

**22 GCA BUSINESS REGULATIONS  
CH. 9 WORKER'S COMPENSATION**

**CHAPTER 9  
WORKER'S COMPENSATION**

- § 9101. Title.
- § 9102. Minor Employees. (Repealed)
- § 9103. Definitions.
- § 9104. Coverage.
- § 9105. Liability for Compensation.
- § 9106. Exclusiveness of Liability.
- § 9107. Time for Commencement of Compensation: Maximum and Minimum Compensation.
- § 9108. Medical Services and Supplies.
- § 9109. Compensation for Disability.
- § 9110. Compensation for Death.
- § 9111. Determination of Pay.
- § 9112. Guardian for Minor or Incompetent.
- § 9113. Notice of Injury of Death.
- § 9114. Time for Filing of Claims.
- § 9115. Payment of Compensation.
- § 9116. Invalid Agreements.
- § 9117. Assignment and Exemption from Claims of Creditors.
- § 9118. Compensation, a Lien Against Assets.
- § 9119. Collection of Defaulted Payments.
- § 9120. Procedure in Respect of Claims.
- § 9121. Presumptions.
- § 9122. Review of Compensation Order.
- § 9123. Modification of Awards.
- § 9124. Procedure Before the Commissioner.
- § 9125. Witnesses.
- § 9126. Witness Fees.
- § 9127. Costs in Proceedings Brought Without Reasonable Grounds.
- § 9128. Powers of the Commissioner.
- § 9129. Fees for Services.
- § 9130. Record of Injury or Death.
- § 9131. Reports.
- § 9132. Penalty for Misrepresentation.
- § 9133. Security for Compensation.
- § 9134. Compensation for Injuries Where Third Persons are Liable.
- § 9135. Right to Compensation as Exclusive Remedy.

**22 GCA BUSINESS REGULATIONS  
CH. 9 WORKER'S COMPENSATION**

- § 9136. Compensation Notice.
- § 9137. Substitution of Carrier for Employer.
- § 9138. Insurance Policies.
- § 9139. Certificate of Compliance with this Law.
- § 9140. Penalty for Failure to Secure Payment of Compensation.
- § 9141. Administration.
- § 9142. Investigation by the Commission.
- § 9143. Special Fund.
- § 9144. Government of Guam Special Fund.
- § 9145. Annual Report.

**§ 9101. Title.**

Chapter 9 of Title 22, Guam Code Annotated is amended to make its title *Worker's Compensation* and throughout the Chapter the word *worker* is substituted in the place of *workman*.

**SOURCE:** GC § 37000. Amended by P.L. 16-1:1.

**§ 9102. Minor Employees.**

**[Repealed].**

**SOURCE:** GC § 37001. Repealed in its entirety by P.L. 11-74.

**§ 9103. Definitions.**

(a) *Adoption or Adopted.* This term means legal adoption prior to the time of the injury.

(b) *Carrier.* This term includes stock corporations or mutual associations from which any employer has obtained workers' compensation insurance or guaranty insurance in accordance with the provisions of this Title.

(c) *Child, grandchild, brother, sister.* The term *child* shall include a posthumous child, a child legally adopted prior to the injury of the employee, a child in relation to whom the deceased employee stood in loco parentis for at least one (1) year prior to the time of injury, and a stepchild or acknowledged illegitimate child dependent upon the deceased; but does not include married children unless wholly dependent upon the employee. The term *grandchild* means a child, as above defined, of a child, as above defined. The terms *brother* and *sister* include stepbrothers and stepsisters, half brother and half sisters, and brothers and sisters by adoption; but does

22 GCA BUSINESS REGULATIONS  
CH. 9 WORKER'S COMPENSATION

not include married brothers nor married sisters unless wholly dependent upon the employee. The terms *child*, *grandchild*, *brother*, and *sister* include only persons who are under eighteen (18) years of age, and also persons who, though eighteen (18) years of age or over, were wholly dependent upon the deceased employee at the time of his injury and incapable of self-support by reason of mental or physical disability.

(d) *Commission*. This term means the Workers' Compensation Commission.

(e) *Commissioner*. This term means the head of the Workers' Compensation Commission who shall be the Director of the Department of Labor or his designee.

(f) *Compensation*. This term means the money allowance payable to an employee or to his dependents as provided for in this Title and includes funeral benefits provided herein.

(g) *Death*. This term, when used as a basis for a right to compensation under this Title, means only death resulting from an injury.

(h) *Disability*. This term means incapacity, because of injury, to earn the wages which the employee was receiving at the time of injury in the same or any other employment.

(i) *Employee*. This term, as used herein, is synonymous with *worker*, and means any person who has entered into the employment of or works under contract of service or apprenticeship with an employer. It includes aquacultural and agricultural workers but excludes a person whose employment is purely casual and not, for the purpose of the employer's trade or business. As used herein the term *employee* includes any person who has worked forty (40) hours per week during the previous sixty (60) days, exclusive of holidays, for the same employer.

(j) *Employer*. This term, unless otherwise stated, includes any body of persons, corporate or unincorporated, public or private, and the legal representative of a deceased employer. It includes the owner or lessee of premises, or other person who is in fact the proprietor, or operator of the business carried on there but who by reason of there being an independent contractor, or for any other reason, is not the direct employer of the workmen there employed. If the employer is insured it includes his insurer as far as applicable.

22 GCA BUSINESS REGULATIONS  
CH. 9 WORKER'S COMPENSATION

(k) *Guam*. This term, when used in a geographical sense means the Territory of Guam including the territorial waters thereof.

(l) *Industrial Employment*. In the case of private employees this term only includes employment in a trade, occupation or profession which is carried on by the employer for the sake of pecuniary gain.

(m) *Injury*. This term means accidental injury or death arising out of and in the course of employment, and such occupational disease or infection as arises naturally out of such employment or as naturally or unavoidably results from such accidental injury. The terms includes an injury caused by the wilful act of a third person directed against an employee because of his employment.

(n) *Parent*. The term includes stepparents or parents by adoption, parents-in-law, and any person who for more than three (3) years prior to the death of the deceased employee stood in the place of a parent to him, if dependent on the employee.

(o) *Person*. The term mans individual, partnership, corporation, or association.

(p) *Public Employment*. The term '*public employment*' means employment by the government of Guam Executive, Judicial or Legislative departments, agencies, instrumentalities, inclusive of semi-autonomous and autonomous agencies, and any other government of Guam entities and public corporations. It shall include all elected officials.

(q) *Territory*. The term means the Territory of Guam.

(r) *Wages*. The term means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of injury; including the reasonable value of board, rent, housing, lodging, or similar advantage received from the employer, and gratuities received in the course of employment from others than the employer.

(s) *Widow*. the term includes only the decedent's wife who, at the time of his death, lived with him or was dependent for support upon him; or who was living apart from him for justifiable cause or by reason of his desertion at such time.

(t) *Widower*. This term includes only the decedent's husband who, at the time of her death, lived with her and was dependent for support upon her.

**22 GCA BUSINESS REGULATIONS**  
**CH. 9 WORKER'S COMPENSATION**

**SOURCE:** GC § 37002. Subsection (e) amended by P.L. 16-1:11; subsection (i) amended by P.L. 16-1:2; subsection (p) amended by P.L. 16-1:3; r/r by P.L. 25-91:IV:04.

**NOTE:** Subsection (j) was erroneously replaced. Compiler has now reinstated the appropriate term *employer*. Amended by the Compiler in order to reflect the correct citation.

**§ 9104. Coverage.**

(a) Compensation shall be payable under this Title in case of disability or death of an employee, but only if the disability or death results from an injury sustained while engaged in industrial employment or public employment or both as defined in § 9103.

(b) Employers, who hire workmen within the territory to work without the territory, may agree with the workmen that the remedies under this Title shall be applicable as regards injuries received without the territory by accident arising out of and in the course of the employment. All contracts of hiring in the territory shall be presumed to include such an agreement.

(c) If workman who has been hired in the territory receives a personal injury by accident arising out of and in the course of his employment, he shall be entitled to compensation according to the law of the territory even though such injury was received without the territory.

(d) If a workman who has been hired without the territory is injured while engaged in his employer's business, and is entitled to compensation for the injury under the laws of the state or territory where he was hired, he shall be entitled to enforce against his employer his rights in this territory if his rights are such that they can reasonably be determined and dealt with by the Commissioner and the court in this territory.

