

BILL NO. 14 OF 2015

A BILL

FOR AN ACT TO AMEND THE WORKMEN'S COMPENSATION ACT (CAP. 94)

ENACTED by the Parliament of the Republic of Fiji—

Short title and commencement

1.—(1) This Act may be cited as the Workmen's Compensation (Amendment) Act 2015.

(2) This Act shall come into force on the date of its publication in the *Gazette*.

(3) In this Act, the Workmen's Compensation Act (Cap. 94) shall be referred to as the "Principal Act".

Section 3 amended

2. Section 3 of the Principal Act is amended—

(a) in the definition of "member of the family" by inserting "*de facto* partner," after "husband,"; and

(b) by inserting the following new definitions—

““*de facto* partner” means a party in a *de facto* relationship;

“*de facto* relationship” has the same meaning as under section 42 of the Family Law Act 2003;

“labour inspector” means a labour inspector appointed or authorised by the Permanent Secretary for the purposes of this Act to institute and appear on behalf of any workman, and where the workman is deceased on behalf of the dependants of the deceased workman, in any civil proceedings by the workman or his or her dependants in respect of any matter or course of action arising out of or in the course of employment of such workman under the provisions of this Act;

“Minister” means the Minister responsible for the administration of this Act;”

Section 6 amended

3. Section 6 of the Principal Act is amended in paragraph (a) by deleting “twenty four thousand dollars” and substituting “fifty thousand dollars”.

Section 7 amended

4. Section 7 of the Principal Act is amended—

- (a) in subsection (1) by deleting “thirty two thousand dollars” and substituting “sixty seven thousand dollars”; and
- (b) in subsection (2) by deleting “one-quarter” and substituting “half”.

Section 8 amended

5. Section 8 of the Principal Act is amended in subsection (1)(b), by deleting “twenty four thousand dollars” and substituting “fifty thousand dollars”.

Section 14 amended

6. Section 14 of the Principal Act is amended by deleting subsection (3) and substituting the following—

“(3) If an employer fails to comply with the provisions of subsections (1) and (2) without reasonable cause, a labour inspector shall issue the employer with a demand notice.

(3A) If the employer fails to comply with the requirements of the demand notice issued under subsection (3), the employer commits an offence and shall be liable to—

- (a) in the case of an employer whose consolidated revenue in a financial year is less than \$500,000, a fixed penalty of \$500;
 - (b) in the case of an employer whose consolidated revenue in a financial year is more than \$500,000 but less than \$2 million, a fixed penalty of \$1,500;
 - (c) in the case of an employer whose consolidated revenue in a financial year is more than \$2 million but less than \$5 million, a fixed penalty of \$3,000;
 - (d) in the case of an employer whose consolidated revenue in a financial year is more than \$5 million but less than \$20 million, a fixed penalty of \$7,000;
- or

(e) in the case of an employer whose consolidated revenue in a financial year is more than \$20 million, a fixed penalty of \$10,000.

(3B) A fixed penalty notice specifying the fixed penalty shall be issued to the employer in the form prescribed under Schedule 2.

(3C) If the employer fails to pay the fixed penalty in accordance with the requirements of the fixed penalty notice issued under subsection (3B), the employer shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding \$50,000.

(3D) The Permanent Secretary or labour inspector may direct the employer who has committed an offence under subsection (3A) to furnish a report or documentation on its consolidated revenue for the preceding year, and such employer must comply with such direction.

(3E) If the employer fails to comply with the directive under subsection (3D), the employer commits an offence and shall be liable upon conviction to a fine not exceeding \$50,000.”

Schedule amended

7. The Schedule to the Principal Act is amended in the heading by inserting “1” after “Schedule”.

New schedule inserted

8. The Principal Act is amended by inserting the following new Schedule after Schedule 1—

“SCHEDULE 2—FIXED PENALTY NOTICE
(Section 14(3B))

WORKMEN’S COMPENSATION FIXED PENALTY NOTICE

PART A

Notice No.: _____

To: _____ of _____

Place of Offence: _____

Date of Offence: _____ Time of Offence: _____

It is alleged that you have been found committing an offence in contravention of section _____ of the Workmen’s Compensation Act (Cap. 94).

Statement/Particulars of Offence: _____

- If you do not wish for the matter to be determined in a court hearing, you may complete Part B attached to this notice and forward that form together with the prescribed penalty to the Ministry of Employment, Productivity and Industrial Relations within 21 days.
- The fixed penalty for the alleged offence is \$_____
- You have the right to decline to proceed in the manner described above and to allow the matter to be determined in a court hearing—
 - (i) if you wish to contest whether the offence alleged was actually committed;
 - (ii) if you wish to submit to the court matters in extenuation of the penalty; or
 - (iii) for any other reason, in which event you need not reply or take further action in respect of this notice, and in such case proceedings will be instituted against you in due course.
- As well as paying the fixed penalty for the specified offence, you are required to remedy your non-compliance with the relevant provisions of the Workmen's Compensation Act (Cap. 94) by _____

Signed: _____ Name: _____
 Labour Inspector

Date: _____

**see back of form for Affidavit of Service*

PART B Notice No.: _____

I, _____ of _____
 being the person named above hereby enter a plea of guilty to the offence specified.

