

## **Comments on the Compensation for Occupational Injuries and Diseases Amendment Bill**

Socio-Economic Rights Institute of South Africa (SERI)

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**This submission is endorsed by:**

South African Domestic Service and Allied Workers Union (SADSAWU)

United Domestic Workers of South Africa (UDWOSA)

Izwi Domestic Workers Alliance

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## 1. Introduction

1.1 This submission responds to a call for public comment on the Compensation for Occupational Injuries and Diseases Amendment Bill by the Portfolio Committee on Employment and Labour issued on 25 January 2021. It focuses on the inclusion of domestic workers in private households under the definition of “employee” in section 1 (xix)(v) of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 in the light of the Constitutional Court judgment on the *Mahlangu v Minister of Labour* matter, which was handed down on 19 November 2020.

1.2 The submission begins with a brief background to the Socio-Economic Rights Institute of South Africa (SERI) before moving to the importance of the inclusion of domestic workers in the Compensation for Occupational Injuries and Diseases Act (COID Act) and the implementation of the *Mahlangu* judgment in Section 3. Section 4 provides comments on the Bill and Section 5 considers administering the COID Act in the context of the domestic work sector. Section 6 provides recommendations for the Department of Employment and Labour arising from the comments in the submission. It ends with a brief conclusion.

## 2. The Socio-Economic Rights Institute

2.1 The Socio-Economic Rights Institute (SERI) is a registered non-profit organisation and public interest law clinic that provides professional, dedicated and expert socio-economic rights assistance to individuals, communities, community-based organisations and social movements in South Africa. SERI conducts applied legal research, litigates in the public interest, facilitates civil society mobilisation and coordination, and conducts popular education and training. SERI’s core work relates to the advancement and protection of socio-economic rights in poor communities.

2.2 One of SERI’s thematic areas is “Making a Living”, which focuses on informal and precarious work and livelihoods. It is concerned with the struggles that many vulnerable people face in earning a living including poor working conditions, the lack of social protections and the general insecurity associated with part-time, temporary or informal

employment. SERI has been involved in legal, research and advocacy work in relation to the rights of domestic workers over the last few years.

2.3 SERI represented Sylvia Mahlangu and the South African Domestic Service and Allied Workers Union in the [Mahlangu v Minister of Labour](#) matter which culminated in a groundbreaking judgment from the Constitutional Court of South Africa. On 19 November 2020, the Constitutional Court handed down an order declaring the constitutional invalidity of section 1(xix)(v) of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 (the COID Act), which excluded domestic workers employed in private households from the definition of "employee", precluding them from claiming from the Compensation Fund for work-related injuries, illnesses or death. The Court also ruled that the order of constitutional invalidity is to have immediate and retrospective effect from 27 April 1994.

2.4 SERI has conducted research and advocacy on domestic work, collaborating closely with domestic worker organisations like the South African Domestic Service and Allied Workers Union (SADSAWU) and Izwi Domestic Workers Alliance. Over the last three years SERI has helped to raise public awareness about domestic worker issues, participating in over 30 media interviews on the subject. SERI research on the sector includes:

- a) [Domestic Workers' Rights: A Legal and Practical Guide](#) (July 2018), which explains what the law says about domestic workers and gives practical advice on how domestic workers can engage their employers.
- b) [Mobile-friendly information sheets](#) on the rights of domestic workers on subjects like wages, leave, the Unemployment Insurance Fund (UIF), employment contracts, the end of employment and the Commission for Conciliation, Mediation and Arbitration (CCMA), available in English and Zulu.
- c) An [Information sheet](#) which explains how the COID Act works, summarises the facts of the court case and explains the implications of the judgment for domestic workers. The information sheet was produced in collaboration with the Black Sash.

2.5 During the COVID-19 lockdown in 2020 SERI issued [recommendations](#) on legal remedies from the Unemployment Insurance Act available to unregistered domestic workers on behalf of SADSAWU.

It is on the basis of the above experience on the domestic work sector that SERI submits these comments.

