

**THE WORKER'S COMPENSATION  
(AMENDMENT) ACT, NO.5 OF 2005**

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**ACT NO.5 OF 2005**

**I ASSENT**

**{AMANI ABEID KARUME}  
PRESIDENT OF ZANZIBAR  
AND  
CHAIRMAN OF THE REVOLUTIONARY COUNCIL**

1 July, 2005

**AN ACT TO AMEND THE WORKMEN'S  
COMPENSATION ACT, 1986**

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**ENACTED** by the House of the Representatives of Zanzibar.

Short title and commencement.

1.(1) This Act may be cited as the Worker's Compensation (Amendment) Act, 2005 and shall be read as one with the Workmen's Compensation Act, 1986 hereinafter referred to as the "principal Act".

(2) This Act shall come into operation on such date as the Minister may, by notice in the Gazette, appoint.

Amendment of section 1.

2. Section 1 of the principal Act is amended by replacing "Workmen's" with "Workers" and wherever the words "workmen" or "workman" appears in the Principal Act, they shall be replaced with "workers" or "worker" respectively.

General amendment.

3. (1) The principal Act is generally amended by adding "or she", "or her" immediately after "he" or "him" respectively wherever the two words appear.

(2) The principal Act is amended by replacing the word "Decree" wherever it appears and substitute therefore the word "Act".

Amendment  
of section 2.

4. Section 2 of the principal Act is repealed and replaced as follows:-

"Application  
the Act.  
SO  
2.(1) Subject to the provisions of subsection  
(2) of this Act shall apply to all workplaces as  
defined in the Occupational Safety and Health Act,  
2005.

(2) This Act shall not apply to workers  
employed in the Union Government.

(3) The Minister may, in consultation with  
the Labour Advisory Board, exempt from the  
application of this Act, any worker or workers".

Amendment  
of section 3.

5. Section 3 of the principal Act is amended:-

(a) by re-defining employer as follows: "employer"  
means any person who employs or provides work  
for any person and remunerates that person or  
expressly or tacitly undertakes to remunerate him  
or her";

(b) by replacing the interpretation of "workman" and  
substituting therefore the following:-

"worker" means any person who:-

(a) is employed by or works for an employer  
and who receives or is entitled to receive  
any remuneration; or

(b) works under the direction or supervision of  
an employer or any other person;

(c) is an apprentice;

(c) by adding in alphabetical order the following terms and their interpretation:-

“beneficiaries” means legal heirs of the deceased worker;

“Compensatable disease” means any disease which was contracted while a person concerned was performing a work or was present while a work was performed and any other disease which the Minister, on advice of the Labour Advisory Board declares by notice in the Gazette, to be a compensatable disease;

“Court” means a Regional Magistrate’s Court or any other Court having jurisdiction of the Regional Magistrate’s Court;

“District Commissioner” means the District Commissioner appointed under the Regional Administration Act, 1998;

“Inspectorate” means the Worker’s Compensation Inspectorate established under section 3A(1) of this Act;

“Labour Advisory Board” means the Board established under the Employment Act, 2005;

“Labour Officer” means the labour officer appointed under the Labour Relations Act, 2005;

“salary” means basic gross salary;

“self-employed person” means a person who works for gain or reward otherwise than under a contract of employment, whether or not he or she employs others;

“social partners” means the Government through ministry responsible for labour, the employers and their associations and the employees and their trade unions.

Addition of new Part 1A.

6. The principal Act is amended by adding a new PART IA immediately after PART I as follows:-

### **“PART IA ADMINISTRATION**

Establishment of Workers compensation Inspectorate.

3A.(1) There shall be established a Worker’s Compensation Inspectorate under the Ministry responsible for labour.

(2) The Inspectorate established under this section shall generally perform such functions as may be necessary for the purpose of giving effect to the provisions of this Act and such other functions as may from time to time be assigned to it by the Minister.

Appointment of Medical Inspector.

3B. The Minister, in consultation with the Labour Advisory Board, shall appoint:-

- (a) a Medical Inspector from amongst experienced medical practitioners in Zanzibar who shall be the head of the Inspectorate and shall exercise the powers and perform the functions conferred upon him or her by this Act or by the Minister under this Act;
- (b) as many other medical practitioners as the Minister may consider necessary for the performance of the medical examinations and other functions required under this Act; and
- (c) such other officers and staff as the Minister may consider necessary for the performance of the functions of the Inspectorate.

