

# Compensation for accidents and diseases at work

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The Workmens' Compensation Act\* provides for the compensation of workers who are injured in accidents at work or who suffer from occupational diseases. It also provides for the compensation of the families of workers who are killed in accidents at work or die from occupational illnesses.

Compensation is paid for all workplace illnesses and injuries regardless of whether the employer or anybody else caused the accident through their negligence. The Act stops workers from suing their employers for damages. Compensation is paid from the Accident Fund to which employers contribute.

The employers' contribution to the Accident Fund depends on the industry in which they are engaged; dangerous industries pay higher contributions than less dangerous industries. If a company has a very bad accident record, its contribution can be increased by the Workmens' Compensation Commissioner. However, in practice, this is seldom done.

## Who and what is covered?

The Act covers most categories of

employees. The major exceptions are domestic workers.

In addition, employees earning in excess of R42 000 per year are excluded. This figure is increased from time to time.

A worker who is injured at work is supposed to report the accident to the employer. Even if the worker does not report the accident, the employer must report all accidents that it is aware of to the Workmens' Compensation Commission. The employer must also supply the Commissioner with details of the employee's earnings so that these can be used to calculate the compensation.

The Act covers :

- **Temporary disability**

Workers who are unable to work for a period because of occupational illness or injury are classified as being "temporarily totally" disabled. While they cannot work, they can receive compensation equivalent to 75% of their wages up to maximum earnings of R2 500. In other words, the highest compensation they can receive is R1 875 per month.

\* Although the Act refers to "workmen", it covers workers of both sexes - hopefully this sexist language will soon be removed from the statute



### ● Permanent disability

Workers who suffer a permanent injury or disability receive compensation either in the form of a lump sum or as a pension. This depends upon the severity of the injury. The Act contains a Schedule which classifies injuries giving them a percentage disability. Examples of this classification are :

- Total paralysis 100%
- Loss of leg (at hip) 70%
- Loss of hand and wrist 50%
- Loss of sight of one eye 30%
- Loss of thumb 25%
- Loss of all toes 15%
- Loss of little finger 4%

Workers whose permanent injury is assessed at 30% receive a single lump sum payment equal to 15 times their monthly wage. Where the injury is less than 30%, the lump sum is reduced proportionately.

Where the disability is rated at 100%, the worker will receive a pension equivalent to 75% of his or her monthly wages. In a situation where the assessment of the injury is less than 100%, but greater than 30%, the pension will be reduced proportionately.

### ● Death at work

Pensions are also paid to the dependants of workers killed in accidents. The maximum pension that the family can receive is 75% of the employees earnings at the time of the accident. Of this pension 40% is given to the widow and 20% to a maximum of three children up to the age of 18.

### Problems

The major problem with pen-

sions is that they do not increase at anything near the rate of inflation. Up until the start of the 1980s pensions were not increased. During the 1980s, pensions paid to permanently disabled workers and dependants of workers killed in accidents increased at roughly 5% per year although inflation was closer to 15%.

The problem with the compensation of permanently injured workers is that many workers whose injuries are assessed at being well below 100% will not be able to obtain further employment. For instance, a manual worker who loses his hand at the wrist is unlikely to get further employment and his pension will only be 37,5% of his wages at the time of the accident. In addition, many workers who do not even qualify for pensions may find that their injury is so severe that they are unable to obtain new employment.

### Civil claims

The Act prevents workers from bringing civil claims against their employers but they can claim increased compensation if they can prove that the accident was due to the negligence of their employer. If this is proved, the Commissioner can award them compensation up to their full financial loss. In the 1980s trade unions made extensive use of this provision. Claims must be made within two years of the accident.

It is important to remember that the Act only prohibits civil actions against employers. It does not prevent actions being brought against co-employees

such as supervisors who may have caused an accident, or against other third parties such as the manufacturers or suppliers of equipment that may have been defective and caused the accident.