### **3. Domestic workers and Compensation for Occupational Injuries and Diseases in context**

3.1 The exclusion of South Africa's one million domestic workers from the Compensation for Occupational Injuries and Diseases Act has been a grave injustice to the workers and their families. The International Labour Organization recognises social protections, including compensation for workplace injuries and diseases, as a component of "decent work" and as important in reducing poverty and preventing people from falling into poverty.<sup>1</sup> Extending social protections to domestic workers, a workforce highly subject to discrimination as well as social and economic vulnerability, is a key element in the fight against poverty and the promotion of gender equality.<sup>2</sup> SERI therefore welcomes the Department of Employment and Labour's amendment of section 1(xix)(v) of the COID Act to include domestic workers.

3.2 The struggle for inclusion in the COID Act was hard-won and domestic worker unions and organisations played a major role in this achievement. The first domestic workers union, the South African Domestic Workers Union (SADWU), formed in 1984,<sup>3</sup> began campaigning for inclusion of domestic workers in Workmen's Compensation in the early stages of its inception. Despite their involvement in the labour movement, domestic workers were excluded when the Workmen's Act of 1941 was repealed by the introduction of the current Compensation for Occupational Injuries and Diseases Act 130 of 1993 (COID Act) and prevented from accessing a social protection afforded other workers.

3.3 In 2000, SADWU's efforts at organising around workmen's compensation and other issues were rekindled when the union was re-launched as the South African Domestic Service and Allied Workers Union (SADSAWU). Some of the strategies used by SADSAWU to ensure the amendment of the COID Act to include domestic workers included rallies, Worker's Day demonstrations, presenting petitions at strategic government functions and

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<sup>1</sup> International Labour Organization (ILO), *Social Protection Floor*, ILO (2021), available at : <https://www.ilo.org/global/topics/dw4sd/themes/sp-floor/lang-en/index.htm>

<sup>2</sup> ILO, *ILO: 90 per cent of domestic workers excluded from social protection*, ILO (2021), available at: [https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_458878/lang-en/index.htm](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_458878/lang-en/index.htm)

<sup>3</sup> South African Domestic Service and Allied Workers Union (SADSAWU), *About Us*, SADSAWU (2014), available at: <http://www.sadsawu.com/about-us.html>

participating and providing comment in Portfolio Committee meetings.<sup>4</sup> The legislature, though effecting certain amendments to the COID Act from time to time<sup>5</sup>, never effected the kind of amendment that would bring domestic workers into the protections provided by COIDA. During this time, many domestic workers continued to suffer from uncompensated occupational injuries and diseases.

3.4 In 2015, SADSAWU sought legal assistance in the *Mahlangu* matter, after Sylvia Mahlangu's application for compensation for her mother's death was turned down by the Compensation Fund because domestic workers were not covered by the COID Act. The legal action SADSAWU embarked upon was not only for the protection of domestic workers traditionally defined, as a wider class of workers also stood to benefit because Sectoral Determination 7, made in terms of section 51 of the Basic Conditions of Employment Act 75 of 1997, defined domestic workers to be gardeners, drivers employed in households, child minders, including those who look after the aged, the sick, the frail or the disabled, and domestic workers employed or supplied by employment services. SADSAWU's legal action culminated in the Constitutional Court judgment on the *Mahlangu* matter, declaring the exclusion of domestic workers as unconstitutional. As a result, this whole category of employees is now entitled to social protection for occupational injuries and diseases.

3.5 Domestic work is *work* and domestic workers are *workers* worthy of the social protections afforded other workers. The implication of excluding domestic workers from the COID Act meant that the only recourse available to them and to their dependents, was to sue employers. Domestic work, like all other work, is prone to accidents, injuries and diseases including death. In a study commissioned by the Solidarity Center, interview respondents reported injuries, ailments and diseases such as dog bites, back injuries, chronic spinal cord injuries, broken limbs, cuts, asthma and bone fractures.<sup>6</sup> Incidences of physical violence from employers have also been reported. Domestic workers are therefore deserving of a fail-safe against injuries and diseases sustained in the workplace. Further, in the *Mahlangu* judgment, the Constitutional Court accepted that many domestic workers

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<sup>4</sup> Parliamentary Monitoring Group, *Domestic Worker issues: Department of Labour, union and civil society briefings*, Parliamentary Monitoring Group (23 August 2010), available at: <https://pmg.org.za/committee-meeting/11890/>

<sup>5</sup> After 1993 the COID Act was amended in 1997.

