

Draft regulations for employees returning to work after occupational disease, injury - Part 1

On 15 June 2023, the Department of Employment and Labour (DEL) published the [Draft Rehabilitation, Reintegration and Return to Work Regulation](#) in terms of the Compensation for Occupational Injuries and Diseases Act (Coida) for public comment. These draft regulations propose new and significant obligations for employers to fulfil.

By [Kate Collier, Kenneth Coster & Mbalu Nkosi](#) 26 Jun 2023



Image source: Marcus Aurelius from [Pexels](#)

The draft regulations flow from recent amendments effected to Coida which introduce, among other changes, the concept of rehabilitation and reintegration as essential parts of return-to-work processes for employees who have suffered work-related injuries or occupational diseases. A summary of those change signed into law by the President but awaiting a commencement date can be found [here](#).

The amendments to Coida include the need to incorporate clinical, vocational, and social rehabilitation measures to facilitate employees' physical, psychological, and social recovery. These changes seek to ensure that individuals can regain their independence, re-enter the workforce and actively participate in all aspects of life. With this laudable goal comes immense practical and financial considerations and challenges, primary among these, is the question of whether employers are required to reserve employee work for the duration of the rehabilitation period.

The draft regulations will require the adoption of new systems, policies, and measures by all employers regarding employees who have suffered occupational diseases or sustained injuries in the workplace. These include considerations of existing dismissal procedures and incapacity-related policies already implemented by employers, as well as proposed measures to ensure the reintegration of employees into the workplace as far as reasonably possible.

In considering the draft regulations, the following key aspects and features will, in our view, affect all employers:



Draft regulations

The draft regulations provide for increased participation of the Compensation Fund (CF) or Licensee in respect of enforcing the proposed provisions in the employers' workplace as well as collaboration and involvement of various stakeholders including the requisite inspectorate, unions, and healthcare facilities. An interesting feature in the draft regulations is the proposed additional obligations of healthcare and occupational medical practitioners who play an integral role in assisting the employer to implement already existing occupational health and medical programmes in the workplace.



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The proposed penalties for non-compliance with the draft regulations have not been set and simply prescribe that the fine or penalty will be determined by the Compensation Commissioner.

Employee health and wellness representative

Employers may appoint an employee health and wellness representative for their "business establishment". The person appointed in the role must report all work-related injuries and occupational diseases to the CF Licensee and must receive reports of injuries or diseases from employees. Although the wording in the regulations in some instances infers that the appointment is discretionary, other instances imply that these persons must be identified by the employer and discharge prescribed functions.

It is proposed that the appointee will act as a liaison officer between the CF or Licensee, the affected employee, and the rehabilitation service providers. The appointee must have the necessary skill, knowledge and competence to perform their duties and it is proposed that the appointee must educate the employee and the rehabilitation service providers on their legal rights and obligations. The appointee also has a number of rights, primarily relating to access to information and plays a role in ensuring cost-effective programmes.

Obligations on employers

The draft regulations will require employers to provide access to facilities, services and benefits aimed at

rehabilitating employees to enable their return-to-work or to the labour market more generally. This include the implementation of a reintegration and return-to-work policy which must be freely accessible and communicated to all employees.

The draft regulations incorporate various obligations regarding employers' general duties to provide and maintain, as far as reasonably practicable, a working environment that is safe and without risk to the health and safety of their employees and associated general duties are incorporated into the draft regulations.



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Also imposed on employers will be various specific duties:

- to develop and implement a rehabilitation and return-to-work policy and programme that outlines the procedures to be taken to ensure that employees return to work, provision of reasonable accommodation and assistive devices and technology, a plan for employee health and wellness to encourage early return to work; the re-skilling of employees for alternative work; the consequences for non-compliance with the policy and procedures and consistent support and intervention by employers, employees, healthcare providers and insurers;
- to facilitate required access and assistance to enable a CF case manager to perform their functions;
- to establish and maintain a system of rehabilitation and return to work reporting for all employees exposed to occupational injuries and diseases;
- to submit the reporting data to the CF in the prescribed manner and on an annual basis;
- to provide reasonable, transitional, or temporary work to allow the injured employee to work safely in the return-to-work process;
- to modify work areas, duties, equipment, or processes in accordance with the injured employee's capacity to allow for reasonable accommodation and assistive devices and technology;
- to consult with relevant stakeholders to resolve difficulties at the workplace that impact the outcomes of the rehabilitation and return to work programme;
- to ensure that the employee undergoing rehabilitation can return to their original work where reasonable and to reserve the employee's original work or a suitable alternative position for this purpose until such time as evidence of incapacity has been provided;
- to notify the compensation commissioner when an employee resumes work. Similarly, if an employer is unable to retain an employee "after all efforts have been made to preserve the employment" of that employee, notice to the commissioner is also required; and
- not to dismiss an employee based on incapacity or reduce their rate of remuneration or alter employment conditions to a less favourable one as a result of being injured on duty or contracting an occupational disease without reporting such to the chief inspectorate and the CF in writing stating the reasons for dismissal. This obligation is expressly subject to the provisions of the Labour Relations Act. The term "chief inspectorate" is not defined; however, we assume the chief inspectorate of mines or occupational health and safety, whichever is applicable.

Other obligations proposed relate to guiding and assisting injured or diseased employees with their general day-to-day reintegration into the workplace.

The draft regulations also envisage that the employer must identify and designate employee health and

wellness representatives who will act as liaison officers between the CF or Licensee, the injured or diseas employee and the medical rehabilitation service providers.

In [Part 2 of this article](#), we will look at the obligations on employees and other stakeholders.

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