

1347

EMPLOYEE'S COMPENSATION ACT, 2010

EXPLANATORY MEMORANDUM

This Act repeals the Workmen's Compensation Act Cap. W6 Laws of the Federation of Nigeria, 2004 and makes comprehensive provisions for payment of compensation to employees who suffer from occupational diseases or sustain injuries arising from accident at workplace or in the course of employment.

EMPLOYEE'S COMPENSATION ACT, 2010

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EMPLOYEE'S COMPENSATION ACT, 2010

A Bill
For

An Act to repeal the Workmen's Compensation Act Cap. W6 LFN, 2004 and to make provisions for compensations for any death, injury, disease or disability arising out of or in the course of employment; and for related matters.

[] Commencement

ENACTED by the National Assembly of the Federal Republic of Nigeria

PART I – PRELIMINARY PROVISIONS

- 1. The objectives of the Act are to - Objectives of the Act.
 - (a) provide for an open and fair system of guaranteed and adequate compensation for all employees or their dependants for any death, injury, disease or disability arising out of or in the course of employment;
 - (b) provide rehabilitation to employees with work-related disabilities as provided in this Act;
 - (c) establish and maintain a solvent compensation fund managed in the interest of employees and employers;
 - (d) provide for fair and adequate assessments for employers;
 - (e) provide an appeal procedure that is simple, fair and accessible, with minimal delays; and
 - (f) combine efforts and resources of relevant stakeholders for the prevention of workplace disabilities, including the enforcement of occupational safety and health standards.

- 2. (1) Subject to the provisions of sections 3 and 70 of this Act, this Act shall apply to all employers and employees in the public and private sectors in the Federal Republic of Nigeria. Scope and application, etc.

- (2) The Nigeria Social Insurance Trust Fund Management Board (in this Act referred to as "the Board") shall have power to implement this Act and the Fund established under section 56 of this Act.

- 3. Without prejudice to the generality of the provisions of section 2 of this Act, this Act shall not apply to any member of the armed forces of the Federal Republic of Nigeria other than a person employed in a civilian capacity. Exemptions

PART II – PROCEDURES FOR MAKING CLAIMS

- 4. (1) In every case of an injury or disabling occupational disease to an employee in a workplace within the scope of this Act, the employee, or in case of death the dependant, shall within 14 days of the occurrence or receipt of the information of the occurrence, inform the employer by giving information of the disease or injury to a manager, supervisor, first-aid attendant, agent in charge of the work where the injury occurred or other appropriate representative of the employer, and the information shall include – Employee's notification of injury

- (a) the name of the employee;
- (b) the time and place of the occurrence; and
- (c) in ordinary language, the nature and cause of the disease or injury if known.

(2) In the case of a disabling occupational disease, the employer to be informed of the death or disability is the employer who last employed the employee in the employment to the nature of which the disease was due.

(3) The employee shall, if he or she is fit to do so and on request of the employer, provide to the employer particulars of the injury or occupational disease on a form prescribed by the Board, and supplied to the employee or the dependant by the employer.

(4) Failure to provide the information required under sub-section (1) of this section is a bar to a claim for compensation under this Act, unless the Board is satisfied that the –

- (a) information, although imperfect in some respects, is sufficient to describe the disease or injury suffered;
- (b) employer or the employer's representative had knowledge of it; or
- (c) employer has not been prejudiced, and the Board considers that the interests of justice requires that the claim be allowed.

- 5. (1) Subject to sub-section (6) of this section, employer shall report to the Board and the nearest office of the National Council for Occupational Safety and Health in the State within 7 days of its occurrence every injury to an employee that is or is claimed to be one arising out of and in Employer's obligation to report death, injury or disease of an employee

the course of employment.

- (2) Subject to sub-section (6) of this section, an employer shall report to the Board, within 7 days of receiving information under section 4 of this Act, every disabling occupational disease or claim for or allegation of an occupational disease.
- (3) An employer shall, immediately, report the death of an employee arising out of and in the course of employment to the Board and to the local representative of the Board.
- (4) A report under this section shall be in such form and manner as prescribed by the Board and shall state -
 - (a) the name and address of the employee;
 - (b) the time and place of the disease, injury or death;
 - (c) the nature of the injury or alleged injury;
 - (d) the name and address of any specialist or accredited medical practitioner who attend to the employee; and
 - (e) any other particular required by the Board under this Act or any regulation made thereunder,

and such report may be made by mailing the copies of the form addressed to the Board at the address the Board prescribes.

- (5) The failure to make a report required under this section, unless allowed by the Board on the ground that the report for some sufficient reason could not have been made, constitutes an offence under this Act.
 - (6) Without prejudice to the generality of the provisions of this section, the Board may, by regulation, define and prescribe a category of minor injuries not required to be reported under this section.
 - (7) The Board shall verify if the injury or disease for which a claim for compensation is raised has been reported to the National Council for Occupational Safety and Health Office in the State where the accident or disease occurred as required under section 30 of the Occupational Safety and Health Act, 2005 prior to the settlement of such claim.
 - (8) The Board may make rules of procedures for making claims for compensation under this Act.
6. (1) An application for compensation shall be made on the form prescribed by the Board and shall be signed by the employee or the deceased employee's dependant.
- (2) Unless an application is filed or a determination is made within one year

Application for compensation

after the date of death, injury or disability arising from an occupational accident or disease, no compensation shall be payable, except as otherwise provided in sub-section (3) of this section.

(3) If the Board is satisfied that there existed special circumstances which precluded the filing of an application within one year after the date of the occurrence, the Board may pay the compensation provided by this Act if the application is filed within 3 years after that date.

(4) The Board may pay the compensation provided under this Act for the period commencing on the date the Board received the application for compensation if -

(a) the Board is satisfied that special circumstances existed which precluded the filing of an application within one year after the date referred to in sub-section (2) of this section; and

(b) the application is filed not more than 3 years after the date referred to in sub-section (2) of this section.

(5) Notwithstanding the time limits set in sub-sections (2) and (3), the Board may pay the compensation for an occupational disease provided under this Act if -

(a) sufficient medical or scientific evidence was not available on those dates for the Board to recognize the disease as an occupational disease and this evidence became available at a later date; and

(b) the application is re-filed.

PART III - COMPENSATION FOR DEATH, INJURY OR DISEASE

7. (1) Any employee, whether or not in a workplace, who suffers any disabling injury arising out of or in the course of employment shall be entitled to payment of compensation in accordance with Part IV of this Act.

Compensation for injury

(2) An employee is entitled to payment of compensation with respect to any accident sustained while on the way between the place of work and --

- (a) the employee's principal or secondary residence;
- (b) the place where the employee usually takes meals; or
- (c) the place where he usually receives remuneration, provided that the employer has prior notification of such place.

(3) Where an injury disables an employee from earning full remuneration at the workplace, compensation shall be payable pursuant to this Act from

the first working day following the day of the injury, except that only a health care benefit shall be payable in respect of the day of the injury.

- (4) Where the injury or disease is caused by accident and the accident arose out of the employment, unless the contrary is shown, it shall be presumed that the injury occurred in the course of the employment.
- (5) Where an injury or disease is superimposed on an already existing disability, compensation shall be allowed only for the proportion of the disability following the personal injury or disease that may reasonably be attributed to the personal injury or disease, the measure of the disability attributable to the personal injury or disease shall, unless the contrary is shown, be the amount of the difference between the employee's disability before and disability after the occurrence of the personal injury or disease.

- 8. (1) Subject to sub-section (2) of this section, an employee shall be entitled to compensation for mental stress not resulting from an injury for which the employee is otherwise entitled to compensation, only if the mental stress is -

Compensation for mental stress

- (a) an acute reaction to a sudden and unexpected traumatic event arising out of or in the course of the employee's employment; or
- (b) diagnosed by an accredited medical practitioner as a mental or physical condition amounting to mental stress arising out of the nature of work or the occurrence of any event in the course of the employee's employment.

- (2) Where the mental stress is caused as a result of the decision of the employer to change the work, the working conditions of work organization in such a way as to unfairly exceed the work ability and capacity of the employee thereby leading to mental stress, such situation shall be liable to compensation to the degree as may be determined under any regulation made by the Board.

- (3) For the purposes of ascertaining the conditions under sub-sections (1) and (2) of this section, the Board may appoint a Medical Board of Inquiry consisting of relevant specialists to review the situation to determine whether or not the employee is entitled to compensation for mental stress.

- 9. (1) Where -

Compensation for occupational disease

- (a) an employee suffers from an occupational disease and is disabled from earning full remuneration at the workplace;
- (b) the death of an employee is caused by an occupational disease;

(c) the disease is shown to be due to the nature of any employment in which the employee was employed, whether under one or more employments; or

(d) an employee suffers from any occupational disease listed in the First Schedule to this Act,

compensation and health care benefits shall be payable under this Act.

