GOVERNMENT NOTICE

Department of Employment and Labour

No. **2023**

COMPENSATION FOR OCCUPATIONAL INJURIES AND DISEASES ACT, 1993 (ACT NO 130 OF 1993)

REGULATIONS ON WORK-RELATED UPPER RESPIRATORY TRACT DISORDERS FOR THE COMPENSATION FUND MADE BY THE MINISTER UNDER COMPENSATION FOR OCCUPATIONAL INJURIES AND DISEASES ACT, 1993

I, Thembelani Waltermade Nxesi, Minister of Employment and Labour, after consultation with the Compensation Board, hereby make the following attached in terms of Section 97 of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No 130 of 1993) as amended. The regulations are attached as Schedule A.

EFFECTIVE DATE OF REGULATIONS

The regulations will come into effect on the date of publication hereof in the Gazette.

MR T W NXESI, MP
MINISTER OF EMPLOYMENT AND LABOUR
DATE: 03/04/2023

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SCHEDULE A

REGULATIONS ON WORK-RELATED UPPER RESPIRATORY TRACT DISORDERS FOR THE COMPENSATION FUND MADE BY THE MINISTER UNDER COMPENSATION FOR OCCUPATIONAL INJURIES AND DISEASES ACT, 1993

1. **DEFINITION OF REGULATION**

   In these regulations, "the regulations" means the regulations relating work-related upper respiratory tract disorders under Compensation for Occupational Injuries and Diseases Act, 1993; and any word or expression to which a meaning has been assigned in the regulations shall have that meaning unless the context otherwise indicates.

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1. DEFINITIONS

"Immunology test" means an antigen to detect presence of antibodies to a pathogen, or an antibody to detect the presence of an antigen, of the pathogen in the specimens of the victim.

"Irritant" means a substance that causes slight inflammation or other discomfort to the body.

"Work related upper respiratory tract disorders" means diseases affecting the mucosal lining of the nose, larynx and pharynx caused or aggravated by conditions attributable to a particular working environment. Two types of Work related upper respiratory tract disorders are generally recognizable:

(a) Allergic; and
(b) Irritant.

Note: The disorders may include allergic and or irritant rhinitis and nasal erosions and perforations.

2. DIAGNOSIS

(1) The diagnosis of Work-related upper respiratory tract disorders shall be made by medical practitioner based on the following:

(a) Workplace exposure to agent(s) reported to give rise to Work-related upper respiratory tract disorder.
(b) Chronological relationship between work- related upper respiratory tract disorder and work environment.
(c) Evidence of sensitization (immunological tests) to a known workplace allergen where applicable.

(2) The Medical Officer employed by the Compensation Fund shall determine whether the diagnosis of Work-related upper respiratory tract disorder was made according to acceptable medical standards.

3. IMPAIRMENT

Impairment shall be assessed after maximum medical improvement has been reached and where necessary after removal from exposure using the latest AMA Guide.

Table 11-6 Criteria for Rating Impairment due to Air Passage Deficits

IMPAIRMENT CLASS	CLASS 0	CLASS 1	CLASS 2	CLASS 3	CLASS 4
IMPAIRMENT RANGES (WPI %)	0	1%-9% WPI	11%-27% WPI	30%-42% WPI	45%-58% WPI
GRADE		1 3 5 7 9	11 15 19 23 27	30 33 36 39 42	45 48 51 54 58
HISTORY[c]	There are no complaints of dyspnoea at rest ***and*** Minimal or no interference with any activities	There are no complaints of dyspnoea at rest Activities requiring intensive effort may be interfered with or require medication to maintain optimal function	There are no complaints of dyspnoea at rest ***and*** dyspnoea is produced by stress, prolonged exertion, hurrying, hill climbing, or recreational or similar activities except sedentary forms	There are no complaints of dyspnoea at rest ***and*** dyspnoea is produced by walking more than 1 or 2 level blocks, climbing 1 flight of stairs even with periods of rest, or performance of other usual activities of daily living	Dyspnoea occurs at rest, although individual is not necessarily bedridden ***and*** dyspnoea is aggravated by the performance of any of the usual activities of daily living beyond personal cleansing, dressing, or grooming *For ventilator dependence, refer to the*

