
GOVERNMENT NOTICE

Department of Labour

No.

2019

**COMPENSATION FOR OCCUPATIONAL INJURIES AND
DISEASES ACT, 1993 (ACT NO 130 OF 1993)**

**REGULATIONS ON NOISE INDUCED HEARING LOSS FOR THE
COMPENSATION FUND MADE BY THE MINISTER UNDER COMPENSATION
FOR OCCUPATIONAL INJURIES AND DISEASES ACT, 1993**

I, Minister of Labour, after consultation with the Compensation Board, hereby make the following attached regulations for public comment in terms of Section 97 of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No 130 of 1993) as amended. The proposed regulations are attached as Schedule A.

REGULATIONS

The following regulation is issued to clarify the position in regard to compensation of claims for occupational Noise Induced Hearing Loss and supersedes all previous instructions regarding compensation for occupational Noise Induced Hearing Loss.

Interested persons are invited to submit any substantiated comments in writing on the proposed amendments within 30 days from date of publication hereof to the Department of Labour, Compensation Fund 167 Thabo Sehume Street, Delta Heights, Pretoria 0001 or medical.regulations@labour.gov.za

(For the attention of Director Medical Services: Dr Lucas Mosidi, Tel: 012 406 5856)

MP
MINISTER OF LABOUR
DATE_____

SCHEDULE A

1. DEFINITION OF REGULATION

In these regulations, “the regulations relating to NHIL under Compensation for Occupational Injuries and Diseases Act, 1993: and any word or expression to which a meaning has been assigned in the regulations shall have that meaning unless the context otherwise indicates.

2. PURPOSE OF REGULATIONS

These *Regulations on NHIL* seek to clarify the Fund’s position on integrated management of employees diagnosed with NHIL within the broader mandate of the Fund. It is developed to regulate and monitor service provision rendered to the Fund’s beneficiaries as provided by various stakeholders and medical service providers within the primary and secondary care spheres. It is to be used by all providers as a guiding document when dealing with NIHL in COID beneficiaries from a case management perspective, as well as a tool to guide those who are charged with developing and implementing programmes and policies which seek to promote, prevent and manage occupational hazards, to comply with relevant prescribed legislation.

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Definition of Terms

"Assessment" - a programme to determine any risk from exposure to noise associated with the workplace in order to identify the steps needed to be taken to remove, Reduce or control such hazard.

"Exposed" - exposed to noise whilst at a workplace and "exposure" has a corresponding meaning.

"Audiogram" - a chart, graph or table indicating the hearing threshold levels of an individual as a function of frequency (viz. 0.5, 1, 2, 3, 4, 6 and 8 kilohertz), as determined during a measurement of a person's hearing threshold levels by means of monaural, pure-tone, air-conduction threshold test.

"dB (A)" - a unit of sound pressure level as contemplated in SABS 083, "8 hour rating level" as defined in SABS 083.

"Competent person"-

(a) A person registered with the Health Professions Council in any of the following

Three categories-

(i) Otorhinolaryngologist (ear, nose and throat specialist);

(ii) Speech therapist and audiologist; or

(iii) Occupational medical practitioner; or

(b) A person qualified in audiometric techniques from an institution registered with the relevant Education and Training Quality Assurer (ETQA) registered in terms of the South African Qualifications Authority Act (Act No58 of 1995), or until that ETQA is established, approved by the chief inspector.

“**COID Act**”- compensation in the case of disablement caused by occupational injuries and diseases, sustained or contracted by employees in the course of their employment, or death resulting from such injuries and diseases; and to provide for matters connected therewith.

“**Better ear**” - the ear with the lowest value

“**Poorer ear**” - the ear with the highest value

“**TTD**” - total temporary disablement

“**PD**” - permanent disablement

“**AMA Guides**”- the American Medical Association to the evaluation for assessing impairment, causation and work ability.

Definition

Hearing loss caused by exposure to excessive noise. Excessive noise is noise of ≥ 85 dB in 8 hours in 24 hours for more than 5 days per week. It is sensorineural, it results in permanent damage usually affects both ears.