- (2) For the purposes of this section, the date of disability shall be treated as the date of occurrence of the disability.
- (3) Any employee in any workplace who becomes disabled from any uncomplicated disease or from any disease complicated by any other disease, condition or factor shall be entitled to compensation for total or partial disability or as shall be determined under this Act.
- (4) Where death results from any disability under sub-section (3) of this section, the dependants of the employee shall be entitled to compensation under this Act, except that neither the employee nor a dependant shall be entitled to compensation for the disability or death unless the employee -
- (a) has been in the employment in a workplace associated with exposure to an agent or agents leading to that condition; and
 - (b) was free from the disease and complicating disease before being first exposed to the agent causing the disease in the workplace.
- (5) Where an employee has been exposed to the agent causing the disease in two or more classes or sub-classes of industry in the workplace, the Board may apportion the cost of compensation among the funds provided by those classes or sub-classes on the basis of the duration and severity of the exposure in each.
- (6) Where a deceased employee was, at the date of death, under the age of 70 years and suffering from an occupational disease of a type that impairs the capacity of the vital organs of non-traumatic origin, it shall be presumed that the death resulted from the occupational disease.
- (7) The compensation payable for occupational disease may, in addition to the provisions of this section of this Act, be determined by regulations made by the Board.
- (8) For the purposes of ascertaining occupational disease under this section.

the Board may appoint a Medical Board of Inquiry consisting of relevant specialists to review the situation to determine whether or not the employee is entitled to compensation.

- 10. (1) Where an employee suffers from hearing impairment of non-traumatic origin, but arising out of or in the course of employment under this Act, the employee shall be entitled to compensation under this Act.
- (2) Where the hearing impairment referred to in sub-section (1) of this section amounts to total deafness, but with no loss of earnings resulting from the hearing impairment, compensation shall be calculated as may be provided by regulations made by the Board under this Act in consultation with the National Council for Occupational Safety and Health in respect of -
 - (a) the ranges of hearing impairment;
 - (b) the percentages of disability;
 - (c) the methods or frequencies to be used to measure hearing impairment; and
 - (d) any other matter relating to hearing impairment.
- (3) If a loss or reduction of earnings results from the hearing impairment, the employee shall be entitled to compensation for a total or partial disability as established under this Act.
- (4) Any compensation paid for the hearing impairment of an employee under sub-section (3) of this section shall not be less than the amount determined under sub-section (2) of this section.
- (5) Where a hearing impairment under this section is superimposed on an already existing hearing impairment, compensation shall be allowed only for the proportion of the impairment following the hearing impairment that may reasonably be attributed to the exposure in two or more classes or sub-classes of industry in a workplace, unless the contrary is shown, and the amount of compensation shall be the difference between the employee's impairment before and impairment after the occurrence of the last exposure.
- (6) Where an employee suffers from hearing impairment caused by exposure to causes of hearing impairment in two or more classes or sub-classes of industry in a workplace, the Board may apportion the cost of compensation among the funds provided by those classes or sub-classes on the basis of the duration or severity of the exposure in each.
- (7) An application for compensation under this section shall be accompanied or supported by -

Compensation for hearing impairment

- (a) a report of a medical practitioner who specializes in ailments of ear or hearing accredited by the Board;
- (b) an audiogram and a report by the employer of the working environment where the employee has been in employment; or
- (c) other evidence of hearing impairment, as the Board may, from time to time, determine.

(8) For the purposes of sub-section (7) of this section, the Board may, in consultation with the Nigerian Medical and Dental Practitioners Council and other relevant professional bodies, make rules, regulations and guidelines for accreditation of medical practitioners and other specialists.

11. Where the injury to an employee occurs while the employee is working outside the normal workplace which would otherwise entitle the employee to compensation under this Act if the injury occurred in the workplace, compensation shall be paid to the employee under this Act if –

Compensation for injuries occurring outside the normal workplace

- (a) the nature of the business of the employer extends beyond the usual workplace;
- (b) the nature of the employment is such that the employee is required to work both in and out of the workplace; or
- (c) The employee has the authority or permission of the employer to work outside normal work place.

12. (1) The provisions of this Act are in lieu of any right of action, statutory or otherwise, founded on a breach of duty of care or any other cause of action, whether that duty or cause of action is imposed by or arises by reason of law or contract, express or implied, to which an employee, dependant or member of the family of the employee is or may be entitled against the employer of the employee, or against any employer within the scope of this Act, or against any employee, in respect of any death, injury or disability arising out of and in the course of employment and where no action in respect of it lies.

Limitation of actions, subrogation, etc.

(2) The provisions of sub-section (1) of this section shall apply only when the action or conduct of the employer, the servant or agent of the employer or the employee, which caused the breach of duty, arose out of and in the course of employment within the scope of this Act.

(3) Where the cause of death, injury or disability of an employee is such that an action lies against some person, other than an employer or employee, the injured employee or deceased employee's dependant may claim compensation or may bring an action and if the employee or dependant elects to claim compensation, the employee or dependant shall do so within 6 months of the occurrence of the injury or death or any longer period, as the Board may, from time to time, determine and an election

by the employee or dependant to bring an action in court shall be a bar to claim compensation from the Fund in respect of such injury, disability or death.

- (4) Where the Board is satisfied that, due to physical or mental disability, an employee is unable to exercise his or her right of election under sub-section (3) of this section, and an undue hardship results, the Board may pay the compensation under this Act until the employee is able to make an election and if the employee then elects not to claim compensation, no further compensation may be paid, but the compensation so paid shall be a first charge against any sum recovered.
- (5) An application for compensation filed by a parent or guardian on behalf of any dependant of a deceased employee, who is under 18 years of age, shall be a valid election under this section.
- (6) If the employee or dependant applies to the Board claiming compensation under this Act, neither the making of the application nor the payment of compensation under it restricts or impairs any right of action against the party liable, but as to every such claim, the Board is subrogated to the rights of the employee or dependant and may maintain an action in the name of the employee or dependant or in the name of the Board, and if more is recovered and collected than the amount of the compensation to which the employee or dependant would be entitled under this Act, the amount of the excess, less costs and administration charges shall be paid to the employee or dependant.
- (7) The Board shall, with respect to the provisions of sub-section (6) of this section, have exclusive competence to determine whether to maintain an action or compromise the right of action and its decision shall be final.
- (8) Nothing in this Act shall prevent an employer of the injured or deceased from maintaining an action upon contract or indemnity agreement against another employer or independent contractor in respect of the personal injury or death of an employee.
- (9) Where the Board is of the opinion that another employer or an independent contractor caused the injury or death of the employee referred to in sub-section (8) of this section, it may order that the compensation be charged in whole or in part to the other employer or independent contractor.
- (10) In any action brought under this section, an award for damages shall include -
 - (a) health care provided under section 26 of this Act; and

(b) remuneration paid by an employer during the period of disability for which regard has been had by the Board, or would have been had if the employee had elected to claim compensation, in fixing the amount of a periodical payment of compensation.

13. (1) No employee shall agree with his employer to waive or to forego any benefit or right to compensation to which the employee or the dependants are or may become entitled under this Act. Compensation cannot be waived

(2) Any agreement in whatever form between the employer and the employee in contravention of sub-section (1) of this section shall be void and unenforceable.

14. (1) No employer shall, either directly or indirectly, deduct from the remuneration of an employee any part of a sum which the employer is or may become liable to pay into the Fund established under section 56 of this Act, or to require or permit the employee to contribute in any manner towards indemnifying the employer against a liability which the employer has incurred or may incur under this Act. Contribution by employees for compensation prohibited

(2) Any person who contravenes the provisions of sub-section (1) of this section, commits an offence and shall –

(a) be liable on conviction to imprisonment for a term not exceeding 1 year or to a fine of not less than ₦100,000.00 or to both such imprisonment and fine; and

(b) in addition to the penalty in paragraph (a) of this sub-section, repay to the employee any sum which has been so deducted or otherwise contributed from the remuneration of the employee.

(3) Where the offence in sub-section (2) was committed by a body corporate, it shall –

(a) be liable on conviction to a fine of not less than ₦1, 000, 000; and

(b) in addition to the penalty in paragraph (a) of this sub-section, repay to the employee, any sum which has been so deducted or contributed from the remuneration of the employee.

15. A sum payable as compensation or by way of computation of a periodic payment in respect of it shall not be assigned, charged or attached, nor shall it pass by operation of the law except to a personal representative, and a claim shall not be set off against it except for money advanced by way of financial or other social welfare assistance owing to the Federal, State or Local Government, or for money owing to the Board. Compensation not assignable or liable to attachment

16. (1) The Board may, in getting an injured employee back to work or in Vocational rehabilitation.

assisting to lessen or remove a resulting disability, take any measure and make the expenditures from the Fund that it considers necessary or expedient, regardless of the date on which the employee first became entitled to compensation. etc.

(2) The Board may, where it considers it necessary, provide counseling services to dependants.

