

Advice Skills



A guide for
NUMSA shopstewards



1996-1999

dear comrades

The NUMSA members in your factory have elected you as a shop steward until 1999. They have put their trust in you to represent them. This is the second booklet that we are writing so that you can:

- represent them better and
- help them with their day to day problems.

With this information you can also help your fellow comrades in your community to know their rights and to claim them.

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chapter

1



workers unfairly
dismissed
photo: William Matlala

Basics of Fair Dismissal

What counts as a dismissal?

Under the old LRA there was sometimes confusion about who could challenge unfair dismissal. For example, when a retrenched worker was refused re-employment when work became available, was this an unfair dismissal? The new LRA tries to solve these problems by defining dismissal very widely.

A dismissal takes place when :

- The employee's service is terminated by the employer (with or without notice).
- The employee had a reasonable expectation that the employer would renew a fixed term contract but the employer either did not or would only do so on worse terms and conditions.
- The employer refuses to allow a woman to resume work after maternity leave.
- An employer selectively re-employs workers.
- A constructive dismissal takes place. Constructive dismissal takes place when an employer does not dismiss the employee directly, but makes that employee's working situation impossible to tolerate, so that the employee walks out or resigns because of the pressure.

Justifiable Dismissals

The Act uses ILO standards to classify justifiable dismissals into three classes:

- Dismissal for misconduct
- Dismissal for incapacity (illness or poor work performance)
- Dismissal for operational reasons (retrenchment)

The principles from better decisions in the Industrial Court on unfair dismissal have been built into codes of good practice which can be changed by NEDLAC.

Dismissal for misconduct will only be fair if:

- The worker broke a rule at work.
- The rule was a fair and valid rule.
- The worker knew of the rule or should have known of it
- The employer applied the rule consistently.
- Dismissal is an appropriate step for breaking the rule.

Dismissal for incapacity, that is, poor work performance, or illness and injury, is not the same as misconduct.

Dismissal for poor work performance will only be fair if:

Before dismissing a worker for incapacity an employer has given the worker appropriate training and evaluation. The employer must investigate whether the problem cannot be solved without dismissing the worker.

Dismissal for illness or injury will only be fair if:

If illness causes temporary incapacity, the employer must consider ways of avoiding a dismissal. If the incapacity is permanent, the employer should try and find alternative work for the worker or adapt the work situation to accommodate that worker's problem. More effort is expected of the employer if the worker was injured or became ill at work.

Dismissal for operational reasons (retrenchment) will only be fair if :

An employer tried to reach agreement with workers in retrenchment discussions. Until recently, an employer was not expected to try to reach agreement with a union during retrenchment discussions. Now it is required that the employer must try to reach agreement with the union, or other body representing workers where there is no recognised union on:

- ways to avoid a retrenchment;
- ways to reduce the number of retrenched;
- ways to limit the harsh effects of retrenchment;
- ways of selecting workers; and
- severance pay.

To make these discussions more meaningful an employer must provide unions with all relevant information relating to the proposed retrenchment, and must state reasons for not agreeing to alternative proposals for retrenchment.

Minimum severance pay is guaranteed. Every employer must pay at least one week's wage for every year of completed service to retrenched workers. This does not prevent unions negotiating for more than this.

Fair and objective selection methods must be used, if these cannot be agreed upon.

Unjustifiable Dismissals (Invalid Reasons)

A dismissal can never be fair if the reason is invalid.

Some reasons for dismissal can never justify the dismissal. Such reasons are invalid reasons. If an employer dismisses a worker for an invalid reason, the dismissal is automatically unfair.

Examples of invalid reasons for dismissals are:

- participation in union activities
- participation in procedural strike activity
- refusing to perform the work of a person engaged in a legal strike or protest action
- pregnancy and related reasons
- arbitrary grounds such as race, age, religion, sex, sexual orientation, family responsibility, etc.
- disability.

Nevertheless -

- It is not unfair to retire someone at the normal or agreed retirement age for a certain job
- It might not be unfair to dismiss a person on an arbitrary ground if that arbitrary ground is directly related to the requirements of the job.

Example: In a religious institution where religious practice is closely bound up with working practice, it might be considered important that the employee subscribes to the same faith as the religious order that runs the institution. A change or loss of that faith might be grounds for dismissal.

Remedy for Unfair Dismissal

What happens if an arbitrator finds a dismissal unfair?

The employee must be reinstated as far as possible.

If reinstatement is not possible, the court can order -

- up to two year's wages for dismissal for invalid reasons.

- In the case of an employer not being able to justify the dismissal for valid reasons, up to one years' wage must be paid.

Notice and Fairness

Before the introduction of the unfair labour practice in 1979, the only requirement that an employer had to meet in order to dismiss an employee was to give the employee notice. Either the employer could require the employee to work the notice period or could pay her in lieu of notice. For certain forms of gross misconduct, no notice was even necessary.

To dismiss an employee on notice did not require any reason for the dismissal to be given by the employer. Apart from giving the notice in the proper manner, no procedure had to be followed before the dismissal could take place.

Under the new Labour Relations Act, a dismissal may be challenged even if proper notice is given. The challenge is on the basis of fairness, i.e. that all workers have a right not to be unfairly dismissed, as set out in the LRA.

This does not mean that notice has become irrelevant. Even if an employee is fairly dismissed she is still entitled to receive proper notice, unless the reason for the dismissal was one which was so serious that dismissal without notice would be justified (e.g. assault, gross insubordination, etc).

Warnings

When dealing with warnings, procedural requirements are less important. With warnings the legal issue mainly concerns the substantive fairness of the warning. Generally speaking, the higher the level of responsibility held by an individual, the weaker the requirement to issue warnings before more serious disciplinary action.

Suspension and Demotion

Suspension as a penalty cannot be without pay except with the consent of the employee.

Demotion also requires the consent of the employee because it involves a variation of terms and conditions of employment.

Demotion without consent may constitute an unfair labour practice if the new occupation is significantly inferior, relative to the employee's former status.

The Remains of the Unfair Labour Practice

There is no longer a general definition of an unfair labour practice as there was under the old LRA.

The effect of this is not easy to predict, but we can guess by looking at the type of cases that the court mostly dealt with under the old Unfair Labour Practice definition. The vast majority of these concerned dismissals.

Other disputes dealt with under the unfair labour practice concerned recognition, duty to bargain, and a few cases of unfair bargaining practices. It is the bargaining disputes that have no compulsory third party determination under the new Act. Under the new Act only advisory arbitration is required for such disputes as a step before striking.

Dismissal disputes are all covered by the codification of unfair dismissal principles. Areas of dispute that previously were not raised often under the old unfair labour practice may become more common - e.g. discrimination type disputes.

Most of the principles of fair labour practices have been included under the different rights in the new Act.

But there are still some unfair labour practices which have been spelled out separately in the Act. Some of these could be regarded as new unfair labour practices, but in theory they could have been raised under the old definition. However with the values in the constitution on issues like unfair discrimination, awareness of these claims might increase.

The unfair labour practices which are specified in the new Act are:

- unfair discrimination on grounds of race, sex, ethnicity, disability, religion, culture, marital status, etc.
- unfair policies on promotion, demotion and access to training and benefits
- unfair disciplinary action short of dismissal
- a failure to reinstate or re-employ an employee, under an agreement

Job applicants can also bring an unfair labour practice claim if they believe the employer has unfairly discriminated against them by not employing them for an arbitrary reason (e.g. religion, disability), or setting conditions which have the effect of discriminating against them unfairly.

Unfair discrimination claims may go to the Labour Court if unresolved by the conciliation phase. All other unfair labour practice claims can be referred to arbitration if unresolved by conciliation.

SOME ISSUES TO FIND OUT FOR YOURSELF :

- Can a contract worker challenge his dismissal if his fixed contract is not renewed?
- If a woman is refused a job interview because she does not agree to grant a sexual favour to the interviewing officer can she challenge this under the new LRA?
- An employer rejects an application for promotion from a worker when a vacancy occurs. Instead someone else is appointed. The worker believes that it is because of his race that he was not appointed, is there anything he can do?

Checklist of Substantial and Procedural Fairness for Misconduct

SUBSTANTIVE FAIRNESS

- What rule or standard is the worker charged with breaking ?
- Is the rule or standard a valid or reasonable one ?
- Was the worker aware of the rule, or should s/he have been aware of it ?
- Has the employer applied the rule consistently ?
- IF the worker was found guilty of breaking the rule or standard in this case, would it be appropriate to dismiss the worker for breaking the rule ?

PROCEDURAL FAIRNESS

The new LRA stresses that procedural unfairness will result, at most, in back pay. It also does not require employers to follow formal procedures unless they have agreed to them.

TEST FOR PROCEDURAL UNFAIRNESS BY ASKING :

- Did the chair of the enquiry conduct it without bias and without appearing biased?
- Did the worker have a reasonable chance to respond to the case against him/her?
- Were the charges against the worker understandable?
- Was the member given adequate time to prepare for the enquiry?
- Did the worker have an interpreter?
- Was the member aware of the right to call witnesses?
- Was the member allowed representation?
- Did the employer comply with the DISCIPLINARY PROCEDURE?
- Was the enquiry must be held reasonably soon after the event?
- Did the enquiry first consider the question of guilt before considering an appropriate penalty?

★ Remember to refer your dismissal case within 30 days!!!

SCHEDULE 8 of LRA

Code of Good Practice: Dismissal

1. Introduction

- (1) This code of good practice deals with some of the key aspects of dismissals for reasons related to conduct and capacity. It is intentionally general. Each case is unique, and departures from the norms established by this Code may be justified in proper circumstances. For example, the number of employees employed in an establishment may warrant a different approach.
- (2) This Act emphasises the primacy of collective agreements. This Code is not intended as a substitute for disciplinary codes and procedures where these are the subject of collective agreements, or the outcome of joint decision-making by an employer and a workplace forum.
- (3) The key principle in this Code is that employers and employees should treat one another with mutual respect. A premium is placed on both employment justice and the efficient operation of business. While employees should be protected from arbitrary action, employers are entitled to satisfactory conduct and work performance from their employees.

2. Fair reasons for dismissal

- (1) A dismissal is unfair if it is not effected for a fair reason and in accordance with a fair procedure, even if it complies with any notice period in a contract of employment or in legislation governing employment. Whether or not a dismissal is for a fair reason is determined by the facts of the case, and the appropriateness of dismissal as a penalty. Whether or not the procedure is fair is determined by referring to the guidelines set out below.
- (2) This Act recognises three grounds on which a termination of employment might be legitimate. These are: the conduct of the employee, the capacity of the employee, and the operational requirements of the employer's business.
- (3) This Act provides that a dismissal is automatically unfair if the reason for the dismissal is one that amounts to an infringement of the fundamental rights of employees and trade unions, or if the reason is one of those listed in section 187. The reasons include participation in a lawful strike, intended or actual pregnancy and acts of discrimination.
- (4) In cases where the dismissal is not automatically unfair, the employer must show that the reason for dismissal is a reason related to the employee's conduct or capacity, or is based on the operational requirements of the business. If the employer fails to do that, or fails to prove that the dismissal was effected in accordance with a fair procedure, the dismissal is unfair.

3. Misconduct

Disciplinary procedures prior to dismissal

- (1) All employers should adopt disciplinary rules that establish the standard of conduct required of their employees. The form and content of disciplinary rules will obviously vary according to the size and nature of the employer's business.
In general, a larger business will require a more formal approach to discipline. An employer's rules must create certainty and consistency in the application of discipline. This requires that the standards of conduct are clear and made available to employees in a manner that is easily understood. Some rules or standards may be so well established and known that it is not necessary to communicate them.
- (2) The courts have endorsed the concept of corrective or progressive discipline. This approach regards the purpose of discipline as a means for employees to know and understand what standards are required of them. Efforts should be made to correct employees' behaviour through a system of graduated disciplinary measures such as counselling and warnings.
- (3) Formal procedures do not have to be invoked every time a rule is broken or a standard is not met. Informal advice and correction is the best and most effective way for an employer to deal with minor

violations of work discipline. Repeated misconduct will warrant warnings, which themselves may be graded according to degrees of severity. More serious infringements or repeated misconduct may call for a final warning, or other action short of dismissal. Dismissal should be reserved for cases of serious misconduct or repeated offences.

Dismissals for misconduct

- (4) Generally, it is not appropriate to dismiss an employee for a first offence, except if the misconduct is serious and of such gravity that it makes a continued employment relationship intolerable. Examples of serious misconduct, subject to the rule that each case should be judged on its merits, are gross dishonesty or willful damage to the property of the employer, willful endangering of the safety of others, physical assault on the employer, a fellow employee, client or customer and gross insubordination. Whatever the merits of the case for dismissal might be, a dismissal will not be fair if it does not meet the requirements of section 188.
- (5) When deciding whether or not to impose the penalty of dismissal, the employer should in addition to the gravity of the misconduct consider factors such as the employee's circumstances (including length of service, previous disciplinary record and personal circumstances), the nature of the job and the circumstances of the infringement itself.
- (6) The employer should apply the penalty of dismissal consistently with the way in which it has been applied to the same and other employees in the past, and consistently as between two or more employees who participate in the misconduct under consideration.

4. Fair procedure

- (1) Normally, the employer should conduct an investigation to determine whether there are grounds for dismissal. This does not need to be a formal enquiry. The employer should notify the employee of the allegations using a form and language that the employee can reasonably understand. The employee should be allowed the opportunity to state a case in response to the allegations. The employee should be entitled to a reasonable time to prepare the response and to the assistance of a trade union representative or fellow employee. After the enquiry, the employer should communicate the decision taken, and preferably furnish the employee with written notification of that decision.
- (2) Discipline against a trade union representative or an employee who is an office-bearer or official of a trade union should not be instituted without first informing and consulting the trade union.
- (3) If the employee is dismissed, the employee should be given the reason for dismissal and reminded of any rights to refer the matter to a council with jurisdiction or to the Commission or to any dispute resolution procedures established in terms of a collective agreement.
- (4) In exceptional circumstances, if the employer cannot reasonably be expected to comply with these guidelines, the employer may dispense with pre-dismissal procedures.

5. Disciplinary records

Employers should keep records for each employee specifying the nature of any disciplinary transgressions, the actions taken by the employer and the reasons for the actions.

6. Dismissals and industrial action

- (1) Participation in a strike that does not comply with the provisions of Chapter IV is misconduct. However, like any other act of misconduct, it does not always deserve dismissal. The substantive fairness of dismissal in these circumstances must be determined in the light of the facts of the case, including :
 - (a) the seriousness of the contravention of this Act;
 - (b) attempts made to comply with this Act; and
 - (c) whether or not the strike was in response to unjustified conduct by the employer.

- (2) Prior to dismissal the employer should, at the earliest opportunity, contact a trade union official to discuss the course of action it intends to adopt. The employer should issue an ultimatum in clear and unambiguous terms that should state what is required of the employees and what sanction will be imposed if they do not comply with the ultimatum.
- The employees should be allowed sufficient time to reflect on the ultimatum and respond to it, either by complying with it or rejecting it. If the employer cannot reasonably be expected to extend these steps to the employees in question, the employer may dispense with them.

7. Guidelines in cases of dismissal for misconduct

Any person who is determining whether a dismissal for misconduct is unfair should consider-

- (a) whether or not the employee contravened a rule or standard regulating conduct in, or of relevance to, the workplace; and
- (b) if a rule or standard was contravened, whether or not-
 - (i) the rule was a valid or reasonable rule or standard;
 - (ii) the employee was aware, or could reasonably be expected to have been aware, of the rule or standard;
 - (iii) the rule or standard has been consistently applied by the employer; and
 - (iv) dismissal was an appropriate sanction for the contravention of the rule or standard.

