

SAMOA

Arrangement of Provisions

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2009, No. 20

AN ACT to amend the Accident Compensation Act 1989.

[27th October 2009]

BE IT ENACTED by the Legislative Assembly of Samoa in Parliament assembled as follows:

1. Short title and commencement-(1) This Act may be cited as the Accident Compensation Amendment Act 2009 and shall be read together with and form part of the Accident Compensation Act 1989 (“the Principal Act”).

(2) This Act commences on the date of assent by the Head of State, except sections 14 and 15 which are deemed to commence on 1 September 2003 and have retrospective effect.

2. Interpretation – Section 2 of the Principal Act is amended:

(a) in subsection (1), by deleting the definition of the term ““Accidents” or “personal injury by accident”” and substituting the following:

““Accident” means any of the following kinds of occurrences:

(a) a specific event or a series of events, other than a gradual process, that:

(i) involves the application of a force (including gravity), or resistance, external to the human body; or

(ii) involves the sudden movement of the body to avoid a force (including gravity), or resistance, external to the body; or

(iii) involves a twisting movement of the body;

(b) the inhalation of any solid, liquid, gas, or foreign object on a specific occasion, which kind of occurrence does not include the inhalation of a virus, bacterium, protozoan, or fungus, unless that inhalation is the result of the criminal act of a person other than the injured person;

(c) the oral ingestion of any solid, liquid, gas, fungus, or foreign object on a specific occasion, which kind of occurrence does not include the ingestion of a virus,

- bacterium, or protozoan, unless that ingestion is the result of the criminal act of a person other than the injured person;
- (d) a burn, or exposure to radiation or rays of any kind, on a specific occasion, which kind of occurrence does not include a burn or exposure caused by exposure to the elements;
 - (e) the absorption of any chemical through the skin within a defined period of time not exceeding one (1) month;
 - (f) any exposure to the elements, or to extremes of temperature or environment, within a defined period of time not exceeding one (1) month, that:
 - (i) for a continuous period exceeding one (1) month, results in any restriction or lack of ability that prevents the person from performing an activity in the manner or within the range considered normal for the person; or
 - (ii) causes death,

provided that where a person has suffered a personal injury, this shall not of itself be construed as an indication or presumption that it was caused by an accident.”;

- (b) after subsection (1), by inserting the following new subsection:

“(1A) For the purposes of this Act, a Member of Parliament shall be deemed to be a worker employed by the Government of Samoa.”.

3. Continuation of Corporation – Section 4 of the Principal Act is amended by:

- (a) deleting subsection (2)(f) and substituting the following:

“(f) five (5) other members appointed by the Head of State acting on the advice of Cabinet as follows:

(i) one (1) shall be a barrister and solicitor of the Supreme Court of Samoa;

(ii) one (1) shall be a registered medical practitioner;

(iii) one (1) shall be a registered public accountant;

(iv) one (1) shall be acquainted with the customs and traditions of the people of Samoa; and

(v) one (1) shall be a representative of workers to be recommended by the Corporation based on the advice of the General Manager of the Corporation.”;

(b) after subsection (2), inserting the following new subsection:

“(2A) From 1 July 2010:

(a) no member of Parliament or public servant shall be a member of the Corporation or be re-appointed as a member of the Corporation unless Cabinet has certified that such appointment or re-appointment, as the case may be, is necessary; and

(i) in the national interest; and

(ii) that the member of Parliament or public servant, as the case may be, has particular qualifications or business experience which the Corporation requires and such qualifications or business experience cannot be found elsewhere; and

- (b) where a member of Parliament or public servant is appointed or re-appointed under this section the person shall not receive remuneration or other benefits from the Corporation for services as a member.”.

4. Functions and duties in relation to safety and rehabilitation – Section 13(1) of the Principal Act is amended by deleting “motor vehicle” and substituting “Specified Conveyance”.

5. Workers – Section 16 of the Principal Act is amended by inserting immediately after subsection (2), the following new subsections:

“(2A) Notwithstanding anything in this provision but subject to subsection (2B), any person who:

- (a) has had an accident but had not been a worker within 60 days from the day of the accident; and
- (b) had worked for a period of not less than 12 months prior to the accident,

shall be deemed to be a worker for the purposes of this Act.

(2B) When calculating compensation to be awarded to a person deemed to be a worker under subsection (2A), the Corporation shall only issue compensation calculated at the ordinary rate of pay for the work in which the person was last employed, and in relation to dependants, where death occurs, compensation shall only be made payable to dependants of the worker existing at any time between the person’s last day of employment and the time of the accident.”.

