When does an accident 'arise out of' employment? What every employer needs to know about COIDA claims

Kate Collier: Partner, Webber Wentzel
Kalene Watson: Associate Director, Webber Wentzel

Under the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 (COIDA), an employee is entitled to compensation where they suffer an accident that arises out of and in the course of their employment. Where that threshold is met, COIDA benefits generally replace an employee's common-law right to sue their employer for damages.

For a phrase that carries so much weight, it has proven remarkably difficult to pin down.

Courts have, over decades, grappled with the difficulty of deciding whether a particular incident constitutes an accident that arose out of and in the course of employment. The Supreme Court of Appeal (SCA) has acknowledged, frankly, that South African courts "have not been a model of consistency" in their approach to this question. The inevitable conclusion is that there is no bright-line rule – each case must be determined on its own facts.

What has, however, emerged from the case law is a useful analytical framework. The two legs of the phrase are not synonymous: an accident can occur in the course of employment without necessarily arising out of it. The "arising out of" enquiry asks whether the employment brought the employee within the range or zone of the particular hazard that caused the injury, and whether the risk was one they would not have faced, but for the employment. A useful refinement is to ask whether the wrongful act causing the injury was a risk incidental to the employment, although even this framing does not resolve every case.

The judgments below illustrate both the unpredictability of the enquiry and the consistent thread running through it.

Langeberg Foods v Tokwe: The employee was injured during a tea break on the employer's premises, and it was accepted that he was in the course of employment at the time. However, the court held that the incident did not arise out of employment, the assault flowed from the employee being seen smoking dagga, which had nothing whatsoever to do with his employment. It was his own conduct, not his work, that brought him into the zone of danger.

MEC for the Department of Health, Free State v DN: A doctor was raped by an intruder at approximately 02:00 while on duty and moving between wards in the hospital. The SCA could not conceive how rape by an outsider on a doctor on duty could arise out of employment, or how rape could ever be considered a risk incidental to employment as a medical professional. Critically, the court warned that forcing such claims into the COIDA's exclusive channel, thereby stripping the employee of a common-law remedy, would be adverse to employees and constitutionally troubling.

Churchill v Premier of Mpumalanga: An employee was assaulted and humiliated by protestors at her workplace, suffering serious physical and psychiatric injury, including post-traumatic stress disorder (PTSD). The incident occurred in the course of employment, but the central dispute was whether it arose out of employment. The SCA found that the chain of events was, in fact, triggered by the employee swearing when her office was locked, an act with no connection to the protest or to her employment duties. The employer's reliance on section 35 of the COIDA to bar the common-law claim accordingly failed, and the SCA emphasised that the onus rests squarely on the employer invoking section 35 to establish that the accident arose out of employment.

Bent v Rand Mutual Assurance: Ms Bent was employed as a credit clerk on the third floor of her employer's building. At approximately 17:00, having knocked off for the day and finding the lift out of service, she walked down the stairs and slipped and fell on the second floor, fracturing her ankle. Rand Mutual repudiated her claim on the basis that the employee was not performing her duties when she was injured. The objection tribunal upheld the repudiation, ruling that the accident cannot be connected to her employment.

The High Court disagreed. The court was satisfied that Ms Bent's injury arose out of her employment, the act of coming and going from her workstation was sufficiently and closely connected to the injury sustained, and the risk of sustaining an injury while walking on the employer's premises is inherent and incidental to an employee's normal duties. To find otherwise would defeat the purpose of the Act. The appeal succeeded and Ms Bent was declared entitled to compensation as envisaged in section 22(1) of the COIDA.

Bent is important because it illustrates the perils of an insurer or tribunal adopting an overly narrow, desk-bound conception of performing duties.

The facts may differ, the outcomes may vary, but one principle has remained unwavering throughout the case law. The policy of workers' compensation legislation is to assist workers as far as possible. It is for that reason that the COIDA must be interpreted and applied in a manner that does not unnecessarily prejudice employees and that is most favourable to them. The purpose of the Act, as expressed in its long title, is to provide compensation for disablement caused by occupational injuries or diseases sustained or contracted by employees in the course of their employment.

This purposive approach is not merely academic. It shapes how courts evaluate ambiguous factual scenarios, informs the weight of the onus that rests on an employer invoking section 35, and reinforces why neither insurers nor tribunals should approach the statute as a tool for exclusion.

Employers must take great care to ensure that they can clearly demonstrate that an accident was not work related if they decide that a matter ought not or does not need to be reported in terms of the COIDA. Where there is any potential uncertainty, the employer ought not to assume a role as the decision-maker on whether an accident is work related, and decline to report unless this is clear and the employer is in a position to defend that decision if challenged.

A hasty decision against reporting an accident carries significant risk.

The COIDA places a clear obligation on every employer to report an accident to the Commissioner within seven days of receiving notice or otherwise learning of it. Critically, for reporting purposes, an accident includes any injury reported by an employee as having arisen out of and in the course of employment, irrespective of whether the employer agrees.

Failure to report carries significant consequences. An employer who fails to comply with the reporting obligation is liable to a penalty of 10% of the actual or estimated annual earnings for that particular year. In addition, the Commissioner may impose a penalty equal to the full amount of compensation payable, which, for these purposes, includes the cost of medical aid, amounts payable for constant attendance, funeral costs and conveyance, and, in the case of a pension, its capitalised value, together with interest calculated from the date of the accident.

Once a report is lodged, the Commissioner conducts such enquiries as are necessary to determine liability. If a claim is rejected, the COIDA provides a structured process: the affected person or their employer may lodge an objection with the Commissioner, whereafter a tribunal is constituted to consider the matter. A further right of appeal lies to the High Court on questions relating to the interpretation of the Act.

As *Bent* demonstrates, even where a claim is initially repudiated and the objection dismissed, the Act's mechanisms exist precisely to correct such errors, but only if the claim was reported and lodged in the first place.

In conclusion, the test for whether an accident arises out of and in the course of employment is, by judicial acknowledgement, nuanced. Courts have not always spoken with one voice and no single judgment will settle the matter definitively – each case is decided on its own facts. What is settled is the interpretive compass: the COIDA is remedial social legislation and where a more favourable reading for the employee is available, that is the reading courts should prefer.

But the most important practical message is this: the question of whether an accident is work related is not the employer's to answer. Where an employee alleges it is, the COIDA requires the employer to report it and where it is unclear, there is far less risk in timeous reporting to the relevant insurer. Report timeously, let the Compensation Fund determine compensability, and allow the COIDA's internal mechanisms to do the work they were designed to do. The alternative, a failure to report (which includes late reporting), a penalty of 10% of annual earnings and a further penalty equal to the full amount of compensation payable plus interest, and an employee left without recourse, is a far worse outcome than a claim the Fund might ultimately repudiate on its own. Any employer electing not to report should be clear in its position to demonstrate that this was reasonably and diligently assessed and the position adopted is defensible.

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