

Unpacking the Coida Bill and its importance to employers, employees

By [Lukas Coetsee](#)

3 Oct 2022

Further to a meeting of the National Council of provinces held 22 March 2022, the report on the Coida (Compensation for Occupational Injuries and Diseases Amendment) Bill was adopted with proposed amendments.



Image source: Jozef Polc – [123RF.com](#)

The Bill has introduced the concept of a multi-disciplinary employee-based process in which employee rehabilitation, reintegration, and return to work processes must be undertaken by employers for employees who suffer occupational injuries or disease.

In our experience of 30 years of consulting on cases that involve occupational injuries and diseases, this is a game changer because these measures will force employers to ensure that they have exhausted all processes before embarking on dismissal processes. When the Bill is enacted, employers will most likely be expected to revise their incapacity procedures and policies to align them with the Bill.

Let's start with what the Act says:

1. Incapacity and the Labour Relations Act (LRA)

Schedule 8 to the LRA embodies the Code of Good Practice in relation to dismissal. Items 10 and 11 of the schedule, provides as follows:

Item 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.



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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 of the employer to accommodate the incapacity of the employee is more onerous in these circumstances.

Item 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 a 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.

2. Return to work programmes

The proposed amendment to COIDA Bill introduces the principle of additional steps by the employer to retain incapacitated employees.

A return-to-work programme allows workers who are unable to perform their usual job duties to work in a limited or temporary light-duty capacity or employees who have not worked for some time, to return to work and resume their duties. The latter is often accomplished by a process of reasonable accommodation in the workplace.

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A carefully managed, early, and safe return to work can be beneficial to all parties.

Generally speaking, the longer an employee is away from work, the less likely they are to return to their pre-injury job. Therefore, it is important to support employees in their return to work and to work together to bring them back as soon as it is safe to do so.

Some key benefits of an early and safe return to work include:

- Keeping the employee active and engaged in the workplace.
- Maintaining the employee's income through a planned recovery.
- Continuing the employee's contribution to the workplace.
- Reducing the workplace's compensation costs.

What's the takeaway to keep in mind:

While an early and safe return to work is the goal, be aware of situations where returning before recovery may increase the risk of re-injury. Determining the right time for employees to return to work is important.

This is a multi-disciplinary process in most instances and will impact the current incapacity procedures of employers.

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