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THE WORK INJURY BENEFITS ACT

CHAPTER 236

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CHAPTER 236

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CHAPTER 236

WORK INJURY BENEFITS ACT

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

[Date of commencement: 2nd June, 2008.]

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.]

PART I – PRELIMINARY

1. Short title

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

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;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for labour matters;

"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;

"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 practise in Kenya under the Medical Practitioners and Dentists Act (Cap. 253);

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"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 Defence Forces as defined in the Kenya Defence 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 necessaries 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 Cabinet Secretary in respect of any liability that the employer may incur under this Act to any of his employees.

(2) The Cabinet Secretary 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 Cabinet Secretary 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 Cabinet Secretary.

(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

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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 employees earnings, subject to the minimum and maximum amounts fixed by the Cabinet Secretary 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 Cabinet Secretary, 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 Cabinet Secretary 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 Cabinet Secretary 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 Cabinet Secretary, after consultation with the Council.

35. Amendment of Third Schedule

The Cabinet Secretary 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 the 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 Cabinet Secretary 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—

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- (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 Chairperson 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 Cabinet Secretary 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 Cabinet Secretary 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 Cabinet Secretary, from time to time, after consultation with the Council and such bodies or associations representing medical practitioners entitled to practice within Kenya as the Cabinet Secretary 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 Cabinet Secretary 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 Cabinet Secretary 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 Cabinet Secretary may think fit, and prescribing a time limit for the making of such returns.

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(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 Chairperson, 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.

[Spent]

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.

FIRST SCHEDULE

[s. 30]

DEGREE OF DISABLEMENT

	Minimum degree of disablement (percentage)
A. DEATH	
Death as result of accident	100
B. INJURY (GENERAL)	
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	
C. INJURY TO UPPER LIMB	

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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
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—	

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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.

D. INJURY TO LOWER LIMB

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

E. INJURY TO EYES

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

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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

- 1. Total loss of hearing – both ears 50
- 2. Total loss of hearing – one ear 7

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

[s. 38(1)]

OCCUPATIONAL DISEASES

PART I

DESCRIPTION OF DISEASE	DESCRIPTION OF WORK
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1. Poisoning by lead or a compound of lead	Any Occupation involving: 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 of 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.
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).
13. Poisoning by diethylene dioxide (dioxan)	The use or handling of, or exposure to the fumes of, or vapour containing methyl bromide.
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.

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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 Gonioma Kamassi (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. Ankylostomiasis	Work to do or about a mine.
23. (a) Dystrophy of the corneal (including ulceration of the corneal surface) of the eye	} 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.
(b) Localised new growth of the skin, papillomatous or keratotic	
(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	
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	Exposure to electro-magnetic radiation other than heat, or to ionizing particles.
25. Heat cataract	Frequent or prolonged exposure to rays from molten or red-hot material.
26. Decompression sickness	Subjection to compressed or rarefied air.
27. Cramp of the hand or forearm due to repetitive movements	Prolonged periods of handwriting, typing or other movements of the fingers, hand or arm.
28. Subcutaneous cellulites of the hand (beat hand)	Manual labour causing severe or Prolonged, friction or pressure on hand.
29. Bursitis, or subcutaneous cellulites arising at or about the knee due to external friction or	Manual labour causing severe or prolonged external friction or pressure at or about the knee.

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pressure at or about the knee (beat knee)

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)

31. Traumatic inflammation of the tendons in the hand or fore-arm, or the associated tendon sheaths

32. Miner's systagmus

33. Poisoning by beryllium or a compound of beryllium

a) carcinoma of the mucous membrane of the nose or associated air sinuses

(b) Primary carcinoma of a lung

35. Tuberculosis

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

Manual labour causing severe or prolonged external friction or about the elbow.

Manual labour, or frequent or repeated movements of the hand or wrist.

Work in or about a mine.

The use or handling of, exposure to the fumes, dust or vapour of beryllium or a compound of beryllium, or a substance containing beryllium. Work in a factory where nickel is produced by decomposition of a gaseous nickel compound.

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.

Any occupation involving—

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;

(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.

(a) Work in a building in which any of the following substances is produced for renal commercial purposes—

(i) alphanaphthylamine;

(ii) diphenyl 1 substituted by at least one nitro or primary amino group;

(iii) any of the substances mentioned in subparagraph (ii) above if further ring substituted

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	<p>by halogen methyl or methoxy groups but not by other groups;</p> <p>(iv) the salts of any of the substances mentioned in subparagraphs (i) to (iii) above.</p> <p>(b) The use of handling of any of the substances mentioned in subparagraphs (i) to (iv) of paragraph (a), or work in a process in which any such substance is used or handled or is liberated.</p> <p>(c) The maintenance or cleaning of any plant or machinery used in any such process as is mentioned in paragraph (b), or the cleaning of clothing used in any such building as is mentioned in paragraph (a) if such clothing is cleaned within the works of which the building forms a part or in a laundry maintained and used solely in connection with such work.</p>
37. Poisoning by cadmium	Exposure to cadmium fumes.
38. Inflammation or ulceration of the mucus membrane of the upper respiratory passages or mouth produced by dust, liquid or vapour	Exposure to dust, liquid or vapour.
39. Non-infective dermatitis of external origin (including chrome ulceration of the skin but excluding dermatitis due to ionising particles of electromagnetic radiation other than radiant heat)	Exposure to dust, liquid or vapour or any other external agent capable of irritating the skin including friction or heat but excluding ionising particles or electromagnetic radiations other than radiant heat.
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).

THIRD SCHEDULE

[ss. 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