8. Incapacity: Poor work performance

- (1) A newly hired employee may be placed on probation for a period that is reasonable given the circumstances of the job. The period should be determined by the nature of the job, and the time it takes to determine the employee's suitability for continued employment. When appropriate, an employer should give an employee whatever evaluation, instruction, training, guidance or counselling the employee requires to render satisfactory service. Dismissal during the probationary period should be preceded by an opportunity for the employee to state a case in response and to be assisted by a trade union representative or fellow employee.
- (2) After probation, an employee should not be dismissed for unsatisfactory performance unless the employer has-
 - (a) given the employee appropriate evaluation, instruction, training, guidance or counselling; and
 - (b) after a reasonable period of time for improvement, the employee continues to perform unsatisfactorily.
- (3) The procedure leading to dismissal should include an investigation to establish the reasons for the unsatisfactory performance and the employer should consider other ways, short of dismissal, to remedy the matter.
- (4) In the process, the employee should have the right to be heard and to be assisted by a trade union representative or a fellow employee.

9. Guidelines in cases of dismissal for poor work performance

Any person determining whether a dismissal for poor work performance is unfair should consider

- (a) whether or not the employee failed to meet a performance standard; and
- (b) if the employee did not meet a required performance standard whether or not :
 - (i) the employee was aware, or could reasonably be expected to have been aware, of the required performance standard;
 - (ii) the employee was given a fair opportunity to meet the required performance standard; and
 - (iii) dismissal was an appropriate sanction for not meeting the required performance standard.

10. Incapacity: Ill health or injury

- (1) Incapacity on the grounds of ill health or injury may be temporary or permanent. If an employee is temporarily unable to work in these circumstances, the employer should investigate the extent of the incapacity or the injury. If the employee is likely to be absent for a time that is unreasonably long in the circumstances, the employer should investigate all the possible alternatives short of dismissal. When alternatives are considered, relevant factors might include the nature of the job, the period of absence, the seriousness of the illness or injury and the possibility of securing a temporary replacement for the ill or injured employee. In cases of permanent incapacity, the employer should ascertain the possibility of securing alternative employment, or adapting the duties or work circumstances of the employee to accommodate the employee's disability.
- (2) In the process of the investigation referred to in subsection (1) the employee should be allowed the opportunity to state a case in response and to be assisted by a trade union representative or fellow employee.
- (3) The degree of incapacity is relevant to the fairness of any dismissal. The cause of the incapacity may also be relevant. In the case of certain kinds of incapacity, for example alcoholism or drug abuse, counselling and rehabilitation may be appropriate steps for an employer to consider.
- (4) Particular consideration should be given to employees who are injured at work or who are incapacitated by work-related illness. The courts have indicated that the duty on the employer to accommodate the incapacity of the employee is more onerous in these circumstances.

11. Guidelines in cases of dismissal arising from ill health or injury

Any person determining whether a dismissal arising from ill health or injury is unfair should consider :

- (a) whether or not the employee is capable of performing the work; and
- (b) if the employee is not capable :
 - (i) the extent to which the employee is able to perform the work;
 - (ii) the extent to which the employee's work circumstances might be adapted to accommodate disability, or, where this is not possible, the extent to which the employee's duties might be adapted; and
 - (iii) the availability of any suitable alternative work.

Points to remember when taking a statement

It is important to have a good grasp of what actually happened before you go to a hearing or to negotiate over a dismissal. It is common sense that it is better to have information when you deal with management on the issue. Without information you will have no idea what kind of defence you will have to make or whether the worker has a good chance of getting off the charges.

To defend a worker as best as possible, it is necessary to know as much as possible. If you do not take a full statement, it just means that you will be unprepared for the management version of events.

For this reason, you should question the member vigorously about what happened. Explain to the member that:

- s/he will have to be able to answer the same difficult questions at the enquiry or in court and there is no advantage to avoiding them at the preparation stage; and
- Your job of defending the member will be made more difficult the less correct your information is.

Don't make up a story. You will find it hard to stand up to questioning: you cannot prepare for every possible question and witnesses get their stories mixed up.

You should check whether the worker (or shop steward or organiser) has the following documents:

- past disciplinary warnings
- charge sheet or notice to attend a disciplinary hearing
- minutes of the disciplinary hearing
- minutes of the appeal hearing
- copy of the company disciplinary code or procedure or policy
- letter of appointment/contract of employment
- letter stating reasons for dismissal

If not, you could write to the company and ask for them.

If you find the worker was dismissed without a hearing, you could write to the company and ask for same documents listed above.

After reading the statement look at the questions in the box below and go back to any points that don't seem to make sense.

CHECKING A STATEMENT AFTER TAKING IT

- WHAT ARE THE CHARGES AGAINST THE WORKER?
- WHEN (Day/time/shift) did the incident/s take place?
- WHERE did the incident/s take place?
- WHO was INVOLVED in the incident/s and what did they say or do?
- WHO was PRESENT who saw/heard what happened but was not involved?
- Is the SEQUENCE of events at each separate incident clear?
- Is it obvious from the description of the incidents, why the persons involved behaved as they did? If not, what is the explanation for the way they behaved? If the explanation does not make sense, you ask more questions.
If the explanation is 'victimisation' are there any other events or statements by the company which would support this?
- Does the charge against the member fit the incident/s described ?
If not, then either the case against the member is weak or you have not got a full account of what happened. Question the member on the difference between the charge and the account given, and on any inconsistent parts of the member's account. Speak to the shop steward or other witness if possible and ask them what happened.

There are additional details which do not usually relate to the fairness of the dismissal but which should be sorted out when the worker is at the office. These are in a checklist below:

ADDITIONAL QUESTIONS TO CHECK WHEN A WORKER IS DISMISSED

- Did the worker receive NOTICE PAY, HOLIDAY PAY, and WAGES owing?
- If there is an annual bonus at the firm is the worker entitled to part of it if s/he leaves during the year?
- Was the worker given a UIF card?
- Did the worker fill in any Pension/Provident Fund application form when s/he left the company?

NOTE: Accepting payment of these amounts does not mean that the worker is accepting that his/her dismissal is fair.

To emphasise this point, the worker can always acknowledge payment of such monies by writing above his/her signature:

"Accepted without prejudice to any claim I might have against the employer arising out of my dismissal."

Statement Taking In Misconduct Cases

First:

- Allow the member to tell the story without interruption.
- Listen carefully and make a mental note of things you want to come back to.
- Clarify points that you are not sure of.

Then:

- Start from the beginning of the story
- Take notes in point form
- Follow the order in which things happened.
- Separate what happened from why it happened.
- Ignore speculation.
- The member must clear up all uncertainties this time.
- Get certainty on times, dates and places of events and who was present.

Testing the Story

- At the end, think of all the questions the employer might ask in the enquiry and put these to the member.
- Does the story sound believable? If you have doubts about parts of the story, question the member further. If you do not do this you may be surprised at the enquiry by other evidence that makes the member's version even more doubtful.
- Have you covered all the issues that are important to establish if a dismissal will be fair or not? (See checklists on substantive and procedural fairness)

Building the Case

- Do you have all the information necessary to answer the basic questions set out in the applicable section of the Code?
- Who can be called as witnesses by either side? Are you going to call any? If so, have you made arrangements for them to attend the enquiry?

Details you must be sure to get -

- ANY DOCUMENTATION THE MEMBER HAS on the matter.
- Can you contact the member easily?
- Details of the length of service, wage and occupation of the member.

The steps to follow for different disputes:

Step 1	Step 2	Step 3
1. Freedom of Association	Conciliation by CCMA, SC or BC	Adjudication by Labour Court
2. Rights of entry to the workplace, meetings, stop orders and leave for office bearers	Conciliation by CCMA	Arbitration by CCMA only
3. Disclosure of information for collective bargaining and consultation	Conciliation by CCMA	Arbitration by CCMA
4. Interpreting collective agreements	Conciliation by CCMA	Arbitration by CCMA
5a. Interpreting closed shop or agency shop agreements	Arbitration by CCMA only	
5b. Appeals against CCMA arbitrators on closed shop or agency shop funds	Adjudication by Labour Court	
6. Interpreting and applying organisational rights	Arbitration by CCMA	
7. Admitting a union to a closed shop agreement	Conciliation by CCMA	Adjudication by Labour Court
8. Interpreting or applying a SC ruling	Conciliation by CCMA	Arbitration by CCMA
9. Employers refusing to admit a registered union to council	Adjudication by Labour Court	Notice of strike
10a. Issues that can go to a protected strike, for example, a demand for higher wages	Conciliation by CCMA	Notice of lock-out
10b. Issues that can go to a lock-out by employers	Conciliation by CCMA	
11. Refusal to bargain	Conciliation by CCMA, SC or BC	Advisory arbitration, or possible legal strike
12. Court interdicts on strikes, lockouts and protest action	Adjudication by Labour Court	
13a. Working out picketing rules	Arbitration by CCMA	
13b. Getting picketing rights	Adjudication by Labour Court	
14a. What is an emergency service?	Conciliation by CCMA or adjudication by Essential Service Committee	
14b. Settling an interest dispute in an emergency service	Conciliation by CCMA, SC or BC	Arbitration by CCMA

Step 1	Step 2	Step 3
15. No agreement on the Constitution of the Workplace Forum	Conciliation by CCMA	Arbitration by CCMA
16. Change in rules of social benefits	Adjudication by Labour Court	
17. Disclosing information to the Workplace Forum	Conciliation by CCMA	Arbitration by CCMA
18. Reviewing arbitration awards of Commission	Adjudication by Labour Court	
19. Automatically unfair dismissals eg. victimisation	Conciliation by CCMA, SC or BC	Adjudication by Labour Court
20. Dismissals for misconduct, incapacity or unknown reason	Conciliation by CCMA, SC or BC	Arbitration by Council or CCMA
21. Dismissals for operational reasons (retrenchments) or strikes	Conciliation by CCMA, SC or BC	Adjudication by Labour Court
22. Severance pay	Conciliation by CCMA, SC or BC	Arbitration by Council or CCMA
23. Unfair disciplinary action	Conciliation by CCMA, SC or BC	Arbitration by Council or CCMA
24. Employer failing to re-employ a worker after an agreement	Conciliation by CCMA, SC or BC	Arbitration by Council or CCMA
25. Unfair discrimination against a worker	Conciliation by CCMA, SC or BC	Adjudication by Labour Court

Dismissals summary

Dismissal for:	Will only be fair if:
misconduct	<ul style="list-style-type: none"> the worker broke a rule that the worker knew of, other workers had been fired for breaking the same rule
poor work performance	<ul style="list-style-type: none"> The employer has trained the worker The employer has tried to solve the problem before firing the worker
illness or injury	<ul style="list-style-type: none"> the employer has tried to avoid dismissing a worker who is temporarily ill the employer has tried to find alternative work for a worker who can't do their old job anymore if the worker was injured at work, the employer must make extra effort to do this.
operational reasons (retrenchment)	<p>the employer has:</p> <ul style="list-style-type: none"> tried to find ways of avoiding retrenchment tried to cut down on numbers to be retrenched tried to limit the effects of retrenchment negotiated with the union on who to select and the severance pay

Unfair Dismissals

You cannot be fired for:

- taking part in union activities
- taking part in legal strikes
- refusing to do the work of someone who is on a legal strike/protest
- your race, age, religion, sex,
- a disability



unemployed people
photo: William Matlala

Unemployment Insurance Fund

1. Who is covered?

Apart from domestic and casual workers, most other workers are covered by the Unemployment Insurance Fund unless they earn in the region of R1335 a week, or more than R69 420-00 a year (the Act looks at annual earnings). These amounts are amended from time to time.

At present a casual worker is defined in the Basic Conditions of Employment Act as a worker who works for not more than three days in a week (except for domestic workers). This Act is to be replaced by the new Employment Standards Act, now on its way to Parliament.

2. Who is entitled to claim?

- Workers with 13 weeks (91 days) of employment in the last 12 months. In the case of adoption benefits, the minimum is 18 weeks.
- Dependents of such workers where the worker died while still employed (one claim).

3. Who contributes?

Every worker covered by the Fund is expected to pay 1% of their wages in contributions towards the Fund, and their employer is expected to contribute an equal amount of 1% of each worker's wages. This amount varies from time to time.

The contributions are made through deductions, sent to the Fund monthly by employers. Employers are supposed to include all workers not specifically excluded from the Fund, as from the month they are employed, in the monthly record sheet sent to the Fund. Parliament also subsidises the Fund.

4. What benefits are payable?

Maternity benefits: 45 % of wages, provided the employer is not paying more than 33 % (1/3) of the worker's wages during this period.

Illness benefits: 45 % of wages after more than two weeks' illness, provided the employer is not paying more than 33 % (1/3) of the wages.

Dependant's benefits: Normal unemployment benefit paid as a lump sum to one dependant of the worker that has died.

Unemployment benefits: Workers who have lost their job, including pensioners willing to work.

Adoption benefit: A female UNEMPLOYED worker adopting a child under two years of age.

5. What Is the maximum payable?

The fund pays benefits for up to six months (26 weeks). To obtain the maximum benefit, the worker must have worked for three years.

Benefits are paid at a rate of one week's benefit for every six weeks worked.

The fund has a discretion to extend the benefit period, if workers make application for such an extension, using form UF139.

Calculating UIF Benefits:

Total benefit due = $\frac{(\text{Number of weeks employment}) \times (\text{weekly wage} \times 0,45)}{6}$

6. How to make a claim

6.1 Maternity Benefits

Maternity benefits are usually posted to the worker. So it is important to make sure the worker provides a reliable postal address.

Two situations usually arise - see A and B below:

A. WHERE THE WORKER APPLIES FOR BENEFITS BEFORE THE BIRTH OF THE CHILD.

The worker will need :

- BLUE CARD (Contributor's Record Card).
- A form called **UF 92** with paragraph 14 completed by a doctor.

The worker may also be asked to make a declaration in the form of UF 93 for the pre-natal period. After the child's birth, the worker must get UF 94 completed by the doctor/midwife.

[Sometimes the Department of Labour will accept a statement in the form of UF 95 together with the birth certificate instead of UF 94.]

B. THE WORKER APPLIES FOR BENEFITS AFTER THE DATE OF THE CHILD'S BIRTH:

The worker will need :

- BLUE CARD (Contributor's Record Card).
- UF 92 .
- UF 94 completed by the midwife/doctor.

6.2 Unemployment Benefits

STEP 1 Collect the completed blue card (Contributor's Card) from the company.
If there is no card the employer should give the worker a letter to take to the Department to say that the card will be sent.

- STEP 2** Register as soon as possible at the nearest Department of Labour offices. Take identity (ID) document when registering.
- STEP 3** The worker must sign the register at the Department every two weeks. The department will give the worker a white check card in exchange for the blue card. The white check card must be signed by the UIF clerk at every visit. This is very important. The worker must return to sign the register on the dates given. The worker should not refuse work if it is offered by the department; and should go to those employers, to which s/he is referred for work, by the department.
- STEP 4** Collect the benefits personally. They cannot be posted like other benefits. Each time the worker is paid s/he will receive a slip which shows the amount of the payment and the period of the payment. It is important to keep these slips to see how much benefit is still outstanding.

6.3 Illness Benefits

NB- These will amount to 45 % of wages, and are payable only after more than two weeks' illness, and provided that the employer is not paying more than 33 % (1/3) of the worker's wages.

These benefits are also posted to the worker, so a reliable postal address is important.

