

COVID AMENDMENT PRESENTATION TO COMPENSATION FUND STAKEHOLDERS

2025/26



employment & labour

Department:
Employment and Labour
REPUBLIC OF SOUTH AFRICA



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PURPOSE & RATIONALE



To make stakeholders aware of the legislative changes that has resulted from the COIDA Act 10 of 2022 which has been signed into law

THE ACT RATIONALE

To provide for the following

- Improved governance of the Board;
- Commissioners to perform the functions that were previously performed by the Director-General;
- rehabilitation, re- integration and return to work of occupationally injured and diseased employees;
- regulate the use of health care services;
- Commissioner to review pension claims or awards
- to regulate compliance and enforcement of employers;
- The administrative penalties.

DEFINITIONS



Principal Act

“Accident” means accident arising out of and in the course employee’s employment.

“Assessment” means made in terms of section 83.

“Compensation” means” compensation in terms of this Act – medical aid or payment of cost of medical aid.

Amendment Act

- ✓ “Accident” any incident or occurrence arising out of and in the course of employee’s employment.
- ✓ “Assessment” means assessment in terms of section 83 or assessment of disablement in terms of section 47 and 49 or assessment of an employee in relation to rehabilitation in terms of section 70A

“Compensation” includes constant attendance care and funeral costs.

DEFINITIONS



Principal Act

Amendment Act

“Dependant” means

- (i) widow or widower married to the deceased in terms of civil marriage;
- (ii) widow or widower married according to indigenous law or custom
- (iii) a child under 18 years and includes posthumous child, step child, adopted child and a child born out of wedlock

- ✓ “Dependant” means
- ✓ (i) a life partner of the employee
- ✓ (ii) widow or widower married according to civil law, civil union, customary law or any other law.
- ✓ (iii) A child under 18 years and includes a posthumous child, step child, adopted child and a child born out of wedlock
- ✓ (iv) A child over 18 years but under 25 years who is still a learner or who is wholly or partly financially dependent on the employee.
- ✓ (v) A child who is over 25 years or older, a parent, a brother, a sister, a half-brother or half-sister, a grandparent, a grandchild or any other person who is wholly or partly financially dependent on the employee

DEFINITIONS



Principal Act

“Earnings” means remuneration of the employee at the time of the accident or commencement of occupational disease

“Employee” does not include an employees employed in a private household.

Amendment Act

“Earnings” means earnings defined as gross income in the Income Tax and excludes any amount paid or payable to an employee by way of:

- (i) Pension
- (ii) Superannuation
- (iii) Allowance
- (iv) Retiring allowance

“Employee” includes an employee employed in a private household

DEFINITIONS



Principal Act	Amendment Act
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“Licensee” means mutual associations.

“Licensee” means a legal person to whom the license has been issued.

“Rehabilitation” the Principal Act is silent about rehabilitation

“Rehabilitation” means measures, services and facilities also in the form of clinical, vocational and social rehabilitation provided with a view

- (i) to reintegration of employees exposed occupational injury or disease back into work
- (ii) to enable the employees to attain and maintain maximum independence, full physical, mental, social and vocational ability and full inclusion and participation in all aspect of life.



Principal Act

Section 11

Appointment of board members

The Board is appointed by the Minister and comprise:

- (i) The Director-General as chairperson
- (ii) The Chief Inspector of Occupational Health and Safety
- (iii) Two members representing mutual associations
- (iv) Two members one of whom appointed after consultation with the Minister of Health
- (v) Two members nominated by South African and Dental Council
- (vi) Three members to represent employer organisation
- (vii) Five members to represent employee organisation

Amendment Act

Section 11

Appointment of board members

The Board shall be appointed by the Minister and shall comprise:

- (i) Seven (7) members representing Organised Labour;
- (ii) Seven (7) members representing Business
- (iii) Seven (7) members representing the State
- (iv) The Commissioner by virtue of his office.
- (v) Independent chairperson



Principal Act	Amendment Act
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Section 13
Term of office of board members
(i) Four years
(ii) No limitation on the number of terms to serve as board member

Section 13
Term of office of board members
(i) Four years
(ii) Only two terms

Section 13
Disqualification of board members

The principal Act is silent on the disqualification of board members

Section 13 B
Disqualification of board members
A member will be disqualified from the Board if:
(i) Is an unrehabilitated insolvent
(ii) Becomes insolvent resulting in the sequestration of his/her estate
(iii) Is declared mentally ill by a competent court
(iv) Is convicted of theft, fraud ,forgery, perjury or any other act involving dishonesty
(v) Is removed from office trust
(vi) Is disqualified in terms of Companies Act



Principal Act

Amendment Act

(vii) Acquires an interest in a business that conflict with his/her proper performance of the board functions

Section 13

Resignation and removal of board members

The principal Act is silent of the resignation of board members

Section **13C**

Resignation and removal of board members

A member may resign by:

- (i) Giving the Minister one month prior written notice
- (ii) Giving the Minister less than one month if the minister agrees.
- (iii) A member may be removed from the board if he/she permanently incapacitated or is guilty of serious misconduct or is absent from three consecutive board meetings



Principal Act

Amendment Act

Section 22
Conveyance of employee
Conveyance of employee is deemed to take place in course of the employee's employment if:

- (i) It is free of charge
- (ii) The vehicle is driven by the employer
- (iii) The vehicle is driven by fellow employee.

