

# Before Amendments

## COMPENSATION FOR OCCUPATIONAL INJURIES AND DISEASES ACT 130/1993

(Assented to 24 September 1993)

(Afrikaans text signed by the Acting State President)

as amended by

R.76 of 01/02/2001

R.77 of 01/02/2001

R.66 of 01/02/2002

R.67 of 01/02/2002

R.141 of 03/02/2003

R.89 of 02/04/2004

R.552 of 30/04/2004

R.201 of 11/03/2005

Citation of Constitutional Laws Act 5/2005

### ACT

*[Act 61/1977 has substituted the expression 'commissioner' for 'Director-General' wherever it occurs in the Act, except where it occurs in the definition of 'commissioner' in section 1 and where it occurs in section 38(1), section 39(1), (3) and (12), section 41, section 43, section 44, paragraph (b) of the proviso to section 50, paragraph (b) of the proviso to section 55, section 56(1) and (3), paragraph (b) of the proviso to section 69, section 74, section 80(1), (2), (3) and (5), section 82(1) and (2), section 86, section 87(4), section 89(3) and Schedule (4) 08/01/1999]*

*[Section 38 of Act 61/1997 provides: Any claim for compensation in respect of any accident that happened before the commencement of this Act shall be dealt with in terms of the principal Act as it was in force immediately before the commencement of this Act]*

*[Schedule 3 amended by R.552 of 30/04/2004 w.e.f. 30/04/2004]*

*[Schedule 4 amended by R.554 of 30/04/1999 w.e.f. 01/05/1999]*

*[Schedule 4 amended by R.73 of 04/02/2000 w.e.f. 01/03/2000]*

*[Schedule 4 amended by R.76 of 01/02/2001 w.e.f. 01/03/2001]*

*[Schedule 4 amended by R.77 of 01/02/2001 w.e.f. 01/03/2001]*  
*[Schedule 4 amended by R.67 of 01/02/2002 w.e.f. 01/03/2002]*  
*[Schedule 4 amended by R.141 of 03/02/2003 w.e.f. 01/03/2003]*  
*[Schedule 4 amended by R.89 of 02/02/2004 w.e.f. 01/04/2004]*  
*[Schedule 4 amended by R.201 of 11/03/2005 w.e.f. 01/04/2005]*  
*[Schedule 4 amended by R.71 of 27/01/2006 w.e.f. 01/04/2006]*  
*[Schedule 4 amended by R.423 of 05/05/2006 w.e.f. 01/04/2006]*  
*[Schedule 4 amended by R.497 of 2008 w.e.f. 01/04/2008]*  
*[Schedule 4 amended by R.694 of 2009 w.e.f. 01/07/2009]*  
*[Schedule 4 amended by R.304 of 2010 w.e.f. 01/04/2010]*  
*[Schedule 4 amended by R.382 of 2011 w.e.f. 01/04/2011]*  
*[Schedule 4 amended by R.448 of 2012 w.e.f. 01/04/2012]*  
*[Schedule 4 amended by R.212 of 2013 w.e.f. 01/04/2013]*  
*[Schedule 4 amended by R.138 of 2014 w.e.f. 01/04/2014]*  
*[Schedule 4 amended by R.473 of 2014 w.e.f. 01/04/2014]*  
*[Schedule 4 amended by R.274 of 2015 w.e.f. 01/04/2015]*  
*[Schedule 4 amended by R.448 of 2016 w.e.f. 01/04/2016]*  
*[Schedule 4 amended by R.816 of 2017 w.e.f. 01/04/2017]*  
*[Schedule 4 amended by R.17 of 2018 w.e.f. 01/04/2018]*

To provide 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; and to provide for matters connected therewith.

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows: -

## **CHAPTER I**

### **Interpretation of Act**

#### **1. Definitions**

In this Act, unless the context indicates otherwise -

"accident" means an accident arising out of and in the course of an employee's employment and resulting in a personal injury, illness or the death of the employee;

*[Definition of 'accident' substituted by clause 1(a) of Act 61/1997 w.e.f. 1/03/1998]*

"actuary" means any Fellow of an institute, faculty, society or chapter of actuaries approved by the Minister;

"airman" means an employee employed in any capacity in an aircraft;

"annual earnings" means -

- (a) for the amount referred to in Section 82(1)(a) if accepted by the Director-General as correct; -
- (b) the amount determined by the Director-General if in his opinion the amount referred to in paragraph (a) is less than the amount actually paid; or
- (c) the estimated amount referred to in section 82(5);

"assessment" means an assessment made in terms of section 83;

"assessor" means a person appointed under section 8 as an assessor;

"board" means the Compensation Board established by section 10;

"business" means any industry, undertaking, trade or occupation or any activity in which any employee is employed;