6. Insertion of new section – The Principal Act is amended by inserting immediately after section 16, the following new section:

“16A. Spouse of worker-(1) Subject to subsections (2) and (3), where following an accident, caused by or in connection with the use of a Specified Conveyance in Samoa, the spouse of a worker suffers total or partial incapacity, there shall be paid to the worker by the Corporation during any period of incapacity of the worker’s spouse the weekly payment which is equal to 70% of the minimum wage to be in effect as from the time of the accident.

(2) Notwithstanding subsection (1), any amount made payable to the spouse of a worker under subsection (1) shall only be made for a period of no longer than three (3) months in the aggregate.

(3) Any person paid, or entitled to be paid, by the Corporation under section 35 is not entitled to any payment under this section.

(4) In this section, “spouse” means a non-worker who is either a man or woman who:

(i) is legally married to the worker; or

(ii) not being married to the worker, has cohabited with the worker immediately preceding the date of the accident, and in the opinion of the Corporation, has entered a relationship in the nature of marriage with the worker.”.

7. Accidents occurring outside Samoa – Section 18 of the Principal Act is amended by inserting immediately after subsection (2), the following new subsections:

“(2A) Where an accident happens to a worker outside Samoa and that worker continues to receive wages from his or her Samoan employment up to the

time of the accident, that worker shall be entitled to all other compensation payable under this Act as may be incurred by a worker in respect of his or her treatment overseas except for expenses specified under subsection (2B).

(2B) Expenses for which workers under subsection (2A) shall not be entitled to shall be those under sections 31 and 32, and in relation to expenses under section 27, such workers shall only be entitled to funeral grants and not medical expenses.”.

8. Insertion of new section – The Principal Act is amended by inserting immediately after section 22, the following new section:

“22A. Double payment of compensation-(1) Despite anything in this Act, no person shall be entitled to receive compensation under this Act where such person is determined by the Corporation to be receiving compensation from a similar scheme in another country.

(2) Where a person is determined to be receiving compensation from a similar scheme overseas, the Corporation shall be entitled to seek a refund of the monies which have been awarded to the person under this Act and such monies shall be treated as a debt owing to the Corporation.

(3) Any person who fraudulently declares, whether in writing or not, to the Corporation that they are not receiving compensation from a similar scheme in another country commits an offence and upon conviction shall be punishable to a fine not exceeding 10 penalty units or imprisonment not exceeding five (5) years or to both such fine and imprisonment .”.

9. Compensation for temporary incapacity resulting in economic loss – Section 23(2)(b)(ii) of the Principal Act is amended by deleting “\$400” where it appears and substituting \$1,000”.

10. Permanent injury compensation - Section 24(2) of the Principal Act is amended by deleting “\$400” and substituting “\$1,000”.

11. Compensation for occupational diseases – Section 25 of the Principal Act is amended by inserting immediately after subsection (3) the following new subsections:

“(4) In this section, “disease” means any of the diseases listed in the Third Schedule.

(5) The Third Schedule may be amended from time to time by Notice in writing by the Minister published in the Savali.”.

12. Compensation in the case of death - Section 26 of the Principal Act is amended by:

(a) in subsection (2)(a), deleting “\$200” and substituting “\$1,000”;

(b) in section (3)(a), deleting “\$200” and substituting “1,000”; and

(c) in subsection (5), deleting “fourth” and substituting “fifth”.

13. Medical expenses and funeral grant – Section 27(2)(a) of the Principal Act is amended by deleting “\$2,000” and substituting “\$4,000”.

14. Provision of artificial limb or aid - Section 28 of the Principal Act is amended by deleting “\$15,000” and substituting “\$150,000”.

15. Treatment overseas in special cases - Section 33(1) of the Principal Act is amended by deleting “\$15,000” and substituting “\$150,000”.

16. Insertion of new sections - The Principal Act is amended by inserting immediately after section 33 the following new sections:

“33A Care Living Allowance-(1) Subject to subsections (4) and (5), the Corporation may award a living allowance for the care needs of a person who has suffered as a result of an accident, whether the person resides alone or with other persons, provided that such assistance per week to that person does not exceed an amount equal to 60% of the minimum wage per week at the time of the accident under section 19 of the Labour and Employment Act 1972.

(2) In awarding a care living allowance under this section, the Corporation must consider whether the person’s disability is sufficiently severe for the person to suffer at least one of the following difficulties:

- (a) the person requires assistance with washing, dressing, eating, getting to and using the toilet, or communicating their needs; or
- (b) the person is virtually unable to use both hands, or has no hands, and needs supervision so as to avoid putting him or herself or others in substantial danger.

