

1. Title of the Act

Compensation for Occupational Injuries and Diseases Act 130 of 1993

2. Last amendment date

2005

3. Date of summary

May 2005

4. Purpose

To facilitate a process which provides for payment of medical treatment and compensation for disablement caused by occupational injuries and diseases sustained by employees in the course of their employment, or for death resulting from such injuries or diseases; and to provide for matters connected therewith;

5. Overview

The "Compensation for Occupational Injuries and Diseases Act No 130 of 1993" (COID Act) provides compensation for disablement or death caused by occupational injuries and diseases sustained or contracted by employees in the course of their employment.

All employers are required in terms of the COID Act to register as employers and pay the necessary assessment. The employer must furnish a "Return of Earnings" on the prescribed form before 31 March of each year. They may register with the Compensation Commissioner or Federated Employers' Mutual Assurance Company Limited or Rand Mutual Assurance. If the employer has liabilities insured in terms of the COID Act he would be protected against all civil claims which may be instituted against him if his employees are injured on duty, even in the event of alleged negligence.

Essentially an employee is a person who has entered into or works under a contract of service or apprenticeship or learnership, with an employer, whether the contract is expressed or implied, oral or in writing, and whether the remuneration is calculated by time or by work done, or is in cash or in kind and includes:- casual employees, working directors of the company, working members of a close corporation, site personnel, clerical/administrative staff, irrespective of age, race or gender.

All employees are entitled to compensation if the date, time and place of the occurrence can be determined and if it arises out of or in the course of their employer's employment and results in personal injury or death.

These are the basic principles the Compensation Commissioner or Mutual Associations would apply in order to determine compensation or extent of such compensation in the event of an accident on duty. The following deals with some of

the main issues, employer obligations and procedures which need to be contemplated when an accident occurs.

In the event of an accident arising out of an incident in the course of an employee's employment, the employee would be entitled to the benefits in terms of the Act. However if an accident is attributable to "serious and willful misconduct" by the employee, no compensation is payable unless the accident results in serious disablement or the employee dies, leaving dependants.

In instances where accidents occur on the way to or from work and where transport is provided free of charge and the vehicle is driven by the employer or one of his employees and is specifically provided for that purpose, it will be deemed to have occurred in the course of their employment.

Where a business is carried out primarily in South Africa and an employee has an accident whilst on official duty outside the borders of this country, the employee would be entitled to compensation, and the accident would be seen to have occurred in South Africa. Employees who are likely to work outside the borders of South Africa for a period of more than twelve months should together with the employer complete a form W.As.51, indicating that the employee still wants to be regarded as an employee in terms of the Act.

Where an employer carries on business chiefly outside the country and his employee is injured at work whilst temporarily in South Africa, there will be no compensation.

Accidents are deemed to have occurred in the course of employment under the following conditions: whilst working, in training, whilst administering first-aid, doing ambulance work, rescue work, fire fighting or any other emergency work whilst in the service of the employer. Compensation may be refused if an employee submits false information or refuses to submit to a medical examination.

Compensation may not form part of the estate of a deceased employee. It may not be ceded or pledged and it is not capable of attachment, it cannot be set off against any debt, it is not taxable, if a third party causes the accident the employee may claim damages from the third party.

Written or verbal notice of an injury at work is to be given to the employer before the completion of the shift where possible. Failure to give notice will not bar compensation if the Compensation Fund or the employer is not seriously prejudiced or such failure is caused by the employee's absence from South Africa or other reasonable cause.

On reporting of an incident an investigation must be carried out. Any incident referred to in section 24 of the COID Act must be reported to the Department of Labour within seven (7) days. Failure to report may result in the employer being fined.

The employer must submit a claim for compensation to the Compensation Commissioner or Mutual Association on the prescribed form. Any medical reports or other documentation and a certified copy of the employee's Identity Document must also be forwarded.

Failure to report the accident to the Compensation Commissioner or Mutual Association may result in a fine or penalty being imposed.

The injured employee must, on request of the Compensation Commissioner or the Mutual Association concerned, undergo a medical examination. The Compensation Commissioner or other party requiring a medical examination shall be liable for the cost of such examination.

Compensation is based on the earnings of the employee at the time of the accident.

The employer is liable for the payment of 75% of the wages or salary of the injured employee for the first three months after the injury. This amount is refundable by the Compensation Commissioner or the Mutual Association concerned. Payments must be in the form of periodical payment not exceeding one month apart.

Thereafter payment by the Compensation Commissioner or Mutual Association concerned continues for as long as the disablement continues, but not exceeding 24 months. If longer than 24 months, it may be treated as a permanent disability.

All periodic payments are calculated at 75% of an employee's monthly or weekly earnings up to a maximum as determined from time to time. No payment for compensation is due where the employee is absent from work for less than three (3) days.

Compensation for temporary or partial disablement ceases under the following circumstances: on the injured employee's return to work or on the date the medical practitioner states that the case has been finalised and the employee is fit to return to work.

If there is a recurrence of the injury which prevents the employee from performing their duties and medical treatment is necessitated by the deterioration, the case may be re-opened, with permission of the Compensation Commissioner, and may continue in terms of the original injury.

In terms of the COID Act there is no compensation for pain or suffering.

Funeral costs incurred as a result of the accident are compensated to a determined maximum. Surviving spouse(s) and children up to the age of eighteen (18) years are entitled to compensation by way of a monthly pension. If there is no spouse but there is a guardian, the children's portion of the pension is paid to the guardian. If a dependant child is physically or mentally disabled and unable to earn a living the pension will be paid until death.

An injured employee may apply for increased compensation due to gross negligence of the employer. Where the employee succeeds with this application, the employer will be required to pay an increased premium.

Compensation payable in terms of the COID Act may for reasons deemed by the Director-General to be sufficient.

Payments made to the employee or the dependant of an employee entitled thereto, or to any other person on behalf of such employee or dependant, in installments or in such other manner as the Director-General may deem fit, may be:

- Invested or applied to the advantage of the employee or the dependants of an employee;
- Paid to the Master of the Supreme Court, a trustee or any other person to be applied in accordance with such conditions as may be determined by the Director-General;
- Applied to any one or more of the above

Compensation in terms of this Act owing to the death of an employee shall not form part of his estate.

Compensation for Occupational Diseases is determined and an employee is entitled to compensation, if the disease has arisen out of or in the course of his employment. If the occupational disease is aggravated by another disease, the employee may receive compensation for the treatment of the other disease as well. The employee must, within 12 months of being diagnosed with the disease, bring it to the attention of the Commissioner, the employer or the Mutual Association concerned, failing which the claim will not be accepted and no compensation will be payable.

The employer must make transport available immediately to take an injured employee to a doctor or hospital. The Compensation Fund or the Mutual Association concerned pays these costs

6. Implications for Affected Parties

The fundamental issues as set out in this Act requires that every employer registers with the Compensation Commissioners Office and pays the necessary premium, that all occupational injuries and diseases are reported and that due care is taken by both the employer and employee to take necessary steps to prevent such injuries or diseases.

Liability

Liability attaches to employers and employees.

Risk

Non compliance by the employer may result in a fine or penalty being imposed.