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THE EMPLOYMENT SURVIVAL GUIDE – COVID-19

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The Coronavirus and the workplace: #coughcoughsneeze

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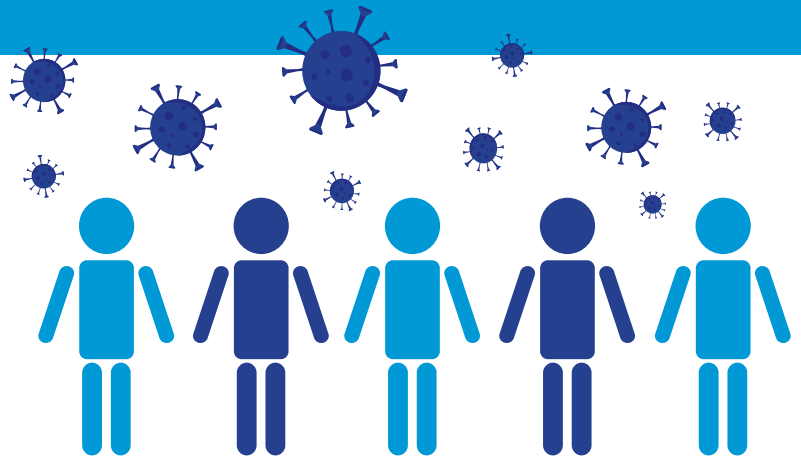
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Coronavirus Q&A

Know your employment rights

Aadil Patel and Anli Bezuidenhout

The COVID – 19 (or “Coronavirus”) is spreading. Employers and employees have a role to play in limiting its impact. In this alert, we answer some of the most pressing questions that have been asked over the past few days.*



1. What is an employee's sick leave entitlement?

The Basic Conditions of Employment Act 75 of 1997 (BCEA) regulates sick leave entitlement. In terms of section 22 of the BCEA, the “sick leave cycle” means the period of 36 months' employment with the same employer immediately following an employee's commencement of employment. During every sick leave cycle, an employee is entitled to an amount of paid sick leave equal to the number of days the employee would normally work during a period of six weeks. Usually (for an employee who works five days a week) this equates to 30 days' sick leave per 36 months of employment.



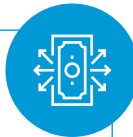
2. Must an employee be paid for sick leave?

Subject to section 23 of the BCEA, an employer must pay an employee for sick leave: a) the wage the employee would ordinarily have received for work on that day; and b) on the employee's usual pay day.



3. When is an employer not required to pay sick leave?

In terms of section 23 of the BCEA, an employer is not required to pay an employee for sick leave if the employee has been absent from work for more than two consecutive days or on more than two occasions during an eight-week period and, on request by the employer, does not produce a medical certificate stating that the employee was unable to work for the duration of the employee's absence on account of sickness or injury.



4. What are the basic requirements for the medical certificate?

The medical certificate must be issued and signed by a medical practitioner or any other person who is certified to diagnose and treat patients and who is registered with a professional council.



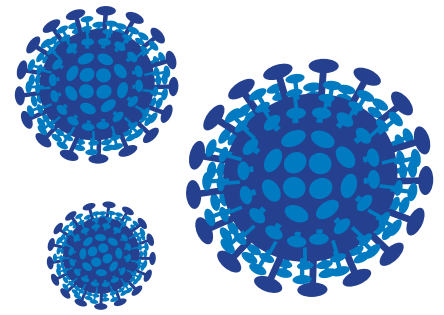
5. What if sick leave is exhausted?

An employer is not required to pay employees for sick leave taken when the sick leave entitlement has been exhausted. However, we recommend that authorised unpaid leave be considered. In those instances, the employee must claim illness benefits in terms of the Unemployment Insurance Act 63 of 2001 (UIA). In terms of section 20 of the UIA, a contributor is entitled to the illness benefits contemplated in the UIA for any period of illness if, inter alia, the contributor is unable to perform work on account of illness.



Coronavirus Q&A

Know your employment rights



6. When can an employee be dismissed due to the Coronavirus?



In terms of Schedule 8: Code of Good Practice Dismissals, an employer must investigate the extent of the illness if the employee is temporarily unable to work. If the illness may result in a prolonged absence from work, alternatives to a dismissal must first be considered. The factors to take into account in considering alternatives to dismissal include, the seriousness of the illness, the period of absence, the nature of the employee's job and whether a temporary replacement may be secured. During this process, the ill employee should be given an opportunity to make recommendations as well. Only once all these processes have been followed and no alternative to dismissal found, may an employer consider dismissal.