(3) The Corporation may determine, amend and revoke from time to time guidelines relating to the awarding of an allowance under this section, provided that any guidelines so made are to be made in accordance with subsection (2).

(4) No person shall be entitled to an allowance under this section:

- (a) where the Corporation has already awarded an allowance under section 33B to the person;
- (b) where the person is receiving compensation under section 23; or
- (c) where the person is being cared for in a hospital.

(5) Despite anything in this section but subject to subsection (6), a care living allowance under this provision shall only be awarded for 10 years for an accident.

(6) Every 10 year period mentioned in subsection (5) shall commence from the date of the first payment of an allowance awarded under this section.

33B. Mobility Allowance-(1) Subject to subsection (5), the Corporation may award a allowance for the mobility needs of a person who has suffered as a result of an accident, whether the person resides alone or with other persons, provided that such assistance per week to that person does not exceed an amount equal to 60% of the minimum wage per week at the time of the accident under section 19 of the Labour and Employment Act 1972.

(2) In awarding a mobility allowance under this section, the Corporation must consider the matters set out under subsection (3).

(3) In determining the eligibility of a person to a mobility allowance under this section, the Corporation must consider whether the person's disability is sufficiently severe for the person to suffer at least one of the following difficulties even where the person is wearing or using an aid or equipment to assist with his or her movement:

- (a) the person must be unable to or virtually unable to walk, or have no feet;
- (b) the person is assessed by a registered medical practitioner to be 100% disabled because of the loss of eyesight;
- (c) the person is assessed by a registered medical practitioner to be 100% disabled because of loss of hearing;

(d) the person is assessed by a registered medical practitioner to be severely mentally impaired so as to cause severe behavioural problems and requires supervision throughout the day and during the night to avoid the person from putting him or herself or others in substantial danger; or

(e) the person's effort to walk could threaten the person's life or seriously affect the person's health.

(4) The Corporation may determine, amend and revoke from time to time guidelines relating to the awarding of an allowance under this section, provided that any guidelines made are to be made in accordance with subsection (3).

(5) No person shall be entitled to an allowance under this section where:

(a) the Corporation has already awarded a care living allowance under section 33A to the person;

(b) the person is receiving compensation under section 23; or

(b) the person is being cared for in a hospital.

(6) Despite anything in this section but subject to subsection (7), a mobility allowance under this provision shall only be awarded for 10 years for an accident.

(7) Every 10 year period mentioned in subsection (6) shall commence from the date of the first payment of an allowance awarded under this section.”.

17. Limitation of time for submitting claims - Section 41 of the Principal Act is deleted and substituted as follows:

“No claim for compensation shall be considered by the Corporation unless the claim is made within 10 years from the date of the accident causing injury, or, in the case of death, within 10 years after the date of death.”.

18. Insertion of new section - The Principal Act is amended by inserting immediately after section 68 the following new section:

“68A Special payment upon death without accident or injury-(1) Despite any other provision of this Act, there shall be paid to an approved family member of a deceased worker an amount not exceeding the sum of \$4,000 upon the death of the worker.

(2) In this section:

“approved family member” means a member or members of the deceased worker’s family approved by the Corporation;

“deceased worker” means a worker who has died of natural causes and not as a result of an accident or injury arising from an accident which would be compensable under the provisions of this Act.”.

19. Insertion of new Schedule – The Principal Act is amended by inserting immediately after the Second Schedule, the following new Schedule:

“THIRD SCHEDULE

Section 25

Diseases

1. Pneumoconioses caused by sclerogenetic mineral dust (silicosis, anthraco-silicosis, asbestosis) and silico-tuberculosis, provided that silicosis is an essential factor in causing the resultant incapacity or death.
2. Lung cancer or mesothelioma diagnosed as caused by asbestos.
3. Diseases of a type generally accepted by the medical profession as caused by beryllium or its toxic compounds.

