

Employees' Compensation Act 1941, amended in 1995 read together with the Social Security Act 34 of 1994.

What is the Employees' Compensation Act 1941 (Act No 30 of 1941) about?

The Employees' Compensation Act 1941(Act No 30 of 1941) provides for compensation for disablement caused by accidents to or industrial diseases contracted by employees in the course of their employment, or for death resulting from such accidents and diseases.

What is a workplace injury?

- A workplace injury occurs as a result of an accident arising out of and in the course of an employee's employment and resulting in a personal injury; it is unexpected, unplanned and unwanted.
- Work injuries may be classified on the basis of their consequences as those resulting in:
 - permanent total incapacity;
 - permanent partial incapacity;
 - temporary incapacity; and
 - fatal injury leading to death of a worker.

Is an employee who gets injured in the course of an employee's employment entitled to compensation?

- Yes. Under the Employees' Compensation Act, the accident fund [the Fund], is established from which compensation is paid to employees who have been injured in the course of employment.
- If an accident happens to an employee resulting in his disablement or death, the employee shall be entitled to the benefits under the Act.
- If the accident is attributable to the serious and wilful misconduct of the employee, no compensation shall be payable unless the accident results in serious disablement, or the employee dies in consequence of the accident leaving a dependant wholly dependent upon him or her.
- Where an employer carries on business chiefly within Namibia and the usual place of employment of his or her employee is in Namibia, and an accident happens to his or her employee while the employee is temporarily employed by him or her out of Namibia, the employee shall be entitled to compensation in the same manner as if the accident had happened in Namibia.
- If an accident happens to a seaman who is employed on a ship which is registered under the laws in force in Namibia in relation to the registration of ships or the laws of any other country and which is owned or chartered by a person whose principal office or place of business is in Namibia, or by a person who resides in Namibia, such a seaman is entitled to compensation. But, if the accident happened outside Namibia, the airman shall not be entitled to compensation unless the employee is a member of the crew of the ship.
- If an accident happens to an airman on an aircraft registered or licensed under the laws in force in Namibia in relation to the registration or licensing of aircraft the owner of which resides or has a place of business in Namibia, such an airman is entitled to compensation. But, if the accident happened outside Namibia, the airman shall not be entitled to compensation unless the employee is a member of the crew of the aircraft.

What types of compensation are payable?

- Payment of Medical expenses for injured employee.
- Transport expenses to hospital or clinic.
- Compensation for temporary or permanent disability.
- Compensation for occupational diseases and/or injuries.
- Pension to dependents of fatal accidents.
- Burial expenses at a prescribed tariff.

Who is excluded from claiming compensation from the Fund?

- The following are excluded from claiming compensation from the Fund.
 - Members of the Namibian Police Force while employed in a war or other emergency to assist in the defence of Namibia;
 - Members of the Namibian Defence Force while employed in a war or other emergency to assist in the defence of Namibia or any international peacekeeping operation;
 - Employees whose annual earnings exceed N\$81,300¹ or, from a date determined by the Minister by notice in the Gazette, such higher amount as he may so determine;
 - Self-employed persons;
 - Casual workers; and
 - Persons employed temporarily outside of Namibia for more than 12 months at a time.

What is the amount of compensation for permanent disablement?

- Compensation for permanent disablement is fixed according to the degree of disablement and in accordance with the following rules:
 - where the degree of disablement is thirty per cent (30%), a lump sum equal to 15 times the monthly earnings of the employee.
 - where the degree of disablement is under thirty per cent (30%), a lump sum equal to 15 times the monthly earnings of the employee.
 - where the degree of disablement is one hundred per cent (100%), a monthly pension equal to seventy-five per cent (75%) of the monthly earnings of the employee.

What is the procedure to claim compensation from the Fund?