Diagnosis

1. The following regulations are issued to clarify the position in regard to claims for impairment of hearing:

- 1.1 An occupational disease due to excessive noise in industry , and
- 1.2 An occupational injury due to factors other than excessive industrial noise [head trauma, (resulting from e.g. blows to the head), or acoustic trauma causing the immediate loss of hearing produced by one or more exposures to sudden intense forms of acoustic energy such as explosions, gunfire, or blasts]. Such incidents may cause binaural (both ears) or monaural (one ear) impairment of hearing.
- 1.3 In loss of hearing by accident in either one or in both ears the impairment may be caused either by conductive loss when the middle is injured or by sensorineural loss when the inner ear is injured or by a combination of both conductive and sensory-neural loss when both the middle and inner ear are injured- the so called mixed (sensori-neural and conductive) hearing loss.

- 1.4 Impairment of hearing claimed to result from exposure to excessive noise in industry (occupational noise of an excessive nature) usually manifests itself over a number of years and results in binaural impairment of hearing.
- 1.5 The provisions of section 65(4) of the Act referring to prescription shall be strictly applied with due regard to the provisions of Section 38 of the Act.
- 1.6 The date of the commencement of the disease shall be the date of the first valid audiogram showing an increase in hearing loss from the subsequent audiogram by 25dB or more. The hearing impairment values are calculated using the results of the audiogram and the diagnostic audiogram using the attached tables. Annexure A
- 1.7 Persons to be submitted for compensation consideration would be:
 - 1.7.1 Employees who show a shift of more than 25dB from the first audiogram ;
or
 - 1.7.2 Employees who have more than 25dB and whom there is no first valid audiogram is available.
- 1.8 A medical opinion must be provided by either;
 - 1.8.1 An ENT specialist if the case is complicated or the degree of impairment exceeds 55Db or,
 - 1.8.2 An Occupational Medical Practitioner if the case is uncomplicated (occupational injury other than baro-trauma and acoustic trauma) and the degree of impairment is to be 55dB or less.
- 1.9 The following principles will apply:
 - 1.9.1 The claimant's service record should confirm exposure to excessive noise in his occupation
 - 1.9.2 It should be proven that the noise was of such a nature and intensity and exposure to it of such duration, as to be likely to have caused permanent noise-induced hearing impairment. The compensability of a claim can only be considered where noise levels readings exceed the maximum laid down by the South African Bureau of Standards which is known as the N85 Noise Rating Curve Level
 - 1.9.3 An OMP / ENT specialist should certify that the decibel loss in the four frequencies 500, 1000, 2000 and 3000 Hz is compatible with noise-induced hearing impairment and that no other cause(s) for the hearing loss were found on examination. If other cause(s) are found, a detailed report should be submitted. This report should be accompanied by 2 audiograms showing the loss in decibels at the four frequencies mentioned

- 1.9.4 Audiograms should be done on pure tone audiometers which are correctly calibrated
- 1.9.5 It is essential that two different audiograms should be taken in a suitable test environment and only after the employee has been removed from his noise occupation for at least 24 hours. The audiometric readings must show the decibel loss in the four frequencies 500, 1000, 2000 and 3000 Hz
- 1.9.6 Where the two readings show a substantial variation, more than 10 dB at any of the four frequencies 500, 1000, 2000 or 3000 Hz, it will be necessary to have the test repeated.

2 BINAURAL HEARING IMPAIRMENT

In cases where binaural hearing impairment is claimed as a result of mechanical or acoustic trauma , the principles laid down under paragraph 1.4,1.5 and 1.6 for occupational hearing loss due to excessive noise in industry apply, with the exception that the ENT-Surgeon/Occupational Medical practitioner should certify that the impairment found on examination is compatible with the nature of the injury sustained or is due to acoustic trauma of the nature and intensity experienced by the employee and that no other cause(s) for the impairment of hearing were found on the examination.