PART IV – SCALE OF COMPENSATION

17. (1) Where death results from the injury of an employee, compensation shall be paid to the dependants of the deceased- Compensation in fatal cases

(a) where the deceased employee leaves dependants wholly dependent on his earnings a widow or widower -

- (i) and two or more children, a monthly payment of a sum equal to 90 per cent of the total monthly remuneration of the employee as at the date of death,
- (ii) and one child, a monthly payment of a sum equal to 85 per cent of the total monthly remuneration of the deceased employee as at the date of death,
- (iii) without a child who, at the date of death of the employee, is 50 years of age or above, or is an invalid spouse, a monthly payment of a sum equal to 60 per cent of the total monthly remuneration of the deceased employee, and
- (iv) who, at the date of the death of the employee is not an invalid spouse, is under the age of 50 years and has no dependent children;

a monthly payment of a sum that is equal to the product of the percentage determined by subtracting 1 per cent from 60 per cent for each year for which the age of the dependant, at the date of death of the employee, is under the age of 50 years, and provided that the total percentage shall not be less than 30 per cent;

(b) where there is no surviving spouse eligible for monthly payments under this section, and the-

- (i) dependant is a child, a monthly payment of a sum equal to 40 per cent of the total monthly rate of compensation under this Act that would have been payable if the deceased employee had, at the date of death, sustained a permanent total disability,
- (ii) dependants are 2 children, a monthly payment of a sum equal to 60 per cent of the monthly rate or

compensation under this Act that would have been payable if the deceased employee had, at the date of death, sustained a permanent total disability, or

- (iii) dependants are 3 or more children, a monthly payment of a sum equal to 80 per cent of the total monthly rate of compensation under this Act that would have been payable if the deceased had, at the date of death, sustained a permanent total disability;
- (c) monthly payments to eligible children under this Act shall be made to children up to the age of 21 or until they complete undergraduate studies, whichever comes first;
- (d) where the surviving child is disabled, the Board shall determine the period of the monthly payment for such time as the Board believes that the disabled child would not have been dependent on the deceased employee;
- (e) where the deceased employee does not leave a dependent spouse or child entitled to compensation under this section, but leaves other dependants or next of kins who were wholly dependent on him or her, the Board shall determine a sum reasonable and proportionate to the pecuniary loss suffered by such dependants or next of kins by reason of death of the employee;
- (f) where -
 - (i) no compensation is payable under subsection (1) (a)-(e) of this section; or
 - (ii) the compensation is payable only to a spouse, a child or children or a parent or parents;but the employee leaves a spouse, child or parent who, though not dependent on the remuneration of the employee at the time of the death of the employee, had a reasonable expectation of pecuniary benefit from the continuation of the life of the employee, the Board shall make monthly payment of an amount to be determined by the Board to such spouse, child or children, parent or parents; and
- (g) where the employee leaves no dependent widow or widower, or the widow or widower subsequently dies, and the Board considers it desirable to continue the existing household, and when a suitable person acts as a foster parent or an administrator of the estate of the deceased employee in keeping up the household and taking care of and

maintaining the children entitled to compensation, in a manner satisfactory to the Board, the same allowance shall be payable to the foster parent or administrator and on behalf of the children as would have been payable to a widow or widower and children, and shall be continued as long as those conditions continue.

- (2) Where a disabled spouse ceases to be disabled, or a widow or widower with dependent children no longer has dependent children or there is a reduction in the number of dependent children, the spouse, widow, widower or children shall be entitled to the same category of benefits as would have been payable if the death of the employee had occurred on the date the disabled spouse ceases to be disabled or the widow or widower no longer has dependent children or the number of dependent children is reduced, as the case may be.
- (3) Where there is a widow or widower and a child or children, and the widow or widower subsequently dies, the allowances to the children shall, if they are in other respects eligible, continue and be calculated in the same manner as if the employee had died leaving no dependent spouse.
- (4) Where at the date of death a spouse is not disabled, but is suffering from a disability that results in a substantial impairment of work ability and earning capacity, the Board may, having regard to the degree of disability or the extent of impairment of work ability or earning capacity, pay the spouse a proportion of the compensation that would have been payable if the spouse had been disabled.
- (5) For the purpose of this Act, where 2 employees in a workplace are married to each other and both are contributing to the support of a common household, each is deemed to be a dependant of the other.
- (6) Where 2 parents contribute to the support of a common household in which their children also reside, the children are deemed to be dependants of the parent whose death is compensable under this Act.
- (7) Where compensation is payable as the result of the death of an employee, or of injury resulting in death, and where at the date of death the employee and dependant spouse were living separate and apart and there was -
 - (a) in force at the date of death a court order or separation agreement providing periodic payments for support of the dependent spouse or children living with that spouse, no compensation under subsection (1) of this section shall be payable to the spouse or

children living with the spouse, but monthly payments shall be made in respect of that spouse and those children equal to the periodic payments due under the order or agreement; or

- (b) no court order or separation agreement in force at the date of death providing periodic payments for support of the dependent spouse, or children living with that spouse, and the employee and dependent spouse were –

(i) living separate and apart for a period of less than 3 months preceding the date of death of the employee, compensation shall be payable in accordance with the provisions of sub-section (1) of this section, or

(ii) separated with the intention of living separate and apart for a period of 3 months or longer preceding the death of the employee, monthly payments shall be made up to the level of support which the Board believes the spouse and those children would have been likely to receive from the employee if the death had not occurred.

- (8) The compensation payable under sub-section (7) of this section shall not exceed the compensation that would have been payable under sub-section (1) of this section had there been no separation.

- (9) Where an employee has lived with and contributed to the support and maintenance of a wife or husband and the employee and the wife or husband have -

(a) no children, for a period of 3 years; or

(b) children, for a period of one year, immediately preceding the death of the employee, and where the employee does not leave a dependent widow or widower, the Board may pay the compensation to which a dependent widow or widower would have been entitled under this Act to the wife or husband.

- (10) Where –

(a) an employee has lived with and contributed to the support and maintenance of a wife or husband for the period set out in sub-section (9) of this section;

(b) an employee also left, surviving, a dependent widow or widower from whom, at the date of death, the employee was living separate and apart; and

(c) there is a difference in the amount of compensation payable to the

widow or widower by reason of the separation and the amount of compensation that would have been payable to that spouse if that spouse and the employee had not been living separate and apart, the Board may pay compensation to the wife or husband up to the amount of the difference.

(11) Where in any situation there is a need to apportion allowances payable to dependants among those dependants, the formula for apportionment shall be determined by the Board, unless the Board has grounds for a different apportionment, the sharing formula shall be where there –

- (a) is a dependent spouse and one child, two-thirds to the dependent spouse and one-third to the child;
- (b) is a dependent spouse and more than one child, half to the dependent spouse and half among the children in equal shares; and
- (c) are children but no dependent spouse, among the children in equal shares.

(12) If a dependant is entitled to receive compensation as a result of the –

- (a) death of an employee; and
- (b) subsequent death of another employee,

the total compensation payable for the dependant as a result of those deaths shall be an amount that the Board has reasonable grounds to believe is appropriate, provided that the compensation payable to a dependant shall not be-

- (a) less than the highest of the amounts that would otherwise be payable in respect of the death of any of the employees; and
- (b) more than 90 *per cent* of the average remuneration of an employee.

(13) Where a situation arises that is not expressly covered by this section, or where some special additional facts are present that would, in the opinion of the Board, make the strict application of this section inappropriate, the Board may make rules and take decisions it considers fair in the circumstances.

18. Where death, injury, disability or disease of an employee occurs in the course of the employment as a direct result of enemy warlike action or counteraction and provision has been made for compensation in respect of such action for the employee or the deceased employee's dependants by the Government, the employee, or his or her dependants are entitled to compensation under this Act only when the compensation provided by the Government is less than

Compensation
relating to enemy
warlike actions

that provided by the Act, and shall be only to the extent of the difference.

19. The Board shall make monthly payments under this Act for the life of the person to whom the payment is to be made, unless a shorter period applies under the provisions of this Act, or as the Board may, from time to time by regulations, specify. Period for making payments

20. The Board may, from time to time, require the proof of the existence and condition of dependants in receipt of compensation payments that is deemed necessary by the Board, and pending the receipt of that proof, the Board may withhold further payments. Proof of existence of dependants

21 (1) Subject to this Act, if a permanent total disability results from the injury of an employee, the Board shall pay to the employee compensation that is a periodic payment equal to 90 per cent of the remuneration of the employee. Permanent total disability

(2) The compensation awarded under this section shall be payable monthly.

22. (1) Subject to this Act, if a permanent partial disability results from the injury of the employee, the Board shall – Permanent partial disability or disfigurement

- (a) estimate the impairment of earning capacity from the nature and degree of the injury; and
- (b) pay the employee's compensation that is a periodic payment equal to 90 per cent of an estimate of the loss of remuneration resulting from the impairment.

(2) The compensation referred to in sub-section (1) of this section shall be determined and calculated in accordance with the Second Schedule to this Act. Second Schedule

(3) The Board may, by regulations published in the Federal Gazette, revise or amend the Second Schedule to this Act. Second Schedule

(4) Subject to this Act, if -
(a) a permanent partial disability results from the injury of an employee; and
(b) the Board makes a determination under sub-section (5) of this section with respect to the employee,

the Board may pay the employee compensation with a periodic payment that is equal to 90 per cent of the difference between the remuneration of the worker before the injury and whichever of the following amounts the

Board considers better represents the loss of earnings of the employee the remuneration that -

- (i) the employee is earning after the injury; or
- (ii) the Board estimates the employee is capable of earning in a suitable occupation after the injury.

