GOVERNMENT NOTICE

DEPARTMENT OF EMPLOYMENT AND LABOUR

No. R. **2023**

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

REGULATIONS ON COMPENSATION FOR WORK-RELATED CHRONIC OBSTRUCTIVE PULMONARY DISEASE (COPD) FOR THE COMPENSATION FUND MADE BY THE MINISTER UNDER COMPENSATION FOR OCCUPATIONAL INJURIES AND DISEASES ACT, 1993

I, Thembelani Wltermade Nxesi, Minister of Employment and Labour, after consultation with the Compensation Board, hereby make the following attached regulations in terms of Section 97 of 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

SCHEDULE A

REGULATIONS ON COMPENSATION FOR WORK-RELATED CHRONIC OBSTRUCTIVE PULMONARY DISEASE (COPD)

1. DEFINITION OF REGULATION

In these regulations, "the regulations" means the regulations relating to work-related chronic obstructive pulmonary disease (COPD) 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. DEFINITION

"Work-related chronic obstructive pulmonary disease" (COPD) means a progressive disease of the airways, characterised by an abnormal inflammatory response and chronic airflow limitation (obstruction) that is irreversible or partially reversible due to causes and conditions attributable to a particular working environment. It is associated with lung hyperinflation and systemic effects. The dominant clinical correlates are chronic bronchitis and emphysema.

2. DIAGNOSIS

(1) The chronic obstructive pulmonary disease shall be diagnosed by a medical practitioner and the diagnosis should include:

(a) a characteristic history of progressive dyspnea and or chronic cough (with or without sputum production), and spirometry showing evidence of chronic airflow limitation. This is characterised by a post-bronchodilator FEV_1 /FVC ratio < 70% (400ug short acting beta 2 agonist; measured 15 minutes after administration of bronchodilator);

(b) a chronological relationship between the work-related exposure and the development of COPD. (As outlined in Annexure 1); and

(c) at least 15 years of workplace exposure to an agent(s) reported to give rise to work related COPD, but 10 years may be considered sufficient if exposure levels have been very high. Where particulate exposure data is available, levels ≥10mg/m^3 inhalable dust level would be considered as high.

(2)The diagnosis should be made within 10 years of last exposure to the causative agent/s.

(3) The Medical Officers employed by the Compensation Fund will determine whether the diagnosis of work related COPD was made according to acceptable medical standards.

3. IMPAIRMENT

(1) Pulmonary impairment will be determined using the lung function tests in Table 1 – post-bronchodilator FEV_1 and the treatment of the individual in Table 2 to calculate the impairment score that equates to the level of permanent disablement in Table 3.

Table 1: FEV_1 (post-bronchodilator reading)	
Score	**FEV_1 % Predicted**
0	>80
1	65-79
2	55-64
3	45-54
4	<45

* FEV_1 % predicted = measured FEV_1 divided by reference FEV_1 x 100

Table 2: Treatment	
Score	**Treatment**
0	No medication
1	Bronchodilators (short-acting Beta-2 agonists or short-acting anti-cholinergics or both) as needed or regularly And/Or Oral Theophylline
2	Regular long-acting Beta-2 agonists or long-acting anti-cholinergics or both

3	Inhaled glucocorticosteroids And/Or Antibiotic treatment for frequent exacerbations (≥3/year)
4	Treatment for chronic respiratory failure (e.g. long term oxygen therapy, ventilatory support)

(2) Whole Person Impairment will be determined, in accordance with the latest AMA Guide edition once Maximal Medical Improvement (MMI) has been reached.

4. COMPENSATION BENEFITS

The compensation benefits payable in terms of the Act are:

(1) Payment for temporary total disablement shall be made for as long as such disablement continues, but not for 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 extent of the disablement.

(2) Medical costs shall cover the costs of diagnosis of COPD and any necessary treatment provided by any health care 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 chronic obstructive pulmonary disease.

7. REPORTING

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

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

(b) First Medical Report in respect of an Occupational Disease (W.CL.22).

(c) Notice of an Occupational Disease and Claim for Compensation (W.CL.14).

(d) Exposure History (W.CL.110) or an appropriate employment history guided by Annexure 1.

(e) Progress or Final Medical Report in respect of an Occupational Disease (W.CL.26).

(f) Medical report detailing the employee's exposures, symptoms, clinical features and treatment prescribed.

(g) An affidavit by the employee if an employer cannot be traced or the employer will not timeously supply a W.CL.1. (W.CL.305)

(h) Pulmonary function tests confirming diagnosis and final pulmonary function tests when no further medical improvement is anticipated.

(i) Chest X-ray and radiology reports or other relevant investigations, where applicable.

Annexure 1: Agents and occupations associated with Occupational COPD[1-3]

Agent	Occupation	
Chemicals, vapours or gases	Isocyanates Sulphur Dioxide Oxides of Nitrogen Solvents	Painters Foundries Chemical processors Cleaners, dry cleaners, personal services (hairdressers, nail technicians)
Dust		
• Mineral dusts	Silica, silicate, coal, asbestos, hard rock, cement, fibre, glass, quartz, asphalt	Mine workers, quarry workers, construction workers, highway or tunnel workers, transport workers, concrete/cement manufacturing, foundries, refractory brick workers, ship building, pottery workers
• Hard metal dusts	Aluminium	Engineering, metal workers, car manufacturers, foundries