

NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS
37TH CONSTITUTIONAL REGULAR SESSION, 2016



Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

WORKERS' COMPENSATION ACT 2016

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WORKERS' COMPENSATION ACT 2016

AN ACT to provide for compensation and rehabilitation of workers in respect to work related injuries or fatalities

BE IT ENACTED BY THE NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS

§101. Short title.

This Act may be cited as the Workers' Compensation Act 2016.

§102. Purpose

The purpose of this Act is to provide for the compensation and rehabilitation of workers in respect of work related injuries or fatalities.

§3. Interpretation.

In this Chapter, unless the context requires:

"Administrator" means the Administrator of the Marshall Islands Social Security Authority or a designee;

"Adoption" or "adopted" refers to a legal and customarily adoption prior to the time of the injury;

"Carrier" includes stock corporations or mutual associations from which any employer has obtained workers' compensation insurance or guaranty insurance in accordance with the provisions of this Chapter;

"Child", has the same meaning under section 103(h) of the MISSA Act;

- "Board" means the Board of Directors established under section 107 of the MISSA Act;
- "Republic" means the Republic of the Marshall Islands;
- "Compensation" means the payment for medical services and supplies, the disability benefits payable to an employee or to his or her dependents, and such other payments arising from the injury of an employee as provided for in this Chapter;
- "Date of Disability" means the date after which an employee can no longer earn the wages he or she was earning at the time of the injury resulting in the disability. The date of disability is not necessary the date of injury;
- "Death" when used as a basis for a right to compensation under this Chapter, mean only death resulting from an injury;
- "Disability" has the same meaning under section 103(p) of the MISSA Act;
- "Disability benefits" means the money allowance payable periodically to an employee or to his or her survivors as provided for under Section 137 of the Marshall Islands Social Security Act;
- "Employee" has the same meaning under section 103(s) of the MISSA Act;
- "Employer" has the same meaning under section 103(t) of the MISSA Act;
- "Independent" means any person who renders service for a specified recompense for a specified result, under the control of his principal as to the result of his work only and not as to the means by which such result is accomplished;
- "Injury" means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accident or injury. The term includes an injury caused by the wilful act of a third person inflicted upon any employee in the course of his or her employment.
- "Parent" has the same meaning under section 103(ff) of the MISSA Act;
- "Person" means an individual, partnership, corporation, association, governmental entity or agency including local government, or any other entity.
- "Spouse" has the same meaning under section 103(nn) of the MISSA Act;

“Wages” means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the injury; including the reasonable value of board, rent, housing, lodging, or other similar advantages received from the employer, and gratuities received in the course of employment from other than the employer.

§4. Coverage.

- (1) Compensation shall be payable under this Chapter in case of disability or death of an employee, but only if the disability or death results from an injury sustained while engaged in employment.
- (2) If a worker who has been hired in the Republic receives personal injury by accident arising out of and in the course of his employment, he or she shall be entitled to compensation according to the law of the Republic even though such injury was received outside the Republic.
- (3) Any person who may be injured in performing service for the Government in any voluntary or unpaid capacity under the authorized direction of a public officer or employee, and who shall not have secured payment of his hospital and medical expenses from Government or under any other provision of law and shall both have secured payment thereof from any third person, shall be paid his reasonable hospital and medical expenses by the Government.
- (4) No compensation shall be payable under this Chapter to the employee if the injury was proximately caused by the intoxication of the employee or by the wilful intention of the employee to injure or kill himself, herself or others.

§5. Liability for Compensation.

- (1) Every employer shall be liable for and shall secure payment of such compensation as may be required under Sections 8, 9, and 10.
- (2) Compensation shall be payable irrespective of fault as to the injury.
- (3) In the case of an employer who is a subcontractor or jobber in the construction or garment manufacturing industries the contractor or fisheries industry shall be liable for and shall secure payment of such compensation to employees of the subcontractor unless the subcontractor has secured such payments.

§6. Exclusiveness of Liability.

Where the conditions of compensation exist, the right to recover such compensation, pursuant to the provisions of this Chapter, is against the employer or against any other employee of the employer acting within the scope of such other employee's employment; provided that, if an employer fails to secure payment of compensation as required by this Chapter, an injured employee, or his or her legal representative in case death resulted from the injury, may elect to claim compensation under this Chapter, or to maintain an action at law or for damages account of such injury or death. In such action, the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, nor that the employee assumed the risk of his or her employment, nor that the injury was due to the contributory negligence of the employee.

§7. Disability Benefits:

- (1) Time for Commencement, Maximum Amount.
 - (a) If an injury causes disability, a disability benefit payment shall be made for one week in advance on the fourth day after the date of disability.
 - (b) Disability benefits shall not exceed \$140 per week

§8. Medical Services and Supplies.

- (1) The employer shall furnish to the injured employee such remedial treatment, care, and attendance under the direction of a qualified physician or surgeon or other recognized practitioner, nurse or hospital, as the nature of the injury or the process of recovery may require, including medicines, crutches, artificial limbs and other apparatus and vocational rehabilitation services.

If the employer refuses to provide, after request by the injured employee, or neglects to provide, having knowledge of the injury, treatment and services required by the injury, the injured employee may do so and shall be entitled to recover from the employer the amount expended.

No such claim for medical or surgical treatment shall be valid and enforceable, as against such employer, unless within 20 days following the first treatment, the physician giving such treatment

shall furnish to the employer and the Administrator a report of such injury and treatment on a form prescribed by the Board. The Administration may, however, excuse the failure to furnish such report within 20 days when he finds it to be in the interest of justice to do so, and he may, upon application by a party in interest, make award for the reasonable value of such medical or surgical treatment so obtained by the employee.

If at any time during such period the employee unreasonably refuses to submit to medical or surgical treatment, the Administrator may, by order, suspend the payment of further compensation during such time as such refusal continues.