7. May employers consider retrenchments due to the impact of the Coronavirus?



Section 189 of the Labour Relations Act 66 of 1995 applies if an employer contemplates dismissing one or more of its employees for reasons based on its operational requirements. "Operational requirements" is defined as requirements based on the economic, technological, structural or similar needs of the employer.

A retrenchment is as a result of no fault on the part of the employee. In the circumstances, it is not an opportunity for an employer to terminate the employment of ill employees.

At this point, the Coronavirus is unlikely to trigger an operational need. The recommended period for recovery/isolation is 14 days – this in itself cannot trigger a need to retrench. However, should a large number of employees be infected, an operational need could possibly arise in future.

8. What can be done about employees who refuse to come to work?



Employees remain obligated to come to work, unless instructed otherwise by their employers. Employees who refuse to come to work must have a valid reason for their absence. The mere presence of the Coronavirus in South Africa does not constitute a valid reason to stay away from work. Employees who stay away from work without a valid reason, may face disciplinary action. We encourage employees to rather speak to their employers about their concerns before making a decision to stay at home, without authorisation.

9. Do employees have the right to work from home?

Employees do not have a right to work from home. Working from home may be considered by employers but should not be implemented by employees without the employer's consent. We encourage employees to rather speak to their employers about their concerns.



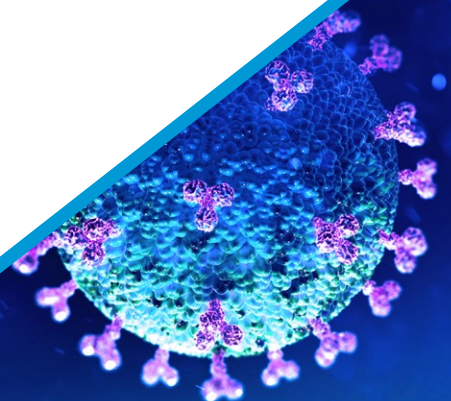
10. May employees be required to work from home?

Yes. Working from home may be permitted in the discretion of the employer. This is not always viable but could be considered in a corporate environment. Should employers consider this option, we recommend that clear guidelines be set for employees. This may include that the working environment must be safe, the employee must have a secure telephone line and Wi-Fi connection and employees should remain within travelling distance of the office.



11. May an employee's professional or personal travel plans be restricted?

Professional travel plans may be changed or prohibited. However, an employer does not have the right to dictate whether an employee may travel during his/her annual leave or weekends. Employers may, however, require their employees to disclose if they have travelled to any specific locations in order for the employer to assess the risk to other employees or customers.





12. As an employer, what are my obligations?



The Occupational Health and Safety Act 85 of 1993 (OHSA), requires an employer to bring about and maintain, as far as reasonably practicable, a working environment that is safe and without risk to the health of its employees. For this reason, we recommend that employers adopt contingency plans and communicate with its employees regarding the measures it will adopt in securing the workplace. This may include:

- the prohibition of handshakes or physical contact;
- limitation on meetings;
- sufficient supply of hand sanitizer; or
- requiring employees to work from home, should they feel sick in any way.

It may also be necessary to relax the sick leave policy or to permit more flexibility in working arrangements.

13. As an employee, what are my obligations?



The employee and the employer share the responsibility for health in the workplace. Therefore both the employee and employer must pro-actively identify dangers and develop control measures to make the workplace safe. For this reason, employees should abide by any policies adopted by the employer to curb the spread of the Coronavirus. Employees should also inform their employer if they are aware of any risk to the health of their colleagues.

14. Practical Tips



The following practical tips may be considered:

- 14.1 The prohibition of unnecessary meetings and the increased use of video conferencing facilities.
- 14.2 The prohibition of any form of physical contact, specifically hugs and handshakes.
- 14.3 Requiring employees to report to their manager if they feel unwell in order to possibly allow that employee to work from home.
- 14.4 Requiring employees to disclose if they have travelled to a high-risk area recently.
- 14.5 A rule that requires employees to wash their hands regularly.

*The answers to these questions are always subject to the specific facts of each matter and we recommend that you contact an employment law expert for advice applicable to your facts.



Coronavirus and the workplace: What to do?

Corona virus spreads through coughing or sneezing; close personal contact and touching an object or surface on which the virus is found.

On 5 March 2020, South African Minister of Health, Dr Zweli Mkhize, confirmed the first incident of COVID-19, commonly known as the corona virus in South Africa. This is likely to create a panic in workplaces across the country because of the way in which the virus spreads. What do we know so far?

Corona virus spreads through:

- coughing or sneezing;
- close personal contact; and
- touching an object or surface on which the virus is found.

