
WORKMEN'S COMPENSATION: WHO BENEFITS?

Compensation for work-related injury or ill-health is administered and partly funded by the state, together with contributions by employers through a system of levy payments.

The present system of compensation in South Africa was introduced with the Workmen's Compensation Act of 1941 (WCA). It was designed to protect the worker by encouraging safer conditions at work, and by ensuring compensation for occupation-related injury or disease. Experience has shown, however, that the Act falls far short of the needs of workers with regard to safe working conditions and adequate compensation. In fact, the compensation system under this Act has been shown to protect and benefit employers rather than employees. The system compromises workers at two levels: Firstly, the Act itself does not make adequate provisions; and secondly, the implementation of this law remains a problem.

Even though the Workmen's Compensation Act has been amended, it has not been changed significantly since 1941, and has many deficiencies. This should always be considered when dealing with the case of a worker applying for compensation.

Inadequacies of Workmen's Compensation

The Act is characterised by its exclusions rather than by its inclusions.

The WCA is not sufficiently comprehensive in its coverage. There is no coverage for outworkers, casual workers, employees not employed for the purposes of the employer's business. The latter would, for instance, include gardeners in an industrial concern. Moreover, domestic workers and state employees are excluded from the WCA.

Compensation money does not compensate

The amount for which a worker is eligible can never compensate for loss of earnings, because:

- The maximum benefit which a worker may receive is 75 percent of his/her monthly wage at the time that the accident occurred or the disease developed. The assumption here seems to be that worker's needs decrease when injured when, in fact, the opposite tends to be true. Workers incur more expenses when injured or disabled. Moreover, this calculation means that people earning different levels of wages are awarded different amounts for the same injuries or degree of disablement. This ruling particularly disadvantages lower paid workers. It certainly does not ensure a fair or adequate payment for disability. Because of the wage gap between blacks and whites, compensation is de facto racially determined. For the same injury a black worker will almost always receive less compensation money than a white worker.
- If a worker is off for less than two weeks, the compensation fund will not pay for the first three days off work. This means loss of earnings for the worker, unless the employer pays the worker sick leave for these three days.
- Disablement is assessed according to anatomical loss or loss of movement. Under the Act, loss of bodily function is not compensated for. Furthermore, compensation for disablement is not calculated in relation to the workers' ability or inability to pursue their occupation. For instance: A below-knee amputation to a crane driver may mean a 100 percent disability in terms of vocation, but would be assessed as an anatomical loss of 35-45 percent.
- Compensation is in no way related to re-employment potential. Thus, a manual worker who loses a hand is rarely re-employable and receives minimal compensation, as compensation is based on his wage. A skilled worker losing a hand, in contrast, is more likely to be re-employed and rehabilitated, and will receive more compensation than his less skilled counterpart.

No protection against dismissal and relocation to other jobs

There is nothing in the law to protect injured workers from being dismissed. Very often workers are fired following a disabling injury. Unemployment resulting from dismissal following an injury or disease often comes to mean unemployability when, as in present-day South Africa, there is a large pool of more healthy unemployed workers.

If such disabled workers are being kept on, they are often relocated to menial jobs at lower pay. Health workers and employers in South Africa generally tend to disregard the importance of rehabilitating injured workers to re-assume an active and meaningful worklife. This lack of awareness is widespread, even though the Workmen's Compensation Act makes provision for the care of disabled workers.

As a result, rehabilitation of injured workers has remained an under-utilised component of the Act. This tendency underlines the general attitude of employers

and health professionals - that commitment to the worker begins and ends with making contributions to the Accident Fund and filling in forms.



Rehabilitation of injured workers is an under-utilised component of the Act

Other inadequacies

- The Act makes no provision for the pain and suffering which workers may experience as the result of work-related injury or ill-health
- The Act does not recognise as compensatable many conditions which are not obvious or do not result in "time lost" absences from work, but which may cause considerable problems for sufferers (for instance backache, muscular injury or scarring/adhesions from burns).
- The Act deals inadequately with occupational diseases. Only 18 groups of diseases are acknowledged as compensatable. The Act thus excludes many conditions which are recognised and accorded indemnity by international authorities (as, for instance, in the case of occupational asthma).

Furthermore, it is often difficult for the worker to prove that his occupational disease arose from a particular job which he did at a particular time in his work history. This applies especially in the case of lung diseases, which may take a long time to develop and show symptoms. These symptoms are often detectable only with sophisticated instruments, and specialised medical personnel, to which black workers often do not have access. Where workers are in a weak position vis-a-vis their employers, they tend to get laid off at the diagnosis of the first symptoms of industrial disease.

How do the problems arise? - The responsibilities of employers and medical officers

Many of the problems experienced with the Workmen's Compensation Act are related to the interpretation and implementation of the Act. In order to explore these issues, it is necessary to broadly identify the responsibilities of the various parties involved.

It is the function of the Workmen's Compensation Commissioner (WCC) to *determine what constitutes a compensatable injury or disease, and to determine the degree of disablement.* This assessment will be based on the reported information supplied by doctors and employers.