"chiropractor" means a person registered as a chiropractor in terms of the Associated Health Service Professions Act, 1982 (Act No. 63 of 1982);

"commissioner" means the Compensation Commissioner appointed under section 2(1)(a);

*[Definition of 'commissioner' substituted by clause 1(b) of Act 61/1997]*

"compensation" means compensation in terms of this Act and, where applicable, medical aid or payment of the cost of such medical aid;

*[Definition of 'compensation' substituted by clause 1(c) of Act 61/1997]*

"compensation fund" means the fund established by section 15;

"continental shelf" means the continental shelf referred to in section 7 of the Territorial Waters Act, 1963 (Act No. 87 of 1963);

"contractor" means a person referred to as a contractor in section 89;

"dependant of an employee" means -

- (a) a widow or widower who at the time of the employee's death was married to the employee according to civil law;
- (b) a widow or widower who at the time of the employee's death was a party to a marriage to the employee according to indigenous law and custom, if neither the husband nor the wife was a party to a subsisting civil marriage;
- (c) if there is no widow or widower referred to in paragraph (a) or (b), a person with whom the employee was at the time of the employee's death living as husband and wife;
- (d) a child under the age of 18 years of the employee or of his or her spouse, and includes a posthumous child, a step-child, an adopted child and a child born out of wedlock;
- (e) a child over the age of 18 years of the employee or of his or her spouse, and a parent or any person who in the opinion of the Director-General was acting in the place of a parent, a brother, a sister, a half brother or half-sister, a grandparent or a grandchild of the employee,

and who was in the opinion of the Director-General at the time of the employee's death wholly or partly financially dependent upon the employee;

*[Definition of 'dependant of an employee' substituted by clause 1(d) of Act 61/1997]*

"director-general" means the Director-General of the Department of Labour;

*[Definition of 'Director-General' inserted by clause 1(e) of Act 61/1997]*

"disablement" means temporary partial disablement, temporary total disablement, permanent disablement or serious disfigurement, as the case may be;

*[Definition of 'disablement' substituted by clause 1(f) of Act 61/1997]*

"earnings" means the remuneration of an employee at the time of the accident or the commencement of the occupational disease as calculated in terms of this Act;

*[Definition of 'earnings' substituted by clause 1(g) of Act 61/1997]*

"employee" means a person who has entered into or works under a contract of service or of apprenticeship or learnership, with an employer, whether the contract is express or implied, oral or in writing, and whether the remuneration is calculated by time or by work done, or is in cash or in kind, and includes -

- (a) a casual employee employed for the purpose of the employer's business;

(b) a director or member of a body corporate who has entered into a contract of service or of apprenticeship or learnership with the body corporate, in so far as he acts within the scope of his employment in terms of such contract;

(c) a person provided by a labour broker against payment to a client for the rendering of a service or the performance of work, and for which service or work such person is paid by the labour broker;

in the case of a deceased employee, his dependants, and in the case of an employee who is a person under disability a curator, acting on behalf of that employee;

but does not include -

(i) a person, including a person in the employ of the State, performing military service or undergoing training referred to in the Defence Act, 1957 (Act No. 44 of 1957), and who is not a member of the Permanent Force of the South African 25 Defence Force;

(ii) a member of the Permanent Force of the South African Defence Force while on 'service in defence of the Republic' as defined in section 1 of the Defence Act, 1957;

(iii) a member of the South African police Force while employed in 30 terms of section 7 of the Police Act, 1958 (Act No. 7 of 1958) on 'service in defence of the Republic' as defined in section 1 of the Defence Act, 1957;

(iv) a person who contracts for the carrying out of work and himself engages other persons to perform such work;

(v) a domestic employee employed as such in a private household;

"employer" means any person, including the State, who employs an employee, and includes -

(a) any person controlling the business of an employer;

(b) if the services of an employee are lent or let or temporary made available to some other person by his employer, such employer for such period as the employee works for that other person;

(c) a labour broker who against payment provides a person to a client for the rendering of a service or the performance of work, and for which service or work such person is paid by the labour broker;

"employer individually liable" means an employer who in terms of section 84(1)(a) is exempt from paying assessments to the compensation fund;

"employers' organization" means an employers' organization as defined in section 1 of the Labour Relations Act, 1956 (Act No 28 of 1956);

"financial year" means the period between the first day of March in any year and the last day of February in the following year, both dates included;

"mandator" means a person referred to as a mandator in section 89;

"medical aid" means medical, surgical or hospital treatment, skilled nursing services, any remedial treatment approved by the Director-General, the supply and repair of any prosthesis or any device necessitated by disablement, and ambulance services where, in the opinion of the Director-General, they were essential;

"medical practitioner" means a person registered as a medical practitioner in terms of the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974);

"minister" means the Minister of Labour;

*[Definition of 'Minister' substituted by clause 1(h) of Act 61/1997]*

"mutual association" means a mutual association licensed under section 30;

"national revenue fund" means the fund established by section 213 of the Constitution of the Republic of South Africa, 1996.