- (2) Whenever, in the opinion of the Administrator, a physician has not impartially estimated the degree of permanent disability or the extent of temporary disability of any injured employee, the Administrator shall have the power to cause such employee to be examined by a physician selected by the Administrator and to obtain a report containing the physician's estimate of such disabilities. If the report of the second physician shows that the estimate of the first physician has not been impartial from the standpoint of such employee, the Administrator shall have the power, at his discretion, to charge the cost of such examination to the employer.
- (3) Any fees and other charges for treatment or service shall be limited such charges as prevail in the same community for similar treatment of injured persons.
- (4) The liability of an employer for medical treatment as herein provided shall not be affected by the fact that his employee was injured through the fault or negligence of a third party, not in the same employment. The employer shall, however, have a cause of action against such third party to recover any amounts paid by him for such medical treatment in like manner as provided in section 34 of this Chapter.

§9. Disability Benefits.

Disability benefits shall be paid to the employee as follows:

- (1) Permanent Total Disability.

In case of total disability, adjudged to the permanent, sixty-six and two thirds ($66\frac{2}{3}$) percent of this average weekly wages shall be paid to the employee during the continuance of such total disability.

Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two thereof shall, in the absence of conclusive proof to the contrary, constitutes permanent total disability. In all other cases, permanent total disability shall be determined in accordance with the facts.

(2) Temporary Total Disability.

In case of temporary total disability, sixty-six and two-thirds ($66\frac{2}{3}$) percent of the average weekly wages shall be paid to the employee during the continuance thereof.

(3) Permanent Partial Disability.

In case of permanent partial disability, the disability benefits shall be sixty-six and two-thirds ($66\frac{2}{3}$) percent of the average weekly wages, which shall be in addition to disability benefits for temporary total disability or temporary partial disability paid in accordance with subsection (b) or subsection (e) of this section respectively and shall be paid to the employee as follows:

- (a) Arm lost 280 weeks disability benefits;
- (b) Leg lost, 248 weeks disability benefits;
- (c) Hand lost, 212 weeks disability benefits;
- (d) Foot lost, 172 weeks disability benefits;
- (e) Eye lost, 140 weeks disability benefits;
- (f) Thumb lost, 51 weeks disability benefits;
- (g) First finger lost, 28 weeks disability benefits;
- (h) Great toe lost, 26 weeks disability benefits;
- (i) Second finger lost, 18 weeks disability benefits;
- (j) Third finger lost, 17 weeks disability benefits;
- (k) Toe other than great toe lost, 8 weeks disability benefits;
- (l) Fourth finger lost, 7 weeks disability benefits;
- (m) Loss of hearing. Disability benefits for loss of hearing of one ear, 52 weeks, or of both ears, 200 weeks.

- (n) Phalanges. Disability benefits for loss of more than one phalange of a digit shall be the same as for lost of the entire digit. Disability benefits for loss of the first phalange of a digit shall be one-half (1/2) of the disability benefits for the loss of the entire digit.
- (o) Amputated arm or leg. Disability benefits for an arm or leg, if amputated at or above the elbow or the knee, shall be the same as for a loss of an arm or leg, but, if amputated between elbow and the wrist or the knee and the ankle, disability benefits shall be the same as for the loss of a hand or foot.
- (p) Binocular vision or percent of vision. Disability benefits for loss of binocular vision or for 80 percent or more of the vision of an eye shall be the same as for loss of the eye.
- (q) Two or more digits. Disability benefits for loss of two or more digits, or one or more phalanges of two or more digits, of a hand or foot shall be proportioned to the loss of the hand or foot.
- (r) Total loss of use. Disability benefits for permanent total loss of use of a member shall be the same as for loss of the member.
- (s) partial loss or loss or loss of use. Disability benefits for permanent partial loss or loss of use of the member.
- (t) Disfigurement. The Administrator shall award proper and equitable disability benefits for serious facial or head disfigurement.
- (u) Other cases. In all other cases of permanent partial disability the disability benefits shall be two-thirds (2/3) of the difference between the employee's average weekly wages and his wage earning capacity thereafter in the same employment or otherwise, payable during the continuance of such partial disability; provided that, disability benefits shall be subject to reconsideration as to the degree of such impairment by the Administration on his own motion or upon application of any party in interest.
- (v) In any case in which there shall be loss, or loss of use of more than one member or parts of more than one member set forth in paragraphs (1) to (19) of this subsection, not amounting to permanent total disability, the award of disability benefits

shall be for the loss of, or loss or use of each such member of part thereof, which awards shall run consecutively, except that where the injury affects only two or more digits of the same hand or foot, paragraph (17) of the subsection shall apply.

- (4) An award for disability may be made after death of the injured employee. Any disability benefits to which any deceased claimant would be entitled under this subsection (c) shall, despite death arising from contributing causes other than the injury, be payable to and for the benefit of the following persons:
 - (a) If there be a surviving spouse, and no child of the deceased, to such spouse.
 - (b) If there be a surviving spouse, and surviving child or children of the deceased, one half (1/2) shall be payable to the surviving spouse and the other half to the surviving child or children.
 - (c) If there be a surviving child or children of the deceased, but no surviving spouse, then to such child or children.
- (5) Temporary partial disability. In case of temporary partial disability resulting in a decrease of earning capacity the disability benefits shall be two-thirds (2/3) of the difference between the injured employee's average weekly wages before the injury and his wage earning capacity after the injury in the same or another employment. Disability benefits are to be paid during the continuance of such disability, but no longer than five years.
- (6) Injury increasing disability.
 - (a) If an employee receives an injury which of itself would only cause permanent partial disability but which, combined with a previous disability does in fact cause permanent total disability, the employer shall provide compensation only for the disability caused by the subsequent injury; provided, however, that in addition to compensation for such permanent partial disability and after the cessation of the payments for the prescribed period of weeks, the employee shall be paid the remainder of the compensation that would be due for permanent total disability. Such additional compensation in bi-weekly installments and at the same rate as the disability benefits paid for the subsequent injury shall be paid out of the Special Disability Fund established in Section 9.