- STEP 1** The worker must complete a form UF 86 which must also be completed by the worker's doctor. The UF 86 must be sent to the nearest Department of Labour.
- STEP 2** The Department of Labour will send the worker another form UF 87 which must also be completed by the doctor and returned to the Department.
- STEP 3** A cheque will be posted to the worker for the period claimed. No benefits are payable while the worker is still receiving sick pay from the employer. Also the worker will only receive benefits for the first two weeks of illness without pay, if the illness continues for longer than two weeks.

For example:

A worker is ill for five weeks. The employer pays the remaining sick pay of two weeks which the worker has to his/her credit. The fund will not pay for the third and fourth week of illness until the worker has entered the fifth week of illness. Then the fund calculates payment for the first two weeks when the worker did not receive sick pay, in a complicated way. The fund pays out two weeks benefit for the first two weeks if you are sick for a further two weeks thereafter. If you are only sick for one week thereafter, you will only get one week's benefit for the first two weeks. If you are only sick for three days more after the first two weeks, you will get paid benefit for three days and a further three days out of the first two weeks. In this case the worker will receive two weeks of benefits: one for first week (fifth week) after the two unpaid weeks (third and fourth weeks) and one week more.

If a worker has been ill for 4 weeks without sick pay from the employer the full benefits for all such unpaid illness will be paid.

- STEP 4** Where the ordinary benefits for illness are exhausted it is possible to claim additional benefits using UF 140, which must also be completed by a doctor.

6.4 Dependant's Benefits

These benefits are also posted to the worker, so a reliable postal address is important. These are benefits paid to one of the following dependants of a deceased contributor: either a widow or widower, or a child (including an adopted child) of the contributor who is under 17 years old, or anyone, in the discretion of the Fund, who was "wholly or mainly dependant ... for the necessities of life" on the contributor who died.

- STEP 1** The worker must complete a form UF 126 if the applicant is a widow or widower; or complete form UF 127 if the applicant is another dependant or someone applying on behalf of a dependant child. A number of records should be attached to these forms, as set out on the forms, which may include the contributor's Blue Card, a death certificate, and records of marriages and births. The deceased worker's employer should complete form UF 128. These forms and documents must be sent to the nearest Department of Labour. It is very important to keep copies of all these documents as the worker may need them for other purposes and if mislaid by the Department the worker may experience problems later. The claim must be made within three years of the death of the contributor.
- STEP 2** The Department of Labour may require the applicant to submit further information.
- STEP 3** A cheque will be posted to the worker for an amount equal to the amount which the deceased contributor would have received if s/he were still alive and unemployed.

6.5 Adoption Benefits

These benefits are also posted to the worker, so a reliable postal address is important. These are benefits paid for up to 26 weeks, to an unemployed women worker who legally adopts a child who is less than two years old, whether or not she is available for and capable of work.

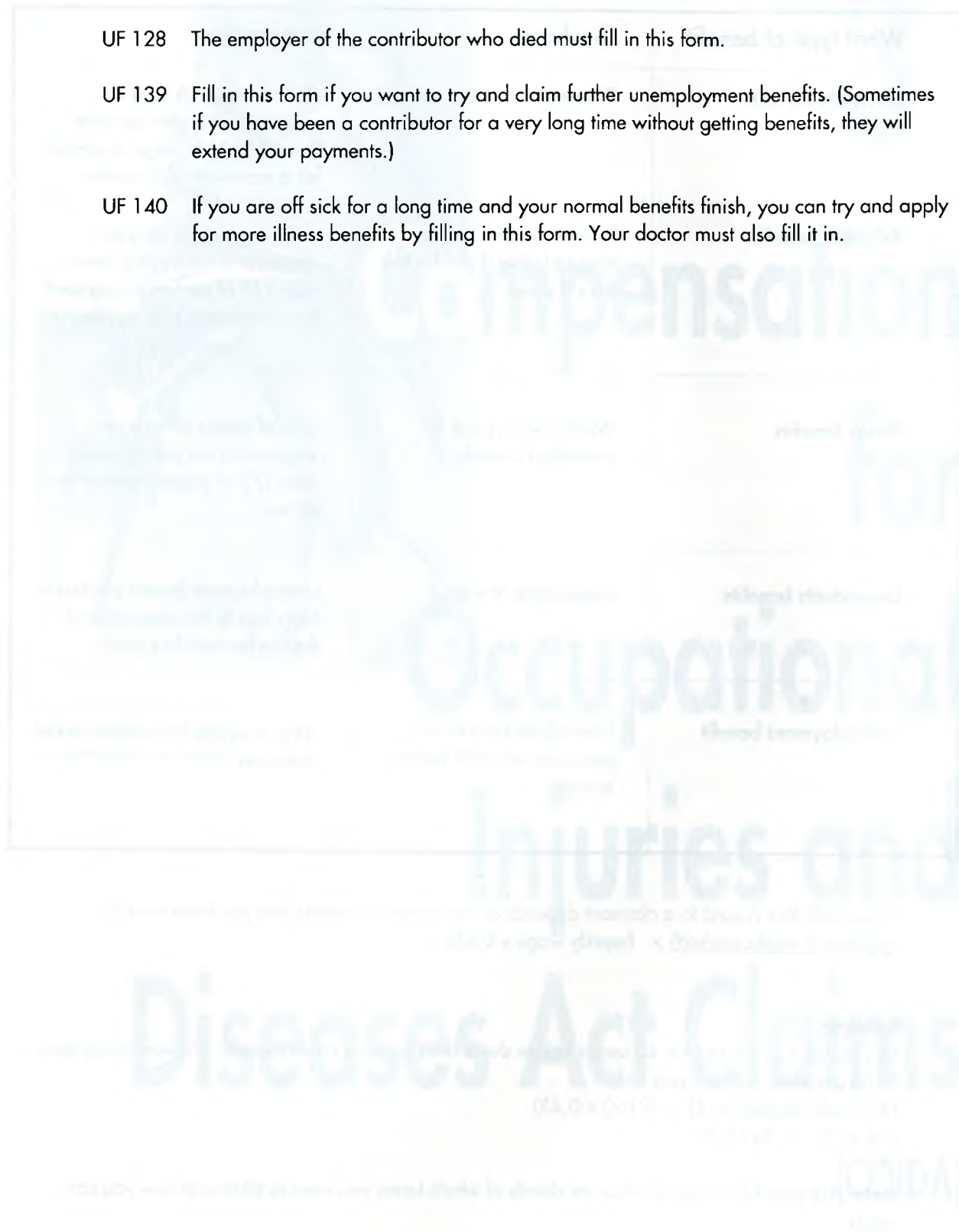
- STEP 1** The worker must complete a form UF 92A and include a copy of her Blue Card and a certified copy of the birth certificate of the child. These must be sent to the nearest Department of Labour. It is very important to keep copies of these documents.
- STEP 2** If a certified copy of the adoption order from the children's court is not yet available at the time of the application, this must be submitted as soon as it becomes available; as no benefits will be paid until the Department of Labour receives this.
- STEP 3** The Department of Labour may require the woman to come in at intervals and sign a check card to show that she is still unemployed.
- STEP 4** A cheque will be posted to the worker for an amount equal to the amount which the deceased contributor would have received if s/he were still alive and unemployed.

Forms

All the forms that are mentioned in this section are available in your local Numsa office. The following forms are for the following issues:

- UF 1 Your employer must sign and fill in this form to register you as a contributor when you already have a "blue card"
- UF 7 The UIF office must sign this when you hand in your UIF card (blue card) to get your contributions.
- UF 74 Your blue card.
- UF 85 The form that the employer must sign to register you as a new contributor so that you can get a blue card.
- UF 86 You must fill this in if you want to apply for illness benefits. Your doctor must also fill it in.
- UF 87 The Department of Labour will send you this form after you have applied for illness benefits. Your doctor must also fill it in.
- UF 92 You and your doctor must complete this before the birth of your child.
- UF 92A You must complete this form if you want to adopt a child and claim benefits.
- UF 94 After your child is born, you and your doctor must complete this form. (take it with you to hospital)
- UF 95 You must complete this form if this is the first time you are applying for maternity benefits, and your child is already born.
- UF 103 Fill in this form at the Department of Labour/magistrate's court in rural areas. You will have to sign this, and keep signing it every 2 weeks, if you want to claim unemployment benefits.
- UF 107 Application for a "blue card". If you have lost your card, or have never received one, you, or your Local Numsa office, or your employer must fill in this form.
- UF 123 Fill in this form if you want to claim unemployment benefits.
- UF 125 Your employer must sign this form if you are ill or on maternity leave and you want to claim benefits.
- UF 126 Fill in this form if you are a widow or widower of a contributor to UIF and you want to claim Dependant's benefits.

- UF 127 Fill in this form if you are a dependant of a contributor who has died and you want to claim dependant's benefits.
- UF 128 The employer of the contributor who died must fill in this form.
- UF 139 Fill in this form if you want to try and claim further unemployment benefits. (Sometimes if you have been a contributor for a very long time without getting benefits, they will extend your payments.)
- UF 140 If you are off sick for a long time and your normal benefits finish, you can try and apply for more illness benefits by filling in this form. Your doctor must also fill it in.



Summary of information on UIF

What type of benefit	To whom	How much
Maternity benefits	To mother of new born baby	45% of wages as long as employer is not paying more than 1/3 of her wage, payment for a maximum of 6 months
Adoption benefits	To unemployed mother of adopted child if child is less than 2 years	45% of wages as long as employer is not paying more than 1/3 of her wage, payment for a maximum of 6 months
Illness benefits	Worker who is sick for more than 2 weeks	45% of wages as long as employer is not paying more than 1/3 of wages for time he is off sick
Dependents benefits	Dependents of worker	Unemployment benefit paid as a lump sum to the dependent of the worker who has died
Unemployment benefit	Unemployed worker or pensioner who still wants to work	45% of wages for a maximum of 6 months

The benefit that is paid to a claimant depends on the number of weeks that you have worked:

$\frac{\text{(number of weeks worked)}}{6} \times (\text{weekly wage} \times 0,45)$

6

Example:

Mrs Gwala has worked for 40 weeks before she is fired by Joe's Panel beaters. She was being paid R160 per week. UIF will pay her:

$(40 \text{ weeks divided by } 6) \times (R160 \times 0,45)$

$6,6 \times 72 = R475,20$

Note: Ask your Numsa local office for details of which forms you need to fill in and how you can apply.



a worker injured at work
photo: William Matlala

chapter

3

Compensation for Occupational Injuries and Diseases Act Claims

(COIDA)

1. Who is covered?

When a worker is injured as a result of an accident at work, or ill as a result of a disease contracted at work, s/he will normally be entitled to compensation for reasonable medical expenses resulting from the accident and for the disability suffered. This includes casual workers and some support for dependants of injured/ill workers. (Some diseases caused by mining are compensated by the Mines and Diseases Act.).

It excludes members of the SANDF and the SAP, independent contractors and domestic workers.

2. Who is entitled to Claim?

The ill/disabled worker may claim compensation. If such a worker dies as a result of her/his illness or injury, this Act recognises claims from a wide category of possible dependants, including widows, widowers, children, relatives and others partly or wholly dependant on the deceased worker.

However the total claim of these dependants cannot exceed that amount which the individual worker would have been able to claim if s/he had still been alive.

3. Who contributes and how much?

These benefits are paid from the Compensation Fund established under the Compensation Fund Act. The director of the fund is known as the Compensation Commissioner.

Only employers contribute to this fund, unlike in the case of UIF. Employers pay an assessment levied by the Compensation Commissioner according to a tariff which relates to their employees' earnings.

4. What does the Fund pay for?

Compensation is paid for disablement arising out of an injury or an occupational disease or a disease contracted while working :

- **Temporary disability**

Here the worker eventually recovers totally but for a period may not be able to perform her duties properly (partial disability) or at all (total disability).

In the case of temporary disability payments are made for the period of the disability based on the worker's wage. These payments will not be greater than 75 % (3/4) of the employee's wage at the time of the accident.

- **Permanent disability**

In this case the worker never completely recovers (partial disability) or does not recover at all (total disability).

Permanent disability is normally paid out in the form of a lump sum. The lump sum is calculated using the seriousness of the disability and the employee's wage.

The seriousness of the disability is set out in the Schedule to the regulations contained at the end of these notes.

5. What about death?

Dependants of a deceased worker will be able to claim an amount not more than the deceased worker would have got for total disablement:

These dependants could include:

- A **widow or widower** can claim a lump sum of twice the amount which would have been payable as a monthly pension to the deceased worker if s/he had lived and been totally disabled, and 40% of the monthly pension to the deceased worker if s/he had lived and been totally disabled; (Here the Commissioner should recognise marriages under indigenous law and custom or a person with whom the deceased worker was living as a husband/wife)
- a **child under 18** years old can claim a pension of 20% monthly pension to the deceased worker if s/he had lived and been totally disabled;
- **children over 18 and unable to support themselves** can claim a similar 20% pension (see above);
- **other relatives** including parents, brothers and sisters, half-brothers and sisters, grandchildren, and grandparents, can claim a pension of up to 40% of the monthly pension to the deceased worker if s/he had lived and been totally disabled, **according to how dependant they were** on the worker who died;
- If there are no dependants set out above but only a parent or someone acting as a parent (in the view of the Commissioner) they can claim as a lump sum, a portion of R28 680, **according to how dependant they were** on the worker who died. (This amount will be amended from time to time).
- The fund may also pay a reasonable amount for funeral costs up to R5350 or less, if the costs were less. (This amount will be amended from time to time).

6. How much should your benefit be?

The formulas for calculating benefits are set out in the box below:

PERMANENT DISABLEMENT
Compensation depends on the degree of disablement and varies from a lump sum payment, to a life pension where disablement is total
LESS than 30 % disablement: (see schedule of "percentage disablement"): Compensation = $\frac{\% \text{ disablement}}{30} \times \text{monthly wage} \times 15$ Monthly wage = 4.33 x weekly wage (subject to an upper limit)
30 % disablement: Compensation = $(\% \text{ disablement}) \times \text{monthly wage} \times 15$
30 % to 99 % disablement: Compensation = MONTHLY PENSION for life MONTHLY PENSION = $\frac{\% \text{ disablement}}{100} \times 75\% \times \text{monthly wage}$
100 % disablement: Compensation = MONTHLY PENSION for life MONTHLY PENSION = 75 % x monthly wage.

TEMPORARY DISABLEMENT
Total disablement : Paid 75 % of monthly wage subject to an upper limit Partial disablement: Paid a portion of the total disablement rate determined by the commissioner. Must be paid at least monthly. Employer liable for 3/4 of the monthly wage in compensation instead of the worker's wages, for the first 3 months after the injury; Commissioner can order them to pay and the employer can later claim this money back from the Fund
Maximum period: 12 months but may be extended
Ends when worker returns to work or if disablement turns out to be permanent.

The worker may also make claims for medical expenses, or additional compensation. Her/his dependants may be able to claim if the worker dies.

7. Processing a claim

- STEP 1** The worker should be examined by a doctor as soon as possible if this has not already been done. The doctor must complete a report detailing the nature and extent of the injury for the purposes of completing paragraphs 1-9 of Annexure 15. This should be submitted to the Commissioner.
- STEP 2** Find out if the employer has reported the accident in the form of WCL 1 (Annexure 12) for diseases and WCL 2 (Annexure 13) for injuries. Workers may have copies of this. It should be possible to verify this from the Commissioner/employer. If not, the worker should be assisted to complete WCL 3 (Annexure 14) which should then be sent to the Commissioner. Once the employer knows of the accident s/he is under a duty to report it. The worker can also report it officially to the employer using Annexure 14.

OPEN A FILE to keep copies of all the documents and correspondence relating to the claim.

