

EMPLOYMENT LAW ALERT

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CLIFFE DEKKER HOFMEYR

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KIETI LAW LLP, KENYA

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If there is one thing we can learn from the COVID-19 pandemic, it is that many employees can work from anywhere and the "normal" 9 to 5 is no longer palatable to the upcoming workforce.



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The four-day working week and its impact on South African labour law: Are we ready?

If there is one thing we can learn from the COVID-19 pandemic, it is that many employees can work from anywhere and the “normal” 9 to 5 is no longer palatable to the upcoming workforce.

Over the past two years, many employers have had to reassess their working arrangement as a result of the pandemic. COVID-19 served as a test run on what the “new normal” has to offer in respect of the employment relationship and some working conditions. This has resulted in many employers successfully implementing a hybrid working arrangement and, in some instances, even requiring their employees to work from home indefinitely.

Many employers have indicated that they have experienced an increase in productivity and less stressed employees. On the flip side, however, employees have been unable to shut down and find themselves working round the clock and over and above their normal working hours. Considering the above, does this mean that South Africa is ready for a four-day working week post COVID-19?

Countries like Belgium and the UK have been able to successfully implement a four-day working week. However, given that South Africa

is highly regulated in respect of its labour and employment laws, it has been argued that it would not be as seamless or easy an exercise to implement in comparison to these countries.

South Africa has numerous bargaining councils and sectorial agreements that regulate basic conditions of employment in the different sectors and include, *inter alia*, working hours. In order to be able to implement a four-day working week model, these agreements will have to be amended and their terms renegotiated to align with such a model.

This means an employer cannot change the terms and conditions of employment as recorded in these agreements without first consulting the relevant stakeholders, which include trade unions, workplace forums and individual employees.

This is a process that is consultative and which must result in consensus being reached on all aspects related to the arrangement. A failure to obtain consent prior to implementing



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the working model may result in a unilateral change in terms and conditions of employment by an employer. This could expose the employer to a referral by its employees in relation to unilateral changes to terms and conditions of employment.

In addition to this, the relevant labour and employment laws will have to be amended to cater for the working model from a regulatory point of view. Employers will need to consider their health and safety obligations towards employees in terms of the Occupational Health and Safety Act 85 of 1993, which requires an employer to, among other things, do everything reasonably practicable to protect employees' health and safety in the workplace. In this regard, an employer's obligations to ensure the health and safety of its employees extends to where the employee is working outside of the conventionally understood workplace, including a home office.

Although a four-day working week model sounds like a brilliant and exciting idea, employers will have to assess their respective sector and industry in order to establish whether it would be practicable or even feasible for its business model. Employers will also have to consider the applicable legislation and agreements regulating their sector and engage in a consultative process with the relevant stakeholders.

It is, therefore, perhaps premature to make a concrete finding that the four-day working week model would be possible in a highly regulated country like South Africa. We will therefore have to monitor its progress and assess from an individual employer's business model as to whether the four-day working week would be appropriate.

**HEDDA SCHENSEMA AND
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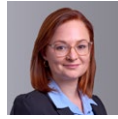
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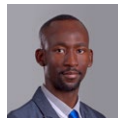
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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

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.

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