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					pulmonary chapter ratings
PHYSICAL EXAM	Minimal changes to the oropharynx, laryngo-pharynx, larynx, upper trachea, or lower trachea, or incomplete and episodic obstruction of the nose or nasopharynx	Mild changes to the oropharynx, laryngo-pharynx, larynx, upper trachea, or lower trachea, or incomplete and episodic obstruction of the nose or nasopharynx	Moderate changes to the oropharynx, laryngo-pharynx, larynx, upper trachea, or lower trachea, or reversible complete or permanent incomplete obstruction of the nose or nasopharynx	Severe changes to the oropharynx, laryngo-pharynx, larynx, upper trachea, or lower trachea, or obstruction of the nose or nasopharynx that is only partially reversible	Severe changes to the oropharynx, laryngo-pharynx, larynx, upper trachea, or lower trachea, or complete, nonreversible obstruction of the nose or nasopharynx
DIAGNOSTIC OR OTHER OBJECTIVE FINDINGS	There are no tests showing obstruction of the nose, sinuses, nasopharynx, oropharynx, or larynx	Sinus CT[d] shows mild mucosal thickening, mild obstruction of nasopharynx or oropharynx, or laryngoscopy may show mild alteration in vocal fold (cord) function	Sinus CT shows moderate mucosal thickening or moderate obstruction of nasopharynx or oropharynx, or laryngoscopy may show moderate alteration in vocal fold (cord) function	Sinus CT shows moderately severe mucosal thickening or turbinate swelling, or moderately severe obstruction of nasopharynx or oropharynx, or laryngoscopy may show moderately severe alteration in vocal fold (cord) function	Sinus CT shows diffuse severe mucosal thickening or severe turbinate swelling, or severe obstruction of nasopharynx or oropharynx, or laryngoscopy may show severe alteration in vocal fold (cord) function such as bilateral paralysis

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[a] Individuals with successful tracheotomy or stoma should be rated as having 25% impairment of the whole person
[b] Move up in class 4 based on the severity and number of findings in physical exam and objective findings
[c] Key factor
[d] CT indicates computed tomography.
AMA Guides to the Evaluation of Permanent Impairment 6th edition

4. COMPENSATION BENEFITS

The compensation benefits payable according to the Act are:

(1) Payment for temporary total or partial disablement shall be made for as long as such disablement continues, but not of a period exceeding 24 months.

(2) If total impairment score is zero to three (i.e. permanent disablement less than or equal to 30%), permanent disablement shall be determined and a lump sum shall be paid in terms of the Act.

(3) If total impairment score is more than three (i.e. permanent disablement is higher than 30%), pension shall be paid in terms of the Act.

5. MEDICAL COSTS

(1) Medical costs shall be provided for a period of not more than 24 months from the date of diagnosis or longer, if in the opinion of the Commissioner, further medical aid will reduce the degree of the disablement.

(2) Medical costs shall cover diagnosis of Work related upper respiratory tract disorders and any necessary treatment provided by any healthcare provider.

(3) The Commissioner shall decide on the need for, the nature and sufficiency of medical costs to be supplied.

6. DEATH BENEFITS

Death benefits payable are:

(1) Reasonable burial expenses shall be paid in terms of Burial Expenses Policy; and

(2) Widow's and dependent's pensions shall be payable, where applicable, if the employee dies as a result of work-related upper respiratory tract disorders.

6. REPORTING

The following documentation must be submitted to the Compensation Fund or the employer individually liable or the licensee concerned:

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(a) Employer's report of an Occupational Disease (W.CL.1).

(b) Notice of Occupational Diseases and claim for compensation (W.C. L14)

(c) An affidavit by the employee (W.CL.305) if an employer cannot be traced or the employer fails to timeously submit Employer's report of an Occupational Disease (W.CL.1).

(d) Industrial history or workplace exposure history (W.C. L 110) - there should be a clear history of occupational exposure or exposure in an occupation or industry where Work-related upper respiratory tract disorders where exposure is known to occur.

(e) First Medical Report detailing the employee's illness in respect of an occupational disease (W.C.L 22).

(f) ENT and or medical report detailing the employee's symptoms and clinical features.

(g) Other appropriate tests such immunological and ENT examinations or any investigation to confirm diagnosis, where applicable.

(h) Progress or Final medical report in respect of occupational disease (W.C.L 26).

(i) In case of death, a death certificate and a BI1663 (notification of death) should be submitted. Alternatively, a death certificate accompanied by a detailed medical report on a practice letterhead on the cause of death should be submitted.

7. CLAIMS PROCESSING

The Commissioner shall consider and adjudicate upon the liability of all claims. The Medical Officers employed by the Compensation Fund is responsible for medical assessment of a claim and for the confirmation of the acceptance or rejection of a claim.

MR TW NXESI, MP
MINISTER OF EMPLOYMENT AND LABOUR
DATE: 03/04/2023