

Do domestic workers and gardeners have the same rights as other employees?

The Constitutional Court of South Africa was faced with an issue concerning domestic workers. The issue arose from the Compensation for Occupational Injuries and Diseases Act (“COIDA Act”) because it excluded domestic workers who are employed in private households from the definition of “employee” in the COIDA Act. The consequence of that exclusion was that it denied them compensation in the event they contract diseases, suffer disablement, injuries, or death in the course of their employment. For convenience, the reference to homeowners who have a domestic worker means “employer/s”.

In *Sylvia Bongzi Mahlangu and Another v Minister of Labour and Others* 2020, Sylvia worked as a domestic worker until her unfortunate death caused by drowning in the employer’s pool whilst executing her duties. She had a daughter who was financially depended on her. The daughter claimed with the Department of Labor (“the Compensation Commissioner”) and was advised that she could neither get compensation under the *COIDA Act* nor could she get unemployment insurance benefits.

This newsletter does not discuss the ruling of the Constitutional Court. Rather, it provides some practical steps to employees and awareness to domestic workers to avoid being on the wrong side of the law.

The objective of the *COIDA Act* is to facilitate a process that provides for payment of medical treatment and compensation for disablement caused by occupational injuries and diseases sustained by domestic workers, in the course of their employment, or for death, resulting from such injuries or diseases. Previously, the *COIDA Act* was silent on including domestic workers.

The *COIDA Amendment Bill* (“*the Bill*”) is before Parliament and includes domestic workers. The definition of domestic workers appears in the *National Minimum Wage Act* (“*Wage Act*”). The *Wage Act* defines domestic workers to include, but not limited to, gardeners, persons who perform domestic work at a private residence and persons employed by a homeowner as a driver.

In the result, *the Bill* is finally passed and assented to by the President, employers will be required to register with the Compensation Commissioner. Other duties which would be required from employers are:

1. Give the Compensation Commissioner the full particulars of their business;
2. Keep a record of the earnings of their domestic workers;
3. Give returns of earnings to the Compensation Commissioner;
4. Pay an assessment fee to the Compensation Fund; and
5. Ensure the domestic worker is registered under the Unemployment Insurance Act if applicable

A failure by an employer to attend to the above might result in exposure to financial or reputational risk and penalties.

Please note that at the time of publishing this newsletter, Parliament had yet to call for written submission from the broader public.

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