(e) If an officer or enlisted person of the Guam Militia or volunteer civil defense worker shall suffer injury or death arising out of and in the performance of his duty in the Guam Militia or Guam Civil Defense Agency, compensation shall be paid and medical services and supplies shall be furnished to him or his dependents, as the case may be, by the government of Guam for such injury or death in the manner and in the amounts provided for in this law for worker's compensation as if he were injured during the course of his civilian employment.

(f) Any person who may be injured in performing service for the government of Guam in any voluntary or unpaid capacity under the authorized direction of a public officer or employee, and who shall not have

**22 GCA BUSINESS REGULATIONS**  
**CH. 9 WORKER'S COMPENSATION**

secured payment of his hospital and medical expenses from the government of Guam or under any other provisions of law and shall not have secured payment thereof from any third person, shall be paid his reasonable hospital and medical expenses by the Government of Guam.

(g) This Title shall affect the liability of employers to employees engaged in interstate or foreign commerce or otherwise, only so far as the same is permissible under the laws of the United States.

(h) No compensation shall be payable under this Title if the injury was occasioned solely by the intoxication of the employee, or by the wilful intention of the employee to injure or kill himself or others.

(i) Any person who may be injured in performing service for the government of Guam as a volunteer fireman under the authorized direction of a public officer or employee, and who shall not have secured compensation from the government of Guam or from any third person, shall be paid compensation equivalent to that of a firefighter.

**SOURCE:** GC § 37003. Subsection (j) amended by P.L. 13-41:1. P.L. 16-1:4 repealed §37003(h) and relettered subsections (i) and (j) appropriately.

**§ 9105. Liability for Compensation.**

(a) Every employer shall be liable for and shall secure payment to his employees of the compensation payable under §§ 9108, 9109, and 9110. In the case of an employer who is a subcontractor, the contractor shall be liable for and shall secure payment of such compensation to employees of the subcontractor unless the subcontractor has secured such payment.

(b) Compensation shall be payable irrespective of fault as to the cause of the injury.

(c) [Repealed].

(d) [Repealed]

**SOURCE:** GC § 37004. Subsections (c) and (d) added by P.L. 25-03:IV:01; repealed by P.L. 25-91:1.

**§ 9106. Exclusiveness of Liability.**

The liability of an employer prescribed in § 9104 shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, any and all third party claimants who may generally possess a claim for contribution

**22 GCA BUSINESS REGULATIONS  
CH. 9 WORKER'S COMPENSATION**

among joint tortfeasors against the employer, or anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death; provided that, if an employer fails to secure payment of compensation as required by this Title, an injured employee or his legal representative, in case death results from the injury, any elect to claim compensation under this Title, or to maintain an action at law or in admiralty for damages on account of such injury or death. In such action, the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, nor that the employee assumed the risk of his employment, nor that the injury was due to the contributory negligence of the employee.

**SOURCE:** GC § 37005. Amended by P.L. 19-35:1

**§ 9107. Time for Commencement of Compensation: Maximum and Minimum Compensation.**

(a) No compensation shall be allowed for the first three (3) days of the disability, except for the benefits provided for in § 9108; provided, however, that in case the injury results in disability of more than fourteen (14) days, the compensation shall be allowed from the date of disability.

(b) Compensation for disability shall not exceed Two Hundred Fifty Dollars (\$250) per week; provided that if the employee's average weekly wages, as computed under § 9111 are less than One Hundred Fifty Dollars (\$150.00) per week, he shall receive as compensation for permanent total disability not less than One Hundred Fifty Dollars (\$150.00) per week.

**SOURCE:** GC § 37006. Subsection (a) repealed and reenacted by P.L. 16-1:5; subsection (b) amended by P.L. 16-1:6. Amended by P.L. 19-35:2 (Dec 30, 1988)

**§ 9108. Medical Services and Supplies.**

(a) The employer shall furnish such medical, surgical, and other attendance or treatment, nurse, hospital service, medicine, crutches, and apparatus for such period as the nature of the injury or the process of recovery may require. If the employer fails to provide the same, after request by the injured employee, such injured employee may do so at the expense of the employer. The employee shall not be entitled to recover any amount expended by him for such treatment or services unless he shall have requested the employer to furnish the same and the employer shall have refused or neglected to do so, or unless the nature of the injury required such treatment and services and the employer or his superintendent or foreman having knowledge of such injury shall have neglected to provide

**22 GCA BUSINESS REGULATIONS  
CH. 9 WORKER'S COMPENSATION**

the same; nor shall any claim for medical or surgical treatment be valid and enforceable, as against such employer, unless, within twenty (20) days following the first treatment, the physician giving such treatment shall furnish to the employer and the Commission a report of such injury and treatment, on a form prescribed by the Commission. The Commissioner may, however, excuse the failure to furnish such report within twenty (20) days when he finds it to be in the interest of justice to do so, and he may, upon application by a party in interest, make an award for the reasonable value of such medical or surgical treatment so obtained by the employee. If at any time during such period the employee unreasonably refuses to submit to medical or surgical treatment, the Commissioner may, by order, suspend the payment of further compensation during such time as such refusal continues, and no compensation shall be paid at any time during the period of such suspension, unless the circumstances justified the refusal.

(b) Whenever, in the opinion of the Commissioner, a physician has not impartially estimated the degree of permanent disability or the extent of temporary disability of any injured employee, the Commissioner shall have the power to cause such employee to be examined by a physician selected by the Commissioner and to obtain a report containing his estimate of such disabilities. If the report of such physician shows that the estimate of the physician has not been impartial from the standpoint of such employee, the Commissioner shall have the power, in his discretion, to charge the cost of such examination to the employer, if he is a self-insurer, or to the insurance company which is carrying the risk.

(c) All fees and other charges for treatment or service shall be limited to such charges as prevail in the same community for similar treatment of injured persons of like standard of living, and shall be subject to regulations by the Commissioner.

(d) The liability of an employer for medical treatment as herein provided shall not be affected by the fact that his employee was injured through the fault or negligence of a third party, not in the same employ, unless and until notice of election to sue has been given or suit has been brought against such third party without the giving of such notice. The employer shall, however, have a cause of action against such third party to recover any amounts paid by him for such medical treatment in like manner as provided in § 9134 of this law.

**SOURCE:** GC § 37007.

**§ 9109. Compensation for Disability.**

Compensation for disability shall be paid to the employee as follows:

(a) Permanent total disability. In case of total disability, adjudged to be permanent, sixty-six and two-thirds ( $66\frac{2}{3}$ ) per centum of his average weekly wages shall be paid to the employee during the continuance of such total disability. Loss of both hands, or both arms, or both feet, or both legs, or both eyes, or of any two (2) thereof shall, in the absence of conclusive proof to the contrary, constitute permanent total disability. In all other cases, permanent total disability shall be determined in accordance with the facts.

(b) Temporary total disability. In case of disability total in character but temporary in quality, sixty-six and two-third ( $66\frac{2}{3}$ ) per centum of the average weekly wages shall be paid to the employee during the continuance thereof.

(c) Permanent partial disability. In case of disability partial in character but permanent in quality, the compensation shall be sixty-six and two-thirds ( $66\frac{2}{3}$ ) per centum of the average weekly wages, which shall be in addition to compensation for temporary total disability or temporary partial disability paid in accordance with subsection (b) or subsection (e) of this section respectively and shall be paid to the employee as follows:

- (1) Arm lost, two hundred eighty (280) weeks compensation.
- (2) Leg lost, two hundred forty-eight (248) weeks compensation.
- (3) Hand lost, two hundred twelve (212) weeks compensation.
- (4) Foot lost, one hundred seventy-three (173) weeks compensation.
- (5) Eye lost, one hundred forty (140) weeks compensation.
- (6) Thumb lost, fifty-one (51) weeks compensation.
- (7) First finger lost, twenty-eight (28) weeks compensation.
- (8) Great toe lost, twenty-six (26) weeks compensation.
- (9) Second finger lost, eighteen (18) weeks compensation.

**22 GCA BUSINESS REGULATIONS**  
**CH. 9 WORKER'S COMPENSATION**

(10) Third finger lost, seventeen (17) weeks compensation.

(11) Toe other than great toe lost, eight (8) weeks compensation.

(12) Fourth finger lost, seven (7) weeks compensation.

(13) Loss of hearing. Compensation for loss of hearing of one (1) ear, fifty-two (52) weeks. Compensation for loss of hearing of both ears, two hundred (200) weeks.

(14) Phalanges. Compensation for loss of more than one phalange of a digit shall be the same as for loss of the entire digit. Compensation for loss of the first phalange of a digit shall be one-half (1/2) of the compensation for loss of the entire digit.

