

# EMPLOYERS' LIABILITY ORDINANCE, 1912<sup>(1)</sup> (PAPUA, ADOPTED) IN ITS APPLICATION TO THE TERRITORY OF NEW GUINEA.

## An Ordinance to amend the Law Regulating the Liability of Employers to make Compensation for Personal Injuries Suffered by Workmen in their Service.

**B**E it enacted by the Lieutenant-Governor of the Territory of Papua with the advice and consent of the Legislative Council thereof as follows:—

1. This Ordinance may be cited as the *Employers' Liability Ordinance, 1912.*<sup>(1)</sup> Short title and commencement.

It shall commence on a day to be fixed by the Lieutenant-Governor by proclamation published in the *Gazette.*<sup>(2)</sup>

2. *The Employers' Liability Act of 1886* 50 Vic. No. 24 (Queensland adopted) is repealed. Repeal.

3. In this Ordinance unless the context or subject matter otherwise indicates or requires— Interpretation.

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| “ship” includes every vessel of whatever kind whether propelled by steam sails oars or otherwise;  | “Ship.”<br>Q. 52 Vic. No. 3, s. 2; N.S.W. 28 of 1897, s. 3.                      |
| “employer” includes a body of persons whether corporate or unincorporate and a corporation sole;   | “Employer.”<br><i>Ibid.</i>  |
| “seaman” means any person employed upon a ship owned in the Territory or who has signed articles of engagement in the Territory;   | “Seaman.”<br>N.S.W. 28 of 1897, s. 3.<br>Compare Q. 52 Vic. No. 3, s. 2.         |
| “workman” means a seaman as above defined a railway servant and any other person who being a labourer servant in husbandry journeyman artificer handicraftsman miner or otherwise engaged in manual labour | N.S.W. <i>Ib.</i><br>Compare Q. 50 Vic. No. 24, s. 3.<br>Q. 52 Vic. No. 3, s. 4. |

(1) Particulars of this Ordinance are set out in the following Table:—

### ORDINANCE OF THE TERRITORY OF PAPUA.

Short title, number and year.	Ordinance by which adopted.	Date on which adoption took effect.
<i>Employers' Liability Ordinance</i> 1912 (No. 33 of 1912)	<i>Laws Repeal and Adopting Ordinance</i> 1921 (No. 1 of 1921)	9.5.1921 ( <i>Cwllth. Gaz.</i> of 6.5.1921)

(2) By Proclamation dated 28th April, 1913, and published in *Papua Gort. Gaz.* of 7th May, 1913, the *Employers' Liability Ordinance, 1912*, was proclaimed to commence in the Territory of Papua on 7th May, 1913.

## COMPENSATION—

whether under or above the age of twenty-one years has entered into or works under a contract with an employer whether the contract was made before or after the passing of this Ordinance is express or implied oral or in writing and whether it is a contract of service or a contract personally to execute any work or labour;

the expression "person who has superintendence intrusted to him" means a person whose sole or principal duty is that of superintendence and who is not ordinarily engaged in manual labour.

### 4. Where personal injury is caused to a workman other than a seaman—

- (1) by reason of any defect in the state or condition of the ways works machinery or plant connected with or used in the business of the employer; or
- (2) by reason of the negligence of any person in the service of the employer who has any superintendence intrusted to him whilst in the exercise of such superintendence; or
- (3) by persons<sup>(3)</sup> of the negligence of any person in the service of the employer to whose orders or directions the workman at the time of the injury was bound to conform and did conform where such injury resulted from his having so conformed; or
- (4) by reason of the act or omission of any person in the service of the employer done or made in obedience to the rules or by-laws of the employer or in obedience to particular instructions given by any person delegated with the authority of the employer in that behalf; or
- (5) by reason of the negligence of any person in the service of the employer who has the charge or control of any signal-points engine or train upon a rail or tramway; or

when within the jurisdiction of the Territory a ship is moored or at anchor receiving or discharging cargo coals ballast or dunnage and personal injury is caused to a workman being a seaman—

- (6) by reason of any defect in the condition of the spars tackle machinery gearing fittings or other apparel or furniture of the ship or by reason of the absence of any necessary and usual spars tackle machinery gearing fittings or other apparel or furniture of such ship; or

Right of compensation for personal injury.

