In the Spotlight
Transportation Of Farm Workers: What Does The Law Say?

There are various laws that apply to the transport of workers by employers. These include the Road Traffic Act, the National Land Transport Act, the Road Accident Fund Act and the Compensation for Occupational Injuries and Diseases Act.

In terms of the Regulation 247 of the Road Traffic Act, 1996 (Act No. 93 of 1996) the vehicle must be roadworthy and not overloaded. Persons may under certain circumstances be transported on freight trucks, however such a vehicle must be covered to a minimum height of 350 mm above where people are sitting or 900 mm if a person is standing, to prevent passengers from falling off. In addittion, no person my be conveyed in the same compartment as tools or goods unless a partition is made.

The driver must be in possession of the relevant licence. In certain instances the driver's liscence must be endorsed as a Professional Driving Permit (PrDP) in addition to being the correct code for the specified class of vehicle. Section 32 of the National Road Traffic Act read with Regulation 115 (1) indicates that a driver must have a PrDP if the vehicle is a bus (designed to carry 32 people or more) or a vehicle (including a minibus) with a gross vehicle mass exceeding 3500 kilograms, or designed or adapted to carry 12 or more persons including the driver. In addition, if any vehicle is used to convey people for reward and the driver is the holder of a road-based public transport license, the driver requires a PrDP. The requirements to obtain a PrDP are laid out in regulations 116 to 118 of the National Road Traffic Act.

Where people are transported at a cost the operator that provides such transport must have the necessary operating licence to do so. This is in terms of section 50(1) of the National Land Transport Act 5 of 2009. In terms of section 53(1)(c) of the said Act, a farmer who transports his employees in a vehicle belonging to him is exempt from having such a permit. When the farmer himself is not driving but his vehicle is used to convey his employees or someone else is contracted to do so, it is regarded as a "staff service" by the Act. The Minister may in the future proclaim that the operator of a staff service requires a public transport permit. If regulations are procliamed, the Minister of Transport may prescribe the circumstances under which such operating licences can be issued. At the time of this publication, no regulation to this effect has been made, but to be on the safe side, such a licence for the class of vehicle can be obtained from your provincial regulatory entity, or a municipality if so delegated by the National Public Transport Regulator. Obtaining a permit provisionally my be in your best interest as the sanction for non-compliance includes the impounding of your vehicle (see section 87) and may constitute a criminal offense in terms of section 90. Note that this is a different requirement to the professional driving permit which is required in terms of the National Road Traffic Act.

If a vehicle in which employees are transported is involved in an accident, employees who are injured or the dependants of deceased workers may claim from the Compensation for Occupational Injuries and Diseases Act if the accident occurred while workers were on duty or on the way to or from their workplace. Where employees are provided with free transport to and from their workplace by the employer or someone specifically appointed by the employer for this purpose, it is regarded as being within the scope of the employees' duties and as such is covered by the Compensation for Occupational Injuries and Diseases act. The Act also covers seasonal workers. An employee whose damages are covered by this Act cannot also institute a claim against his/her employer. It is important therefore that employers register with the

Compensation Commissioner and keep proper records of who is on duty, wages and overtime paid, etc. Besides the claim against the Compensation Commissioner, such an employee can also claim against the Road Accident Fund but any amount received from the Compensation Commissioner will be deducted from the compensation payable in terms of the Motor Accident Fund. On 18 May 2007, in the case of the Road Accident Fund vs. Pedro Ernesto Monjane, however, the Appeal Court ruled that the Road Accident Fund did not have to compensate an employee in the case where his/her employer was the guilty party. In this case the employer had driven the vehicle and, through negligence, was responsible for the accident. In this regard the Court found as follows: "Section 19(a) of the RAF Act, read with section 35(1) of COIDA, indicates where that line has been drawn: an employee who sustains an 'occupational injury' in the context of a motor accident will have no claim under the RAF Act if the wrongdoer is his or her employer."

The Road Accident Fund Act stipulates that a person who is injured in a vehicle accident or the dependants of a person who died, may institute a claim in terms of the Act. For purposes of the Act, a trailer or farming implement is also regarded a vehicle.

If the accident occurs after 1 August 2008, the injured party can claim their full out of pocket expenses resulting from the accident. There is no longer a limit to the amount a passenger can claim, however any excess can also no longer be claimed from the driver/owner of the motor vehicle. The only general limitation that is introduced is a capped maximum amount on loss of earning capacity and loss of support. Whether a party is a passenger or not, he/she can only claim a maximum amount (currently R201 337 per year) for loss of income if he/she can no longer work, or their dependant's claim for loss of support is limited to that amount if the party was killed in the motor vehicle accident.

