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# EMPLOYMENT ALERT

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### Time to get your TERS ducks in a row: The UIF announces a forensic audit

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### The return to work of vulnerable persons

On 10 November 2020, the Department of Health (DOH) issued an updated guideline in relation to the return to work of employees who are classified as "*vulnerable persons*" (Updated Guideline). Vulnerable persons are defined as those with co-morbidities and/or persons over the age of 60 years old who have an increased risk of severe COVID-19.

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## Time to get your TERS ducks in a row: The UIF announces a forensic audit

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For some time now, we anticipated that there would be an audit conducted by the UIF on TERS benefits which were paid out and we advised clients to be alive to such an audit being carried out by the UIF at some point in time.

Last Friday, 27 November 2020, the UIF officially announced a forensic audit into TERS claims. The purpose of the audit is to verify the authenticity of TERS claims and to ensure that employees received the TERS benefits which were applied for by employers during the lockdown. The forensic audit is due to commence in the first week of December 2020.

For purposes of the audit, employers are required to have the following documentation readily available, either manually or electronically:

- UIF COVID-19 TERS application pack;
- Bank statements relating to COVID-19 TERS application;
- Each employee file; and
- Payroll report from 1 January 2020 to July 2020.

The purpose of the forensic audit is also to assist the Fund to recover outstanding UIF contributions, including penalties and interest owed to the Fund. The forensic audit was announced pursuant to multiple claims of alleged TERS-related fraud or companies misusing TERS benefits intended for employees. Companies who have illegally received funds from the TERS scheme will be held to account through the necessary legal processes.

There have already been reported prosecutions. Also, there have already been compliance notices issued against some employers under the labour laws.

In addition, employers and employees are to note that as matters currently stand the extension of the TERS scheme has been withdrawn with effect from 15 October 2020 (this is despite the extended declaration of the national disaster). Employers and employees will not be permitted to make application for TERS benefits for any period beyond 15 October 2020. Employers and employees have until 31 December 2020 to claim TERS benefits for the period of 16 September 2020 to 15 October 2020. Should there be any changes in this regard we will update accordingly.

Employers are encouraged to be proactive in their preparation and to co-operate with the forensic auditors in the process.

We have advised clients on the TERS application process since early 2020 and any concerns or queries which arise from the UIF investigation process can be directed to us for further assistance.

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*Imraan Mohamed and Riola Kok*

## The return to work of vulnerable persons

The purpose of the Updated Guideline is to assist employers in making the determination as to whether a vulnerable employee should return to the workplace or not.

On 10 November 2020, the Department of Health (DOH) issued an updated guideline in relation to the return to work of employees who are classified as “*vulnerable persons*” (Updated Guideline). Vulnerable persons are defined as those with co-morbidities and/or persons over the age of 60 years old who have an increased risk of severe COVID-19. The Updated Guideline was published pursuant to the Guideline Document on Vulnerable Persons published by the DOH on 25 May 2020, which encouraged persons who were categorised as “*vulnerable persons*” to remain working from home or, insofar as possible, to be accommodated in the workplace where they are required to return due to the nature of their role.

The Updated Guideline sets out the manner in which vulnerable persons may now return to the workplace, provided it is safe for them to do so, taking into account both the decreased rate of infections and the possibility of a resurgence.

The purpose of the Updated Guideline is to assist employers in making the determination as to whether a vulnerable employee should return to the workplace or not.

In deciding whether a vulnerable person should return to work, the Updated Guideline recommends that an employer consider the following:

- (i) **the employees age and co-morbidities:** reference is to be made to the distinction between vulnerable employees and highly vulnerable employees as contained in Annexure B of the Updated Guideline;
- (ii) **the risk of exposure due to the employee’s current job description:** employer are encouraged to assess the employees current job description and to eliminate or mitigate the risk of exposure to COVID-19 by accommodating the employee through measures such as alternative temporary placements, additional PPE, protected isolation, barriers and the like. The level of risk associated with an employee’s current job description is to be assessed in line with the Department of Employment and Labour’s risk classification scale; and

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expanding on its strong offering to clients by attracting a new suite of esteemed employment law experts to the team.

