

Draft regulations for employees returning to work after occupational disease, injury - Part 2

By [Kate Collier](#), [Kenneth Coster](#) & [Mbali Nkosi](#)

28 Jun 2023

In [part 1](#) of this article, we began unpacking the [Draft Rehabilitation, Reintegration and Return to Work Regulation](#) recently published by the Department of Employment and Labour (DEL). We reviewed the employer obligations, as well as the role of the employee health and wellness representative. Here we will look at the obligations of the employees and other relevant stakeholders.



Image source: Kampus Production from [Pexels](#)

Obligations on employees

Section 42(1A) of COIDA places the duty on employees to submit to a medical examination for the purposes of rehabilitation. The draft regulations propose further obligations on employees to assist both the employer and CF in the execution of their obligations.

Employees will be required to report an injury or disease as soon as practicable after the injury or diagnosis to their immediate supervisor and/or health and safety representative, as well as provide any relevant medical reports relating to rehabilitation and periods of absence from work, and comply with any medical restrictions imposed at all times.

The draft regulations also state that employees will be obliged to avail themselves for, and actively participate, in the implementation of the rehabilitation and return to work plan, as well as return to their pre-injury workplace where medically reasonable and safe, and accept an offer of reasonable accommodation.

Obligations on other relevant stakeholders

The draft regulations propose extensive involvement and participation from the CF or Licensee.

Over and above the general obligation to provide access to facilities, services, and benefits together with the employer, the CF or Licensee's proposed role is to facilitate the overall implementation of the draft regulations. In doing so, the draft regulations propose that the CF and Licensee may, amongst others:

- found, establish, subsidise, or assist a body, organisation or scheme that deals with facilities designed to provide rehabilitation and assistance to employees;
- ensure that employers and employees are made aware of their obligations within the occupational setting and the CF or Licensees' rehabilitation and return-to-work processes;
- ensure that the appropriate financial resources are available to support rehabilitation and return-to-work programmes;
- provide appropriate support to stakeholder organisations to ensure that they comply with the draft regulations;
- institute steps to increase stakeholder awareness and recognition of their own efforts in rehabilitation and return-to-work programme; and
- monitor, evaluate and review the implementation of rehabilitation and return-to-work policy.

It is proposed that the CF or Licensee must appoint or designate a disability manager* who will be responsible for assessing, approving, and authorising all individual rehabilitation plans.

COIDA provides for assessment rebates to incentivise employers to participate in rehabilitation programmes. Employers will face the task of balancing rehabilitation processes with operational needs and ensuring workers are fit to perform their duties. Striking the right balance between rehabilitation and operational requirements will require careful consideration and proactive measures from employers.

There exists also, in our view, a possible legal challenge to the proposed regulations regarding the expansion of the CF's powers, which may interfere with the primacy of the application of the Labour Relations Act to employment relationships. The public has been invited to provide substantiated comments on the draft regulations in writing by 15 July 2023.

*The term "disability manager" is defined as a suitably trained individual who performs various functions pertaining to return-to-work and rehabilitation systems such as design coordination and implementation to return-to-work programmes

For more, visit: <https://www.bizcommunity.com>