- (b) In all other cases in which, following a previous disability, an employee receives an injury which is not covered by paragraph (1) of this subsection, the employer shall provide compensation only for disability caused by the subsequent injury. In determining disability benefits for the subsequent injury or death resulting therefrom, the average weekly wages shall be such sum as will reasonably represent the earning capacity of employee at the time of subsequent injury.
- (7) The wage earning capacity of an injured employee in cases of partial disability under subsection (3) (u) of this section and subsection (e) of this section shall be determined by his or her actual earnings if such actual earnings or if his or her actual earnings do not fairly and reasonably represent his or her wage earning capacity, the Administrator may, in the interest of justice, fix such wage earning capacity as shall be reasonable, having due regard for the nature of the injury, the degree of physical impairment, the employee's usual employment, and any other factors or circumstances in the case which may affect the capacity of the employee to earn wages in a disabled condition including the effects of disability as it may extend into the future.
- (8) In cases under subsection (3) (u) and subsection (e) of this section, upon the determination of the Administration that it is in the best interest of an injured employee entitled to disability benefits, the Administrator may approved agreed settlements of the interested parties discharging the liability of the employer for such disability benefits, despite the provisions of Section 16 (b) and Section 17 of this Chapter; provided, that the sum so agreed upon shall be payable in installments and shall be subject to commutation under Section 15 (j); and provide, further, that if the employee shall die from causes other than the injury after the Administration has approved an agreed settlement as provided for herein, the sum so approved shall be payable in manner prescribed in this section, to and for the benefit of the persons enumerated in subsection (d) of this section.
- (9) Where in the determination of the disability benefit there is inconsistent with section 137 of the MISSA, this Act shall prevail.

§10. Compensation for Death.

If the injury causes death, the disability benefits shall be payable in the amounts and to or for the benefit of the persons following:

- (1) Reasonable funeral expenses not exceeding \$1,200;
- (2) If there be a surviving spouse and no child or the deceases, to such surviving spouse 35 percent of the average wages of the decease until such time as the surviving spouse remarries, with two years' disability benefits in one sum upon remarriage; and, if there be a surviving child children of the deceased, the additional amount of 15 percent of such wages for each child. In the case of the death or remarriage of such surviving spouse, if there be one surviving child of the deceases employee, such child shall have his or her disability benefits increased to 35 percent of such wages; and if there be more than one surviving child of the deceased employee, to such children, in equal parts, 35 percent of such wages, increased by 15 percent of such wages for each child in excess of one; provided, that the total amount payable shall in no case exceed two-thirds (2/3) of such wages;
- (3) If there be one surviving child of the deceased, but no surviving spouse, then for the support of such child 35 percent of the wages of the deceased. If there be more than one surviving child of the deceased, but no surviving spouse, then for the support of such children, in equal parts, 35 percent of such wages increased by 15 percent of such wages for each child in excess of one. The total amount payable under this section shall in no case exceed two-thirds (2/3) of such wages;
- (4) If there be no surviving spouse or child or if the amount payable to a surviving spouse and to children shall be less in the aggregate than sixty-six and two-thirds (66-2/3) percent of the average wages of the deceased, then an amount no greater than the difference between two-thirds (2/3) of such wages and the amount, if any, payable as hereinbefore provided to the surviving spouse and the surviving child or children shall be apportioned in the following percentages of such wages and in descending order of priority to:
 - (a) grandchildren, fifteen (15) percent for each;
 - (b) brother and sisters, fifteen (15) percent for each;

- (c) parents, if dependent upon the deceases at the time of the injury, twenty-five (25) percent for each;
- (d) grandparents, if dependent upon the deceased at the time of the injury, twenty-five (25) percent for each.

§11. Determination of Pay.

Except as otherwise provided in this Chapter, the average weekly wage of the injured employee at the time of the injury shall be taken as the basis upon which to compute disability benefits and shall be determined as follows:

- (1) If the injured employee shall have worked in the occupation in which he or she was working at the time of the injury, whether for the same or another employer, during a substantial portion of the twelve calendar months immediately preceding the injury, the average annual earnings shall consist of 313 times the average daily wage or salary (for a six day worker) or 261 times the average daily wage or salary (for a five day worker), which the employee shall have earned in such employment during the days when so employed.
- (2) If the injured employee shall not have worked in such occupation during a substantial portion of the immediately preceding twelve calendar months, his or her average annual earnings shall consist of 313 times (for a six day worker) and 261 times (for a five day worker) of the average daily wage or salary which an employee of the same occupation working a substantial portion of the immediately preceding twelve calendar months in the same or in a similar occupation in the same or a neighboring place shall have earned in such employment during the days when so employed.
- (3) If either of the foregoing methods of arriving at the average annual earnings of the injured employee cannot reasonably and fairly be applied, such average annual earnings shall be such sum as shall reasonably represent the annual earning capacity of the injured employee in the occupation in which he or she was working at the time of the injury, and of other employees of the same or most similar occupation working in the same or neighboring locality or other employment of such employee, including the reasonable value of the services of the employee if engaged in self-employment.

- (4) The average weekly wages of an employee shall be one fifty-second (1/52) part of the employee's average annual earnings.
- (5) If it be established that the injured employee was a minor when injured, and that under normal conditions the employee's wages would be expected to increase during the period of disability, that fact may be considered in arriving at the average weekly wages.

§12. Guardian for Minor or Incompetent.

The Administration may require the appointment of a guardian or any other representation, by a court of competent jurisdiction, for any person who is mentally incompetent or a minor. The guardian or representative shall receive the disability benefits payable to such person under this Chapter and shall exercise the powers granted to, or perform the duties required of, such person under this Chapter.

PART 2. PROCEDURE FOR CLAIMS AND COMPLIANCE.

§13. Notice of Injury or Death.

- (1) Notice of an injury or death for which compensation is payable under this Chapter shall be given within 30 days after the date of such injury or death both to the Administrator and to the employer.
- (2) Such notice shall be in writing; shall contain the name and address of the employee and a statement of the time, place, nature, and cause of the injury or death, and shall be signed by the employee or by some person on his behalf, or in case of death, by any person claiming to be entitled to compensation for such death or by a representative of such person.
- (3) Notice shall be given to the Administration by personal delivery or by first class mail, addressed to the Administrator's office; and to the employer by personal delivery or by sending it by first class mail, postage prepaid, addressed to the employer at its last known place of business or electronic email to all his or her available webmail based addresses. If the employer is a partnership, such notice may be given to any partner, or if a corporation, such notice shall be given to any agent or officer thereof upon whom legal process may be served or

who is in charge of the business in the place where the injury occurred.

