

NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS
44TH CONSTITUTION REGULAR SESSION, 2023



Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

WORKERS COMPENSATION (AMENDMENT) ACT, 2023

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WORKERS COMPENSATION (AMENDMENT) ACT, 2023

AN ACT to amend certain sections of Title 16, Chapter 7, the workers Compensation Act, in order to improve the implementation of the Workers Compensation Program.

BE IT ENACTED BY THE NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS

§101. Short title.

This Act may be cited as the Workers Compensation (Amendment 2) Act, 2023.

§102. Amendment.

(1) Section 703 of the Workers Compensation Act is amended as follows:

“Resident worker” for the purpose of this Chapter means any natural person who is performing services or labor and who is a citizen of the Republic or an immigrant alien admitted to the Republic for permanent residence under the provisions of the Immigration Act 2006 or the Citizenship Act of 1984, including persons acting in a professional managerial, or executive capacity for more than 90 days in the Republic;

“Non-resident worker” for the purpose of this Chapter means a worker who is not permanently resident in the Republic of the Marshall Islands, or a worker who is temporarily working in the Republic of the Marshall Islands for periods not exceeding a total of 90 days during a taxable year, provided however, it does not include Marshallese Government workers who are working for the Marshall

Islands Embassies, Consulate, and other Government Offices establishes outside of the Marshall Islands;

“Domestic Company or companies” means any legal entity or business (i.e. sole proprietorship, partnership, corporation and limited liability company, enterprise, etc), regardless of citizenship of the owner(s), that provide commodities, goods, or services and whose operations are located and transacted in the Marshall Islands for profit;

“Local Students” means any person regardless of citizenship, who resides in the Marshall Islands and enrolled in any schools accredited by the Ministry of Education;

“Immediate Family” includes father, mother, spouse, biological and legally adopted children, biological siblings, step-parents, grandparents and parents in-law (both for legally and customarily married).

- (2) Sections 704(2) and 704(4) of the Workers Compensation Act is amended, and further amended by inserting additional amendments as follows:

§704. Coverage.

.....

- (2) Except for those employees excluded under this Section 704(5) or unless exempted by other laws, where a worker who has been hired in the Republic receives personal injury by accident arising out of and in the course of his employment, he or she shall be entitled to compensation according to the law of the Republic even though such injury was received outside the Republic.
- (4) No compensation shall be payable under this Chapter to the employee if the injury was proximately caused by the intoxication of the employee or by the wilful intention of the employee to injure or kill himself, herself or others. The onus of proof to establish that a claim is not compensable due to this part rests with the employer.
- (5) The following individual may not be covered by this Act:

- (a) A Marshallese worker who is contracted to work on the USA Army Garrison – Kwajalein Atoll (USAG-KA), or on any operations of the USAG-KA, and had opted to be covered under Defence Base Act (DBA) of the United States, so long as all the provisions of the DBA and attendant Worker's Compensation insurance are compatible with those provisions included in this Chapter, and provided that such Marshallese worker shall choose to be covered either under the DBA and under this Chapter but not both.
- (b) A Non-resident consultant who is working in or on behalf of the RMI;
- (c) A Non-resident, or a Marshallese worker who is not already covered and whose project or job assignment is carried outside of the Marshall Islands, other than Marshallese Government workers who are working for the Marshall Islands Embassies, Consulate, and other Government Offices established outside of the Marshall Islands. Such exclusion for Marshallese workers without existing insurance specifically relates to constructions workers who are employed by Marshall Islands local companies, and are temporarily assigned to complete a project or contract outside of the Marshall Islands;
- (d) Non-Resident members of foreign or international diplomatic Corps who are assigned to work in the Marshall Islands, excluding Marshallese employees;
- (e) Non-Resident employees of regional or international organizations;
- (f) Self-employed workers, regardless of nationality, who opted not to be covered by this Act and who have submitted a valid exemption to the Administrator;
- (g) Local students under practicum training and interns;
- (h) Non-Resident or local volunteers, or church missionaries. ~~and~~

- (6) An injury to an employee which arises out of, or in the course of, the employee's employment may not be covered where the employee is on a journey between the employee's home and place of employment, unless such injury results from the employee traveling as part of an approved travel arrangement.