3 MONAURAL HEARING IMPAIRMENT

Noise-induced hearing loss affects both ears to more or less an equal degree and the impairment is due to sensori-neural loss. If, therefore, the loss of hearing is monaural, it must be assessed whether the loss is commensurate with noise exposure to one ear more than the other such as a gun shots in security workers. The assessment of permanent disablement for the loss of hearing in one or both ears as detailed must take cognisance of such additional factors as tinnitus, unhealed perforations of the tympanic membranes with possible recurrence of infections following thereon and /or mastoidectomies. In the event of recurring infections in the two latter instances, medical treatment should be provided and the employee should receive periodical (TTD) payments.

4. impairment

The calculation of permanent disability in loss of hearing

4.1 To determine hearing impairment, the following steps should be taken:

4.1.1 The decibel loss is read from the audiogram in the four frequencies, 500, 1000, 2000, 3000 Hz

4.1.2 The minimum level is taken as 0 dB and the maximum as 100 dB

4.1.3 Hearing loss is recorded in increments of 5 dB for each ear. It is, therefore, important to remember to read the audiogram in “fives” e.g. 20, 25, 30, 35 dB etc. and not 20, 21, 22, 23 dB etc.

4.2 Step two

Total the four decibel values for each ear separately. These values, read from the audiogram at the frequencies 500, 1000, 2000, 3000 Hz is referred to as the DSHL (decibel sum of the hearing threshold levels)

4.3 Step three

Use table 1 (Annexure A) to calculate the percentage impairment in each ear. (This is NOT the permanent disablement)

4.4 Step four

Use the following formula to determine the binaural hearing impairment:

Binaural hearing impairment (%) = $5 \times \text{hearing impairment of better ear} + (1 \times \text{hearing impairment of poorer ear}) \div 6$

4.4.1 The “better ear” is the ear with the lowest value

4.4.2 The “poorer ear” is the ear with the highest value

4.5 Step five

Use table 2 (Annexure B) to determine the percentage permanent disability

If there is monaural impairment of hearing as a result of an accident on duty the formula as applicable to binaural hearing impairment is also used in the calculation as if both ears were injured. If the ear not affected by the accident has no hearing impairment the value of the “better” ear will be 0 dB time 5 = 0. If the total dB loss on the four frequencies is 100dB or less, the impairment is 0% and if the total dB loss in the four frequencies is 368 or greater the impairment is 100%. (See table 1 Annexure A)

6. General

In all claims for compensation, the Compensation Fund or the applicable mutual association should ensure that the principles laid down in this circular are complied with

The ENT-Surgeon should at the same time of the claim submission be requested to advise whether the supply of a hearing aid is a necessity

Claims presenting unusual features should be submitted to the Compensation Commissioner or applicable mutual association for a ruling

ANNEXURE A

Table 1

DSHL	% Impairment of Hearing	DSHL	% Impairment of Hearing	DSHL	% Impairment of hearing
100	00,00	190	33,80	285	69,30
		195	35,60	290	71,20
105	1,90	200	37,50	295	73,10
110	3,80			300	75,00
115	5,60	205	39,40		
120	7,50	210	41,20	305	76,90
		215	43,10	310	78,80
125	9,40	220	45,00	315	80,60
130	11,20			320	82,50
135	13,10	225	46,90		
140	15,00	230	48,90	325	84,40
		235	50,60	330	86,20
145	16,90	240	52,50	335	88,10
150	18,80			340	90,00
155	20,60	245	54,40		
160	22,50	250	56,20	345	91,90
		255	58,10	350	93,80
165	24,40	260	60,00	355	95,60

170	26,20			360	97,50
175	28,10	265	61,90		
180	30,00	270	63,80	365	99,40
		275	65,60	368 or greater	100,00
185	31,90	280	67,50		