### Medical Aid

The Commissioner will pay for the medical treatment of workers who are injured in accidents for a period of two years after the accident provided the treatment is for an injury received at work. After the two year period, the Commissioner may continue to pay for further medical treatment.

### Occupational diseases

The compensation of workers who suffer from occupational diseases is more difficult than the compensation for accidents. This is because it can be very difficult to determine with certainty whether an illness was caused by exposure to a substance at work or not. For instance, one well known occupational disease is occupational asthma. This has identical symptoms to ordinary asthma and it is very difficult to show that the workers asthma was caused by his/her working environment.

The Act contains a list of 16 scheduled diseases. These include diseases caused by exposure to substances such as cyanide, lead and mercury, skin diseases, and lung diseases such as byssinosis (caused by inhaling cotton dust) and asbestosis and mesothelioma (both caused by inhaling asbestos fibres). Where a worker suffers from a listed occupational disease and was employed in an environ-



ment listed in the schedule within the last two years, it is presumed that the disease was caused by his working environment. If this is not the case, the worker will have to prove that the illness was caused by exposure at work.

**Calculating compensation**

The compensation that workers receive is based on their earnings. The Act defines earnings as including an employees' cash wage, the value of any food and accommodation supplied to the worker by the employer as well as overtime payments or other earnings that are earned regularly or constantly. The Act excludes payment for irregular overtime or casual payments, special payments made to the worker on account of the nature of his or her work and any ex-gratia payments.

Earnings therefore include regular bonuses, shift allowances and similar payments. It can be argued that earnings should also include a range of items that do not actually go into the employees pay packet such as an employers contribution to a medical aid fund or a provident pension fund, the value of free medical services received or transport supplied by the employer.

**How could unions take up issues of compensation?**

1. Because compensation is regulated by a statute, many trade unions do not believe it is an issue that should be taken up in collective bargaining. However, there is nothing to prevent unions making demands upon employers that

would improve the compensation workers receive. One obvious demand would be that workers would receive their full wages while they are temporarily disabled. In other words, the employer would pay the difference between the 75% compensation and the worker's wages.

Another demand that could be made is that the employer should pay the worker his or her compensation immediately so that the worker does not need to wait to receive the compensation from the Commissioner.

Demands could also be made to improve the position of permanently injured workers or the families of workers killed in accidents. The employers could "top up" the pension received by bringing it to the level of the employees' earnings or by paying an amount that would ensure that the pension rises in line with inflation.

2. Trade unions, either through in the form of shop stewards or safety stewards play no role in monitoring whether an employer is complying with the Act. A demand that would allow union representatives to fulfil this function would be for the employer to let the shop steward committee have copies of all reports of accidents as well as all other compensation forms filled in. This would allow the committee to ensure that all accidents are reported and that the details of the employees earnings' supplied by the employer reflect the full earnings.

3. Where the union believes an accident may have been caused by the negligence of

management, they can arrange for a claim for additional compensation to be lodged. Where they believe the accident may have been caused by the negligence of somebody other than the employer, they would refer the matter to lawyers to investigate whether a civil claim could be instituted.

4. The union could check to see whether the compensation received is calculated correctly and based on the employees full earnings. If this is not done, an objection can be made against the award of compensation. This must be done within 60 days of the award of compensation.

If more than 60 days has passed since the award of compensation is made, the worker can ask for the compensation to be revised if it is incorrectly calculated or based on earnings that are less than his or her full earnings. If the Commissioner refuses to revise the compensation, an objection can be lodged.

These are all strategies to make more effective use of the present Act. However, it is also important that unions campaign for better accident compensation legislation. The Workmen's Compensation Act is currently being re-drafted by the Government and it is expected that it will be debated next year on the National Manpower Commission. Now is the time for unions to formulate demands for an accident compensation act that provides fairer and better compensation for injured and ill workers as well as the families of the victims of fatal accidents of diseases. ☆