Section 22
Conveyance of employee
Conveyance of employee is deemed to take place in course of employee's employment if;

- (i) Is authorised by the employer
- (ii) is in furtherance of the business of the employer
- (iii) boarded or alighted at the place designated by the employer for pick-up and drop-off.

Section 25
Accidents during training for or performance of emergency
Only trainees who perform organised first aid, ambulance or rescue work, fire-fighting or any other emergency on any mine are covered.

Section 25
Accidents during training for or performance of emergency
Trainees undergoing any work-related training in furtherance and pursuance of the employer's business are covered.

Principal Act

Section 32

Compensation may not be alienated or reduced

The principal Act is silent about payment of compensation where the employee is incapacitated and has no family members or relatives.

Section 36

Recovery of damages and compensation paid to third parties

Damages may be recovered from third parties and Road Accident Fund is regarded as a third party from which to recover

Section 39

Notice of accident by employer to the Commissioner

An employer who fails to report an accident to the Commissioner within seven is guilty of an offence

Amendment Act

Section 32

Compensation may not be alienated or reduced

Compensation may be paid into the curator who is appointed by Court if the employee is incapacitated and has no family members or relatives.

Section 36

Recovery of damages and compensation paid to third parties

Road Accident Fund is not a third party from which to recover.

Section 39

Notice of accident by employer to the Commissioner

An employer who fails to report an accident to the Commissioner within seven days is liable to a penalty of 10% of the actual or estimated earnings of the year in question.



Principal Act

Amendment Act

Section 40

Inquiry by Director-General into accident

An employer who fails to furnish the information requested by the Commissioner shall be guilty of an offence.

Section 40

Inquiry by Director-General into accident

An employer who fails to furnish the information requested by the Commissioner shall be liable to a penalty of 10% plus interest on actual earnings declared.

Section 41

Particulars in support of claim

The Act is silent about the reimbursement of employees expenses/costs for independently obtaining a medical report

Section 41

Particulars in support of claim

An employee who independently obtains a medical report is entitled to reimbursement.

Section 42

Employee to submit to medical examination

The Principal Act is silent on an employee submitting himself/herself for rehabilitation

Section 42

Employee to submit to medical examination

An employee may be required to submit himself/herself to medical examination for the purpose of rehabilitation



Principal Act	Amendment Act
<p>Section 44</p> <p><u>Prescription</u></p> <p>The period of prescription is twelve (12) months</p>	<p>Section 44</p> <p><u>Prescription</u></p> <p>The period of prescription is three years.</p>
<p>Section 47</p> <p><u>Compensation for temporary total or partial disablement</u></p> <p>An employer who fails to pay temporary total or partial disablement is guilty of an offence</p>	<p>Section 47</p> <p><u>Compensation for temporary total or partial disablement</u></p> <p>An employer who fails to pay temporary total or partial disablement is liable to penalty equal to double the full amount of three months compensation plus interests</p>
<p>Section 49</p> <p><u>Compensation for permanent disablement</u></p> <p>The principal Act is silent on the review of pension claims or awards</p>	<p>Section 49</p> <p><u>Compensation for permanent disablement</u></p> <p>The Commissioner may at any time review the pension claims or awards</p>



Principal Act	Amendment Act
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Section 49A

Commencement of monthly pension

The principal Act is silent on the commencement of pension.

Section 49A

Commencement of monthly pension

A pension shall commence from the date on which a medical practitioner certifies an employee has reached maximum medical intervention

Section 57

Increase of monthly pensions

The Minister may on the recommendation of Director-General and by notice in the Gazette increase monthly pension

Section 57

Increase of monthly pensions

The Minister may after consultation with the Commissioner and the Board and by notice in the Gazette increase monthly pensions

Compensation Fund to provide rehabilitation

The principal Act is silent on the provision of rehabilitation

Section 70A

Compensation Fund to provide rehabilitation

The compensation Fund, the employer individually liable or licensee must provide



Principal Act

Amendment Act

facilities services and benefits aimed at rehabilitating the employees to enable them

- (i) to return to their work
- (ii) To reduce any disability resulting from injuries and diseases

Rehabilitation benefits consists of:

- (i) Clinical rehabilitation and provision of assistive devices for the purpose of physical and psychological recovery or to reduce any disability resulting from occupational injuries and diseases.
- (ii) Vocational rehabilitation to assist an employee to maintain employment, obtain employment, regain or acquire vocational independence.

Social rehabilitation to assist in restoring employee's independence and social integration to the maximum extent practicable.



