



COVID-19 labour impact: How to manage your workforce during and post lockdown

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## COVID-19: Workforce Management

### Background

- 15 March 2020 – President Cyril Ramaphosa declared a national state of disaster in terms of the Disaster Management Act, 57 of 2002 (the DMA).
- 17 March 2020 – the regulations to the DMA, which mobilised state resources and sought to curtail gatherings of more than 100 persons in an effort to combat the spread of COVID-19, were published (the Regulations).
- 25 March 2020 – the Regulations were amended to provide for the restriction of movement of persons as well as non-essential goods and services from 23h59 on Thursday, 26 March 2020 to 23h59 on Thursday, 16 April 2020 (lockdown), a period of 21 days.
- 8 April 2020 – President Cyril Ramaphosa extended the Lockdown by an additional two weeks until 30 April.
- 23 April 2020 – President Cyril Ramaphosa announced easing of restrictions.
- 29 April 2020 – further regulations to the DMA issued regarding, amongst others, the procedures to be followed in respect of a return to work by businesses permitted to operate during Alert Level 4.

## COVID-19: Workforce Management

COVID-19 national lockdown and beyond – Impact on your business

# Scenarios

- (A) Lockdown (business not permitted).
- (B) Return to operation – the new work environment.
- (C) Post lockdown restructuring (financial push or innovation/reinvention pull).

## A. Lockdown

### Workforce structure and remuneration

#### Workforce structure

- Remote work – possible.
- Remote work – not possible.

#### Payment of salaries

- Employee working remotely – continue to pay.
- Employee not able to work:
  - No work, no pay
  - Encouraged to consider financial support:
    - *paid annual leave* – in absence of any other agreement (once exhausted, unpaid leave)
    - *bonus advancement* – where likely to be payable
    - *reduced pay* – based on reduced working hours
  - Temporary shut down – operations halted, employment contract suspended
- Employer should assist employees whose salaries have been reduced / suspended to access available state benefits (set out on the next slide).

## A. Lockdown

### State benefits: Employer support

The following benefits are designed to assist employers to continue paying their staff.

#### Employment Tax Incentive (ETI)

- Tax subsidy of up to R750 per month per qualifying employee earning below R6 500.
- Available for the next four months.
- South African Revenue Service (SARS) will pay out monthly.

#### Income tax relief

- Businesses with turnover of < R100 million permitted to delay, without penalties or interest:
  - 35% of their Pay As You Earn (PAYE) liabilities over the next four months; and
  - 35% of provisional corporate income tax payments over the next six months.

#### Other relief

- Temporary suspension of contributions to Skills Development Fund.
- Other state benefits available to qualifying business (e.g. grants).

## A. Lockdown

### State benefits: Employee support – Salary replacement

The following benefits are made available to support employees whose salaries have been reduced or suspended.

#### Reduced working time

- UIF benefits can be claimed where earnings have been reduced, subject to sufficient UIF credits.
- Benefit can be claimed for up to 12 months.
- Benefit calculated in terms of income replacement rate sliding scale (38% - 60%), subject to maximum cap.

#### Temporary Employer / Employee Relief Scheme (TERS)

- Employer temporarily shuts down due to effects of COVID-19.
- Benefit available provided:
  - employer registered with UIF
  - employer complies with application procedure
  - closure proven directly linked to COVID-19
- Benefit calculated on income replacement sliding scale of 38% - 60% of R17 712 per month per employee, subject to minimum of R3 500.
- Claims not dependent on UIF credits and irrespective of duration of contribution to UIF.
- Application made by employer, paid by UIF to employer (or bargaining council), then paid over to employees. Successful application may require memorandum of agreement.
- Can credit back paid annual leave / recoup salary advancement.

## A. Lockdown

### Workforce management – Additional considerations

#### Remote work

- Consider:
  - amending policies to accommodate and structure
  - amending KPIs
  - extending probation periods

#### Discipline

- Hearing must be fair – consider the circumstances.
- Alternatives:
  - written submissions (senior staff)
  - technology (supply where necessary)
  - postpone if no reasonable arrangement
- Amend human resource policies to accommodate.

## B. Return to operation

### Work environment – Employer obligations

#### Occupational Health and Safety Act

- Employer required to provide safe working environment, including ventilation and sanitary facilities.
- Health and safety representative/s and committee/s.