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ANNEXURE B
Table 2

% Binaural Hearing Impairment	% Permanent Disability	% Binaural Hearing Impairment	% Permanent Disability
0,00 – 1,60	0	51,70 – 53,60	26
1,70 – 2,40	1	53,70 – 55,50	27
2,50 – 4,80	2	55,60 – 57,40	28
4,90 – 7,20	3	57,50 – 59,40	29
7,30 – 9,60	4	59,50 – 61,30	30
9,70 – 12,00	5		
		61,40 – 63,20	31
12,10 – 14,40	6	63,30 – 65,20	32
14,50 – 16,80	7	65,30 – 67,10	33
16,90 – 18,80	8	67,20 – 69,00	34
18,90 – 20,80	9	69,10 – 70,90	35
20,90 – 22,70	10		
		71,00 – 72,90	36
22,80 – 24,60	11	73,00 – 74,80	37
24,70 – 26,60	12	74,90 – 76,70	38
26,70 – 28,50	13	76,80 – 78,70	39
28,60 – 30,40	14	78,80 – 80,60	40
30,50 – 32,30	15		
		80,70 – 82,50	41
32,40 – 34,30	16	82,60 – 84,50	42
34,40 – 36,20	17	84,60 – 86,40	43
36,30 – 38,10	18	86,50 – 88,30	44
38,20 – 40,10	19	88,40 – 90,20	45
40,20 – 42,00	20		
		90,30 – 92,20	46
42,10 – 43,90	21	92,30 – 94,10	47
44,00 – 45,90	22	94,20 – 96,00	48
46,00 – 47,80	23	96,10 – 97,90	49
47,90 – 49,70	24	98,00 – 100,00	50
49,80 – 51,60	25		

7. Benefits

The benefits payable according to the Act:

7.1 Temporary total disablement

Payment for temporary total or partial disablement shall be made for as long as such disablement continues, but not of a period exceeding 24 months.

7.2 Permanent Disablement

Payment for permanent disablement shall be made, where applicable, as and when the diagnosis of hearing loss is confirmed and final medical report is received

7.3 Medical Aid

Medical Aid shall be provided for a period of not more than 24 months from the date of diagnosis or longer, if in the opinion of the Director General, further medical aid will reduce the extent of the disablement. Medical aid covers costs of diagnosis of hearing loss caused by exposure to excessive noise and trauma and any necessary treatment provided by any healthcare provider. The compensation Commissioner shall decide on the need for, the nature and sufficiency of medical aid supplied.

8. Reporting

The following documentation should be submitted to the Compensation Commissioner or the Employer individually liable or the Mutual Association concerned:

- 8.1 Employer's report of an Occupational Disease (W.CL.1/2).
- 8.2 Notice of Occupational Diseases and claim for compensation (W.C. L 14/3)
- 8.3 An affidavit by the employee if an employer can not be traced or the employer will not timeously supply W.CL 1.
- 8.4 Industrial work history (W.C. L 110)
 - 8.4.1 There should be a clear history of exposure or
 - 8.4.2 Exposure in an occupation or industry where NIHL exposure is known to occur.
 - 8.4.3 Length of exposure

- 8.4.4 Medical surveillance report that is baseline periodic exit, where applicable.
- 8.4.5 Occupational hygiene report, where applicable.
- 8.5 Claimant's/Employee service record should confirm in writing exposure to excessive occupational noise. This intensity and duration of exposure should commensurate with the hearing impairment.
- 8.6 It should be proved that the noise was of such a nature and intensity and exposure to it of such duration, as to be likely to have caused permanent noise induced impairment. The compensability of a claim can only be considered where noise level readings exceed the maximum laid down by the South African Bureau of Standards (S.A.B.S.083-1983) and which is known as the N85 Noise Rating Curve Levels.
- 8.7 Notice of Occupational Diseases and claim for compensation (W.C. L 14/3)
- 8.8 Medical opinion - this should state that the hearing loss is compatible with noise induced hearing impairment. In atypical cases an appropriate explanation should be provided.
- 8.9 An affidavit by the employee if an employer can not be traced or the employer will not timeously supply W.CL 1.
- 8.10 Industrial work history (W.C. L 110)
 - 8.10.1 There should be a clear history of exposure or
 - 8.10.2 Exposure in an occupation or industry where NIHL exposure is known to occur.
 - 8.10.3 Length of exposure
 - 8.10.4 Medical surveillance report that is baseline periodic exit, where applicable.
 - 8.10.5 Occupational hygiene report, where applicable.
- 8.11 First Medical Report detailing the employee's illness in respect of an occupational disease (W.C.L 22). The medical opinion should state that the hearing loss is compatible with noise induced hearing loss.
- 8.12 Audiograms: two (2) diagnostic audiograms conducted by an audiologist should be submitted. The audiograms should be performed after at least 16 hours have elapsed from the last exposure. The audiograms may be done on the same day but on different sittings or times. The audiograms must not differ by more than 10dB at any frequency.

