

WORKMEN'S COMPENSATION (NO. 3)

No. 18 of 1969

An Ordinance to amend the Workmen's Compensation Ordinance 1951-1968, as amended by the Workmen's Compensation Ordinance 1969 and the Workmen's Compensation Ordinance (No. 2) 1969.

1.—(1.) This Ordinance may be cited as the *Workmen's Compensation Ordinance (No. 3) 1969*.*

Short title
and citation.

(2.) The *Workmen's Compensation Ordinance 1951-1968*,† as amended by the *Workmen's Compensation Ordinance 1969*‡ and the *Workmen's Compensation Ordinance (No. 2) 1969*,§ is in this Ordinance referred to as the Principal Ordinance.

(3.) Section 1 of the *Workmen's Compensation Ordinance (No. 2) 1969* is amended by omitting sub-section (4.).

(4.) The Principal Ordinance, as amended by this Ordinance, may be cited as the *Workmen's Compensation Ordinance 1951-1969*.

2. This Ordinance shall come into operation on the first day of September, One thousand nine hundred and sixty-nine.

Commence-
ment.

3. Section 6 of the Principal Ordinance is amended by inserting in sub-section (1.), after the definition of "approved insurer", the following definition:—

Interpretation.

" 'compensation' means an amount payable under this Ordinance in respect of an injury to, or the death of, a person;".

4. Section 18 of the Principal Ordinance is amended—

Compulsory
insurance.

(a) by adding at the end of sub-section (1.) the words " and an amount not less than Fifty thousand dollars in respect of his liability independently of this Ordinance for any injury to, or the death of, a workman employed by him ";

(b) by omitting from sub-section (2.) the words " to pay compensation under this Ordinance to the workmen employed by him " and inserting in their stead the words " referred to in the last preceding sub-section ";

* Made on 22 August 1969; notified in the *Commonwealth Gazette* on 28 August 1969.

† Ordinance No. 2, 1951, as amended by No. 4, 1952; No. 12, 1954; No. 1, 1956; Nos. 12, 20 and 21, 1959; No. 8, 1961; No. 10, 1962; No. 6, 1965; No. 44, 1967; and No. 19, 1968.

‡ Ordinance No. 7, 1969.

§ Ordinance No. 13, 1969.

(c) by omitting paragraph (b) of sub-section (6.) and inserting in its stead the following paragraph:—

“(b) include in such a policy a provision not included in that form.”;

(d) by inserting after sub-section (6.) the following sub-section:—

“(6A.) Nothing in the last preceding sub-section prohibits an insurer from including in a policy of insurance or indemnity issued for the purposes of this Ordinance a provision which relates to a liability of an employer other than a liability referred to in sub-section (1.) of this section.”; and

(e) by omitting from sub-section (16.) the words—

“in respect of the liability of the defendant under this Ordinance issued by an approved insurer”—

and inserting in their stead the words—

“issued by an approved insurer in favour of the person charged in respect of a liability referred to in sub-section (1.) of this section”.

Claims for payment by nominal insurer where employer defaults.

5. Section 18c of the Principal Ordinance is amended by omitting sub-sections (2.), (3.) and (4.) and inserting in their stead the following sub-sections:—

“(2.) Where—

(a) a final judgment has been obtained against an employer in respect of his liability independently of this Ordinance for an injury to, or the death of, a workman employed by him, being an injury or death that occurred on or after the first day of September, One thousand nine hundred and sixty-nine;

(b) execution of the judgment is not stayed;

(c) the liability of the employer under the judgment is not covered, or is not covered in full, by a policy or policies of insurance or indemnity obtained in accordance with this Ordinance; and

(d) the judgment has, for a period of not less than one month, remained unsatisfied in whole or in part,

the person in whose favour the judgment was given may make a claim against the nominal insurer for payment of the amount by which the judgment remains unsatisfied.

“(3.) Where—

(a) an employer has entered into an agreement to pay a sum of money in discharge of the liability of the employer independently of this Ordinance in respect of an injury to, or the death of, a workman employed by him, being an injury or death that occurred on or after the first day of September, One thousand nine hundred and sixty-nine;

- (b) the liability of the employer is not covered, or is not covered in full, by a policy or policies of insurance or indemnity obtained in accordance with this Ordinance; and
- (c) the employer has, for a period of not less than one month, failed to pay the whole or a part of the sum of money payable by him under the agreement,

the person to whom that sum of money is payable under the agreement may make a claim against the nominal insurer for payment of the amount that the employer has failed to pay.

“ (4.) A claim under any of the last three preceding sub-sections shall be made within a period of one month after the right to make the claim arose or within such further time as the Minister, on an application made before or after the expiration of that period of one month, allows.

“ (5.) For the purpose of sub-section (1.) of this section, ‘compensation’ includes—

- (a) an amount in settlement of a claim for compensation;
- (b) an amount payable under section eleven of this Ordinance; and
- (c) costs payable to a workman by an employer in relation to a claim for compensation.”.

6. Section 18D of the Principal Ordinance is repealed and the following section inserted in its stead:—

“ 18D.—(1.) Subject to this Ordinance, where a person makes a claim against the nominal insurer in accordance with the last preceding section, the nominal insurer shall pay to that person—

Payments by nominal insurer.

- (a) where the claim is made under sub-section (1.) of the last preceding section—the compensation payable at the date of the claim or becoming payable thereafter;
- (b) where the claim is made under sub-section (2.) of that section—the amount payable for damages and costs under the judgment to which the claim relates; or
- (c) where the claim is made under sub-section (3.) of that section—the amount payable by the employer under the agreement.