- (4) Failure to give such notice shall not bar any claims under this Chapter if:
 - (a) the employer (or the employer's agent in charge of the business in the place where the injury occurred) or the carrier had knowledge of the injury or death, and the Administrator determines that the employer or carrier has not been prejudiced by failure to give such notice; or
 - (b) the Administrator excuses such failure on the ground that for some satisfactory reason such notice could not be given; or
 - (c) the objection to such failure is not raised before the Administrator at the first hearing of a claim for compensation in respect to such injury or death.

§14. Time for Filing of Claims.

- (1) The right to compensation under this Chapter shall be barred unless a claim therefore is filed within one year after the injury, and the right to compensation for death shall be barred unless a claim therefore is filed within one year after death; provided, that if payment of compensation has been made without an award on account of such injury or death, a claim may be filed within one year after the date of the last payment. Such claim shall be filed with the Administrator.
- (2) Notwithstanding the provisions of subsection (a) of this section, failure to file a claim within the period prescribed in such subsection shall not be a bar to such right unless objection to such failure is made at the first hearing of such claim.
- (3) If a person who is entitled to compensation under this Chapter is mentally incompetent or a minor, the provisions of subsection (a) of this section shall not be applicable so long as such person has no guardian or other authorized representative, but shall be applicable, in the case of a person who is mentally incompetent or a minor, from the date of appointment of such guardian or other representative; or in the case of a minor, where no guardian is appointed before he or she becomes age, from the date he or she becomes age.

§15. Payment of Compensation.

- (1) Compensation under this Chapter shall be paid promptly and directly to the person entitled thereto, without an award, except where liability to pay compensation is controverted by the employer.
- (2) Disability benefits shall be paid in bi-weekly installments, excepts where the Administrator determines that payment in installments should be made monthly or at some other interval.
- (3) Upon making the first payment, and upon suspension of payment for any cause, the employer shall immediately notify the Administrator in accordance with a form prescribed by the Board, that payment of disability benefits has begun or has been suspended, as the case may be.
- (4) If the employer controverts the right to compensation the employer shall file with the Administrator, on or before the 14th day after the employer has knowledge of the alleged injury or death, a notice in accordance with a form prescribed by the Board stating that the right to compensation is controverted, the name of the claimant, the name of employer, the date of the alleged injury or death, and the grounds upon which the right to compensation is controverted.
- (5) If any installment of disability benefits payable without an award is not paid within 15 days after it becomes due, as provided in subsection (b) of this section, there shall be added to such unpaid installment an amount equal to 10 percent thereof, which shall be paid at the same time as, but in addition to such instalment, unless notice is filed under subsection (d) of this section, or unless such nonpayment is excused by the Administrator after a showing by the employer that, owing to conditions over which the employer had no control, such installment could not be paid within the period prescribed for the payment.
- (6) If any disability benefits, payable under the terms of an award, are not paid without 10 days after become due, there shall be added to such unpaid disability benefits an amount equal to 20 percent thereof which shall be paid at the same time as, but in addition to, such disability benefits unless review of the compensation order making such award is had as provided in section 22.

- (7) Within 15 days after final payment of compensation has been made, the employer shall send to the Administrator a notice, in accordance with a form prescribed by the Board, stating that such final payment has been made, the total amount of compensation paid, the name of the employee, and of any other person to whom compensation has been paid. If the employer fails to notify the Administrator within such time, the Administrator shall assess against such employer a civil penalty in the amount of \$100.
- (8) The Administrator may at any time in a case in which payments are being made without an award, and shall in any case where right to compensation is controverted, or where payments of compensation have been stopped or suspended, upon receipt of notice from any person entitled to compensation, or from the employer that the right to compensation is controverted, or that payment of compensation has been stopped or suspended, make such investigation, causes such medical examinations to be made, or hold such hearings, and take such further action as he or she considers will properly protect the rights of all parties.
- (9) The Administration may require any employer to make a deposit with a carrier to secure the prompt and convenient payment of such compensation. Payments upon any awards shall be made from such deposits by the Carrier upon order of the Administrator.
- (10) Whenever the Administrator determines that it is in the interest of justice, the liability of the employer for compensation or any part thereof, as determined by the Administrator, may be discharged by the payment of a lump sum equal to the present value of future compensation payments commuted, computed at four (4) percent true discount compounded annually. The probability of death of the injured employee or other person entitled to disability benefits before the expiration of the period during which he or she is entitled to disability benefits shall be determined in accordance with American Experience Table or Mortality or such table as the Commission may deem appropriate, and the probability of the remarriage of the surviving spouse shall be determined in accordance with the remarriage tables of the Dutch Royal Insurance Institution or such other table as the Board may deem appropriate. The probability of the happening of any other contingency affecting the amount or duration of the disability benefits shall be disregarded.

- (11) An employer, who has made advance payments of compensation, shall be entitled to reimbursement out of any unpaid installment or installments of compensation due.
- (12) Any recipient with disability payments under this Chapter shall give receipts for such payments to the employer for inspection by the Administrator, whenever required by the employer.
- (13) The total disability benefits for either injury or death payable under this Chapter to one employee for one occurrence of injury shall in no event exceed the sum of Forty Thousand Dollars (\$40,000).

§16. Invalid Agreements.

- (1) No agreement by an employee to pay any portion of a premium paid by the employer to a carrier or to contribute to a benefit fund or department maintained by such employer for the purpose of providing compensation as required by this Chapter shall be valid, and any employer who makes a deduction for such purpose from any pay of any employee entitled to the benefits of this Chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than One Thousand Dollars (\$1,000).
- (2) No agreement by any employee to waive the right to compensation under this Chapter shall be valid.

§17. Assignment and Exemptions from Claims of Creditors.

No assignments, release, or commutation of compensation due or payable under this Chapter, shall be valid, except as provided by this Chapter, and such from compensation shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, which exemption may not be waived.

§18. Compensation a Lien Against Assets.

Any person entitled to compensation under the provisions of this Chapter shall have a lien against the assets of the carrier or employer for such compensation without limit or amount, and shall, upon insolvency, bankruptcy, or reorganization in bankruptcy proceedings and priority in the distribution of assets of such carrier or employer, or both.

§19. Collection of Defaulted Payments.