The better diagnostic audiogram will be used to calculate the hearing impairment for compensation purposes. If required, a 3rd audiogram shall be performed. If this is still not within the 10dB limit then the assessment shall be delayed for a period of six (6) months. If audiograms of the required quality are still not obtained after six months, then referral to an ENT specialist will be made in order to determine hearing loss.

8.13 A copy of the first valid audiogram – this is important as the first valid audiogram will be subtracted from the subsequent audiogram to determine hearing loss for which the Commissioner, Mutual Associations or Employer individually liable is responsible.

8.14 The audiologist performing the audiogram should attest in writing to the employee's identity.

6.10 Progress/Final medical report in respect of occupational disease (W.C.L 26)

9. Conducting and recording an audiogram

9.1 A first audiogram must be conducted on all employees in any working place where the equivalent continuous weighted sound pressure level, normalized at a weighted time average of 8 hours per day or forty hour week, is equal to or exceeds 85dB.

9.2 A first audiogram must be conducted on every current employee exposed to noise as contemplated in 6.1, within 2 years of the date of this Regulation.

9.3 From the date on which Regulation 168 was published, every new employee exposed to noise as specified in 6.1 must have a first valid audiogram done within 30 days of commencement of employment.

9.4 The first valid audiogram of an employee conducted

9.5 An employee's first valid audiogram must be recorded and such record must be kept for forty years

10 Transfer between workplaces or changing employer

10.1 The first valid audiogram results, as well as the most recent subsequent audiogram conducted whilst in employment, should be given to an employee

when he is no longer exposed to noise or leaves employment at that workplace.

- 10.2 The first valid audiogram as well as the most recent audiogram with hearing impairment as calculated must be presented at employment to the new employer.
- 10.3 At recruitment, the new employer must record the first valid audiogram as well as the subsequent hearing loss sustained with the previous employer and the latter may be verified with an initial audiogram at recruitment.

11 Use of the Audiogram

- 11.1 The first valid audiogram must be recorded for the purpose of using these values for all future references to the employee's baseline hearing levels.
- 11.2 The subsequent audiogram should then be used in determining any future compensable hearing loss in terms of Regulation 168
- 11.3 Should the employee have been previously compensated for hearing loss the last and the subsequent audiogram will be used for determining deterioration and impairment.

12 Standards for the conducting audiograms

- 12.1 Testing for the first valid audiogram must be done 16 hours after an employee has been removed from an environment in which the noise level was equal to or exceeding 85dBA. The use of hearing protection devices to affect attenuation will not be acceptable.
- 12.2 The first valid audiogram is the better of the employee's two audiograms performed on the same day and that do not differ from each other by more than 10dB for any of the following measured test frequencies, i.e. 0.5, 1, 2 and 3 kilohertz (kHz).
- 12.3 If it is impossible to obtain two audiograms that comply with the requirements of 9.2, the employee must be referred to a competent person to determine baseline hearing levels.
- 12.4 If it is impossible for the competent person to determine baseline hearing levels as contemplated in 9.2, the competent person may establish

baseline hearing levels by using other techniques such as speech reception thresholds.

13. Claims Processing

The office of the Compensation Commissioner shall consider and adjudicate upon the liability of all claims. The Medical Officers in the compensation commissioner's office are responsible for medical assessment of a claim and for the confirmation of the acceptance or rejection of a claim.

14. Review of the Regulation

This regulation will be reviewed and updated as may be required from time to time. The Compensation Fund may at any point draft and implement a policy to clarify the contents of this regulation

MINISTER OF LABOUR

DATE: