

## **Summary of Occupational Health Legislation**

Changes and progress within occupational health has been largely linked to a changing industrialized process within South Africa as well as the ability of worker organizations to prioritise and pressurise the government and employers to take the safety and health of workers much more seriously. Moving from an agriculture-based economy to one rich in metals and minerals has exposed workers to many more health and safety risks and hazards. Hence, SA has seen a transition in many pieces of occupational health legislation largely with the will to protect workers and ensure a safe and healthy workplace.

Below is a summary of the more prominent health and safety legislation with South Africa:

### **1. Mine Health and Safety Act**

The Act was passed in 1996 and came into effect on 15 January 1997. The Act falls under the Department of Minerals and Energy and it has a Mines Inspectorate to effectively carry out the Act.

#### **Scope of the Act:**

The Act covers all mineworkers, owners and managers in mines and works.

#### **The Act aims to:**

- Protect the health and safety of persons at mines
- Require employers and employees to identify hazards and eliminate, control and minimize the risks relating to health and safety at mines
- Provide for employee participation in health and safety through health and safety representatives and committees at mines
- Provide for enforcement of health and safety measures at mines
- Provide for investigations and inquiries to improve health and safety at mines
- Promotion of:
  - a) A health and safety culture in the mining industry
  - b) Training in health and safety in the mining industry
  - c) Cooperation and consultation on health and safety between State, employers and employees and their representative
- Give effect to the ILO Convention and Recommendation on Health and Safety in Mines 1995 and the recommendations of the Leon Commission of Inquiry into Health and Safety in Mines

The Mine Health and Safety Act entrenches the right to refuse dangerous work. The Act also formalizes the election of health and safety representatives by workers to participate in health and safety committees although there are several problems with the implementation thereof.

In 2001, the National Union of Mineworkers (NUM) called on the government for the 1 October to be declared National Health and Safety Day.

## 2. Occupational Health and Safety Act

This Act was passed in 1993 and came into effect on 1 March 1994. It replaced the Machinery and Occupational Safety Act. The Act is based on the idea that workers and employers must regulate their own workplaces to prevent occupational injury and disease.

### Scope of the Act:

All employers and workers are covered with the following exceptions:

- Mine, quarry and oil rig owners and workers (covered by Mines Health & Safety Act)
- Shipping owners and workers (covered by the Merchant Shipping Act and the Maritime Safety Code)

The OHS Act covers farm workers, domestic workers and all casual and temporary workers. Domestic workers are excluded from the provision on health & safety representatives and committees.

### The Act aims to:

- Promote a preventive OH&S culture
- Protect employees health and safety at work
- Make provision for worker representation in workplace and national structures that address health and safety issues
- Identify employers OH & S responsibilities
- Provide for the monitoring, enforcement of OH & S provisions
- Provide for workplace and Department of Labour investigations and inquiries into Occupational injuries, diseases and death
- Provide for the referral of cases to the Criminal Justice system for adjudicating contravention and imposing penalties

### Offences and Penalties for contravening the OHS Act

Offences	Penalties
<b>Offences:</b> <ul style="list-style-type: none"> <li>• Failure to comply with OHS Act</li> <li>• Obstructing an Inspector in his/her duties</li> <li>• Refusing to cooperate with</li> </ul>	<ol style="list-style-type: none"> <li>1. The maximum penalty for the <b>offences</b> are a fine of R50 000, one year in prison, or both</li> <li>2. The maximum penalties for <b>negligent causing of injury</b> are a fine of R100 000, two years in</li> </ol>

<p>an official inquiry or investigation</p> <ul style="list-style-type: none"> <li>• Trying to influence the proceedings or the outcome of an inquiry</li> <li>• Tampering with or misuse of safety equipment</li> <li>• A worker not using safety equipment provided by the employer</li> <li>• Wilfully or recklessly acting to endanger the health and safety of any person</li> </ul>	<p>prison, or both</p> <ol style="list-style-type: none"> <li>3. If a worker is killed, there can be a charge of <b>culpable homicide</b> against anyone whose negligence caused the accident</li> <li>4. The penalty for contravening a Ministerial regulation under OHSA is a maximum sentence of 12 months in prison or a fine.</li> <li>5. There penalties can be imposed only in a criminal prosecution under OHSA.</li> </ol>
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These dismissal penalties for negligent companies whose annual turnovers run into billions of rands is a sad indictment on the plight of exploited workers.

### 3. **Compensation for Occupational Injuries and Diseases Act (COIDA)**

Better known as COIDA, this Act was passed in 1993 and came into effect on 1 March 1994. COIDA provides a system of no-fault compensation for employees who are injured in accidents or who sustain occupational diseases arising out of and in the course of their employment.

#### **Scope of the Act:**

- Employees in all industries are covered by the Act
- Mines fall under COIDA for accidents and some diseases. Other mining diseases are covered by the Occupational Diseases in Mines and Works Act (ODMWA)
- Domestic workers are ***not covered*** under the Act

#### **The Act aims to:**

- Provide certain benefits to workers who are injured at work or who suffer a disease caused by their working conditions
- Provide certain benefits to the dependents of workers who die from such an injury or disease
- Provide employers with an insurance against being sued by employees with occupational injuries and diseases

#### **Who can claim compensation?**

- Workers who suffer permanent or temporary disablement

- Dependents of workers who die as a result of injuries sustained in workplace accidents

#### 4. **Occupational Diseases in Mines and Works Act (ODMWA)**

The Act came into effect in 1973, was amended in 1993 and the Amendment Act came into effect on 1 March 1994.

##### **Scope of the Act:**

The Act covers anyone who works in a controlled mine and related works.

##### **The Act aims to:**

- provide for compensation for mineworkers who have contracted occupational lung diseases.
- remove racial discrimination in the benefits provided to mineworkers with occupational diseases under the 1973 Act. The mining industry and the workers employed in the sector have historically faced unequal and inappropriately diverse regulation of compensation for illness, injury and disablement.

Compensation for occupational diseases and injuries are provided for in two statutes – COIDA and ODMWA. ODMWA is almost 100 years old and was last amended in 1994. COIDA is a fairly recent piece of legislation, coming into effect in 1994. The differences in both the application of and the benefits paid are reflected in the table below.

#### **KEY DIFFERENCES BETWEEN COIDA AND ODMWA<sup>1</sup>**

	<b>ODMWA</b>	<b>COIDA</b>
<b>Regulated By</b>	Dept of Health	Dept of Labour
<b>Cover</b>	Mining related occupational lung disease	Accidents and occupational diseases only except for those covered by ODMWA
<b>Payment</b>	Lump sum only	Lump sums for permanent disability below 30% and pensions if the PD are greater than 30%
<b>Follow-up of ex-employees</b>	Biennial and free	Non-existent
<b>Maximum earnings for calculation of benefit</b>	R2 500	R15 820
<b>Pensions</b>	Not paid	Min: R1 411 Max: R11 865

<sup>1</sup> Source: [www.klasslooch.com](http://www.klasslooch.com)

<b>Medical Costs</b>	Life-long costs, paid by owner of the mine for occupational lung disease diagnosed while working	Maximum of two years costs, paid by the COIDA fund
<b>Funeral Costs</b>	Nil	R9 200 (max)
<b>Post-mortem benefits</b>	Routinely provided for and free. Compensation paid, irrespective of cause of death	Not provided for routinely. Compensated only if occupational disease caused death

A recent landmark case in the Constitutional Court has enabled mineworkers to sue for health damages under the common law. The applicant, Mr Mankayi developed lung disease while he worked at AngloGold Ashanti between 1979-1995. He lodged a civil claim of more than R2.6 million despite being previously compensated under the ODMWA. The court had to decide whether mines, who had been compensated under the ODMWA could claim compensation from their employers or whether a section of the COIDA dismissed common law claims. The court analysed the definition of “employee” under COIDA and arrived that the exclusion of liability clause under COIDA is limited to “employees” who are entitled to compensation under COIDA. In other words, although the miner in this case, Mr Mankayi, is an employee in terms of COIDA, his diseases are covered by ODMWA and therefore COIDA does not apply to him.

Mr Mankayi won his constitutional court battle with AngloGold Ashanti but unfortunately he died of lung disease on 25 February 2011.