

EMPLOYMENT LAW ALERT

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CLIFFE DEKKER HOFMEYR

INCORPORATING
KIETI LAW LLP, KENYA

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Labour Court and Labour Appeal Court directives - The 2022 return to court

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AND SERVICES

Labour Court and Labour Appeal Court directives - The 2022 return to court

To maintain the functioning of the Labour Court (LC) and Labour Appeal Court (LAC), since the lockdown of March 2020, six directives were issued by the Judge President.

On 5 January 2022, two new directives were issued referenced: LC 02/2022 being in respect of service by email and directive: LC/LAC 01/2022 being in respect of access to and the conduct of proceedings in the Labour Court and the LAC. The LC 02/2022 directive effectively confirms the existing position on service by email, and directive LC/LAC 01/2022 is important and comes into effect from 17 January 2022 (Directive).

The operations and processes of our court system drastically changed with the 2020 COVID-19 lockdown. The most notable change during this time was the implementation of virtual hearings.

The Directive repeals all previous directives issued since March 2020. Among other changes, the virtual court room is no longer the default position as all matters will now be heard in open court.

Virtual hearings have however, not been eliminated entirely. To have a virtual hearing, the party seeking such format must first seek an agreement

with the opponent. Even if agreement is reached between the parties, the party seeking a virtual hearing must apply to the Judge President no less than 14 days prior to the hearing of the matter. This would also apply where no agreement is granted. The application may be submitted in the form of a letter which must obviously be copied to the opposing side and detail the necessity for the matter to be heard virtually instead of in open court. Importantly, only matters where no evidence is to be led will be considered for a virtual platform.

Representatives and litigants who are required to travel to the court building must still comply with any restrictions that may be imposed, and if their travel is not lawful in terms of COVID-19 regulations the matter shall be removed from the roll. This is to cater for restrictions on travel and issues which arose in the High Court in 2020 where representatives travelled to court without necessary permits being issued.

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Labour Court and Labour Appeal Court directives - The 2022 return to court

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Furthermore, to access the court building a person must submit to a compulsory screening, wear a face mask, adhere to social distancing rules, and comply with any additional directions set out by the Registrar of that court. Parties, their representatives and any other persons accompanying them shall be allowed to enter the courts provided they are not more than ten people, unless arranged otherwise with the Registrar. Representatives may not visit the presiding Judge's chambers to introduce themselves or raise any issues concerning the matter to be heard unless specifically invited to do so.

Orders and judgments shall be prepared and signed in hard copy. Thereafter, the Judge and Registrar will retain a copy and the order or judgment will be communicated to the parties by email.

The Registrars of the different courts, should they deem it necessary, may also issue directions in respect of practices that will apply specifically to their seat.

2022 sees the return of parties to the various Labour Courts and the Labour Appeal Court in physical form. There is no requirement that a vaccine certificate be produced to access court.

**IMRAAN MAHOMED, AMY KING AND
STORM ARENDS**

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BBBEE STATUS: LEVEL ONE 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

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