



4 MARCH 2021

EMPLOYMENT LAW ALERT

IN THIS ISSUE

Extended COVID-19 TERS relief

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Extended COVID-19 TERS relief

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After much anticipation, the Minister of Labour and Employment has now gazetted Directions on the extension of the COVID-19 TERS benefits. Whilst dated 26 February 2021, the Directions were gazetted on 3 March 2021.

These Directions follow the publication of a series of alerts CDH has published on the extended TERS benefits. Our most [recent alert](#) was issued on 3 March 2021, and this alert should be read with the aforesaid alert.

In terms of the Directions, the following categories of employees may claim:

1. Those employees whose employers are not permitted to commence operations, either partially or in full, in terms of the Regulations published by the Minister of Cooperative Governance and Traditional Affairs in December 2020. These sectors, 24 in total, are listed below.

1.	Cinemas	13.	Domestic and international air travel
2.	Theatres	14.	Rail, bus services and taxi services
3.	Casinos	15.	E- hailing services
4.	Museums, galleries, libraries and archives	16.	Sale, dispensing, distribution and transportation of liquor
5.	Gyms and fitness centres	17.	Beaches, dams, rivers and lakes
6.	Restaurants	18.	Passenger ships
7.	Venues hosting auctions	19.	Venues where social events are held
8.	Venues hosting professional sports.	20.	Venues hosting concerts and live performances
9.	Night clubs	21.	Hotels, lodges, bed and breakfast, time share facilities, resorts and guest houses
10.	Swimming pools	22.	Conferencing, dining, entertainment and bar facilities
11.	Bars, taverns and shebeens.	23.	International sport, arts and cultural events
12.	Public parks	24.	Any industries that form part of the value chain of the above as per the discretion of the UIF. This inclusion is important in that it is envisaged that businesses surrounding the above listed sectors can also apply for benefits for their employees

Extended COVID-19 TERS relief

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Employees, in any sector, who went into quarantine or isolation in terms of an Occupational Health Safety Direction or another direction issued by the Minister of Health following a high risk-contact.

2. Employees, in any sector (not limited by the sectors set out above), with comorbidities or any other condition that may place the employee at a higher risk of complications than other employees if infected with COVID-19.
3. Employees, in any sector (not limited by the sectors set out above), over the age of 60 years who are at a higher risk of complications or death, if infected.
 - 3.1 As proof that it is unable to make alternative arrangements for employees with comorbidities and employees over the age of 60 to work from home, an employer that employs:
 - 3.1.1 fifty or more employees, must provide a report from a certified occupational health and safety officer that the employees are not able to be reasonably accommodated setting out the reasons in full;
 - 3.1.2 less than 50 employees must provide a report from a certified health and safety officer or provide an affidavit deposited to by the owner or senior manager setting out the reasons in full.
4. Employers who are unable to make use of the services of their employees, either fully or partially, because of operational requirements based on the economic, technological, structural or similar needs due to compliance with the Regulations made in terms of section 27(2) of the Disaster Management Act, 2002 or directions made under regulation 4(10) of those Regulations in particular, the need to limit the number of employees at the workplace through rostering, staggering of working hours, short time, and the introduction of a shift system.
5. Employees, in any sector, who went into quarantine or isolation in terms of an Occupational Health Safety Direction or another direction issued by the Minister of Health following a high risk-contact. These employees need not exhaust sick leave in terms of section 22 of the Basic Conditions of Employment Act 75 of 1997(BCEA) before claiming this benefit. Affidavits to prove qualification for this benefit must be submitted.
 - 5.1 In order to prove that an employee in quarantine or isolation is entitled to the benefit, the employer and the employee must each submit an affidavit attested to by both parties, stating that the employee had a high-risk contact and attaching such supporting documents as may be prescribed by the Fund.

Extended COVID-19 TERS relief

...continued

What happens after 15 March 2021, where it is anticipated that the lockdown continues further into 2021, is not as yet clear.

Calculation of Benefits

Qualifying employees will receive a benefit that is calculated in terms of section 13(1) of the Unemployment Insurance Act 63 of 2001 (UIA).

After calculations, if the benefit (together with any other remunerations) falls below R3,500, the benefit will be increased to ensure that an employee receives a minimum of R3,500.

Reduced Work Time

Employees from sectors not mentioned in the list, but whose employers are unable to make use of their services either fully or partially due to compliance with Regulations shall be entitled to a reduced work time benefit in accordance with the illness benefits as stated in section 12(1)(b) of the UIA. This benefit is subject to the availability of sufficient credits and will be calculated according to the Income Replacement Rate and sliding scale as provided for in the UIA.

Employers are encouraged to disclose any remuneration received for work performed by the employee when applying for the benefit. Upon this disclosure, employers are entitled to supplement the amount received from the fund with the remuneration received for work performed by the employee. However, the benefit from the fund and the supplement from the employer, when combined, should not exceed 100% of the remuneration that the employee would ordinarily receive for working during that period.

Claims can only be made by employees who are contributors for purposes of the UIA and where employers have declared and paid their Unemployment Insurance to the Fund. The benefit (with the exception of the reduced work time – illness benefit) shall be de-linked from the Unemployment Insurance Fund's normal benefits and provisions thereto.

These directives have a retrospective effect commencing from 16 October 2020 and will remain in operation until 15 March 2021. What happens after 15 March 2021, where it is anticipated that the lockdown continues further into 2021, is not as yet clear.

