondary operations are performed at a date subsequent to the primary operation, the prescribed fee shall be as originally charged.	
36	Fees for services not specified in this Schedule, and fees for specially complicated or prolonged treatment, may be referred to the Labour Commissioner for assessment by the Director of Medical Services.	
37	Where a fee for any service is prescribed in this Schedule, the medical practitioner shall not be entitled to payment calculated on a basis of visits or examinations made where such calculation would result in the prescribed fee being exceeded.	
38	Laboratory fees— Payable at prevailing rates	

Rules of Court under section 43

**WORKMEN'S COMPENSATION RULES**

[G.N. 1139/1950, L.N. 538/1958.]

1. These Rules may be cited as the Workmen's Compensation Rules.
2. The forms contained in the First Schedule shall, where applicable, be used in matters or proceedings under the Act, with such variations and modifications as the circumstances may require.
3. The court shall, upon request—
  - (a) give information as to matters of form or procedure to any party to any proceedings under the Act, and supply to any such party who is not legally represented any form required by these Rules for use in matters or proceedings before a court;
  - (b) fill in and make copies of any necessary forms whenever a party who is not legally represented is unable to do so owing to illiteracy, blindness or other physical cause;
  - (c) issue all necessary process.
4. The first document lodged by a party with the court shall bear such party's full name and such address as will enable service of notices and documents to be effected on him either by delivery or through the post; a post office box alone shall not be a sufficient address for the purposes of this rule.
5. The court shall mark with a separate number the first document lodged with the court by an applicant, and any document lodged subsequently by any party in relation to that application shall first be marked with the same number by the party lodging it and, unless so marked, may be refused by the court.
6. The court shall file under their respective numbers and keep separate the records of all applications made under the Act.
7. The court shall keep a book, to be called the Application Record Book, which shall be in form No. 12 in the First Schedule.
8. The court shall, within two weeks after the end of March, June, September and December in each year, furnish to the Labour Commissioner a return of all determinations made by the court during the preceding three months, and shall state in such return the nature of each application, the names of the applicant and the respondent and the order made.
9. Any minute of any order or appointment made by the court and any receipt to be given by the court may be signed by the magistrate.
10. Any change of such address shall forthwith be notified, by the party making such change, to the court and to the other party or parties to the proceedings.
11. Any address lodged by a party in pursuance of rule 4 shall remain an address for service of such party from the date of lodging such address until forty-eight hours after change thereof has been notified as prescribed in rule 10.

**[Subsidiary]**

**12.** Save as is otherwise specially provided in the Act or these Rules, the following provisions shall apply to service of applications, answers, orders, notices and other documents which, by the Act or any rules made thereunder, are required to be served on any person who resides in Kenya, or who has an address for service in Kenya, or who has authorized a person resident in Kenya to accept service on his behalf—

- (a) service may be effected by sending a copy thereof by prepaid registered post to the party to be served at his address for service; every copy so sent shall, until the contrary is proved or unless and until the copy is returned by the postal authorities, be deemed to have been served on the person to whom it was so addressed at the time at which it would be delivered in the ordinary course of post;
- (b) where a party to an application employs an advocate for the purposes of the application, service upon that party may be effected by delivery of the document at the office of such advocate;
- (c) service may also be effected through any messenger of the court in the manner provided by the rules governing service of summons in civil cases;
- (d) service may be effected in any other matter, provided that a receipt, stating the date and hour of service signed by the person to be served or by a person entitled to give such receipt on his behalf, is endorsed on the document or on a copy, thereof.

**13.** Where any respondent to an application either does not come within the provisions of rule 12 or cannot be served in any of the manners provided in that rule, the court may, upon application *ex parte* supported by an affidavit stating the circumstances, direct in what manner service shall be effected upon him, including service by newspaper advertisement; and service in accordance with such directions shall be valid and effectual.

**14.** Save where other provision is made, service shall be effected by the parties or, at the instance of the parties, by the court.

**15.** (1) A workman or an employer who desires the determination of any question arising out of an accident in which compensation is or might be claimed shall lodge with the court a written application in the prescribed form accompanied by particulars containing—

- (a) a concise statement of the circumstances under which the application is made and the relief or order which the applicant claims, or the question which he desires to have determined;
- (b) the full name and address of the applicant, and the name and address of the respondent.

(2) If the application is made by an employer, it shall be accompanied by a statement whether he admits his liability to pay compensation or denies such liability, and whether the admission or denial is total or partial, and if he admits or denies liability partially a statement of the extent to which he admits or denies liability; in the case of a denial of liability, the grounds shall be stated.