(15) Amputated arm or leg. Compensation for an arm or a leg, if amputated at or above the elbow or the knee, shall be the same as for a loss of the arm or leg; but, if amputated between the elbow and the wrist or the knee and the ankle, compensation shall be the same as for loss of a hand or foot.

(16) Binocular vision or per centum of vision. Compensation for loss of binocular vision or for eighty (80) per centum or more of the vision of an eye shall be the same as for loss of the eye.

(17) Two (2) or more digits. compensation for loss of two (2) or more digits, or one (1) or more phalanges of two (2) or more digits, of a hand or foot may be proportioned to the loss of use of the hand or foot.

(18) Total loss of use. Compensation for permanent total loss of use of a member shall be the same as for loss of the member.

(19) Partial loss or partial loss of use. Compensation for permanent partial loss or loss of use of a member may be for proportionate loss or loss of use of the member.

(20) Disfigurement. The Commissioner shall award proper and equitable compensation for serious disfigurement of the face, head or other parts of the body that are customarily visible in the course employment, not to exceed Ten Thousand Dollars (\$10,000.00).

**22 GCA BUSINESS REGULATIONS  
CH. 9 WORKER'S COMPENSATION**

(21) Other cases. In all other cases of permanent partial disability the compensation shall be two-thirds (2/3) of the difference between the employee's average weekly wages and his wage-earning capacity thereafter in the same employment or otherwise, payable during the continuance of such partial disability; provided that, compensation payments shall be subject to reconsideration as to the degree of such impairment by the Commissioner on his own motion or upon application of any party in interest.

(22) In any case in which there shall be a loss of, or loss of use of, more than one (1) member or parts of more than one member set forth in paragraphs (1) to (19) of this subsection, not amounting to permanent total disability, the award of compensation shall be for the loss of, or loss of use of, each such member or part thereof, which awards shall run consecutively, except that where the injury affects only two (2) or more digits of the same hand or foot, paragraph (17) of this subsection shall apply.

(d) An award for disability may be made after the death of the injured employee. Any compensation to which any deceased claimant would be entitled under subsection (c), excepting paragraph (c-21), shall, notwithstanding death arising from cause other than the injury, be payable to and for the benefit of the persons following:

(1) If there be surviving wife or dependent husband, and no child of the deceased under the age of eighteen (18) years, to such wife or dependent husband.

(2) If there be a surviving wife or dependent husband, and surviving child or children of the deceased under the age of eighteen (18) years, one-half (1/2) shall be payable to the surviving wife or dependent husband and the other half to the surviving child or children.

(3) The Commissioner may in his discretion require the appointment of a guardian for the purpose of receiving the compensation of a minor child. In the absence of such a requirement the appointment for such a purpose shall not be necessary.

**22 GCA BUSINESS REGULATIONS  
CH. 9 WORKER'S COMPENSATION**

(4) If there be a surviving child or children of the deceased under the age of eighteen (18) years, but no surviving wife or dependent husband, then to such child or children.

(e) Temporary partial disability. In case of temporary partial disability resulting in decrease of earning capacity, the compensation shall be two-thirds (2/3) of the difference between the injured employee's average weekly wages before the injury and his wage-earning capacity after the injury in the same or another employment. Compensation shall be paid during the continuance of such disability, not longer than five (5) years.

(f) Injury increasing disability.

(1) if an employee receives an injury which of itself would only cause permanent partial disability but which, combined with a previous disability, does in fact cause permanent total disability, the employer shall provide compensation only for the disability caused by the subsequent injury: Provided, however, that in addition to compensation for such permanent partial disability, and after the cessation of the payments for the prescribed period of weeks, the employee shall be paid the remainder of the compensation that would be due for permanent total disability. Such additional compensation shall be paid out of the special fund establish in § 9143.

(2) In all other cases in which, following a previous disability, an employee receive an injury which is not covered by (1) of this subsection, the employer shall provide compensation only for the disability caused by the subsequent injury. In determining compensation for the subsequent injury or for death resulting therefrom, the average weekly wages shall be such sum as will reasonably represent the earning capacity of the employee at the time of the subsequent injury.

(g) Maintenance for employees undergoing vocational rehabilitation. An employee who as a result of injury is or may be expected to be totally or partially incapacitated for a remunerative occupation and two under the direction of the Commission, as provided by § 9141(c) of this Title, is being rendered fit to engage in a remuneration occupation shall receive additional compensation

**22 GCA BUSINESS REGULATIONS**  
**CH. 9 WORKER'S COMPENSATION**

necessary for his maintenance, but such additional compensation shall not exceed Fifty dollars (\$50.00) per week.

(h) The wage-earning capacity of an injured employee in cases of partial disability under subsection (c)(21) of this section or under subsection (e) of this section shall be determined by his actual earnings if such actual earnings fairly and reasonably represent his wage-earning capacity: Provided that, if the employee has no actual earnings or if his actual earnings do not fairly and reasonably represent his wage-earning capacity, the Commissioner may, in the interest of justice, fix such wage-earning capacity as shall be reasonable, having due regard to the nature of his injury, the degree of physical impairment, his usual employment, and any other factors or circumstances in the case which may affect his capacity to earn wages in his disabled condition including the effect of disability as it may naturally extend into the future.

(i) In cases under subsection (c)(21) and subsection (e) of this section, whenever the commissioner determines that it is for the best interest of an injured employee entitled to compensation, he may, with the approval of the Commission, approve agreed settlements of the interested parties, discharging the liability of the employer for such compensation, notwithstanding the provisions of § 9116(b) and § 9117 of this Title; provided, that the sum so agreed upon shall be payable in installments as provided in § 9115(b), which installments shall be subject to commutation under § 9115(j); and provided further, that if the employee should die from causes other than the injury after the Commissioner has approved an agreed settlement as provided for herein, the sum so approved shall be payable, in the manner prescribed in this subsection, to and for the benefit of the persons enumerated in subsection (d) of this section.

**SOURCE:** GC § 37008. subsection (c)(20) repealed and reenacted by P.L. 19-35:3; subsection (g) repealed and reenacted by P.L. 19-35:4.

**NOTE:** On subsection (a) seventh line down, after the phrase "or of any two (2)", the comma has been deleted. Under subsection (c) section (22) fourth line down from (22), the words "loss of" should be added between "or" and "use". Subsection (g) on the sixth line down and after the phrase "fit to engage in", the sentence "a remuneration occupation shall receive additional" was added. Lastly, subsection (i) is missing a word on line 12. The word "if" is added after the phrase "and provided further, that" to complete the sentence. Amended by the Compiler in order to reflect the correct citation.

**§ 9110. Compensation for Death.**

If the injury causes death, the compensation shall be known as a death benefit and shall be payable in the amount and to or for the benefit of the persons following:

(a) Reasonable funeral expenses not exceeding Three Thousand Six Hundred Dollars (\$3,600.00).

(b) If there be a surviving spouse and no surviving dependent child of the deceased; to the surviving spouse thirty-five (35) percentum of the average wages of the deceased until death or remarriage; and if there be a surviving dependent child or dependent children of the deceased, the additional amount of fifteen (15) percentum of such wage for each child. In the case of the death or remarriage of such surviving spouse, if there be one (1) surviving dependent child of the deceased employee, such child shall have his compensation increased to thirty-five (35) percentum of such wages; and if there be more than one (1) surviving dependent child of the deceased employee, to such dependent children in equal parts, thirty-five (35) percentum of such wages, increased by fifteen (15) percentum of such wages for each dependent child in excess of one (1); provided that, the total amount payable shall in no case exceed two-thirds (2/3rds) of such wages. The Commissioner, may, at his discretion, require the appointment of a guardian for the purpose of receiving the compensation of a minor child. In the absence of such a requirement, the appointment of a guardian for such purposes shall not be necessary.

(c) If there be one (1) surviving dependent child of the deceased, but no surviving spouse, then for the support of such dependent child, thirty-five (35) percentum of the wages of the deceased. If there be more than one (1) surviving dependent child of the deceased, but no surviving spouse, then for the support of such wages for each dependent child in excess of one. The total amount payable under this Section shall in no case exceed two-thirds (2/3rds) of such wages.