<sup>6</sup> Janet Munakamwe and Tinovimbanshe Gwenyaya, *When the Job Hurts: Workplace Injuries and Diseases Amongst South Africa's Domestic Workers*, Solidarity Center (2020), p.5.

tend to be black women who have long suffered from inequality owing to their sex and race. Failure to afford social protection to domestic workers exacerbates these inequalities.

3.6 Although the current Amendment Bill has proposed the inclusion of domestic workers in the definition of “employee” in section 1 (xix)(v), it does not give effect to the *Mahlangu* judgment which ruled that the constitutional invalidity of section 1 (xix)(v) is to have immediate and retrospective effect from 27 April 1994. The implications of this part of the order for domestic workers are crucial: those domestic workers and dependants who have experienced work-related injuries, diseases or death as far back as 27 April 1994 are also able to submit their claims.

#### **4. Comments on the COID Act Amendment Bill**

4.1 SERI’s interest in the COID Act Amendment Bill 2020 is to ensure that domestic workers, as a class of employees, are sufficiently protected and that the Constitutional Court judgment in *Mahlangu v Minister of Labour* is fully complied with. Our primary concern is that the order directs the Compensation Fund (the Fund) to accept retrospective claims from domestic workers. In this section of the submission SERI addresses this subject and identifies sections, mainly in chapter V of the Act, which do not allow for retrospective claims from domestic workers to be processed.

4.2 In December 2020, acting in the interest of Sylvia Mahlangu in *Mahlangu*, SERI submitted a retrospective claim for compensation for the death of Maria Mahlangu, her mother, which occurred in March 2012. The process has revealed problems in sections 38, 39, 41 and 44 of the COID Act, which make processing Mahlangu’s claim or any other retrospective claim impossible. The submission addresses each of these sections below.

##### **Section 38: Notice of accident by employee to employer.**

4.3 As the title suggests, section 38 requires employees to file, verbally or in writing, reports of occupational accidents and/or injuries to their employers; but it also says “notice of the



accident *may also be given* ... to the commissioner ...”<sup>7</sup> Although it further says that failure to give notice to an employer does not “bar a right to compensation”, to benefit from this an employee must show that “the employer had knowledge of the accident from any other source at or about the time of the accident.”<sup>8</sup> Section 38(3) creates other instances where an employee who had not filed the “first report” of the accident to an employer can still have her claim considered, but to benefit from each one of these instances, the employee must prove the conditions set out in the subsection.

4.4 It is therefore clear that the scheme of section 38 requires employees to file the first report of an accident to the employer, failing which, and where the employee does not prove the exceptions justifying her failure, her claim may be rejected.

4.5 SERI submits that section 38 requires some reconsideration and/or an amendment because domestic workers, as a previously excluded group, are unlikely to have filed those first reports of their accidents to their employers. As it currently stands, section 38 will result in a situation where the application of this section works to the disadvantage of domestic workers. The current Amendment Bill is silent about section 38 being reconsidered in any way whatsoever.

### **Section 39: Notice of accident by employer to commissioner**

4.6 Section 39 is going to be amended but only at the level of penalties imposed on employers who have failed to notify the commissioner about accidents occurring at their workplaces.<sup>9</sup> The other provisions which constitute the employer as the preferred party to give notice of accidents to the commissioner, and the time limits set out for the giving of such notices, remain intact. SERI’s submits that the scheme of the section works to the disadvantage of domestic workers whose employers had no duty to give notice of the accident to the commissioner as the Act did not apply to domestic workers. The Department should consider making a provision in section 39 to accommodate workers submitting retrospective claims whose employers are unwilling to lodge a claim or are untraceable.

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<sup>7</sup> See section 38(1) of the Compensation for Occupational Injuries and Diseases Act (the COID Act).

<sup>8</sup> See section 38(2) of the COID Act.

<sup>9</sup> See clause 19 of Compensation for Occupational Injuries and Diseases Amendment Bill (Amendment Bill).

