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## **CORONAVIRUS – A PRACTICAL GUIDE FOR EMPLOYERS**

### **Introduction**

1. On 11 March 2020 the World Health Organisation (“the WHO”) officially declared that the spread of Coronavirus had reached the level of a pandemic. The virus is crossing international boundaries and affecting a large number of people worldwide. Coronavirus is a very serious illness and is potentially lethal. In respect of the workplace immediate steps must be taken in order to attempt to diminish its impact.
2. The WHO statement was followed by the declaration of a State of Disaster in South Africa in a widely viewed television address by President Ramaphosa on Sunday, 15 March 2020. Drastic measures were announced including the closure of schools, the banning of public events exceeding one hundred people, the prohibiting of international travellers from certain countries from entering South Africa and the closing of multiple ports of entry. NEDLAC is also holding emergency meetings to discuss the measures that employers should be taking and ways to mitigate the damage that could be suffered.
3. It is apparent from the WHO’s declaration and the steps taken both here and abroad that a multifaceted and unified approach is necessary in order to attempt to limit the spread of the virus (total containment now being impossible). This requires cooperation and coordination between the State, the Department of Health, the private sector, the medical fraternity, businesses, schools, individuals and so on. In relation to employers specifically, we have been inundated with requests from our clients for advice on the legal obligations and implications of the spread of Coronavirus.
4. From a solely legal perspective, employers are subject to both a common law and a statutory duty in terms of the Occupational Health and Safety Act to provide a safe and healthy working environment for their employees. This includes taking appropriate steps to prevent the spread of Coronavirus and the involvement of medical practitioners, welfare departments, operational health and safety representatives and committees in that regard.

### **Symptoms and Transmission**

5. In order to develop a plan to mitigate the effects of Coronavirus, it is necessary to begin by understanding its symptoms and how it spreads.
6. The symptoms of Coronavirus typically include a fever, a cough (in particular a dry cough) and/or shortness of breath, although it is possible that symptoms can present like a normal cold or flu. These symptoms can escalate to pneumonia and other serious medical conditions and ultimately death (it has been reported that up to 3% of persons who are infected may die). Elderly persons

and persons with existing medical conditions, especially respiratory conditions, are particularly at risk.

7. The symptoms appear between two and fourteen days after exposure and, in certain cases, asymptomatic transmission is possible (i.e. a person may be contagious before he/she shows any symptoms of the virus).
8. The virus spreads through close contact between persons. This may occur as a result of respiratory droplets produced when sneezing or coughing. It is also spread through the contamination of surface areas. It has been reported that such contamination may last for as long as three days.
9. The best means to limit the spread of the virus is to limit interaction between people. Internationally, this has manifested itself in citywide lockdowns and widespread travel restrictions. Some of these measures have also been adopted as part of the State of Disaster in South Africa.

### **Employers & Employees – Proactive Steps To Be Taken**

10. A number of proactive steps can be taken both by employers and employees in order to mitigate the risk of Coronavirus. These including the following:-
  - employers should issue a communique to all staff advising them of the symptoms and encouraging them to self-monitor for infection. This should include a procedure for employees to confidentially report any suspected infection / risk of infection to the employer (i.e. where a family member has contracted the virus);
  - a number of employers are implementing policies which permit so-called self-isolation / quarantine in the event that an employee suspects that he/she may have contracted the virus. This option may of course not be practical for critical employees and employers may wish to retain the services of those employees until they exhibit signs of illness;
  - where possible, employees should be permitted to work from home or alternatively limit the amount of physical interaction that they have with other employees and clients. Email, phone and Skype/Video communications should be encouraged and unnecessary gatherings/meetings avoided. International travel should also be avoided as should unnecessary air travel between different offices (i.e. in larger companies);
  - In circumstances where working from home becomes necessary, a Policy and Procedure should be implemented by employers in order to regulate the working from home arrangement. To that end employees should have a clear and detailed understanding of both the hours to be worked and the level of performance required for work performed at home. Critically employees must understand their responsibility to report regularly to their Line Managers. The costs involved in working from home, if any, should be limited and comprehensively dealt with in the Policy. It is to be regretted that this may inevitably lead to abuse by certain employees and accordingly employers would be required to closely monitor such an arrangement;
  - employees should be advised of appropriate hygiene practices including regularly washing their hands, avoiding face-touching and cleaning commonly used surfaces (including eating surfaces). Employers should facilitate this by providing both soap and alcohol based hand rubs (containing at least 60% alcohol). Posters containing such advice should also be posted around the workplace and employers should adopt robust cleaning procedures

in relation to commonly used surfaces (including bathrooms and kitchens). Employees who fail to abide by these workplace rules should be subject to disciplinary action;

- employees should also be encouraged to exercise good respiratory etiquette including practising the 'vampire cough' (i.e. coughing into the elbow instead of the hand) and/or using tissues which are discarded appropriately;
- employees should avoid sharing phones, desks, computers and other tools of the trade. Where shared equipment is used such as photocopiers, handwashing should be encouraged immediately thereafter;
- employers should revisit the planning of their offices in order to ensure appropriate distance is kept between employees (a distance of two meters is recommended). This will not always be possible especially in factory settings;
- where an employee is displaying symptoms of the Coronavirus, employers must require that employee not to attend at the workplace and to immediately seek medical advice. Employees should avoid emergency rooms / hospitals and instead rely on their general practitioner as a first port of call. Employees should also be encouraged to telephonically contact their GP's as many are conducting skype / video consultations where symptoms are not severe in order to avoid further spreading the virus. Employees should also obtain and submit sick notes electronically where possible;
- emergency occupational health and safety committee meetings should be convened to enable action plans to be put in place. These plans may vary according to types of employees where different contingencies may be necessary.