#### COVID-19 directive

- Employers required to:
  - conduct risk assessment and create COVID-19-Ready Workplace Plan (>500 employees must report to Department of Labour)
  - limit concentration of workers (remote work, staggered hours, shift rotation, staggered break times)
  - practice social distancing (1.5m distance or physical barrier)
  - provide personal protection equipment (two masks, other equipment as may be required)
  - screen workers for COVID-19 symptoms (refuse entry, or remove safely, report if diagnosed)
  - provide soap and water, hand and workspace sanitiser
  - regular cleaning and disinfection, ventilation
  - provide health and safety training (specifically COVID-19 measures)
  - appoint COVID-19 manager
  - monitor and supervise compliance with minimum measures
- Additional hygiene considerations:
  - no fingerprint identification system (unless COVID-19 proof)
  - no cloth towels – only disposable



## B. Return to operation

### Work environment – Employee obligations

#### Occupational Health and Safety Act

- Employees required to:
  - take care
  - cooperate
  - carry out reasonable instructions / orders
  - comply with rules and procedures
  - report unsafe situation or incident

#### COVID-19 directive

- Employees required to:
  - self-report any COVID-19 symptoms
  - comply with measures implemented in terms of directive

## B. Return to operation

### Work environment – Illness

#### Employer obligations

- Apply for sick leave (medical certificate may be required) – typically 30 days in every three years' employment.
- Employee can take entire sick leave entitlement (for three years of employment) during first year.
- Sick leave cannot be taken when employee is on another type of leave.

#### Unemployment Insurance Fund (UIF)

- Once statutory paid sick leave exhausted, if illness lasts for > seven days, UIF benefits apply.
- Benefit calculated on one day's credit for every four days of employment (subject to maximum accrual of 365 days' benefit), multiplied by number of days eligible to receive benefits during payment period.
- Benefit reduced where employer is paying a portion of salary (combined value not more than remuneration which would be received if not on quarantine).

#### Compensation for Occupational Injuries and Diseases Fund (COIDA)

- Compensation for disablement caused by injuries and diseases sustained in course of employment. Onus on employee to prove link.
- COVID-19 claim must meet the following requirements:
  - occupational exposure to a known source of COVID-19
  - reliable diagnosis as per World Health Organization's guidelines
  - linked to an approved official trip and travel history to countries/areas of high risk for COVID-19 on work assignment, or presumed high-risk work environment where transmission of COVID-19 is inherently prevalent
  - chronological sequence between work exposure and development of symptoms

## B. Return to operation

### Work environment – Illness (cont)

#### Compensation for Occupational Injuries and Diseases Fund (cont)

- Benefits applicable depend on temporary or permanent disablement.
- Payment for temporary total disablement shall be made from the date of diagnosis for as long as such disablement continues, up to 30 days.
- Days of absence during self-quarantine recommended by a registered medical practitioner not covered.

#### Civil claims

- Where employee not covered by COIDA, might have delictual claim against employer.
- Additional potential civil claims – independent contractor, service provider, client.

#### Remote work environment

- Challenging – need to determine whether disease contracted out of and in course of employment.

#### Death

- UIF benefits payable to deceased's beneficiaries – application must be made within 18 months of death.
- COIDA covers reasonable burial expenses and widow's / dependent's pensions.

## B. Return to operation

### Workforce management – Additional considerations

#### Discrimination

- Mindful of arbitrary rules.

#### Privacy

- Maintain medical and other employee information private.

#### Medical testing

- Generally, can test where permitted by legislation or justifiable in light of medical facts, employment conditions, social policy, fair distribution of benefits, or necessitated by inherent job requirements.
- COVID-19 classified as a 'notifiable medical condition' – obliging testing and treatment.
- New labour directive requires screening.

## C. Post lockdown restructuring

Legal advice to be sought – Strict legislated processes

### Retrenchment

- Where employer requires to downsize, may implement terminations due to operational requirements.
- During consultation process, alternatives to be considered:
  - remote work
  - temporary lay-offs
  - reduced pay
  - annual period of shut down brought forward
  - unpaid leave
  - training layoff scheme (CCMA)

### Amendment of terms

- Where employer requires to amend employment terms, must consult.

### State benefits – Unemployment Insurance Fund

- UIF benefits can be claimed by contributor whose employment has been terminated and he/she remains unemployed for over 14 days.
- Contributor must apply within 12 months of unemployment, and register as work-seeker.
- Benefit calculated on one day's credit for every four days worked and contributed in four year cycle from date of unemployment, up to maximum of 365 days.

## Closing

### Workforce management

- Prepare your work site.
- Prepare for different lockdown levels.
- Support your staff.
- Restructure with care.

## CLOSING

### Workforce Management

- Thank you for attending this presentation.
- Please look out for the next Deloitte Legal webinar, on *COVID-19 Business Impact – How to manage your commercial agreements both during and post lockdown*, to be held on **20 May 2020 at 10h00 -11h00**.



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