The role of medical professionals

It is the responsibility of the attending medical officer to report as accurately as possible, the condition and circumstance of the injury or disease, in order that the Workmen's Compensation Commissioner can make a fair and just assessment, based on this information.

In practice, however, many problems arise because forms are not sufficiently or accurately filled in. As already mentioned, the Workmen's Compensation Commissioner is dependent on the information supplied in the forms in order to make an assessment.

It is therefore imperative that the information is accurate, complete and fair. In filling in the relevant details on the form, the medical officer should bear in mind

the potentially serious implications of this procedure to injured workers, whose ability to earn a living for themselves and their dependants may have been seriously affected by their temporary or permanent disability.

The role of employers

It is the responsibility of the employer to report the accident to ensure a fair assessment of the injury by an impartial doctor of the worker's own choice, and to ensure that the appropriate forms, accurately filled in, are sent to the offices of the Workmen's Compensation Commissioner.

At face value, these appear to be simple and reasonable procedures. In practice, however, many of the problems that workers experience in obtaining compensation, can be traced to the fact that employers and medical officers do not comply with the requirements outlined above.

(Non-) reporting of work-related injury or ill-health

Accident statistics do not reflect the likely assumption that black workers are the ones to suffer most injuries. This is probably due to non-reporting of accidents, black workers not knowing their rights with regard to compensation, and the red tape involved in claiming compensation.

Injuries can be easily hidden by these factors, whereas deaths from industrial accidents cannot go unreported. Correspondingly, we find that the death rate, which is comparatively high, involves mostly black workers. This seems to indicate that many accidents resulting in injuries are not being reported.

The rebate system: A small number of claims ensures a high rebate

The system of employer contributions and rebates, intended to promote a safer work environment, has in many instances promoted a reluctance to comply with the Act.

Compensation is paid to injured workers from a central fund to which employers contribute according to an annual assessment levied on them, based on a percentage of their wage bill and their accredited risk status. This means that industries that are considered more dangerous than others pay higher contributions. The assessment of the degree of danger depends on the hazards of the production process, or on the number of accidents reported to the Workmen's Compensation Commission.

At the same time, there is a system of rebates, calculated three-yearly on the basis of the accident record of the firm: The fewer the claims, the more substantial the rebate.

Besides reduced or increased assessment rates in accordance with accident records, a "discount" of up to 25 percent may be obtained if the employer provides "adequate" medical facilities at the point of employment. (Such facilities, at the same time, ensure that a worker will return to work as soon as possible after having been injured.)

All these factors strongly influence employers' and occupational health workers' decisions, when they report accidents or submit claims for compensation. The rebate system is a disincentive for reporting accidents. To avoid reporting an accident, for instance, occupational health nurses may treat potentially disabling injuries; or workers may be kept at work after having had an accident or work-related disease. This practice is supported by the fact that many companies do not allow workers to have work-related injuries assessed by doctors of their own choice.

These practices have serious implications for workers. They deny the worker access to any future compensation should complications following an injury set in. (A so-called "minor" injury may become a serious disablement, as in the case of an infections of burns.)

Other possible reasons for non-reporting

Employers may not report an injury for fear of prosecution, if they themselves are not registered with the Workmen's Compensation Commission, or if the injured worker is unregistered. In terms of the Act, the injured person is covered in both instances.

There are many documented cases of employers simply refusing to acknowledge that an accident has happened at all.



A number of accidents are not reported

How to minimise delays in obtaining compensation

Claims for compensation often take a long time to be realised. Many factors contribute to such a delay:

- Staff shortages and inexperienced Workmen's Compensation Commission clerks are partly to blame for bureaucratic inefficiency.
- The actual process of compensation may take a long time. Disease claims, in particular, may take years to finalise, before the worker or the dependants receive the money.
- If forms are inadequately filled in, the process is slowed down.

The Workmen's Compensation Commission will not start the proceedings until all relevant forms concerning the case have been received. It is therefore very important that all persons responsible for filling in and forwarding forms do so as efficiently and as quickly as possible.

It may be necessary to follow up the progress of a claim to determine whether and why there is a delay. This simple procedure may help considerably in ensuring that disabled workers receive compensation with the shortest possible delay.

Unclaimed benefits

Every year, vast amounts of money go unclaimed by workers. (The number of unclaimed benefits are published in the Government Gazette.) This is due to the fact that employers often do not keep accurate forwarding addresses in the event of workers being dismissed or leaving their employment before they have received their cheque.

Ways to improve the implementation of Workmen's Compensation

Workers need to know their rights

Workers themselves often do not know their rights with respect to Workmen's Compensation. They often do not realise that they can be compensated for loss of earnings through injury or illness at work. Many workers do not understand the procedures and are therefore unable to protect their own interests.

In addition, workers, under the 1941 Act, have no recourse to the civil courts: the Workmen's Compensation Commission adjudicates on all matters.

Health workers need to look beyond the administration of Workmen's Compensation

Health workers in general, and in the occupational health field in particular, can play an invaluable role by becoming more aware of the implications of the Workmen's Compensation Act, beyond the administrative function. Such an awareness would help to alleviate many of the problems experienced at the level of interpretation and implementation of the Act.