(d) If there be no surviving spouse or dependent children, or if the amount payable to a surviving spouse or to the dependent children shall be less in the aggregate than sixty-six (66) and two-thirds (2/3rds) percentum of the average wages of the deceased; then for the support of surviving dependent grandchildren or surviving dependent brothers

**22 GCA BUSINESS REGULATIONS**  
**CH. 9 WORKER'S COMPENSATION**

and sisters, if they were dependent upon the deceased at the time of the injury, fifteen (15) percentum of such wages for the support of each such person; and for the support of each surviving dependent parent, or grandparent of the deceased if they were dependent upon him at the time of the injury, twenty-five (25) percentum of such wages during such dependence. But in no case shall the aggregate amount payable under this Section exceed the difference between two-thirds (2/3rds) of such wages and the amount payable as hereinbefore provided to surviving spouse and for the support of surviving dependent child or children.

(e) In computing death benefits, the average weekly wages of the deceased shall be considered to have been not more than Three Hundred Seventy-Five Dollars (\$375.00) per week nor less than Two Hundred Twenty-Five Dollars (\$225.00) per week.

(f) All questions of dependency shall be determined as of the time of the injury.

(g) Aliens. Compensation under this Title to aliens, not resident (or about to become non-residents) of the United States, the Territory of Guam, or Canada, shall be the same amount as provided for residents; provided that, dependents in any foreign country shall be limited to the surviving spouse and surviving dependent child or children, or if there be no surviving spouse or dependent child or children, to surviving dependent parents whom the employee has supported, either wholly or in part, for the period of one (1) year prior to the date of the injury; and provided that, the Commissioner may, at his option or upon the application of an insurance carrier, commute all future installments of compensation to be paid to such aliens by paying or causing to be paid to them one-half (1/2) of the commuted amounts of such future installments of compensation as determined by the Commission.

**SOURCE:** GC § 37009. Subsection (a) amended by P.L. 16-1:7; subsection (e) amended by P.L. 16-1:8. Repealed and reenacted by P.L. 19-35:5.

**NOTE:** Subsection (g) had a repetitive sentence that was deleted. This phrase was located 8 lines down from (g) and states "or if there be ..... or children,". Amended by the Compiler in order to reflect the correct citation.

**§ 9111. Determination of Pay.**

**22 GCA BUSINESS REGULATIONS**  
**CH. 9 WORKER'S COMPENSATION**

Except as otherwise provided in this Title, the average weekly wage of the injured employee at the time of the injury shall be taken as the basis upon which to compute compensation and shall be determined as follows:

(a) If the injured employee shall have worked in the occupation in which he was working at the time of the injury, whether for the same or another employer, during substantially the whole of the year immediately preceding his injury, his average annual earnings shall consist of three hundred (300) times the average daily wage or salary for a six (6) day worker and two hundred sixty (260) times the average daily wage or salary for a five (5) day worker, which he shall have earned in such employment during the days when so employed.

(b) If the injured employee shall not have worked in such occupation during substantially the whole of such year, his average annual earnings if a six (6) day worker, shall consist of three hundred (300) times the average daily wage or salary; and if a five (5) day worker, two hundred and sixty (260) times the average daily wage or salary, which an employee of the same class working substantially the whole of such immediately preceding year in the same or in similar occupation in the same or a neighboring place shall have earned in such employment during the days when so employed.

(c) If either of the foregoing methods of arriving at the average annual earnings of the injured employee cannot reasonably and fairly be applied, such average annual earnings shall be such sum as shall reasonably represent the annual earning capacity of the injured employee, having regard to the previous earnings of the injured employee in the occupation in which he was working at the time of the injury, and of other employees of the same or most similar class working in the same or similar occupation in the same or neighboring locality, or other employment of such employee, including the reasonable value of the services of the employee if engaged in self-employment.

(d) The average weekly wages of an employee shall be one fifty-second ( $1/52$ ) part of his average annual earnings.

(e) If it be established that the injured employee was a minor when injured, and that under normal conditions his wages should be expected to increase during the period of disability, the fact may be considered in arriving at his average weekly wages.

SOURCE: GC § 37010.

**§ 9112. Guardian for Minor or Incompetent.**

The Commissioner may require the appointment of a guardian or other representative, by a court of competent jurisdiction, for any person who is mentally incompetent or a minor; such guardian or representative to receive compensation payable to such person under this Title and to exercise the powers granted to, or perform the duties required of, such person under this Title.

SOURCE: GC § 37011.

**§ 9113. Notice of Injury or Death.**

(a) Notice of an injury or death for which compensation is payable under this Title, shall be given within thirty (30) days after the date of such injury or death (1) to the Commissioner and (2) to the employer.

(b) Such notice shall be in writing; shall contain the name and address of the employee and a statement of the time, place, nature, and cause of the injury or death; and shall be signed by the employee or by some person on his behalf, or in case of death, by any person claiming to be entitled to compensation for such death or by a person on his behalf.

(c) Notice shall be given to the Commissioner by delivering it to him or sending it by mail, addressed to his office; and to the employer by delivering it to him or by sending it by mail, addressed to him at his last known place of business. If the employer is a partnership, such notice may be given to any partner, or if a corporation, such notice may be given to any agent or officer thereof upon whom legal process may be served or who is in charge of the business in the place where the injury occurred.

(d) Failure to give such notice shall not bar any claim under this Title (1) if the employer (or his agent in charge of the business in the place where the injury occurred) or the carrier had knowledge of the injury or death, and the Commissioner determines that the employer or carrier has not been prejudiced by failure to give such notice, or (2) if the Commissioner excuses such failure on the ground that for some satisfactory reason such notice could not be given, or (3) if objection to such failure is not raised before the Commissioner at the first hearing of a claim for compensation in respect of such injury or death.

SOURCE: GC § 37012.

**§ 9114. Time for Filing of Claims.**

(a) The right of compensation for disability and death under this Title shall be barred unless a claim therefor is filed within one (1) year after medical knowledge of disability or death. The time for filing a claim shall not begin to run until the employee or beneficiary becomes aware of the relationship between the injury or death and the employment. If payment of compensation has been made without an award on account of such injury or death, a claim may be filed within one (1) year after the date of the last payment. Such claim shall be filed with the Commissioner. For the purposes of Chapter 32, Title 10, Guam Code Annotated, notice of exposure where no disability or death is immediately medically apparent, shall not constitute medical knowledge of disability or death.

(b) Notwithstanding the provisions of subsection (a) of this section, failure to file a claim within the period prescribed in such subsection shall not be a bar to such right unless objection to such failure is made at the first hearing of such claim in which all parties in interest are given reasonable notice and opportunity to be heard.

(c) If a person who is entitled to compensation under this Title is mentally incompetent or a minor, the provisions of subsection (a) of this section shall not be applicable so long as such person has no guardian or other authorized representative, but shall be applicable, in the case of a person who is mentally incompetent or a minor, from the date of appointment of such guardian or other representative; or in the case of a minor, where no guardian is appointed before he becomes of age, from the date he becomes of age.

(d) When recovery is denied to any person, in a suit brought at law or in admiralty to recover damages in respect of injury or death, on the ground that such person was an employee and that the defendant was an employer within the meaning of this Title and that such employer had secured compensation to such employee under this Title, the limitation of time prescribed in subsection (a) of this section shall begin to run only from the date of termination of such suit.

**SOURCE:** GC § 37013. Subsection (a) amended by P.L. 20-110:7.

**§ 9115. Payment of Compensation.**

**22 GCA BUSINESS REGULATIONS  
CH. 9 WORKER'S COMPENSATION**

(a) Compensation under this Title shall be paid periodically, promptly, and directly to the person entitled thereto, without an award, except where liability to pay compensation is controverted by the employer.

(b) The first installment of compensation shall become due on the fourteenth (14th) day after the employer has knowledge of the injury or death, on which date all compensation then due shall be paid. Thereafter, compensation shall be paid in semi-monthly installment except where the Commissioner determines that payment in installments should be made monthly or at some other interval.

(c) Upon making the first payment, and upon suspension of payment for any cause, the employer shall immediately notify the Commissioner, in accordance with a form prescribed by the Commission, that payment of compensation has begun or has been suspended, as the case may be.

(d) If the employer controverts the right to compensation, he shall file with the Commissioner, on or before the fourteenth (14th) day after he has knowledge of the alleged injury or death, a notice in accordance with a form prescribed by the Commission, stating that the right to compensation is controverted, the name of the claimant, the name of the employer, the date of the alleged injury or death, and the grounds upon which the right to compensation is controverted.

(e) If any installment of compensation payable without an award is not paid within fourteen (14) days after it becomes due, as provided in subsection (b) of this section, there shall be added to such unpaid installment an amount equal to ten (10) per centum thereof, which shall be paid at the same time as, but in addition to, such installment unless notice is filed under subsection (d) of this section, or unless such nonpayment is excused by the Commissioner after a showing by the employer that owing to conditions over which he had no control such installment could not be paid within the period prescribed for the payment.

