EMPLOYMENT LAW

Workplace Injuries

In terms of the Compensation for Occupational Injuries and Diseases Act ("COIDA"), the Compensation Fund ("Fund") provides compensation to employees who become disabled due to work-related injuries or due to contracting a disease in the course of their work.

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For all your workplace injuries questions and answers, simply follow our guide below:

1. Who is excluded from claiming compensation from the Fund?
2. What is the procedure to claim compensation from the Fund?
3. What types of compensation are payable?
4. Under what circumstances will the Fund deny or pay additional compensation?
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In terms of the Compensation for Occupational Injuries and Diseases Act ("COIDA"), the Compensation Fund ("Fund") provides compensation to employees who become disabled due to work-related injuries or due to contracting a disease in the course of their work. The Fund also provides compensation to the dependant/s of an employee who dies as a result of a work-related injury or disease ("disablement").

1. Who is excluded from claiming compensation from the Fund?

- Members of the South African National Defence Force (these members have their own fund).
- Members of the South African Police Service (these members have their own fund).
- Employees of the State performing military service or undergoing training in terms of the Defence Act.
- Independent contractors.

- Employees working outside of South Africa for more than 12 months at a time, unless an agreement was entered into with the Fund.

In the past, domestic employees working in private homes were also excluded from claiming compensation from the Fund. However, a recent Constitutional Court ruling (*Mahlangu and Another v Minister of Labour and Others* (CCT306/19) (2020) ZACC 24) finally held that this exclusion is unconstitutional. This means that domestic employees working in private homes can now claim compensation from the Fund.

2. What is the procedure to claim compensation from the Fund?

- **Step 1:** The employee must report the disablement, in writing, to his/her employer as soon as possible or within 12 months from the date the disability occurred.
- **Step 2:** The employer must report work-related injury to the Fund within 7 days, or the work-related disease to the fund within 14 days.
- **Step 3:** The employee must obtain medical reports (first, progress and final report) from the doctor/hospital who is treating him/her and provide these reports to the employer. The employer must provide these reports and other documents required to the Fund within 7 days of receipt. These reports will state how serious the disablement is and how long the employee is likely to be off from work. The employee must supply truthful information and cooperate with the doctors and other medical staff; failure to do so can result in the non-payment or delay in payment of the compensation.
- **Step 4:** The employee must also obtain the following documents and provide it to the employer/Fund:
    - the employee's banking details (bearing the bank's official stamp) together with a certified copy of his/her identity document and proof of residence;
    - if a dependant is claiming death benefits, the employee's marriage certificate; death certificate; children's birth certificates; spouse's declaration; employer's accident report; funeral account; and details of the employee's income and property.
- **Step 5:** If and when the employee returns to work, his/her employer must send a resumption report to the Fund.
- **Step 6:** After the Fund received the first medical report and the accident report, it will allocate a claim number, consider the claim and make a decision whether or not to make payment of compensation.

- **Step 7:** If the employee disagrees with the decision of the Fund, s/he can object to the decision within 180 days.

3. What types of compensation are payable?

- The compensation payable by the Fund will depend on what the employee was earning at the time of his/her disablement and the level of his/her disablement. The level of disablement refers to the type of disablement and the degree of disablement (more or less than 30%).
- An employee can be temporarily disabled, wherein s/he recovers, or permanently disabled, wherein s/he never fully recovers.
- The following types of compensation may be claimed:
    - Income of the employee, which is payable in the form of installments, a once off lump sum or monthly pension.
    - Medical expenses.
    - Funeral expenses.
- There are certain limits set by COIDA on the compensation payable by the Fund to the employees or dependants.

4. Under what circumstances will the Fund deny or pay additional compensation?

No compensation will be payable:

- if the employee’s disablement was not caused in the course of his/her work.
- if a claim is reported more than 12 months after the disablement;
- in respect of temporary disablement which lasted for three days or less;
- if the employee’s own serious and wilful misconduct caused the disablement, unless the employee was seriously disabled or died;
- if the employee unreasonably refuses or neglects to have medical treatment; or
- if the employee falsely represented that s/he was not suffering from, or had not previously suffered from any disablement.

The employee is entitled to additional compensation if the employer was negligent and increased compensation if the disablement was caused by a defect in the employer’s equipment.

5. How can LegalWise assist you?

If you are a LegalWise Member and require more information or advice please contact your nearest LegalWise Branch, call, e-mail or WhatsApp us. For more information about our membership options visit our legal services page or to join visit our join now page.

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