- STEP 3** Confirm where possible that the commissioner will pay for a particular course of medical treatment attended by the worker. This should be done in writing or the commissioner may refuse subsequently to pay the medical bills incurred.
The payments for medical expenses are determined by a tariff so s/he may incur additional costs if the doctor's fees are greater than the tariff.

The claim must be lodged within 12 months of the accident (exceptions are permitted as long as the accident was reported within 12 months after the date it occurred).

8. Can a worker still sue an employer for extra compensation arising from an accident?

The Act allows a worker to claim the compensation above without having to prove that the employer was to blame for the accident. In exchange for this "guarantee" of compensation without legal action, the Act prohibits legal action against the employer.

However, it is possible to apply for additional compensation over and above the amounts specified above, if you can prove that the employer (or persons in certain managerial positions) directly caused the accident through negligence or by failing to fix an obvious defect in the materials, machinery or premises of the company. You claim this using WG 30 within 24 months of the accident or (if good reasons) within 36 months.

9. When will the fund not pay compensation?

- If the injured worker is temporarily disabled for a period of three days or less, then the worker will not be compensated by the COIDA Fund.

- Any claim for an injury must be lodged within 12 months of the accident (exceptions are permitted as long as the accident was reported within 12 months after the date it occurred).
- No claim for an occupational disease will be paid if the claim is made more than 12 months after the diagnosis of the disease is reported.
- The Fund will not pay claims where the accident is as a result of the worker's own misconduct. However, if the worker is seriously disabled or dies in the accident, then the Fund will still pay compensation.

10. Objections to decisions of the commissioner

Objections to decisions must be made within 90 days of the decision. You can use WG 29.

11. Constant helper

You can claim money to pay a constant helper, in addition to any other claim, if the Commissioner agrees you need one.

12. Pressing need

The Commissioner may advance money to an applicant.

13. First Aid and transport to doctor/hospital

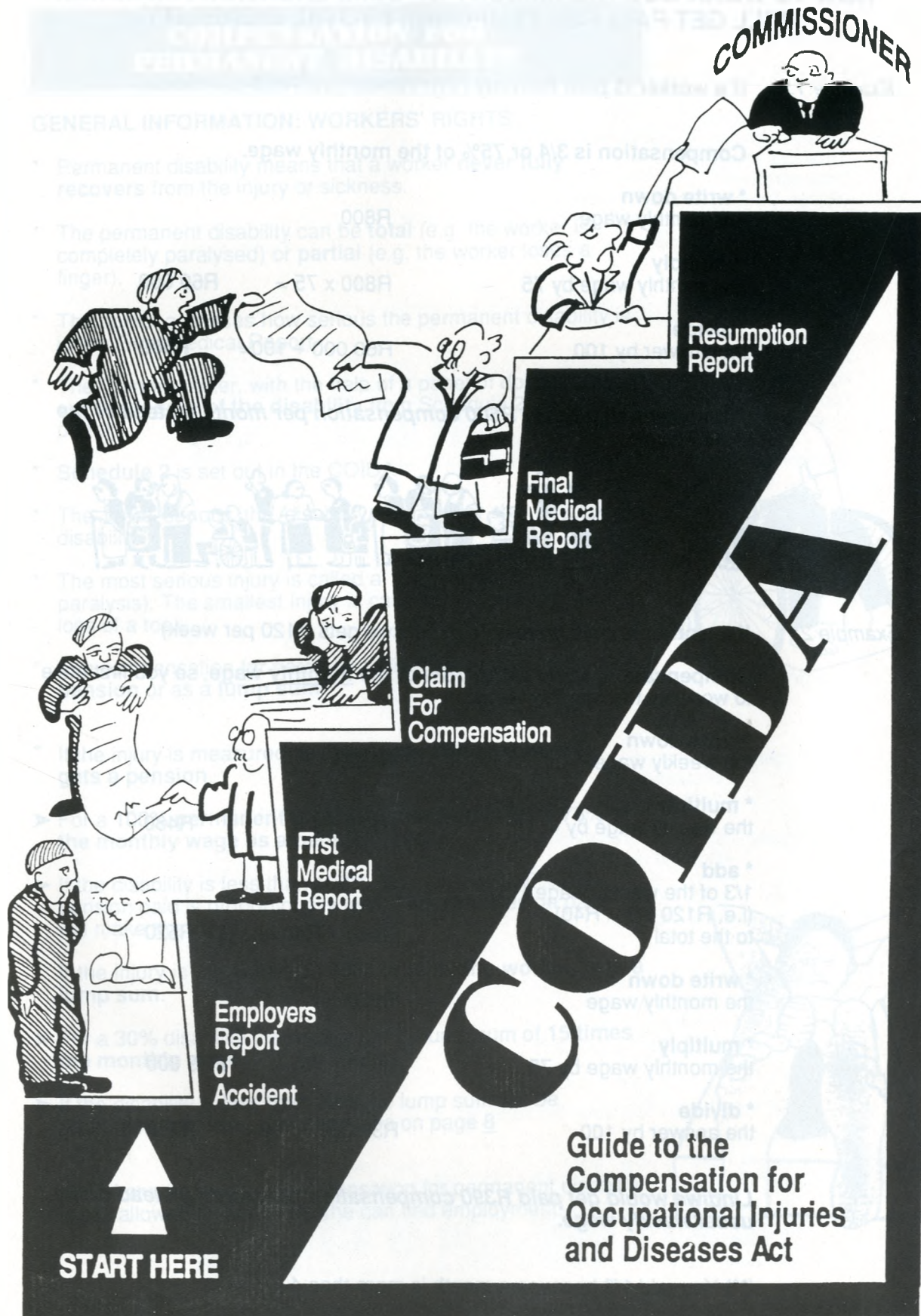
The employer is liable for this and they can claim compensation from the Fund.

14. Medical Aid

The Commissioner or the employer may be liable for reasonable costs of medical aid for up to two years after an accident. The employer may not deduct this from the worker's wages.

The next 24 pages are extracts from IHRG book on COIDA, for your own copywrite to:

IHRG
Protem No 1
UCT
Private Bag
Rondebosch 7700



HOW TO WORK OUT THE AMOUNT OF COMPENSATION A WORKER WILL GET PAID FOR TEMPORARY TOTAL DISABILITY.

Example 1: If a worker is paid monthly (e.g. Temba gets R800 per month)

Compensation is 3/4 or 75% of the monthly wage.

* write down the monthly wage	R800	
* multiply the monthly wage by 75	$R800 \times 75 =$	R60 000
* divide the answer by 100	$R60\ 000 \div 100 =$	R600

Temba would get paid R600 compensation per month instead of the R800 wage.



Example 2: If a worker is paid weekly (e.g. Lindiwe gets R120 per week)

Compensation is still 3/4 or 75% of the monthly wage, so you first have to work out the monthly wage.

* write down the weekly wage	R120	
* multiply the weekly wage by 4	$R120 \times 4 =$	R480
* add 1/3 of the weekly wage (**) (i.e. $R120 \div 3 = R40$) to the total	$R480 + R40 =$	R520
* write down the monthly wage	R520	
* multiply the monthly wage by 75	$R520 \times 75 =$	R39 000
* divide the answer by 100	$R39\ 000 \div 100 =$	R390

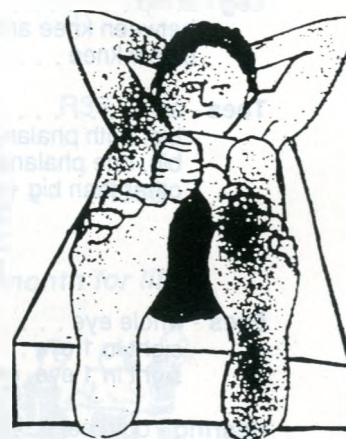
Lindiwe would get paid R390 compensation per month instead of the usual weekly wage.

(**) You add 1/3 because a month is more than 4 x 7 days.

COMPENSATION FOR PERMANENT DISABILITY

GENERAL INFORMATION: WORKERS' RIGHTS

- * Permanent disability means that a worker **never fully recovers** from the injury or sickness.
- * The permanent disability can be **total** (e.g. the worker is completely paralysed) or **partial** (e.g. the worker loses a finger).
- * The doctor assesses how serious the permanent disability is in the Final Medical Report.
- * The Commissioner, with the help of a panel of doctors, works out the **degree of the disability** from Schedule 2 (see next page).
- * **Schedule 2** is set out in the COIDA
- * The more serious the disability, the higher the percentage disability.
- * The most serious injury is called a 100% disability (e.g. total paralysis). The smallest injury is called a 1% disability (e.g. loss of a toe).
- * The compensation for permanent disability is paid either as a **pension** or as a **lump sum**.
- * If the injury is measured as **more than 30%**, the worker **gets a pension**.
- For a **100% permanent disability**, the worker gets **75% of the monthly wage as a pension for life**.
- If the disability is less than 100% but more than 30% the pension paid is proportionally less. The examples on page 7 will make this clear.
- * If the injury is measured as **30% or less**, the worker gets a **lump sum**.
- For a **30% disability** the worker gets a lump sum of **15 times the monthly wage**.
- If the disability is less than 30% the lump sum will be proportionately less. See examples on page 8
- * A worker who receives compensation for permanent disability is still allowed to work if he/she can find employment.



SCHEDULE 2

INJURY	Percentage of permanent disablement
Loss of two limbs	100
Loss of both hands or of all fingers and both thumbs	100
Total loss of sight	100
Total paralysis	100
Injuries resulting in being permanently bedridden	100
Any other injury causing permanent total disablement	100
Loss of:	
Arm at shoulder	65
Arm between elbow and shoulder	65
Arm at elbow	55
Arm between wrist and elbow	55
Hand at wrist	50
Four fingers and thumb of one hand	50
Four fingers	40
Thumb - both phalanges (joints in finger)	25
one phalanx	15
Index finger - 3 phalanges	10
2 phalanges	8
1 phalanx	5
Middle finger - 3 phalanges	8
2 phalanges	6
1 phalanx	4
Ring finger - 3 phalanges	6
2 phalanges	5
1 phalanx	3
Little finger - 3 phalanges	4
2 phalanges	3
1 phalanx	2
Metacarpals - 1st, 2nd or 3rd (additional)	4
4th or 5th (additional)	2
Leg - at hip	70
between knee and hip	45 - 70
below knee	35 - 45
Toes - all	15
big, both phalanges	7
big, one phalanx	3
other than big - 4 toes	7
3 toes	5
2 toes	3
1 toe	1
Eyes - whole eye	30
sight in 1 eye	30
sight in 1 eye, except perception of light	30
Hearing - both ears	50
one ear	7

HOW TO WORK OUT THE DISABILITY PENSION FOR A WORKER WITH PERMANENT DISABILITY OF MORE THAN 30%

Example 1: Temba earns R800 per month and has 100% disability
- he will get a pension of 75% of monthly wage

Multiply
the monthly wage by 75 $R800 \times 75 = R60\ 000$

Divide
the answer by 100 $R60\ 000 \div 100 = R600$

Temba will get a disability pension of R600 per month for life.



Example 2: Temba earns R800 per month and has 60% disability
- he will get a pension of 60% of 75% of monthly wage

STEP 1
Work out the pension for 100% disability:

Multiply
the monthly wage by 75 $R800 \times 75 = R60\ 000$

Divide
the answer by 100 $R60\ 000 \div 100 = R600$

The pension for 100% disability is R600

STEP 2
Work out the pension for 60% disability:

Multiply
the pension for 100% disability by 60 $R600 \times 60 = R36\ 000$

Divide
the answer by 100 $R36\ 000 \div 100 = R360$

Temba will get a disability pension of R360 per month for life.



HOW TO WORK OUT A DISABILITY PENSION FOR A WORKER WITH PERMANENT DISABILITY OF 30% OR LESS

Example 1: Temba earns R800 per month and has 30% disability
- he will get a lump sum of 15 times his monthly wage.

Multiply
the monthly wage by 15 $R800 \times 15 = R12\ 000$

Temba will get a lump sum of R12 000 and no further payments.



Example 2: Temba earns R800 per month and has 25% disability
- he will get a lump sum as a percentage of 30% disability payout.

Multiply
the monthly wage by 15 $R800 \times 15 = R12\ 000$

Multiply
the answer by 25 $R12\ 000 \times 25 = R300\ 000$

Divide
the answer by 30 $R300\ 000 \div 30 = R10\ 000$

Temba will get a lump sum of R10 000 and no further payments.



Example 3: Temba earns R800 per month and has 5% disability
- he will get a lump sum as a percentage of 30% disability payout.

Multiply
the monthly wage by 15 $R800 \times 15 = R12\ 000$

Multiply
the answer by 5 $R12\ 000 \times 5 = R60\ 000$

Divide
the answer by 30 $R60\ 000 \div 30 = R2\ 000$

Temba will get a lump sum of R2 000 and no further payments.

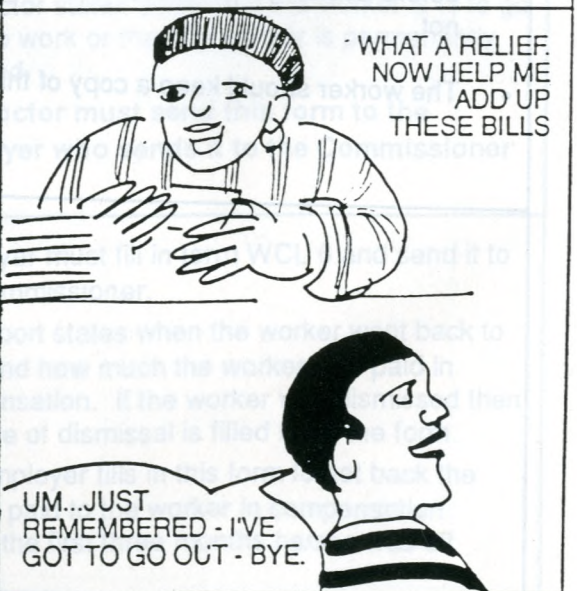
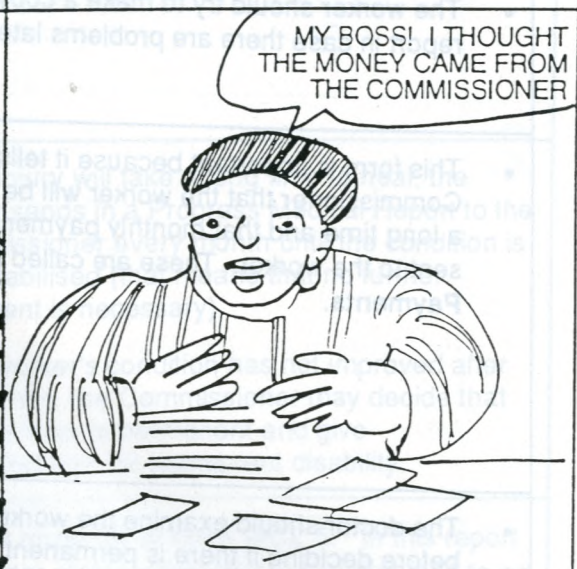
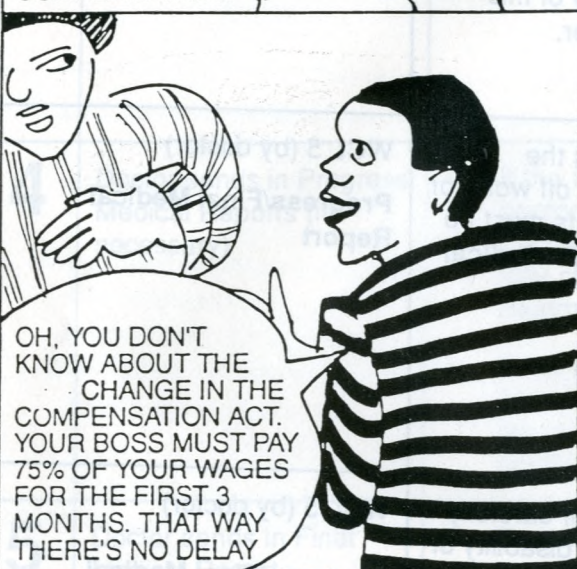
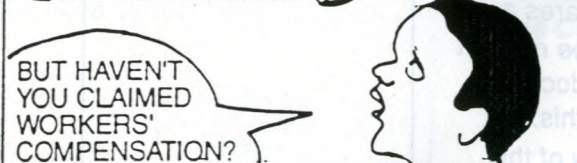
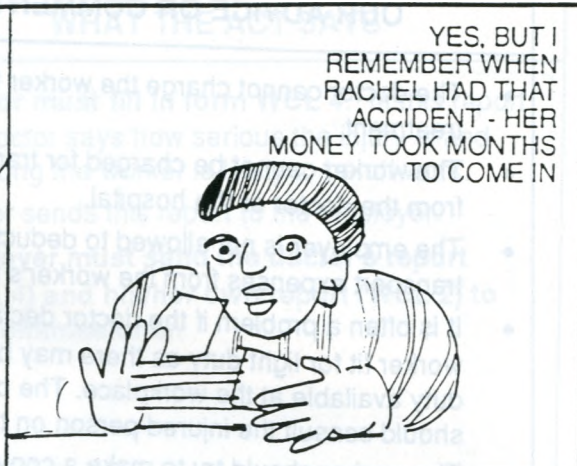
HOW TO CLAIM COMPENSATION FOR INJURY CAUSED BY A WORK ACCIDENT