(f) If any compensation, payable under the terms of an award, is not paid within ten (10) days after it becomes due, there shall be added to such unpaid compensation an amount equal to twenty (20) per centum thereof which shall be paid at the same time as, but in addition to, such compensation unless review of the compensation order making such award is had as provided in § 9122, and an interlocutory injunction staying payment is allowed by the court as provided therein.

**22 GCA BUSINESS REGULATIONS**  
**CH. 9 WORKER'S COMPENSATION**

(g) Within sixteen (16) days after final payment of compensation has been made, the employer shall send to the Commissioner a notice, in accordance with a form prescribed by the Commission, stating that such final payment has been made, the total amount of compensation paid, the name of the employee, and of any other person to whom compensation has been paid, the date of the injury or death, and the date up to which compensation has been paid. If the employer fails to notify the commissioner within such time the Commission shall assess against such employer a civil penalty in the amount of one hundred dollars (\$100.00).

(h) The Commissioner (1) may upon his own initiative at any time in a case in which payments are being made without an award and (2) shall in any case where right to compensation is controverted, or where payments of compensation have been stopped or suspended, upon receipt of notice from any person entitled to compensation, or from the employer that the right to compensation is controverted, or that payment of compensation has been stopped or suspended, make such investigation, cause such medical examinations to be made, or hold such hearings, and take such further action as he considers will properly protect the rights of all parties.

(i) Whenever the Commissioner deems it advisable he may require any employer to make a deposit with the Treasurer of Guam to secure the prompt and convenient payment of such compensation; and payments from such deposits upon any awards shall be made by the Treasurer upon order of the Commissioner.

(j) Whenever the Commissioner determines that it is in the interest of justice, the liability of the employer for compensation or any part thereof, as determined by the Commissioner, may, with the approval of the Commission, be discharged by the payment of a lump sum equal to the present value of future compensation payments computed at four (4) per centum true discount compounded annually; provided, however, that with respect to government of Guam employees, no determination for a lump sum payment of compensation which is meant to replace wages may be made, *unless* a rational basis for such lump sum payment of compensation exists, without which the employee's or employee's family's welfare would suffer from the inability to maintain the level of lifestyle in existence immediately prior to the disability. The probability of the death of the injured employee or other person entitled to compensation before the expiration of the period during which the employee is entitled to compensation shall be determined in accordance with the American Experience

**22 GCA BUSINESS REGULATIONS  
CH. 9 WORKER'S COMPENSATION**

Table of Mortality, and the probability of the remarriage of the surviving spouse shall be determined in accordance with the Remarriage Tables of the Dutch Royal Insurance Institution. The probability of the happening of any other contingency affecting the amount or duration of the compensation shall be disregarded.

(k) If the employer has made advance payments of compensation, he shall be entitled to be reimbursed out of any unpaid installment or installments of compensation due.

(l) An injured employee or, in case of death, his dependents or personal representative shall give receipts for payment of compensation to the employer paying the same and such employer shall produce the same for inspection by the Commissioner, whenever required.

(m) The total compensation, excluding medical services and supplies, payable under this Title for any injury or death shall in no event exceed the sum of One Hundred Thousand Dollars (\$100,000.00). In cases of disability compensable under Paragraph 21 of Subsection (c) of § 9109, the total compensation for such disability, and for any temporary partial disability sustained in addition therein, shall not exceed in the aggregate the sum of One Hundred Thousand dollars (\$100,000.00)

(n) [Repealed].

**SOURCE:** GC § 37014. Subsection (m) amended by P.L. 16-1:9; subsection (m) repealed and reenacted by P.L. 19-35:6. Subsection (n) added by P.L. 25-03:IV:02; repealed by P.L. 25-91:IV:03. Subsection (j) amended by P.L. 25-72:IV:01.

**NOTE:** Subsection (h) under the first sentence, the word "of" has been replaced by the word "at". Under the same section on the ninth line, the phrase "upon receipt of notice....stopped or suspended." was repetitive and therefore deleted. Amended by the Compiler in order to reflect the correct citation.

**§ 9116. Invalid Agreements.**

(a) No agreement by an employee to pay any portion of premium paid by his employer to a carrier or to contribute to a benefit fund or department maintained by such employer for the purpose of providing compensation or medical services and supplies as required by this Title shall be valid, and any employer who makes a deduction for such purpose from the pay of any employee entitled to the benefits of this Title shall be guilty of a violation, and upon conviction thereof shall be punished by a fine of not more than one thousand dollars (\$1,000.00).

(b) No agreement by an employee to waive his right to compensation under this Title shall be valid.

**SOURCE:** GC § 37015. Subsection (a) amended by P.L. 13-187:201.

**§ 9117. Assignment and Exemption from Claims of Creditors.**

No assignment, release, or commutation of compensation or benefits due to payable under this Title, except as provided by this Title, shall be valid, and such compensation and benefits shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy for recovery or collection of a debt, which exemption may not be waived.

**SOURCE:** GC § 37016.

**§ 9118. Compensation, a Lien Against Assets.**

Any person entitled to compensation under the provisions of this Title shall have a lien against the assets of the carrier or employer for such compensation without limit or amount, and shall, upon insolvency, bankruptcy, or reorganization in bankruptcy proceedings of the carrier or employer, or both, be entitled to preference and priority in the distribution of the assets of such carrier or employer, or both.

**SOURCE:** GC § 37017.

**§ 9119. Collection of Defaulted Payments.**

In case of default by the employer in the payment of compensation due under any award of compensation due under any award of compensation for a period of thirty (30) days after the compensation is due and payable, the person to whom such compensation is payable may, within one (1) year after such default, make application to the Commissioner for a supplementary order declaring the amount of the default. After investigation, notice, and hearing, as provided in § 9120, the Commissioner shall make a supplementary order, declaring the amount of the default, which shall be filed in the same manner as the compensation order. In case the payment in default is an installment of the award, the Commissioner may, in his discretion, declare the whole of the award as the amount in default. The applicant may file a certified copy of such supplementary order with the clerk of the Superior Court. Such supplementary order of the Commissioner shall be final, and the court shall, upon the filing of the copy, enter judgment for the amount declared in default by the supplementary order, if such supplementary order is in accordance with law. Review of the judgment so entered may be had as in civil suits for damages at common

law. Final proceedings to execute the judgement may be had by writ of execution in the form used by the court in suits at common law in actions of assumpsit. No fee shall be required for filing the supplementary order nor for entry of judgment thereon, and the applicant shall not be liable for costs in a proceeding for review of the judgment unless the court shall otherwise direct. The court shall modify such judgment to conform to any later compensation order upon presentation of a certified copy thereof to the court.

**SOURCE:** GC § 37018.

**§ 9120. Procedure in Respect of Claims.**

(a) Subject to the provisions of § 9114, a claim for compensation may be filed with the Commissioner in accordance with regulations prescribed by the Commission at any time after the first seven (7) days of disability following any injury, or at any time after death, and the Commissioner shall have full power and authority to hear and determine all questions in respect to such claim.

(b) Within ten (10) days after such claim is filed the Commissioner, in accordance with regulations prescribed by the Commission, shall notify the employer and any other person (other than the claimant), whom the Commissioner considers an interested party, that a claim has been filed. Such notice may be served personally upon the employer, or other person, or sent to such employer or person by registered mail.

(c) The Commissioner shall make or cause to be made such investigations as he considers necessary in respect of the claim, and upon application of any interested party, shall order a hearing thereon. If a hearing on such claim is ordered, the Commissioner shall give the claimant and other interested parties at least ten (10) days notice of such hearing, served personally upon the claimant and other interested parties, or sent to such claimant and other interested parties by registered mail, and shall within twenty (20) days after such hearing is had, by order, reject the claim or make an award in respect of the claim. If no hearing is ordered within twenty (20) days after notice is given as provided in subsection (b) of this section, the Commissioner shall, by order, reject the claim or make an award in respect of the claim.

(d) At such hearing the claimant and the employer may each present evidence in respect of such claim and may be represented by any person authorized in writing for such purpose.

**22 GCA BUSINESS REGULATIONS  
CH. 9 WORKER'S COMPENSATION**

(e) The order rejecting the claim or making the award (referred to in this Title as a compensation order) shall be filed in the office of the Commissioner, and a copy thereof shall be transmitted to the claimant and to the employer by delivery to them in person or by registered mail sent to their last known addresses.

(f) An award of compensation for disability may be made after the death of an injured employee.