- (5) A payment may be made under sub-section (4) of this section only if the Board determines that the combined effect of the occupation of the employee at the time of the injury and the disability resulting from the injury is so exceptional that an amount determined under sub-section (1) does not appropriately compensate the employee for the injury.
- (6) In making a determination under sub-section (5) of this section, the Board shall consider the ability of the employee to continue in his or her occupation at the time of the injury or to adapt to another suitable occupation.
- (7) Where permanent partial disability results from the injury, the minimum compensation awarded under this section shall be calculated in the same manner as provided by section 24 of this Act for temporary total disability but to the extent only of the partial disability.
- (8) Where the employee has suffered a serious and permanent disfigurement which the Board considers is capable of impairing the employee's earning capacity, a lump sum in compensation may be paid, although the amount the employee was earning before the injury has not been diminished.

23. The compensation payable under section 21, 22, 24 or 25 of this Act may be paid to an employee, only if the employee is-

Period of payment for permanent total or partial disability

- (a) less than 55 years of age on the date of the injury, until-
 - (i) the date the employee reaches 55 years of age, or
 - (ii) the Board is satisfied that the employee would retire after reaching 55 years of age, or
 - (iii) the date the employee would retire, as may be determined by the Board; and
- (b) 55 years of age or older on the date of the injury, until-
 - (i) 2 years after the date of the injury,
 - (ii) the Board is satisfied that the employee would retire after the date referred to in sub-paragraph (i) of this paragraph, or

(iii) the date the employee would retire, as may be determined by the Board.

24. (1) Subject to section 28(4) of this Act, if a temporary total disability results from an employee's injury, the Board may pay the employee compensation of a lump sum in accordance with Second Schedule to this Act or any regulation made pursuant to section 22(3) of this Act. Temporary total disability
Second Schedule
- (2) The payment referred to in sub-section (1) of this section shall not be in respect of any disability that lasts for a period of more than 12 months.
25. (1) Subject to section 28(4) of this Act, if a temporary partial disability results from an employee's injury, the Board may pay the employee of a lump sum in accordance with the Second Schedule to this Act or regulations made under section 22(3) of this Act. Temporary partial disability
Second Schedule
- (2) The payment referred to in sub-section (1) of this section shall not be in respect of any disability that lasts for a period of more than 12 months.
26. (1) In addition to the other compensation provided by this Act, the Board may provide for the injured employee any medical, surgical, hospital, nursing and other care or treatment, transport, medicines, crutches and apparatus, including artificial members, that it may consider reasonably necessary at the time of the injury, and thereafter during the disability, to cure and relieve from the effects of the injury or alleviate those effects, the Board may adopt rules and regulations with respect to furnishing health care to injured employees entitled to it and for the payment of it. Health care and disability support
- (2) The Board may make a daily allowance for the subsistence of an injured employee when, under its direction, the employee is undergoing treatment at a place other than the place where the employee resides, and the power of the Board to make a daily allowance for subsistence under this section extends to an injured employee who receives compensation, regardless of the date the employee first became entitled to compensation.
- (3) Where in a case of emergency, or for other justifiable cause, a physician or accredited medical practitioner other than the one provided by the Board is called in to treat the injured employee, and if the Board finds there was a justifiable cause and that the charge for the services is reasonable, the cost of the services shall be paid by the Board.
- (4) The Board may authorize employers to provide health care at the expense of the Board on terms fixed by the Board and the employer shall provide to an injured employee, when necessary, immediate conveyance and transport to a hospital or accredited medical practitioner

for initial treatment.

- (5) Health care furnished or provided under sub-section (3) or (4) of this section shall at all times be subject to the direction, supervision and control of the Board and the Board may enter into contract with any medical practitioner, nurse or other person, accredited by the Board, authorized to treat human ailments, hospitals and other institutions for any health care required, and to agree on a scale of fees or remuneration for that health care; and all questions as to the necessity, character and sufficiency of health care to be provided shall be determined by the Board.
- (6) The fees or remuneration for health care provided under this section shall not be more than the fees that would be properly and reasonably charged if the employee were paying, and the Board may, from time to time, fix and determine the amount, on the advice of the Minister charged with responsibility for health.
- (7) Without limiting the powers of the Board under this section to supervise and provide health care in every case where it considers the exercise of such powers expedient, the Board shall permit health care to be administered by the physician or medical practitioner who may be selected or employed by the injured employee.
- (8) The Board may assume the responsibility of replacement and repair of --
- (a) artificial appliances, including artificial limbs or members damaged or broken as the result of an accident arising out of and in the course of the employment of an employee; and
 - (b) eye glasses, dentures and hearing aids broken as a result of an accident arising out of and in the course of employment if such breakage is accompanied by objective signs of personal injury, or, where there is no personal injury, if the accident is otherwise corroborated.
- (9) Where an injury to an employee results in serious impairment of the sight of the employee, the Board may, to protect the remaining vision of the employee, provide the employee with protective eye glasses.
27. (1) Every medical practitioner or accredited medical practitioner attending or consulted on a case of injury or alleged case of injury to an employee in a workplace within the scope of this Act shall -
- (a) provide the reports in respect of the injury in the form required by the Board or regulations made by the Board, but the first report containing all information

Duty of
accredited
medical
practitioner and
other specialists

requested in it shall be supplied to the Board within 7 days after the date of his or her first attendance on the employee;

- (b) provide a report within 7 days after the employee is, in the opinion of the medical practitioner or accredited medical practitioner, able to resume work and, if treatment is being continued after resumption of work, to furnish further adequate reports;
- (c) if a specialist whose opinion is requested by the attending accredited medical practitioner or the Board, or if the specialist continues to treat the employee after being consulted as a specialist, the specialist shall be required to provide his or her first report to the Board within 7 days after completion of consultation, but if the specialist is regularly treating the employee, the specialist shall submit reports as required in paragraphs (a) and (b) of this sub-section; and
- (d) give all reasonable and necessary information, advice and assistance to the injured employee and a deceased employee's dependants in making application for compensation, to provide the required certificates and proofs, without charge to the employee.

(2) Every specialist or accredited medical practitioner who is authorized by this Act to attend to an injured employee is subject to the same duties and responsibilities, and any health care furnished by the specialist or accredited medical practitioner is subject to the direction, supervision and control of the Board.

(3) Unless the Board otherwise directs, a claim for medical services or health care shall not be paid if it is submitted later than 90 days from the date that the—

- (a) last treatment was given; or
- (b) accredited medical practitioner or person providing the medical service was first aware that the Board may be liable for his services, whichever first occurs.

(4) An accredited medical practitioner or other person authorized to render health care under this Act shall confine his or her treatment to injuries to the parts of the body he or she is authorized to treat under the Medical and Dental Practitioners Act under which he or she is permitted to practise, and any unauthorized treatment shall not be paid for by the Board.

(5) An accredited medical practitioner or other person who fails to submit prompt, adequate and accurate reports and accounts as required by this Act or the Board, commits an offence under this Act, and the accreditation to render health care pursuant to this Act may be cancelled by the Board or suspended for a period to be determined by the Board.

(6) Where the right of accreditation of a medical practitioner or other person is cancelled or suspended under sub-section (5) of this section, the Board shall notify –

- (a) the medical practitioner or other person;
- (b) inform the Nigerian Medical and Dental Council established under the Medical and Dental Practitioners Act or the relevant professional body to which the person is authorized to treat human ailment; and
- (c) the injured employee who seeks treatment from him or her of the cancellation or supervision.

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28. (1) This section applies to an employee who is receiving periodic payments under section 21 or 22 of this Act.

Retirement benefits

(2) A periodic payment under this Act shall not prejudice the beneficiary receiving any entitlement under the Pension Reform Act.

Act No. 2, 2004

(3) The Board shall set aside, at the time a periodic payment is made to an employee, an amount that -

- (a) is equal to 7.5 per cent of the periodic payment, or an amount set by the Pension Reform Act; and
- (b) is in addition to the periodic payment.

Act No. 2, 2004

(4) Subject to the Pension Reform Act, an employee may apply to the Board to contribute to the amount set aside or to be set aside under sub-section (3) of this section an amount that is not less than 1 per cent and not greater than 7.5 per cent of each subsequent periodic payment made to the employee.

Act No. 2, 2004

(5) Subject to sub-section (6) of this section, if the employee makes an application under sub-section (4) of this section, the Board shall, deduct the amount of contribution of the employee from each subsequent periodic payment made to the employee and remit this contribution along with the amount set aside under sub-section (2) of this section to the retirement savings account of the employee pursuant to the Pension Reform Act.

Act No. 2, 2004

- (6) The deductions made by the Board under sub-section (5) of this section may not be varied, except in response to an application by the employee to stop the deductions or transfer the deductions into his or her retirement savings account.
- (7) An employee may make the respective applications under sub-section (4) or sub-section (6) of this section only once.
- (8) An application made under sub-section (4) or (6) of this section shall be made in a form prescribed by the Board.

