



Paul Benjamin

Laws covering health and safety at work

PAUL BENJAMIN assesses changes introduced in the system of workers' compensation for injuries and diseases at work by recent legislation.

The last months of apartheid rule saw many changes to the laws on occupational health and safety. The Occupational Health and Safety Act (OHSA) came into effect at the beginning of the year replacing the Machinery and Occupational Safety Act of 1983. Most importantly, workers in all workplaces must now elect health and safety representatives. The purpose of OHSA is to require employers to provide safe workplaces so as to minimise occupational accidents and diseases.

Changes in the laws that provide compensation for workers who are involved

in accidents at the workplace or who contract occupational diseases have been less frequent. On 1 March, the Compensation for Occupational Injuries and Diseases Act of 1993 (sometimes called COIDA) repealed the oldest surviving labour law, the Workmen's Compensation Act which had been in operation since 1941. The new Act makes a number of significant changes to the statutory compensation system. But the basic framework remains the same. Much of the new Act is no more than a reordering of the Workmen's Compensation Act making it more logical and user-friendly for non-



lawyers. However, many of the major weaknesses of the compensation system have not been reformed. This note gives a brief overview of the compensation system and then discusses some of the most significant changes.

Overview of the compensation system

South Africa has a system of "no fault" compensation for workers injured in accidents at work or who contract occupational diseases. They are entitled to compensation regardless of whether their injury or illness was caused by the fault of their employers for causing their injury or disease. However, if an accident is caused by the negligence of the employer or a senior employee, the worker can claim increased compensation.

Compensation is paid to workers who are temporarily disabled, permanently disabled and the dependants of workers who die from injuries sustained in accidents at work or from an occupational disease. The Act also covers the payment of medical costs, funeral costs and attendants for seriously disabled

workers. Workers who are temporarily disabled receive 75% of their wages for the period of their absence. Workers who are permanently disabled receive a lump sum (if their disability is assessed at 30% or less) or a pension if they have a more serious injury. Generally, the compensation received by a permanently disabled worker is only a small portion of his or her loss of earnings.

Compensation is paid from the Compensation Fund which is administered by the Compensation Commissioner. All employers must register with the fund and pay assessments to the fund. Government departments and some larger municipalities are self-insured and employers in mining and building are insured through Rand Mutual and Federated Employers' Mutual. The Act requires the employer to report all accidents and occupational diseases to the commissioner. Where an employer does not make a report, the worker may do so on his or her own or with the assistance of a union. Workers are now entitled to obtain a copy of the accident or disease report from the employer.

The Compensation Board

COIDA creates a Compensation Board to advise the Minister of Labour and the Compensation Commissioner. The Board has representation from the government, unions, employers and the medical profession. This brings the Act in line with other labour legislation which create similar advisory bodies.

Occupational diseases

The new Act significantly changes the approach to the compensation of occupational diseases. The list of scheduled occupational diseases has been considerably extended and is now in line with current international standards. The most important inclusion in the list is muscular strain caused by repetitive movements. This condition affects a wide group of factory, office and other workers (for example, typists and production line workers) whose jobs require them to use the same muscles repeatedly.

In recent years about 150 workers have received compensation for occupational diseases each year. This is a small proportion of the workers who do contract occupational diseases. There are many reasons for the under-reporting of occupational diseases. These include ignorance by workers of their rights, the failure by the government to publicise the benefits available in terms of the Act, lack of access by many employees to medical facilities and the lack of specialist occupational health doctors. In addition, many workers who are sick will not claim compensation because they fear that this may lead to their dismissal.

Compensation for first three months absence

Employers must now pay workers who are temporarily disabled their compensation for three months. This change should help with one of the biggest problems: the delay before workers receive their first compensation payment. When a worker is injured at work, the employer must now pay the employee 75% of his or her wages for the first three months that he or she is absent from work as a result of the injury. The worker should be paid on his or her

normal pay day. The employer must do this even if the worker is dismissed or if his employment contract would have expired. After the three months the employer may recover this money from the commissioner. Many unions have reached agreements that employers will pay employees their full wages during absence due to an injury: this new provision will not affect the employers' obligations in terms of these agreements.

Employees covered by the Act

The Act now covers all employees regardless of their earnings level. Previously, there was a ceiling on cover and high earning employees were excluded. As most high-earning employees are not employed in high risk jobs, it is thought that this reform will assist the finances of the compensation Fund.

The Act has also been extended to cover out-workers – that is employees who work at home but perform work supplied by an employer. (This is a common arrangement in the garment industry and is often associated with extreme exploitation). There are no time limits for qualification for benefits – a worker who works for only one hour per week or who is injured during the first minute of working is entitled to compensation. The only major groups of employees now excluded are domestic workers and members of the police and defence forces. The Act does not apply to self-employed persons.

Motor accidents

The category of motor accidents involving workers who are being transported to and from work to which compensation will be paid in terms of the Act has been narrowed. Compensation will only be paid if the accident happens while the workers are being transported free of charge to or from their place of work for the purpose of their employment. In addition, the vehicle must be driven by an employee of their employer and must be specially provided for transporting employees. (Workers involved in accidents that do not meet this test may nevertheless be entitled to damages under the motor vehicle assurance legislation.) ☆