Functions of  
Inspector.

3C.(1) The Medical Inspector shall be charged with the direction and control of all medical examinations provided for in this Act, and may on such conditions as he or she may deem fit authorize or direct any medical practitioner to perform any such examination.

- (2) The Medical Inspector may in writing authorise-
  - (a) any person appointed under section 3B (b) or (c) to issue or sign any certificate or other document which in terms of this Act is required to be issued or signed by the Medical Inspector; and
  - (b) the owner of a workplace, occupier or a contractor, as the case may be, to issue or renew, through his or her officers authorized thereto by him or her on behalf of the inspector and subject to his or her directions, any certificate of fitness.

Powers to  
enter places,  
perform tests.

3D.(1) The Medical Inspector or any medical practitioner authorized thereto in writing by him or her may:-

- (a) enter upon any place where a person who works or has worked or intends to work is being or is to be medically examined in accordance with any provision of this Act, or where any person who works or has worked at any workplace is being nursed or medically treated;
- (b) attend any medical examination of such a person and with his or her consent examine him or her medically or cause him or her to be medically examined by any other medical practitioner; and
- (c) inspect any instrument or appliance which is being or has been used in connection with any medical examination or treatment of such a person and demand for inspection any book or document in which any information relating to any such examination or treatment has been recorded, and



make copies of or extracts from it.

(2) The Medical Inspector or any person authorized thereto in writing by him or her may enter upon any place where persons who work or have worked or intend to work are being or are to be radiologically examined, and at such place carry out such tests, measurements and observations as the Medical Inspector may deem desirable.

Power to investigate.

3E.(1) The Medical Inspector or any person authorized thereto in writing, may, if the inspector has reason to suspect that the owner or occupier of a workplace or any person employed at the workplace contravenes or fails to comply with any provision of this Act, conduct such investigation in connection with the matter as the Medical Inspector may deem expedient or as the inspector may require.

(2) The Medical Inspector or any person authorised by him or her shall when requested by any owner or occupier of a workplace affected by the exercise under this section or other parts of this Act, produce his or her identity card to the person so requesting such identification.

Powers of Inspector to demand information.

3F.(1) The Medical Inspector may require any person to submit to him or her periodically or otherwise, and at such times as may direct, any information available to such person which the inspector considers necessary for the effective performance of his or her functions, or to submit to him or her or his or her nominee any book or document in the possession or under the control of such person which contains or is suspected to contain any such information, and may examine and make copies of or take extracts from any such book or document.

(2) Information called for under subsection (1) may be required to be given in the form of a sworn declaration by the person furnishing such information.

(3) The Medical Inspector may, by notice in writing signed by him or her require any person to appear before him or her at

a time and place specified in the notice, to be interrogated or to produce any book or document referred to in subsection (1), and may administer an oath or affirmation to and question any person appearing before him or her whether in pursuance of any such notice or otherwise.

(4) The Medical Inspector may compensate any person who has appeared in response to a notice under subsection (3), for any loss sustained or expenses incurred by that person in connection with his or her appearance, if such person has produced all books and documents which he or she was obliged to produce and has satisfactorily answered all questions which he or she was bound to answer.

(5) The total amount paid by way of compensation to any such person shall not exceed the amount which would in like circumstances have been payable to him or her had he or she been summoned to appear as a witness in a civil case before a High Court.

Limit of  
information to  
Medical Inspector.

3G. Nothing in this Act contained shall be construed as empowering the Medical Inspector to require any person to furnish any information or produce any book or document which that person is by law prohibited from disclosing or producing or which is privileged in terms of any law, and the legal rules relating to privilege as applicable to a witness summoned to give evidence or produce any book or document in civil proceedings in a court of law, shall apply in connection with the interrogation of any person required to appear as contemplated in this Act, and in connection with the production of any book, document or information which he or she is to produce in terms of such a requirement.

Legal  
proceedings.

3H.(1) Any civil or criminal action for recovery of compensation or otherwise under this Act shall be instituted and or defended by the Medical Inspector or any other person authorized by him or her;

(2) No criminal prosecutions shall be instituted without consent in writing from the Director of Public Prosecutions.

Annual report by  
Medical Inspector.

3I. As soon as may be practicable after the close of each financial year, the Medical Inspector shall furnish the Minister with a report on the activities of the Workers' Compensation Inspectorate".