- 29. Any amount set aside as retirement benefit under section 28 of this Act shall be paid to the employee as part of his or her accrued retirement benefits in accordance with the provisions of the Pension Reform Act 2004. Payment of retirement benefits
- 30. The Board may make rules for the reconsideration of benefits payable under this Act. Reconsidering benefits

PART V – POWERS AND FUNCTIONS OF THE BOARD

- 31. The Board shall – Powers of the Board
 - (a) be in charge of overall policies for the administration of the Fund established under section 56 of this Act;
 - (b) approve investment of any money in the Fund on the advice of the Investment Committee established under section 62 of this Act;
 - (c) fix the terms and conditions of service including remuneration of the employees of the Fund;
 - (d) formulate policies and strategies for assessment of compensation, rehabilitation and welfare of employees who sustain injuries or contract occupational diseases at the workplace or in the course of employment; and
 - (e) do such other things which, in the opinion of the Board, are necessary to ensure the efficient performance of the Board under this Act.
- 32. The Board shall – Functions of the Board
 - (a) carry out assessment of the amounts to be paid into the Fund by employers under this Act;
 - (b) undertake regular actuarial valuation of industries, sectors and workplaces and determine the rates of contributions by employers into the Fund by such industry, sector or workplace;
 - (c) receive and credit into its account, all moneys payable into the

Fund under this Act;

- (d) make all payments of the various compensation or benefits to any person entitled to such compensation or benefit and make all disbursements required to be made out of the Fund established under this Act;
- (e) invest any money standing to the credit of the Fund only in accordance with the advice of the Investment Committee established under section 62 of this Act;
- (f) cooperate with the National Council for Occupational Safety and Health for the prevention of occupational accidents and diseases and for the promotion of safety and health culture at the workplace; and
- (g) carry out other activities as are necessary or expedient to ensure the effective performance of its functions under this Act.

(2) No investment shall be undertaken by the Board under this Act unless there is evidence to show that such investment is safe and not susceptible to market failures.

PART VI - EMPLOYERS' ASSESSMENT AND CONTRIBUTIONS

33. (1) Every employer shall, within the first 2 years of the commencement of this Act, make a minimum monthly contribution of 1.0 per cent of the total monthly payroll into the Fund. Employers' contribution to the Fund

(2) Without prejudice to the provisions of sub-section (1) of this section, the Board shall, from time to time, make regulations prescribing-

- (a) the categorization of risk factors of each class or sub-class of industry, sector or workplace and the amount of contributions to be made into the Fund; and
- (b) for different assessment rates applicable to each class and sub-class of industry, sector or workplace mentioned under paragraph (a) of this sub-section.

34. (1) The Board shall assess employers for such sums in such manner, form and procedure as the Board may, from time to time, determine for the due administration of this Act. Assessments.

(2) Assessments shall, in the first instance, be based upon estimates -

- (a) of the employer's payroll for the year provided under section 41 of this Act; or

(b) as determined by the Board under section 43 of this Act.

(3) The Board may, by order, establish a minimum assessment.

35. (1) Payment of any assessment made under section 33 of this Act shall be due on the 1st January in the year for which it relates. Assessment payable

(2) The Board may provide for the payment of the amount of assessment by installment, in which case the assessment for the year is payable on the dates determined by the Board.

36. (1) The Board shall have a cause of action for any unpaid assessment and shall be entitled to the costs of any action to recover the unpaid assessment. Liability for assessment, etc

(2) If, for any reason, an employer liable to assessment is not assessed by the Board, the employer shall be liable for the amount for which the employer should have been assessed, or as much as the Board considers reasonable, and payment of that amount may be enforced as if the employer had been assessed for that amount.

37. (1) The Board may provide for different assessment rates applicable to each class and sub-class of industry classified under section 38 of this Act. Assessment rates

(2) Publication in the Federal Gazette of a statement of percentages and rates fixed by the Board applicable to specific industries constitutes an assessment upon, and notice to, each employer in those industries for the period named in the Federal Gazette.

Employer classification

- 38. (1) For the purposes of this section, the Board may establish classes and sub-classes of industries as it deems appropriate
- (2) The Board shall assign every employer to an appropriate class or sub-class based upon the industry in which the employer operates.
- (3) The Board may, by regulations -
 - (a) create new classes in addition to those referred to in sub-section (1) of this section;
 - (b) divide classes into sub-classes and divide sub-classes into further sub-classes;
 - (c) consolidate or rearrange any existing class and sub-class;
 - (d) assign an employer, independent operator or industry to one or more classes or sub-classes;
 - (e) withdraw from a class -
 - (i) an employer, independent operator or industry,
 - (ii) a part of the class, or
 - (iii) a sub-class or part of a sub-class and transfer it to another class or sub-class or form it into a separate class or sub-class; or
 - (f) withdraw from a sub-class -
 - (i) an employer, independent operator or industry,
 - (ii) a part of the sub-class, or
 - (iii) another sub-class or part of another sub-class and transfer it to another class or sub-class or form it into a separate class or sub-class.
- (4) If the Board exercises authority under sub-section (3) of this section, it may make the adjustment and disposition of the funds, reserves and accounts of the classes and sub-classes affected as the Board considers just and expedient.

39. (1) Every employer shall -

Employer to provide estimate of payrolls

- (a) keep, at all times at some place in Nigeria, the location and address of which the employer has given notice to the Board, complete and accurate particulars of the employer's payrolls;
- (b) cause to be furnished to the Board -
 - (i) when the employer becomes an employer within the scope of this Act, and
 - (ii) at other times as required by any regulation made by

the Board of general application or any decision of the Board limited to a specific employer, an estimate of the probable amount of the payroll of each of the employer's industries within the scope of this Act, together with any further information required by the Board; and

(iii) provide signed copies of reports of the employer's payrolls, not later than the 31st December in each year or at such other times and in the manner required by the Board.

- (2) Where the employer fails to comply with sub-section (1) of this section, the employer is liable to pay as a penalty for the default, a percentage of the assessment prescribed by regulations or determined by the Board, and the Board may make its own estimate of the payrolls, assess and levy on that estimate and the employer is bound by it.
- (3) In computing the amount of the payroll for the purpose of assessment, regard shall be had only to that portion of the payroll that represents workers and employment within the scope of this Act.
- (4) If an employer does not comply with sub-section (1) of this section, or if a statement made in pursuance of its requirements is not true and accurate, the employer, for every failure to comply and for every such statement shall be liable to imprisonment for a term not exceeding one year or fine of not less than ₦100,000 or to both imprisonment and fine for an individual or a fine of not less than ₦1,000,000 for a body corporate and in addition, each director, manager or officer of the body corporate shall be deemed to have committed the offence and shall be liable on conviction to imprisonment for a term not exceeding one year or a fine of ₦100,000 or to both such imprisonment and fine.
40. (1) Every employer shall, not later than the last day of February in each year or at such other time as may be required by the Board, provide, in a manner to be determined by the Board, a statement - Statement and estimate of earnings
- (a) of the total amount of all earnings paid to its employees in the preceding year;
 - (b) estimating the earnings that will be paid to its employees in the current year or any part of it as directed by the Board;
 - (c) of the nature of the work activities; and
 - (d) of any additional information as the Board may require.
- (2) If the statement is found to be incorrect, the Board shall reassess the

employer for each year that the statement was incorrectly made and may charge the employer interest, at a rate determined by the decision of the Board, on any assessment that was not paid.

- (3) Employers shall declare the earnings of an employee who would be entitled to compensation and who is employed outside Nigeria as if the worker were employed in Nigeria.
- (4) Earnings paid to an employee in excess of the maximum assessable earnings shall not be included in the employer's statement under sub-section (1).
- (5) Unless satisfactory evidence of an employer's actual payroll for any period is provided to the Board, the payroll estimated by the Board under this section or under section 40(1) shall be deemed to be the actual payroll of the employer.
- (6) Where any person is deemed under this Act to be an employee, the Board may deem an amount to be the earnings for that employee.
- (7) Where the activity or business of the employer is carried on in more than one industry, the Board may require separate statements for each industry.

- 41. (1) The Board shall maintain experience accounts for each employer, indicating the assessments levied and the cost of all claims chargeable in respect of the employer.
- (2) Where, in the opinion of the Board, an employee's disability results, in whole or in part, from the negligence of an employer who is not the employer of the disabled employee, or an employee of that employer -
 - (a) the cost of any claim, as determined by the Board, may be charged to the experience account of that employer; and
 - (b) where the employer is in a separate class or sub-class from the disabled employee's employer, the Board may charge the cost of the claim, as determined by the Board, to the class or sub-class in which that employer is included in proportion to the degree of negligence attributed to that employer or that employer's employee.
- (3) Where an employee suffers a work-related disability, the disabled employee's employer may, within 24 months of the disability arising, request that sub-section (2) of this section be applied by the Board.

Employer's experience accounts

- 42. (1) If, in any year or other period determined by the Board, the claims cost charged to the experience account of an employer are in excess of 105

Super assessment

per cent of the ordinary assessment of that employer for the same year, the Board may, within 4 years, assess and levy the employer in that year a super-assessment of an amount directed by the Board, but not exceeding 133 per cent of the employer's ordinary assessment for the year, having regard to the amount of the excess and the extent of the amounts previously charged against that employer's experience account.

(2) Where the Board has levied an assessment under sub-section (1) of this section, the employer shall continue to be liable for the ordinary assessment for the year.

43. The Board may, by a decision adopt a system of merit rating for employers. Merit rating

44. (1) Where any person or organization employs an independent contractor to perform any work in a workplace, both the person or organization and the independent contractor shall be liable- Liability for assessment of independent contractors and sub-contractors

(a) jointly for any assessment under this Act relating to that work; and

(b) for that amount which may, at the discretion of the Board, be collected from either of them, or partly from one and partly from the other.