The advent of the virus will most likely result in employees wanting to work remotely and take extended leave because of the virus. The Basic Conditions of Employment Act 75 of 1997 has a closed list of recognised forms of leave – sick leave, family responsibility leave, adoption leave, annual leave and paternity leave – with the exception of annual leave, none of these forms of leave accommodate employees who do not wish to report for fear of contracting a virus. Sick leave should only apply to employees who are showing symptoms of the virus (i.e. actually sick) as opposed to those who fear contracting the virus.

If the virus escalates, employers across the country may be required to consider flexible working arrangements such as – allowing employees to work remotely instead of reporting to the office, and even limiting traveling for employees. The option of remote working will be subject to operational requirements of that particular employer.

Also, the option of remote working is only open to a small percentage of South African employees – retailing, banking and fast-moving company goods companies cannot afford to extend the same arrangement. In those instances, the employers should consider the following questions:

Employers must be proactive and take charge and encourage calm. These are some ideas:

1. Does the threat of infection have the potential of impacting or affecting organisational culture?
 - Human touch is part of everyday work life, therefore, organisational culture such as human interactions, and handshakes amongst other things will likely decrease.

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Coronavirus and the workplace: What to do?...continued

In conclusion, employers need to be proactive in their efforts to mitigate the spread of the virus.

- Therefore, launching a hygiene campaign, including instructional guides on how to wash hands effectively and keeping an employee's workspace clean and hygienic is an option.
2. Can employees wear a face mask to work?
- Unlike industries such as mining and firefighting where protective clothing is a requirement, employers are not legally obliged to provide masks.
 - Therefore, wearing face masks to work would be at the employer's discretion and informed by its risk to exposure to the virus.

In conclusion, employers need to be proactive in their efforts to mitigate the spread of the virus. Subtle changes in workplace culture such as declaring the workplace a handshake free environment and creating awareness for visitors, clients and other external stakeholders to manage expectations are an option. For those employees experiencing symptoms of the virus, the employer may encourage those employees to wear masks as a precautionary measure. This is dependent on the prevalence of the virus across the country.

At the time of publishing this article, there was only one reported incident in the country.

Thabang Rapuleng, Tamsanqa Mila and Lawrence-John Maralack



IMMIGRATION

Coronavirus – temporary concession for Chinese Nationals currently in South Africa

It has been communicated that until further notice, Chinese Nationals whose visitor's visas have already reached the maximum validity period, will be allowed to apply for a new visitor's visa on the same visa conditions for a further three-month period.

Since the outbreak of the COVID-19 virus in late 2019 (coronavirus), nearly 80,000 people have been diagnosed with the illness and more than 2,600 people have died at the time of penning this article – it's no wonder the world is sitting up to take note of these developments.

The world's authorities have learned that swift action is needed in order to prevent the widespread distribution of the illness across international borders.

Some countries and airlines have embargoed flights to and from China and have even gone so far as to deny Chinese Nationals who from the Wuhan district (situated in Hubei), entry into state territory.

South Africa has also taken precautionary measures and introduced a temporary visa concession for Chinese nationals currently holding visitors visas and temporary residence visas, in light of the corona virus outbreak.

It has been communicated that until further notice, Chinese Nationals whose visitor's visas have already reached the maximum validity period, will be allowed to apply for a new visitor's visa on the same visa conditions for a further three-month period.

Chinese Nationals who hold intra-company transfer visas, which visas are due to expire on or before 31 July 2020, will be permitted to apply for three-month visitor's visas (with authorisation to work) in terms of section 11(2) of the Immigration Act.

Chinese Nationals who are holders of temporary residence visas which have already expired since 1 December 2019, and those which will be expiring by 29 February 2020, will be allowed to submit renewal applications for those expired visas without the need to first legalise their status in South Africa (form 20-authorisation for an illegal foreigner to remain in the Country pending an application for status).

These temporary concessions are only valid until 31 July 2020 and is only available to Chinese Nationals who were legally admitted into South Africa.

Unfortunately, these concessions do not seem to provide any relief to non-Chinese citizens, but who are ordinarily resident in China. Non-Chinese citizens who are required to return to China, may need to apply for special authorisation to benefit from these concessions.

Michael Yeates

The Coronavirus and the workplace: #coughcoughsneeze?

Managing the risks associated with contracting the virus has not only affected the way employees engage with each other, but has also affected the ways in which employees engage with their clients, especially in a corporate setting.

