

# JOBLAW

Job Law (Pty) Ltd (Registration Number 2004/014656/07) (Vat No 457 0213 258)

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Circular 5 of 2020

19 March 2020

Dear Client

RE COVID-19 Joblaw (Pty) Ltd Viewpoint

## **Short time or Lay off - as an alternative to retrenchment**

Introduction:

The President's announcement on Sunday, 15 March 2020 has left many business sectors in economic turmoil as to the implications of the of the COVID-19 threat. Companies therefore are forced to either place employees on short-time or Lay-off or possible retrenchment procedures in terms of section 189 of the Labour Relations Act 66 of 1995 would be embarked on.

Redundancy will occur through this challenging time due to operational strain by lack of work available or financial circumstances.

Due to a reduction in work Short-time or Lay-off could be introduced as an alternative to retrenchments. However, should the employer elect to proceed with Retrenchments, they will have to notify employees and Retrenchment Consultation Procedures will have to be followed. Kindly take note that Short-time or Lay-offs do not constitute a dismissal.

Directors

Mr. AE Steyn; Mr. C Swanepoel (LLB)

**APPROVED MEMBER OF AHI EMPLOYERS ORGANISATION Reg. Nr. Ref No. LR2/6/3/475**

Offices in

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Klerksdorp - Centurion - Pretoria - Pretoria East - Greytown - Hoopstad - Christiana - Robertson - Hermanus - Vryburg**

Consultations can take place to explain to employees the reason for the Short-time or Lay-off and keep employees informed of the situation during this time. In this case this is temporarily embarked on where employees will receive notice of proposed Short-time or Lay-off as soon as 24 hours before the proposed Short-time or Lay-off commences.

Joblaw (Pty) Ltd employment contracts have made provision for this unforeseen circumstance whereby affected employees undertook and agreed to work Short-time or Lay-off in accordance with the employers' operational requirements and subject to the provisions of any *applicable legislation* dealing with Short time or Lay-off.

Employees are contractually bound to employers and we therefore recommend that Short-time or Lay-off must not be imposed for an excessive period of time. Short-time or Lay-off can be imposed on employees for the first month whereby conditions will be monitored for employees to either return to work or further Short-time or Lay-off would have to continue not exceeding two months.

Depending on the severity of the outbreak at this point will determine if Short-time or Lay-off was sufficient for businesses to recover or whether retrenchment would have to be looked at.

Employees will continue with normal operating hours of work each day, but not all employees will be required to report for duty. Rotating shift work can be shared equally amongst employees whereby employers will give notice as to when Short-time or Lay-off will be implemented and for how long.

Please note that these suggested action to be taken is only applicable to the Basic Conditions of Employment Act and excludes businesses that falls under applicable Bargaining Counsel agreements like the MEIBC, BIBC etc which counsels have their own rules pertaining to short time and lay off. Any clients that enquiries about short time or lay off in terms of a Bargaining Counsel agreement are advised to make contact with their nearest Joblaw office for specific advice and assistance.

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The following procedure will be recommended:

- 1) Notice of proposed Short-time or Lay-off (See attached notice)
- 2) Consultation must take place to obtain employees response and/or representation and/or alternatives.
- 3) After proper consultation, confirmation of Short-time or Lay-off will be implemented with full details provided (See attached notice).
- 4) Employees will be paid for hours worked, however employees will not be remunerated for hours not worked due to the proposed Short-time or Lay-off.

We suggest that should you consider embarking on any of the above mentioned processes to first call our Joblaw (Pty) Ltd office/s for advice.

Kind regards

**Carlo Swanepoel**  
**Chief Executive Officer**

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