(g) At any time after a claim has been filed with him, the Commissioner may transfer such case to any member of the Commission for the purpose of making investigation, taking testimony, making physical examinations or taking such other necessary action therein as may be directed.

(h) An injured employee claiming or entitled to compensation shall submit to such physical examination, by a medical officer of the Department of Public Health and Social Services, or by a qualified physician designated or approved by the Commission, as the Commissioner may require. The place or places of such examination shall be reasonably convenient for the employee. Such physician or physicians as the employee, employer, or carrier may select and pay for may participate in an examination if the employee, employer, or carrier so requests. Proceedings shall be suspended and no compensation shall be payable for any period during which the employee refuses to submit to such examination.

**SOURCE:** GC § 37019.

**NOTE:** Subsection (g) on the first phrase, the word "Commission" should read "Commissioner". Following that, the word "Commissioner" should read "Commission". Amended by the Compiler in order to reflect the correct citation.

**§ 9121. Presumptions.**

In any proceeding for the enforcement of a claim for compensation under this Title, it shall be presumed, in the absence of substantial evidence to the contrary:

- (a) That the claim comes within the provision of this Title.
- (b) That sufficient notice of such claim has been given.
- (c) That the injury was not occasioned solely by the intoxication of the injured employee.

**22 GCA BUSINESS REGULATIONS  
CH. 9 WORKER'S COMPENSATION**

(d) That the injury was not occasioned by the willful intention of the injured employee to injure or kill himself or another.

**SOURCE:** GC § 37020.

**NOTE:** Under subsection (d) after the word "injure", the word "to" was deleted and replaced with "or". Amended by the Compiler in order to reflect the correct citation.

**§ 9122. Review of Compensation Order.**

(a) A compensation order shall become effective when filed in the office of the Commissioner as provided in § 9120, and, unless proceedings for the suspension or setting aside of such order are instituted as provided in subsection (b) of this section, shall become final at the expiration of the thirtieth (30th) day thereafter.

(b) If not in accordance with law, a compensation order may be suspended or set aside, in whole or in part, through injunction proceedings, mandatory or otherwise, brought by any party in interest against the Commissioner, and instituted in the Superior Court. The orders, writs, and processes of the court in such proceedings may run, be served, and be returnable anywhere in the Territory of Guam. The payment of the amounts required by an award shall not be stayed pending final decision in any such proceeding unless upon application for an interlocutory injunction the court, on hearing, after not less than three (3) days notice to the parties in interest and the Commissioner, allows the stay of such payments, in whole or in part, where irreparable damage would otherwise ensue to the employer. The order of the court allowing any such stay shall contain a specific finding, based upon evidence submitted to the court and identified by reference thereto, that such irreparable damage would result to the employer, and specifying the nature of the damage.

(c) If any employer or his officers or agents fail to comply with a compensation order making an award that has become final, any beneficiary of such award or the Commissioner may apply to the Superior Court for the 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 officers or agents have failed to comply therewith, the court shall enforce obedience to the order by writ of injunction, or by other proper process, mandatory or otherwise, to enjoin upon such employer and his officers and agents compliance with the order.

(d) Proceedings for suspending, setting aside, or enforcing a compensation order, whether rejecting a claim or making an award, shall

**22 GCA BUSINESS REGULATIONS  
CH. 9 WORKER'S COMPENSATION**

not be instituted otherwise than as provided than as provided in this section and § 9119.

**SOURCE:** GC § 37021.

**NOTE:** Under subsection (b) the first paragraph with the word "an" was deleted. Amended by the Compiler in order to reflect the correct citation.

**§ 9123. Modification of Awards.**

Upon his own initiative, or upon the application of any party in interest, on the ground of a change in conditions or because of a mistake in a determination of fact by the Commissioner, the Commissioner may, at any time prior to one (1) year after the date of the last payment of compensation, whether or not a compensation order has been issued, or at any time prior to one (1) year after the rejection of a claim, review a compensation case in accordance with the procedure prescribed in respect of claims in § 9120, and in accordance with such section issue a new compensation order which may terminate, continue, reinstate, increase, or decrease such compensation, or award compensation. Such new order shall not affect any compensation previously paid, except that an award increasing the compensation rate may be made effective from the date of the injury; and if any part of the compensation due or to become due is unpaid, an award decreasing the compensation rate may be made effective from the date of the injury, and any payment made prior to the time of the award in excess of such decreased rate shall be deducted from any unpaid compensation in such manner and by such method as may be determined by the Commissioner with the approval of the Commission.

**SOURCE:** GC § 37022.

**NOTE:** Towards the end of this paragraph, the sentence "rate may be made effective .... any unpaid compensation" was repetitive and therefore was deleted. Amended by the Compiler in order to reflect the correct citation.

**§ 9124. Procedure Before the Commissioner.**

(a) In making an investigation or inquiry, or conducting a hearing, the Commissioner shall not be bound by common law or statutory rules of evidence or by technical or formal rule of procedure, except as provided by this Title, but may make such investigation or inquiry, or conduct such hearing in such manner as to best ascertain the rights of the parties. Declarations of a deceased employee concerning the injury in respect of which the investigation or inquiry is being made, or the hearing conducted,

**22 GCA BUSINESS REGULATIONS**  
**CH. 9 WORKER'S COMPENSATION**

shall be received in evidence and shall, if corroborated by other evidence, be sufficient to establish the injury.

(b) Hearings before the Commissioner shall be open to the public and shall be recorded. The Commissioner shall, by regulation, provide for the preparation of a record of the hearings and other proceedings before the Commissioner.

**SOURCE:** GC § 37023. Amended by P.L. 26-011:1 to eliminate the need for attorneys to preside over hearings and to place this duty with the Commissioner.

**§ 9125. Witnesses.**

No person shall be required to attend as a witness in any proceeding before the Commissioner at a place outside the Territory of Guam; but the testimony of any witness may be taken by deposition or interrogatories according to the rules of practice of the Superior Court.

**SOURCE:** GC § 37024.

**§ 9126. Witness Fees.**

Witnesses summoned in a proceeding before the Commissioner or whose depositions are taken may receive the same fees and mileage as witnesses in the Superior Court.

**SOURCE:** GC § 37025.

**§ 9127. Costs in Proceedings Brought Without Reasonable Grounds.**

If the court having jurisdiction of proceedings in respect of any claim or compensation order determines that the proceedings in respect of such claim or order have been instituted or continued without reasonable ground, the costs of such proceedings shall be assessed against the party who has so instituted or continued such proceedings.

**SOURCE:** GC § 37026.

**§ 9128. Powers of the Commissioner.**

(a) The Commissioner shall have power to preserve and enforce order during any such proceedings; to issue subpoenas for, to administer oaths to, and to compel the attendance and testimony of witness, or the production of books, papers, documents, and other evidence, or the taking of depositions before any designated individual competent to administer oaths; to examine witnesses; and do all things conformable to law which may be necessary to enable him effectively to discharge the duties of his office.

**22 GCA BUSINESS REGULATIONS**  
**CH. 9 WORKER'S COMPENSATION**

(b) If any person in proceedings before the Commissioner disobeys or resists any lawful order or process, or misbehaves during a hearing at or so near the place thereof as to obstruct the same, or neglects to produce, after having been ordered to do so, any pertinent book, paper, or document, or refuses to appear after having been subpoenaed, or upon appearing refuses to take the oath as a witness, or after having taken the oath, refuses to be examined according to law, the commissioner shall certify the facts to the Superior Court which shall thereupon in a summary manner hear the evidence and if in the judgment of the Court, the evidence so warrants, punish such person in the same manner and to the same extent as for a contempt committed before the court, or commit such person upon the same conditions as if the doing of the forbidden act had occurred with reference to the process of or in the presence of the court.

**SOURCE:** GC § 37027.

**§ 9129. Fees for Services.**

(a) No claim for attorney's fees or for any other services rendered in respect of a claim or award for compensation, to or on account of any person, shall be valid unless approved by the Commissioner, whose approval shall not be unreasonably withheld, or if proceedings for review of the order of the commissioner in respect of such claim or award are had before any court, unless approved by such court. Any claims so approved shall, in the manner and to the extent fixed by the Commissioner or such court, be a lien upon such compensation.

