

Kontak die LWO / Contact the LWO

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24 Jaar/Years 1990-2014 FOKUS | FOCUS



LWO Fokus / Focus
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Nuusbrief van die LWO Werkgeversorganisasie

Newsletter of the LWO Employers Organisation

Workmanship Compensation Fund - your responsibilities?

By Elmien Wehncke

The LWO and Corporate Industrial Risk Consultants (CIRC) have entered into a collaboration agreement to assist LWO members with regards to the Workmanship Compensation Fund and injuries on duty.



WHO MUST REGISTER AT THE COMPENSATION FUND?

According to the Compensation for Occupational Injuries and Diseases Act, Act 130 of 1993 (COIDA), anyone who employs one or more employees must register with the Compensation Fund and pay the annual assessment fees. A separate registration is necessary for each separate branch of a business, unless an arrangement for combined registration has been made.

BENEFITS OF REGISTRATION

Employers are protected against civil claims if an employee is injured on duty. An employee who is injured on duty can claim compensation for temporary or permanent disablement.

DOES THIS ACT APPLY TO MY EMPLOYEES?

COIDA applies to:

- all employers; and
- casual and full-time employees who, as a result of a workplace accident or work-related disease are injured, disabled, killed or become ill.

COIDA excludes:

- employees who are totally or partially disabled for less than 3 days;
- domestic employees;
- anyone receiving military training;
- members of the South African National Defence Force, or the South African Police Service;
- any employee guilty of willful misconduct, unless they are seriously disabled or killed;
- anyone employed outside the RSA for 12 or more continuous months; and
- employees working mainly outside the RSA and only temporarily employed in the RSA.

WHO IS AN EMPLOYEE?

Any person, who has entered into a contract of service with an employer, is regarded as an employee. The employment contract can be in writing, orally, expressed or implied and applies to temporary and permanent employees and is defined in Section 1 of this Act. Foreign employees are also included in this Act, if they are in possession of a valid worker's permit and legal documentation of residence in South Africa. Temporary/Casual employees employed for the purpose of the business are also covered.

HOW DOES CIRC ASSIST EMPLOYERS AND EMPLOYEES?

CIRC was established to assist employers and employees with their obligations in terms of the COIDA. CIRC operates in a market where the need for discretion, integrity and absolute confidentiality are of paramount importance. The quality of and need for CIRC's services has resulted in a client base of more than 700 employers. CIRC's aim is to

Wie is die LWO?

Die LWO is gedurende 1990 as werkgewersorganisasie tot stand gebring, ten einde werkgewers binne die Suid-Afrikaanse besigheidsgemeenskap te bedien met regsdiens, asook verwante dienste op die gebied van Arbeidsreg. Die LWO is 'n nie-winsgewende ledeorganisasie en word bestuur deur 'n Raad wat uit lede bestaan. Die LWO beskik oor die nodige infrastruktuur waardeur lede effektief op 'n nasionale basis bedien kan word.

Die doel van die LWO

Die LWO het ten doel om die werkgewersorganisasie van voorkeur te wees vir werkgewers op 'n nasionale basis, gegrond op die professionele en effektiewe wyse waarop lede van die LWO met regsdiens, asook verwante dienste op die gebied van die Arbeidsreg, bedien word.

Who is the LWO?

The LWO was established during 1990 as an employers organisation in order for employers to be provided with legal services within the field of the Labour Law. The LWO is a non-profitable members organisation and is managed by a board consisting of members. The LWO has the necessary infrastructure through which members can be served effectively on a national basis.

The purpose/goal of the LWO

The LWO aims to be the employers organisation of choice for employers on a national basis, based on a professional and effective manner in which members of the LWO can be served with legal services as well as services related to the Labour Law.

provide LWO members with a one-stop service regarding the administration of their Injury on Duty claims and ensure that all statutory requirements are met in a cost-effective manner.

LETTER OF GOOD STANDING

All employers should be in possession of a letter of good standing - issued to the employer who meets the criteria of a fully paid assessment or installment arrangement. The employer is regarded to be in good standing when registered with the fund, for annual returns submitted on time, fully paid assessments and accidents reported timeously. CIRC can assist in the procedure of obtaining a Letter of Good standing.