(3) Section 705 of the Workers Compensation Act is amended as follows:

§705. Liability for Compensation.

- (1) Every employer shall be liable for and shall secure payment of such compensation as may be required under this Chapter.
- (2) For a Marshallese worker who is contracted to work on USA Army Garrison – Kwajalein Atoll (USAG-KA), or on any operations of the USAG-KA, and had opted to be covered under this Chapter, his or her employer shall be liable and secure payment of such compensation as may be required under this Chapter.

(4) Section 709 of the Workers Compensation Act is amended by adding new subsections (10) and (11) as follows:

§709. Disability Benefits.

.....

- (10) The claimant or in case of death of the claimant, the nearest surviving family member(s), may be given an option to choose whether to receive periodic benefit payments or lump-sum, as approved by the Administrator with due regard to Section 715. On a case-by-case basis, however, the Administrator may decide on behalf of the deceased claimant if the decision of the surviving dependent(s) is deemed not practicable or not beneficial to the claimant's family on a long-term basis;

- (11) If the claimants or surviving family member(s) are not permanent residents of the Marshall Islands, a lump sum payment may be allowed by the Administrator.

(5) Section 714 of the Workers Compensation Act is amended as follows:

§714. Time for Filing of Claims.

- (1) The right to compensation under this Chapter shall be barred unless a claim therefore is filed within one year after the injury, and the right to compensation for death shall be barred unless a claim therefore is filed within one year after death; provided, that:
 - (a) if payment of compensation has been made without an award on account of such injury or death, a claim may be filed within one year after the date of the last payment. Such claim shall be filed with the Administrator;
 - (b) Where an employer fails to secure payment of compensation, and an employee elects to maintain an action at law for damages account to such injury or death. In the case of a government as the employer, the employee shall file within the requirements of the Government Liability Act. Other than the Government, the employee shall file within requirements of the Civil Procedures Act.

(6) Section 715(6) and (10) of the Workers Compensation Act is amended as follows:

§715. Payment of Compensation.

.....

- (6) If any disability benefits, payable under the terms of an award, are not paid within 10 days after it becomes due, there shall be added to

such unpaid disability benefits an amount equal to 20 percent thereof which shall be paid at the same time as, but in addition to, such disability benefits unless review of the compensation order making such award is had as provided in section 22.

- (10) Whenever the Administrator determines that it is in the interest of justice, applying the guiding indicators set out in the Regulations, the liability of the employer for compensation or any part thereof, as determined by the Administrator, may be discharged by the payment of a lump sum equal to the present value of future compensation payments commuted, computed at four (4) percent true discount compounded annually. The probability of death of the injured employee or other person entitled to disability benefits before the expiration of the period during which he or she is entitled to disability benefits shall be determined in accordance with American Experience Table or Mortality or such table as the Board may deem appropriate, and the probability of the remarriage of the surviving spouse shall be determined in accordance with any such table as the Board may deem appropriate. The probability of the happening of any other contingency affecting the amount or duration of the disability benefits shall be disregarded.

(7) Section 722 (3) and (4) of the Workers Compensation Act is amended by as follows:

§722. Review of Compensation Order.

.....

- (3) Any person filing a notice of appeal as provided in subsection (2) of this Section shall at the same time file a written statement of objection to the Administrator's decision. Any parties in interest may file an opposing statement within 5 business days of service upon them of the appellant's statement.
- (4) Oral argument before the Board shall be permitted upon the written request of any party in interest to the appeal, or upon the Board's own request, and shall be confined to the written statements in

support of or in opposition to the Administrator's decision. A majority of the authorized number of directors of the Board of Directors of the MISSA shall be a quorum, and a decision of the Board must be supported by a majority of the directors then in office. For the purpose of reviewing the Administrator's decision, the Board shall consider only the record which was before the Administrator; provided, the Board may consider additional facts if they are supported by substantial evidence, could not upon reasonable inquiry have been discovered earlier, and could materially have affected the Administrator's decision had they been known to the Administrator at the time the decision was rendered.

