

WORKERS COMPENSATION FUND



Employers' role towards the commencement of the Workers' Compensation Fund

The Workers Compensation Act, 2008 (The Act) repealed the Workers Compensation Act Cap. 263 RE 2002. The Act provides for *compensations to employees of disablement, death, injury or diseases sustained or contracted in the course of employment*. The Act applies only in mainland Tanzania and covers all employers and employees in both private and public sectors. The predecessor Act of 2002 covered all of Tanzania in general subject to the Minister gazetting a notice specifying that any such area as applicable under the repealed Act.

1. Establishment of Workers Compensation Fund.

The Workers Compensation Fund (The Fund) is established under Section 5 of the Act. The objective of the Fund is to handle, inquire and adjudicate matters concerning accidents, deaths and occupational diseases of employees during the course of employment. The Fund also assesses the compensation appropriate to the employee or dependents of the deceased employee. For example, the dependents of an employee traveling to China for a business trip on behalf of an employer and who dies as a result of an airplane crash shall be entitled to compensation.

2. Operations and Scope of the Fund.

Although the Act has been operational for over five (5) years, the Fund had been non-existent until recent when the Director General of the Fund revealed the Fund's commencement of operations.

From 1st July, 2015 operation of the Fund shall directly affect employers in both public and private sectors. The Fund is mandated to exercise its powers over employees in the private sector, public servants, and all employees working in Tanzanian ships or aircrafts, or employees working abroad temporarily for employers based in Tanzania. Manual and casual workers, such as housemaids and shamba boys are included in the definition of an employee under the Act.

According to the Minister of Labour, the Fund will operate in the form of a social security insurance and pension to provide benefits in case of injury or death while on duty. According to the Act, employers are required to, among other compliances, register with the Fund, file returns, keep records of the employees and make contributions to the Fund.

3. Contributions from employers.

Employers will be distributing their risks by making annual contributions to the Fund. In case employees suffer death, injuries or diseases, the Fund will be obliged to pay them or their dependents compensation. This is regardless of the longevity of contributions by their employers. According to the notice published in the media by the Fund's Director General read together with the Government Notice No. 169 of 2015, employers from private sector shall contribute 1% of their annual wage bill. Employers from the public sector shall contribute 0.5% of their annual wage bill. This shall be for the period of one year starting 1st July 2015. The contributions shall be made on monthly basis. Failure to register at the prescribed time and in the prescribed manner amounts to an offence and on conviction shall be punishable by a fine of not exceeding Tanzanian Shillings Fifty million or a prison term of five (5) years, or both.

4. **More compliance requirements on the employer.**

Factory owners also have to comply with the requirements under the Occupational Health and Safety Act (OSHA). These include: duty to fence prime movers and transmission machinery and provision of safety gear or appliances to their employees. In case an employee is injured, sustains an occupational disease or dies in the course of employment, the employer will be required to comply with the requirements of the Fund and the Chief Inspector under the Occupational Health and Safety Act. Factory owners shall also be subjected to regular inspections by OSHA inspectors which add further costs thereto.

Obligations of the employers under the Act include;

1. Registering with WCF
2. Keeping of records
3. Assisting employees and dependents
4. Informing employees of their rights.

5. **Compensation by the Fund does not decimate civil liability on the employer.**

○ **Liability to the employee.**

Compensation from the Fund does not decimate civil liabilities of the employer. An employee or dependents of the employee can still sue the employer in a civil suit if the accident, death or occupational disease was sustained by negligence, breach of duty or any wrongful act committed by the employer. However, the award granted in such a civil suit shall be reduced by the value of any compensation which has been paid by the Fund.

○ **Liability to indemnify the Director General.**

Furthermore, the Director General of the Fund can still sue the employer for the compensation he is required to pay, or has paid to the employee or dependents of the employee in a situation where the employer is alleged to have been negligent, in breach of duty or committing a wrongful act causing the said accident, injury, disablement or death.

