

A digest of the Worker's Compensation Act 23 of 1998

The employment landscape in Botswana is changing in fundamental ways. Employers have of recent years seen an increase in workmen's compensation claims from their employees. However, the safe haven for them in the suddenly unsafe world lies in the mandatory workmen's compensation insurance scheme provided for by the Worker's Compensation Act.

It was enacted to provide for compensation of workers for injuries suffered or occupational diseases contracted in the course of their employment or for death resulting from such injuries or diseases and for matters incidental and connected to the foregoing. It provides for a mandatory insurance scheme by employers to cover their employees against workplace injuries sustained in the course of their employment. This however does not apply to the Government as an employer.

The Act is more of a social legislation and all the workmen compensation claims are done in terms of the Act. The stewardship of the Act is vested upon the Minister of Labour who is empowered to delegate his powers to the Commissioner of Labour. He in turn is responsible for the administration of the Act and any assessment of any claim. In assessing the claims, and contrary to civil claims, fault is not required as a prerequisite. This however does not bar an employee to institute a civil suit independent of a claim under the Act for recovery of damages, if any.¹

This form of insurance protects employers from the high costs incidental to occupational injuries and claims. Coverage can be extended in instances where employees are injured and need medical attention; employees have sustained work related injuries and cannot work but need their wages; an occupational injury kills or disables an employee or when an employee waives their benefits and decides to sue the employer for negligence.

The Act specifies circumstances whereupon compensation is payable to the employee and the amounts payable thereto.² The level of incapacity by the claimant is also distinguishable between permanent total incapacity, permanent partial incapacity, fatal and medical expenses. The compensation differs as to levels of incapacity. Administratively, these levels are determined on recommendations by medical practitioners.³

However, sustaining or acquiring an injury or occupational disease in the course of employment does not necessarily make an employee entitled to compensation. This includes instances whereupon injuries or diseases are self-inflicted⁴; injuries or diseases that does not incapacitate the worker to an extent that he is not able to work and earn full wages for any length of time; health problems the worker knew about and never disclosed to employer or injuries or diseases proved to have been caused by the employee's wilful misconduct.

Determinations made by the commissioner under the Act are only appealable to our High Courts only when, firstly, a question of law is involved and secondly where the determination is one which could not reasonably have been made in view of the evidence. In most instances, our courts always refer the matter back to the Commissioner for determination.⁵

¹ Section 41

² Section 13 to Section 17

³ Section 10

⁴ *Rammala v Attorney General (2007) 3 BLR 73*

⁵ *Patrick Mokokwe v Debswana Diamond Company (2015) CA*