STEPS		WHAT THE ACT SAYS
1	Worker informs supervisor or employer.	<ul style="list-style-type: none"> The Act says the worker can inform the employer or supervisor verbally or in writing. The worker must inform the employer as soon as possible
2	Employer reports accident.	<ul style="list-style-type: none"> Employer must report the accident even if he/she does not believe the worker's story. Employer fills in form WCL 2 in duplicate. (Part A and part B) Part B of the form is given to the worker to give to the doctor (this is proof that the injury is a genuine worker's compensation claim so the worker must not be charged for treatment). Part A of the WCL2 form must be sent to the Commissioner within 7 days. If an employer refuses to fill in the accident report form, the worker can report the accident to the Commissioner by sending the WCL3 form directly to the Commissioner. The Commissioner will then contact the employer and instruct him/her to fill in the WCL2 form.

STEPS		WHAT THE ACT SAYS
3	Doctor sends in First Medical Report.	<ul style="list-style-type: none"> • Doctor must fill in form WCL 4. In this report the doctor says how serious the injury is and how long the worker is likely to be off work. • Doctor sends this report to the employer. • Employer must send the doctor's report (WCL 4) and his/her own report (WCL 2) to the Commissioner.
4	Doctor sends in Progress Medical Reports (if necessary)	<ul style="list-style-type: none"> • If the injury will take a long time to heal, the doctor sends in a Progress Medical Report to the Commissioner every month until the condition is fully stabilised (that means that no further treatment is necessary). • If the worker's condition has not improved after 24 months, the Commissioner may decide that the condition is permanent and give compensation for permanent disability.
5	Doctor sends in Final Medical Report.	<ul style="list-style-type: none"> • Doctor must fill in form WCL 5. In this report the doctor states either that the worker is fit to go back to work or that the worker is permanently disabled. • The doctor must send this form to the employer who sends it to the Commissioner
6	Employer sends in the Resumption Report.	<ul style="list-style-type: none"> • Employer must fill in form WCL 6 and send it to the Commissioner. • The report states when the worker went back to work and how much the worker was paid in compensation. If the worker was dismissed then the date of dismissal is filled in on the form. • The employer fills in this form to get back the money paid to the worker in compensation during the first three months he/she was off work.

OUR ADVICE OR COMMENTS	FORMS TO BE FILLED IN
<ul style="list-style-type: none"> • The doctor cannot charge the worker for treatment. • The worker cannot be charged for transport to or from the doctor or the hospital. • The employer is not allowed to deduct medical or transport expenses from the worker's wages. • It is often a problem if the doctor declares a worker fit for light duty as there may be no light duty available at the workplace. The doctor should consult the injured person on this. • The worker should try to make a copy of this report in case there are problems later. 	<p>WCL 4 (by doctor)</p> <p>First Medical Report and Account for an Accident</p>
<ul style="list-style-type: none"> • This form is important because it tells the Commissioner that the worker will be off work for a long time and that monthly payments must be sent to the worker. These are called Periodical Payments. 	<p>WCL 5 (by doctor)</p> <p>Progress/Final Medical Report</p>
<ul style="list-style-type: none"> • The doctor should examine the worker carefully before deciding if there is permanent disability or not. • The worker should keep a copy of this form. 	<p>WCL 5 (by doctor)</p> <p>Progress/Final Medical Report</p>
	<p>WCL 6 (by employer)</p> <p>Resumption Report</p>

EMPLOYERS PAY 75% FOR 3 MONTHS



OCCUPATIONAL DISEASES

GENERAL INFORMATION

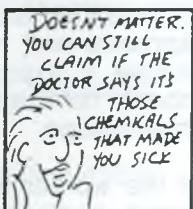
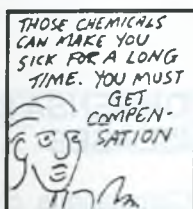
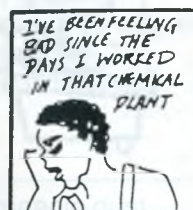
- Occupational diseases are diseases caused by conditions a worker is exposed to in the workplace.
- 28 categories of occupational diseases are recognised by the Commissioner.** These are listed in **Schedule 3** (see pages **16 - 18**).
- Workers can claim compensation for one of the diseases on the list if they are exposed to the substance listed next to each disease on Schedule 3.
- Workers can claim compensation for a disease not on the list but this is more difficult and costly to the worker:

The worker and the doctor will have to argue strongly to prove that the unlisted disease which the worker suffers from was caused by conditions at work rather than outside the workplace.

Sometimes specialists need to examine the worker and carry out expensive tests.

The worker will have to pay for all these medical expenses until the Commissioner decides to accept or reject the claim.

- The Commissioner only pays the medical expenses if he decides to accept the claim.
- Even though the worker and the doctor send proof to the Commissioner that the disease was caused by conditions at work, the Commissioner may not accept it. The Commissioner makes the final decision to accept or reject the claim.
- Some diseases take a long time before becoming obvious and making the worker feel sick. Sometimes the worker has left the workplace which caused the disease a long time before the disease is discovered.
- Workers can claim compensation for an occupational disease caused by conditions in a workplace even if they no longer work there.



WORKERS MUST REPORT THE DISEASE WITHIN 12 MONTHS OF BEING DIAGNOSED (WHEN A DOCTOR DISCOVERS THE DISEASE) OR THEY CANNOT CLAIM COMPENSATION

Some diseases can get worse after a period of time. If this happens, workers should try to have their compensation re-assessed and increased. A doctor will need to write a complete report on the new state of health and send it to the Commissioner.

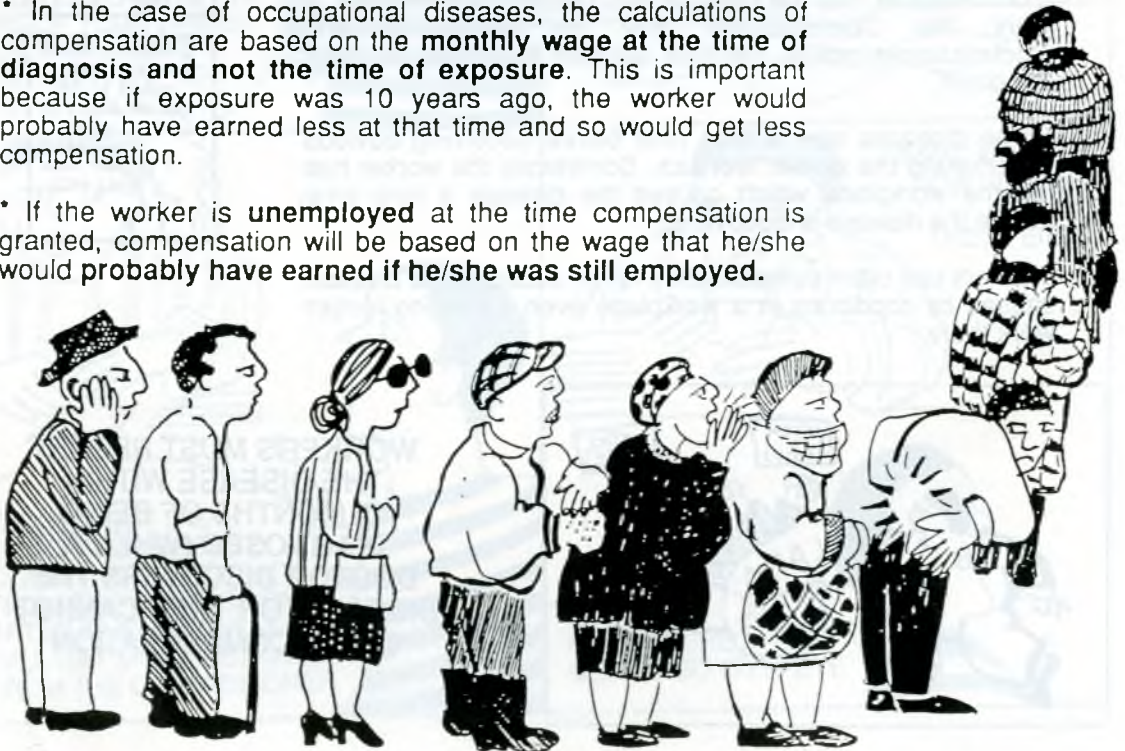


Note:

The doctor may order expensive tests to be done to try to find out about what caused the disease. The Commissioner will only pay for these expenses if the claim gets accepted. If the claim is rejected, the worker will have to pay.

COMPENSATION PAYOUTS FOR OCCUPATIONAL DISEASES

- * Calculations of compensation will be based on whether the occupational disease leaves the worker **temporarily or permanently disabled**, and whether the permanent disability is **partial or total**.
- * The calculations for compensation are discussed in detail on pages **4** and **7**.
- * In the case of occupational diseases, the calculations of compensation are based on the **monthly wage at the time of diagnosis and not the time of exposure**. This is important because if exposure was 10 years ago, the worker would probably have earned less at that time and so would get less compensation.
- * If the worker is **unemployed** at the time compensation is granted, compensation will be based on the wage that he/she would **probably have earned if he/she was still employed**.



SCHEDULE 3

WORKERS CAN CLAIM COMPENSATION FOR THE FOLLOWING DISEASES IF THEY ARE EXPOSED TO ANY ONE OF THE SUBSTANCES OR WORK PROCESSES IN THE BOX

DISEASES	WORK
	(a) Any work involving the handling of or exposure to any of the following substances emanating from the workplace concerned:
<i>Pneumoconiosis-fibrosis of the parenchyma of the lung.</i>	Organic or inorganic fibrogenic dust.
<i>Pleural thickening causing significant impairment of function.</i>	Asbestos or asbestos dust.
<i>Bronchopulmonary disease.</i>	Metal carbides (hard metals).
<i>Byssinosis.</i>	Flax, cotton or sisal.
<i>Occupational asthma.</i>	The sensitising agents- (1) isocyanates (2) platinum, nickel, cobalt, vanadium, or chromium salts (3) hardening agents, including epoxy resins (4) acrylic acids or derived acrylates (5) soldering or welding fumes (6) substances from animals or insects (7) fungi or spores (8) proteolytic enzymes (9) organic dust (10) vapours or fumes of formaldehyde, anhydrides, amines or diamines.
<i>Extrinsic allergic alveolitis.</i>	Moulds, fungal spores or any other allergenic proteinaceous material, 2,4 toluene-di-isocyanates.

<i>Any disease or pathological manifestations.</i>	Beryllium, cadmium, phosphorous, chromium, manganese, arsenic, mercury, lead, fluonne, carbondisulphide, cyanide, halogen derivatives of aliphatic or aromatic hydrocarbons, benzene or its homologues, nitro- and amino-derivatives of benzene or its homologues, nitroglycenne or other nitric acid esters, hydrocarbons, trinitrotoluol, alcohols, glycols or ketones, acrylamide, or any compounds of the aforementioned substances.
<i>Erosion of the tissues of the oral cavity or nasal cavity.</i>	Irritants, alkalis, acids or fumes thereof.
<i>Dysbarism, including decompression sickness, baro-trauma or osteonecrosis.</i>	Abnormal atmospheric or water pressure.
<i>Any disease.</i>	Ionising radiation from any source.
<i>Allergic or irritant contact dermatitis.</i>	Dust, liquids or other external agents or factors.
<i>Mesothelioma of the pleura or peritoneum or other malignancy of the lung.</i>	Asbestos or asbestos dust.
<i>Malignancy of the lung, skin, larynx, mouth cavity or bladder.</i>	Coal-tar, pitch, asphalt or bitumen or volatiles thereof.
<i>Malignancy of the lung, mucous membrane of the nose or associated air sinuses.</i>	Nickel or its compounds.
<i>Malignancy of the lung.</i>	Hexavalant chromium compounds, or bis chloromethyl ether.
<i>Angiosarcoma of the liver.</i>	Vinyl chloride monomer.
<i>Malignancy of the bladder.</i>	4-amino-diphenyl, benzidine, beta naphthylamine, 4-nitro-diphenyl.