In case of default by the employer in the payment of compensation due under any award of compensation for a period of 30 days after the compensation is due and payable, the person to whom such compensation is payable may, within one year after such default, make application to the Administrator for a supplementary order declaring the amount of the default. After investigation, notice, and hearing, as provided in Section 20, the Administrator shall make a supplementary order declaring the amount of the default, if any which shall be filed in the same manner as the compensation order. In case the payment in default is an installment of the award, the Administrator may, at his or her discretion, declare the whole of the award as the amount in default. The applicant may file a certified copy of such supplementary payment in default as an installment of the award, the Administrator may, at his or her discretion, declare the whole of the award as the amount in default. The applicant may file a certified copy of such supplementary order with the clerk of the Republic Superior Court. Such supplementary order of the Administrator shall be final, and the court shall, upon the filing of the copy, enter judgment for the amount declared in default by the supplementary order, if such supplementary order is in accordance with law. Review of the judgment so entered may be had as in civil suit for damages at common. Final proceedings to execute the judgment may be had by writ of execution. No fee shall be required for filing the supplementary order not for the entry of judgment thereon, and the applicant shall not be liable for the cost in a proceeding for review of the judgment unless the court shall otherwise direct. The court shall modify such judgment to conform to any later compensation order upon presentation of a certified copy thereof to the court.

§20. Procedure in Respect of Claims.

- (1) Subject to the provision of Section 14, a claim for compensation may be file with the Administrator in accordance with regulations prescribed by the Board at any time after the first four days following any injury, or at any time after death, and the following Administrator shall have full power and authority to hear and determine all questions in respect of such claim.
- (2) Within 10 days after such claim is filed, the Administrator, in accordance with regulations prescribed by the Board, shall notify the employer and any other person (other than the claimant), whom the

Administrator considers an interested party, that a claim has been filed. Such notice may be served personally upon the employer, or other person, or sent to such employer or person by registered email.

- (3) The Administrator shall cause to be made such investigations as he or she considers necessary in respect of the claim, and upon application of any interested party shall order a hearing thereon. If the hearing on such claim is ordered, the Administrator shall give the claimant and other interested parties at least 10 days notice of such hearing, served personally upon the claimant and other interested parties by registered mail, and shall within 20 days after such hearing is had, by order, reject the claim or make an award in respect of the claim. If no hearing is held within 20 days after notice is given as provided in subsection (b) of this section, the Administrator shall, by order, reject the claim or make an award in respect of the claim.
- (4) At such hearing the claimant and the employer may each present evidence in respect of such claim and may be represented by any person authorized in writing for such purpose.
- (5) The order rejecting the claim or making award (referred to in this Chapter as a compensation order) shall be filed in the office of the Administrator, and a copy thereof shall be transmitted to the claimant and to the employer by delivery to them in person or by registered mail sent to their last known addresses.
- (6) An award of disability benefits may be made after the death of an injured employee.
- (7) An injured employee claiming or entitled to compensation shall submit to such physical examination, by a medical officer of the Department of Public Health, or by a qualified physician designated or approved by Board, as the Administrator may require. The place or places of such examination shall be reasonably convenient for the employee. Such physician or physicians as the employee, employer, or carrier may select and apply for may participate in an examination if the employee, employer, or carrier so requests. Proceedings shall be suspended and no compensation shall be payable for any period during which the employee refuses to submit such examination.

§21. Presumption.

In any proceedings for the enforcement of a claim for compensation under this Chapter, it shall be presumed, in the absence of substantial evidence to the contrary:

- (1) that the claim comes within the provisions of this Chapter;
- (2) that sufficient notice of such claim has been given;
- (3) that the injury was not proximately caused by intoxication of the injured employee;
- (4) that the injury was not occasioned by the willful intention of the injured employee to injure or kill himself or herself or other.

§22. Review of Compensation Order.

- (1) A compensation order shall become effective when filed in the office of the Administrator as provided in Section 20, and unless an appeal to the Board is instituted as provided in subsection (2) of this section, shall become final at the expiration of the 15th day thereafter.
- (2) Within 15 calendar days of the filing of a compensation award in the office of the Administrator, any party in interest may file a notice of appeal with the Board. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceedings unless upon application for an interlocutory injunction the court, on hearing, after not less than three days notice to the parties in interest and the Administrator, allows the stay of such payments, in whole or in part, where irreparable damage would otherwise ensue to the employer. The order of the court allowing any such stay shall contain a specific finding, based upon evidence submitted to the court and identified by reference thereto, that such irreparable damage would result to the employer, and specifying the nature of the damage.
- (3) Any person filing a notice of appeal as provided in subsection (b) of this Section shall at the same time file a written statement of objection to the Administrator's decision. Any parties in interest may file an opposing statement within 5 business days of service upon them of the appellant's statement. Oral argument before the Board shall be permitted upon the written request of any party in interest to the appeal, or upon the Board's own request, and shall be confined to the

written statements in support of or in opposition to the Administrator's decision. A majority of the authorized number of directors of the Board of Directors of the MISSA shall be a quorum, and a decision of the Board must be supported by a majority of the directors then in office. For the purpose of reviewing the Administrator's decision, the Board shall consider only the record which was before the Administrator; provided, the Board may consider additional facts if they are supported by substantial evidence, could not upon reasonable inquiry have been discovered earlier, and could materially have affected the Administrator's decision had they been known to the Administrator at the time the decision was rendered. Within 15 business days of the filing of the notice of appeal, the Board shall issue a written decision supported by written findings of fact and conclusions of law. The decision of the Board shall be a final administrator decision subject of judicial review.

- (4) If any employer or its offices or agents fails to comply with a final order of the Board making award, any beneficiary of such award or the Administrator may apply to the Republic Superior Court for enforcement of the order. If the court determines that the order was made and served in accordance with law and that such employer or his or her officers or agents have failed to comply therewith, the court shall enforce the order by injunction or other proper process.
- (5) The provision of the Administrative Procedure Act shall apply in any proceedings for suspending, setting aside, or enforcing a compensation order. In the event of any inconsistency between the provisions of this Chapter and the provisions of the Administrative Procedure Act, the provisions of this Chapter shall prevail. Except for a proceeding to suspend payments pending a final decision, no court proceeding may be brought until all available administrative remedies have been exhausted.