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## The return to work of vulnerable persons ...continued

The Updated Guideline contains recommended action based on job description and district positivity rates in Annexure A thereto.

iii) **the risk of community transmission based on the district COVID-19 positivity rates:** District COVID-19 positivity rates are calculated on the basis of the number of infections in the preceding 14 days and are published on the website of the National Institute for Communicable Diseases bi-monthly.

The Updated Guideline contains recommended action based on job description and district positivity rates in Annexure A thereto.

Finally, the Updated Guideline recommends that the following vulnerable employees should remain at home:

- very vulnerable employees with one or more medium, high or very high-risk factors outlined in Annexure A of the Updated Guideline; and
- employees who have a comorbidity with a high or very high-risk factor outlined in Annexure A of the Updated Guideline.

When determining whether vulnerable persons should return to the workplace, employers should consider the provisions of the Updated Guideline.

*Aadil Patel and Riola Kok*



**SEXUAL HARASSMENT  
IN THE WORKPLACE**  
Including the virtual  
world of work

**A GUIDE TO MANAGING  
SEXUAL HARASSMENT**

The purpose of our 'Sexual Harassment in the Workplace – Including the Virtual World of Work' Guideline, is to empower your organisation with a greater understanding of what constitutes sexual harassment, how to identify it and what to do if it occurs.

[CLICK HERE TO ACCESS THE GUIDELINE](#)

## POPI AND THE EMPLOYMENT LIFE CYCLE: THE CDH POPI GUIDE

The Protection of Personal Information Act 4 of 2013 (POPI) came into force on 1 July 2020, save for a few provisions related to the amendment of laws and the functions of the Human Rights Commission.

POPI places several obligations on employers in the management of personal and special personal information collected from employees, in an endeavour to balance the right of employers to conduct business with the right of employees to privacy.

[CLICK HERE](#) to read our updated guide.

Our Employment practice is ranked as a Top-Tier firm in THE LEGAL 500 EMEA 2020.

Fiona Leppan is ranked as a Leading Individual in Employment in THE LEGAL 500 EMEA 2020.

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Gillian Lumb is recommended in Employment in THE LEGAL 500 EMEA 2020.

Hugo Pienaar is recommended in Employment in THE LEGAL 500 EMEA 2020.

Michael Yeates is recommended in Employment in THE LEGAL 500 EMEA 2020.

Jose Jorge is recommended in Employment in THE LEGAL 500 EMEA 2020.

Imraan Mahomed is recommended in Employment in THE LEGAL 500 EMEA 2020.



CHAMBERS GLOBAL 2014 - 2020 ranked our Employment practice in Band 2: Employment.

Aadil Patel ranked by CHAMBERS GLOBAL 2015 - 2020 in Band 2: Employment.

Fiona Leppan ranked by CHAMBERS GLOBAL 2018 - 2020 in Band 2: Employment.

Gillian Lumb ranked by CHAMBERS GLOBAL 2020 in Band 3: Employment.

Imraan Mahomed ranked by CHAMBERS GLOBAL 2020 in Band 3: Employment.

Hugo Pienaar ranked by CHAMBERS GLOBAL 2014 - 2020 in Band 2: Employment.

Michael Yeates ranked by CHAMBERS GLOBAL 2020 as an up and coming employment lawyer.



EMPLOYMENT

## RETRENCHMENT GUIDELINE



[CLICK HERE](#) for the latest thought leadership and explanation of the legal position in relation to retrenchments, temporary layoffs, short time and retrenchments in the context of business rescue.

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### BBBEE STATUS: LEVEL TWO CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

### PLEASE NOTE

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

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