

National Workers Union

Workers of the world unite!



WORKMEN'S COMPENSATION ACT

The *Occupational Safety and Health Act* is designed to stop accidents happening. But if they do, then workers who are injured will need help in dealing with the consequences. There are three avenues open:

- Workmen's Compensation
- Industrial Injury benefits from the National Insurance Board
- to sue to negligence

This pamphlet deals with the **Workmen's Compensation Act 1960** which "provides for the payment of compensation to workers for injuries suffered in the course of their employment"¹.

Generally, the **National Workers Union** is critical of this Act as not being satisfactory in providing proper benefits for workers.

Who is covered?

Anyone who has "**entered into or works under a contract of service**"² is covered by the Act.

Certain other groups are not covered³, including:

- strictly speaking, anyone who does not do manual labour and earnings more than \$5000 per year (that is correct – per year!) is not covered. But in practical terms this seems to be ignored;
- casual workers;
- outworkers;
- members of the Defence Force, Police Service or Fire Service.

What is covered?

Any injury, including death, "**arising out of and in the course of the employment**"⁴ is covered by the Act. This is so even if, at the time of the accident, the worker was:

- acting in contravention of any statutory or regulation;
- acting in contravention of any orders given by or on behalf of the employer, or was
- acting without instructions from his employer, providing this was done in connection with the employers business⁵.

The important point is that the question of blame does not arise, unless the injuries were caused by the workers own "**serious and wilful misconduct**"⁶.

1 Headnote of the Act

2 Section 2 - definition of "workman"

3 Section 2 - definition of "workman" sub-sections (a) to (f)

4 Section 4(1)

5 Section 4(2)

6 Section 4(1)(b)

This is a summary of the legislation and at all times the law takes precedence.

*For more information and assistance, contact the **National Workers Union** at 43 Fifth Street, Barataria (tel: 675-1267 :: fax: 638-6413 :: email: headoffice@workersunion.org.tt)*

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This also includes occupational diseases⁷. The Act provides a list of these.

What is paid?

Compensation is paid under the following categories:

- death;
- permanent total disability;
- permanent partial disability;
- temporary disablement.

Death⁸

- Where there are dependants wholly reliant on the earnings of the deceased worker – a lump sum equal to thirty-six months earnings;
- Where there are dependants partially reliant on the earnings of the deceased worker – a lump sum to be agreed not exceeding thirty-six months earnings;
- Where there are no dependants – “reasonable expenses” to bury the worker not exceeding \$500.

Permanent Total Disablement⁹

Total disablement¹⁰ is any disability which stops you having the ability to work in any job that you are capable of doing. In other words, you are permanent incapable of working.

The compensation provided for is:

- in the case of an adult (that is, over the age of seventeen) – a sum equal to forty-eight months earnings;
- in the case of an minor (that is, under the age of seventeen) – a sum equal to ninety-six months earnings.

Permanent Partial Disability¹¹

Permanent partial disablement¹² is where the disability permanently reduces the earnings capacity of the worker in any job they are capable of doing at the time of the accident.

There is the need to determine the percentage disability. This is done either by using the Second Schedule of the Act, if the injury is described there, or by getting medical evidence.

Compensation is then calculated on the basis of:

- a percentage of the compensation that would have been paid for Permanent Total Disablement. (That would be a percentage of forty-eight months earnings for an adult and ninety-six months earning for a

7 First Schedule

8 Section 5(1)(a)

9 Section 5(1)(b)

10 See Section 2 for a definition of “total disablement”

11 Section 5(1)(c)

12 See Section 2 for a definition of “partial disablement”

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minor).

Temporary Disablement¹³

Temporary disablement is where any impact on the earnings ability of the worker is temporary and there will eventually be a full enough recovery to enable a return to normal earnings.

Compensation is then calculated on the basis of:

- a half monthly payment payable on the sixteenth day from the date of the disablement and continuing for the duration of the disablement or five years (whichever is the shorter period):
 - in the case of an adult (that is, over the age of seventeen years) a sum equal to one third of monthly earnings
 - in the case of a minor (that is, under the age of seventeen years) a sum equal to one half of monthly earnings

Deductions¹⁴

Where a lump sum is payable for:

- death;
- permanent total disablement, or
- permanent partial disability

a deduction can be made from the lump sum any money received **“by way of compensation”** during the period of disablement – but this cannot amount to more than 50% of the lump sum.

It is important to note that this deduction can only be for monies paid for for compensation. Wages or salary paid during periods of injury leave cannot be deducted.

Where payments are made for:

- temporary disablement

Any payments received for compensation made before the payment of the first half-monthly payment can be deducted.

Medical expenses¹⁵

The employer must pay **“reasonable expenses”** to an amount not exceeding \$500 in respect of each of the following heads:

- medical, surgical and hospital treatment, skilled nursing services, the supply of medicine and travelling for the purpose of obtaining any of the foregoing, and
- the supply, maintenance and repair and renewal of non-articulated artificial limbs and apparatus.

¹³ Section 5(1)(d)

¹⁴ Section 5(2) and 5(3)

¹⁵ Section 16(1)

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These payments cannot be claimed if these services are provided free by the Government.

Occupational Diseases

Where it is established that a worker is suffering from an occupational disease set out in the First Schedule of the Act, compensation is paid as if it is an injury arising out of or in the course of employment¹⁶.

Compensation has to be paid by the last employer the worker worked for immediately preceding the disablement or death.

Compulsory Insurance

It is a legal requirement that employers have in force a policy of insurance to cover workmen's compensation. The Government is excluded from this requirement¹⁷.

¹⁶ Section 17(8)

¹⁷ Section 24(1)

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