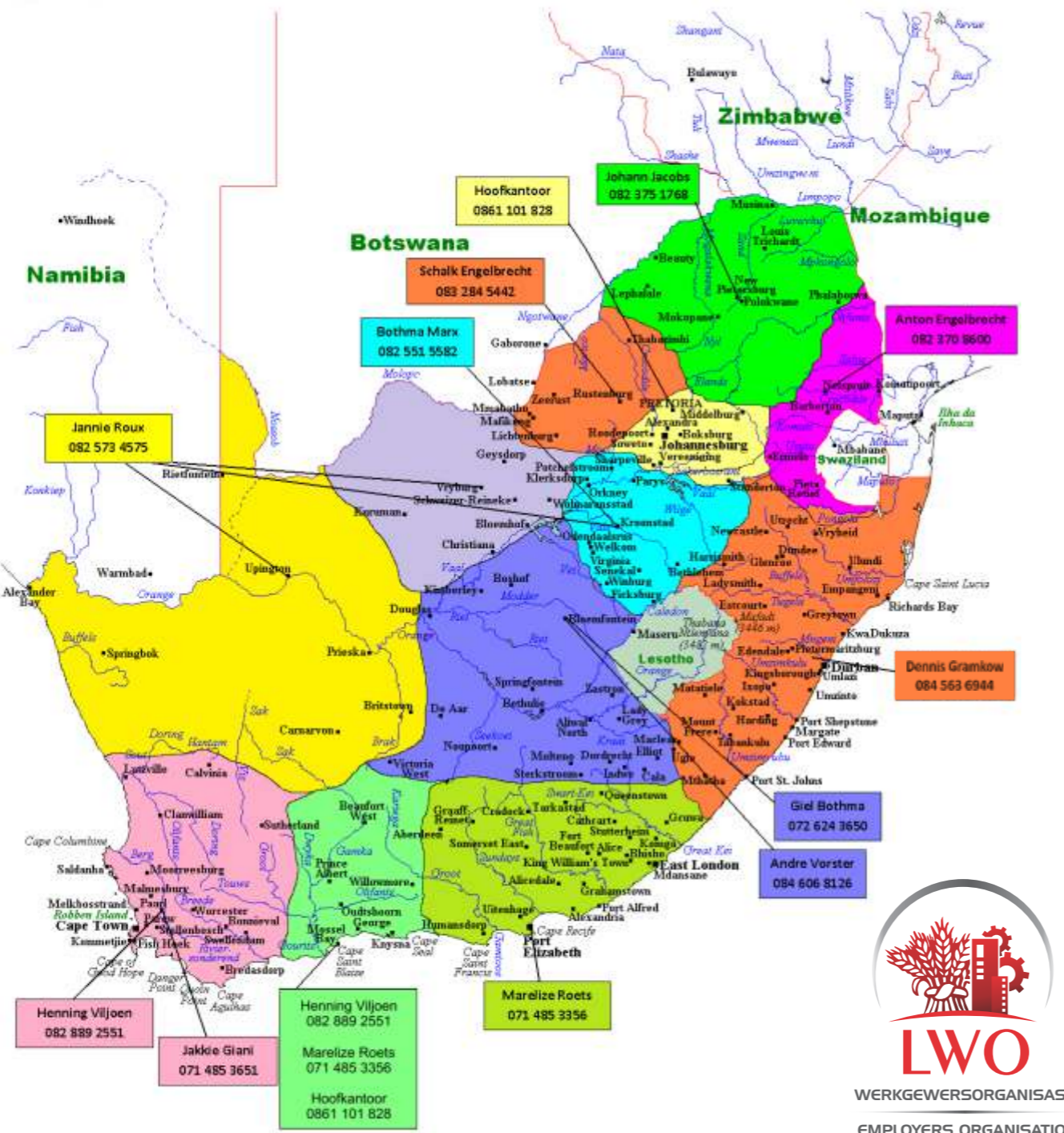
ASSESSMENT MANAGEMENT

The eventual assessment payable in terms of Workman's Compensation is based on the payroll. If this is not set up correctly, it will result in overpayments. CIRC's services include, amongst other, production of quarterly reports as well as the completion and submission of annual returns. At year-end CIRC ensures that all statutory employer and employee requirements are met.

CLAIMS MANAGEMENT SOLUTIONS

CIRC provides a solution with regards to the administration and management of COIDA claims from start to finish. Depending on the number of accidents, one or more claim administrators are dedicated to a specific client. These administrators ensure that all valid expenditure incurred by the employer is recovered from the Commissioner. We have found that a large portion of employers are unsure as to what they may claim and in fact end up never recovering their costs.

You are welcome to visit their website or contact them for more information at 012 346 8100 | www.circ.co.za



Dit is weereens daardie tyd van die jaar en die LWO Werkgeversorganisasie herinner aangewese werkgewers (wie aan die minimum vereistes voldoen) graag daaraan dat Billike Werksgeleentehede ("Employment Equity") verslae 'n wetlike verpligting is volgens Artikel 21 van die Wet op Billike Werksgeleentehede, Wet 55 van 1998.