§23. **Modification of Awards.**

Upon his or her own initiative, or upon the application of any party in interest, on the ground of a change in conditions or because of a mistake in a determination of fact by the Administrator, the Administrator may, at any time prior to one year after the date of the last payment of compensation, whether or not a compensation order has been issued, or at any time prior to

one year after the rejection of a claim, review a compensation case in accordance with the procedure prescribed in Section 20, and in accordance with the provisions of such section issue a new compensation order which may terminate, continue, reinstate, increase or decrease such compensation or award of compensation. Such new order shall not affect any compensation previously paid, except that an award increasing the disability benefits may be made effective from the date of injury; and if any part of the disability benefits due or to become due is unpaid, an award decreasing the disability benefits may be made effective from the date of the injury, and any payment made prior to the time of the award in excess of such decreased rate shall be deducted from any unpaid disability benefits, in such manner and by such method as may be determined by the Administrator with the approval of the Board.

§24. Procedure Before the Administrator.

- (1) In making an investigation or inquiry or conducting a hearing the Administrator shall not be bound by common law or statutory rules of evidence or by technical or formal rules of procedure, except as provided by this Chapter, but may make such investigation or inquiry, or conduct such hearing in such manner as to best ascertain the rights of the parties. Declarations, whether oral or written, of a deceased employee concerning the injury in respect of which the investigation or inquiry is being made or the hearing conducted shall be received in evidence and shall, if corroborated by other evidence, be sufficient to establish the injury.
- (2) Hearings before the Administrator shall be open to the public and shall be recorded. The Board shall by regulation provide for the preparation of a record of the hearings and other proceedings before the Administrator.

§25. Witnesses.

No person shall be required to attend as a witness in any proceeding before the Administrator at a place outside the Republic; but the testimony of any witness may be taken by deposition or interrogatories according to the rules of practice of the Republic Superior Court.

§26. Witness Fees.

Witnesses summoned in a proceeding before the Administrator or whose depositions are taken shall receive the same fees and mileage as witnesses in the High Court.

§27. Cost in Proceedings Brought Without Reasonable Grounds.

If the court having jurisdiction of proceedings in respect of any claim or compensation order determines that the proceedings in respect to such claim or order have been instituted or continued without reasonable ground, the costs and attorneys' fees of such proceedings shall be assessed against the party who so instituted or continued such proceedings.

§28. Powers of the Administrator.

- (1) The Administrator shall have the power to preserve and enforce order during proceedings before her or him; to issue subpoenas for, to administer oaths to, and to compel the attendance and testimony of witnesses, or for the production of books, papers, documents, and other evidence, or the taking of depositions before any designated individual competent to administer oaths; to examine witnesses; and to do all things conformable to law which may be necessary to enable the effective discharge of the Administrator's duties.
- (2) If any person in proceedings before the Administrator disobeys or resists any lawful order or process, or misbehaves during a hearing at or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper, or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath as a witness, or after having taken the oath, refuses to be examined according to law, the Administrator shall certify the facts to the Republic's High Court which shall thereupon in a summary manner hear the evidence and if in the judgment of the court, the evidence so warrants, punish such person in the same manner and to the same extent as for contempt committed before the court, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of or in the presence of the court.

§29. Fees for Legal or Other Services.

No claim for legal services or for any other services rendered in respect of a claim or award for compensation, to or on account of any person, shall be valid for more than fifteen (15) percent of the total award of disability benefits and unless approved by the Administrator, or if proceedings for review of the order of the Administrator in respect of such claim or award are had before any court, unless approved by such court. Any claim so approved shall, in the manner and to the extent fixed by the Administrator or such court, be a lien upon such disability benefits.

§30. Record of Injury or Death.

Every employer shall keep a record of any injury to an employee. Such record shall contain such information of disease, other disability or death in respect of such injury as the Board may by regulation require, and shall be available for inspection by the Administrator or by other government authorities at such times and under such conditions as the Board may by regulation prescribe.

§31. Reports.

- (1) Within 10 days of the date of any injury or death, or of the date that the employer has knowledge of such injury or of a disease or infection in respect to such injury, the employer shall send to the administrator a report setting forth:
 - (a) the name, address, and business of the employer;
 - (b) the name, address, and occupation of the employee;
 - (c) the cause and nature of the injury or death or of the disease or infection arising from such injury;
 - (d) the year, month, day and hour, and the particular locality where the injury or death occurred; and such other information as the Administrator may require.

A copy of such report shall be sent at the same time to the employee.

- (2) Additional reports in respect of such injury and of the condition of such employee shall be sent by the employer to the Administrator at such times and in such manner as the Board may prescribe.

- (3) Any report provided for in subsections (a) or (b) shall not be evidence of any fact stated in such report in any proceeding in respect of any injury or death concerning which the report is made.
- (4) The employer may comply with the obligations of this Section by mailing any required report, with a copy thereof, first class postage prepaid, to the Administrator within the appropriate time limit prescribed in subsection (a) or (b).
- (5) Any employer who fails or refuses to send any report required of it by this Section shall be subject to a civil penalty not to exceed \$500 for each such failure or refusal.
- (6) Where the employer or the carrier has been given notice, or the employer (or his or her agent in charge of the business in the place where the injury or death of an employee occurs) fails, neglects, or refuses to file a report thereof as required by the provisions of subsection (a) of this section, the limitations in subsection (a) of section 14 of this Chapter shall not begin to run against the claim of the injured employee or the employee's survivors entitled to compensation, or in favor of either the employer other carrier, until such report shall have been furnished.

§32. Penalty for Misrepresentation.

Any person who wilfully makes any false or misleading statement or representation for the purpose of obtaining any benefit or payment under this Chapter or for the purpose of evading liability for any benefit or payment under this Chapter shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not more than One Thousand Dollars (\$1,000) or by imprisonment not to exceed one year, or both.

§33. Security of Compensation.

- (1) Every employer shall secure the payment of compensation under this Chapter by insuring and keeping insured the payment of such compensation with an insurer granted by a certificate of authority to transact general casualty insurance in the Republic. However, the Republic Government may make compensation payments under the provision of this Chapter from the Government Employee's Self-

Insurance fund referred to in Section 51 and need not otherwise secure compensation.