I, attach a cheque (not negotiable) or cash of \$_____

Signed: _____ Name: _____

Date: _____

(NOTE: Penalty must be paid directly to the Headquarters of the Ministry of Employment, Productivity and Industrial Relations or to the District or Divisional Office of the Ministry of Employment, Productivity and Industrial Relations nearest to you)

AFFIDAVIT OF SERVICE
(To be completed in all cases)

I, _____, the Labour Inspector whose signature appears at the foot of the Workmen's Compensation Fixed Penalty Notice above, make oath and say that on the _____ day of _____ 20____ at _____ I did serve the person specified therein,

OR

affix in a conspicuous position, on the _____
the Workmen's Compensation Fixed Penalty Notice.

Sworn by the above named Labour Inspector on this _____ day of _____ 20____.

Before: _____
Magistrate or Justice of Peace or
Commissioner for Oaths

Labour Inspector"

WORKMEN'S COMPENSATION (AMENDMENT) BILL 2015

EXPLANATORY NOTE

(This note is not part of the Bill and is only intended to indicate its general effect)

1.0 BACKGROUND

- 1.1 The Workmen's Compensation (Amendment) Bill 2015 ('**Bill**') seeks to amend the Workmen's Compensation Act (Cap. 94) ('**Act**').
- 1.2 A major problem faced by injured workers and the dependants of deceased workers is the very low compensation payouts that are disproportionate to the current cost of living, thereby contributing to poverty.
- 1.3 The last review of the compensation quantum was conducted 21 years ago in 1994, and there is an urgent need to increase the quantum to be compatible with the current cost of living.
- 1.4 The Workers Compensation Unit that is responsible for the administration of the Act has developed and is currently implementing its standard operating procedures benchmarked to the ISO 9001: 2008 Quality Management Systems, to continually improve its service quality to the injured and the dependants of deceased workers.

2.0 CLAUSES

- 2.1 Clause 1 provides for the short title and commencement date.
- 2.2 Clause 2 amends section 3 of the Act by providing the definitions of "*de facto* partner", "labour inspector" and "Minister". Also, the Act recognises an illegitimate child as a dependant while his or her mother is not recognised. Therefore, the new definition of "*de facto* relationship" is included to effect the equal distribution of compensation claims under the Act.
- 2.3 Clause 3 amends section 6 of the Act by increasing the maximum compensation payouts for deaths from \$24,000 to \$50,000.

- 2.4 Clause 4 amends section 7 of the Act by increasing the maximum compensation payouts for permanent total incapacity from \$32,000 to \$67,000.
- 2.5 Clause 5 amends section 8 of the Act by increasing the maximum compensation payouts for permanent partial incapacity from \$24,000 to \$50,000.
- 2.6 Clause 6 amends section 14 of the Act by inserting new subsections which allow a fixed penalty notice to be issued if an employer does not comply with the reporting of an injury to the Ministry. The form of the notice is also prescribed under the new Schedule 2.
- 2.7 Employers who fail to report an injury to the Ministry commit an offence and have to pay a fixed penalty. The fixed penalties to be paid by the employers are varied depending on the consolidated revenue of an employer in a financial year.
- 2.8 If an employer has consolidated revenue of less than \$500,000 in a financial year, the fixed penalty is \$500.
- 2.9 If an employer has consolidated revenue of more than \$500,000 but less than \$2 million in a financial year, the fixed penalty is \$1,500.
- 2.10 If an employer has consolidated revenue of more than \$2 million but less than \$5 million in a financial year, the fixed penalty is \$3,000.
- 2.11 If an employer has consolidated revenue of more than \$5 million but less than \$20 million in a financial year, the fixed penalty is \$7,000.
- 2.12 If an employer has consolidated revenue of more than \$20 million in a financial year, the fixed penalty is \$10,000.
- 2.13 If an employer fails to comply with a directive to furnish financial reports or documentation, he or she commits an offence and shall be liable upon conviction to a fine not exceeding \$50,000.
- 2.14 Clauses 7 and 8 allow for the inclusion of a Fixed Penalty Notice under Schedule 2.

3.0 MINISTERIAL RESPONSIBILITY

- 3.1 The Act comes under the responsibility of the Minister responsible for Employment, Productivity and Industrial Relations.

A. SAYED-KHAIYUM
Attorney-General