## **Section 41: Particulars of claim**

4.7 The difficulty with section 41 is that it provides for particulars of claim to be provided by claiming employees when requested to do so. It is clear that the kind of particulars envisioned are medical reports and the like. It should be acknowledged that domestic workers intending to bring retrospective claims may not be in a position to provide these sorts of particulars. SERI submits that other forms/types of particulars to prove retrospective claims should be considered, including affidavits and/or witness testimonies. Furthermore, the Department should consider other forms/types of particulars as well.

## **Section 44: Prescription**

4.8 Section 44 is the prescription section and states that right to benefits in terms of the Act will lapse if the accident is not brought to the attention of the commissioner or the employer or mutual association concerned, within three years from the date of the accident. The Amendment Bill extends the timeframe from 12 months to 3 years; however, this extension remains disadvantageous to domestic workers submitting retrospective claims.

4.9 SERI submits that a mechanism must be put in place to enable the Fund to process retrospective claims from domestic workers.<sup>10</sup> The Amendment Bill should either be withdrawn in its entirety because the proposed amendments are wholly inadequate in dealing with retrospective claims, or a new section should be introduced in the Act to give effect to the *Mahlangu* Constitutional Court judgment and the subject of retrospective claims. These recommendations are expanded on in section 6.

## **5. Administering COIDA in the context of the domestic work sector**

5.1 The submission thus far focuses on the inclusion of domestic workers in the COID Act in section 3 and comments on amendments which would give effect to the Constitutional Court judgment and the issue of retrospective claims in section 4. However, coverage of domestic workers in any social protection scheme goes hand in hand with the compliance

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<sup>10</sup> Absent an enabling mechanism, if the Compensation Commissioner was to process any retrospective claim, he will be exercising a power he does not have.

of employers: “there is little value in having well-designed and well-administered schemes if some employers are side-stepping their obligations”.<sup>11</sup> Employer non-compliance in the domestic work sector is widespread. It is therefore important to explore the nature of this sector, the characteristics which facilitate employer non-compliance and challenges enforcing the law.

5.2 Domestic workers are recognised as among one of the most vulnerable group of workers.<sup>12</sup> In its report investigating minimum wages and conditions of employment of domestic workers in July 2001, the Department of Labour affirmed that:

“Domestic workers represent a particularly vulnerable category of workers. In general, domestic work is an undervalued activity performed by people from disadvantaged social groups. It is work with perceived low economic value and limited social recognition.”<sup>13</sup>

5.3 Due to its location in the private household, domestic work is characterised by “isolation, invisibility and low organisation”<sup>14</sup> and “domestic workers find themselves with a highly individualised employment relationship, subjected to unequal power relations, which contributes to their vulnerability”.<sup>15</sup> These characteristics also make it difficult for enforcement. The Department of Employment and Labour certainly cannot use the same enforcement mechanisms used in other sectors. The vulnerability of domestic workers who are foreign nationals, documented or undocumented, are compounded, as many employers use workers’ precarious circumstances to violate the law.

5.4 In the post-apartheid period, the state has sought to integrate the domestic work sector into labour legislation, by including domestic workers in the Labour Relations Act 66 of 1995, the Basic Conditions of Employment Act 75 of 1997, and the Unemployment

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<sup>11</sup> ILO, *Strengthening the role of employment injury schemes to help to prevent occupational accidents and injuries*, ILO (2013), p. 17.

<sup>12</sup> ILO, *Who are domestic workers*, ILO (2021) available at: [https://www.ilo.org/global/topics/domestic-workers/WCMS\\_209773/lang--en/index.htm](https://www.ilo.org/global/topics/domestic-workers/WCMS_209773/lang--en/index.htm)

<sup>13</sup> Department of Labour, “Investigation into minimum wages and conditions of employment of domestic workers invitation for representations”, Department of Labour (10 July 2001), p. 10.

<sup>14</sup> Department of Labour, “Investigation into minimum wages and conditions of employment of domestic workers”, p.10.

<sup>15</sup> Department of Labour, “Investigation into minimum wages and conditions of employment of domestic workers”, p.10.

