

COVID-19 as an occupational disease?

To the Editor: The coronavirus disease 2019 (COVID-19) pandemic continues to intensify worldwide. South Africa (SA) reported its first three confirmed cases in the week starting 2 March 2020. It is suspected that cases of COVID-19 will spread rapidly, making it unlikely that any workplace will be spared from the outbreak. In the midst of the challenges that COVID-19 will present, the rights of workers must be upheld according to SA health and safety legislation.

Relevant legislation obligates employers 'to provide and maintain a workplace that is safe and without hazards/risks to health'.^[1] The Hazardous Biological Agents Regulations further stipulate that in workplaces where employees are likely to be exposed to hazardous biological agents (HBA), employers are required, among other things, to provide information and training, conduct a risk assessment, monitor exposure, conduct medical surveillance and control exposure to HBA.^[1] Employers should use these regulations to inform their strategies for protecting their workers.

With regard to employees who need to self-isolate, as recommended by the World Health Organization,^[2] the Basic Conditions of Employment Act No. 75 of 1997^[3] prohibits employers from deducting time absent from work as a result of an occupational disease from workers' ordinary sick leave allocation. Additionally, the Employment Equity Act No. 55 of 1998^[4] provides for fair labour practices in workplaces and prohibits discrimination on the basis of health.

A question that needs to be considered is whether, in certain circumstances, COVID-19 can be regarded as an occupational disease. Section 65 of the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993^[5] (COIDA) defines an occupational disease as 'a disease contracted by an employee that has arisen out of and during the course of employment'. Some occupations present an increased risk of exposure and infection with severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), the coronavirus responsible for COVID-19. One such occupation is healthcare. In the execution of their duties, healthcare workers will come into close contact with infected patients, particularly in facilities where the necessary precautions to prevent spread of the infection are lacking. Will healthcare workers who contract COVID-19 in the workplace qualify for compensation in terms of COIDA? Will it be fair to

expect medical aid funders to pay for the medical expenses related to the hospitalisation and clinical treatment of cases acquired in an occupational setting? Who should be responsible for the funeral costs of healthcare workers who succumb to the disease?

It is imperative that all stakeholders in workplaces, including management, workers and organised labour, understand their legal rights in terms of the legislation with regard to infectious disease outbreaks. It is equally essential that relevant state institutions such as the Department of Labour embark on a communication programme clearly outlining the department's position within the framework of the legislation. Consensus must be achieved to mount a response to COVID-19 that will ensure that workers' legal rights with regard to health and safety are upheld.

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