<i>Leukaemia.</i>	Benzene.
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<i>Melanoma of the skin.</i>	Polychlorinated biphenyls.
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<i>Tuberculosis of the lung.</i>	(1) Crystalline silica (alpha quartz) (2) mycobacterium tuberculosis or MOTTs (mycobacterium other than tuberculosis) transmitted to an employee during the performance of health care work from a patient suffering from active open tuberculosis.
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<i>Brucellosis.</i>	<i>Brucella abortus</i> , <i>suis</i> or <i>mellitensis</i> transmitted through contact with infected animals or their products
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<i>Anthrax.</i>	<i>Bacillus anthracis</i> transmitted through contact with infected animals or their products
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<i>Q-fever.</i>	<i>Coxiella burneti</i> emanating from infected animals or their products
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<i>Bovine tuberculosis.</i>	<i>Mycobacterium bovis</i> transmitted through contact with infected animals or their products.
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<i>Rift Valley Fever.</i>	Virus transmitted by infected animals or their products.
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**(b) Any work involving the
handling of or exposure to any of
the following:**

<i>Hearing impairment.</i>	Excessive noise.
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<i>Hand-arm vibration syndrome (Raynaud's phenomenon).</i>	Vibrating equipment.
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<i>Any disease due to overstraining of muscular tendonous insertions.</i>	Repetitive movements.
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HOW TO CLAIM COMPENSATION FOR AN OCCUPATIONAL DISEASE

STEPS		WHAT MUST BE DONE	FORMS TO BE FILLED IN
1	Worker informs employer.	<p>The worker must inform the current employer in writing if he/she thinks a disease is caused by conditions at the workplace.</p> <p>The worker must inform the current employer even if he/she got the disease from another workplace.</p> <p>If the worker is unemployed, he or she must send the WCL14 direct to the Commissioner.</p>	WCL14 (by worker) Notice of an Occupational Disease and Claim for Compensation
2	Employer sends the report to the Commissioner.	<p>The employer must fill in form WCL1 and send it to the Commissioner within 14 days.</p> <p>If an employer refuses to send this report to the Commissioner, the worker fills in form WCL14 and sends it to the Commissioner directly.</p> <p>The Commissioner will then contact the employer and instruct him/her to fill in form WCL 1.</p>	WCL1 (by employer) Employer's Report of an Occupational Disease
3	Doctor submits the medical reports.	<p>The doctor sends in a First Medical Report to the employer. If worker is no longer employed where he/she got the disease, the doctor sends the report direct to the Commissioner or to the employer if the business still exists.</p> <p>If the disease can be treated, but takes a long time to get better, the doctor must send a Progress Report every month to the Commissioner.</p> <p>The doctor sends in a Final Medical Report to the employer.</p> <p>These are sent to the Commissioner together with medical accounts.</p>	<p>WCL22 (by doctor) First Medical Report in Respect of an Occupational Disease</p> <p>WCL26 Progress/Final Medical Report in Respect of an Occupational Disease</p> <p>WCL26 (same as above)</p>
4	Employer fills in the Resumption Report	The employer fills in form WCL6 and sends it to the Commissioner.	WCL6 (by employer) Resumption Report

HOW TO CLAIM COMPENSATION FOR DEATH

Compensation is paid if the worker dies of a work related accident

WHO CAN CLAIM COMPENSATION?	WHAT COMPENSATION IS PAID?	WHAT DOCUMENTS MUST BE SENT TO THE COMMISSIONER?
<ul style="list-style-type: none"> • <u>Widow/Widower</u> (These refer to legal and common law husbands and wives) 	<ul style="list-style-type: none"> • Lumpsum Payment This is twice the pension the dead worker would have got if totally or 100% disabled (i.e. 75% of the monthly wage). • Monthly Pension For Life This is 40% of the pension the dead worker would have got if totally or 100% disabled (i.e. 75% of the monthly wage) 	<ul style="list-style-type: none"> • Employers Report of Accident or Disease (WCL 2 or WCL 1) • Declaration by widow/er (WCL 32) <p>Certified copies of:</p> <ul style="list-style-type: none"> • Death certificate • Marriage certificate or proof that the couple lived as husband and wife
<ul style="list-style-type: none"> • <u>Children under 18 years</u> (These include illegitimate children, adopted or stepchildren). 	<ul style="list-style-type: none"> • Monthly pension (per child) until the child is 18 years. This is 20% of the pension the dead worker would have got if permanently disabled (i.e. 75% of the monthly wage). 	<p>Certified copies of:</p> <ul style="list-style-type: none"> • Birth certificates or baptismal certificates

COMPENSATION FOR DEATH

(Continued)

WHO CAN CLAIM COMPENSATION?	WHAT COMPENSATION IS PAID?	WHAT DOCUMENTS MUST BE SENT TO THE COMMISSIONER?
<ul style="list-style-type: none"> <u>Other dependants</u> If there is no widow/er or children, compensation can be paid to parents, someone acting in place of parent, sisters, brothers, half-sisters, half-brothers, grandchildren. 	<ul style="list-style-type: none"> If the dependants were completely dependent on the dead worker, they will be paid the same as the widow/er would have received. If the dependants were partly dependent on the dead worker, they will get a lump sum. This amount will depend on the degree of dependency. 	<ul style="list-style-type: none"> Same forms as above, plus proof of dependency People who are partly dependent will need to give quite a lot of information, listed on form WCI 209, to show how they were dependent on the dead worker
<ul style="list-style-type: none"> <u>The person (or people) who pay for the funeral</u> 	<ul style="list-style-type: none"> Funeral Expenses Expenses up to R 4,480 - or actual costs - are paid, whichever is less. 	<ul style="list-style-type: none"> Detailed funeral accounts (WCL 46)

GENERAL INFORMATION

- The monthly pension to the widow/widower continues even if he/she remarries.
- The monthly pension to a child stops after the child turns 18 years, or if the child marries before then.
- The Commissioner can allow the pension to continue after 18 years, if the child is mentally or physically handicapped and cannot support him or herself.
- The total monthly pension per family cannot be more than the pension the dead worker would have got if he/she was 100% disabled (i.e. 75% of the monthly wage).** This means you cannot get compensation for more than 3 children: it also means that if a worker had more than one wife, the compensation has to be shared.
- Pensions will only be paid to dependants if the worker dies as a result of the accident or disease.

HOW TO WORK OUT COMPENSATION PAYOUTS WHEN A WORKER DIES

Example: Worker who earned R800 per month dies

► Lump sum payment to widow/widower:

Work out the pension for 100% permanent disability

Write down
the monthly wage R800

Multiply
the monthly wage by 75 $R800 \times 75 = R60\ 000$

Divide
the answer by 100 $R60\ 000 \div 100 = R600$

The pension for 100% permanent disability would have been R600

Multiply
the permanent disability pension by 2 $R600 \times 2 = R1\ 200$

The Lump sum payment for the widow/er of a worker who earned R800 per month would be R1 200.



► Monthly pension to widow/widower:

Work out the pension for 100% disability (see above) R600

Multiply
the pension by 40 $R600 \times 40 = R24\ 000$

Divide
the answer by 100 $R24\ 000 \div 100 = R240$

The monthly pension to the widow/widower would be R240 if the worker earned R800.



► Monthly pension to each child:

Work out
the pension for 100% disability (see above) R600

Multiply
the pension by 20 $R600 \times 20 = R12\ 000$

Divide
the answer by 100 $R12\ 000 \div 100 = R120$

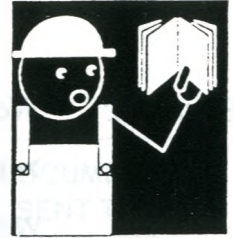
The monthly pension to each child would be R120 if the dead parent earned R800 per month.

OBJECTIONS AND APPEALS

- If a worker does not agree with the Commissioner's decision, then he/she must send the **objection within 90 days**.
- This objection is done on form **WG29** and sent directly to:

The Workmen's Compensation Commissioner
P.O. Box 955
Pretoria 0001

- The worker must write his/her **claim number** on all the letters to the Commissioner. (This is the number which is on the receipt the Commissioner sends to the employer).
- The Commissioner may call a **formal hearing** to review the decision. **He/she must inform the worker in writing** about the hearing.
- The **worker can be represented** at the hearing by a member of the family, a lawyer or a trade union official.
- The worker can ask the Commissioner to call witnesses to give evidence. The **Commissioner will pay the expenses of the witnesses** to attend the hearing.
- After the objection has been heard at the hearing and the Commissioner has made his final decision, there is very little chance of the Commissioner reviewing the same claim again.
- If the worker is still not satisfied with the Commissioner's decision, he/she can **appeal to the Supreme Court**. Workers will need legal advice to have the Commissioner's decision reviewed by the Supreme Court.



ADDITIONAL COMPENSATION

- If a worker is injured, or dies, or gets an occupational disease because of the negligence of the employer or a defect in the plant/equipment, the worker can get extra compensation (i.e. compensation in addition to the compensation for temporary or permanent disability already described).
- An application for additional compensation must be made on form **WG30** within 24 months of injury. This can be extended a further 24 months by the Commissioner if there is a good reason.
- To calculate the correct compensation is complicated, so it is best to contact one of the organizations listed on page **25** for help.

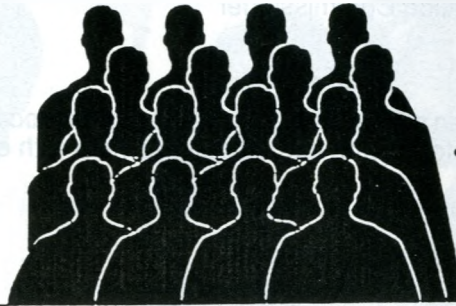


THE NEW COMPENSATION BOARD

HAVE YOU
HEARD THE
PLANS TO HAVE 16
PEOPLE ON A NEW
COMPENSATION
BOARD?



OH NO,
NOT ANOTHER
FACELESS
COMMITTEE



NOT THIS ONE.
5 OF THE 16
WILL COME FROM
TRADE UNIONS



WHAT WILL
THIS BOARD
DO?



THEY WILL
ADVISE THE
COMMISSIONER ON
THINGS LIKE POLICY,
AMENDMENTS AND
BENEFITS



DOES THE
COMMISSIONER
CONSULT WITH
THE BOARD?



YES, AND
THE BOARD CAN
ALSO QUESTION THE
COMMISSIONER ON
HIS PERFORMANCE



SO THE
ROLE OF THE
BOARD IS
**STRICTLY
ADVISORY...**



BUT WE'LL HAVE OUR
REPS ON THE BOARD



RIGHT, AND IF WE
KEEP IN TOUCH WITH
OUR REPS, OUR CASES
WILL BE PRESENTED TO
THE COMMISSIONER
MUCH MORE CLEARLY



APPENDIX

USEFUL ADDRESSES

Commissioner's Head Office:

The Workmen's Compensation Commissioner
P.O. Box 955
PRETORIA 0001

In major cities, the Workmen's Compensation section of the local Department of Labour provides all the prescribed forms and can sometimes help with queries.

Groups which can help you with Compensation queries are:

Industrial Health Research Group
Protem No.1
University of Cape Town
Private Bag
RONDEBOSCH 7700
Telephone: (021) 650-3508

Industrial Aid Society
P.O. Box 620
JOHANNESBURG 2000
Telephone: (011) 29-9315/6/7

Industrial Health Unit
University of Natal
Pvt Bag X10
Dalbridge 4014
Telephone: (031) 260-2441

Industrial Health & Safety Educational Project
P.O. Box 491
EAST LONDON 5200
Telephone: (0431) 43-5301

The Legal Resources Centre has offices in Johannesburg, Cape Town, Durban, Pretoria, Port Elizabeth and Grahamstown. Check in the telephone book for the addresses and phone numbers.



This manual was developed by members of the Industrial Health Research Group in collaboration with Jill Wenman.

Layout and artwork by Stacey Stent

1st Edition - March 1995



Summary of COIDA

COIDA pays out certain benefits to a worker who is injured because of an accident at work, or ill from his work. It also pays out to a worker's family if he is killed on the job.

WHAT BENEFITS?	TO WHOM	HOW MUCH?
Injured at work	Person injured	<p>- temporary disability the worker is paid 75% of his wage while he is off sick (if the worker is off sick for less than 3 days he gets nothing)</p> <p>- permanent disability the worker is paid according to the percentage of his disability.</p> <ul style="list-style-type: none"> * 100% disabled — 75% of his monthly wage as a pension, for life * less than 100% disabled but more than 30% — a monthly pension for life but less than 75% of his monthly wage * 30% disabled — lump sum of 15 x monthly wage * less than 30% disabled — lump sum of less than 15 x monthly wage
Ill from work	Worker who is ill from his work (even if he left work a long time ago)	<p>- temporary disability the worker is paid 75% of his wage while he is off sick (if the worker is off sick for less than 3 days he gets nothing)</p> <p>- permanent disability the worker is paid according to the percentage of his disability.</p> <ul style="list-style-type: none"> * 100% disabled — 75% of his monthly wage as a pension, for life * less than 100% disabled but more than 30% — a monthly pension for life but less than 75% of his monthly wage * 30% disabled — lump sum of 15 x monthly wage * less than 30% disabled — lump sum of less than 15 x monthly wage <p>(if the worker is unemployed when s/he is found to have a disease, compensation is based on what the worker would probably have earned if s/he was still employed)</p>
Killed at work	Worker's dependents	<p>Paid to widow or widower: lumpsum payment of 2 x (75% x worker's monthly wage) monthly pension of 40% x (75% x worker's monthly wage)</p> <p>Paid to children under 18 years: - monthly pension per child until the child is 18 years of: 20% x (75% x worker's monthly wage)</p> <p>if there is no widow/widower or children compensation can be paid to parents, brother, sister, half-brother, half-sister etc.</p> <ul style="list-style-type: none"> - if dependents were completely dependant on the dead worker, they will get * lumpsum payment of 2 x (75% x worker's monthly wage) * monthly pension of 40% x (75% x worker's monthly wage) - if dependents were partly dependant on the dead worker, they will get a lump sum. <p>Funeral expenses Expenses up to R4 480 or actual costs, whichever is less.</p>

You can claim compensation for diseases caused from working with:

Asbestos, metal carbides, platinum, nickel, cobalt, vanadium, chromium, soldering or welding fumes, cyanide, lead, benzene, manganese, arsenic, coal-tar, pitch and many others. You can claim compensation for losing your hearing, and particular muscular harm.

If you think you are sick from your work, if you want forms to claim compensation, see a doctor or consult your Numsa local office for details.

chapter

4

Tax



pic: William Matlala

Introduction

Everyone who earns more than R327.17 per week is taxed. Under the old system, the amount of tax you paid depended on whether you were married or single, the number of children you had and so on. Often employers made mistakes because they were taxing you as if you had 3 children when you really had 4. This was how workers often managed to claim some tax back.

The new system taxes everyone the same way as long as you are earning the same amount of money. So now, a worker earning R346,42 a week, whether she is married or single, has 4 children or no children, will pay the same tax each week — R3,95.

The tables given here will help you check your payslip and work out if your employer is taxing you correctly.

Other things to note:

- Use the Year To Date (YTD) figures on payslips at the end of February to see if the employer has adjusted and perhaps refunded any extra tax paid because of the influence of the bonus month etc.
- There are no more allowances for children, or for being a married woman and a sole bread winner (a "married person"). One set of tax tables applies to every wage earner.
- A worker can claim up to R30 000 in severance pay tax-free, provided that the employer is prepared to write to the Receiver of Revenue and say that this is a genuine retrenchment.
- If a worker leaves the company at the beginning of the tax year, not the end of the Tax year, there will be a difference in the rate of tax which you will pay (it will be higher, because the marginal tax rate will increase). So if you are retrenched, you should try to ask for short time until the next tax year...

1997/8 Income Tax Rates For Under 65 Year Olds

from March 1997 to 28 February 1998

These notes and the accompanying tables are based on the 1997/8 national budget speech.

NOTE:

A person's monthly or weekly income may change according to whether they receive overtime pay or a bonus in that particular month or week. This can place them in a higher annual tax bracket for that month or week but when their total gross income for the year is considered then the additional tax for that period will be averaged out for the year.

The Standard Income Tax on Employees (SITE) tax system applies to gross annual income up to R 50 000. Under this system, the employer must make a determination at the end of each tax year and refund any major excess tax deducted for lump sum payments. If you earn more than R50 000 a year, the additional amount will be taxable under the Pay As You Earn (PAYE) tax system. The rate of tax is the same. The difference is that you must fill in an income tax return every year as a PAYE taxpayer.

Below are tables which may help you to calculate whether the tax deduction on a worker's payslip is correct.

NB the shaded sections all represent the worker's income: first expressed per year, then per month, then per week. This is for convenience in checking the amounts deducted for tax on payslips.