Insurance Act 63 of 2001 amongst others. Sectoral Determination 7 established the basic conditions of employment for the sector. Despite these interventions, domestic workers in South Africa continue to work under unfair conditions because of two main challenges: 1) widespread non-compliance from employers; and 2) lack of effective enforcement of laws by the Department of Employment and Labour.

5.5 The experience of domestic workers' efforts to access unemployment insurance, a social protection scheme similar to compensation for occupational injuries and diseases, illustrates that coverage of vulnerable worker groups in social protection schemes is meaningless without effective enforcement to ensure compliance.

5.6 Domestic workers have been covered by the Unemployment Insurance Act since 2003, however employer compliance is poor. According to a study by Women in Employment: Globalizing and Organizing (WIEGO) and the Social Law Project at the University of Western Cape, only 20% of domestic workers are registered by their employers under UIF.<sup>16</sup> Further, the percentage of employers who keep up with contributions is probably lower.

5.7 Domestic workers experienced the significance of employers' failure to register them for UIF during the COVID-19 pandemic, when many workers lost their jobs or were put on unpaid leave by employers. Although domestic workers were eligible to receive income support through the Department of Employment and Labour's COVID-19 Temporary Employer/ Employee Relief Scheme (TERS), the vast majority were unable to benefit as TERS was only available to employers who are registered with the Unemployment Insurance Fund (UIF) and are up to date with contributions as required by the Unemployment Insurance Contributions Act 4 of 2002.

5.8 Employers who do want to register their employees with the UIF and make contributions face technical problems with the UIF online "u-filing" system. Employers express frustration with the online service and lack of responsiveness of call centre operators. Many employers give up after no success, to the detriment of their employees.

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<sup>16</sup> Social Law Project, *Domestic Workers' Laws and Legal Issues in South Africa*. WIEGO Law and Informality Resources (2014), available at: <http://www.wiego.org/sites/default/files/resources/files/Domestic-Workers-Laws-and-Legal-Issues-South-Africa.pdf>

5.9 Given the similarities in administration of the Unemployment Insurance and Compensation Funds, it is reasonable to expect that employer non-compliance will be a challenge with respect to the inclusion of domestic workers in the COIDA Act. Therefore, special attention should be given to the administration of the Compensation Fund in the context of the domestic work sector in order to ensure that domestic workers are covered.

## **6. Recommendations**

6.1 A set of recommendations emerge from SERI's comments on the Amendment Bill in section 4 and administering COIDA in section 5. Principally, a mechanism must be put in place to enable the Fund to process retrospective claims from domestic workers. The Department of Employment and Labour should consider withdrawing the Bill or, alternatively, including a new section on retrospective payments in the Act. In addition, it should promote occupational safety and health practices in the domestic work environment, create incentives for employers of domestic workers to register and contribute to the Compensation Fund, strengthen its enforcement mechanisms in the domestic work sector, issue an internal directive educating departmental staff about the inclusion of domestic workers into COIDA, issue a directive to guide employers of domestic workers about COIDA and, finally, launch a public awareness campaign about COIDA. Each of these recommendations is developed in what follows next.

### **6.1.1 Withdraw the Amendment Bill**

Having set out the inadequacies of the Amendment Bill in Section 4, SERI submits that, ideally, the Bill should be withdrawn in its entirety because the proposed amendments are wholly inadequate in dealing with retrospective claims. When the Bill was drafted the retrospective claim of benefits was not considered in any way and, as a result, the Bill is not aligned with the Constitutional Court judgment.

### **6.1.2 Introduce a new section of the Act addressing retrospective claims**

- a) An alternative to withdrawing the Bill is to introduce a new section in the Act to deal specifically with the *Mahlangu* Constitutional Court judgment and the retrospective claims.

- b) In order to give effect to the Constitutional Court judgment, the proposed new section should address the retrospective application of COIDA for employees previously excluded and proof and investigation of claims older than 3 years from date of accident. Each of these is dealt with below.

