

Travelling to and from work - covered by workmen's compensation or not?

Tinus Boshoff

The subject of compensation is diverse and could sometimes be confusing as well.

In South Africa, the Compensation for Occupational Injuries and Diseases Act, Act 130 of 1993, largely governs compensation-related matters.

The COIDA mainly facilitate a process which provides for payment of medical treatment and compensation for disablement caused by occupational injuries and diseases sustained by employees in the course of their employment, or for death resulting from such injuries or diseases, and to provide for matters connected therewith.

One of the questions that frequently arise, is "if an employee is involved in an accident, travelling to and from work, will the employee be covered by COIDA?"

Well, firstly we would need to look at the term "accident". According to the COIDA definition, it 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".

For the worker to claim, the accident should "*arise out of and in the course of an employee's employment*". It should have *occurred while the worker was on duty and should have been part of the worker's scope of duty*. This means that the accident should have occurred because the employee was on duty (at work) doing what he or she was employed to do (job description). It means that the employment caused the accident or exposed the worker to the risk of the accident while the worker was doing a task that he or she was employed to do.

From the above-mentioned information, it is clear that an employee, who is travelling to and from work, would normally *not be on duty* and secondly *not be doing what* he or she was employed to do. When I drive to work I am not on duty yet and secondly, it does not form part of my job description. If such an employee is involved in an accident, it will not be deemed to be an injury on duty.

Sometimes employees who are drivers or who have to be transported as part of their work may be involved in motor vehicle accidents while on duty. Will these workers be covered by the provisions of COIDA?

Section 22(5), of the COID Act, addresses the matter. The subsection stipulates that "the conveyance of an employee free of charge to or from his place of employment for his employment using a vehicle driven by the employer himself or one of his employees and specially provided by his employer for such conveyance, shall be deemed to take place in the course of such employee's employment".

Employees who are drivers or who have to be transported as part of their work could be covered by the provisions of COIDA if the accident occurred "in course and scope of employment" and the

following criteria are met:

- The vehicle was provided by the employer?
- The vehicle was provided free of charge?
- The vehicle was provided for employment?
- The vehicle was driven by the employer himself or one of his employees?

Compensation would for example not be payable if an accident occurs with free transport which is provided by a contractor on behalf of the employer. These motor vehicle accidents could alternatively be covered by the Road Accident Fund Act.

It would also be important to look at situations where persons like artisans perform standby duty. If the standby worker is called out by the employer it should be viewed as “in course and scope of duty”. If the worker is involved in an accident while travelling to the workplace, it would be deemed to be an injury on duty.

Even in cases where it would be expected from the standby worker to make use of private transport, it could still be deemed to be in course and scope of duty. The worker should, however, be able to prove that he or she travelled among the most economical route to work.

Please note that standby workers would be covered up to the point where they finish the task or job that they were called out to do. *Travelling back home with private transport will normally not be covered by COIDA.* On the other hand, if the worker makes use of an official company vehicle, provided for standby purposes, they will be covered while driving back to home.

Employers, please note that the following questions are normally asked by the Compensation Commissioners office if an employee is involved in a motor accident and a claim is launched for compensation:

- Describe in detail how and where (street names etc.) the accident happened.
- Include detailed statements by the driver of the vehicle and eyewitnesses to the accident, describing how and where (street names, etc.) the accident occurred, as well as a diagram.
- Who is the registered owner of the vehicle?
- Name the place of departure and the destination of the vehicle at the time of the accident.
- Was the vehicle travelling on a direct route to its destination from its place of departure?
- What was the purpose of the journey?
- Was the vehicle specifically used for the purpose described in the above question? (For example, if the purpose of the journey was to deliver bread, was the vehicle assigned to the task of transporting bread?)
- What control did you exercise over the driver of the vehicle for determining the vehicle’s point and time of departure, destination and route, as well as being able to discontinue the transport at any time?
- Was transport supplied free of charge to employees to transport them to and from work?
- The registration number(s) of the vehicle(s) involved in the accident.
- To which South African Police Station was the accident reported and what was the

reference number assigned to the case?

- The names and claim number numbers of the other injured employees, if any.
- In whose employment was the driver of the vehicle?

If there is any uncertainty relating to an injury on duty, complete and submit the forms to the Commissioner and let them decide.

The COIDA works on the proviso of “at the discretion of the Compensation Commissioner”.

Safety greetings

Tinus Boshoff

tinus@labourguide.co.za