

Is the workers' compensation system adequate?

The Vaal Reefs disaster has once more focused the country's attention on the appalling state of health and safety on South Africa's mines, especially the gold mines.

The accident happened a few weeks after the release of the Leon Commission of Inquiry's highly critical report on the state of health and safety management in the mining industry. These events must have brought home to the government the enormous task that lies ahead for them in raising health and safety standards to acceptable levels.

The response to the accident has gone further. For the first time, attention has been focused on the inadequacies of our compensation system. The day after the accident the National Union of Mineworkers (NUM) and the mine owners, the Anglo American Corporation, formed a joint trust fund to assist the families of the deceased miners. The President and many prominent figures made generous contributions to the fund. But, as the press pointedly asked: what about the families of the other 500 mineworkers who will die in accidents this year? Is the trust fund not an admission that our compensation system is inadequate?

The new compensation Act

Workers' compensation is regulated by the Compensation for Occupational Injuries and Diseases Act (COIDA). This Act came into effect on 1 March 1994, replacing the 50 year old Workmen's Compensation Act (WCA). It

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made certain important changes to the law.

The most important of these are:

- establishing a tripartite compensation board to advise the Minister of Labour and the Compensation Commissioner;
- employers must now pay workers their compensation for the first three months of a temporary disability. This is expected to speed up the payment of these benefits;
- great improvements to the system of compensating occupational diseases. (We look at one of these improvements at the end of this note.)

But COIDA has not increased the benefits that injured workers (and the families of workers killed by accidents or occupational diseases) will receive.

Benefits

In brief, COIDA provides compensation for temporary and permanent disability.

- Workers unable to work because of an injury or disease contracted at work can receive up to 75% of their earnings during a temporary absence of up to two years.
- If a worker suffers a permanent injury, its seriousness is assessed in terms of a percentage. If the percentage is above 30%, the worker will receive a pension, if it is below 30%, the worker will receive a lump sum. A worker who is totally



Vaal Reefs funeral, June 1995.

disabled (100%), such as a paraplegic, receives a pension of 75% of his or her earnings at the time of the accident. Workers with a less severe disability receive a proportionately reduced pension. The rule on lump sums is that a worker receives one month's wages for every 2% of disability. Loss of thumb is classified as 25% – the worker will receive 12 and-a-half month's wages as compensation.

- Widows receive a pension equal to 30% of their husband's earnings at the time of the accident. Children (up to a maximum of three) may receive pensions of 15% each. Workers and their unions may negotiate with employers to top up these benefits so as to receive higher levels of injury pay.

Criticisms

Which categories of benefits are inadequate?

All workers with temporary disability receive 75% of their wages during their absences

from work. The highest award of compensation that is made is R5 000 per month. A worker earning R800 per month will receive R600 in compensation. A worker earning R4 000 will receive R3 000. Is it fair to apply the same percentage basis across the board? Low wage earners spend virtually all, if not all, of their wages on essentials of life, while people higher up the wage scale will have a little more to spare.

Suggestions for reform have been to either have a higher percentage for lower paid workers – for instance, 90% for workers earning below R1 000 per month – or a minimum benefit that all workers would receive regardless of their earnings.

Permanent Injuries

The real inadequacies of the system lie in the compensation of permanently disabled workers.

Many workers who suffer severe injuries and will never be able to find employment may receive either a lump sum or a smallish pension. Examples of this, looking at hand

and arm injuries, are.

- Loss of whole of ring finger – 6% – three month's wages
- Loss of thumb up to joint – 15 % – seven and-a-half month's earnings as a lump sum
- Loss of whole thumb – 25% – 12-and-a-half month's earnings
- Loss of four fingers – 40% – pension equal to 30% of earnings

Pensions are not increased in line with inflation. During the 1980s pensions received by both injured workers and the families of workers killed in accidents increased at one-third of the rate of inflation. This trend continues to the present. In 1995 pensions were increased by 6%, whereas the increase in the cost of living is estimated to be over 10%. In other words, pensions continue to lose value.