- (5) Within 30 business days of the filing of the notice of appeal, the Board shall issue a written decision supported by written findings of fact and conclusions of law. The decision of the Board shall be a final administrator decision subject of judicial review.
- (6) If any employer or its offices or agents fails to comply with a final order of the Board making award, any beneficiary of such award or the Administrator may apply to the High Court for enforcement of the order. If the court determines that the order was made and served in accordance with law and that such employer or his or her officers or agents have failed to comply therewith, the court shall enforce the order by injunction or other proper process.
- (7) The provision of the Administrative Procedure Act shall apply in any proceedings for suspending, setting aside, or enforcing a compensation order. In the event of any inconsistency between the provisions of this Chapter and the provisions of the Administrative Procedure Act, the provisions of this Chapter shall prevail. Except for a proceeding to suspend payments pending a final decision, no court proceeding may be brought until all available administrative remedies have been exhausted, or unless filed after one year after injury or death, whichever is sooner.

(8) Section 725 of the Workers Compensation Act is amended as follows:

§725. Witnesses.

No person shall be required to attend as a witness in any proceeding before the Administrator at a place outside the Republic; but the testimony of any witness may be taken by deposition or interrogatories according to the rules of practice and procedures of the High Court of the Marshall Islands.

(9) Section 731(1) of the Workers Compensation Act is amended as follows:

§731. Reports.

Within 30 days of the date of any injury or death, or of the date that the employer has knowledge of such injury or of a disease or infection in respect to such injury, the employer shall send to the administrator a report setting forth:

- (a) the name, address, and business of the employer;
- (b) the name, address, and occupation of the employee;
- (c) the cause and nature of the injury or death or of the disease or infection arising from such injury;
- (d) the year, month, day and hour, and the particular locality where the injury or death occurred; and such other information as the Administrator may require,

A copy of such report shall be sent at the same time to the employee.

(3) Any report provided for in subsection (1) or (2) shall not be evidence of any fact stated in such report in any proceeding in respect of any injury or death concerning which the report is made.

(4) The employer may comply with the obligations of this Section by mailing any required report, with a copy thereof, by secure email electronically or by first class postage prepaid, to the Administrator within the appropriate time limit prescribed in subsection (1) or (2).

(6) Where the employer or the carrier has been given notice, or the employer (or his or her agent in charge of the business in the place where the injury or death of an employee occurs) fails, neglects, or refuses to file a report thereof as required by the provisions of subsection (1) of this section, the limitations in subsection (1) of section 14 of this Chapter shall not begin to run against the claim of the injured employee or the employee's survivors entitled to compensation, or in favor of either the employer other carrier, until such report shall have been furnished.

(10) Section 733 of the Workers Compensation Act is amended as follows:

§733. Security of Compensation.

- (1) Every employer shall secure the payment of compensation under this Chapter by insuring and keeping insured the payment of such compensation with an insurer granted by a certificate of authority to transact general casualty insurance in the Republic. However, the Republic Government or any non-government employer authorised by the Board, may make compensation payments under the provision of this Chapter from the Government Employee's or other non-government employer's Self Insurance fund referred to in Sections 743 and 743A and need not otherwise secure compensation.
- (1A) Any employer whose annual gross income is not more than \$25,000 may be exempted from securing insurance. However, such employer shall remain liable for payment of compensation, and for cost of medical treatment and expenses related to the injury or death as required in this Chapter.
- (1B) Any such employer under Subsection (1A), will need to apply to the Administrator for an exemption from the requirement to secure insurance, consistent with the Regulations.

(11) Section 739(2) of the Workers Compensation Act is amended as follows:

§739. Penalty for Failure to Secure Payment of Compensation.

.....

- (2) Criminal Penalty.
 - (a) In addition to the other penalties provided for in this Chapter, any employer required to secure payment of compensation or required to make payment such compensation under this Chapter, who fails to do so, shall be guilty of a misdemeanor and, upon conviction thereof by a Court of competent jurisdiction, shall be punished by a fine of not more than One Thousand Dollars (\$1,000) or by imprisonment for not more than one year, or both. Where such employer is a corporation, the president, secretary, and treasure thereof shall be liable for imprisonment by a Court of competent jurisdiction as provided herein, and shall be jointly and severally liable personally for such fine and for any compensation or other benefit which may accrue under this Chapter in respect to any injury which may occur to any employee of such corporation during such time as it fails to secure the payment of compensation as required by Section 33 of this Chapter.
 - (b) Any employer who knowingly transfers, sells, encumbers, assigns, or in any other manner dispose of, or who conceals, secretes, or destroys property belonging to the such employee, after one of its employees has been injured within the purview of this Chapter, with the intent to avoid the payment of compensation under this Chapter to such employee or survivors of such employee, who are entitled to compensation, shall be guilty of a misdemeanour and, upon conviction thereof by a Court of competent jurisdiction, shall be

