

Know your responsibilities in cases of occupationally-acquired COVID-19

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Given the fact that more employers might be exposed to cases of occupationally-acquired COVID-19, it is a good thing to brush up on the provisions of the legislative framework surrounding workplace injuries and illnesses. This document serves as a summary of the Compensation for Occupational Injury and Diseases Act, no. 130 of 1993 (as amended). The Act will be referred to as COIDA.

The Act governs compensation of employees who suffer injuries or diseases contracted at work as well as compensation for employees who die because of work-related injuries or diseases. This means that COIDA is compulsory insurance for employers in case any of their workers die, sustain an injury or contract an occupational disease during the course of their employment.

Application of the Act:

All employers; and casual and full-time workers (including seaman and airman) who, as a result of a workplace accident or work-related disease are injured, disabled, or killed, or become sick.

Exclusions:

- workers who are totally or partially disabled for less than 3 days;
- domestic workers, (this might change in future);
- anyone receiving military training;
- members of the SANDF, or SAPS;

- any worker guilty of wilful misconduct, unless they are seriously disabled or killed;
- anyone employed outside South Africa for 12 or more continuous months; and
- workers employed mainly outside South Africa and only temporarily employed here.

When is compensation payable?

- Upon a worker's death due to work-related injury or disease;
- When a worker is permanently disabled (permanently unable to perform any work because of an accident or an occupational disease).
- When a worker is temporarily disabled (unable to fulfil regular duties for a time, but the employee is expected to recover). This disablement can be total or partial.
- Funeral expenses are paid up to the actual amount of the costs, or to the maximum amount in place at the time, whichever is less.

How is COIDA administered?

The Act is administered by the Director-General of the Department of Labour, helped by Compensation Commissioners and staff, various assessors, the Compensation Board and the Constitution Board, and money for compensation is provided by the Compensation Fund and the Reserve Fund.

The Director-General investigates accidents and occupational diseases and makes the final decisions (on compensation, the calculations, degree of disablement, etc.) on cases brought before him or her. In order to do this job, the Director-General has the right to subpoena relevant persons and to call for information.

Assessors (including medical assessors) help the Director-General in hearing cases, and they represent the interests of employees and employers. An equal number of assessors must be appointed for each party.

What are the rights of employers?

All employers conducting business in South Africa must register with the Compensation Commissioner, and they must keep a record of workers' earnings. More information on the registration process is provided in a separate information sheet.

Employers will be assessed by the State, and compensation tariffs will be calculated according to the category of their business and their history of work-related accidents and occupational diseases.

What are the rights of employees?

If an employee has a work-related injury, he or she is entitled to benefits to compensate for medical or other related costs. If an employee dies because of a work-related injury, their dependents may be entitled to benefits.

If an employee knowingly withholds information about a previous work-related injury or disease from an employer, or if an employee's worker's is because of their refusal or neglect to seek medical treatment, the Compensation Commissioner may decide not to award any compensation. An employee (or dependent) cannot claim compensation and at the same time sue their employer.

Employees are also entitled to compensation if they can prove that they have contracted a disease caused by their working conditions. The main work-related diseases are listed in Schedule 3 of COIDA, and they usually result from exposure to substances, bacteria and disease. Employees who become ill with work-related diseases must inform their employers as soon as possible after contracting the disease. As with occupational injury, the employee must claim compensation within one year of contraction of the disease; otherwise the right to benefits will lapse. The

employer must inform the Compensation Fund within 14 days of receiving notice of the disease. COVID-19 is such a disease.

Offences in terms of COIDA

- It is an offence to influence or threaten a worker to do something that will deprive them of their right to compensation.
- It is an offence for an employer to fail to notify the Compensation Commissioner of a work-related injury or occupational disease.
- It is an offence to pay a person other than a legal representative to appear at a formal compensation hearing.
- It is an offence for an employer to deduct any money from money that is owed to a worker.
- Persons convicted of offences will be liable to a fine or maximum imprisonment of up to one year.

Employers must ensure that they understand their responsibilities in terms of COIDA and obtain sound advice if need be, to avoid serious penalties.

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