Perhaps the most striking weakness is the absence of any system of rehabilitation. Most severely injured workers end up outside of the economy, depending on their compensation. There are no facilities to train them either to re-enter the job market, or to become productively self-employed. There

are no obligations upon employers to re-employ injured workers or to adapt work stations to assist disabled workers. All of these features are common in compensation systems in other countries.

While we have a new compensation law, we do not have a new compensation system. COIDA merely continues the inadequate approach of the WCA.

Possible reforms

How should this system be improved? One of the features of our workers' compensation system, and many systems in other countries, is that workers lose the right to sue their employers for damages. In return, they receive compensation regardless of fault. After major disasters, there is usually the call that civil actions should be reinstated. This will encourage employers to have safer mines and factories, as damages payments are higher than compensation. Compensation excludes claims for pain and suffering.

This may have an advantage for workers in a few cases, but it is more important to improve the compensation system. Damages cases are difficult to prove and expensive.



Relatives of Vaal Reefs victims: will they receive adequate compensation?

From a social perspective, the re-introduction of damages claims would be counter-productive. Money that could be used to pay compensation would instead be used to pay lawyers to fight over who caused an accident. This is true of motor vehicle accident cases in this country. The public contributes R1,1 billion (through the price of petrol) to a fund to pay damages to the victims of motor accidents caused by negligent driving. In 1993, R500 million was paid to accident victims; R150 million was paid to lawyers. The workers' compensation system avoids these unnecessary expenditures.

Workers will benefit most from an improved compensation system. Improvements to the areas discussed in this article will improve the lives of thousands of injured workers and the families of those injured at work. This will be achieved through methods such as more rights for safety representatives, better inspectorates, an active government policy to enforce safety standards and higher fines and other penalties that hurt employers who violate the law.

Disease compensation

In this note we have looked at compensation in terms of COIDA. This covers accidents in the mines and accidents and diseases in all other industries. Diseases in the mines still fall under the Occupational Diseases in Mines and Works Act. This Act's benefits are worse than those paid under COIDA – no pensions are paid to sick miners or their families. Some 6 000 miners receive compensation each year for lung disease caused by dusty conditions in the mines. Many other sick workers do not receive anything. It is because of the low compensation payments that were racially discriminatory until last year that mines have not improved working conditions. It was only in 1994 that mines were made to pay medical expenses for some categories of sick workers.

Many mines are still refusing to do so and the Department of Health has not forced them to comply with the law.

In other industries, it is not clear how many workers get sick from occupational diseases. Last year, about 150 workers were compensated for these diseases. This does not mean our factories are healthy: the true figures are much higher. It shows that most cases of work-related diseases are never diagnosed. Workers and the medical profession are both uninformed about this topic ★

Repetitive strain injuries

COIDA has introduced a much improved approach to occupational diseases. It now provides compensation for workers who suffer diseases associated with repeated movements at work. This is what is known as "repetitive strain injuries" (RSI). These are suffered by a wide group of workers who have to perform the same action over and over again at work. This includes till operators, keyboard operators, many types of machinists in the clothing industry and many others. RSI does not discriminate – it affects both workers and intellectuals.

The injuries suffered are often extremely painful and are aggravated by continuing to work. Employees who contract these injuries often require time off, transfer to other jobs (temporarily or permanently) and medical treatment or physiotherapy. Now they will be entitled to receive compensation (whether the injury is temporary or permanent) and to have the costs of medical treatment paid by the compensation fund.

The importance of RSI being included as a scheduled disease goes beyond the fact that compensation is now available. It is also an important indication to employers that they must examine work stations and the design of work environments to ensure that workers do not suffer from these conditions. RSI is generally preventable by the proper design of workplaces. Employers who do not take notice of this could face claims for increased compensation. ★