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EMPLOYMENT AND REAL ESTATE ALERT

IN THIS ISSUE

Domestic staff residing in Sectional Title Complexes and “*working from home*” during lockdown

On 14 April 2020, CDH published an alert on the *Use of common property during lockdown*. As a follow-on discussion from the aforementioned publication, this article deals with the permissibility of a “*work from home*” arrangement for domestic staff who ordinarily reside in staff living quarters which could either form part of a sectional title unit or be allocated to a sectional title unit as an exclusive use area for purposes of staff living quarters. We will accordingly address this from both a property and employment perspective and express a view that will be applicable until further amendments are made to the current lockdown regulations.

Domestic staff residing in Sectional Title Complexes and “working from home” during lockdown

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The Regulations provide that for the period of lockdown:

“Every person is confined to his or her place of residence, unless strictly for the purpose of performing an essential service, obtaining an essential good or service, collecting a social grant, or seeking emergency, life-saving, or chronic medical attention.”

In the previous alert it was clarified that “residence” for the purposes of a sectional title owner would consist of ownership in the section, the exclusive use area, and an undivided share in the common property.

In certain sectional title schemes, the domestic staff of a sectional title owner reside in the staff living quarters. The staff living quarters are for all intents and

purpose the “residence” of the domestic worker as when the factual question of where the domestic staff resides is investigated, the said staff living quarters will be the finding.

The employment consequences of domestic workers continuing to ‘work from home’ during the lockdown

In terms of the Regulations issued under the Disaster Management Act 57 of 2002, only essential services are permitted to operate during the lockdown, which does not include services provided by domestic workers. However, section 11B(1)(b) of the Regulations provide as follows:

“During the lockdown, all businesses and other entities shall cease operations, except for any business or entity involved in the manufacturing, supply, or provision of an essential good or service, save where operations are provided from outside of the Republic or can be provided remotely by a person from their normal place of residence”

Many employers have since adopted “work from home” arrangements since the commencement of the lockdown. The question that therefore arises is whether a domestic worker who lives on their employer’s premises is permitted to work from home, as contemplated by section 11B(1)(b) of the Regulations.

While domestic workers ordinarily reside in staff living quarters which is usually (but not always) a short distance away from the section, being the main residential area, where the domestic staff are required to

Domestic staff residing in Sectional Title Complexes and “working from home” during lockdown...continued

It is important to note that because domestic workers do not constitute an essential service, they are not obliged to work especially if they feel that “working from home” will place them at risk of contracting the COVID-19 virus.

work, the area where the domestic worker resides still constitutes the employer’s residence as discussed above. The residence is also the domestic worker’s normal place of residence.

On this basis, domestic workers in these circumstances may tender their services during the lockdown, subject to the employer complying with the various health and safety obligations.

Importantly, the Occupational Health and Safety Act 85 of 1993 (OHS Act) provides general duties on employers to provide and maintain, as far as is reasonably practicable, working environments that are safe and without risk to the health of employees. Therefore, while an employer in the ordinary course of employment is required to provide a safe working environment for a domestic worker, the employer should take cognizance of this during the lockdown, especially if the employer works for an essential service provider and has to leave his/her home daily, thus increasing the possibility of the virus spreading to his/her domestic worker.

It is important to note that because domestic workers do not constitute an essential service, they are not obliged to work especially if they feel that “working from home” will place them at risk of contracting the COVID-19 virus. There are therefore two possible views in this regard:

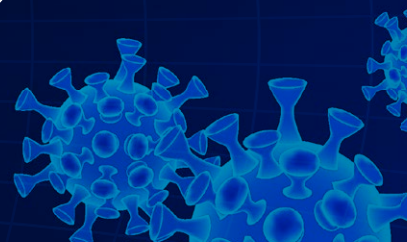
1. Should a domestic worker wish to work, a work from home arrangement would be in order based on the Regulations to date.
2. The purpose of the lockdown is to prevent travel and exposure, and therefore the domestic worker should continue her live-in arrangement but refrain from working as that might lead to additional exposure.

Each Employer and Employee should take the above factors into consideration and determine whether it would be suitable for the specific domestic staff to “work from home”. The decision should be guided by the Government’s initiatives which must encourage risk avoidance behaviours.

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CDH'S COVID-19 RESOURCE HUB

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