

WORKERS' COMPENSATION CLAIMS: THE EMPLOYER'S RIGHTS & DUTIES

In terms of the Workers' Compensation Act, every employer (irrespective of the nature of its business) is required to take out insurance against potential injuries and/or "scheduled diseases" which may be sustained by an employee in the course and scope of his employment.

Where an employee sustains an injury whilst he or she is acting in the course and scope of his employment, there is little question on the obligations imposed on an employer. The employer must report the injury or disease to the nearest District Labour Officer or the Commissioner for Workers' Compensation using the prescribed form set out in the Act. The completion of the forms prescribed in the Act enables compensation payable to the employee to be calculated. The employer must also immediately notify its insurance company of the likely claim.

Until recently, the obligations of an employer who disputed whether its employee was injured whilst acting in the course and scope of his employment or duty were not clear. Was the employer obliged to report the alleged injury if the employer denied that the employee was injured whilst he or she was "on duty"? This was a vexed question because the mere reporting of the alleged injury could later be taken to be an admission by the employer that the injury had been sustained by the employee whilst he or she was on duty.

In the case of **Patrick Mokowe v Debswana Diamond Company (Pty) Limited**, the Court of Appeal finally settled these questions.

The Court of Appeal found that in the event that an employer denies that an injury was sustained by its employee whilst acting in the course and scope of his employment, the employer is not obliged to report the alleged injury. In fact, in that event, we are of the view that the employer should not report the alleged injury to the District Labour Officer as this may later be construed as an admission that the injury was sustained in the course and scope of the employee's employment.

Where the employer denies that the injury occurred "on duty", it is then up to the employee to give notice of the alleged injury to the District Labour Office. The District Labour Officer must then allow both the employer and the employee to make representations to the District Labour Officer about their respective positions, and the Labour Officer must then determine whether or not the injury or disease was sustained in the course and scope of the employee's employment. If the Labour Officer determines that the injury did arise in the course and scope of the employee's employment, the District Labour Officer must then calculate the compensation payable to the employee.

Once the District Labour Officer has made his decision, either party (the employer or the employee) is then entitled to appeal the decision of the District Labour Officer to the Commissioner for Workers' Compensation in Gaborone. A further right of appeal lies from the decision of the Commissioner to the Minister of Labour and Home Affairs. Where a question of law is involved, there is also a right of appeal to the High Court, but this must be brought within 30 days' from the date of the decision.

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