

## DISABILITY INSURANCE AND INCAPACITY

Gap identified	Applicable legislation	Key considerations	Who sets the policies?
<p>Disability insurance and incapacity:</p> <ul style="list-style-type: none"> <li>Benefits are payable at a percentage of the employees' total remuneration, leaving them with reduced income at a time when their cost of living is likely to increase.</li> <li>Sick leave policies are not aligned with the waiting periods on insurance policies, leaving employees without protection for up to three months.</li> <li>In some industries, the definition of incapacity is so specific that employees will be dismissed even when they are able to perform another job with the employer. This problem can be overcome by setting up a rehabilitation programme or changing the definition of incapacities.</li> </ul>	<ul style="list-style-type: none"> <li><i>Labour Relations Act</i> (Act number 66 of 1995)</li> <li><i>Basic Conditions of Employment Act</i> (Act number 75 of 1997)</li> <li><i>Employment Equity Act</i> (Act number 55 of 1998)</li> <li><i>Compensation for Occupational Injuries and Diseases Act</i> (Act number 130 of 1993)</li> <li><i>Occupational Health and Safety Act</i> (Act number 85 of 1993)</li> </ul>	<ul style="list-style-type: none"> <li>Review the applicable legislation</li> <li>Key questions for case management: <ul style="list-style-type: none"> <li>What is the degree of disability/incapacity and how was it caused?</li> <li>Are employees capable of performing some or most of their duties?</li> <li>Can the working conditions or job type be adapted to suit the employee?</li> <li>During the waiting period, will the employee be paid at 100%, 50% or less of their salary?</li> <li>Can the employer terminate employment at this time?</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>The insurer will set out the definition of disability, the term of payment of the benefit, the conditions under which the benefit is payable, in what form the benefit is payable, the exclusions and the price of cover.</li> <li>Either the employer or insurer will define incapacity.</li> <li>The employer will determine the amount of benefit, the waiting period and the employees who are eligible for cover.</li> <li>The employer sets the policy with respect to rehabilitation of disabled or incapacitated employees, taking into account the cost and relevant legislation.</li> </ul>

### POSSIBLE EFFECTS OF CLOSING THE GAP

The main implication of closing the identified gaps is the cost to the employer of doing so.

Disability income benefits (PHI benefits) are unapproved benefits for tax purposes. As a result, the employer, and not the fund, will own the policy. Decreasing the waiting period on the policy so that there is no gap between the use of all available sick leave and the start of payment of disability benefits will increase costs in general.

Rehabilitation programmes will also result in greater costs for the employer. The cost of rehabilitation of incapacitated employees can, in some cases, be greater than the search costs of a replacement for the individual.

Medical aid and medical insurance benefits will place employees in a better position to prevent temporary illnesses and injuries from becoming permanent. Where medical cover is unaffordable, the employer may consider subsidising this benefit.

## STAFF EDUCATION AND LEAVE POLICIES

Gap identified	Applicable legislation	Key considerations	Who sets the policies?
<ul style="list-style-type: none"> <li>Often employers will not include study leave as part of an employee's benefits package. As a result, the employee will have to use their annual leave.</li> </ul>	<ul style="list-style-type: none"> <li>No applicable legislation on study leave entitlements</li> <li><i>Skills Development Act</i> (Act number 97 of 1998)</li> </ul>	<ul style="list-style-type: none"> <li>A survey of the employees can be carried out to determine the importance of such a benefit for members.</li> </ul>	<ul style="list-style-type: none"> <li>This policy will be set entirely by the employer, taking into account the needs of the workforce.</li> <li>The Skills Development Act provides an institutional framework for devising and implementing workplace strategies to develop and improve the skills of the South African workforce.</li> </ul>

### POSSIBLE EFFECTS OF CLOSING THE GAP

In *Benefits Barometer 2013*, we identified training and skills development as a key priority for young workers. In a company that employs a large number of young workers or workers pursuing a particular profession requiring ongoing training, the result of not accommodating the needs of these workers may negatively affect both the attraction and retention of employees.

The employer should consider allowing a reasonable number of study leave days such that the productivity of the business is not affected. Employers could also consider the use of a flexible benefits package, where the employee gives up part of their salary or some other benefit in exchange for study leave.

## MATERNITY LEAVE POLICIES

Gap identified	Applicable legislation	Key considerations	Who sets the policies?
<ul style="list-style-type: none"> <li>Employees who are on unpaid maternity leave might not be covered for risk benefits while they are away and/or the contributions towards retirement funding might cease while they are on leave.</li> </ul>	<ul style="list-style-type: none"> <li><i>Basic Conditions of Employment Act</i> (Act number 75 of 1997)</li> <li><i>Unemployment Insurance Act</i> (Act number 63 of 2001)</li> </ul>	<ul style="list-style-type: none"> <li>Review the applicable legislation.</li> <li>What proportion of the workforce is female?</li> <li>What is the cost of providing risk benefits?</li> <li>Can the cost of the risk benefits be insured for this period and at what cost?</li> <li>Should cover be provided for certain categories of workers or all workers?</li> <li>Can the cost be recouped when the employee returns to work?</li> </ul>	<ul style="list-style-type: none"> <li>Legislation sets out the leave entitlement of the employee.</li> <li>The employer will determine whether the employee will be entitled to paid or unpaid leave and whether the risk benefit premiums and retirement fund contributions will continue while they are away.</li> </ul>

### POSSIBLE EFFECTS OF CLOSING THE GAP

The continuation of risk benefits ensures that the employee is not left vulnerable while they are away from work.

