

Compensation for Occupational Injuries and Diseases Act.



Workman's compensation cover is something that all employees need to have irrespective of the type of work performed. The Construction Regulations are the only Regulation that require a client and a principal contractor ensure that any contractor being appointed is registered and in good standing. This can only be achieved by providing the client or principal contractor with a letter of good standing either issued by the Compensation Commissioner, FEM or RMA, the latter being licensed to provide cover in the metal industry and the mining sector.

There is however a twist in the tale. Section 89 of the COID Act states that should a contractor/sub-contractor come onto your premises or site to work and they are not registered and in good standing, his or her employees are deemed to be your employees for the purposes of any claims for compensation or injury costs. Be mindful of the extreme financial risk you face should you allow a contractor to work who is not insured for workman's compensation.

Why you ask?

Consider the following:

- The average cost of an accident as reported by FEM is R 38 395,00.
- To date, there has been 5441 accidents as reported to FEM, this number only accounts for FEM policy holders and does not include employers insured with the Compensation Commissioner. This number can be comfortably doubled to give us a more realistic figure.
- This equates to around 60 accidents a day, so the likelihood of an accident is quite high.
- There have also been 49 fatalities. These fatalities result in serious compensation being paid to family members and will have far reaching effects on the future valuation of premiums to be paid.
- 929 people were also permanently disabled which would mean that they will need ongoing medical attention also at great cost.

Now consider the following facts:

- Compensation is not insurance, like you would buy for your house or car. Compensation insurance is based on two things, namely:
 - A percentage of the annual wage/salary bill of an employer.
 - Any penalties or rebates paid based on claim frequency.
- Policy values, penalties and rebates are all calculated two years retrospectively, i.e. and costs incurred in 2016 will impact on the 2018 policy calculation, the same is true for rebates.

- Employer can be rewarded for low claims ratio but can be severely penalized for a high claims ratio and could result in a 365% loading on the next premium.
- Any claims related to an injury sustained by an employee of an un-registered contractor will be lodged against the compensation policy of the other contracting party, in this case, the principal contractor.
- Any costs related to the injury and ongoing treatment will be paid out of the principal contractors' compensation insurance, irrespective of where the policy is held.
- These costs could run into tens, if not hundreds of thousands of Rand or in the worst-case scenario, into the millions all of which will be paid against your policy and could result in you having to pay penalties. Recovering these losses from the contractor would more than likely be impossible.

So, my question is this:

Why would any business take on an immeasurable risk by contracting with a contractor who has no workman's compensation in place, thus placing the other party at a huge financial risk should an accident occur and one of the contractors' employees are injured.

Contractors need to ensure that any contractor they wish to appoint are registered and in good standing prior to appointing the contractor. I would even take it one step further and say that only contractors who can prove they are in good standing should be allowed to tender for work.

“measuring safety as the number of years without a lost time injury is as bad as measuring a marriage by the number of years without an affair”-David Collins

Deon Bester

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