(2) Where any work is performed under a sub-contract, the principal, the contractor and the sub-contractor shall be liable -

(a) jointly for any assessment relating to that work; and

(b) for that amount which may be collected from either of them or partly from one and partly from the other.

(3) Any person or organization referred to in sub-section (1) of this section may withhold from the money payable to that contractor, any amount for which the principal is liable under this section and pay such amount to the Board and between the principal, contractor and sub-contractor, the payment shall be deemed to be a payment on the contract or sub-contract or both.

(4) Any contractor may withhold from any money payable to a sub-contractor the amount that the contractor is liable to pay under this section to the sub-contractor and pay that amount to the Board and between the contractor and the sub-contractor, the payment shall be deemed to be a payment on the sub-contract.

(5) In the absence of any term in the contract to the contrary, where -

(a) a principal does not withhold any money payable to a contractor

under sub-section (3) of this section and pays its liability under sub-section (1) of this section to the Board, the contractor shall be indebted to the principal for that amount and the principal shall have a cause of action against the contractor in respect of that debt; or

(b) the contractor does not withhold any money under sub-section (4) of this section and pays its liability under sub-section (2) of this section, the sub-contractor shall become indebted to the contractor for that amount and the contractor shall have a cause of action against the sub-contractor in respect of that debt.

- 45. (1) The Board may serve notice on an employer requiring the employer to provide security, in an amount and form deemed appropriate by the Board, for the payment of assessments that are or might be levied against an employer. Security for payment of assessment
- (2) If at any time the Board considers that the security provided is no longer sufficient, the Board may require such further security as it deems appropriate.
- (3) The employer shall, within 30 days after being served with a notice to do so, provide the security required by the Board.

- 46. If an assessment is not paid when required by the Board, or security is not provided when required, the Board may assess a penalty in an amount equal to 10 *per cent* of the unpaid assessment or the value of the security required, the payment of which may be enforced in the same manner as the payment of an assessment. Penalty for non-payment of assessment or provision of security

- 47. If an employer - Decisions of the Board
 - (a) defaults in providing the security required by the Board;
 - (b) defaults in the payment of any amount due to the Fund; or
 - (c) contravenes any decisions of the Board,
the employer commits an offence under this Act.

- 48. (1) Where - Provisional assessment
 - (a) an employer fails to comply with section 39 of this Act within the time required under this Act; or
 - (b) the information provided under section 39 of this Act does not, in the opinion of the Board, reflect the probable amount of the payroll of the employer or correctly describe the nature of the work carried on,

the Board may assess such sum as it is in its opinion, the probable payroll of the employer or nature of the employer's industry.

(2) If it is later determined that the assessment under sub-section (1) of this section, is different from the required assessment, the employer or the Board shall be liable to pay to the other the difference.

49. (1) Where an employer engages in any industry within the scope of this Act and has not been assessed in respect of it, the Board, if it considers that the industry is to carry on business temporarily, may require the employer to pay or to give security for the payment to the Fund of a sum sufficient to pay the assessment for which the employer may be liable if the industry had been in existence when the last preceding assessment was made. Temporary industry

(2) Every employer who defaults in complying with the requirement under sub-section (1) of this section commits an offence under this Act.

50. When an employer commences or recommences a business, the employer shall provide, within 30 days of commencement or recommencement, to the Board the statements required under section 51 of this Act. Employer commencing or recommencing a business

51. A person who ceases to be an employer shall notify the Board within 30 days of cessation and shall provide a statement of the total payroll for the year. Employer ceasing to be an employer

52. Every employer shall keep an accurate account of all remuneration paid to its employees and of any other particular of its operations as may be required by the Board. Records of remuneration and operations

53. (1) Any person authorized by the Board may examine the books and accounts of any employer as the Board deems necessary for administering this Act. Examination

(2) For the purposes related to the administration of this Act, any person authorized by the Board may, at all reasonable hours, enter any part of the establishment of any employer or person who may be an employer.

(3) An employer shall produce, within 30 days of receiving notice from the Board, and in the manner set out in the notice, all documents, deeds, papers and computer records which are in the possession, custody or power of the employer that relate to the subject matter of an examination under this section.

(4) For the purposes of an examination or inquiry under this section, the Board or any person authorized by it, shall have all the power of a Board of Inquiry appointed under this Act.

(5) Every person authorized by the Board to make an examination under this section may require and take a statement respecting the subject matter of an examination under this section.

- (6) An employer or other person who obstructs or hinders the making of an examination under this section or who refuses to permit it to be made or who neglects or refuses to produce such documents, writings, books, deeds and papers or make statement required in the notice under this section, commits an offence.
- (7) In this section, an employer includes a person who the Board considers to be an employer or a principal.
54. An officer of the Board may, for the purposes of carrying out his or her duties under this Act and any regulation made thereunder or pursuant to any enactment or law –
- Enforcement powers
- (a) enter in any workplace at any time with or without warrant or notice;
 - (b) require the production of any licence, document, record or report, inspect, and examine a copy of the same;
 - (c) remove any licence, document, record or report inspected or examined for the purpose of making copies or extracts and upon making such copies or extracts, shall promptly return same to the person who produced or furnished them;
 - (d) in any inspection, examination or inquiry, shall be accompanied and assisted by a police officer or other person or persons having special, expert or professional knowledge of any matter in respect of which inspection is being carried out;
 - (e) make enquiries of any person who is or was in a workplace either separate or in the presence of any other person who may be relevant to an inspection, examination or enquiry;
 - (f) require that records or documents in a workplace or part thereof may not be disturbed for a reasonable period of time for the purpose of carrying out an examination, investigation or enquiry; and
 - (g) the report arising out of any enquiry, inspection or examination shall be the property of the Board and shall be held in confidence.
55. (1) A person aggrieved by any decision of the Board may appeal to the Board for a review of such decision.
- Right of appeal
- (2) An appeal under sub-section (1) of this section shall be made in writing to the Board within 180 days of the date of the decision otherwise the person shall lose his or her right to appeal the decision.
- (3) The appeal shall be disposed of in the manner determined by the Board within a period of 180 days.
- (4) An appeal shall lie from any decision of the Board under sub-section

(1) of this section to the National Industrial Court.

PART VII - FINANCIAL PROVISIONS

56. (1) There is established the Employees' Compensation Fund (in this Act referred to as "the Fund") into which shall be credited all moneys, funds or contributions by employers for adequate compensation to employees or their dependants for any death, injury, disability or disease arising out of or in the course of employment.

Establishment of the Employees' Compensation Fund

(2) The Fund established under sub-section (1) of this section shall consist of -

- (a) a take-off grant from the Federal Government;
- (b) contributions payable by employers into the Fund pursuant to this Act;
- (c) fees and assessments charged or made pursuant to this Act or any regulations made thereunder;
- (d) the proceeds of investments of the Fund;
- (e) gifts and grants from any national or international organizations; and
- (f) any other money that may accrue to the Fund from any other source.

57. Subject to this Act, the Fund established under section 56 of this Act shall be managed by the Nigeria Social Insurance Trust Fund Management Board established under the Nigeria Social Insurance Trust Fund Act [1993 No. 73] (in this Act referred to as "the Board").

Management of the Fund, etc.

58. The money in the Fund established under section 56 of this Act shall be applied or expended for -

Expenditures of the Fund

- (a) payment of adequate compensation for all employees or their dependants for any injury, disease or disability arising out of or in the course of employment;
- (b) the provision of rehabilitation to employees with work-related disabilities;
- (c) payment of remuneration and allowances of members and staff of the Board;
- (d) supporting activities and programmes on the prevention of occupational accidents and hazards and the promotion of occupational safety and health at the workplace;
- (e) purchase of any equipment or material required for carrying out the functions of the Board under this Act; and
- (f) carrying out any activity or doing anything with respect to any

of the functions of the Board.

59. The Board shall cause to be prepared not later than 31st day of August in each year, an estimate of its income and expenditures for the succeeding year. Annual estimates, etc.
60. The Board shall cause to be kept proper accounts and records of the Fund and such account shall not later than 4 months after the end of each year, be audited by auditors appointed by the Board from the list and in accordance with the guidelines supplied by the Auditor-General for the Federation. Accounts and audits
61. The Board shall not later than 6 months after the end of each year, submit to the President through the Minister, a report on the activities and administration of the Fund during the immediate preceding year and shall – Annual reports, etc.
- (a) include in such report, the audited accounts of the Fund and the auditors report thereon; and
 - (b) cause such report to be published and distributed to all the social partners and the National Assembly.

PART VIII- ESTABLISHMENT OF THE INDEPENDENT INVESTMENT COMMITTEE, ETC.

62. (1) There is established the Independent Investment Committee (in this Act referred to as “the Investment Committee”) which shall consist of – Establishment of the independent investment Committee
- (a) a representative of the –
 - (i) Central Bank of Nigeria,
 - (ii) Nigeria Investment Promotion Commission,
 - (iii) National Pension Commission;
 - (b) 3 representatives of the most represented employers’ organizations;
 - (c) 3 representatives of the most represented employees’ organizations; and
 - (d) a representative of the Nigerian Association of Chambers of Commerce, Industry, Mines and Agriculture.
- (2) The Investment Committee shall, subject to the Interpretation Act, make its standing orders and supplementary rules for its proceedings.

