

# **WORKMEN'S COMPENSATION ACT, 1923. FAQ**

## **1. Who is Workman / Employee ?**

**Section 2 (1) (n) defines who is a workman and the section read with schedule II of the Act, wherein list of persons who, subject to the provisions of Section 2 (1) (n), are included in the definition of workman.**

## **2. Who is an Employer ?**

**"Employer" includes any body of persons whether incorporated or not and any managing agent of an employer and the legal representative of deceased employer, and, when the services of a workman are temporarily lent or let on hire to another person by the person with whom the workman has entered into a contract of service or apprenticeship, means such other person while the workman is working for him;**

**"managing agent" means any person appointed or acting as the representative of another person for the purpose of carrying on such other person's trade or business, but does not include an individual manager subordinate to an employer;**

## **3. What is Employer's liability for compensation ?**

**Chapter II of the W.C. Act, deals with this issue. (1) If personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this Chapter.**

**PROVIDED that the employer shall not be so liable:-**

**a) in respect of any injury which does not result in the total or partial disablement of the workman for a period exceeding (three) days;**

**b) in respect of any (injury, not resulting in death, [or permanent total disablement] caused by] an accident which is directly attributable to---**

**the workman having been at the time thereof under the influence of drink or drugs, or**

**the willful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety or workmen, or**

**the willful removal or disregard by the workman of any safety guard or other device he knew to have been provided for the purpose of securing the safety or workman.**

**Nothing herein contained shall be deemed to confer any right to compensation on a workman in respect of any injury if he has instituted in a Civil Court a suit for damages in respect of the injury against the employer or any other person; and no suit for damages shall be maintainable by a workman in any court of law in respect of any injury—**

**(a) if he has instituted a claim to compensation in respect of the injury before a Commissioner; or**

(b) if an agreement has been come to between the workman and his employer providing for the payment of compensation in respect of the injury in accordance with the provisions of this Act.

**4. What is fatal accident and non-fatal accident ?**

(i) Fatal accident is one that results in the death of the workman.

(ii) Non-fatal accident is one that causes injury to the workman resulting in partial or permanent physical disablement by which he loses his earning capacity.

**5. When / Where claim application is to be filed ?**

In case of fatal accident the dependents of the deceased workman are entitled to file a claim application before the Commissioner for Workmen's Compensation Act.

In case of non-fatal accident the injured worker who suffered partial or permanent disablement and lost his earning capacity can file an application under the Act.

The applicants shall file the claim before the Commissioner for Workmen's Compensation of the area in which—

the accident took place which resulted in the injury; or  
the workman or in case of his death, the dependent claiming the compensation ordinarily resides; or  
the employer has his registered office:

**6. Whether application can be made to the Central Labour Department ?**

No. The applications can be made to the Commissioners for Workmen's Compensation as notified by the State Government as required under the Act. No official of Central Labour Department is notified as Commissioner for Workmen's Compensation.

**7. What is the wage limit prescribed under the Act ?**

The wages drawn by the injured or deceased workman shall not exceed Rs.4,000/- per month. However if the workman draws morethan Rs.4,000/- per month the amount of compensation shall be taken limiting the monthly salary as Rs.4,000/-

**8. What is limitation period to file an application ?**

A claim application shall be filed within two years from the date of accident. However, the C.W.C. may entertain the application after limitation period by condoning the delay after hearing the parties.

**9. Who are the opposite parties to the claim ?**

The employer of the workman is the Opp. Party in any claim

application. In case the employer has obtained an Insurance Policy covering the risk of workman, such insurer may be made as 2<sup>nd</sup> Opp. Party.

**10. Whether an agreement can be made between Workman and Employer ?**

Yes, only in non-fatal cases and such agreements shall be registered with the Commissioner by the parties as per Section 28 of the Act. In case a memorandum of any agreement the registration of which is required by section 28, is not sent to the Commissioner as required by that Section, the employer shall be liable to pay the full amount of compensation which he is liable to pay under the provisions of the Act, and notwithstanding anything contained in the provision to sub-section (1) of section 4, shall not, unless the Commissioner otherwise directs, be entitled to deduct more than half of any amount paid to the workman by way of compensation whether under the agreement or otherwise.

**11. Who are the dependents of the deceased workman ?**

"dependent" means any of the following relatives of a deceased workman, namely:-

a widow, a minor [legitimate or adopted] son, and unmarried [legitimate or adopted] daughter, or a widowed mother; and

if wholly dependent on the earnings of the workman at the time of his death, a son or a daughter who has attained the age of 18 years and who is infirm;

if wholly or in part dependent on the earnings of the workman at the time of his death,

a widower,

a parent other than a widowed mother,

a minor illegitimate son, an unmarried illegitimate daughter or a daughter [legitimate or illegitimate or adopted] if married and minor or if widowed and minor,

a minor brother or an unmarried sister or a widowed sister if a minor,

a widowed daughter-in-law,

a minor child of a pre-deceased son,

a minor child of a pre-deceased daughter where no parent of the child is alive, or

a paternal grandparent if no parent of the workman is alive;]

**12. What is the responsibility of the Employer on the occurrence of the accident ?**

Where an accident occurred in the premises of an employer, which results in death or serious bodily injury the employer shall send a report to the Commissioner giving the circumstances,

**13. Whether a shop employee covered by the Act ?**

Yes. Though the schedule of the W.C.Act does not cover the Shop Employee, the A.P.Shops & Estts. Act provides for applicability of W.C.Act, 1923 in case of accidental injuries / death of workman.

**14. What is amount of Compensation ?**

(1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:-

Where death results from the injury  
an amount equal to [fifty percent] of the monthly wages of the deceased workman multiplied by the relevant factor;

or

an amount of [eighty thousand rupees], whichever is more;

Where permanent total disablement results from the injury an amount equal to [sixty percent] of the monthly wages of the injured workman multiplied by the relevant factor;

or

an amount of [ninety thousand rupees], whichever is more.

Where permanent partial disablement results from the injury

in the case of an injury specified in Part-II of Schedule-I, such percentage of the compensation which would have been payable in the case of permanent total disablement as is specified therein as being the percentage of the loss of earning capacity caused by that injury; and

in the case of an injury not specified in Schedule - I, such percentage of the compensation payable in the case of permanent total disablement as is proportionate to the loss of earning capacity (as assessed by the qualified medical practitioner) permanently caused by the injury;

**16. Where appeal lies ?**

The appeal lies with the High Court on the order of the Commissioner for Workmen's Compensation.

**17. Whether an employee covered under ESI can file a claim application under W.C.Act ?**

No.