#### **6.1.3 Retrospective application of COIDA for employees previously excluded**

- a) Claims from the category of employees who were previously excluded from the definition of employee in section 1 of COIDA, whose claims arose from 27 April 1994 to a specified date (perhaps the date the amended COID Act comes into operation) remain valid and will be adjudicated upon in terms of the best evidence available to prove the merits of such claim.
- b) Notwithstanding the provisions of section 43 in the Amendment Bill, claims older than 3 years from the date of the accident are still valid if they relate to the category of employees that were previously excluded from the definition of employee in section 1.
- c) Notwithstanding the provisions of sections 38 and 39, claims older than 3 years from the date of the accident relating to employees previously excluded from the definition of employee in section 1, can be lodged with the Fund by the said employee personally, or by an agent of the said employee, or a family member of the said employee.
- d) Notwithstanding the provisions of section 39, a claim contemplated by section 1(b) *above* need not be lodged with the Fund by the employer of the injured employee where this proves to be impossible owing to, amongst others, the untraceable nature of such employer or the unwillingness of such employer.

#### **6.1.4 Proof and investigation of claims older than 3 years from date of accident**

- a) An employee intending to bring a claim against the Fund older than 3 years from the date of accident, will bring such a claim by lodging with the Fund the prescribed form together with supporting documents set out in the Regulations.
- b) Upon receipt of such a claim in a prescribed form the fund will investigate its merits by tracing the employer and the details of the accident.
- c) No claim will be repudiated only on account that the investigation of its merits proves impossible or cumbersome.

- d) If the investigation of the claim proves impossible and/or cumbersome, the Fund will host a formal enquiry in terms of which an employee will be permitted to give the best evidence available which may include the calling of witnesses to give oral evidence.

#### **6.1.5 Promote occupational safety and health practices in the domestic work environment in accordance with the Occupational Health and Safety Act (OHSA)**

- a) A misconception exists about the occurrence of workplace injuries for domestic workers because the private household is not perceived as “dangerous”. However, injuries do occur, and the Department of Employment and Labour should promote occupational health and safety amongst employers of domestic workers in order to prevent workplace injuries. Common injuries include dog bites and injuries related to the use of electrical equipment<sup>17</sup>, bone fractures from falling, back injuries due to lifting heavy objects, skin damage caused by harsh chemicals in cleaning products, asthma, and head injuries from car accidents while driving with employers.<sup>18</sup>
- b) The OHSA requires every employer to provide and keep, as far as is reasonably possible, a working environment that is safe and does not put the employee’s health at risk, including by providing protective equipment and the information, instruction, training and supervision necessary to ensure, as far as reasonably possible, that the workplace remains healthy and safe.<sup>19</sup>

#### **6.1.6 Create incentives for employers of domestic workers to register and contribute to the Compensation Fund**

- a) Employers of domestic workers, unlike other employers, are not incentivised to register and contribute. Economic gain and fiscal incentives are examples of how employers in other sectors stand to gain from employing workers. Employer contributions could, for example, be regarded as income tax-deductible expenses,

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<sup>17</sup> Department of Labour, “Investigation into minimum wages and conditions of employment of domestic workers”, p. 72.

<sup>18</sup> Janet Munakamwe and Tinovimbanshe Gwenyaya, *When the Job Hurts: Workplace Injuries and Diseases Amongst South Africa’s Domestic Workers*, p.5.

<sup>19</sup> See Occupational Health and Safety Act 85 of 1993

to encourage registrations and contributions.<sup>20</sup> Fiscal incentives can influence the effective rate of registration.<sup>21</sup>

- b) Drawing from the experience with UIF, the registration and contribution system for domestic employers should be simplified as burdensome procedures could dissuade employers from complying, with domestic workers ultimately paying the price.

#### **6.1.7 Strengthen enforcement mechanisms in the domestic work sector**

- a) In addition to offering incentives to encourage compliance, the Department should strengthen its enforcement of the sector, by securing enough qualified labour inspectors and by ensuring that their compliance orders are respected and enforced. SERI commends the Department's "special innovation pilot project" which began in June 2017,<sup>22</sup> aimed at addressing issues in the domestic sector, and deploying inspectors in selected towns, to inspect whether employers are meeting the requirements for employing a domestic worker, including contributing to the UIF.<sup>23</sup> Should an employer have been found to be non-compliant, the labour inspector would issue an enforcement notice which gave 14 days to comply, failing which the labour inspector would issue a recommendation for prosecution at the Labour Court.<sup>24</sup> SERI encourages the Department to build on the pilot project and other efforts that followed it, like the conference for Inspections and Enforcement Services in 2019, by convening the relevant stakeholders to reflect on the pilot, and plan for the roll-out of the project in other parts of the country.
- b) SERI discourages the creation of complaint mechanisms like the "Impimpa Hotline" launched in March 2020 for workers to report cases of non-compliance with the national minimum wage. In the context of domestic work, such a mechanism would

