

# Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COIDA)

Topic: Labour/Health and Safety

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## IN A CALABASH

### Introduction

Unfortunately, accidents in the workplace do happen.

This may be due to a lack of health and safety controls, negligence on the part of the employee or employer, failure to comply with standard work instruction or an act out of the control of both the employee and employer.

An employer is responsible for all persons whom it employs in a workplace. If an employee is injured or killed on duty or whilst performing work-related activities, the employer will be responsible for the costs and damages incurred by the employee or his or her family as a result of the injury or death. Examples of damages incurred include costs of medical attention, hospitalisation, time off and loss of earnings and/or costs of funeral and, in the case of death or prolonged absence from the workplace, loss of support.

This high-risk issue could cost the employer a lot of money. The employer may not have the funds to pay these costs and claims, with the result that the employee or his or her family would be left uncompensated and out of pocket.

This is the reason why the Compensation for Occupational Injuries and Diseases Act (COIDA) was brought into operation.

### Objectives of the Act

The COIDA provides for compensation for harm, injury or disability caused by occupational injuries or diseases sustained or contracted by employees in the course of their employment or for death resulting from such injuries or diseases. Compensation is paid by the Compensation Commissioner, thus limiting the liability of employers in respect of occupational injuries and diseases.

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## **Application of the Act and its implication to Tourism**

### **Employers**

Every employer in South Africa must comply with the COIDA.

Compliance by an employer can be delegated to a department such as the Human Resources or Industrial Relations department, or, in the case of a small business, the owner of the business or a manager.

### **Employees and contractors**

All employees and contractors must comply with the COIDA.

The COIDA applies to all employees, both part- and full-time, who, as a result of a workplace accident or work-related disease, are injured, disabled or killed or become ill.

This, however, excludes–

- any employees who are totally or partially disabled for less than 3 days;
- domestic workers;
- anyone receiving military training;
- members of the South African National Defence Force or the South African Police Service;
- 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 working mainly outside of South Africa and only temporarily employed in South Africa.

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## **Summary of the provisions of the Act**

### **Registration**

In order to qualify for and be covered under this compensation system, an employer must register either with the Compensation Commissioner or with a reputable insurance fund in South Africa.

Registration with the Compensation Commissioner and payment of the annual COID assessment fees are mandatory for all employers who employ one or more staff members.

### **Annual earnings**

Following registration, the employer has a duty to submit an annual return showing the amount of earnings that each full- or part-time employee earns in a year, which amount is limited to no more than R312 480\* per employee. \*This amount is increased each year.

## **Assessment fees**

Once the employer has registered under the COIDA and submitted the return of earnings, the employer will receive a statement from the Compensation Commissioner setting out the amount which the employer must pay to either the Compensation Commissioner or to the insurance company. This is known as an annual assessment fee and is based on the number of full- and part-time employees employed by the employer in aggregate over the preceding year and the earnings of each employee, subject to the limit mentioned above.

## **Compensation**

If an employee has an accident at work resulting in either injury, time off work, temporary or permanent disability or death, such employee or the dependants of such employee shall be entitled to the benefits provided for and prescribed under the COIDA. There are various types of payments and limitations which are made by the Compensation Commissioner under the COIDA and the value of the payments are revised from time to time and published in the Government Gazette.

Employees are prohibited from instituting claims for damages against their employers, managers or fellow employees when they are covered under the COIDA or a separate insurance policy.

## **Definition of an accident**

The COIDA has defined an accident to be one which has arisen out of and in the course of the employment of the employee concerned, provided that the employee at the time of the accident was not acting

- contrary to any law applicable to his or her employment;
- contrary to any order by or on behalf of his or her employer; or
- without any order of his or her employer.

In order to receive compensation, the employee concerned needs to have been acting for the purposes of, in the interests of or in connection with the business of the employer at the time of the accident.

It is important to note that any conveyance of an employee free of charge to or from his or her place of employment for the purposes of his or her employment by means of a vehicle driven by the employer or an employee specially provided by the employer for the purpose of such conveyance shall be deemed to take place in the course of such employee's employment. However, where an employee drives him or herself to work or receives a self-arranged lift, the COIDA will not compensate the employee in the case of death or injury which that employee has suffered whilst en-route to work.

## **Notice by employee**

As soon as possible after an employee is injured in the workplace or in the course and scope of his or her employment, the employee concerned or someone acting on his or her behalf must give written or verbal notice of the accident to the employer. However, failure to do so will not bar the employee's right to compensation if it can be proven that the employer had knowledge of the accident from any other source at or about the time of the accident.

## Notice by employer

The employer must report the accident to the Compensation Commissioner within seven days after having received notice of an accident or having learned in some other way that an employee has met with an accident or he, she or it will be guilty of an offence.

The employee concerned or dependant of the employee is entitled to a copy of the accident report, if he or she so requests from the employer.

## Contractors

Where a person (known as the mandator) contracts with another (known as the contractor) to perform any work, the mandator must obtain written proof from the contractor in the form of a COID Registration Certificate and/or a COID Certificate of Good Standing to confirm that the contractor has registered all of its employees with the Compensation Commission in accordance with the COIDA and has paid the necessary assessments.

If a contractor fails to register or pay any assessment, the employees of the contractor shall be deemed to be the employees of the mandator. In this case, the mandator may pay the assessment in respect of those employees and recover that assessment from the contractor or set off the amount against its debt to the contractor.

A mandator will not be liable in respect of any accident which happened at a place which is not on its premises, or which is not otherwise under its control or management.



### WHAT HAPPENS IF YOU DO NOT COMPLY?

An employer who fails to report an accident, fails to retain records or fails allow an inspector to inspect them will be guilty of an offence.

The penalty for a contravention of the COIDA or any regulations made in terms of the Act is a fine or imprisonment for a period of up to one year.



### RECOMMENDED ACTIONS OR CONTROLS WHICH SHOULD BE IMPLEMENTED BY THE TARGET AUDIENCE TO ENSURE COMPLIANCE WITH THE ACT

In order to demonstrate compliance with this Act, the following controls need to be in place:

- All employers must register with the Compensation Commission or a reputable insurance fund;
- COIDA annual assessments must be paid based on employees' aggregate earnings, subject to threshold;

- Investigations of all accidents involving workplace incidents must be conducted by the employer's Safety, Health and Environment department;
- Accident reports must be submitted timeously to the Compensation Commissioner and queries must be answered;
- Inspector must be allowed on site to investigate;
- Reports must be retained for required periods;
- All employees must be trained on how to report and investigate an accident and how to liaise with the Department of Labour and the Compensation Commissioner;
- Standard forms and procedures for reporting and investigations must be in place;
- All contractors must be registered and in good standing and a certificate confirming this must be kept on file; and
- Employers must submit return of earnings by 31 March each year.

## FURTHER INFORMATION

### **Regulator**

Department of Labour

### **Website**

[www.labour.gov.za](http://www.labour.gov.za)

### **Forms**

Compensation fund forms can be downloaded from the following website:

[www.labour.gov.za/documents/forms/compensation-for-occupational-injuries-and-diseases/compensation-for-occupational-injuries-and-diseases](http://www.labour.gov.za/documents/forms/compensation-for-occupational-injuries-and-diseases/compensation-for-occupational-injuries-and-diseases)

[www.services.gov.za/services/content/Home/OrganisationServices/labourissues/employer/en..ZA](http://www.services.gov.za/services/content/Home/OrganisationServices/labourissues/employer/en..ZA)