**16.** (1) As soon as an application, together with the accompanying particulars and statements prescribed by these Rules, has been lodged, the court shall cause a copy thereof to be served upon the respondent in the manner prescribed, together with a notice informing the respondent that he must lodge with the court such an answer as is prescribed by paragraph (2), within the period therein prescribed, and that in default of his complying with such notice or in default of his appearing at a time and place fixed in the notice such order may be made as the court deems just and expedient; and, save with the written consent of the respondent communicated to the court, not less than fourteen clear days shall elapse between the date of the service of the notice upon the respondent and the date fixed for hearing the application.

*Work Injury Benefits*

[Subsidiary]

(2) If the respondent intends to oppose an application he shall, within seven days after service of the notice, or within such extended period as the court may upon special request allow, lodge with the court a written answer containing a concise statement of the extent and grounds of his opposition.

(3) The court may, at any time before the determination of the question in dispute and upon such terms as to adjournment or as to costs as may be deemed just, allow an application, or any particulars or statement accompanying the same, or any answer thereto, to be amended; and any such amendment shall be lodged with the court, who shall forthwith cause it to be served upon the opposite party in manner prescribed.

**17.** (1) The respondent may, not later than seven days after he has received notice of application, serve upon the applicant a request in writing for further particulars of the grounds upon which the application is made, specifying in such request the questions as the which he desires to have information; and the applicant may, not later than seven days after he has received the answer to the application, serve on the respondent a request in writing for similar particulars of the grounds upon which the application is opposed.

(2) A copy of any such request shall forthwith be lodged with the court by the party making the request, and a copy of any reply thereto shall forthwith be lodged with the court by the party make the reply.

(3) If the party so requested to furnish particulars fails to do so within seven days from the date of service of the request aforesaid and in consequence of such failure it is necessary to adjourn the hearing of the application, the court may order that the costs occasioned by such adjournment shall be paid by the party so in default.

(4) The court may disallow, with costs, any request for particulars which appears to the court to be unnecessary or vexatious.

(5) The court may award against the party making a request for particulars the costs of the replies thereto.

**18.** Where an applicant wishes to amend his application or any particulars or statement accompanying it, or where a respondent wishes to amend his answer to an application, the party wishing to make such amendment shall forthwith lodge with the court a statement in writing of such amendment, and shall at the same time serve a copy thereof upon the other party or parties to the proceedings.

**19.** (1) A respondent from whom compensation is claimed may pay into court a sum which is considered by him to be sufficient to cover his liability.

(2) If no greater compensation be awarded than the sum of money which the respondent has paid into court, the court may order that any costs incurred by such respondent, after payment by him into court of the said sum of money, shall be paid by the applicant.

**20.** Every party shall lodge with the court such copies of documents as are required to be served, by the court, on the other party to the application or to be sent to him.

**21.** (1) Where a principal has given notice to a contractor of claim or application for compensation made against the principal, and the contractor desires to intervene, he shall forthwith lodge with the court a notice that he so intervenes and shall forthwith serve copies of such notice of intervention upon the applicant and the principle the contractor shall thereupon be entitled to make copies of the application and of any other document then lodged with the court in connexion with the application.

(2) A contractor who has so lodged with the court notice that he intervenes shall lodge an answer to the application within seven days after service upon him of the said notice given by the principal, or within such further time as the court may on application allow.

**[Subsidiary]**

(3) The court may, on the hearing of the application, either order that such person be made a respondent if the court is satisfied that he, is entitled so to intervene, or may refuse to make him a respondent and order him to pay the costs incurred by his intervention if satisfied that he is not entitled so to intervene.

**22.** If any person served with a notice as a contractor desires to dispute the applicant's claim or his own liability to the principal, he shall appear before the court; and in default of his so doing he shall be deemed to admit the validity of any order made against the principal, whether such order is made by consent or otherwise, and his own liability to indemnify the principal to the extent claimed in the notice served on him by the principal.

**23.** The court may, at any stage of the proceedings, upon request made to it in writing or of its own motion, order that any person appearing to be interested be joined in the proceedings.

**24.** (1) An application to determine what sum is payable in respect of medical attendance on or the burial of a deceased workman who leaves no dependants shall be made by the personal representative, if any, of the deceased workman, or, if there is no such personal representative, or he fails to make such application, by any person to whom any such expenses are due; and in the latter case any other person known to the applicant to be a person to whom any such expenses are due shall be joined in the application either as applicant or as respondent.