- (3) The Investment Committee shall advise the Board on the investment of any money standing to the credit of the Fund under this Act.
- (4) The Board shall not later than the 31st March in each year submit an annual report on its investment activities to the Investment Committee.
- (5) The Investment Committee shall forward the report referred to in sub-section (4) of this section and its recommendation thereon to the National Labour Council and the Minister.

63. The Investment Committee shall -

- (a) carry out investment surveys in the economy and draw up a list of safe investment, from time to time;
- (b) initiate or carry out independent assessment of the investment activities of the Board; and
- (c) carry out any duty or activity as the Board may, from time to time, direct.

Functions of the Investment Committee

PART IX- MISCELLANEOUS PROVISIONS

64. The Minister may, on the recommendation of the Board, make regulations generally for giving full effect to the provisions of this Act.

Power to make regulations

65. A person required under the Act to provide information to the Board who knowingly provides the Board with any false or misleading information is guilty of an offence and is liable on -

Providing false information

- (a) first conviction to imprisonment for a term not exceeding 6 months or a fine not exceeding N200,000 or to both; or
- (b) each subsequent conviction to imprisonment for a term not exceeding one year or to a fine not exceeding N500,000 or both.

66. (1) No member, employee, agent of the Board or person authorized to make an examination or inquiry under this Act shall disclose or allow to be disclosed, except in the performance of their duties or under authority of the Board, any information obtained in the administration of this Act.

Confidentiality

(2) Whenever information in respect of a specific claim, other than information that is statistical in nature, is provided to another institution to which the Board may have a working agreement, the Board shall notify the employee or the employer of the information that has been provided.

(3) Any person who violates the provisions of this section commits an offence under this Act.

67. No member, employee or agent of the Board shall be required to testify in a civil suit to which the Board is not a party with regard to information obtained in the discharge of a duty or obligation under this Act except when required to do so by the court or in such other circumstances as may be prescribed by the Board from time to time.

Non-compellability

68. (1) Where the Board sends a notice to an employer that requires to be posted in the employer's workplace, the employer shall post such notices in such prominent location in the workplace readily accessible to the employees.

Records and notices

(2) An order, notice or other documents may be served by registered mail to the last known address of the person it is addressed to and when served by registered mail if the post office receipt is received by the Board, such service shall be deemed to be good and sufficient service.

(3) Any order, notice or other document served under sub-section (2) shall be deemed to be served on the date that the post office receipt was signed by the employer.

69. The Board may waive any requirement under this Act for an illiterate person to provide written notice and may accept instead notice in any form the Board deems appropriate.

Illiteracy

70. (1) Notwithstanding anything contained in this Act, where an employer becomes insolvent, any amount due or required by an employer to be paid to the Fund on an assessment made under this Act or on a judgement for it, shall constitute a lien in favour of the Fund payable in priority over all liens, charges or mortgages of every person, wherever created or to be created, with respect to the property or proceeds of property, real, personal or mixed, used in or in connection with or produced in or by the industry with respect to which the employer was assessed or the amount became payable, excepting liens for wages due to employees by their employers.

Priority as to amounts due to the Fund in the case of employer's insolvency

(2) The lien created in favour of the Fund subsection (1) of this section shall remain valid and in force with respect to each assessment until the expiration of 5 years from the end of the calendar year for which the assessment was levied.

(3) Where the employer is a body corporate, the word "property" in subsection (1) of this section shall include the property of any director, manager, secretary or other officers of the body corporate where the

property is used in, or in connection with the industry in respect of which the employer was assessed or the amount became payable, or was so used within the period in respect of which assessment are unpaid.

71. (1) Any person who contravenes any provision of this Act for which no specific penalty is provided, commits an offence and shall be liable on conviction to a fine of ₦20, 000 for the first case of non-compliance or imprisonment for a term not exceeding 1 year or ₦100, 000 for every subsequent case of non-compliance or to both such imprisonment and fine. General penalty

(2) Where an offence under this Act is committed by a body corporate, every-

- (a) director, manager, secretary or other officers of the body corporate;
- (b) partner or officer of the firm; or
- (c) person who was purporting to act in such capacity mentioned in paragraphs (a) and (b) of this sub-section,

shall be deemed to have committed the offence unless he proves that the act or omission constituting the offence took place without his knowledge, consent, connivance or neglect or he took reasonable steps to prevent the commission of the offence.

72. (1) The Workmen’s Compensation Act, Cap W6 LFN 2004 is repealed. Repeal of Cap. W 6, LFN and Savings.

(2) Without prejudice to section 6 of the Interpretation Act, the repeal of the enactment specified in subsection (1) of this section, shall not affect anything done under or pursuant to the enactment.

(3) Every order, requirement, certificate, notice, direction, decision, authorization, consent, application, request or thing made, issued, given or done under any enactment repealed by this Act shall, if in force at the commencement of this Act, continue to be in force and have effect as if made, issued, given or done under the corresponding provision of this Act.

73. In this Act— Interpretation

“accident” means an occurrence arising out of or in the course of work which results in fatal or non-fatal occupational injury that may lead to compensation under this Act;

“accredited medical practitioner” means a registered medical practitioner or a specialist accredited by the Board for the purposes of this Act;

“Board” means the Nigeria Social Insurance Trust Fund Management Board established under the Nigeria Social Insurance Trust Fund Act, 1993.

“child” means any person not more than 21 years old and who is receiving full time education or any training and is not paid wages; and includes any step-child and child adopted in a manner recognized as lawful in Nigeria;

“compensation” means any amount payable or service provided under this Act in respect of a disabled employee and includes rehabilitation;

“dependant” includes those members of the family, including adoptive and foster family, of the deceased or disabled employee who were wholly dependent upon his earnings at the time of his death, or would, but for the disability due to the occupational accident or diseases, have been so dependent;

“employee” means a person employed by an employer under oral or written contract of employment whether on a continuous, part-time, temporary, apprenticeship or casual basis and includes a domestic servant who is not a member of the family of the employer including any person employed in the Federal, State and Local Governments, and any of the government agencies and in the formal and informal sectors of the economy;

“employer” includes any individual, body corporate, Federal, State or Local Government or any of the government agencies who has entered into a contract of employment to employ any other person as an employee or apprentice;

“enemy war-like action” includes civil insurrection, riots, commotion, conflicts, terrorist act, hostilities;

“Fund” means the Employees’ Compensation Fund established under section 56 of this Act;

“industry” includes establishment, undertaking, work, trade, business and any other workplace;

“injury” includes bodily injury or disease resulting from an accident or exposure to critical agents and conditions in a workplace;

“invalid” means incapable of earning income in any occupation by reasons of some specific disease or bodily or mental disablement;

“interest” means monetary interest calculated at a rate and in a manner set by the Board for the purposes of this Act;

“invalid spouse” means a spouse incapable of earning income in any occupation by reason of some specific disease or bodily or mental disablement;

“member” means a member of the Board and includes the Chairperson;

“Minister” means the Minister charged with responsibilities for matters relating to employment, labour and productivity;

“monthly payments” means monthly payments under this Act to a widow, widower, former common law wife or former common law husband of a deceased worker or to other eligible persons under this Act;

“National Council on Occupational Safety and Health” means the Council established under the Occupational Safety and Health Act, 2005;

“occupational disease” means a disease contracted arising out of or in the course of exposure to risk factors at work;

“permanent partial disability” means the physical functions or conditions, mental capacity or physiological health arising from and in the course of employment that cause a deviation for more than 12 months from the condition typical for the respective age which restricts participation in the life of society and includes disfigurement;

“permanent total disability” means the physical functions or conditions, mental capacity or physiological health arising from and in the course of employment that cause a deviation for more than 12 months from the condition typical for the respective age which restrict participation in the life of society and includes disfigurement;

“reasonable hour” means from 6am-6pm

“remuneration” means basic wages, salaries or earnings designated or calculated, capable of being expressed in terms of money and fixed by mutual agreement or by law which are payable by an employer to an employee for work done or to be done or services rendered or to be rendered; and allowances which include rental, transport, meals and utility or other allowances as may be determined by the Board, from time to time;

“spouse” means the person who, at the date of the employee’s death, cohabited with the employee, and to whom the employee is legally married, or with whom the employee cohabited as a couple for at least 12 months

immediately before the death of the employee;

“workplace” includes any premises or place where a person performs work or needs to be or is required to be in the course of employment;

“work-related” in reference to a disability of an employee means a disability arising out of and in the course of employment of an employee.