WETSWYSIGINGS

Die wysigings aan die Wet op Billike Werksgeleentehede het op 1 Augustus 2014 in werking getree. Hierdie wysigings affekteer hoofsaaklik *wie* gesien word as 'n aangewese werkgewer, asook *hoe gereeld* verslae ingedien moet word by die Departement van Arbeid.

DIE INDIENINGSDATUMS IS SOOS VOLG:

- 1 September 2014 tot 1 Oktober 2014 vir per hand indiening by u naaste Departement van Arbeid-kantoor; of
- 1 September 2014 tot Donderdag, 15 Januarie 2015 vir elektroniese indiening.

HOE GEREELD MOET DIE VERSLAE INGEDIEN WORD?

Een van die baie belangrike wysigings wat vanaf 1 Augustus 2014 in werking getree het, bepaal dat dit nie meer saak maak hoeveel werknemers 'n aangewese werkgewer in diens het nie, maar dat alle aangewese werkgewers die verslae elke jaar moet indien. Dus word daar nie meer onderskeid getref tussen aangewese werkgewers met minder, of meer as 150 werknemers nie.

ISU 'N AANGEWESSE WERKGEWER?

Die minimum vereistes is soos volg:

- ① Werkgewers wie 50 of meer werknemers in diens het; en/of
- ② Werkgewers wie minder as 50 werknemers het, maar ten minste 'n jaarlikse omset het soos in die onderskeie sektore hieronder uiteengesit:
 - ➔ Landbou R6.0 miljoen
 - ➔ Mynbou & Steengroewe R22.5 miljoen
 - ➔ Vervaardiging R30.0 miljoen
 - ➔ Elektrisiteit, Gas en Water R30.0 miljoen
 - ➔ Konstruksie R15.0 miljoen
 - ➔ Kleinhandel & Motor Handel en Herstel Dienste R45.0 miljoen
 - ➔ Groothandel, Kommersiële Agente & Geallieerde Dienste R75.0 miljoen
 - ➔ Spysniering, Akkommodasie & ander Handel R15.0 miljoen
 - ➔ Vervoer, Stoor en Kommunikasie R30.0 miljoen
 - ➔ Finansies en Besigheids Dienste R30.0 miljoen
 - ➔ Gemeenskap, Spesiale en Persoonlike Dienste R15.0 miljoen

VIR WATTER TYDPERK MOET GERAPPORTEER WORD?

Die rapporteringsperiode vir die Billike Werksgeleentehede verslae is vasgestel as die tydperk van 1 Oktober 2013 tot 30 September 2014.

BILLIKE WERKSGELEENTHEDE PLAN

Volgens Artikel 20 van die Wet op Billike Werksgeleentehede moet elke aangewese werkgewer ook in besit wees van 'n Billike Werksgeleentehede plan. Die plan is geldig vir tussen 3 tot 5 jaar en moet op die perseel beskikbaar wees vir inspeksie.

NOTA: Indien u versoek dat die LWO u bystaan met die verwerk en opstel van hierdie verslae, het die LWO ook "Excel"-lyste saamgestel om dit vir werkgewers makliker te maak om die relevante inligting saam te stel vir verwerking / en voltooiing van die EEA2 en EEA4 verslae. Die lyste kan met graagte aan u gestuur word per e-pos of faks.

Vir meer inligting is u welkom om vir Elmari Lemmer direk te kontak by 0861 101 828 | 071 485 3531 | elmari@lwo.co.za



DIENS	PAKKET	KOSTE
Verslae (EEA2 & EEA4)	Verwerking, samestelling van inligting en indiening van verslae	R2,200.00
Billike Werksgeleentehede plan	<ul style="list-style-type: none"> • Opstel van Plan • 1 x Konsultasie - maksimum 2 ure (daarna R475.00 per uur) • 300 km gratis (daarna R3.00 per km ekstra) 	R2,000.00
Ekstra konsultasie	Enige addisionele konsultasies ter nakoming van die vereistes, soos gestel deur die Wet op Billike Werksgeleentehede wat lede op hul besigheidsperseel verlang	R475.00 per uur R4 per km

Alle kostes sluit BTW in

Die LWO het daarin geslaag om dieselfde tariewe te hef as gedurende 2013 vir die opstel van die EEA2 en EEA4 verslae asook die Billike Werksgeleentehede plan.