- (2) An employer who pays more than one-half the cost of medical insurance for an employee as a benefit of employment shall be required to secure the payment of medical services and supplier provided for in Section 8 of this Act only to the extent that such payment is not secured by the aforementioned medical insurance.

§34. Compensation For Injuries Where Third Persons are Liable.

The claim of an employee for compensation does not affect his or her claim or right of action for all damages proximately resulting from such injury or death against any person other than the employer. Any employer who pays, or becomes obligated to pay compensation, may likewise make a claim or bring an action against such third person and may recover in the same suit, in addition to the total amount of compensation, damages for which he or she was liable including all salary, wage, pension, or other emolument paid to the employee or to the employee's survivors.

If the employer shall recover from such other third person damages in excess of the compensation already paid or awarded to be paid under this Chapter, then any such excess shall be paid to the injured employee, or other person entitled thereto, less the employer's expenses, including reasonable attorneys fees, and cost of action.

In the absence of a written agreement that provides otherwise, an alleged third party tortfeasor, named in a suit by an injured employee or on behalf of a deceased employee, may not obtain indemnification, reimbursement, or contribution from an employer in excess of the amounts for which this Chapter mandates the employer compensate the injured or deceased employee.

§35. Compensation Notice.

Every employer who has secured compensation under the provisions of this Chapter shall keep posted in a conspicuous place in or about each of its places of business, typewritten or printed notices, in accordance with a form prescribed by the Board, stating that such employer has secured the payment of compensation in accordance with the provisions of this Chapter. Such notices shall contain the name and address of the carrier with whom

the employer has secure the payment of compensation and the date of the expiration of the policy.

§36. Substitution of Carrier for Employer.

In any case where the employer is not a self-insurer, in order that liability for compensation imposed by this Chapter may be most effectively discharged by the employer, and in order that the administrator of this Chapter in respect to such liability may be facilitated, the Board shall by regulation provided for the discharge, by the carrier for such employer, as it considers proper in order to effectuate the provisions of this Chapter. For such purposes:

- (1) notice to or knowledge by an employer of the occurrence of the injury shall be deemed notice to or knowledge by the carrier;
- (2) jurisdiction over the employer by the Administrator, the Board, or any court under this Chapter shall be sufficient to confer jurisdiction over the carrier, and
- (3) any requirement by the Administrator, the Board, or any court under any compensation order, finding, or decision shall be binding upon the carrier in the same manner and to the same extent as upon the employer.

§37. Insurance Policies.

- (1) Every policy or contract of insurance issued under authority of this Chapter shall contain:
 - (a) A provision to carry out the provisions of section 36, and A provision that the insolvency or bankruptcy of the employer or the employer's discharge in any insolvency of bankruptcy proceedings, or both, shall not relieve the carrier from payment of compensation for disability or death sustained by an employee during the period covered by such policy or contract.
 - (b) No contract or policy of insurance issued by a carrier under this Chapter shall be cancelled prior to the date specified in such contract or policy for its expiration until at least 30 days after a notice of cancellation has been sent to the Administrator

and to the employer in accordance with the provision of subsection (c) of Section 13.

§38. Certificate of Compliance with the Law.

Within 30 days of the effective date of this Act every employer shall file with the Administrator a certificate that payment of compensation to the employer's employees is secured as required in Section 33 of this Chapter.

§39. Penalty for Failure to Secure Payment of Compensation.

(1) Civil Penalty.

The Administrator shall assess against any employer required to secure the payment of compensation under this Chapter who fails to secure such compensation a civil fine of not more than One Hundred Dollars (\$100) per day for each day such failure continues.

(2) Criminal Penalty.

(a) In addition to the other penalties provided for in this Chapter, any employer required to secure payment of compensation or required to make payment such compensation under this Chapter, who fails to do so, shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars (\$1,000) or by imprisonment for not more than one year, or both. Where such employer is a corporation, the president, secretary, and treasure thereof shall be liable for imprisonment as provided herein, and shall be jointly and severally liable personally for such fine and for any compensation or other benefit which may accrue under this Chapter in respect to any injury which may occur to any employee of such corporation during such time as it fails to secure the payment of compensation as required by Section 33 of this Chapter.

(b) Any employer who knowingly transfers, sells, encumbers, assigns, or in any other manner dispose of, or who conceals, secretes, or destroys property belonging to such employer, after one of its employees has been injured within the purview of this Chapter, with the intent to avoid the payment of compensation under this Chapter to such employee or survivors of such employee, who are entitled to compensation,

shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than One Thousand Dollars (\$1,000), or by imprisonment for not more than one year, or both. Where such employer is a corporation, the president, secretary, and treasurer thereof shall be liable for imprisonment as provided for herein, and shall be jointly and severally liable personally for such fine.

- (3) This Section shall not excuse or diminish any other liability of the employer under this Chapter.

PART 3. WORKERS COMPENSATION BOARD.

§48. Administration.

- (1) Except as otherwise specifically provided, the Workers' Compensation Board shall administer the provision of this Chapter, and for such purpose the Board may:
- (a) make rules and regulations in conformance with this Chapter, including any requirements it's reasonably determines are necessary to assure timely payment of compensation and reporting by insurance carriers of compensable injuries;
 - (b) select technical assistants, medical advisors, offices, and employees, as its deems necessary; and make from appropriate funds such expenditure (including expenditures for personal services, rent, law books of reference, periodicals, and printing, binding and other necessities) as it deems necessary for the proper administration of this Chapter.
 - (c) The Board of Directors of the MISSA shall serve as the Workers' Compensation Board. Whenever possible persons employed by the MISSA shall also render services to the Workers' Compensation Board. If any member of the Board is removed from office or for any reason ceases to act as a member, all of his or her official records and papers shall be transferred to the Board. No member nor any business associate of a member shall appear as attorney in any proceedings under this Chapter, and no member shall act in

any such case in which he or she has an interest, or when he or she is employed by any party in interest or related to any party in interest by consanguinity or affinity within the third degree as determined by the common law.