**SOURCE:** GC § 37028. Amended by P.L. 13-187:202 (Sept. 2, 1976); P.L. 19-35:7 (Dec. 30, 1988).

**2008 COMMENT:** Public Law 19-35:7 states: "Section 37208 of the Government Code is amended to read: Section 37208. Fees for Services. (a) No claim . . ." This amendment made no mention of subsection (b), which was in the original GC § 37208 and amended by P.L. 13-187: 202. The effect of P.L. 19-35 was to repeal subsection (b). For informational purposes subsection (b) states:

(b) Any person (1) who receives any fee, other consideration, or any gratuity on account of services so rendered, unless such consideration or gratuity is approved by the Commissioner or such court, or (2) who makes it a business to solicit employment for a lawyer or for himself in respect of any claim or award for compensation, shall be guilty of a misdemeanor.

**§ 9130. Record of Injury or Death.**

**22 GCA BUSINESS REGULATIONS  
CH. 9 WORKER'S COMPENSATION**

Every employer shall keep a record in respect of any injury to an employee. Such record shall contain such information of disease, other disability, or death in respect of such injury as the Commission may by regulation require, and shall be available to inspection by the Commission or by governmental authority at such times and under such conditions as the commission may by regulation prescribe.

**SOURCE:** GC § 37029.

**§ 9131. Reports.**

(a) Within ten (10) days from the date of any injury or death, or from the date that the employer has knowledge of a disease or infection in respect of such injury, the employer shall send to the Commission a report setting forth (1) the name, address, and business of the employer; (2) the name, address, and occupation of the employee; (3) the cause and nature of the injury or death; (4) the year, month, day, and hour, and the particular locality where the injury or death occurred; and (5) such other information as the Commission may require. A copy of such report shall be sent at the same time to the Commissioner.

(b) Additional reports in respect of such injury and of the condition of such employee shall be sent by the employer to the Commission at such times and in such manner as the Commission may prescribe.

(c) Any report provided for in subsection (a) or (b) shall not be evidence of any fact stated in such report in any proceeding in respect of any such injury or death for which the report is made.

(d) The mailing of any such report and copy in a stamped envelope, within the time prescribed in subsection (a) or (b), to the Commission, shall be a compliance with this section.

(e) Any employer who fails or refuses to send any report required of him by this section shall be subject to a civil penalty not to exceed five hundred dollars (\$500.00) for each such failure or refusal.

(f) Where the employer or the carrier has been given notice, or the employer (or his agent in charge of the business in the place where the injury occurred) or the carrier has knowledge, of any injury or death of an employee and fails, neglects, or refuses to file report thereof as required by the provisions of subsection (a) of this section, the limitations in subsection (a) of § 9114 of this Title shall not begin to run against the claim of the injured employee or his dependents entitled to compensation, or in favor of

**22 GCA BUSINESS REGULATIONS  
CH. 9 WORKER'S COMPENSATION**

either the employee or the carrier, until such report shall have been furnished as required by the provisions of subsection (a) of this section.

**SOURCE:** GC § 37030.

**NOTE:** According to the Government Code books, subsection (b) was amended by P.L. 9-238; but (b) of this section was never amended since its inception. P.L. 9-238 actually amended §37039(b) instead. Towards the end of Subsection (f) the last paragraph, the word "employer" should actually read "employee". Amended by the Compiler in order to reflect the correct citation.

**§ 9132. Penalty for Misrepresentation.**

Any person who wilfully makes any false or misleading statement or representation for the purpose of obtaining any benefit or payment under this Title, or for the purpose of evading liability for any benefit or payment under this Title, shall be guilty of a misdemeanor.

**SOURCE:** GC § 37031. Amended by P.L. 13-187:203.

**§ 9133. Security for Compensation.**

(a) Every employer shall secure the payment of compensation under this Title:

(1) By insuring and keeping insured the payment of such compensation with any stock corporation or mutual association authorized by the Commission to transact the business of workers' compensation insurance in the Territory.

(2) By obtaining and keeping in force guarantee insurance with any company authorized by the Commission to do such guarantee business within the Territory.

(3) The government of Guam may make compensation payments under the provisions of this Title from the special fund referred to in § 9143.

(b) In granting authorization to any carrier to insure payment of compensation under this Title, the Commission may take into consideration the recommendation of any authority having supervision over carriers or over workers' compensation, and may authorize any carrier to insure the payment of compensation under this Title in the Territory. The Commission may suspend or revoke any such authorization for good cause shown after a hearing at which the carrier shall be entitled to be heard in person or by

counsel, and to present evidence. No suspension or revocation shall affect the liability of any carrier already incurred.

**SOURCE:** GC § 37032.

**NOTE:** The term "territory" under section (a)(1) & (2) as well as (b) should be capitalized. Under (b) on the last line, the word "make" authorize should read "may" authorize. Amended by the Compiler in order to reflect the correct citation.

**§ 9134. Compensation for Injuries Where Third Persons are Liable.**

When an injury for which compensation is payable under this Title shall have been sustained under circumstances creating in some person other than the employer a legal liability to pay damages in respect thereto, the injured employee may claim compensation under this Title and, at his option, may also obtain damages from a proceed at law against the other person in order to recover damages. If compensation is claimed and awarded under this Title, an employer or his insurance carrier, having paid the compensation or having become liable therefor, shall be subrogated to the rights of the injured employee up to the amount paid by the employer or his insurance carrier to the employee and shall be entitled to recover against such third person up to said amounts; provided, if the employer or its insurance carrier shall recover from said third person damages in excess of compensation already paid or awarded to the employee under this Title, then any such excess shall be paid to the injured employee, or other person entitled thereto, less the employer's expenses and costs of action. The amount of compensation paid by the employer, or in the amount of compensation to which the injured employee or his dependents are entitled, shall not be used in order to diminish the employer's claim or the employee's claim against said third persons. The collateral source doctrine is reemphasized and reestablished by this Code Section.

**SOURCE:** GC § 37033. Repealed and reenacted by P.L. 19-35:8.

**§ 9135. Right to Compensation as Exclusive Remedy.**

Nothing contained in § 9134 of this Title shall be deemed to create a cause of action by an injured employee against any co-employee, officer, agent or director of the employer. The right to compensation for benefits under the Worker's Compensations Law of Guam shall be the exclusive remedy to an employee when he is injured, or to his eligible survivors or legal representatives if he is killed, by the negligence of any other person or persons in the same employ; provided, that this provision shall not affect the liability of a person other than an officer or employee of the employer.

**22 GCA BUSINESS REGULATIONS  
CH. 9 WORKER'S COMPENSATION**

**SOURCE:** GC § 37033.1. Added by P.L. 19-35:9.

**§ 9136. Compensation Notice.**

Every employer who has secured compensation under the provisions of this Title shall keep posted in a conspicuous place or places in and about his place or places of business, typewritten or printed notices, in accordance with a form prescribed by the Commission, stating that such employer has secured the payment of compensation in accordance with the provisions of this Title. Such notices shall contain the name and address of the carrier, if any, with whom the employer has secured payment of compensation and the date of the expiration of the policy.

**SOURCE:** GC § 37034.

**§ 9137. Substitution of Carrier for Employer.**

In any case where the employer is not a self-insurer, in order that the liability for compensation imposed by this Title may be most effectively discharged by the employer, and in order that the administration of this Title in respect of such liability may be facilitated, the Commission shall by regulation provide for the discharge, by the carrier for such employer, of such obligations and duties of the employer in respect of such liability, imposed by this Title upon the employer, as it considers proper in order to effectuate the provisions of this Law. For such purposes (1) notice to or knowledge of the employer of the occurrence of the injury shall be notice to or knowledge of the carrier, (2) jurisdiction of the employer by the Commissioner, the Commission, or any court under this Title shall be jurisdiction of the carrier, and (3) any requirement by the Commissioner, the Commission, or any court under any compensation order, finding, or decision shall be binding upon the carrier in the same manner and to the same extent as upon the employer.

**SOURCE:** GC § 37035.

**NOTE:** Towards the mid part of this section, just right after the word "Title", this phrase was inserted "upon the employer, as it considers proper in order to effectuate the provisions of this law" to complete the sentence. Amended by the Compiler in order to reflect the correct citation.

**§ 9138. Insurance Policies.**

(a) Every policy or contract of insurance issued under authority of this Title shall contain (1) a provision to carry out the provisions of § 9137 and (2) a provision that insolvency or bankruptcy of the employer or discharge

**22 GCA BUSINESS REGULATIONS  
CH. 9 WORKER'S COMPENSATION**

therein, or both, shall not relieve the carrier from payment of compensation for disability or death sustained by an employee during the life of such policy or contract.

(b) No contract or policy of insurance issued by a carrier under this Title shall be cancelled prior to the date specified in such contract or policy for its expiration until least thirty (30) days have elapsed after a notice of cancellation has been sent to the Commissioner and to the employer in accordance with the provisions of subsection (c) of § 9113.