(2) Where the amount awarded by the court on any such application is insufficient to pay such expenses in full, it shall be apportioned between the persons to whom such expenses are payable in such manner as the court shall direct.

**25.** (1) When a court submits any question of law for the decision of a judge of the High Court, the case shall be divided into paragraphs numbered consecutively, and shall state concisely such facts and refer to such documents as may be necessary to enable the judge to decide the questions of law raised thereby.

(2) The case shall be signed and sent to the Registrar of the High Court, who shall forthwith transmit the same to a judge, who shall appoint a day, hour and place for hearing the case.

(3) The Registrar shall forthwith cause due notice of the day, hour and place appointed for hearing the case to be given to the parties; and such notice shall be not less than fourteen clear days before the date of the hearing, unless the judge, with the consent of all parties, fixes an earlier day.

(4) Any party shall be entitled, on payment of the prescribed fees, to obtain from the Registrar a copy of the case.

(5) After deciding the question submitted to him, the judge shall remit the case with a memorandum of his decision to the court.

(6) The judge may remit the case to the court for re-statement or further statement.

(7) The costs of the hearing of a case shall be in the discretion of the court, and shall form part of the proceedings before the court.

**26.** The fees payable in respect of proceedings under these Rules shall be those set out in the Second Schedule:

Provided that no fees shall be payable under this rule by any workman or by the dependants of any workman.

**27.** Appeals under section 22 of the Act shall be made in accordance with the rules relating to appeals from magistrates in civil matters and the fees chargeable shall be the same:

Provided that no fees shall be payable under this rule by any workman or by the dependants of a deceased workman.



Work Injury Benefits

[Subsidiary]

28. Where any matter or thing is not specially provided for under these Rules, the same procedure shall be followed and the same provisions shall apply, as far as practicable, as in a similar matter or thing under the Civil Procedure Act (Cap. 21) and the rules made thereunder:

Provided that the magistrate may at any time direct that an infant shall appear as an applicant or respondent in the same manner as if he were of full age.

29. Costs shall be paid in respect of proceedings under these Rules according to Part III of the Remuneration of Advocates Order (Cap. 16. Sub. Leg.).

30. Notwithstanding anything contained in these Rules, no costs shall be paid by a workman in any proceedings in which such workman's monthly earnings do not exceed two hundred shillings:

Provided that the court may, if in its opinion any application made by a workman is frivolous or vexatious, award costs against such workman.

FIRST SCHEDULE

[Rule 2.]

FORM No. 1

APPLICATION BY INJURED WORKMAN WITH RESPECT TO THE COMPENSATION PAYABLE TO HIM

The ..... Court of .....

Case No. ....

In the matter of an application between—

....., Applicant

And

....., Respondent

- 1. On the ..... day of ....., 20 ..... personal injury by accident arising out of and in the course of his employment was caused to .... a workman employed by ..... [or by ..... a contractor with ..... for the execution of work undertaken by him].
2. A question has [or questions have] arisen [state the questions, specifying only those which have arisen, e.g.]—
(a) whether the said ..... is a workman to whom the Act applies;
(b) as to the liability of the said ..... to pay compensation under the Act in respect of the said injury;
(c) as to the amount of the compensation payable by the said ..... to the said ..... under the Act in respect of the said injury [or as the case may be];
(d) [such other question as may have arisen].
3. An application under the Act is hereby made by the said ..... for the determination of the said question [or questions] and for the following relief or order [state shortly the relief or order which the applicant claims].

Work Injury Benefits

[Subsidiary]

FIRST SCHEDULE, FORM 1—continued

- 4. Particulars are hereto appended [or annexed]—
    - 1. Name and address of applicant .....
    - 2. Name, place of business and nature of business of respondent .....
    - 3. Nature of employment of applicant at time of accident and whether employed under respondent or under a contractor with him [if employed under a contractor who is not a respondent, name and place of business of contractor also to be stated] .....
    - 4. Date and place of accident, nature of work on which workman was then engaged, and nature of accident and cause of injury .....
    - 5. Nature of injury .....
    - 6. Particulars of incapacity for work, whether temporary or permanent, and, if permanent, whether total or partial, and, if temporary, estimated duration of incapacity .....
    - 7. Average monthly earnings of the workman with the employer at the time of the accident causing incapacity or death, or, if by reason of the shortness of the time during which the workman has been in the employment of the employer it is impracticable to compute the average monthly earnings, then the amount which the workman claims should be taken as his average monthly earnings and the grounds upon which that amount is claimed .....
    - 8. Average monthly amount which the applicant is earning or is able to earn in some possible employment after the accident .....
    - 9. Payment, allowance or benefit received from employer during the period of incapacity .....
    - 10. Amount claimed as compensation .....
    - 11. Date of giving of notice of accident to respondent [a copy of any notice in writing, if available, to be annexed] .....
    - 12. If notice not given, reason for omission to give such notice .....
    - 13. The names and address[es] of the applicant [and his advocate] are—
      - of the applicant .....
      - of his advocate .....
    - 14. The name and address of the respondent to be served with this application are .....
- Dated this ..... day of ....., 20 .....