*[Definition of 'National Revenue Fund' inserted by clause 1(i) of Act 61/1997 and amended by Act 5/2005]*

"natural resources" means the natural resources referred to in section 7 of the Territorial Waters Act, 1963 (Act No. 87 of 1963);

"occupational disease" means any disease contemplated in section 65(1)(a) or (b);

*[Definition of 'occupational disease' substituted by clause 1(j) of Act 61/1997]*

"occupational injury" means a personal injury sustained as a result of an accident;

"pension" means a pension referred to in section 49 or 54;

"periodical payment" means a periodical payment of compensation in respect of temporary disablement;

"permanent disablement" , in relation to an employee and subject to section 49, means the permanent inability of such employee to perform any work as a result of an accident or occupational disease for which compensation is payable;

*[Definition of 'permanent disablement' inserted by clause 1(k) of Act 61/1997]*

"person under disability" means a minor, a lunatic or any person who by law is subject to curatorship or tutorship;

"prescribed" means prescribed in terms of this Act or by regulation;

"presiding officer" means any officer appointed in terms of section 2(1)(a) or (b) and designated as such by the Director-General;

*[Definition of 'presiding officer' inserted by clause 1(l) of Act 61/1997]*

"regulation" means a regulation made in terms of this Act;

"reserve fund" means the fund established by section 19;

"seaman" means an employee employed in any capacity on board a ship by the owner or person in command of the ship;

"serious and wilful misconduct" means -

- (a) being under the influence of intoxicating liquor or a drug having a narcotic effect;
- (b) a contravention of any law for the protection or the health of employees or for the prevention of accidents, if such contravention was committed willfully or with a reckless disregard of the provisions of such law; or
- (c) any other act or omission which the Director-General having regard to all the circumstances considers to be serious and wilful misconduct;

"south african aircraft" means an aircraft registered or licensed in the Republic in terms of a law governing the registration or licensing of aircraft, and the owner of which is resident in the Republic or has a place of business in the Republic;

"south african ship" means a vessel used in navigation which -

- (a) is registered in the Republic in terms of any law governing the registration of ships and is not registered in any other state in terms of a similar law; or
- (b) is owned or chartered by a person whose head office or place of business is in the Republic or by a person who resides in the Republic;

"state revenue fund" ... Deleted.

*[Definition of 'State Revenue Fund' deleted by clause 1(m) of Act 61/1997]*

"tariff of assessment" means the tariff of assessment referred to in section 83(1);

"temporary partial disablement" , in relation to an employee, means the temporary partial inability of such employee as a result of an accident or occupational disease for which compensation is payable to perform the whole of the work at which he or she was employed at the time of such accident or at the commencement of such occupational disease or to resume work at a rate of earnings not less than that which he or she was receiving at the time of such accident or commencement of such occupational disease;

*[Definition of 'temporary partial disablement' substituted by clause 1(n) of Act 61/1997]*

"temporary total disablement" , in relation to an employee, means the temporary total inability of such employee as a result of an accident or occupational disease for which compensation is payable to perform the work at which he or she was employed at the time of such accident or the commencement of such occupational disease or work similar thereto;

*[Definition of 'temporary total disablement' substituted by clause 1(o) of Act 61/1997]*

"this act" includes the Schedules thereto and any regulation;

"trade union" means a trade union as defined in section 1 of the Labour Relations Act, 1956 (Act No. 28 of 1956), and includes an employees' organization recognized by law and functioning;

"Workmen's Compensation Act" means the Workmen's Compensation Act, 1941 (Act No. 30 of 1941).



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*[Schedule 4 amended by R.17 of 2018 w.e.f. 01/04/2018]*

*[Schedule 4 amended by Notice 334 of 2018 w.e.f. 01/04/2018]*

*[Schedule 4 amended by R.627 of 2019 (G.G. 42431 of 03/05/2019) w.e.f. 01/04/2019]*

*[Schedule 4 amended by R.823 of 2020 (G.G. 43569 of 31/07/2020) w.e.f. 01/04/2020]*

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## CHAPTER I

### Interpretation of Act

#### 1. Definitions

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*[Definition of 'accident' substituted by clause 1(a) of Act 61/1997 w.e.f. 1/03/1998]*

"actuary" means any Fellow of an institute, faculty, society or chapter of actuaries approved by the Minister;

"airman" means an employee employed in any capacity in an aircraft;

"annual earnings" means -

- (a) for the amount referred to in Section 82(1)(a) if accepted by the Director-General as correct; -
- (b) the amount determined by the Director-General if in his opinion the amount referred to in paragraph (a) is less than the amount actually paid; or
- (c) the estimated amount referred to in section 82(5);