6. Compensation to an employee injured while committing a misconduct.

Where an accident is attributed to a serious misconduct by an employee, compensation is only payable if the accident results in permanent and total disablement or if the employee dies and leaves dependents.

7. Benefits to the employees under the Fund

The Fund offers the following benefits to employees; medical aid, rehabilitation benefits, compensation for temporary and permanent disablement, dependents and funeral grants. Assessment of the benefits and duration is in accordance to the law and discretion of the Director General.

8. Controversy between powers of the Director General and the Commission of Mediation and Arbitration (CMA).

The Director General, under the Act, has the power to determine if a person is an employee, employer or dependent of an employee. Under the *Employment and Labour Relations Act (ELRA)*, CMA and higher courts have been granted with the jurisdiction to declare the same. In the event where both parties (employer versus employee or dependents) receive conflicting rulings from the above bodies, it is unclear as what decision will prevail or override the other. There is, therefore need to align the provisions in both legislation to cure the possible conflict of powers given by the two laws.

Breakthrough Attorneys is of the view that the powers to determine whether one is an employee or employer of the other should remain solely with the labour tribunals under the ELRA. Thus, in the event the Director General is faced with such question he should make reference to any such tribunal for determination. This will avoid conflicting decisions. Questions on whether one is a rightful dependent or not can easily be referred to ordinary civil courts of competent jurisdiction as well.

9. Inequities to employers of different levels of wage-bills.

As mentioned in paragraph 3 above, employers are required to contribute to the Fund. It is not clear why employers in the private sector are required to contribute more than the public sector. That is 1% for private sector and 0.5% for the public sector.

Furthermore, the wage-bills for the purpose of contributions to the Fund by the employers differ in terms of number of employees and the salaries paid. Admittedly, companies with most high grade and bigger number of employees will contribute more to the Fund than others.

The inequity dilemma here is that, there are, for example, industries which are prone to have most of their employees sustain occupational diseases, injuries and death in the course of employment while their wage-bill contributions are minute. The other side of this inequity is that some companies with large wage-bill contributions to the Fund are comprised of large percentages of white-collar employees who are unlikely to suffer occupational accidents. Sectors such as the mining, oil and gas and manufacturing are likely to benefit more from the Fund's collective pot as compared to other sectors, such as banking industry.

We at **Breakthrough Attorneys** opine that the Fund should categorize the contributions by thresholds. Accident prone industries should have their own categories of contributions different from other sectors. Furthermore, thresholds can also be categorized according to the wage-bills. This will help strike a balance between those companies that pay large salaries and those that pay less. After all, the concept of insurance at large is based on risks and their probabilities versus varying premiums.

Offences under the Act against employers, among others, include employer deducting from the employees' wage in order to contribute to the Fund, failure to register to the Fund, failure to notify the Director General concerning an occupational injury, disease or death etc. An offender shall be liable to a prison term or fine or both, upon conviction.

Breakthrough Attorneys is of a considered view that both employers and employees and their dependents are likely to benefit from the Fund. Employees who have permanent disablement will receive monthly payments for the rest of their lives. The Act does not only cover spouse and children of the deceased but may also cover parents, siblings and grandparents.

The employer no longer has to cover for the medical bills or funeral services unless it is either by choice or order of the Court. The Fund is responsible to bear that cost. If the employer incurs cost related to duties conferred to the Director General under the Act, the employer shall be entitled to a refund from the Director General. Further we are of the view that the Fund should maintain a sophisticated computerized system to ensure fair and just service to the public, without giving loophole to bureaucratic mismanagement and corrupt practices by the Fund officials.

Due to the harshness of the penalties and need for success of the Fund, it is important that employers should be fully informed of the compliance requirements stipulated in the Act. For example, there are key questions that employers should know answers to.

- *What to do when the employer is informed of a death of an employee?*
- *What are the time limits?*
- *What are the consequences for failure to comply with various requirements under the Act?*

According to the Act, failure of an employer to comply with the notice of assessment within the prescribed time constitutes an offence and on conviction the employer may be liable to a prison term of ten (10) years or a fine of Fifty million Tanzanian shillings or both.