Imraan Mahomed, Yusuf Omar and Mariam Jassat

EMPLOYMENT REVIVAL GUIDE

Alert Level 1 Regulations

On 28 February 2021, the President announced that the country would move to Alert Level 1 (AL1) with effect from 28 February 2021. AL1 of the lockdown is aimed at the recommencement of almost all economic activities.

CLICK HERE to read our updated AL1 Revival Guide.
Compiled by CDH's Employment law team.



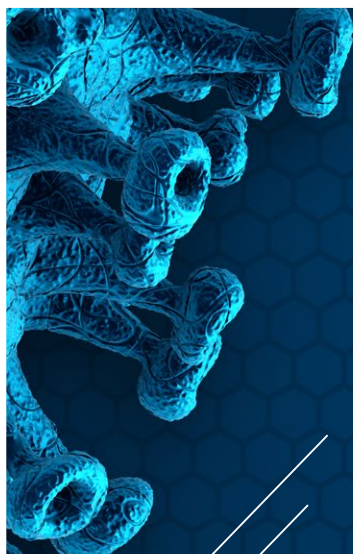
SEXUAL HARASSMENT IN THE WORKPLACE

Including the virtual
world of work

**A GUIDE TO MANAGING
SEXUAL HARASSMENT**

The purpose of our 'Sexual Harassment in the Workplace – Including the Virtual World of Work' Guideline, is to empower your organisation with a greater understanding of what constitutes sexual harassment, how to identify it and what to do if it occurs.

[CLICK HERE TO ACCESS
THE GUIDELINE](#)



COVID-19 WORKPLACE HEALTH AND SAFETY ONLINE COMPLIANCE TRAINING

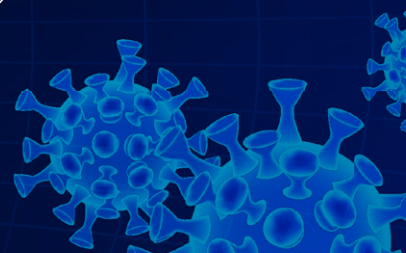
Information. Education. Training.

We have developed a bespoke eLearning product for use on your learning management system, that will help you strengthen your workplace health and safety measures and achieve your statutory obligations in the face of the COVID-19 pandemic.

To purchase or for more information contact OHSonlinetool@cdhlegal.com.

CDH'S COVID-19 RESOURCE HUB

[Click here for more information](#) 



A CHANGING WORK ORDER

CASE LAW UPDATE 2020

[CLICK HERE](#) to access CDH's 2020 Employment Law booklet, which will assist you in navigating employment relationships in the "new normal".

EMPLOYMENT

RETRENCHMENT GUIDELINE



CLICK HERE for the latest thought leadership and explanation of the legal position in relation to retrenchments, temporary layoffs, short time and retrenchments in the context of business rescue.

2021 RESULTS

CHAMBERS GLOBAL 2014 - 2021 ranked our Employment practice in Band 2: Employment.

Aadil Patel ranked by CHAMBERS GLOBAL 2015 - 2021 in Band 2: Employment.

Fiona Leppan ranked by CHAMBERS GLOBAL 2018 - 2021 in Band 2: Employment.

Gillian Lumb ranked by CHAMBERS GLOBAL 2020 - 2021 in Band 3: Employment.

Imraan Mahomed ranked by CHAMBERS GLOBAL 2021 in Band 2: Employment.

Hugo Pienaar ranked by CHAMBERS GLOBAL 2014 - 2021 in Band 2: Employment.

Michael Yeates ranked by CHAMBERS GLOBAL 2020 - 2021 as an up and coming employment lawyer.



Our Employment practice is ranked as a Top-Tier firm in THE LEGAL 500 EMEA 2020.

Fiona Leppan is ranked as a Leading Individual in Employment in THE LEGAL 500 EMEA 2020.

Aadil Patel is recommended in Employment in THE LEGAL 500 EMEA 2020.

Gillian Lumb is recommended in Employment in THE LEGAL 500 EMEA 2020.

Hugo Pienaar is recommended in Employment in THE LEGAL 500 EMEA 2020.

Michael Yeates is recommended in Employment in THE LEGAL 500 EMEA 2020.

Jose Jorge is recommended in Employment in THE LEGAL 500 EMEA 2020.

Imraan Mahomed is recommended in Employment in THE LEGAL 500 EMEA 2020.



POPI AND THE EMPLOYMENT LIFE CYCLE: THE CDH POPI GUIDE

The Protection of Personal Information Act 4 of 2013 (POPI) came into force on 1 July 2020, save for a few provisions related to the amendment of laws and the functions of the Human Rights Commission.

POPI places several obligations on employers in the management of personal and special personal information collected from employees, in an endeavour to balance the right of employers to conduct business with the right of employees to privacy.

CLICK HERE to read our updated guide.

AN EMPLOYER'S GUIDE TO MANDATORY WORKPLACE VACCINATION POLICIES

FOR A COPY OF THE CDH
EMPLOYMENT PRACTICE
GUIDE, CLICK HERE

OUR TEAM

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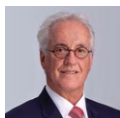
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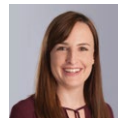
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BBBEE STATUS: LEVEL TWO CONTRIBUTOR

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

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

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