Work-related injuries and diseases - official and unofficial figures

Each year, some 200 000 injuries are reported to the Workmen's Compensation Commissioner. Approximately 25 percent of these are injuries which lead to permanent disablement. These figures do not include unreported injuries or unidentified or reported disease cases. The true extent of injuries and accidents at work, and of the accompanying social problems, would provide a more frightening picture than that arising from the official statistics.

Alternatives

At this stage, we need to address ourselves to the formulation of a compensation system that compensates workers adequately. This would be a system

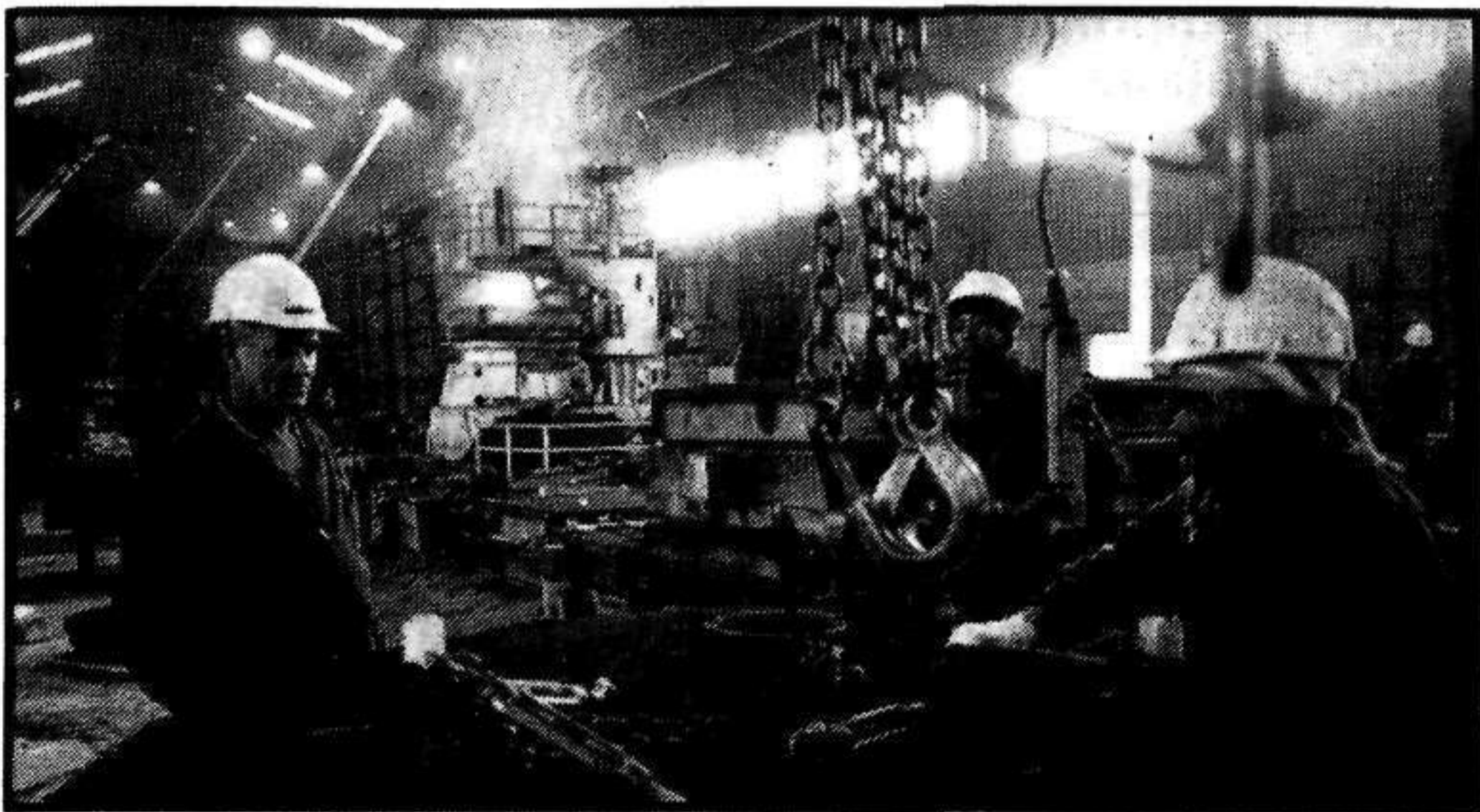
- which does not allow employers to use it to their own advantage and
- which does not penalise workers for accidents or injuries at work.

Instead, workers should be covered by a compensation system whereby compensation is determined by

- the loss of functional ability
- the prospect of re-employability.
- the impairment of their quality of life.

To this end, legislation should be passed which ensures that any workers injured or diseased in the course of their work, may not be fired from their jobs and may not lose earnings as a result of relocation to other jobs.

Most importantly, legislation should lay the responsibility of providing a healthy and safe workplace at the door of the employer.



Employers should provide a healthy and safe workplace