"Person who has superintendence."  
Q. 50 Vic. No. 24, s. 3; N.S.W. 28 of 1897, s. 3.

Q. *Ib.*, s. 4; N.S.W., *Ib.*, s. 4.

Q. 52 Vic. No. 3, s. 3; N.S.W. *Ib.*, s. 4.

(3) The word "persons" appeared in the original Ordinance. The word "reason" has now been inserted in its stead by the First Schedule of the *Ordinances Reprint and Revision Ordinance* 1947 of the Territory of Papua-New Guinea.

*Employers' Liability Ordinance, 1912 (Papua, adopted).*

- (7) by reason of the negligence of any person in the service of the employer who has any superintendence intrusted to him by such employer whilst in the exercise of such superintendence; or Q. 52 Vic. No. 3, s. 3; N.S.W. 23 of 1897, s. 4.
- (8) by reason of the negligence of any person in the service of the employer of the seaman to whose orders and directions the seaman was at the time of the injury bound to conform and did conform where such injury resulted from his having so conformed Ibid.

the workman or in case the injury results in death the legal personal representative of the workman and any persons entitled in case of death shall have the same right of compensation and remedies against the employer as if the workman had not been a workman of nor in the service of the employer nor engaged in his work.

5. A workman shall not be entitled under this Ordinance to any right of compensation or remedy against the employer in any of the following cases that is to say:—

[Limiting] right of compensation for personal injury.

- (1) Under subsection one of section four unless the defect therein mentioned arose from or had not been discovered or remedied owing to the negligence of the employer or of some person in the service of the employer and intrusted by him with the duty of seeing that the ways works and machinery or plant were in proper condition. Q. 50 Vic. No. 24, s. 5; N.S.W. *Ib.*, s. 5.
- (2) Under subsection four of section four unless the injury resulted from some impropriety or defect in the rules by-laws or instructions therein mentioned. Q. *Ib.*, s. 5 altered; N.S.W. *Ib.*, s. 5.
- (3) Under subsection six of section four unless the defect therein mentioned arose from or had not been discovered or remedied owing to the negligence of the employer or of some person in the service of the employer and intrusted by him with the duty of seeing that the spars tackle machinery gearing fittings or other apparel or furniture of the ship were in proper condition or unless the absence of any necessary and usual spars tackle machinery gearing fittings or other apparel or furniture was due to the negligence of the employer or of some person in the service of the employer and intrusted by him with the duty of seeing that the same were duly provided. N.S.W. *Ib.*, s. 5
- (4) In any case where the workman knew of the defect or negligence which caused his injury and failed within a reasonable time to give or cause to be given information thereof to the employer or some person intrusted with any duties of superintendence in or N.S.W. *Ib.*, s. 5. Q. *Ib.*, s. 5, altered.

## COMPENSATION—

over that department in which the defect or negligence existed whether such superintendent be ordinarily engaged in manual labour or not unless the injured person should himself perform duties of superintendence in which case such injured person must have given notice to the employer or to a person intrusted with any superintendence over himself unless the employer or person so intrusted already knew of the said defect or negligence.

Notice of injury. Commencement of action. Q. 50 Vic. No. 24, s. 7; N.S.W. 28 of 1897, s. 6.

6. An action for the recovery under this Ordinance of compensation for an injury shall not be maintainable unless notice that injury has been sustained is given within six weeks and the action is commenced within six months after the occurrence of the accident causing the injury or in case of death within twelve months from the time of death:

Proviso as to want of notice. Q. *Ib.*, s. 7. N.S.W. *Ib.*, s. 6.

Provided always that the want of such notice shall be no bar to the maintenance of such action if upon motion made for leave to proceed notwithstanding no such notice has been given a Judge of the Central Court<sup>(4)</sup> shall be of opinion that there was reasonable excuse for such want of notice; and where the action is intended to be brought in any Small Debts Court any magistrate of the district in which such Court is situated shall for the purpose of this proviso have all the powers of a Judge of the Central Court.<sup>(4)</sup>

Defective notice may be amended. N.S.W. *Ib.*, s. 7.