- A written notice of the accident, in the prescribed manner, must be given by or on behalf of the employee to the employer as soon as is reasonably possible after the accident.
- Every employer must immediately, after having been notified or having gained knowledge of the happening of an accident to a employee, report the accident to the Social Security Commission [the Commission] in the manner prescribed. Any employer who fails to comply with the provisions of this sub-section shall be guilty of an offence.
- A standard claim or injury report form is completed by the employer, who keeps one copy (Part A) and;
- sends the other (Part B) to the medical practitioner or hospital concerned.
- The employer then sends the first medical report received from the medical practitioner or hospital along with (Part A) to the Social Security Commission.

¹Figure as provided for in *Government Gazette No 5291* of 20 September 2013.

- The employee must, with his/her claim, or thereafter at the request of the Commission, submit such information and documents as may be prescribed or as the Commission may direct.
- Instructions are included in the form, and there is also a publication providing guidance.
- If the employee has not resumed work at the time the report is submitted, a resumption report is completed as soon as he resumes duty.
- Social Security Commission then adjudicates on all claims submitted.
- No claim for compensation shall be entertained unless it is lodged by or on behalf of the claimant in the prescribed manner with the Commission or the employer concerned within six months after the date of the accident, or in the case of death, within six months after the death.
- If an accident happens to a seaman or airman then a claim for compensation may, except when the seaman or airman is the person in command of the ship or aircraft, be presented to the person in command of the ship or aircraft as if he were the employer, or to the employer himself, and for the purpose of any claim for compensation the person in command or the employer shall, at the option of the claimant, be deemed to be the employer and shall carry out the obligations of an employer.
- If the accident happened to any such seaman or airman outside Namibia resulting in death a claim for compensation shall be made within six months after news of the death has been received by any dependant claiming compensation.

Under what circumstances will the Fund deny or pay additional compensation?

No benefit will be payable:

- If the employee's injury/incapacity to work was not caused in the course of his work.
- If such injury is reported after the expiry of the prescribed time.
- The employee is entitled to additional compensation if the employer was negligent or if employers' faulty/substandard equipment caused the injury.

Can an aggrieved person appeal a decision of the Commission?

- Any person aggrieved by any decision of the Commission taken in the performance of the Commission's functions may, within a period of 60 days from the date upon which he or she was notified of such decision, appeal by notice in the prescribed form against such decision to the Labour Court.

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Glossary of terms:

ACCIDENT: means an accident arising out of and in the course of a employee's employment and resulting in a personal injury.

AIRMAN: means an employee employed in any capacity in an aircraft.

CHILD: means a son or daughter under the age of eighteen years and includes an illegitimate child of an employee or his or her spouse, a posthumous child, a step-child and an adopted child if the Commission is satisfied that the child was in fact adopted.

DEPENDANT: means:

(a) the surviving spouse, if married to the employee at the time of the accident;

(b) if there is no surviving spouse who, at the time of the accident, was wholly or partly dependent upon the employee for the necessities of life, any person with whom the employee was in the opinion of the Commission living as man and wife at the time of the accident;

(c) any child: provided that in the case of an adopted child the Commission is satisfied that the child was adopted prior to the accident;

(d) a parent or step-parent or an adoptive parent who adopted such employee if the Commission is satisfied that the employee was in fact adopted and in either case that the employee was adopted prior to the accident;

(e) a son or daughter (other than a child as defined): a brother, sister, half-brother, or half-sister: a sister or brother of a parent: a grand-parent or grandchild: or

(f) any other person who, in the opinion of the Commission, was at the time of the accident wholly or partly dependent on the employee for the necessities of life:

EMPLOYEE: means any person who has entered into or works under a contract of service or of apprenticeship or learnership, with an employer, whether the contract is express or implied, is oral or in writing, and whether the remuneration is calculated by time or by work done, or is in cash or in kind.

EMPLOYER: means a person who employs an employee and includes the State and any person controlling the business of an employer.

SEAMAN: means any person who has entered into or works under a contract of service or of apprenticeship or learnership, with an employer, whether the contract is express or implied, is oral or in writing and employed in any capacity on board a ship by the owner or master whose occupation is conveying for gain persons or goods by means of any ship.

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Workplace Injuries