Regarding compensation for non-pecuniary loss such as pain and suffering, an additional qualification is introduced; A claimant must prove that he or she suffered 'serious injury' before any compensation for non-pecuniary loss will be awarded. In order to prove this, the claimant will have to undergo a compulsory medical examination where the doctor will fill in an RAF 4 form to assess if the claimant suffered 'serious injury' in terms of the American Medical Association's guideline number 6. By this standard, a claimant will only be entitled to non-pecuniry damages if he/she has suffered 30% whole body impairment or has lost certain bodily functions permanently (the narrative test).

To sum up, the new position after 1 August 2008 abolishes the limitation on a passenger's claim as well as his/her right to claim the excess compensation from the driver or owner. As such, an employee who is injured whilst being transported within the scope of your business will have to claim all losses resulting from bodily injury from the Road Accident Fund, and no excess amount can be claimed vicariously from his employer. However, any damage to property caused by such an accident will not be covered by the Road Accident Fund and can be claimed from the employer directly.

Special provisions apply to those parties who were injured in an accident occurring before 1 August 2008. The Road Accident (Transitional Provisions) Act 15 of 2012 allows the injured party to chose whether they want the old Act or the New Act to apply. The advantage of choosing to have a claim handled according to the old position is that there is no qualification stating that a claimant's injury must be 'serious' in order to claim compensation for non-pecuniary loss. However as a passenger your claim will be capped on R25 000. If a party believes he is entitled to a greater amount, the residual can be claimed seperately from the driver/owner (take note that this only applies to accidents that happened before 1 August 2008). A party who wishes that the old act must apply, must fill out the prescribed form where he/she must unequivicollay state that he/she wishes the old Act to be applied. This form must be completed and submitted before midnight on the 12th of February 2014.

If a party who was injured before 1 August 2008 does not submit such a form within the prescribed time, the new Act will apply to their claim with certain transitional conditions imposed. This party's claim for compensation for non-pecunairy loss will be limited to a maximum of R25

000, but the qualifier or “serious injury” will not apply. If however, the party undergoes a medical assement to establish if serious injury was inflicted as explained above, and serious injury is proved, then the party’s claim will not be capped as far as compensation for non-pecunairy loss is concerned. Take note that this only applies to non-pecunairy loss, all medical costs etc are not capped at R25 000 nor dependent on the serious injury assessment. All other conditions of the new position will apply and the residual right will not be claimable from the driver/owner. The accident will then be deemed to have taken place on 1 August, 2008.

A claiment is also obliged to provide under oath all details of any compensdation already recieved as a result of the accident. The amount paid out by the RAF will be proportionately reduced by any amount paid over by the Fund directly to a supplier or as interim payments, as well as any amount recieved from the compensation commissioner.

The position of a party injured before 1 August 2008 can be summerized as follows:

Elect old Act to apply		**Elect new Act to apply**	
Pro’s	**Con’s**	**Pro’s**	**Con’s**
	Entire claim limited to R25 000	Only non-pecunairy loss limited to R25 000	
No qualification of “serious injury”			“serious injury” must be proved **if** amount in excess of R25 000 is claimed
Residual can be claimed from driver/owenr			No residual can be claimed from driver/owner
			Loss of income/support capped at R201 337 per year

The above does not apply to parties who have settled their claims by agreement, by judgement, or parties whos claims have prescribed. A party’s claim prescribes 3 years after the date of the accident if that party is an adult and the identity of the driver/owner of the car is known. Although the time can be extended to 5 years if a claim is lodged by filling in an RAF 1 form within the original 3 years. Likewise, where the identity is not known, an adult will have 2 years from the date of the accident which can be extended to a total of 5 years if a claim is lodged within the the 2 years. Prescription does not run as long as the injured party is a minor, mentally ill person, or under curatorship.

It is important to remember that claimants who elect to settle their claims in terms of the old Act are entitled to claim the excess from their employers vicariously.Therefore, farmers who transport people outside work context should ensure that they are also adequately insured against such claims. It is apparently also important to ensure that such cover is commercial rather than mere personal insurance.

Criminal prosecution is possible where the driver or owner of the vehicle was negligent. Offences committed in terms of the Road Traffic Act, such as reckless driving, driving under the influence of alcohol, non-roadworthiness of the vehicle, and driving without the necessary licence, are all offences for which the driver or owner may be prosecuted.

To summarise; farmers must be aware of their legal position relating to the transportation of farm workers. This is a complex set of rules with overlapping laws and some exceptions

created within the legislation. The Compensation for Occupational Injuries and Diseases Act offers the employer protection where employees are transported in the course of their duties or free of charge to and from the workplace by the owner or someone appointed by the owner. Even in such a case criminal prosecution is possible where the provisions of the Road Traffic Act are not complied with. In cases where people are transported outside work context, the risk of liability is much greater for the owner or driver of the vehicle.