1745	10412	6432	10000	2000	17200	10000
1821	10742	6532	10000	2000	17400	10000
1933	11038	6632	10000	2000	17600	10000
2049	11340	6732	10000	2000	17800	10000
2164	11648	6832	10000	2000	18000	10000
2284	11962	6932	10000	2000	18200	10000
2409	12282	7032	10000	2000	18400	10000
2534	12608	7132	10000	2000	18600	10000
2659	12940	7232	10000	2000	18800	10000
2784	13278	7332	10000	2000	19000	10000
2909	13622	7432	10000	2000	19200	10000
3034	13972	7532	10000	2000	19400	10000
3159	14328	7632	10000	2000	19600	10000
3284	14690	7732	10000	2000	19800	10000
3409	15058	7832	10000	2000	20000	10000
3534	15432	7932	10000	2000	20200	10000
3659	15812	8032	10000	2000	20400	10000
3784	16198	8132	10000	2000	20600	10000
3909	16590	8232	10000	2000	20800	10000
4034	16988	8332	10000	2000	21000	10000
4159	17392	8432	10000	2000	21200	10000
4284	17802	8532	10000	2000	21400	10000
4409	18218	8632	10000	2000	21600	10000
4534	18640	8732	10000	2000	21800	10000
4659	19068	8832	10000	2000	22000	10000
4784	19502	8932	10000	2000	22200	10000
4909	19942	9032	10000	2000	22400	10000
5034	20388	9132	10000	2000	22600	10000
5159	20840	9232	10000	2000	22800	10000
5284	21298	9332	10000	2000	23000	10000
5409	21762	9432	10000	2000	23200	10000
5534	22232	9532	10000	2000	23400	10000
5659	22708	9632	10000	2000	23600	10000
5784	23190	9732	10000	2000	23800	10000
5909	23678	9832	10000	2000	24000	10000
6034	24172	9932	10000	2000	24200	10000
6159	24672	10032	10000	2000	24400	10000
6284	25178	10132	10000	2000	24600	10000
6409	25690	10232	10000	2000	24800	10000
6534	26208	10332	10000	2000	25000	10000
6659	26732	10432	10000	2000	25200	10000
6784	27262	10532	10000	2000	25400	10000
6909	27798	10632	10000	2000	25600	10000
7034	28340	10732	10000	2000	25800	10000
7159	28888	10832	10000	2000	26000	10000
7284	29442	10932	10000	2000	26200	10000
7409	30002	11032	10000	2000	26400	10000
7534	30568	11132	10000	2000	26600	10000
7659	31140	11232	10000	2000	26800	10000
7784	31718	11332	10000	2000	27000	10000
7909	32302	11432	10000	2000	27200	10000
8034	32892	11532	10000	2000	27400	10000
8159	33488	11632	10000	2000	27600	10000
8284	34090	11732	10000	2000	27800	10000
8409	34698	11832	10000	2000	28000	10000
8534	35312	11932	10000	2000	28200	10000
8659	35932	12032	10000	2000	28400	10000
8784	36558	12132	10000	2000	28600	10000
8909	37190	12232	10000	2000	28800	10000
9034	37828	12332	10000	2000	29000	10000
9159	38472	12432	10000	2000	29200	10000
9284	39122	12532	10000	2000	29400	10000
9409	39778	12632	10000	2000	29600	10000
9534	40440	12732	10000	2000	29800	10000
9659	41108	12832	10000	2000	30000	10000
9784	41782	12932	10000	2000	30200	10000
9909	42462	13032	10000	2000	30400	10000
10034	43148	13132	10000	2000	30600	10000
10159	43840	13232	10000	2000	30800	10000
10284	44538	13332	10000	2000	31000	10000
10409	45242	13432	10000	2000	31200	10000
10534	45952	13532	10000	2000	31400	10000
10659	46668	13632	10000	2000	31600	10000
10784	47390	13732	10000	2000	31800	10000
10909	48118	13832	10000	2000	32000	10000
11034	48852	13932	10000	2000	32200	10000
11159	49592	14032	10000	2000	32400	10000
11284	50338	14132	10000	2000	32600	10000
11409	51090	14232	10000	2000	32800	10000
11534	51848	14332	10000	2000	33000	10000
11659	52612	14432	10000	2000	33200	10000
11784	53382	14532	10000	2000	33400	10000
11909	54158	14632	10000	2000	33600	10000
12034	54940	14732	10000	2000	33800	10000
12159	55728	14832	10000	2000	34000	10000
12284	56522	14932	10000	2000	34200	10000
12409	57322	15032	10000	2000	34400	10000
12534	58128	15132	10000	2000	34600	10000
12659	58940	15232	10000	2000	34800	10000
12784	59758	15332	10000	2000	35000	10000
12909	60582	15432	10000	2000	35200	10000
13034	61412	15532	10000	2000	35400	10000
13159	62248	15632	10000	2000	35600	10000
13284	63090	15732	10000	2000	35800	10000
13409	63938	15832	10000	2000	36000	10000
13534	64792	15932	10000	2000	36200	10000
13659	65652	16032	10000	2000	36400	10000
13784	66518	16132	10000	2000	36600	10000
13909	67390	16232	10000	2000	36800	10000
14034	68268	16332	10000	2000	37000	10000
14159	69152	16432	10000	2000	37200	10000
14284	70042	16532	10000	2000	37400	10000
14409	70938	16632	10000	2000	37600	10000
14534	71840	16732	10000	2000	37800	10000
14659	72748	16832	10000	2000	38000	10000
14784	73662	16932	10000	2000	38200	10000
14909	74582	17032	10000	2000	38400	10000
15034	75508	17132	10000	2000	38600	10000
15159	76440	17232	10000	2000	38800	10000
15284	77378	17332	10000	2000	39000	10000
15409	78322	17432	10000	2000	39200	10000
15534	79272	17532	10000	2000	39400	10000
15659	80228	17632	10000	2000	39600	10000
15784	81190	17732	10000	2000	39800	10000
15909	82158	17832	10000	2000	40000	10000
16034	83132	17932	10000	2000	40200	10000
16159	84112	18032	10000	2000	40400	10000
16284	85098	18132	10000	2000	40600	10000
16409	86090	18232	10000	2000	40800	10000
16534	87088	18332	10000	2000	41000	10000
16659	88092	18432	10000	2000	41200	10000
16784	89102	18532	10000	2000	41400	10000
16909	90118	18632	10000	2000	41600	10000
17034	91140	18732	10000	2000	41800	10000
17159	92168	18832	10000	2000	42000	10000
17284	93202	18932	10000	2000	42200	10000
17409	94242	19032	10000	2000	42400	10000
17534	95288	19132	10000	2000	42600	10000
17659	96340	19232	10000	2000	42800	10000
17784	97398	19332	10000	2000	43000	10000
17909	98462	19432	10000	2000	43200	10000
18034	99532	19532	10000	2000	43400	10000
18159	100608	19632	10000	2000	43600	10000
18284	101690	19732	10000	2000	43800	10000
18409	102778	19832	10000	2000	44000	10000
18534	103872	19932	10000	2000	44200	10000
18659	104972	20032	10000	2000	44400	10000
18784	106078	20132	10000	2000	44600	10000
18909	107190	20232	10000	2000	44800	10000
19034	108308	20332	10000	2000	45000	10000
19159	109432	20432	10000	2000	45200	10000
19284	110562	20532	10000	2000	45400	10000
19409	111698	20632	10000	2000	45600	10000
19534	112840	20732	10000	2000	45800	10000
19659	113988	20832	10000	2000	46000	10000
19784	115142	20932	10000	2000	46200	10000
19909	116302	21032	10000	2000	46400	10000
20034	117468	21132	10000	2000	46600	10000
20159	118640	21232	10000	2000	46800	10000
20284	119818	21332	10000	2000	47000	10000
20409	120992	21432	10000	2000	47200	10000
20534	122172	21532	10000	2000	47400	10000
20659	123358	21632	10000	2000	47600	10000
20784	12450					

1997/8 INCOME TAX RATES FOR UNDER 65 YEAR OLDS						
Annual gross income	Annual income tax Rands	Average rate of tax (%)	Monthly gross income (Rands)	Monthly tax (Rands)	Weekly gross income (Rands)	Weekly tax (Rands)
17000.00	15.00	0.09	1416.67	1.25	327.17	0.29
18000.00	205.00	1.14	1,500.00	17.08	346.42	3.95
19000.00	395.00	2.08	1,583.33	32.92	365.67	7.60
20000.00	585.00	2.93	1,666.67	48.75	384.91	11.26
21000.00	775.00	3.69	1,750.00	64.58	404.16	14.92
22000.00	965.00	4.39	1,833.33	80.42	423.40	18.57
23000.00	1155.00	5.02	1,916.67	96.25	442.65	22.23
24000.00	1345.00	5.60	2,000.00	112.08	461.89	25.89
25000.00	1535.00	6.14	2,083.33	127.92	481.14	29.54
26000.00	1725.00	6.63	2,166.67	143.75	500.38	33.20
27000.00	1915.00	7.09	2,250.00	159.58	519.63	36.86
28000.00	2105.00	7.52	2,333.33	175.42	538.88	40.51
29000.00	2295.00	7.91	2,416.67	191.25	558.12	44.17
30000.00	2485.00	8.28	2,500.00	207.08	577.37	47.83
31000.00	2785.00	8.98	2,583.33	232.08	596.61	53.60
32000.00	3085.00	9.64	2,666.67	257.08	615.86	59.37
33000.00	3385.00	10.26	2,750.00	282.08	635.10	65.15
34000.00	3685.00	10.84	2,833.33	307.08	654.35	70.92
35000.00	3985.00	11.39	2,916.67	332.08	673.60	76.69
36000.00	4305.00	11.96	3,000.00	358.75	692.84	82.85
37000.00	4625.00	12.5	3,083.33	385.42	712.09	89.01
38000.00	4945.00	13.01	3,166.67	412.08	731.33	95.17
39000.00	5265.00	13.50	3,250.00	438.75	750.58	101.33
40000.00	5585.00	13.96	3,333.33	465.42	769.82	107.49
41000.00	5905.00	14.40	3,416.67	492.08	789.07	113.65
42000.00	6225.00	14.82	3,500.00	518.75	808.31	119.80

Marginal Tax Rates For Under-65s For 1997/8 Tax Year

Annual gross income	Annual income tax Rands	Average rate of tax (%)	Monthly gross income (Rands)	Monthly tax (Rands)	Weekly gross income (Rands)	Weekly tax (Rands)
43000.00	6545.00	15.22	3,583.33	545.42	827.56	125.96
44000.00	6865.00	15.60	3,666.67	572.08	846.81	132.12
45000.00	7185.00	15.97	3,750.00	598.75	866.05	138.28
46000.00	7595.00	16.51	3,833.33	632.92	885.30	146.17
47000.00	8005.00	17.03	3,916.67	667.08	904.54	154.06
48000.00	8415.00	17.53	4,000.00	701.25	923.79	161.95
49000.00	8825.00	18.01	4,083.33	735.42	943.03	169.84
50000.00	9235.00	18.47	4,166.67	769.58	962.28	177.73
51000.00	9645.00	18.91	4,250.00	803.75	981.52	185.62
52000.00	10055.00	19.34	4,333.33	837.92	1000.77	193.51
53000.00	10465.00	19.75	4,416.67	872.08	1020.02	201.40
54000.00	10875.00	20.14	4,500.00	906.25	1039.26	209.30
55000.00	11285.00	20.52	4,583.33	940.42	1058.51	217.19
56000.00	11695.00	20.88	4,666.67	974.58	1077.75	225.08
57000.00	12105.00	21.24	4,750.00	1008.75	1097.00	232.97
58000.00	12515.00	21.58	4,833.33	1042.92	1116.24	240.86
59000.00	12925.00	21.91	4,916.67	1077.08	1135.49	248.75
60000.00	13335.00	22.23	5,000.00	1111.25	1154.73	256.64
61000.00	13765.00	22.57	5,083.33	1147.08	1173.98	264.92
62000.00	14195.00	22.90	5,166.67	1182.92	1193.23	273.19
63000.00	14625.00	23.21	5,250.00	1218.75	1212.47	281.47
64000.00	15035.00	23.49	5,333.33	1252.92	1231.72	289.36
65000.00	15485.00	23.82	5,416.67	1290.42	1250.96	298.02
66000.00	15915.00	24.11	5,500.00	1326.25	1270.21	306.29
67000.00	16345.00	24.40	5,583.33	1362.08	1289.45	314.57
68000.00	16775.00	24.67	5,666.67	1397.92	1308.70	322.84
69000.00	17205.00	24.93	5,750.00	1433.75	1327.94	331.12

1997/8 INCOME TAX RATES FOR UNDER 55 YEAR OLDS

Annual gross income	Annual income tax Rands	Average rate of tax (%)	Monthly gross income (Rands)	Monthly tax (Rands)	Weekly gross income (Rands)	Weekly tax (Rands)
70000.00	17635.00	25.19	5,833.33	1469.58	1347.19	339.40
71000.00	18085.00	25.47	5916.67	1507.08	1366.44	348.06
72000.00	18525.00	25.73	6,000.00	1543.75	1385.68	356.52
73000.00	18965.00	25.98	6,083.33	1580.42	1404.93	364.99
74000.00	19405.00	26.22	6,166.67	1617.08	1424.17	373.46
75000.00	19835.00	26.45	6,250.00	1652.92	1443.42	381.74

Marginal Tax Rates For Under-65s For 1997/8 Tax Year

South Africa has what is called a “progressive” system of income tax. This means that the more you earn, the more you pay in tax on each extra rand earned. The following table sets out the different rates of tax on every extra rand earned in different income categories. These rates are known as ‘marginal’ rates of tax.

MARGINAL TAX RATES FOR UNDER-65's FOR 1997/8 TAX YEAR	
ANNUAL INCOME BRACKET	TAX FOR EVERY RAND EARNED WITHIN THAT BRACKET
Up to R 30 000	19 c
R 30 001 to R 35 000	30 c
R 35 001 to R 45 000	32 c
R 45 001 to R 60 000	41 c
R 60 001 to R 70 000	43 c
R 70 001 to R 100 000	44 c
R 100 001 upwards	45 c

Example Of How To Use These Tables

A worker asks you to tell him how much tax he must pay on his wages of R560-00 per week.

This is how you do it. Use the Income Tax table and the Marginal Rate of Tax table.

- Identify the income level immediately below the gross income you are analysing
For a wage of R 560-00 this is R 558-12
- Subtract the lower gross income figure from the higher one
 $R\ 560-00 - R\ 558-12 = R\ 1-88$
- Calculate the marginal rate of tax on the amount in b. above
R 558-12 per week is equivalent to an annual income of R 29000-00.
The marginal rate of tax for someone on this level of income is 19c for every rand or 19 % .
 $R\ 1-88 \times (19/100) = R\ 0-35$.
- Add the tax calculated in c. to the tax due for the lower level of income
 $R\ 0-35 + R\ 44-17 = R\ 44-52$.

Other things to note:

Use the Year To Date (YTD) figures on payslips at the end of February to see if the employer has adjusted and perhaps refunded any extra tax paid because of the influence of the bonus month etc.

There are no more allowances for children, or for being a married woman and a sole breadwinner (a "married person"). One set of tax tables applies to every wage earner.

A worker can claim up to R30 000 in severance pay tax-free, provided that the employer is prepared to write to the Receiver of Revenue and say that this is a genuine retrenchment.

If a worker leaves the company at the beginning of the tax year, not the end of the Tax year, there will be a difference in the rate of tax which you will pay (it will be higher, because the marginal tax rate will increase). So if you are retrenched, you should try to ask for short time until the next tax year...

Taxation On Pension And Provident Funds

The biggest difference between pension and provident funds is when tax is paid, and how tax is paid. However it is true that taxation of pension schemes is slightly more favourable than the taxation of provident funds.

Taxation can take place at different stages - on contributions made, on transfer between funds, and on withdrawal benefits and in the case of pension schemes, on pension income. The worker will always get taxed at some point, either when contributions are made or later on at retirement when the benefits are paid out.

