

DOMESTIC WORKERS AND COIDA

COMPENSATION FOR OCCUPATIONAL INJURIES AND DISEASES ACT

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The **Compensation for Occupational Injuries and Diseases Act 130 of 1993** (COIDA) is a law that provides for the payment of compensation to employees who suffer injuries or contract diseases while performing their work duties. In the case of a death as a result of a work-related injury or disease, COIDA allows for the compensation to the deceased employee's dependents.

Until November 2020, domestic workers were not covered by COIDA even though all other employees were covered by it or similar legislation. This is because section 1(xix) (v) of COIDA clearly states that domestic workers are excluded from the scope of COIDA.

This factsheet explains 1) how COIDA works, 2) summarises the facts of the court case, *Mahlangu v the Minister of Labour*, where domestic workers successfully challenged their exclusion from COIDA and, 3) explores what the court case means for domestic workers.

HOW DOES COIDA WORK?



According to the Department of Labour and Employment, COIDA applies to casual and full-time employees who become ill, are injured, disabled or killed as a result of a workplace accident or a work-related disease. Employers are required by the Occupational Health and Safety Act 85 of 1993 to provide and keep, as far as is reasonably possible, a working environment that is safe and does not put the employee's health at risk.

Employers make contributions to the Compensation Fund. Their employees can claim from the Compensation Fund if they become ill, are injured, disabled or killed while performing their work duties.

According to a report on the Fund by National Treasury, COIDA provides a system of "no-fault" compensation, which means that employees do not need to prove that the injury is the employer or any other person's fault in order to receive compensation. COIDA also prevents employees from suing their employers for damages.

Compensation can come in the form of lump sum payments, periodical payments or monthly pension payments depending on the circumstances of each case.



MANY PEOPLE BELIEVE...

that because domestic work is performed in the home environment, domestic workers are not at risk of injury. A report by Solidarity Center lists injuries suffered by domestic workers including: skin lacerations; major cuts; skin damage and burns; dog bites; bone fractures and temporary or even permanent disablement to arms, hands, legs and shoulders.

MAHLANGU V THE MINISTER OF LABOUR

The *Mahlangu* case started with an unfortunate accident where a domestic worker, Maria Mahlangu, slipped from a ladder while cleaning a window at her employer's home, fell into the swimming pool and drowned. Her daughter Sylvia Mahlangu sought compensation for her mother's death, and was told that there would be no compensation as domestic workers are not covered by COIDA. Through the help of domestic worker union South African Domestic Service and Allied Workers' Union (SADSAWU) and Pinky Mashiane, president of United Domestic Workers of South Africa (UDWOSA) Sylvia was able to get legal representation and the *Mahlangu v the Minister of Labour* case was launched.

In 2019 Sylvia Mahlangu successfully challenged the exclusion of domestic workers from COIDA when the North Gauteng High Court granted an order which declared section 1(xix)(v) of COIDA unconstitutional and stated that the order should apply retrospectively, meaning it should apply "backwards", so that domestic workers who been injured or contracted an illness as a result of their duties, or have been killed, like in Mahlangu's case, would also be able to claim from the Compensation Fund. In South Africa when a law or part of a law is declared unconstitutional, the Constitutional Court, the highest court in the land, needs to confirm the order made by a lower court.

On 19 November 2020 the Constitutional Court confirmed the order declaring section 1 (xix)(v) of COIDA unconstitutional. The Court also ruled that the order should have immediate and retrospective effect from 27 April 1994, the day that the interim Constitution came into effect.



A law or part of a law is unconstitutional if it is not in line with the Constitution of South Africa.

The Constitution is the supreme law of the land, and it sets out the rights and duties of the people living in South Africa.

WHAT DOES THE CONSTITUTIONAL COURT JUDGMENT MEAN FOR DOMESTIC WORKERS?

Domestic workers are covered by COIDA from the day that the judgment was handed down. They can submit claims should they become ill, are injured, disabled or killed as a result of a workplace accident or a work-related disease. It also means that those domestic workers who suffered work-related injuries, diseases or death from 27 April 1994 are also able to submit their claims.

The Department of Employment and Labour issued a statement welcoming the judgment by the Constitutional Court and have already begun the process to amend COIDA to include domestic workers. Given that employers of domestic workers would need to contribute to the Compensation Fund, the Department stated that it will issue a directive on the matter as well as how the Department will deal with the retrospective aspect.

For updates and announcements about the inclusion of domestic workers in COIDA visit the Department of Employment and Labour's media desk.

For information about how employers can register and make payments into the Compensation Fund and the claiming process for workers, visit the Department of Employment and Labour's guidelines on [Compensation for Occupational Injuries and Diseases](#). Please note that this information might be outdated.

For more information about domestic workers' rights in South Africa, download the [Domestic Workers' Rights: A Legal and Practical Guide](#) developed by the Socio-Economic Rights Institute of South Africa (SERI).

For SERI Legal advice contact 011 356 5860 or email info@seri-sa.org

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