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HOW CAN EMPLOYERS GUARD AGAINST CLAIMS FOR INJURY ON DUTY?

It is always an interesting question to ask who is liable to pay when an employee is injured on duty. Due to the regular occurrence of injuries on duty, every employer has a common law obligation to create a safe working environment for their employees, regardless of the type of work environment.

There is however a further statutory obligation on the employer as set out in The Occupational Health and Safety Act 85 of 1993. In terms of this Act, employers have to take all reasonable steps to prevent that any injuries occur in the ordinary course of business. It is always important to note that employees also have an obligation to exercise reasonable care for their own safety and for the safety of their co-employees.

All employers who employ one or more part time or full-time employees must register with the Compensation Fund. Employers should register with the Compensation Fund within seven days after the first employee is employed. Employers should note that separate registrations are necessary for each separate branch of a business, unless an arrangement for combined registration has been made.

Employees can claim from the Compensation Fund if they get injured or contract a disease whilst working on a permanent basis, as a casual, during training, or in the process of completing their apprenticeship. The Compensation Fund is covered by the Occupational Injuries and Diseases Act (COIDA) and the Compensation for Occupational Injuries and Diseases Amendment Act. The Compensation Commissioner is appointed to administer the Fund and approve the claims of employees.

Where an employee is entitled to receive compensation from the Compensation Fund, the Fund, and not the employer, will pay the employee. The following employees cannot claim from the Fund:

- A domestic worker employed at a private home;
- A member of the South African National Defence Force;
- A member of the South African Police Services;
- An employee who is not employed by the employer;
- An employee who works outside South Africa for more than 12 months at a time.

It is imperative for employers to bear in mind that if they are registered with COIDA, they are indemnified from their employees instituting civil claims against them, thus employees cannot sue their employers for damages in terms of common law for an injury on duty. The aforementioned is important if you take into account that in Section 1 of COIDA it states that if an employee gets injured on duty or contracts an occupational disease, the employee can claim compensation for temporary or permanent disablement. Furthermore, if an employee dies as a result of an injury on duty, their dependants will also be entitled to claim compensation. It is therefore of vital importance that employers register their business with the Compensation Fund.

Employers and employees must however take note that claims will only be paid if they are submitted timeously and in the correct manner. Claims will however not be paid under the following circumstances:

- In instances where the claim is made more than 12 months after the accident or death, or after the disease is diagnosed;
- If the employee is off work for 3 days or less;
- If the accident is a result of the employee's own wrong doing due to being negligent;
- In instances where the employee refuses to undergo medical treatment.

Employers can therefore protect themselves from having to pay employees who get injured on duty and avoid civil claims instituted against them if they register their business with the Compensation Fund.

Article by **Michelle Mentz**, candidate attorney at Malan Lourens Viljoen Inc.

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