Applicant [or his advocate]

Work Injury Benefits

[Subsidiary]

FIRST SCHEDULE—continued

FORM No. 2

APPLICATION ON BEHALF OF DEPENDANTS OF DECEASED WORKMAN, WITH RESPECT TO THE COMPENSATION PAYABLE TO SUCH DEPENDANTS WHERE DEATH HAS RESULTED FROM THE INJURY TO THE WORKMAN

The ..... Court of .....

Case No. ....

In the matter of an application between—

....., Applicant

and

....., Respondent

- 1. On the ..... day of ....., 20 ..... personal injury by accident arising out of and in the course of his employment was caused to .... late of ....., deceased, a workman employed by ..... [or by ..... a contractor with ..... for the execution of work undertaken by him], and on the ..... day of ....., 20 ....., the death of the said ..... resulted from the injury.
2. A question has [or questions have] arisen [state the questions, specifying only those which have arisen, e.g.]—
(a) whether the said ..... was a workman to whom the Act applied;
(b) as to the liability of the said ..... to pay compensation under the Act to the dependants of the said ..... in respect of the loss caused to them by the death of the said .....;
(c) as to the amount of compensation payable by the said ..... to the dependants of the said ..... under the Act in respect of the loss caused to them by the death of the said .....;
(d) [such other questions as may have arisen].
3. An application under the Act is hereby made by ..... the representative of the said ....., deceased, acting on behalf of the dependants of the said ..... against the said ..... for the determination of said question [or questions], and for the following relief or order [state shortly the relief or order which the applicant claims].
4. Particulars are hereto appended [or annexed].

PARTICULARS

- (i) Name and late address of deceased workman .....
(ii) Name, place of business and nature of business of respondent from whom compensation is claimed .....
(iii) Nature of employment of deceased at time of accident and whether employed under respondent or under a contractor with him (if employed under a contractor who is not a respondent, name and place of business of contractor also to be stated) .....

Work Injury Benefits

[Subsidiary]

FIRST SCHEDULE, FORM 2—continued

- (iv) Date and place of accident, nature of work on which deceased was then engaged, and nature of accident and cause of injury .....
  - (v) Nature of injury to deceased and date of death .....
  - (vi) Average monthly earnings of the workman with the employer at the time of the accident causing disablement or death, or, if by reason of the shortness of the time during which the workman has been in the employment of the employer it is impracticable to compute the average monthly earnings, then the amount claimed as his average monthly earnings and the grounds upon which that amount is claimed .....
  - (vii) Amount of monthly payments (if any) made to the deceased under the Act .....
  - (viii) Name and address of applicant .....
  - (ix) Particulars as to dependants of deceased by whom or on whose behalf the application is made, giving their names and addresses, and descriptions and occupations (if any), and their relationship to the deceased and, if infants, their respective ages, and stating whether they were wholly or partially dependent on the earnings of the deceased at the time of his death .....
  - (x) Amount claimed as compensation .....
  - (xi) Date of giving of notice of accident to respondent from whom compensation is claimed (a copy of the notice to be annexed) .....
  - (xii) If notice not given, reason for omission to give same .....
  - (xiii) Names and addresses of the applicant and his advocate—  
of the applicant .....
  - of his advocate .....
  - (xiv) Name and address of the respondent to be served with this application .....
- Dated this ..... day of ....., 20 .....

Applicant [or his advocate]

FORM No. 3

GENERAL APPLICATION

The ..... Court of .....

Case No. ....

In the matter of an application between—

....., Applicant

and

....., Respondent

Work Injury Benefits

[Subsidiary]

FIRST SCHEDULE, FORM 3—continued

Application is hereby made by (1) .....
..... against (2) .....