Up until 1 August 2014 unfair discrimination claims had to be adjudicated by the Labour Court, unless all parties to the dispute consented to the arbitration of the dispute at the CCMA. The amendment to Section 10 of the Employment Equity Act, Act 55 of 1998 (EEA) as amended in 2013 and which came into effect on 1 August 2014, now provides that an employee may refer a dispute to the CCMA for arbitration if:

- ① the employee alleges unfair discrimination on grounds of sexual harassment; or
- ② in respect of any other unfair discrimination, if the employee earns less than the earnings threshold, which is currently set at R205,433.30 per annum or R17,119.44 per month.



It now provides that:

- If unfair discrimination is alleged on a listed ground as in Section 6(1), the employer against whom the allegation is made must prove, on a balance of probabilities, that such discrimination did not occur as alleged or, if the discrimination did occur, that it is rational and fair or otherwise justifiable.
- However, if unfair discrimination is alleged based on an arbitrary ground, the employee must prove on a balance of probabilities that the conduct complained of is not rational and amounts to discrimination and that the discrimination is unfair.

An arbitrary ground will include, but is not limited to race, gender, sex, ethnic or social origin, colour, sexual orientation, age, language, marital status or family responsibility.

As a result, CCMA arbitrators will have to arbitrate discrimination disputes that were previously exclusively referred to the Labour Court.

Employers beware, this means that it is likely that more and more cases will be referred to the CCMA, since it is now easier and cheaper for employees to lodge these unfair discrimination cases.

Arbitration awards will, however, be subject to appeal (as opposed to review) to the Labour Court. Please note this is appeal, thus the normal rules of review as set out in Section 145 of the Labour Relations Act, Act 66 of 1995 does not apply.

It's also important to note that the EEA revised the burden of proof in unfair discrimination disputes to distinguish between discrimination on listed grounds, as compared to unfair discrimination disputes on 'arbitrary ground'.

Employers must also note that a new provision was inserted into the prohibition of unfair discrimination section of the EEA. This stipulates that a difference in terms and conditions of employment of employees at the same employer, who are performing the same or substantially the same work, or work of equal value, which is directly or indirectly based on any one or more of the grounds as listed in Section 6(1) of the EEA, will amount to unfair discrimination, unless the employer can show that differences in wages or other conditions of employment, are in fact based on fair criteria.

Examples of criteria that may be considered fair may include experience, skills and responsibility. The Minister of Labour may also prescribe a methodology for assessing work of equal value.

Please contact the LWO for more information at 0861 101 828.

Om te kontrakteer of nie...?

Daar word dikwels in die praktyk gevind dat werkgewers persone in diens neem op die basis, "kom ons kyk hoe dit gaan en dan kan ons later 'n formele diensooreenkoms onderteken". Die werkgewer se behoefte is dalk dringend om die pos te vul maar dit skep bepaalde risiko's om persone op dié lukrake wyse aan te stel. Die ideaal is om reg van die begin af die diensverhouding op skrif te stel en die terme en voorwaardes wat tussen die partye ooreengekom is, vas te stel.



Dit is belangrik om daarop te let dat sodra daar mondelings ooreengekom word dat die voornemende werknemer die betrekking gaan vul, daar 'n diensooreenkoms tot stand kom, ongeag of die persoon eers oor 'n week of 'n maand vanaf datum fisies gaan begin om te funksioneer (te werk) in die pos. Indien die werkgewer dus intussen van besluit verander, besluit om nie

die pos te vul nie, of hy kry dalk iemand anders wat meer geskik is vir die posisie, is die werkgewer reeds gebind aan die aanvanklike diensooreenkoms al was dit net mondelings aangegaan.

Voorts is dit eweneens baie belangrik dat die proeftydperk duidelik en skriftelik uitgespel word deur middel van vereistes, standarde en die werkgewer se reëls (alreeds by aanvang van die diensverhouding) aangesien geen eensydige wysigings later aan die diensooreenkoms gemaak kan word nie.

Werkgevers beskerm hulself nie genoeg in hierdie opsig nie en "kom ons kyk eers hoe dit gaan" kan u later berou. Die persoon wat voor u sit tydens die onderhoud en die werknemer is dikwels nie dieselfde persoon, of voldoen nie aan u aanvanklike verwagtinge nie. Dus is die onderhandelings tydens die onderhoud en die induksie / proeftydperk uiters belangrik en moet geensins afgeskeep word nie.

Die diensooreenkoms in die vorm van 'n volledige skriftelike kontrak by die besluit om 'n persoon aan te stel, kan dus nie genoeg beklemtoon word nie.

Kontak gerus die LWO vir advies by 0861 101 828.