74. This Act may be cited as the Employees’ Compensation Act, 2010.

Citation

SCHEDULES

Section 9
(1)(d)

FIRST SCHEDULE

List of Occupational Diseases

1. Diseases caused by agents

1.1 Diseases caused by chemical agents

- 1.1.1 Diseases caused by beryllium or its toxic compounds
- 1.1.2. Diseases caused by cadmium or its toxic compounds
- 1.1.3. Diseases caused by phosphorus or its toxic compounds
- 1.1.4. Diseases caused by chromium or its toxic compounds
- 1.1.5. Diseases caused by manganese or its toxic compounds
- 1.1.6. Diseases caused by arsenic or its toxic compounds
- 1.1.7. Diseases caused by mercury or its toxic compounds
- 1.1.8. Diseases caused by lead or its toxic compounds
- 1.1.9. Diseases caused by fluorine or its toxic compounds
- 1.1.10. Diseases caused by carbon disulphide
- 1.1.11. Diseases caused by the toxic halogen derivatives of aliphatic or aromatic hydrocarbons
- 1.1.12. Diseases caused by benzene or its toxic homologues
- 1.1.13. Diseases caused by toxic nitro- and amino-derivatives of benzene or its homologues
- 1.1.14. Diseases caused by nitroglycerine or other nitric acid esters
- 1.1.15. Diseases caused by alcohols, glycols or ketones
- 1.1.16. Diseases caused by asphyxiants: carbon monoxide, hydrogen cyanide or its toxic derivatives, hydrogen sulphide
- 1.1.17. Diseases caused by acrylonitrile
- 1.1.18. Diseases caused by oxides of nitrogen
- 1.1.19. Diseases caused by vanadium or its toxic compounds
- 1.1.20. Diseases caused by antimony or its toxic compounds
- 1.1.21. Diseases caused by hexane
- 1.1.22. Diseases caused of teeth due to mineral acids
- 1.1.23. Diseases due to pharmaceuticals agents
- 1.1.24. Diseases due to thallium or its compounds
- 1.1.25. Diseases due to oxmium or its compounds.
- 1.1.26. Diseases due to selenium or its compounds
- 1.1.27. Diseases due to copper or its compounds
- 1.1.28. Diseases due to tin or its compounds
- 1.1.29 Diseases due to zinc or it s compounds

- 1.1.30 Diseases due to ozone, phosgene
- 1.1.31 Diseases due to irritants: benzoquinone and other corneal irritants
- 1.1.32 Diseases caused by any other chemical agents not mentioned in the preceding items 1.1.1. to 1.1.31. where a link between the exposure of an employee to these chemical agents and the diseases suffered is established.

1.2. Diseases caused by physical agents

- 1.2.1. Hearing impairment caused by noise
- 1.2.2. Diseases caused by vibration (disorders of muscles, tendons, bones, joints, peripheral blood vessels or peripheral nerves)
- 1.2.3. Diseases caused by work in compressed air
- 1.2.4. Diseases caused by ionizing radiations
- 1.2.5. Diseases caused by heat radiation
- 1.2.6. Diseases caused by ultraviolet radiation
- 1.2.7. Diseases due to extreme temperature (e.g. sunstroke, frostbite)
- 1.2.8. Diseases caused by any other physical agents not mentioned in the preceding items 1.2.1. to 1.2.7, where a direct link between the exposure of a worker to these physical agents and the diseases suffered is established

1.3. Biological agents

- 1.3.1. Infectious or parasitic diseases contracted in an occupation where there is a particular risk of contamination

2. Diseases by target organ systems

2.1. Occupational respiratory diseases

- 2.1.1. Pneumoconioses caused by sclerogenic mineral dust (silicosis, anthracosilicosis, asbestosis) and silicotuberculosis, provided that silicosis is an essential factor in causing the resultant incapacity or death
- 2.1.2. Bronchopulmonary diseases caused by hard metal dust
- 2.1.3. Bronchopulmonary diseases caused by cotton, flax, hemp or sisal dust (byssinosis)
- 2.1.4. Occupational asthma caused by recognized sensitizing agents or irritants inherent to the work process
- 2.1.5. Extrinsic allergic alveolitis caused by the inhalation of organic dusts as prescribed by national legislation.
- 2.1.6. Siderosis
- 2.1.7. Chronic obstructive pulmonary diseases
- 2.1.8. Diseases of lung, due to aluminum
- 2.1.9. Upper airways disorders caused by recognized sensitizing agents or irritants inherent to the work process.
- 2.1.10. Any other respiratory disease not mentioned in items 2.1.1 to 2.1.9. caused by an agent where a direct link between the exposure of an

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employee to this agent and the disease suffered is established.

2.2. Occupational skin diseases

- 2.2.1. Skin diseases caused by physical, chemical or biological agents not included under other items
- 2.2.2. Occupational vitiligo

2.3. Occupational musculo-skeletal disorders

- 2.3.1. Musculo-skeletal diseases caused by specific work activities or work environment where particular risk factors are present such as:
 - (a) rapid or repetitive motion
 - (b) forceful exertion
 - (c) excessive mechanical force concentration
 - (d) awkward or non-neutral postures
 - (e) vibration

Local or environmental cold may potentate risk

3. Occupational Cancer

3.1. Cancer caused by the following agents

- 3.1.1. Asbestos
- 3.1.2. Benzidine and salts
- 3.1.3. Bis chloromethyl ether (BCME)
- 3.1.4. Chromium and chromium compounds
- 3.1.5. Coal tars and coal tar pitches; soot
- 3.1.6. Betanaphtylamine
- 3.1.7. Vinyl chloride
- 3.1.8. Benzene or its toxic homologues
- 3.1.9. Toxic nitro-and amino-derivatives of benzene or its homologues
- 3.1.10. Ionizing radiations
- 3.1.11. Tar, pitch, bitumen, mineral oil, anthracene, or the compounds, products or residues of these substances
- 3.1.12. Coke oven emissions
- 3.1.13. Compounds of nickel
- 3.1.14. Dust from wood
- 3.1.15. Cancer caused by any other agents not mentioned in the preceding items 3.1.1. to 3.1.14, where a direct link between the exposure of an employee to this agent and the cancer suffered is established

4. Others

- 4.1 Miners' nystagmus

**SECOND SCHEDULE
PERCENTAGE OF DISABILITY**

Injury	Percentage of Disability
Loss of limb	100
Loss of both hands or of all finger and thumbs	100
Loss of both feet	100
Total loss of sight	100
Total paralysis	100
Injuries resulting in being permanently bedridden	100
Any other injury resulting in having permanent total disability	100
Loss of arm at shoulder	80
Loss of arm between elbow and shoulder	70
Loss of arm at elbow	70
Loss of arm between wrist and elbow	70
Loss of hand at wrist	70
Loss of four fingers	50
Loss of thumb -	
both phalanges	35
one phalange	10
Loss of index finger -	
three phalanges	15
two phalanges	10
one phalange	6
Loss of middle finger -	
three phalanges	10
two phalanges	6
one phalange	4
Loss of ring finger -	
three phalanges	6
two phalanges	5
one phalange	3
Loss of little finger -	
three phalanges	5
two phalanges	4
one phalange	3
Loss of metacarpals -	
1 st or 2 nd (additional) 3 rd	4
4 th or 5 th (additional)	3
Loss of leg - at or above knee	75
Loss of leg - at or below knee	60
Loss of foot	40
Loss of toes -	
all of one foot	20
great -	
both phalanges	10
one phalange	3
other than great, if more than one toe lost, each	2
Loss of sight of one eye	30
Loss of hearing - of one ear	10
Total loss of hearing	100
Loss of remaining eye by one-eyed employee	100
Loss of remaining arm by one-armed employee	100
Loss of remaining leg by one-legged employee	100

- (1) Total permanent loss of the use of a member shall be treated as loss of such member.
- (2) In the case of a right-handed employee, an injury to the left arm or hand and in the case of a left-handed employee, to right arm or hand shall be rated at 90 per cent or the above

percentages.

- (3) Where there is loss of 2 or more parts of the hand, the percentage of incapacity shall not be more than for loss of the whole hand, and necessary lesser percentage shall be applied accordingly.

CERTIFY, IN ACCORDANCE WITH SECTION 2 (1) OF THE ACTS AUTHENTICATION ACT, CAP. A2, LAWS OF THE FEDERATION OF NIGERIA 2004, THAT THIS IS A TRUE COPY OF THE BILL PASSED BY BOTH HOUSES OF THE NATIONAL ASSEMBLY.




SALISU ABUBAKAR MAIKASUWA, mni
CLERK TO THE NATIONAL ASSEMBLY

 **1st DAY OF DECEMBER, 2010**


Schedule to Employee's Compensation Bill, 2010

SHORT TITLE OF THE BILL	LONG TITLE OF THE BILL	SUMMARY OF THE CONTENTS OF THE BILL	DATE PASSED BY THE SENATE	DATE PASSED BY THE HOUSE OF REPRESENTATIVES
Employee's Compensation Bill, 2010	An Act to repeal the Workmen's Compensation Act Cap. W6 LFN, 2004 and to make provisions for compensations for any death, injury, disease or disability arising out of or in the course of employment; and for related matters.	This Act repeals the Workmen's Compensation Act Cap. W6 Laws of the Federation of Nigeria, 2004 and makes comprehensive provisions for payment of compensation to employees who suffer from occupational diseases or sustain injuries arising from accident at workplace or in the course of employment.	25 th November, 2010	25 th November, 2010

I certify that this Bill has been carefully compared by me with the decision reached by the National Assembly and found by me to be true and correct decision of the Houses and is in accordance with the provisions of the Acts Authentication Act Cap. A2, Laws of the Federation of Nigeria, 2004.


SALISU ABUBAKAR MAIKASUWA, mni
 Clerk to the National Assembly
 15th Day of December, 2010

I ASSENT.


DR. GOODLUCK EBELE JONATHAN, GCFR
 President of the Federal Republic of Nigeria
 17th Day of December, 2010