Amendment  
of section 4.

7. Section 4 of the principal Act is amended:-

(a) by adding new subsections (2), (3), (4) and (5) immediately after subsection (1) as follows:-

"(2) An act shall be deemed to be done out of and in the course of employment when a worker acts to protect any person on the employer's premises whom the worker believes to be injured or imperiled, or when a worker acts to protect property on the employer's premises.

(3) Any personal injury by accident arising while the employee is traveling directly to or from his or her place of work for the purpose of employment, shall be deemed to be an accident arising out of and in the course of his or her employment.

(4) For the purposes of this section it shall be for the employee who suffers injury by accident arising while traveling to or from his or her place of work to show that such travel was direct.

(5) Any accident arising in the course of employment shall, unless the contrary is proved, be presumed to arise out of employment.

(b) subsection (2) is re-numbered as section 4A;

(c) subsection (3) is re-numbered as section 4B;

(d) subsection (4) is re-numbered as section 4C;

(e) subsection (5) is re-numbered as section 4D".

Amendment of section 5.

8. Section 5(1) (c) of the Principal Act is amended by deleting the number "18" and replace it with "26".

Amendment of section 8.

9. Section 8(4) is repealed and replaced by the following new subsection (4):-

"(4) Any employer who acts in contravention of any order made under the provisions of subsection (1) shall be guilty of an offence and shall be liable to a fine of not less than five hundred thousand shillings but not exceeding one million shillings or to imprisonment for a term of not less than three months or to both such fine and imprisonment, and, if the contravention in respect of which the employer was so convicted is continued after the conviction, the employer shall be guilty of a further offence and be liable in respect thereof to a fine of not less than ten thousand shillings or three days imprisonment for each day on which the contravention was so continued".

Amendment of section 10.

10. Section 10 of the principal Act is repealed and replaced as follows-

"Death of a worker

10. Where death results from injury in the course of employment:-

(1) if the deceased worker leaves any heirs, the amount of compensation shall be a sum equal to thirty-six months' earnings. Provided that where in respect of the same accident which resulted into death compensation has been paid to the worker under the provisions of section 11, there shall be deducted from the sum payable under this subsection any sums so paid as compensation.

(2) The reasonable expenses of the burial of the deceased which shall not be less than one third of the total expenses.

(3) For the purpose of this section any reference to a worker who has died shall, unless the context otherwise requires, include a reference to his or her legal personal representative, his or her heirs or any of them or the Registrar-General or such other officer as the Minister may appoint".

Amendment  
of section 11.

11. Section 11 of the principal Act is amended in subsection (1) by deleting the words "a hundred and sixty two thousand shillings which ever is the less" and replace it by the words "five million shillings which ever is the higher".

Amendment  
of section 12.

12. Section 12 is repealed and replaced thus:-

12.(1) Where permanent partial incapacity results from the injury the amount of Compensation shall be such percentage as verified by a recognised medical practitioner of forty-eight month's earning as being the percentage of the loss of earning capacity caused by that injury.

(2) In verifying the percentages under this Act, the medical practitioner shall be guided by the percentages provided in the First Schedule to this Act".

Amendment  
of section 14.

13. Section 14 of the principal Act is amended in subsection (2) by adding the word "work" between the words "from" and "due".

Amendment  
of section 21.

14. Section 21 of the principal Act is amended by deleting the marginal notes and replace it with "Construction of section 19 and 20".

Amendment  
of section 24.

15. Section 24 of the Principal Act is amended:-

(a) by deleting the proviso to subsection (1);

(b) by replacing subsection (2) as follows:-

“(2) When the death of a worker arising out of and in the course of employment is brought to the notice of or comes to the knowledge of the employer, the employer shall, as soon as may be practicable, give notice to the Medical Inspector or any other officer authorized by him or her and such notice shall state the circumstances of the death of the worker if they are known by the employer”.

(c) by replacing subsection (3) as follows:-

“(3) Any employer who, without reasonable cause fails to comply with the provisions of subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine of not less than two hundred thousand shillings or imprisonment for a term of not less than two months or both.

Amendment  
of section 26.

16. Section 26 is amended in subsection (1) by:-

- (a) replacing the words “Senior commissioner” and substitute therefore the words “Medical Inspector”;
- (b) replacing the words “District Commissioner” in subsection (1) (b) with “Medical Inspector”.