“ (2.) Notwithstanding any other provision of this Ordinance, the amount payable in respect of a claim made under sub-section (2.) or sub-section (3.) of the last preceding section shall not exceed Fifty thousand dollars.”.

7. Section 18E of the Principal Ordinance is amended by inserting in sub-section (1.), after the word “insurer”, the words “under sub-section (1.) of section eighteen c of this Ordinance”.

Re-opening of agreements and awards.

8. After section 18E of the Principal Ordinance the following section is inserted:—

Power of
Supreme Court
to set aside
certain
agreements.

“ 18EA.—(1.) Where a claim is made against the nominal insurer under sub-section (3.) of section eighteen c of this Ordinance, he may apply to the Supreme Court for an order setting aside the agreement to which the claim relates.

“(2.) Where, on an application under the last preceding sub-section, the Supreme Court is satisfied there are reasonable grounds for believing that, in relation to the agreement the subject of the application, the employer has not in good faith endeavoured to protect his own interests and taken all reasonable steps to that end, the Supreme Court may, by order, set aside the agreement.

“(3.) Where an agreement is set aside under this section—

- (a) the agreement shall, for the purposes of any proceedings in a court, be deemed never to have had effect; and
- (b) evidence of a statement or communication, or a part of a statement or communication tending to establish the existence of the agreement shall not, unless the court directs otherwise, be admissible in such proceedings.

“(4.) A court shall not give a direction for the purpose of paragraph (b) of the last preceding sub-section unless it is satisfied that the admission of the evidence is necessary to avoid injustice to a party to the proceedings.

“(5.) Where the Supreme Court sets an agreement aside under sub-section (2.) of this section, the costs of the respondent of, and incidental to, the application shall, unless the Supreme Court directs that this sub-section shall not apply in relation to the application, be paid by the nominal insurer.

“(6.) The Supreme Court shall not give a direction under the last preceding sub-section in relation to an application under this section unless it is satisfied that, having regard to the special circumstances surrounding the making of the agreement to which the application relates, it is desirable that a direction under that sub-section be given.

“(7.) Where—

- (a) an agreement is set aside under sub-section (2.) of this section; and
- (b) but for this sub-section, an action by a party to the agreement to recover damages in respect of a liability to which the agreement related would, at the time at which the agreement is set aside, be barred or would, within three months after the agreement is set aside, become barred, by a law (other than an Act) in force in the Territory relating to the limitation of the time within which proceedings in a court may be commenced,

such an action may, notwithstanding any such law, be commenced at any time within three months after the date on which the agreement was set aside.

“ (8.) Where—

- (a) an agreement is set aside under sub-section (2.) of this section; and
- (b) an action by a party to the agreement to recover damages in respect of a liability to which the agreement related is commenced in a court of the Territory,

the plaintiff in the action shall, within seven days after the date on which the action was commenced, give to the nominal insurer notice in writing of the commencement of the action.

Penalty: Two hundred dollars.

“ (9.) Where notice is given to the nominal insurer under the last preceding sub-section, the nominal insurer—

- (a) may, on behalf of the employer sued in the action, conduct the defence of the action in the name of the employer and in such manner as the nominal insurer thinks fit; and
- (b) shall indemnify the employer against all costs and expenses of and incidental to the action.

“ (10.) Nothing in this Ordinance authorizes the nominal insurer—

- (a) to consent to the entry of judgment in an action against a defendant in the action; or
- (b) to compromise the action,

except with the consent of that defendant.”

9. Section 18G of the Principal Ordinance is amended by omitting from paragraph (c) the words “the claim for compensation” and inserting in their stead the words “the liability of the employer”.

Effects of payment by nominal insurers.

10. Section 19 of the Principal Ordinance is amended by omitting paragraph (a) of sub-section (1.) and inserting in its stead the following paragraph:—

Inspection of policies.

“ (a) to produce for inspection any policy of insurance or indemnity issued to the employer in relation to a liability referred to in sub-section (1.) of section eighteen of this Ordinance; and ”.

11. Section 21 of the Principal Ordinance is amended by omitting sub-section (1.) and inserting in its stead the following sub-section:—

Workman's right to information.

“ (1.) A workman may require his employer—

- (a) to inform him of the name and address of the insurer, or the names and addresses of each of the insurers, by whom a policy or policies of insurance or indemnity held by the employer for the purposes of this Ordinance on a specified date were issued; or

- (b) if, on that date, the employer was exempted under subsection (2.) of section eighteen of this Ordinance—to inform the workman that the employer was so exempted.”.

**Amendment of
Third Schedule.**

- 12.** The Third Schedule to the Principal Ordinance is amended—
- (a) by inserting after the words “ the full amount of his liability under the Ordinance to all workmen employed by him ” the words “ and for an amount of dollars in respect of his liability independently of the Ordinance for any injury to any such workman ”;
 - (b) by inserting after the words “ who is or is deemed by the Ordinance to be a workman of such Employer ” the words “ or to pay any other amount not exceeding dollars in respect of his liability independently of the Ordinance for any injury to any such person ”; and
 - (c) by inserting after the words “ against the employer of any such workman under the provisions of the Ordinance ” the words “ or in respect of his liability independently of the Ordinance and in respect of which the Employer is indemnified under this policy ”.
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