7. The Court in which any action for recovery of compensation under this Ordinance is commenced or is pending may at any stage of the proceedings amend any defect in a notice of injury or death or direct that the action shall proceed and be maintainable notwithstanding that such notice has not been given duly if the Court having regard to the circumstances of the case thinks just so to direct.

Form of notice. Q. *Ib.*, s. 11. N.S.W. *Ib.*, ss. 8 and 9.

8.—(1.) Notice in respect of any injury under this Ordinance shall give the name and address of the person injured and shall state in ordinary language the cause of the injury and the date at which it was sustained.

Defect or inaccuracy.

(2.) No such notice shall be deemed invalid by reason of any defect or inaccuracy therein unless the Judge who tries the action arising from the injury mentioned in the notice shall be of opinion that the defendant in the action is prejudiced in his defence by such defect or inaccuracy.

Service of notice.

(3.) Notice in respect of any injury under this Ordinance shall be served on the employer or if there is more than one employer upon one of such employers.

(4) See Section 17 of the *Laws Repeal and Adopting Ordinance 1921-1939*. At the date of the adoption of the *Employers' Liability Ordinance, 1912*, of the Territory of Papua as a law of the Territory of New Guinea, there was a "Central Court" in both Territories. As to references in any Ordinance to the "Central Court", see now Section 7A of the *Judiciary Ordinance 1921-1938*.

*Employers' Liability Ordinance, 1912 (Papua, adopted).*

(4.) Such notice may be served by delivering the same to or at the residence or place of business of the person on whom it is to be served.

(5.) Such notice may also be served by post by a registered letter addressed to the person on whom it is to be served at his last known place of residence or place of business and if served by post shall be deemed to have been served at the time when a letter containing the same would be delivered in the ordinary course of post; and in proving the service of such notice it shall be sufficient to prove that the notice was properly addressed and registered.

(6.) Where the employer is a body of persons corporate or unincorporate the notice shall be served by delivering the same at or by sending it by post in a registered letter addressed to the office or if there be more than one office any one of the offices of such body.

9. The amount of compensation recoverable under this Ordinance shall not exceed such sum as may be found to be equivalent to the estimated earning during the three years preceding the injury of a person in the same grade employed during those years in the like employment and in the district or port in which the workman is employed at the time of the injury.

Limit of sum recoverable as compensation.  
Q. 50 Vic. No. 24, s. 6; N.S.W. 28 of 1897, s. 10.

10.—(1.) There shall be deducted from any compensation awarded to any workman or representatives of a workman or persons claiming by under or through a workman in respect of any cause of action arising under this Ordinance any penalty or part of a penalty which has been paid in pursuance of any other Ordinance to such workman representatives or persons in respect of the same cause of action.

Money paid as penalty to be deducted from compensation.  
Q. *Ib.*, s. 8.  
N.S.W. *Ib.*, s. 11.

(2.) Where an action has been brought under this Ordinance by any workman or the representatives of any workman or any persons claiming by under or through such workman for compensation in respect of any cause of action arising under this Ordinance and payment has not previously been made of any penalty or part of a penalty under any other Ordinance in respect of the same cause of action such workman representatives or persons shall not be entitled thereafter to receive any penalty or part of a penalty under any other Ordinance in respect of the same cause of action.

No penalty in respect of any injury for which action has been brought.

(3.) There shall be deducted from any compensation awarded to any seaman (or representatives of a seaman or persons claiming by under or through a seaman) in respect of any cause of action arising under this Ordinance any expenses which the employer of such seaman has had to pay on account of the injury to such seaman under the provisions of any other Ordinance.

Expenses under other Ordinances to be deducted.  
N.S.W. *Ib.*  
s. 11 (III.)

11. In determining in any case the amount of compensation payable under this Ordinance by an employer the Court shall take into consideration the value of any payment or contribution made

Employer entitled to credit for insurance effected by him.  
Compare Q. *Ib.*, s. 9; N.S.W. *Ib.*, s. 12.

## COMPENSATION—

by such employer to or for the injured person in respect of his injury and also the value of any insurance or compensation to which such person shall have become entitled by virtue of any payment or arrangement made by such employer.

**12.** Any contract or agreement between an employer and a workman which if it were valid would have the effect of disentitling the workman to the benefit of the provisions of this Ordinance shall to that extent be absolutely void and inoperative.