punished by a fine of not more than One Thousand Dollars (\$1,000), or by imprisonment for not more than one year, or both. Where such employer is a corporation, the president, secretary, and treasurer thereof shall be liable for imprisonment as provided for herein, and shall be jointly and severally liable personally for such fine.

- (c) Where the total annual premium for all employees is more than the maximum penalty of \$1,000 and the Administrator has sufficient reasons to believe that an employer had intentionally decided to pay the \$1,000 fine in order to avoid covering the costs of total annual premium for all employees, the Administrator may seek a Court of competent jurisdiction to penalize such employer up to the amount of the total annual premium, plus \$1,000, or by imprisonment of not more than one year, or both.

- (12) Section 740 of the Workers Compensation Act is amended as follows:

§740. Administration.

.....

- (3) The Workers' Compensation Administrator shall be same as the Administrator of the MISSA or his or her designee, approved by a majority vote of the Board. The Administrator shall maintain and keep open a Workers' Compensation office during reasonable business hours.

- (13) Section 742 of the Workers Compensation Act is amended as follows:

§742. Special Disability Fund.

- (1) A Special Disability Fund is established in the Republic for the purpose of making payments in accordance with the provisions of Subsection 6, Section 9 of this Chapter. Such Fund shall be administered in accordance with the provisions of the Social Security Act.

- (14) Section 743 of the Workers Compensation Act is amended as follows:

§743. RMI Government Self-Insurance Fund

- (1) The Nitijela may establish, out of any money in the general Fund not otherwise appropriated, a fund sufficient to secure compensation payments under this Chapter in respect of employees of the Government, its agencies and instrumentalities, including any public corporation, state owned enterprise (SOE) and any other organization approved by the Nitijela, elected officials of both the national and local Governments, local government employees whose operations are being funded in full by the RMI Government and subject to audit under the supervision of the National Government;

- (15) Section 743 of the Workers Compensation Act is amended by adding a new section, Section 743A as follows:

743A. Individual/Company Self-Insurance Fund.

- (1) The Board may consider, authorise and revoke applications from non-government employers to establish their own self-insurance fund sufficient to secure compensation and reimbursement payments in respect of all employees (however employed) of the employer, irrespective of where they are located in the Republic, subject to the following considerations:
 - (a) whether the employer is able to meet its financial liabilities and can manage financial transactions

necessary to make timely payments of compensation and reimbursements as required under this Chapter;

- (b) does the employer demonstrate they have the necessary resources for the purpose of administering claims under this Chapter;
 - (c) evidence of the employer actively monitoring the incidence and severity of work injuries arising from employment on all of its locations;
 - (d) the working conditions under which their employees are employed and the health and safety arrangements for those workers; and
 - (e) a sound understanding of the supports required for the rehabilitation of injured employees to achieve their recovery and return to work, including providing suitable employment to employees who suffer work injuries.
- (2) Upon the consideration of the criteria identified in Subsection (1) above, and where satisfied, the Board may authorize an employer to establish its own self-insurance fund sufficient to secure compensation and reimbursement payments in respect of all employees, subject to terms and conditions specified under Regulations.

§103. Effective Date.

This Act shall take effect on the date of its certification in accordance with the Constitution and the Rules of Procedures for the Nitijela.

CERTIFICATE

I hereby certify:

1. That Nitijela Bill No: **95ND1** was passed by the Nitijela of the Republic of the Marshall Islands on the **24th** day of **March** 2023; and
2. That I am satisfied that Nitijela Bill No: **95ND1** was passed in accordance with the relevant provisions of the Constitution of the Republic of the Marshall Islands and the Rules of Procedures of the Nitijela.

I hereby place my signature before the Clerk this **10th** day of **April** 2023.



Kenneth A. Kedi

Speaker

Nitijela of the Marshall Islands

Attest:



Morean S. Watak

Clerk

Nitijela of the Marshall Islands