Amendment  
of section 28.

17. Section 28 of the principal Act is amended by deleting subsection (6).

Amendment  
of section 29.

18. Section 29 is amended by replacing subsection (2) with the following:-

“(2) In this section “officer” means the Medical Inspector and such other person as the Minister in writing may appoint to be an officer for the purpose of this section”.

Amendment  
of section 32.

19. Section 32(1) of the principal Act is repealed and replaced as follows:-

Jurisdiction of the Court.	32.(1) Save as is provided in this Act and any regulations made there under, the Court shall, upon shall, upon or in connection with any question to be investigated or determined there under, have all the powers and jurisdiction exercisable by a Regional Magistrate's Court in connection with civil actions and the enforcement of judgments and orders of the Court shall <u>mutatis mutandis</u> apply.
Repeal of section 33.	20. Section 33 of the principal Act is repealed.
Amendment of section 34.	21. Section 34 of the principal Act is amended by replacing "two thousand" in subsection (2) with "five hundred thousand".
Amendment of section 36.	22. Section 36 of the principal Act is amended in subsection (1) deleting paragraph (c) and substitute therefore the following:-  (c) in respect of reasonable transport charges not exceeding in all the sum of one hundred thousand shillings, incurred in transfer of worker to and from a place where the necessary treatment is available; provided that such transfer shall be certified to be necessary by the medical practitioner in charge of the case.
Addition of a new section 36A.	23. The principal Act is amended by adding a new section 36A immediately after section 36 as follows:-
Medical arrangement.	36.A(1) If an owner or occupier of a Workplace makes arrangements to provide to persons in his or her service medical aid which in the opinion of the Medical Inspector is not less favourable to such persons than that provided for in this Act, the Medical Inspector may, subject to such conditions as he or she may determine, approve such arrangements.

(2) If the Medical Inspector has approved the arrangements referred to in subsection (1):-

- (a) the persons concerned shall be entitled to medical aid in accordance with the arrangements;
- (b) the owner or occupier concerned shall not be required to provide or pay for medical aid except in accordance with the said arrangements.

(3) The Medical Inspector may at any time withdraw the approval or amend the conditions referred to in subsection (1).

Repeal of section 38.

24. Section 38 of the principal Act is repealed and replaced as follows:-

“Fees for medical aid. by 38. The fees and charges for medical treatment of a worker shall be in accordance with such scale as may, by regulations, be prescribed by the Minister”.

Amendment of section 39.

25. Section 39 of the principal Act is amended as follows:-

- (a) by substituting the word “disablement” with “disability” whenever it appears in Part IX;
- (b) by deleting subsection (1)(a) and substitute therefore the following:-

(1) Notwithstanding the provisions of Part XII of the Occupational Safety and Health Act 2005, where a medical practitioner grants a certificate:-

- (a) that a worker is suffering from a compensatable disease contained in the Second Schedule which impairs his or her health and or ability to work or that the death of a worker is caused by any compensatable or other disease; and



- (c) by adding a new subsection (3) immediately after subsection (2) as follows:-

“(3) In awarding compensation under this Part, the court shall recognise any other payments so far made in favour of the worker under any other relevant Act and deduct the same in the final award granted to the worker or his or her beneficiaries”.

Amendment  
of section 48.

26. Section 48 of the principal Act is amended by:-

- (a) repealing the first five lines and replace as follows:-

“48. The Minister may, in consultation with the Labour Advisory Board, make regulations for the purpose of giving better effect to the provisions of this Act; and without prejudice to the generality of the foregoing, the Minister may”:-

- (b) deleting paragraph (h) thereof.

Amendment  
of section 49.

27. Section 49 of the principal Act is repealed and replaced as follows:-

“Offences. 49.(1) Any person who is required to make any return by virtue of any provision of this Act who:-

- (a) fails to make such a return within the time he or she was required to make it;
- (b) on being so required, fails to give an information or explanation in respect of the return which is in his or her power to give -

shall be guilty of an offence and shall be liable to a fine of not less than one hundred thousand shillings or imprisonment for a term of not less than one month and if the contravention in

respect of which he or she was so convicted is continued after the conviction he or she shall be guilty of a further offence and be liable in respect thereof to a fine of not less than five thousand shillings or imprisonment for a term of two days for each day on which the contravention was so continued.