The circumstances under which the application is made are shortly as follows: (3) .....

The relief or order which the applicant claims is shortly as follows: (4) .....

The full names and addresses of the applicant and his advocate are—
of the applicant .....

of his advocate .....

The name and address of the respondent to be served with this application are: .....

Dated this ..... day of ....., 20 .....

Applicant [or his advocate]

N.B.—Where the application is made by an employer, and any question of his liability to pay compensation is involved, it must be accompanied by a statement whether he admits his liability to pay compensation or denies such liability, and whether the admission or denial is total or partial, and, if he admits or denies liability partially, a statement of the extent to which he admits or denies liability. In the case of a denial of liability, the grounds must be stated.

Notes.—

- (1) Name and address of applicant.
(2) Name and address of respondent.
(3) State concisely in numbered paragraphs in chronological order the circumstances under which the application is made.
(4) State concisely the relief or order which the applicant claims.

FORM No. 4

NOTICE TO RESPONDENT AS TO APPLICATION

The ..... Court of .....

Case No. ....

In the matter of an application between—

....., Applicant

and

....., Respondent

To .....

of .....

Take notice that, if you intend to oppose the application, of which a copy is served upon you herewith, you must lodge with me, within seven days after the service of this notice upon you, a written answer thereto containing a concise statement of the extent and grounds of your opposition.

And further take notice that ..... the ..... day of ....., 20 ....., at ..... o'clock in the ..... noon, or so soon thereafter as the application can be heard, at the ..... at ..... has been fixed as the time and

Work Injury Benefits

[Subsidiary]

FIRST SCHEDULE, FORM 4—continued

place for the hearing of the application, and that in default of your lodging with me within the time aforesaid a written answer as herein required, or of your appearing at the said time and place fixed for the hearing of the application, such order may be made as the court deems just and expedient.

Dated this ..... day of ..... 20 .....

Magistrate.

FORM No. 5

RESPONDENT'S ANSWER TO NOTICE

The ..... Court of .....

Case No. ....

In the matter of an application between—

....., Applicant

and

....., Respondent

To the Court,

The respondent intends to oppose the above application.

The following is a concise statement of the extent and grounds of his opposition:—

Respondent [or his advocate]

Date .....

Place .....

FORM No. 6

REQUEST FOR PARTICULARS

The ..... Court of .....

Case No. ....

In the matter of an application between—

....., Applicant

and

....., Respondent

To (1) .....

Take notice that you are hereby requested to furnish me with answers in writing to the following question: (2) .....

Dated this ..... day of ..... 20 .....

(3) .....

Work Injury Benefits

[Subsidiary]

FIRST SCHEDULE, FORM 6—continued

Notes—

- (1) Name and address of workman, applicant, or respondent to whom request is made.
- (2) State shortly and clearly under consecutive numbers the questions to which answers are requested.
- (3) Signature and address of persons making the request.

FORM No. 7

ORDER FOR PERIODICAL PAYMENTS

The ..... Court of .....

Case No. ....

In the matter of an application between—

....., Applicant

and

....., Respondent

It is ordered that (1) .....

do forthwith pay to (2) .....

at (3) ..... the taxed costs of an application

heard on the ..... day of ....., 20 ....., and

the sum of £ ....., being the amount now due from the said (1)

..... to the said (2) .....

in respect of a monthly payment of ..... from the

day of ....., 20 ....., being the date of the injury, to the

date of this order; and do further pay at the same place on every

day from the date of this order until otherwise ordered, the sum of .....

Dated this ..... day of ....., 20 .....

Magistrate

Notes—

- (1) Employer's name and address.
- (2) Workman's name and address.
- (3) Place where payment is to be made.

FORM No. 8

APPLICATION FOR THE REVISION OF A PERIODICAL PAYMENT

The ..... Court of .....

Case No. ....

In the matter of an application between—

....., Applicant

and

....., Respondent

Work Injury Benefits

[Subsidiary]

FIRST SCHEDULE, FORM 8—continued

An application is hereby made by ..... against ..... with respect to the revision of the order made by the court on the ..... day of ..... 20..... [or the agreement arrived at between the said parties on the ..... day of ..... 20 ..... ], and for the termination [or suspension or diminution or increase, as the case may be] of the monthly payment payable to the said ..... under the said order [or agreement] in respect of personal injury which arose out of and in the course of his employment.

Particulars are hereto appended [or annexed].