"assessment" means an assessment made in terms of section 83;

"assessor" means a person appointed under section 8 as an assessor;

"board" means the Compensation Board established by section 10;

"business" means any industry, undertaking, trade or occupation or any activity in which any employee is employed;

"chiropractor" means a person registered as a chiropractor in terms of the Associated Health Service Professions Act, 1982 (Act No. 63 of 1982);

"commissioner" means the Compensation Commissioner appointed under section 2(1)(a);

*[Definition of 'commissioner' substituted by clause 1(b) of Act 61/1997]*

"compensation" means compensation in terms of this Act and, where applicable, medical aid or payment of the cost of such medical aid;

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"compensation fund" means the fund established by section 15;

"continental shelf" means the continental shelf referred to in section 7 of the Territorial Waters Act, 1963 (Act No. 87 of 1963);

"contractor" means a person referred to as a contractor in section 89;

"dependant of an employee" means -

- (a) a widow or widower who at the time of the employee's death was married to the employee according to civil law;
- (b) a widow or widower who at the time of the employee's death was a party to a marriage to the employee according to indigenous law and custom, if neither the husband nor the wife was a party to a subsisting civil marriage;
- (c) if there is no widow or widower referred to in paragraph (a) or (b), a person with whom the employee was at the time of the employee's death living as husband and wife;
- (d) a child under the age of 18 years of the employee or of his or her spouse, and includes a posthumous child, a step-child, an adopted child and a child born out of wedlock;
- (e) a child over the age of 18 years of the employee or of his or her spouse, and a parent or any person who in the opinion of the Director-General was acting in the place of a parent, a brother, a sister, a half brother or half-sister, a grandparent or a grandchild of the employee,

and who was in the opinion of the Director-General at the time of the employee's death wholly or partly financially dependent upon the employee;

*[Definition of 'dependant of an employee' substituted by clause 1(d) of Act 61/1997]*

"director-general" means the Director-General of the Department of Labour;

*[Definition of 'Director-General' inserted by clause 1(e) of Act 61/1997]*

"disablement" means temporary partial disablement, temporary total disablement, permanent disablement or serious disfigurement, as the case may be;

*[Definition of 'disablement' substituted by clause 1(f) of Act 61/1997]*

"earnings" means the remuneration of an employee at the time of the accident or the commencement of the occupational disease as calculated in terms of this Act;

*[Definition of 'earnings' substituted by clause 1(g) of Act 61/1997]*

"employee" means a person who has entered into or works under a contract of service or of apprenticeship or learnership, with an employer, whether the contract is express or implied, oral or in writing, and whether the remuneration is calculated by time or by work done, or is in cash or in kind, and includes -

- (a) a casual employee employed for the purpose of the employer's business;
  - (b) a director or member of a body corporate who has entered into a contract of service or of apprenticeship or learnership with the body corporate, in so far as he acts within the scope of his employment in terms of such contract;
  - (c) a person provided by a labour broker against payment to a client for the rendering of a service or the performance of work, and for which service or work such person is paid by the labour broker;
- in the case of a deceased employee, his dependants, and in the case of an employee who is a person under disability a curator, acting on behalf of that employee;

but does not include -

- (i) a person, including a person in the employ of the State, performing military service or undergoing training referred to in the Defence Act, 1957 (Act No. 44 of 1957), and who is not a member of the Permanent Force of the South African Defence Force;
- (ii) a member of the Permanent Force of the South African Defence Force while on 'service in defence of the Republic' as defined in section 1 of the Defence Act, 1957;
- (iii) a member of the South African police Force while employed in 30 terms of section 7 of the Police Act, 1958 (Act No. 7 of 1958) on 'service in defence of the Republic' as defined in section 1 of the Defence Act, 1957;
- (iv) a person who contracts for the carrying out of work and himself engages other persons to perform such work;
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"employer" means any person, including the State, who employs an employee, and includes -

- (a) any person controlling the business of an employer;
- (b) if the services of an employee are lent or let or temporary made available to some other person by his employer, such employer for such period as the employee works for that other person;
- (c) a labour broker who against payment provides a person to a client for the rendering of a service or the performance of work, and for which service or work such person is paid by the labour broker;

"employer individually liable" means an employer who in terms of section 84(1)(a) is exempt from paying assessments to the compensation fund;

"employers' organization" means an employers' organization as defined in section 1 of the Labour Relations Act, 1956 (Act No 28 of 1956);

"financial year" means the period between the first day of March in any year and the last day of February in the following year, both dates included;

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"medical practitioner" means a person registered as a medical practitioner in terms of the Medical, Dental and Supplementary Health Service Professions Act, 1974 (Act No. 56 of 1974);

"minister" means the Minister of Labour;