

DIRECTIVE FOR COMPENSATION OF WORKPLACE-ACQUIRED COVID-19

On 23 July 2020, the Minister of Employment and Labour published, in the Government Gazette, a Directive for Compensation of Workplace-Acquired COVID-19. A copy of the Directive can be accessed at http://www.gpwnline.co.za/Gazettes/Gazettes/43540_23-7_EmployLabour.pdf

Employers must note that the Directive published on 23 July 2020 replaces the version published on 23 March 2020.

The Compensation for Occupational Injuries and Diseases Act, 1993 (COID Act), provides for compensation for disablement caused by occupational injuries or diseases sustained or contracted by employees in the course of their employment, or for death resulting from such injuries or diseases.

The purpose of the Directive is to clarify the position of the Compensation Fund with regards to claims for compensation for employees who have acquired COVID-19 at the workplace as result of work-related exposure/s.

A brief summary of the Directive is set out below:

1. "**Workplace-acquired COVID-19**" is defined to mean *"where an employee, as defined in the COID Act, contracts COVID-19 whilst carrying out his or her duties."*
2. When determining whether a person contracted COVID-19 in the course and scope of employment, the following must be taken into account:
 - An assessment of the inherent risk posed by various categories of work and occupations. (See the four categories of risk below.)
 - Exposure to a known source of COVID-19 at the workplace.
 - Whether the employee concerned undertook an approved official trip (on work assignment) to countries and/or areas of high risk.
 - A reliable diagnosis of COVID-19.
 - A chronological sequence between exposure at the workplace and the development of symptoms.

3. The Medical Officers employed by the Compensation Fund are responsible for assessing whether to accept or reject claims for workplace-acquired COVID-19 claims.

4. The Directive identifies four categories of occupations in reference to risk exposure. The higher the risk level, the higher the probability that the employee contracted COVID-19 at work. Nevertheless, the categorisation of occupations serves only as a guide; all employees, regardless of occupation and risk level, are entitled to make a claim for compensation in the event that they contract COVID-19 at the workplace. The risk exposures identified in reference to occupations are as follows:

NO	RISK EXPOSURE	BRIEF DESCRIPTION	EXAMPLES
1.	Very high-risk exposure	Occupations with high potential for exposure to known or suspected sources during specific medical, post mortem or laboratory procedures.	<p>Healthcare employees performing aerosol generating procedures.</p> <p>Healthcare or laboratory employees collecting or handling specimens from known or suspected COVID-19 patients.</p> <p>Healthcare employees conducting cardio-respiratory function testing.</p> <p>Morgue employees performing procedures on bodies of people who are known or suspected of having COVID-19 at the time of death</p>
2.	High risk exposure	Occupations with high potential for exposure to known or suspected patients with COVID-19.	<p>Healthcare delivery and support employees (not performing aerosol-generating procedures).</p> <p>Medical transport employees moving known or suspected COVID-19 patients in enclosed vehicles.</p>

			Mortuary employees who prepare bodies (who are known to have had or suspected to have had COVID-19) for burial or cremation.
3.	Medium risk exposure	Occupations that require frequent and/or close contact (ie: within 1.5 metres) with people who may be infected with COVID-19 but who are not known or suspected patients.	<p><u>Areas without ongoing community transmission:</u> employees who may have frequent contact with travellers who may return from international locations with widespread COVID-19 transmission.</p> <p><u>Areas with ongoing community transmission:</u> employees who may have contact with the general public (ie: schools, high-population density work environments and some high-volume retail settings).</p>
4.	Low risk exposure	Occupations that do not require contact with people nor frequent close contact (ie: 1.5 metres) with the general public.	Employees in this category have minimal contact with the public and other fellow employees.

5. In terms of the benefits available to employees who have acquired COVID-19 at the workplace, the Directive provides as follows:

- **Persons under Investigation:** The Compensation Fund does not provide compensation for unconfirmed cases which are still being investigated. If an employee is required to self-isolate or self-quarantine, an employer must follow the directions contained in the COVID19 TERS Directive or the Directive on health and safety in the workplace (whichever is applicable). As announced by the Deputy Minister of Employment and Labour on 21 July 2020, the COVID19 TERS benefits will be extended to 15 August 2020. The modalities and scope of the TERS extension have yet to be formally published. B4SA will update its members in this regard as soon as possible.

- **Temporary Total Disablement:** If a case has been confirmed and the Compensation Fund has accepted liability, temporary total disablement benefits shall be paid from the date of diagnosis up to 30 days. In an instance where there are medical complications, the Commissioner has the right to review each case on merit.
 - **Permanent Disablement:** Permanent disablement shall be assessed three (3) months from the date of diagnosis.
 - **Medical aid:** In cases where the Compensation Fund has accepted liability, medical aid shall be provided for a period of not more than 30 days from the date of diagnosis.
 - **Death Benefits:** Reasonable burial expenses, widow's/widowers and dependents pensions shall be payable, where applicable if an employee dies as a result of complications of covid-19.
6. An employer is required, when reporting a case of workplace-acquired COVID-19 to the Compensation Commissioner, to submit several different forms, the applicable forms are listed in paragraph 6.1 of the Directive.
7. Claims may be submitted to the Compensation Commissioner either online (<https://compeasy.labour.gov.za/>) or manually (by email as per the email addresses listed in paragraph 6.3 of the Directive) and must reflect the correct ICD-10 code of U07.1

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23 July 2020