PARTICULARS

- 1. Name and address of injured workman .....
2. Name and place of business of employer by whom compensation is payable .....
3. Date and nature of accident, and injury .....
4. Date of order or agreement fixing monthly payment, amount of such payment, and date from which it commenced .....
5. Relief sought by applicant [whether termination, suspension, diminution or increase] .....
6. Grounds on which [termination or suspension or diminution or increase] is claimed .....
7. Name and addresses of the applicant and his advocate— of the applicant ..... of his advocate .....
8. Name and address of the respondent to be served with this application .....

Dated this ..... day of ..... 20 .....

Applicant [or his advocate]

FORM No. 9

ORDER ON REVISION OF ORDER OR AGREEMENT FOR PERIODICAL PAYMENTS

The ..... Court of .....

Case No. ....

In the matter of an application between—

..... Applicant

and

....., Respondent

Before .....

on ..... day, the ..... day of .....

20.....



Work Injury Benefits

[Subsidiary]

FIRST SCHEDULE, FORM 9—continued

Upon revision of the order for periodical payment made ..... on the ..... day of ....., 20..... [or the agreement arrived at between the said parties on the ..... day of ....., 20..... ] and upon hearing the evidence given by ..... and Mr. .... for the applicant and Mr. .... for the respondent.

It is hereby ordered that the said order [or agreement] be varied in the following manner—

.....  
.....  
.....  
.....  
.....

and that the costs of the said ..... of and incidental to this application and order be taxed and paid by the said ..... to the said .....

Dated this ..... day of ....., 20 .....

Magistrate

FORM No. 10

NOTICE BY PRINCIPAL TO CONTRACTOR

The ..... Court of .....

Case No. ....

In the matter of an application between—

....., Applicant  
and

....., Respondent

To (1) .....

Notice is hereby given to you that an application/a claim for compensation is made against (2) ..... by (3) ..... who alleges that the said (4) ..... is liable to pay him compensation in respect of an accident which occurred at (5) ..... on the ..... day of ....., 20 .....

Dated this ..... day of ....., 20 .....

(6) .....

Work Injury Benefits

[Subsidiary]

FIRST SCHEDULE, FORM 10—continued

Notes.—

- (1) Name and address of the contractor.
- (2) Name and address of principal.
- (3) Name and address of workman.
- (4) Name of principal.
- (5) Place of accident.
- (6) Signature and address of the person giving the notice.

FORM No. 11

NOTICE OF INTERVENTION BY CONTRACTOR

The ..... Court of .....

Case No. ....

In the matter of an application between—

....., Applicant

and

....., Respondent

To the court

and to the [applicant] and the [principal].

Notice is hereby given by (1) .....

that he intervenes in this application for compensation made by (2) .....

against (3) .....

The address for service of the said (4) .....

is .....

.....

.....

.....

.....

Dated this ..... day of ....., 20 .....

(5) .....

.....

.....

.....

.....

Notes.—

- (1) Name and address of the contractor.
- (2) Name of workman.
- (3) Name of principal.
- (4) Name of the contractor.
- (5) Signature and address of the person giving the notice.

Work Injury Benefits

[Subsidiary]

FIRST SCHEDULE—continued

FORM No. 12

APPLICATION RECORD BOOK

The ..... Court of .....

No. of application	Date application lodged	Nature of application	Names and addresses of parties and of their respective advocates		Date application served	Date answer received	Hearing		Remarks
			Applicant	Respondent			Date	Order made	

SECOND SCHEDULE

[Rule 26.]

	Sh.	Cts.
1. On an application for determination of any question by the court by a party other than a workman .....	10	00
2. On lodging a notice of intervention by a contractor .....	10	00
3. On lodging a written answer .....	2	00
4. On lodging any interlocutory application (including the filing of an affidavit in support) .....	6	00
5. On payment into court of a sum by the respondent: 1 per centum of the sum paid in, not exceeding a total fee of Sh. 50.		
6. On any other application .....	10	00
7. On an order or award declaring liability without directing payment of future compensation .....	20	00
8. On an award or on any order directing money to be paid out—		
(a) if for a lump sum: 2 1/2 per centum on any amount not exceeding Sh. 2,000 and thereafter 1 per centum, in no case exceeding a total fee of Sh. 100.		
(b) if for periodical payment with or without a lump sum in respect of arrears: a sum equal to half the amount of the periodical payment.		
9. In every other case the fees payable shall be as laid down in Part IX (Court Fees) of the High Court (Practice and Procedure) Rules (Cap. 8, Sub. Leg.).		