Principal Act

Section 73

Medical expenses

The principal Act does not expressly provide for the reopening of the claims

The principal Act does not provide for the regulation of third parties who are transacting with the Fund

Section 81

Employer to keep record

- (i) An employer must keep a register or other record or reproduction of the earnings for four years
- (ii) An employer who fails to keep the record of earnings for four years is guilty of an offence

Amendment Act

Section 73

Medical expenses

This section now expressly provides for the reopening of claims

The third parties transacting with the Fund must register and will be regulated. (especially medical service providers)

Section 81

Employer to keep record

- (i) Employer must keep a register or other record or reproduction of the earnings for five years
- (ii) An employer who fails to keep the record of earnings for five years is liable to a penalty not exceeding 10% of the actual or estimated annual earnings



Principal Act	Amendment Act
<p>Section 85</p> <p><u>Variation of tariff of assessment</u></p> <p>There is no provision on rehabilitation</p>	<p>Section 85</p> <p><u>Variation of tariff of assessment</u></p> <p>An employer who participate in the rehabilitation of employees may be given a rebate on assessment paid or payable.</p>
<p>Section 87</p> <p><u>Failure to pay assessment or other money</u></p> <p>(i) An employer who fails to pay assessment is liable to a fine</p> <p>An employer who fails to pay a fine or instalment is guilty of an offence</p>	<p>Section 87</p> <p><u>Failure to pay assessment or other money</u></p> <p>(i) An employer who fails to pay assessment is liable to a penalty of 10% of actual or estimated annual earnings.</p> <p>(ii) An employer who fails to pay penalty or instalment is liable to a penalty of 10% of actual or estimated annual earnings</p>



Principal Act	Amendment Act
<p>Section 89</p> <p><u>Mandators and contractors</u></p> <p>Mandator is a main contractor and Contractor is a sub-contractor</p>	<p>Section 89</p> <p><u>Mandators and contractors</u></p> <p>Mandator is a contractor and a Contractor is a sub-contractor</p>
<p>Section 90</p> <p><u>Review of decision by Director-General</u></p> <p>The Director-General may at any time review any decision in connection with a claim for compensation or the award of compensation</p>	<p>Section 90</p> <p><u>Variation of decision by Commissioner</u></p> <p>The Commissioner may at any time vary any decision in connection with a claim for compensation or the award of compensation</p>

Principal Act

Section 91

Objections and appeal against decisions of Director-General

(i) An objection lodged in terms of this section shall be considered by a presiding officer and two assessors.

At least one assessor must agree with the presiding officer for a decision

Inspections, Compliance and Enforcement

The principal Act does not make provision for inspections, Compliance and enforcement

Amendment Act

Section 91

Objections and appeal against decisions of Commissioner

An objection lodged in terms of this section shall be considered by a presiding officer and three assessors (medical practitioner is made an assessor)

(i) At least two assessors must agree with the presiding officer to reach for a decision

Chapter XA

Inspections, Compliance and Enforcement

Appointment of inspectors

(i) The inspectors will be appointed by the Commissioner

(ii) They will be provided with a signed certificate confirming that they are inspectors

(iii) The certificate shall state which legislation they are monitoring or enforcing



Principal Act	Amendment Act
	<p><u>Functions of inspectors</u></p> <ul style="list-style-type: none">(i) Conduct inspections to ensure compliance(ii) Investigate the complaints made to the Commissioner(iii) Issue compliance orders(iv) Advise employees and employers of their rights and obligations
	<p><u>Powers of entry</u></p> <ul style="list-style-type: none">(i) May enter a home or other place with the consent of the owner or occupier(ii) Labour Court may authorise entry upon the application by the inspector(iii) If practicable the employer and trade must be notified of the inspection and the reason thereof



Principal Act	Amendment Act
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Powers to question and inspect

- (i) Inspect and question any person about any document or record
- (ii) Require a person to disclose any information
- (iii) Copy any record or document
- (iv) Remove any article, substance or machinery from work place
- (v) May be accompanied by an interpreter etc.

Compliance orders

Inspectors may issue compliance orders stating:

- (i) The name of employer and workplace inspected
- (ii) The provision of the Act not complied with
- (iii) Details of the conduct constituting non-compliance
- (iv) Steps that the employer is required to take which include cessation of the contravention
- (v) Maximum penalty which may be imposed for non-compliance
- (vi) Employer must comply with compliance order within 30 days.



Principal Act	Amendment Act
<p><u>Compliance order made order of court</u></p> <p>The principal Act does not make provision for compliance orders made orders off court</p>	<p><u>Compliance made order of court</u></p> <p>The Commissioner may apply to the Labour Court for compliance order to be made an order of court if the employer has not complied.</p>
	<p><u>Substitution of certain expression in the Act</u></p> <p>Substitution for the expression “Director-General” wherever it occurs of the word “Commissioner” except in section 1, section 18, section 30, section 50, section 55 and section 69.</p>
	<p><u>Transitional arrangements</u></p> <p>Domestic employees and employers must submit claims in a prescribed manner within three years from the date of commencement of Amendment Act.</p>

Thank You...



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