If an employee is on unpaid maternity leave, the employer may have to pick up the costs of risk benefit premiums and retirement fund contributions, although this structure varies by company and according to fund rules. This money can be claimed from the employee when they return to work. Alternatively, the employer can ask the staff member if they would like to continue the benefits at their own cost.

## PROVISION OF BENEFITS FOR TEMPORARY/CONTRACT/SEASONAL WORKERS

Gap identified	Applicable legislation	Key considerations	Who sets the policies?
<ul style="list-style-type: none"> <li>Temporary workers are often not entitled to the same benefits as permanent employees. As a result, these workers are left unprotected and without any savings at their retirement date.</li> </ul>	<ul style="list-style-type: none"> <li><i>Employment Equity Act</i> (Act number 55 of 1998)</li> <li><i>Labour Relations Act</i> (Act number 66 of 1995)</li> <li><i>Basic Conditions of Employment Act</i> (Act number 75 of 1997)</li> </ul>	<ul style="list-style-type: none"> <li>Review the applicable legislation.</li> <li>Prepare for anticipated changes in legislation regarding the treatment of contract workers employed for more than three months.</li> </ul>	<ul style="list-style-type: none"> <li>The employer has power over which employees are eligible for fund membership. Usually this excludes workers employed on a contract basis who are only expected to be employed for the duration of a special project.</li> <li>There is a proposal to amend the <i>Labour Relations Act</i> so that temporary workers who are employed by a particular client, and not a labour broker, for a period longer than three months, will be entitled to be treated on the whole not less favourably than the permanent employees of the client. This may mean that risk, healthcare and retirement benefits must be extended to these workers.</li> </ul>

### POSSIBLE EFFECTS OF CLOSING THE GAP

Again the main implication here is the cost involved in offering benefits to temporary workers. There may also be administrative complexity where individuals are employed on a fixed-term contract and choose to take accumulated benefits when changing jobs.

Policy makers must consider how to treat accumulated fund credits of temporary workers when compulsory preservation is instituted.

## FUND CONSOLIDATION AND CORPORATE ACTIVITY

Gap identified	Applicable legislation	Key considerations	Who sets the policies?
<ul style="list-style-type: none"> <li>▪ In a merger or takeover, some members of the retirement fund may be prejudiced with regard to their retirement benefits, resulting in inequitable benefit structures.</li> <li>▪ Administrative complexity, and the cost of benefit provision, increases when there are multiple categories of fund members.</li> </ul>	<ul style="list-style-type: none"> <li>▪ <i>Pension Funds Act</i> (Act number 24 of 1956)</li> <li>▪ <i>Labour Relations Act</i> (Act number 66 of 1995)</li> <li>▪ <i>Employment Equity Act</i> (Act number 55 of 1998)</li> <li>▪ <i>Income Tax Act</i> (Act number 58 of 1962)</li> </ul>	<ul style="list-style-type: none"> <li>▪ Review the applicable legislation.</li> <li>▪ How many members are being transferred?</li> <li>▪ Is the transfer occurring from a pension to provident fund? Should the benefits be preserved?</li> <li>▪ What is the cost of aligning IT platforms and benefit structures?</li> </ul>	<ul style="list-style-type: none"> <li>▪ Where a company has been involved in an amalgamation, transfer or other corporate activity, multiple employers would have been involved in setting the benefits policies for the workforce. Unless the predator company has a clear policy on the benefits that all employees are entitled to, workers will retain their original benefits structure.</li> <li>▪ Legislation will ensure that employees are treated equitably.</li> </ul>

### POSSIBLE EFFECTS OF CLOSING THE GAP

Moving all employees into a common benefits offering may increase or decrease the costs of insurance and administration. If all employees are brought onto a common policy, there may be cost savings that arise from economies of scale. But if the risk profile of new employees is worse than the original population, the premium could increase.

Particular care needs to be taken when transfers are made from a pension to a provident fund. All benefits transferred will be taxed according to the *Income Tax Act*. From 1 March 2015, this rule will change so that benefits will not be taxed on transfer.

## STRIKE ACTION

Gap identified	Applicable legislation	Key considerations	Who sets the policies?
<ul style="list-style-type: none"> <li>Workers embarking on strike action may not have risk benefit cover during this period. This depends on whether the strike is protected or unprotected.</li> </ul>	<ul style="list-style-type: none"> <li><i>Labour Relations Act</i> (Act number 66 of 1995)</li> </ul>	<ul style="list-style-type: none"> <li>Review the applicable legislation.</li> <li>What happens to the contributions to the retirement fund during the strike? Will the employer continue to pay them?</li> <li>What exclusions exist?</li> <li>Can the insurance cover be extended to workers who are on strike?</li> </ul>	<ul style="list-style-type: none"> <li>The employer and trustees of the retirement fund will have discretion over whether the contributions to the retirement fund will continue when the member is on a protected strike.</li> <li>Strike action may be listed as an exclusion in insurance policies.</li> </ul>

### POSSIBLE EFFECTS OF CLOSING THE GAP

We raised this issue in *Benefits Barometer 2013* and said that where workers are dismissed due to striking, they will automatically lose their group risk cover. Even if they are reinstated there may still be certain gaps in insured benefit cover, where pre-existing conditions or waiting periods may apply to any new cover provided by their new employer arrangement. Medical underwriting can sometimes result in a gap in cover for up to three months.

Extendable risk cover could be considered in sectors prone to strikes to reduce the impact of this gap.