

Returning to work after COVID-19: A REVIVAL GUIDE

1. LESSONS FROM LOCKDOWN



1.1

Employers who had the means to continue operating remotely were not severely affected by the lockdown as they continued operations.

1.2

The fourth industrial revolution introduced the digital workplace which is a move from the physical workplace. This is the future of work.

1.3

It is possible that some employers managed to conduct their operations remotely and may decide to continue with the digital workplace. In such a case, a restructuring may be necessary in order to align the workforce with the digital workplace.

1.4

In modelling flexible work policies, employers can learn from the employees' behaviours and performance outputs during the lockdown.

2. RETURNING TO WORK AFTER LOCKDOWN



2.1

Returning to work after the lockdown will be dependent on whether the lockdown is uplifted partially or in full, and the regulations and directive which will be applicable at that time. For example, certain industries may still be on partial lockdown depending on factors such as whether they are essential, the ongoing risk of Covid-19 and the likelihood of being able to work safely in that environment given social distancing directives.

2.2

Even after the lockdown has been uplifted, businesses may take time to recover and return to normal. Employers must be prepared to deal with the employment law implications of returning to work after lockdown.

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3. SOME OF THE EMPLOYMENT LAW ISSUES



3.1

Can the employer continue to enjoy the benefits or protections under the directive after the lockdown ?

The directive introduced special benefits such as TERS and allowed employees to claim under the UIF during the lockdown period. TERS is a special benefit which was aimed at minimising the economic impact of the lockdown and job losses.

The directive applies for 3 (three) months from the date of publication or until withdrawn by the Minister of Employment and Labour, whichever comes first. Where the lockdown is uplifted before the expiry of the 3 (three) months period and in the absence of a withdrawal by the Minister, the directive will continue to apply beyond the period of lockdown. In such a case, the employer may claim for TERS and other benefits and protections contained in the TERS.

3.2

Would employees temporarily laid-off be required to return to work?

Temporary lay-off apply for the duration of the lockdown or a possible extended partial lockdown. Employees who are temporarily laid-off will be required to report for duty and fully avail themselves after the call by the employer for return to work.

3.3

Can the employer implement a temporary lay-off after the lockdown?

Such temporary lay-offs must be agreed upon with the employees either through a collective or other agreements. In the absence of this, employers cannot continue with the temporary lay-off outside the lockdown period. Please note that the temporary lay-off provision contained in the directive apply for 3 (three) months from the date of publication or until withdrawn by the Minister.

3.4

Is it a fair reason to retrench after the lockdown due to technological reasons?

Many employers would have used technology during the lockdown period and may decide to continue with this manner of conducting business. Technological needs form part of operational requirements which an employer may rely on for retrenchment under section 189 of the LRA.