In light of the Coronavirus (COVID-19) pandemic, it has become increasingly important for employers to develop strategies and procedures and to reconsider their workplace policies so as to better protect both employees and clients. The varying sources and confusing statistics have made it more incumbent on employers to adopt a radical approach to dealing with the virus.

Managing the risks associated with contracting the virus has not only affected the way employees engage with each other, but has also affected the ways in which employees engage with their clients, especially in a corporate setting. The Occupational Health and Safety Act 85 of 1993 places several obligations on both employers and employees to ensure a safe and healthy working environment.

What we know so far:

- at the time of going to print, over 3,600 people have been tested for the virus in South Africa;
- the total number of coronavirus cases in South Africa is now at 17;
- all 17 cases in the country have been diagnosed in patients who have travelled out of South Africa and have returned to the country with the virus;
- thus far, there have been no reported internal transmissions;
- the number of people the 17 patients have come into contact with has been a mere estimation; and
- the regions in which the patients have been diagnosed are Gauteng, Kwa-Zulu Natal and the Western Cape.

Despite the absence of reported internal transmissions, precautionary measures still need to be put in place especially in the workplace where employees are susceptible to contracting to virus due to close contact with other employees and clients.

Preparing the workplace for COVID-19

Firstly, follow the advice from authorities in your community.

1. How Covid-19 spreads –
 - 1.1. COVID-19 spreads in a similar way to the flu. One can catch COVID-19 by the following:
 - 1.1.1. Touching contaminated surfaces or objects, and then touch your eyes, nose or mouth;
 - 1.1.2. By standing within one meter of an infected person – you stand a chance of breathing in droplets coughed out or exhaled by them.
 - 1.2. Ways of preventing the spread of Covid-19 in the office environment:
 - 2.1. Wipe down surfaces (desks; counters) and objects (telephones; keyboards; stationary) regularly with disinfectant regularly;
 - 2.2. Encourage regular and thorough hand-washing by all employees, clients and contractors:
 - 2.2.1. Put sanitising hand rub dispensers in prominent places in the office. Examples of such places include elevator buttons, bathrooms, frequently used doors, printing rooms, and kitchens;

Brief your employees on the symptoms of COVID-19 and what they should look out for. Advise that they seek medical attention should they develop symptoms.

The Coronavirus and the workplace: #coughcoughsneeze?...continued

- 2.2.2. Display posters promoting hand-washing in all bathrooms and frequently used pathways;
- 2.2.3. Use routine meetings and communications to reinforce the importance of regular hand-washing;
- 2.3. Promote good 'respiratory hygiene' in the workplace:
 - 2.3.1. Encourage employees and clients to sneeze into their bent elbows;
 - 2.3.2. Make tissues readily available. Encourage employees to cough/sneeze into these. Make sure that this is accompanied by closed bins for safe disposal.
- 2.4. Brief your employees on the symptoms of COVID-19 and what they should look out for. Advise that they seek medical attention should they develop symptoms.
- 2.5. Considerations when organising meetings and events:
 - 2.5.1. Before the meeting:
 - 2.5.1.1. Consider whether a face-to-face meeting is necessary, or whether it can be replaced by a teleconference or internet-based meeting;
 - 2.5.1.2. Could the meeting be scaled down? Is everyone invited absolutely essential?
 - 2.5.1.3. Pre-order supplies such as tissues and hand-sanitizer for all participants.
 - 2.5.1.4. It is advisable to ensure that all parties (participants, caterers etc) provide contact details. Communicate clearly that their details will be shared with local authorities should any parties show symptom and the need thereof arise.
 - 2.5.1.5. Ensure that all parties to the meeting are aware of the 'no handshake' policy. It may be useful to inform parties of this policy prior to the meeting.
 - 2.5.2. During the meeting:
 - 2.5.2.1. Try and seat each participant at least 1 metre away from one another;
 - 2.5.2.2. Provide tissues and a closed-bin should any participants need to cough or sneeze;
 - 2.5.2.3. If possible, open windows and doors.
 - 2.5.3. After the meeting:
 - 2.5.3.1. Should the need arise, keep the names and contact details of all participants for at least one month. This is in the event that public health officials need to contact participants if one participant develops symptoms.

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Arnold Saungweme and
Jonathan Sive*

EMPLOYMENT

CASE LAW UPDATE 2019

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booklet to assist
you in navigating
the employment
relationship during
the current economic
uncertainty.



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The module will empower your organisation with a greater appreciation and understanding of what constitutes sexual harassment, how to identify it and what to do if it occurs.

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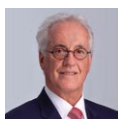


OUR TEAM

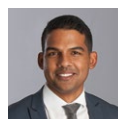
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