4. Diseases of a type generally accepted by the medical profession as caused by phosphorus or its toxic compounds.
5. Diseases of a type generally accepted by the medical profession as caused by chrome or its toxic compounds.
6. Diseases of a type generally accepted by the medical profession as caused by manganese or its toxic compounds.
7. Diseases of a type generally accepted by the medical profession as caused by arsenic or its toxic compounds.
8. Diseases of a type generally accepted by the medical profession as caused by mercury or its toxic compounds.
9. Diseases of a type generally accepted by the medical profession as caused by lead or its toxic compounds.
10. Diseases of a type generally accepted by the medical profession as caused by carbon bisulfide.
11. Diseases of a type generally accepted by the medical profession as caused by the toxic halogen derivatives of hydrocarbons of the aliphatic series.
12. Diseases of a type generally accepted by the medical profession as caused by benzene or its toxic homologues.
13. Diseases of a type generally accepted by the medical profession as caused by nitro- and amido-toxic derivatives of benzene or its homologues.
14. Diseases of a type generally accepted by the medical profession as caused by ionising radiations.
15. Primary epitheliomatous cancer of the skin diagnosed as caused by tar, pitch, bitumen, mineral oil, anthracene, or the compounds, products, or residues of these substances.
16. Anthrax infection.
17. Leptospirosis diagnosed as caused by working with animals or their carcasses.
18. Brucellosis diagnosed as caused by working with animals or their carcasses.
19. Orf diagnosed as caused by working with animals or their carcasses.

20. Streptococcus suis diagnosed as caused by working with animals or their carcasses.
21. Angiosarcoma of the liver diagnosed as caused by vinyl chloride monomer.
22. Byssinosis diagnosed as caused by working with cotton, flax, hemp, or sisal dust.
23. Pneumoconiosis diagnosed as caused by tin, iron oxide, barium, or cobalt.
24. Diseases of a type generally accepted by the medical profession as caused by tungsten.
25. Hand-arm vibration syndrome diagnosed as caused by hand and/or arm vibration.
26. Sino-nasal carcinoma diagnosed as caused by working with wood dust.
27. Diseases of a type generally accepted by the medical profession as caused by ethylene oxide.
28. Extrinsic allergic alveolitis diagnosed as caused by work involving the inhalation of organic dusts.
29. Naso-pharyngeal carcinoma diagnosed as caused by formaldehyde.
30. Laryngeal carcinoma diagnosed as caused by sulphuric acid mists or organic solvents.
31. Lung cancer diagnosed as caused by bis (chloromethyl) ether (and chloromethyl methyl ether), cadmium, coke oven emissions, nickel, radon, silica, or soot.
32. Primary epitheliomatous cancer of the skin diagnosed as caused by shale oil.
33. Bladder carcinoma diagnosed as caused by 2-naphthylamine, benzidine, 4-aminobiphenyl, N, N-Bis (2-chloroethyl)-2-naphthylamine, other aromatic amines, or poly-cyclic aromatic hydrocarbons.
34. Hodgkin's lymphoma diagnosed as caused by wood dust.
35. Chronic solvent-induced encephalopathy diagnosed as caused by organic solvents, particularly styrene, toluene, xylene, trichloroethylene, methylene chloride, or white spirit.

36. Peripheral neuropathy diagnosed as caused by organic solvents such as n-hexane, carbon disulphide, or trichloroethylene; pesticides such as organophosphates; acrylamide.
37. Occupational asthma diagnosed as caused by recognised sensitising agents inherent in the work process such as, but not limited to, isocyanates, certain wood dusts, flour dusts, animal proteins, enzymes, and latex.
38. Chronic obstructive pulmonary disease diagnosed as caused by coal, silica, cotton dust, or grain dust.
39. Chronic renal failure diagnosed as caused by metals such as cadmium or copper, including via welding fumes.
40. Occupational allergic contact dermatitis diagnosed as caused by recognised sensitising agents inherent in the work process such as, but not limited to, nickel and other metals, rubber additives, resins, petroleum distillates, solvents, soaps, detergents, and plant allergens.
41. Vitiligo diagnosed as caused by para-tertiary-butyphenol, para-tertiary-butylcatechol, para-amylphenol, hydroquinone, or the monobenzyl or monobutyl ether of hydroquinone.
42. Subcutaneous cellulites hand (Beat hand) as caused by manual labour causing severe or prolonged friction or pressure on the hand.
43. Subcutaneous cellulitis or acute bursitis arising at or about the knee (Beat knee) as caused by manual labour causing severe or prolonged friction or pressure at or about the knee.
44. Subcutaneous cellulitis or acute bursitis arising at or about the elbow (Beat elbow) as caused by manual labour causing severe or prolonged friction or pressure at or about the elbow.
45. Inflammation of the synovial lining of the wrist joint and tendon sheaths as caused by manual labour, or frequent or repeated movement of the hand or wrist.

46. Tuberculosis as caused by 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) as a research worker engaged in research in connection with tuberculosis;
 - (d) as a laboratory worker, pathologist or post-mortem worker, where the occupation involves working with material which is a source of tuberculosis infection or in any occupation ancillary to such employment.”

**The Accident Compensation Amendment Act 2009
is administered by the Accident Compensation Corporation.**

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