

## **COMPENSATION FOR OCCUPATIONAL INJURIES AND DISEASE ACT (COIDA)**

Many workers across the world are injured or diseased by the kind of work that they do. Workplaces have many hazards and this poses a serious threat to the lives and safety of workers on a daily basis. The Compensation Fund, which falls under COIDA, is meant to pay out or compensate workers who are injured at work or who fall sick as a result of work.

Media reports often only concentrate on the big incidents which take place in various workplaces: the Sasol blasts in 2004 and 2005, the deaths of 6 workers at the Assmang smelter in Cato Ridge in KwaZulu-Natal in 2008, the Paarl Print factory fire in which 13 workers lost their lives in 2009 and the deaths of 82 illegal miners in Harmony gold mine in 2009. According to the National Union of Mineworkers, more than 200 miners have died underground each year since the year 2000. These are staggering statistics, but there is more. Workplaces are also exposed to the silent killers that are seldom spoken about or mentioned in the media: asbestosis, tuberculosis, silicosis, lung cancer, manganese poisoning, to mention a few. Other injuries and diseases include noise-induced hearing loss, loss of eyesite, limbs, fingers, etc. Many workers are exposed daily to these risks at the workplace.

The main legislation covering most of the diseases and injuries listed above is the Compensation for Occupational Injuries and Disease Act, commonly known as COIDA.

### **The main purpose of COIDA is to provide for compensation for:**

1. Disablement due to occupational injuries and diseases sustained in the course of employment
2. Death resulting from such injuries and diseases

### **Who is covered by COIDA?**

**ALL** workers are covered by COIDA except:

- Domestic workers in private households
- Persons employed outside of RSA for more than 12 months
- Members of SAPS and SANDF in times of war

The Compensation Fund is administered by the Director-General in the Department of Labour. The Compensation Commissioner adjudicates the claims and compensates those claims that are accepted.

COIDA is based on a **no-fault principle**. Workers are entitled to compensation whether or not their injury or disease was caused by the fault of the employer or any other person. This

essentially prevents workers from instituting civil claims against the employer for any damages that they might have suffered as a result of a workplace disease or injury. The exception to this principle is that where a worker is able to show an employer's negligence with respect to that occupational injury or disease, additional compensation can be awarded to the worker.

### Who funds the Compensation Fund?

- Within the Compensation system, employers make contributions to the Compensation Fund, calculated on the number of employees in his/her workplace, the health and safety risks of that particular industry or sector and the injury and disease record of the company
- The Compensation Fund also receives money from fines and penalties paid by employers for non-compliance of the legislation
- Money is also received from mutual assurances

COIDA provides clear definitions of who is an **employee** or who is an **employer** in order to clearly analyse the working relationship and who stands to benefit or be compensated.

	Who is an Employee?	Who is an Employer?
1.	Anyone who has entered into or works under a contract of service or of apprenticeship or learnership with an employer	Labour Brokers
2.	The employee must be working for remuneration whether it is cash or in kind	Where an employees services have been lent to another employer, temporarily, that employer becomes the employer in terms of the Act
3.	Casual, seasonal and temporary workers are also employees	A person controlling the employer's business. Eg. A manager or supervisor is the employer
4.	Domestic workers are covered <b>if at the time of the accident</b> , the employee was working in a business set-up and not a household, regardless of the length of time at the business.	

In terms of the Act, an accident is an unexpected occurrence that is **arising out of and in the course of performance of duties**. The Act is very clear that the accident must result in personal injury and it must take place at a specific time and place – this is meant to exclude accidents which are not work-related and fall outside the employee’s official working hours and the place is meant to test whether the employer was in control or responsible or not.

- ❖ **Arising out of** means that the employee may not have been performing what she/he is employed for, however, he/she was placed or exposed to the risk because of the work
- ❖ **Arising in the course of** means that the employee was busy doing what he/she is employed to do at the time of the accident.

### What to do when an injury or disease is sustained?

1. Inform the supervisor or manager immediately – who must complete the accident report form or refer it to the relevant authority for completion.
2. Complete the Notice of Accident (W.CL.3) form immediately and forward it to the supervisor
3. If you have recently learnt of a disease that you may have contracted at the workplace, complete the claim for Compensation for Occupational Disease (W.CL.14) and forward it the supervisor and attach a copy of your Identity book.

**NB:** There are many forms to complete, depending on the nature of your injury - please request assistance from your supervisor or Human Resources department at your place of work or from your nearest Labour Department to complete the correct forms.

*Most occupational diseases take time to manifest and the employee may not have necessarily contracted the disease from the current employer, hence the history of employment is very important.*

**Where an employee reports an accident or disease on his/her own, that employee must go the nearest Labour Centre to complete the relevant forms.**

**Together with an identity document, one of the following must be submitted as proof of income:**

- a. Salary slips from the employer that proves employment
- b. Bank statements indicating deposits by the employer

- c. UIF proof of the employee's registration
- d. Sworn statements from eye witnesses to corroborate the employee's statement that he/she was employed by the employer in question

### **Assessment and payment of Permanent Disablement**

Schedule 2 and 3 of COIDA are used to assess the degree of permanent disablement of the employee. Schedule 2 deals with the percentage of permanent disablement and Schedule 3 lists all the occupational diseases that workers can claim compensation for if they have been exposed to a hazardous substance which resulted in a compensable disease.

- a) The most serious injury is called a 100% disability. The smallest is called a 1% disability.
- b) For a 100% disability, the worker gets 75% of the monthly wage as a pension for life.
- c) If the degree of permanent disablement is less than 30%, the Fund pays a lump sum which is a once-off payment. Eg. Loss of an eye is 30% according to Schedule 2 of COIDA
- d) Where the degree of permanent disablement is 31% and above including death, the Fund pays a monthly pension for the rest of the employee's life. The amount of pension is determined by the degree of permanent disablement combined with the employee's salary at the time of the accident
- e) Where an employee died instantly on duty, the widow and children are entitled to a monthly pension respectively. The widow will get 40% benefits while the children under 18 years will share the 60%.
- f) In the event of the death of the employee while still receiving pension, pension will only be extended to the dependents of the deceased employee if the cause of the death was linked to the initial injury on duty

All these calculations above are regulated by Schedule 4 of COIDA – Manner of Calculating Compensation, which was last amended in April 2012.