



Worker compensation in South Africa under review

The South African mining industry and the people it employs have historically faced unequal and inappropriately diverse regulation of compensation for illness, injury and disablement. This legislation is currently under review. From the company's perspective, the objective of the review, in which it proposes to become extensively involved, is the development of legislation that provides for compensation that is fair and which seeks to promote the long-term viability of the mining industry.

Compensation for occupational diseases and injuries is currently provided for in South Africa by two different statutes – the Compensation for Occupational Injuries and Diseases Act (COIDA) and the Occupational Diseases in Mines and Works Act (ODMWA). ODMWA covers Occupational Lung Disease (OLD) in miners only. COIDA provides for compensation of occupational injury in all industries (including mining) and for occupational disease in all industries (except mining) as well as for certain occupational diseases not covered by ODMWA, such as noise induced hearing loss.

There are differences in both the application of and benefits paid in terms of COIDA and ODMWA. The South African Cabinet has recognised this anomaly and decided, in 1999, to seek greater uniformity between the two Acts. This is now in process and a framework for the new Act has been developed by the Department of Labour. The framework is expected to be presented to Parliament during 2007 and will then move on into a deliberation phase, where the stakeholders (state, labour and employer organisations) in the National Economic Development and Labour Council (NEDLAC) will make comments and contribute to the continuing debate. AngloGold Ashanti, through the Chamber of Mines and Business Unity South Africa (BUSA), will participate in this process.

The two Acts are quite different. ODMWA is almost 100 years old and was last amended in 1994. COIDA is more recent (an entirely new Act was promulgated in 1993) and is more consistent with the ILO Convention 121, on Worker Compensation. Nonetheless, both Acts require review and, where necessary, reformulation and drafting. The table below illustrates some of the main differences between COIDA and ODMWA. According to Dr Dave Barnes, Manager Occupational Health, ODMWA is more user friendly than COIDA. It provides for free, biennial medical examination (by State hospitals) of ex-miners, in order to determine whether they are suffering from an occupational disease. This is important as many occupational diseases (especially of the lungs) take years to develop and often only become apparent in retirement. COIDA has no such provision. In terms of COIDA, potential claimants must pay a private doctor for medical examination in order to make a submission for compensation, if due. ODMWA also provides for post mortem benefits and a deceased miner's estate is compensated if occupational lung disease is found to be present, even if the disease did not cause death. COIDA does not have such a provision.

However, ODMWA pays lump sum benefits only, while COIDA pays lump sums for permanent disability (PD) below 30% and pensions if the PD is ascertained to be greater than 30%. Benefits paid in terms of COIDA are generally more generous than those of ODMWA and an earlier degree of disease is compensable in COIDA. This may mean that a miner, with the same degree of occupational lung disease as a non-miner, may not be compensable, but his non-mining colleague would be.

Worker Compensation law in South Africa and many other jurisdictions is based on the presumption that, where an individual is a member of a statutory contributory compensation scheme, that person surrenders his or her common law right to compensation for injury or illness,



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that arises from work. In this situation, the law should provide for quick and fair compensation – financed through mandatory employer premiums. Compensation entitlement should be consistent with the intention of the ILO Convention on Worker Compensation.

Achieving a balanced solution which offers fair compensation but which also ensures the sustainability of the industry will require a balanced approach.

Differences between ODMWA and COIDA

	ODMWA (administered by Dept of Health)	COIDA (administered by Dept of Labour)
Cover	Mining related occupational lung	Accidents and occupational diseases only (mining and industry) except for that covered by ODMWA (miners only).
Follow-up of ex-employees	Biennial and free	Nil
Low-fence for compensable lung disease	65% lung function (i.e. 35% loss)	80% lung function (i.e. 20% loss)
Maximum earnings for calculation of benefit	R2,500	R15,820
Lump sum benefits paid		
Min	First degree: R39,300 (Max)	R14,531 (for 30% PD)
Max	Second degree: R86,500 (Max)	R132,924 (for 30% PD)
Pensions	Not paid	Min: R1,411 Max: R11,865
Medical costs	Life-long costs, paid by owner of mine, for occupational lung disease diagnosed in service	Maximum of two years costs, paid by the COIDA fund
Funeral costs	Nil	R9,200 (Max)
Post mortem benefits	Routinely provided for and free. Compensation paid, irrespective of cause of death	Not provided routinely. Compensated only if occupational disease caused death