### **Sick Leave & Other Options To Be Considered**

11. On the issue of sick leave there has been a great deal of uncertainty and debate concerning its applicability. This includes uncertainty as to whether employees who voluntarily self-isolate are considered 'sick' for the purposes of the BCEA and consequently whether existing paid sick leave entitlements cover such voluntary self-isolation.
12. At the outset a distinction must be drawn between employees who exhibit symptoms of illness and those who self-isolate as a precautionary measure. In circumstances where employees exhibit any signs of illness, the provisions of the BCEA dealing with sick leave find application and the employees should be placed on paid sick leave. Where that paid sick leave is exhausted, but the employee remains sick, the employee will then be subject to unpaid leave.
13. Employers should also be mindful that the Unemployment Insurance Fund permits employees to claim from the fund in circumstances where they are sick for more than seven days and have exhausted their paid sick leave entitlements. Employers should, where possible, assist employees with the UIF application, although it is to be anticipated that payment would be delayed.
14. Conversely in circumstances where employees voluntarily self-isolate, in the absence of any symptoms and solely as a precautionary measure, employers should opt to place those employees on special leave for that purpose for which a time period could be set. Employees who choose to self-isolate could also be given the option of taking annual leave.
15. This is so as the placement of employees on sick leave in circumstances where they are in fact neither ill nor exhibiting symptoms may create unsustainable precedents susceptible to future

abuse. Some employees may be tempted to take advantage of the pandemic and voluntarily self-isolate without cause.

16. Although employers are encouraged to pay employees during special leave to incentivise voluntary self-isolation in an attempt to curb the pandemic and contain the spreading of Coronavirus, payment in terms of the law is not compulsory. We strongly recommend that these aspects be addressed in an emergency Pandemic policy.
17. We also expect that one of the items that NEDCLAC will discuss will be the utilization of UIF funds to ensure payment of employees who self-isolate and who are unable to receive paid sick leave for that period.
18. In respect of employees who refuse to voluntarily self-isolate and are forced to remain at home because they are displaying symptoms, the position is more complicated. Section 7 of the Employment Equity Act states that medical testing may be justified inter alia in light of medical facts and employment conditions. In our view, given the general health and safety obligations referred to above, employers are legally entitled to insist on medical testing before allowing an employee who is displaying symptoms to attend work.
19. Where an employee unreasonably refuses medical testing notwithstanding that he/she is displaying symptoms but continues to tender his/her service, that employee should be placed on unpaid special leave pending a medical assessment.
20. It is possible that the situation may worsen in the coming weeks and a State of Emergency may be declared. This could have drastic implications, including the closing of businesses, shops and other entities. In those circumstances, employers should consider implementing measures such as short-time, lay-offs or taking of annual or unpaid leave as alternatives to retrenchment. Where financially possible employers should attempt to avoid retrenching employees. Amongst other considerations this could lead to loss of medical aid membership. This is an issue where all should attempt to make sacrifices for our common humanity. In specific circumstances it may be impossible not to implement a restructuring exercise.
21. Where conditions of employment do not deal with issues such as short-time and lay-offs the implementation of those measures must be discussed with employees and consensus must be sought.
22. Such arrangements are regulated by some bargaining council agreements and can be readily implemented in certain circumstances. For other employers, such arrangements will need to be negotiated with Unions or employees and where no agreement can be reached, may need to be implemented through an appropriate process.

## **Conclusion**

23. Employers must develop contingency plans to deal with these and other issues which may be specific to their businesses. Employers should be adopting a flexible and practical approach to dealing with the Coronavirus.
24. For smaller employers, a plan of action should be put into place and communicated to employees. Employees should be informed of the proactive steps that they can take to avoid infection, what to do if they suspect that they have the virus and the requirements for paid sick leave. This may include permitting voluntary self-isolation and compulsory isolation for employees displaying symptoms.

25. For larger employers, many are electing to put in place emergency Coronavirus policies dealing with these issues including different contingency plans for different staff. This should of course be done in conjunction with occupational health and safety committees and take into account employee input.
26. Please feel free to contact us should you require any assistance - we are available to assist in the preparation of both Coronavirus and Homeworkers policies on an emergency basis.
27. As we are dealing with a pandemic please distribute these guidelines to friends and colleagues.

#### **Disclaimer**

The contents and suggestions contained in this article are for information purposes only and are not for the purpose of providing specific comprehensive legal advice. You should contact us to obtain advice with respect to any particular issue or problem mentioned herein.



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