

16 March 2020

RE: COVID-19 – JOBLAW (Pty) Ltd view point

COVID-19: The Employer's Responsibility

The President's announcement on Sunday, 15 March 2020 has left many in the business sector confused as to the implications of the National State of Disaster declaration in response to the COVID-19 threat.

It is important to keep in mind that under the Occupational Health and Safety Act it places an express obligation on an employer to maintain a working environment that is safe and free from risk to the health of employees as far as reasonably practical. With regards to the COVID-19 pandemic, it means proactive management and mitigation of contamination in the workplace will have to be implemented.

The Act does not place sole responsibility on the employer to ensure a safe work environment, and employee's bear an equal responsibility to preserve and maintain workplace safety and health. One way an employer can share this responsibility is by ensuring the employees are well informed and educated on the COVID-19 virus.

Information crucial to the mitigation of workplace infection is knowledge of the symptoms of the disease to be able to identify in themselves or colleagues' individuals who may have contracted the illness.

Directors

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Offices in

Cape Town - East London – Upington – Kimberley – Helderberg (Somerset West / Gordons Bay) – Johannesburg – Bloemfontein
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These include:

- Initial symptoms mimic the Common Cold
 - Fever
 - Fatigue
 - Malaise
 - Body Aches
- Dry Coughing
- Shortness of breath

COVID-19 is a highly transmissible illness. For this reason, it is important to contain the spread of the virus. Steps that employers can implement include:

- Educating employees on the symptoms and precautionary measures:
 - When traveling on public transport, to avoid touching the eyes, mouth or nose with unwashed or non-sanitized hands, avoid waiting for transport in large groups and minimize the amount of time spent on public transport.
 - Avoid public spaces as far as possible until further notice, including restaurants, clubs, gyms and to minimize time shopping. Also avoid large gatherings including weddings, funerals, christenings and family gatherings. Government has placed a prohibition of gatherings of 100 people or more, but strongly encourages any multi-person gathering in the interim.
- Implementing workplace hygiene policies including procedures in the workspace regarding:
 - Hand washing
It is recommended that employees are directed to wash their hands at regular intervals, with liquid soap and warm water, for a minimum of 20 seconds.

- Maintaining social distancing
 - Implementing interim steps such as conference calling/video conferencing instead of in-person meetings, a moratorium on physical contact greetings such as handshakes and/or hugs
- Actively requiring sick employees (whether from a Coronavirus infection or other) to remain at home
- Implementing work-from-home strategies where possible.
 - This will depend on the requirements of the business, and the practicality of employees working off-site. Measures to consider is the safety of the employee while working at home, reliability of connectivity (including phone and WIFI connections), suitability of the task to remote working and demands of team deliverables.

Sick leave, paid leave or unpaid leave?

Currently there have been no announcements changing the entitlements of sick leave. This means that the policies remain as they are at present and will be applicable as follows:

- Annual leave remains as is, with the entitlements as determined by law. Employers are advised to monitor the number of employees present and able to perform tasks maintaining the core business, and to consult with employees planning annual leave should staff availability suddenly change due to illness. Importantly, employers may not force employees to take annual leave to self-quarantine if the requirement for quarantine is ordered by the company. Companies who impose quarantine on employees need to provide paid special leave or arrange work-from-home where possible.

- Sick leave also remains as currently determined by labour law. In short this means:
 - An employee is entitled to 30 days sick leave per 36-month cycle. Sick leave days cannot be limited to 10 days sick leave per year/12 months.
 - An employee may take sick leave for 2 consecutive workdays without a medical certificate. An employer may request a medical certificate if the employee takes sick leave twice in an 8-week period.
 - Sick leave may not be used for mandatory quarantine purposes.
 - If an employee requires sick leave and their sick leave entitlement is exhausted, an employee may take annual leave, or if also exhausted, may be granted unpaid leave.

Operational Requirements

There is no doubt that the current outbreak will have far-reaching economic implications, and employers may find themselves facing ongoing challenges during the outbreak. Many employers have already started considering retrenchment in a pre-emptive move to curb losses.

Section 189 of the Labour Relations Act 66 of 1995 allows for an employer to dismiss one or more employees due to operational requirements. "Operational requirements" is defined as requirements based on the economic, technological, structural or similar needs of the employer.

Retrenchment is a no-fault end of employment on the part of the employee. In the current circumstances, it cannot be used to terminate ill employees as the recovery/isolation period is 14 days. However, should many employees be absent due to illness, an operational need may arise.

Two scenarios that are already becoming problematic are:

1. Employees refusing to come to work in fear of contracting the virus
2. Business unable to operate due to stock shortage

In both scenarios, prudence is advised as employers are encouraged to accommodate employees without placing undue burden on the business. Employers may consider, after consultation with employees, to offer extended unpaid leave in both scenarios. In the case of stock shortage or other operational limits that may be deemed as short-term due to the outbreak, employers can consider activating short-time (shortening the work week) or part-time work at reduced pay. In all cases, employment is not terminated but resumption of full duties is made contingent on the requirements of the business as well as risk of infection to employees.

An employer considering disciplinary steps in the case where an employee is absent without leave for any length of time, where the employee alleges illness or quarantine, the employer must use incapacity investigations and procedures to determine the veracity of the claims, and where found to be invalid, follow fair procedures to apply the correct sanction.

Should you need any additional advice or clarity please feel free to contact your Joblaw office.

We pray that you and your loved ones are kept safe and healthy through this time.

Kind regards

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