The table below illustrates the main differences:

TAX ON CONTRIBUTIONS

PENSION FUNDS	PROVIDENT FUNDS
<p>Member's contributions are tax free up to 7,5% or R 1750 a year of an employee's income, whichever amount is greater.</p> <p>The employer is entitled to deduct up to 10% for employee contributions, from the employer's income, for the purposes of tax on the employer's income.</p> <p>In practice the Receiver will allow up to 20% of an employee's earnings to be deductible from the employer's income, when estimating the employer's income for tax purposes.</p>	<p>Contributory schemes - Member's contributions are taxed</p> <p>Non-contributory schemes - The tax above can be avoided if the member's salary is reduced by the amount of the contribution and the employer pays both the employee and employer shares into the fund. The rule is that the contributions paid by the employer are tax deductible from the employer's income, for up to 10% of the employee's wage. In practice the Receiver will allow up to 20 % of an employee's earnings to be deductible.</p>

PENSION FUNDS	PROVIDENT FUNDS
<p>Transfer of moneys to another fund The pre-tax amount due from the fund will depend on the rules of the fund. The first R 1800 of the lump sum payment is tax free and any part of it that is transferred to a pension fund or used to purchase a retirement annuity, is also not taxed. However, if the lump sum is paid into a provident fund then the part made up of employee contributions that were not taxed when they were made will be taxed. If the contributions made to the fund by the employee exceeded 7,5 % of income and therefore were subject to tax at the time they were made, this part will be deductible if it is greater than the automatic R 18 00 tax free portion. You are never entitled to deduct more than the total lump sum taken.</p>	<p>Transfer of moneys to another fund Same formula as for pension withdrawals</p>

<p>Withdrawal benefits</p> <p>This relates to benefits paid because of resignation, dismissal or retrenchment before the normal retirement date, but not in the case of early retirement due to ill health..</p> <p>The first R 1800 of the lump sum payment is tax free.</p> <p>The remaining taxable portion of the lump sum is calculated in the same way as the lump sum on retirement is taxed (below).</p> <p>The taxable portion is then simply added to the member's income in the tax year that s/he retires and taxed at the average taxation for the pre-lump sum income in that year.</p> <p>The normal retirement age for the purposes of tax will be 55 for men and 50 for women until 1 March 2000.</p>	<p>Withdrawal benefits</p> <p>This relates to benefits paid because of resignation, dismissal or retrenchment before the normal retirement date, but not in the case of early retirement due to ill health.</p> <p>The normal retirement age for the purposes of taxation will be 55 for men and 50 for women until 1 March 2000.</p>
PENSION FUNDS	PROVIDENT FUNDS
<p>Retirement benefits (lump sum)</p> <p>Up to 1/3 of the total retirement benefit can be paid out as a lump sum. The rest of the benefit must be used to buy a pension which will be paid monthly.</p> <p>The taxation of the lump sum is complicated. Part of the lump sum is tax free part is not. The formulas are set out on the next page.</p> <p>The taxable portion is then simply added to the member's income in the tax year that s/he retires. It is taxed as normal income in that year at the same average rate of tax payable on the member's income excluding the lump sum..</p>	<p>Retirement benefits (lump sum)</p> <p>The first R 24 000 of the lump sum payment is tax free.</p>
<p>Retirement benefit (pension)</p> <p>The pension is taxed like a normal salary.</p>	<p>Not applicable</p>
<p>Death benefits (before retirement)</p> <p>The tax is the same as a lump sum benefit except that "C" in the formula on the next page is subject to a minimum value of R 60 000 or twice the annual salary in the 12 months before death.</p>	<p>Death benefits (before retirement)</p> <p>Tax free portion of lump sum is calculated in the same way as pension schemes.</p>

There is a formula (see below) for tax calculations on lump sum payments from pension schemes.

TAX CALCULATIONS ON LUMP SUM PAYMENTS FROM PENSION SCHEMES

The tax free part of the lump sum payment = $C + E - D$

C = the amount Y calculated below, but it may not be greater than R 120 000 or R4500 x the number of completed years membership of the fund.

E = contributions to funds which were not allowed as tax deductible in the past (i.e. deductions in excess of 7,5 % of your wages or R1750 a year in the case of pension funds; and all employee contributions in the case of provident funds).

D = deductions allowed for previous lump sum payments

To calculate Y above in the formula for C

$$Y = \frac{N}{10} \times \text{Average salary}$$

Where

N = completed years of service as a member of the fund (up to 50).

Average salary = highest annual average earnings during any five consecutive years of the fund (usually the last five years), up to a maximum of R 60 000.

Example:

Joe Mdluli has been working in the engineering industry for 10 years. He was fired for stealing petrol. He wants to work out how much of his lump sum pension payout will be tax free. Joe has been a member of the Pension Fund for 10 years. He has always contributed 6% of his wages to the Fund. His highest average wage over the last 5 years was R400 per week.

His tax free payout will be: $C + E - D$

$C = Y$ and $Y = \frac{\text{years of service}}{10} \times \text{highest average annual wage over 5 years}$

$$C = \frac{10 \text{ years service}}{10} \times R400 \times 52 \text{ weeks}$$

So $C = R20\ 800$

E -- His contributions have always been 6% so he can't claim any more money back. So $E = 0$

D -- This is the first time that he is claiming from his pension fund so he doesn't have to take away what he claimed before. So $D = 0$

So the part of his lump sum that he won't pay tax on is R20 800.

chapter

5

Numsa members waiting to consult
an organiser
pic: William Matlala



Pension/Provident Funds for NUMSA members

Introduction

NUMSA has had a demand that there should be 1 retirement fund per industry. In the engineering and motor sector we have almost achieved this - there is a choice of a pension or provident fund. But there are still company schemes in many of our companies eg. Metal Box, all auto companies.

This information just gives you details of the Funds in the engineering and motor sectors. If your company has its own scheme then you should:

- find out details about it
- see if you can join the Motor or Engineering Funds. Because they are bigger they should provide better benefits.

Motor Industry

In the Motor Industry, NUMSA members are either members of the Autoworkers Pension or Provident Fund.

Name of Fund	Auto Workers Provident Fund	Auto Workers Pension Fund
Addresses and phone numbers of Fund	same addresses as Pension Fund	<p>MIFA HO 275 Kent Ave. Ferndale Randburg Tel: 011-7870183 Fax: 011-7873046</p> <p>Border: Motor House, 28 Commissioner Street East London 5201 Tel: 0431-23128 Fax: 0431-438576</p> <p>Eastern Province: United House 726 Main Street North End, Port Elizabeth, 6001 Tel: 041-54-7654/6 Fax: 041-572076</p> <p>KZNatal: 5 Renshaw Road Congella Durban 4001 Tel: 031-255465 Fax: 031-252783</p> <p>OFS: 26 Lombard Street Bloemfontein 9301 Tel: 015-303274/8 Fax: 015-304636</p> <p>Western Province: 8th Floor Motor & General Bldg 4 Loop Street Cape Town 8001 Tel: 021-419-2552 Fax: 021-419-7055</p> <p>Transvaal: 2nd Floor Penmor Tower 1 Rissik Street Johannesburg 2001 Tel: 011-3346357 Fax: 011-3345879</p>

Name of Fund	Auto Workers Provident Fund	Auto Workers Pension Fund
Who can join?	* all workers in the motor industry who are NUMSA members	* all workers in the motor industry who are NUMSA members
Contributions	* 6% of your wages, an employer pays an equal amount. A member can pay more if he wants to.	* 6% of your wages, an employer pays an equal amount. A member can pay more if he wants to.
Retirement benefits: at normal retirement age of 65	<p>The member will get a cash lump sum equal to:</p> <ul style="list-style-type: none"> * his contributions * part of his employer's contributions to retirement benefits (the employer also pays contributions into ill-health and retrenchment benefits) * a share of the earnings of the Fund (A member can decide to convert his lump sum into a retirement annuity instead. This will then pay out the member each month. Contact the Fund for more details.) 	<p>Option 1: Monthly pension</p> <p>This depends on how many years the worker has been putting money into the Fund and on his wage when he retires.</p> <p><u>How many years has he been contributing?</u></p> <ul style="list-style-type: none"> * If less than 3 years, then his monthly payout will be: <ul style="list-style-type: none"> * 2,25% of his highest annual wage over any 3 years until he dies. So if his highest annual wage was R14040, then his pension each month would be: $2,25\% \times R14040 = R315,90$. <p>BUT:</p> <ul style="list-style-type: none"> * If he only paid in 3% of his wages between 3 July 1995 to 30 June 1996, then he will only get 1,13% each month of his highest annual wage over any 3 years in the last 15 years of contributing: $1,13\% \times R14040 = R158,65$ * If he only paid in 4,5% of his wages between 1 July 1996 to 30 June 1997, then he will only get 1,17% each month of his highest annual wage over any 3 years in the last 15 years of contributing: $1,17\% \times R14040 = R164,27$ <p>- If he has been contributing for more than 3 years then:</p> <ul style="list-style-type: none"> * he will get 2,25% of his highest average monthly income over the last 15 years x the number of years service. So if he has 12 years service and his highest monthly income is R1350, then he will get: $2,25\% \times 15 \text{ years} \times R1350 = R455,63$ <p>Option 2: Monthly + one third cash payout</p> <p>- if the member wants, he can ask the Fund to give him one third of his retirement money as a cash payment. They will also pay you a monthly amount but it will be less than with Option 1.</p> <p>Option 3: Total cash payout</p> <p>- if his total retirement payout is less than R120 000, then the member can take the total in cash without paying tax. (Get the details of how much is in the Fund from the Fund)</p>

Name of Fund	Auto Workers Provident Fund	Auto Workers Pension Fund
Retirement benefits: early retirement i.e. from age 55	<p>The member will get a cash lump sum equal to:</p> <ul style="list-style-type: none"> ● his contributions ● part of his employer's contributions to retirement benefits (the employer also pays contributions into ill-health and retrenchment benefits) ● a share of the earnings of the Fund <p>(A member can decide to convert his lump sum into a retirement annuity instead. This will then pay out the member each month. Contact the Fund for more details.)</p>	<p>The member will get a monthly retirement benefit BUT it will be less each month than if he was retiring at 65. Eg. If you retire at 55 you will get 70% of what you would have got if you had retired at 65; if you retire at 60, you will get 80% of what you would have got if you had retired at 65.</p>
For how long does the Fund pay you out once you retire?	<ul style="list-style-type: none"> ● you get one lump sum when you retire. (If you have converted your lump sum into a retirement annuity then you will be paid monthly. How long you are paid out will depend on the terms of the Annuity.) 	<ul style="list-style-type: none"> ● until you die OR ● if you die before 10 years, the money will be paid to your spouse or dependent until 10 years after you retired. After that 10 years, your spouse will get half of what you were getting until she dies. (If the member took all the payout in a lump sum, then the spouse will get nothing)
Disability benefit i.e. if a worker is too sick to work	<p>If the worker's company decides that a worker is too sick to carry on working he will get:</p> <ul style="list-style-type: none"> ● a disability benefit which is 2 x his wages for the whole year when he got disabled AND ● his contributions to the Fund with interest. 	<p>If the worker's company decides that a worker is too sick to carry on working AND (a) he is not yet 55 years old then the worker will get:</p> <ul style="list-style-type: none"> ● a disability benefit which is 2 x his wages for the whole year when he got disabled AND ● his contributions to the Fund with interest <p>(b) he is between 55 years old and 65 then the worker will get 70% of what he would have got if he had retired at 65. (NB - if the Fund can prove that the worker was ill while he was working and that, that illness is the cause of his disability, then they may not pay him out in full. Check with the Fund)</p>
Death benefit	<p>= 2 x annual wage when the worker died PLUS</p> <ul style="list-style-type: none"> ● the worker's portion of the Fund when he died. <p>This is paid to the worker's dependents that he has named or other people that he has named.</p>	<p>= 2 x annual wage when the worker died PLUS</p> <ul style="list-style-type: none"> ● worker's contributions to the Fund with interest. <p>This is paid to the worker's dependents that he has named or other people that he has named.</p>

Name of Fund	Auto Workers Provident Fund	Auto Workers Pension Fund
Retrenchment benefit	If a worker is retrenched, he will get a cash lump sum of <ul style="list-style-type: none"> ● his own contributions to the Fund AND <ul style="list-style-type: none"> ● the full share of his employer's contributions 	If a worker is retrenched and he is less than 65: <ul style="list-style-type: none"> ● he will get a cash lump sum of 2 x his contributions to the Fund
Withdrawal of benefits	If a worker leaves the industry he will get (after 12 months): Option 1 - Cash refund <ul style="list-style-type: none"> ● his own contributions plus interest ● plus his employer's contributions (plus interest) paid towards retirement. (If he has been a member for less than 5 years then he will get a percentage of these contributions) Option 2 - Transfer the refund <p>If a worker wants to avoid tax or wants to save his payout, he can transfer his refund into another pension/provident fund or retirement annuity.</p>	If a worker leaves the industry he can either: Option 1 - Cash refund <p>Get a cash refund after 12 months, of his contributions with interest.</p> Option 2 - Transfer the refund <p>He can transfer his refund to another pension fund or retirement annuity to avoid tax.</p> Option 3 - Deferred Pension <p>If a worker is 50 years old and has been a member of the Fund for more than 15 years, he can ask to get his payout deferred until he reaches the age of 65.</p>
Collateral for housing	Negotiations are continuing to try and let you borrow money against your Fund to buy a house.	same as Provident Fund

Engineering Industry

	Metal Industries Provident Fund	Engineering Industries Pension Fund
Addresses and phone numbers	42 Anderson Street Johannesburg 2001 P.O. Box 6103 Johannesburg 2000 Tel: 011-8363631/8 Fax: 011- 834 5557	Ground Floor Metal Industries House 27 Frederick Street Johannesburg 2001 P.O. Box 7507 Johannesburg 2000 Tel: 011-8363011 Fax: 011-8363037
Who can join?	all workers in the engineering industry	all workers in the engineering industry
Contributions	6% by employers and employees	6% by employers and employees
Benefits: retirement	Retirement age 55 - 65. A member can take early retirement with agreement of employer. Member will get a cash lump sum of: - his contributions - employer's contribution - his share of the earnings of the Fund	Retirement age 55 - 65. A member can take early retirement with agreement of employer. Member will get: Option 1: - 2% of his best annual earnings over the last 3 years x number of years in service. This is paid each month. Option 2: One third (1/3) of his pension as a cash payout and the rest monthly (monthly would be reduced). Option 3: If total payout is not more than the law's limit, he can take the whole lot as a lump sum payout.
retrenchment	- lump sum of own contributions plus employer's contributions, all with interest	- lump sum of own contributions plus employer's contributions, all with interest
resignation or dismissal	cash refund of own contributions and earnings plus employer's contribution on the following scale: - 4 years service - 100% - 3 years service - 75% - 2 years service - 50% - 1 year service - 25% paid within 6 weeks	cash refund of own contributions and earnings plus employer's contribution on the following scale: - 4 years service - 100% - 3 years service - 75% - 2 years service - 50% - 1 year service - 25% paid within 6 weeks
death	cash lump sum equal to 3 years of final wages plus share of the fund	dependant gets a monthly pension of 40% of what member would have got at retirement if he had not died
disability	37,5% x his monthly paid wages each month OR if he was paid weekly: 37,5% x weekly wage x 4.33	37,5% x his monthly paid wages each month OR if he was paid weekly: 37,5% x weekly wage x 4.33
Collateral for housing	You can borrow money from a bank or building society against your Fund to buy a house. Contact your Local Numsa office for details.	same as provident fund

Error on page 22

Step 4 at the bottom of the page should read:

STEP 4 A cheque will be posted to the mother of the adopted child. She will only get benefits if she has worked for more than 13 weeks in the last year. She will not get paid for more than 6 months regardless of how many weeks she has worked. She will get altogether:

$$\frac{\text{Number of weeks employment}}{6} \times (\text{weekly wage} \times 0.45)$$