**SOURCE:** GC § 37036.

**§ 9139. Certificate of Compliance With This Law.**

All employers within the meaning of this Title shall within ninety (90) days after its enactment, file with the Workers' Compensation Commission a certificate that they have complied with the provisions of this Title requiring the securing of compensation to their employees. Any person violating the provisions of this section shall be guilty of a misdemeanor.

**SOURCE:** GC § 37037. Amended by P.L. 13-187:204.

**§ 9140. Penalty for Failure to Secure Payment of Compensation.**

(a) Any employer required to secure the payment of compensation under this Title who fails to secure such compensation shall be guilty of a misdemeanor; and in any case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable to such fine or imprisonment as herein provided, for the failure of such corporation to secure the payment of compensation; and such president, secretary, and treasurer shall be severally personally liable, jointly with such corporation, for any compensation or other benefit which may accrue under the said Title in respect to any injury which may occur to any employee of such corporation while it shall so fail to secure the payment of compensation as required by § 9133 of this Title.

(b) Any employer who knowingly transfers, sells, encumbers, assigns, or in any manner disposes of, conceals, secretes, or destroys any property belonging to such employer, after one of his employees has been injured within the purview of this Title and with intent to avoid the payment of compensation under this Title to such employee or his dependents, shall be guilty of a misdemeanor; and in case where such employer is a corporation, the president, secretary, and treasurer thereof shall be also severally liable to

**22 GCA BUSINESS REGULATIONS**  
**CH. 9 WORKER'S COMPENSATION**

such penalty of imprisonment as well as jointly liable with such corporation for such fine.

(c) This section shall not affect any other liability of the employer under this Title.

**SOURCE:** GC § 37038. Amended by P.L. 13-187:205.

**§ 9141. Administration.**

(a) Except as otherwise specifically provided, the Worker's Compensation Commission shall administer the provisions of this Title, and for such purpose the Commission is authorized (1) to make rules and regulations in conformance with this Title; (2) to select such technical assistants, medical advisors, and other officers and employees; and (3) to make from appropriated funds such expenditures (including expenditures for personal services, rent, law books, books of reference, periodicals and printing, binding and other necessities) as may be necessary in the administration of this Title.

(b) The Workers' Compensation Commission shall be under the cognizance of the Department of Labor and shall consist of the Commissioner and six (6) other members to be appointed by the Governor as follows:

(1) one (1) member appointed from the Mayors' Council;

(2) one (1) member appointed from a list of three (3) medical doctors recommended by the Guam Medical Society

(3) one (1) member appointed from a list of three (3) attorneys recommended by the Guam Bar Association;

(4) one (1) member appointed from a list of three (3) Certified Public Accountants recommended by the Guam Society of Certified Public Accountants;

(5) one (1) government of Guam employee; and

(6) one (1) member of a labor union.

The Commission shall maintain and keep open during reasonable business hours, an office for the transaction of business. If any member of the Commission is removed from office or for any reason ceases to act as a member, all of his official records and papers shall be transferred to his successor in office or to the Commission. No member nor any business

**22 GCA BUSINESS REGULATIONS**  
**CH. 9 WORKER'S COMPENSATION**

associate of a member shall appear as attorney in any proceedings under this Title, and no member shall act in any such case in which he is interested, or when he is employed by any party in interest or related to any party in interest by consanguinity or affinity within the third degree as determined by the common law. Members of the Commission, except the Commissioner, shall receive Fifty Dollars (\$50) per meeting attended not to exceed One Hundred Dollars (\$100) per month and any reasonable expenses incurred in performance of duty.

(c) The Commission shall direct the vocational rehabilitation of permanently disabled employees and shall arrange with the appropriate public or private agencies for such education. The Commission may in its discretion furnish such prosthetic appliances or other apparatus made necessary by an injury upon which an award has been made under this Title to render a disabled employee fit to engage in a remunerative occupation.

**SOURCE:** GC § 37039. Subsection (b) amended by P.L. 9-238:4. Subsection (b) repealed and reenacted by P.L. 16-1:12.

**NOTE:** All references to Commissioners were changed to "Mayors". Amended by the Compiler in order to reflect the correct citation.

**§ 9142. Investigation by the Commission.**

(a) The Commission shall make studies and investigations with respect to safety provisions and the causes of injuries in employments covered by this Title, and shall from time to time make to the Legislature and to employers and carriers such recommendations as it may deem proper as to the best means of preventing such injuries.

(b) In making such studies and investigations, the Commission is authorized (1) to cooperate with any agency charged with the duty of enforcing any law, securing safety against injury in any employment covered by this Title, or with any agency engaged in enforcing any laws to assure safety for employees, and (2) to permit any such agency to have access to the records of the Commission. In carrying out the provisions of this section the Commission or any officer or employee of the commission is authorized to enter at any reasonable time upon any premises, tracks, wharf, dock, or to enter any building, where an employment covered by this Title is being carried on, and to examine any tool, appliances, or machinery used in such employment.

**SOURCE:** GC § 37040.

**§ 9143. Special Fund.**

(a) There is hereby established separate and apart from other funds of the government of Guam, a special fund to make payments in accordance with the provisions of subsection (f)(1) of § 9109 of this Title. Such fund shall be administered by the Commission. The Treasurer of Guam shall be the custodian of such fund, and all moneys and securities in such fund shall be held in trust by such Treasurer, and shall not be money or property of the government of Guam.

(b) The Treasurer is authorized to disburse moneys from such fund only upon order of the Commission.

(c) The amount of such fund shall be subject to audit in accordance with established government of Guam auditing procedures, but the action of the Commission in making payments from such fund shall be final and not subject to review.

**SOURCE:** GC § 37041. Repealed by P.L. 14-132. Added by P.L. 20-220:37.

**NOTE:** § 9143 was originally created by P.L. 1-80:42, commonly known as the "Special Fund". P.L. 14-132 then repealed the fund. But P.L. 20-220:37 created (added) a new Special Fund. This explains why the Compiler has then amended this section in its entirety. Amended by the Compiler in order to reflect the correct citation.

**§ 9144. Government of Guam Special Fund.**

(a) There is hereby authorized to be established, out of any money in the Treasury of Guam not otherwise appropriated, a fund sufficient to secure the payment of benefits under this Chapter in respect of employees in public employment.

(b) With respect to employees in public employment, the Commission may authorize direct benefit payments from such fund, or, *if* it deems desirable, insure and keep insured the payment of such benefits with any stock or mutual company or association.

(c) *Prior to* any lump sum payment of compensation pursuant to § 9115(j) of this Chapter, the Commission must certify that an amount equal to the lump sum payable is deposited into the Government of Guam Special Fund by the respective public employment employer of the employee who is to receive the lump sum payment.

(d) All public employment employers shall reimburse the Government of Guam Special Fund such sums as may be necessary from their annual

**22 GCA BUSINESS REGULATIONS**  
**CH. 9 WORKER'S COMPENSATION**

operational appropriations or revenues for the compensation paid to their employees or dependents pursuant to this Chapter.

(e) Reimbursements into the Government of Guam Special Fund pursuant to Subsection (d) of this Section shall be made within fourteen (14) days of receipt of each assessment demand by the Commission for amounts equal to the amount paid pursuant to this Chapter, *except* when the Commission deems it advisable that the public employment employer make a deposit into the Government of Guam Special Fund *prior to* payment of compensation.

(f) The Treasurer of Guam shall be the custodian of such fund and is authorized to disburse moneys from such fund *only* upon the order of the Commission. The Treasurer of Guam shall deposit any moneys appropriated or paid into such fund into such depository banks as the Commission may designate, and may invest any portion of the funds which in the opinion of the Commission is *not* needed for current requirements, in bonds or notes of the United States or of any Federal land bank.

(g) The account for such fund shall be subject to audit in accordance with the established government of Guam auditing procedure, but action of the Commission in making payments from such fund shall be final and *not* subject to review.

**SOURCE:** GC § 37042. Repealed/reenacted by P.L. 25-091:IV:05.

**§ 9145. Annual Report.**

The Commission shall make to the Guam Legislature and the Governor at the beginning of each regular session a report of the administration of this Title for the preceding fiscal year, including a detailed statement of receipts of and expenditures from the funds established or authorized in §§ 9143 and 9144. Annually the Commission shall advise the Legislature and the Governor of needed changes in the laws of Guam regarding compensation of workers for injuries sustained while working and shall provide data from other jurisdictions on the amounts of compensation payable therein.

**SOURCE:** GC § 37043. Amended by P.L. 16-1:10.

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