- (2) The Workers' Compensation Administrator shall be same as the Administrator of the MISSA or his or her designee, approved by a majority vote of the Board. The term of a designated Administrator shall be four years. The Administrator shall maintain and keep open a Workers' Compensation office during reasonable business hours.

§49. Investigations by the Board.

- (1) The Board shall make studies and investigations with respect to safety provisions, and causes of injuries in employment covered by this Chapter, and shall from time to time make to the Nitijela and to employers and carriers recommendations of means to prevent such injuries.
- (2) In making such studies and investigations, the Board may:
 - (a) Cooperation with any agency charged with the duty of enforcing any law securing safety against injury in any employment covered in this Chapter, or with any agency engaged in enforcing any laws to assure safety for employees; and
 - (b) permit any such agency to have access to the records of the Board. In carrying out the provisions of this section, the Board or any officer or employee of the Board is authorized to enter at any reasonable time upon the premises, tracks, wharf, dock, or to enter any building, where an employment covered by this Chapter is being carried on, and to examine any tool, appliances, or machinery used in such employment.

§50. Special Disability Fund.

- (1) A Special Disability Fund is established in the Republic for the purpose of making payments in accordance with the provisions of subsection (f) of Section 9 of this Chapter. Such Fund shall be administered in accordance with the provisions of the MISSA Act.
- (2) Payments into the Fund shall be made as follows:

- (a) Each employer shall contribute Ten Thousand Dollars (\$10,000) for the death of an employee of such employer resulting from injury where the Administrator determines that there is no person entitled, under this Chapter, to disability benefits for such death.
 - (b) Each insurer providing security for payment of workers' compensation claims under this Chapter shall annually pay 2% (two percent) of the total premium paid for such security during the preceding year. Except, in any year in which the Special Disability Fund has sufficient monies to meet its actuarially predicted obligations, the Board may waive these payments by insurers.
 - (c) All amounts collected as fines and penalties under the provisions of this Chapter shall be paid into the Fund.
- (4) The Administrator shall deposit any monies paid into the Fund into such depository banks as the Board may direct. The Board may invest any portion of the funds which is not needed for current requirements in bonds or notes of the United States or Republic or of any insured Bank of the Republic.
 - (5) Neither the Republic nor the MISSA shall be liable in respect of payments authorized under Section 7 in an amount greater than the money or property deposited in or belonging to such Fund.

However, should the Board find that the present obligations of the Fund exceed the Fund balance; the Board shall immediately report such deficit to the Nitijela.
 - (6) The account for the Fund shall be subject to audit in accordance with established auditing procedures of the Republic which resembles the United States auditing codes, but the action of the Board in making payments from such fund shall be final and not subject to review.
 - (7) Should the Board determine, based on the Fund balance and the actuarially predictable obligations of the Fund, that an excess of funds exists in the Fund, then the Board may release such excess funds to the General Fund of the Republic.

§51. RMI Government Self-Insurance Fund.

- (1) The Nitijela may establish, out of any money in the General Fund not otherwise appropriated, a fund sufficient to secure compensation payments under this Chapter in respect of employees of the Government, its agencies and instrumentalities, including any public corporation.
- (2) The Secretary of Finance shall be the custodian of such fund and may disburse monies from such fund only upon the order of the Board. The Secretary of Finance shall deposit any monies appropriated or paid into such fund into such depository banks as the Board may designate, and may invest any portion of the funds which in the opinion of the Board is not needed for current requirements, in bonds or notes of the Republic or United States or of any insured Bank in the Republic.
- (3) The account for such fund shall be subject to audit in accordance with established auditing procedures of the Republic, but actions of the Board in making payments from such fund shall be final and not subject to review.
- (4) With respect to Republic employees, the Administrator may authorize direct compensation payments from such fund or, if its deems desirable, insure and keep insured the payment of such compensation with any stock company or mutual company or association.

§52. Annual Report.

The Board shall report to the Nitijela at the beginning of each calendar year a report of the administration of this Chapter for the preceding fiscal year, including a detailed statement of receipts of and expenditures from the funds established or authorized in Section 50 and 51. Annually the Board shall advise the Nitijela of needed changes in the laws of the Republic regarding compensation of workers for injuries sustained while working and shall provide data from other jurisdictions on amounts of compensation payable therein.

§53. Effects of Unconstitutionality.

If any part of this Chapter is adjudged unconstitutional by the courts, and such adjudication has the effect of invalidating any payment of compensation under this Chapter, the period intervening between the time the injury was sustained and the time of such adjudication shall not be computed as a part of the time prescribed by this Chapter for the commencement of any action against the employer in respect of such injury; but the amount of any compensation paid under this Chapter on account of such injury shall be deducted from the amount of damages awarded in such action in respect of such injury.

§54. Compensation Rates.

Nothing in this chapter shall prevent an employer or employee from purchasing insurance coverage in addition to that coverage required by this chapter.

§55. Reserved.**§57. Transitional provision.**

This Chapter shall be implemented after one year from the date of certification of this law.

§58 Severability.

If any provision of this Act or any rule, regulation, or promulgated hereunder, or the application of any such provision, rule, regulation, or order to any person or circumstances shall be held invalid by a court of competent jurisdiction, the remainder of this Act or any rules, regulation, rules or order to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

§59. Effective Date.

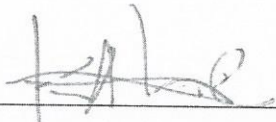
This act shall be effective on the date of certification pursuant to the Constitution and the Rules of Procedures of the Nitijela, and subject to other sections of this Chapter.

CERTIFICATE

I hereby certify:

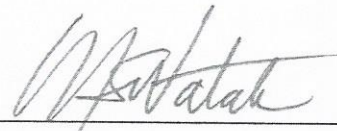
1. That Nitijela Bill No: 49 was passed by the Nitijela of the Republic of the Marshall Islands on the 20th day of September 2019; and
2. That I am satisfied that Nitijela Bill No: 49 was passed in accordance with the relevant provisions of the Constitution of the Republic of the Marshall Islands and the Rules of Procedures of the Nitijela.

I hereby place my signature before the Clerk this 30th day of September 2019.



Hon. Kenneth A. Kedi
Speaker
Nitijela of the Marshall Islands

Attest:



Morean S. Watak
Clerk
Nitijela of the Marshall Islands