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<sup>20</sup> ILO Social Protection Department, *Social protection for domestic workers: Key policy trends and statistics*, ILO (2016), p. 27.

<sup>21</sup> ILO Social Protection Department, *Social protection for domestic workers: Key policy trends and statistics*, p. 27.

<sup>22</sup> Department of Labour, Department of Labour Pilots Innovation Project on Domestic Work Sector, Department of Labour (14 June 2017), available at: <https://www.gov.za/speeches/department-labour-pilot-innovation-project-domestic-sector-14-jun-2017-0000>

<sup>23</sup> Business Tech, "SA labour department wants to inspect how you treat your domestic worker – here's how it will work", *Business Tech* (28 June 2017), available at: <https://businesstech.co.za/news/government/182419/sa-labour-department-wants-to-inspect-how-you-treat-your-domestic-worker-heres-how-it-will-work/>

<sup>24</sup> Business Tech, "SA labour department wants to inspect how you treat your domestic worker – here's how it will work", *Business Tech* (28 June 2017).



not be effective due to the fact that many domestic workers would not use this for fear of losing their jobs.

**6.1.8 Issue an internal directive within the Department of Employment and Labour to educate all staff**

- a) The internal directive should inform the staff at the Department of Employment and Labour and its Labour Centres about the inclusion of domestic workers in COIDA and how to manage and assist domestic workers submitting retrospective claims.
- b) The Department should also document retrospective claims received, and the status of such claims.

**6.1.9 Issue a directive to guide employers of domestic workers about COIDA**

- a) The directive should introduce employers of domestic workers to COIDA and familiarise them with the inner workings of the Compensation Fund, including the registration process and what needs to happen if their employee suffers an occupational injury, contracts a disease or dies during the course of their work.
- b) It should encourage employers to register, outlining deadlines for when all employers need to have registered their employees, the deadline for when an employer needs to register their employee once an employment relationship has been established, and communicating clearly the penalties for violations.<sup>25</sup>

**6.1.10 Launch a public awareness campaign about the inclusion of domestic workers in the Compensation for Occupational Injuries and Diseases Act**

- a) The campaign could include distributing pamphlets on the rights of domestic workers, handbooks explaining the claiming process and how to use online services to contribute to the Compensation Fund.
- b) The campaign should make use of mass media like television, radio, newspapers and websites.

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<sup>25</sup> ILO Social Protection Department, *Social protection for domestic workers: Key policy trends and statistics*, p. 34.

## 7. Conclusion

7.1 In response to a call for public comment on the Act, SERI's submission has focused on the domestic work sector, in the light of the Constitutional Court judgment in *Mahlangu*. The submission contextualises the inclusion of domestic workers in the COID Act against the struggles of domestic workers over the years as well as the implementation of the *Mahlangu* judgment. It has also commented on the Bill and the complexity of administering the COID Act, given the experience of employer non-compliance in other contexts.

7.2 Overall, our submission is that a mechanism must be put in place to enable the Fund to process retrospective claims from domestic workers. Our recommendations, in summary, are that the Department of Employment and Labour should:

- a) Either withdraw the Bill or include a new section on retrospective payments in the Act;
- b) Promote occupational safety and health practices in the domestic work environment;
- c) Create incentives for employers of domestic workers to register and contribute to the Compensation Fund;
- d) Strengthen its enforcement mechanisms in the domestic work sector;
- e) Issue a directive to guide employers of domestic workers about the COID Act; and
- f) Launch a public awareness campaign about the COID Act.

7.3 SERI is available to present these recommendations and/or to engage further with the department about retrospective payments.