(2) Any person who fails or neglects to observe any lawful order of the Medical Inspector or any other authorized officer of the Inspectorate shall be guilty of an offence and be liable on conviction to a fine of not less than one hundred thousand shillings or term of imprisonment of not less than one month or both.

(3) Any person who makes or cause to be made or was a party to the making of any false entry or return in any material particular shall be guilty of an offence and shall be liable on conviction to a term of imprisonment of not less than six months.

(4) If the institution charged under this Act is a government ministry, department or commission then the principal secretary, the director or the commissioner as the case may be, shall be the responsible person to account for the charges; and where the accused is a private company or other legal entity then the executive in charge of that company or other workplace shall be the responsible person unless the contrary appears.

Addition of  
First and  
Second  
Schedules.

28. The Principal Act is amended by addition of First Schedule and Second Schedule respectively at the end of section 50 as follows:-

**FIRST SCHEDULE**

**( Made under section 12 )**

**PERCENTAGES FOR PERMANENT INCAPACITIES**

<b>Injuries</b>	<b>Percent</b>
Loss of two limbs	}
Loss of both hands or of all fingers and both thumbs	}
Total loss of sight	}
Total paralysis	}
Injuries resulting in being bedridden permanently	}
Any other injury causing permanent total disability	} 100
Loss of remaining eye by one-eyed worker	}
Loss of remaining arm by one-armed worker	}
Loss of remaining leg by one-legged worker	}
Loss of arm at shoulder .....	70
Loss of arm between elbow and shoulder .....	68
Loss of arm at elbow .....	67
Loss of arm between wrist and elbow .....	60/65
Loss of hand at wrist .....	60
Loss of four fingers and thumb of one hand .....	60
Loss of four fingers .....	35
Loss of thumb	
Both phalanges .....	35
One phalanx .....	10
Loss of index finger	
Three phalanges .....	10
Two phalanges .....	8
One phalanx .....	4
Loss of middle finger	
Three phalanges .....	6
Two phalanges .....	4
One phalanx .....	2

Loss of ring finger		
Three phalanges	.....	5
Two phalanges	.....	4
One phalanx	.....	2
Loss of little finger		
Three phalanges	.....	4
Two phalanges	.....	3
One phalanx	.....	2
Loss of metacarpals		
First or second (additional)	.....	3
Third, fourth or fifth (additional)	.....	2
Loss of leg at or above knee	.....	70
Loss of leg below knee	.....	40
Loss of foot	.....	40
Loss of toes		
All	.....	15
Great, both phalanges	.....	5
Great, one phalanx	.....	2
Other than great, if more than one toe lost	.....each	1
Loss of eye		
Eye out	.....	30
Sight of	.....	30
Lens of	.....	30
Sight of except perception of light	.....	30
Loss of hearing		
Both ears	.....	50
one ear	.....	7

Total permanent loss of use of member shall be treated as loss of member. The percentage of incapacity for ankylosis of any joint shall be reckoned as from 25 to 100 per centum of the incapacity for loss of the part at that joint,

according to whether the joint is ankylosed in a favourable or unfavourable position.

In the case of a right-handed worker, an injury to the left arm or hand and, in the case of a left-handed worker, to the right arm or hand shall be rated at 90 per centum of the above percentages.

Where there is a loss of two or more parts of the hand, the percentage of incapacity shall not be more than for the whole hand.

Where there are two or more injuries, the sum of the percentages for such injuries may be increased, and, where such injuries are to the hand, the following basis of computing the increase shall be adopted, namely –

- (a) where two digits have been injured, the sum total of the percentages shall be increased by 20 per centum of such sum total;
- (b) where three digits have been injured, the sum total of the percentages shall be increased by 30 per centum of such sum total;
- (c) where four digits have been injured, the sum total of the percentages shall be increased by 40 per centum of such sum total.

A one-eyed worker who, on entering employment, has failed to disclose the fact that he or she is one-eyed to his or her employer shall, if he or she loses the remaining eye, be entitled to compensation in respect of a degree of disablement of 30 per centum only.

For the purpose of this Schedule, a one-eyed worker means a worker who has lost the sight of one eye.

**PASSED** in the House of Representatives on the 8<sup>th</sup> day of April, 2005.

( KHAMIS JUMA CHANDE )  
**CLERK OF THE HOUSE OF REPRESENTATIVES**