**CORONAVIRUS EFFECT ON THE WORKPLACE AND YOUR BUSINESS**

The reality is that the coronavirus infection (the “virus”) has hit South Africa and from media coverage and official sources ([WHO](https://www.who.int/emergencies/diseases/novel-coronavirus-2019)), it is evident that it is a fast-growing global pandemic which has negatively impacted the markets; certain countries have imposed travel restrictions, and some have gone as far as discouraging or prohibiting large public events.

To assist employers to proactively manage immediate workforce challenges, we have compiled a quick guide for reference.

**Duties of employers to their employees**

The law requires employers to provide and maintain, as far as “reasonably practicable”, a safe working environment without risk to the health of its employees.

It is advisable for employers to educate employees about the virus; how to prevent infection and to update employees on developments.

By law, employers must keep the workplace well ventilated. Employers are encouraged to take some of the following “reasonably practicable” precautionary steps to mitigate risk and ensure the safety and well-being of its employees, customers and clients:

* Ensuring that it has clean water, sanitisers and soap;
* Provide and insist that employees in vulnerable roles wear face masks;
* Ensure that frequently touched surfaces in the workplace are cleaned regularly and kept hygienic.

During this period of uncertainty, large employers should consider implementing a policy and employees warned that should they not comply with such rules that disciplinary action may be taken.

Employers have the right to:

* Insist that symptomatic employees or employees who have been in contact with an infected person are obliged to advise the employer immediately; self-isolate and obtain immediate medical attention;
* Insist that employees are obligated to inform the employer, as soon as is practically possible, where they have good reasons to suspect that an employee, customer or client may have contracted the virus;
* Impose conditions on entry to the workplace and prohibit persons from entering the workplace where the health and safety of that person and/or other employees are at risk;
* Encourage employees to have conference calls and Skype sessions etc. *in lieu* of face-to-face meetings;
* Be flexible with their work-from-home policies or insist that employees work remotely to avoid infection or infecting others;
* Insist that infected or at-risk employees work from home;
* Insist that employees who have travelled to affected areas are required to advise the employer, and the employer may instruct such employees to self-isolate for a period of time;
* Subject symptomatic employees to a temperature test and may insist that an employee, customer or client who poses a direct threat to the workforce to leave the workplace.

Employers must be mindful of fair discrimination and labour practices before requesting employees to submit to a medical examination or requiring disclosure of symptoms. However, employers can request employees to disclose whether they have been diagnosed with the virus and are experiencing symptoms or have been in close proximity with someone with the virus. Employers are required to keep such medical information confidential.

Employees could be experiencing stress and anxiety of being exposed to the virus and employees should be encouraged to get psychological help or counselling.

Employers should not hesitate to take disciplinary action against employees found to be:

* Abusing their sick leave by staying home unnecessarily. Having said this, employers should encourage symptomatic employees to stay home; or
* Spreading false rumours which could cause panic and result in work disruptions.

The usual sick leave and pay entitlements apply if an employee has contracted the virus. Employees should advise their employers as soon as practically possible if they are not going to be at work. Employees who contract the virus in the course and scope of employment may claim from the Compensation Fund.

If an employee has travelled for work to an affected area, the employer may insist that the employee telework during an incubation period and the employee should get his or her usual pay.

Employers may need to close temporarily and should instruct staff who have work laptops or mobile phones to continue working from home and employees, who are unable to work from home, may be forced to take annual leave.

**Employer’s rights from a financial perspective**

While no one can currently predict how long this situation will last, the virus may have a negative financial impact on businesses in the long or short term.

To the extent that employers are financially affected in the short term, they have the right to consider reasonable alternatives before contemplating possible restructuring and retrenchments, which may include proposals like:

* Job sharing;
* Reduced working hours;
* Salary cuts;
* No salary increases;
* Unpaid leave of absence;
* Temporarily scrapping bonuses; and/or
* Reduction in overtime.

Since this would likely constitute a change to terms and conditions of employment, the employer would need to negotiate these changes with the affected employees and the employees would need to agree prior to such changes taking place.

Employers also have the right to instruct employees to take annual leave during quiet periods.

**Reduction of staff due to operational requirements (retrenchments)**

In the long term, should these alternative proposals not be effective and the employer is left with no choice but to consider restructuring and retrenchments, then it is required to comply with the S189 procedures in the Labour Relations Act (“LRA”). The employer is required to issue a S189 notice which should not only set out the reasons for the possible retrenchment, but also the various matters that should be consulted over, all of which are set out in S189. The employer must not present the retrenchment as a *fait accompli* but is required to consult with affected employees, in the form of a meaningful joint problem-solving exercise, to strive for consensus, if that is at all possible, in an attempt to avoid retrenchments. Retrenched employees are entitled to one weeks’ remuneration for each completed year of continuous service with the employer.

Bigger businesses contemplating large scale retrenchments may have to comply with additional procedural requirements contemplated in S189A of the LRA, which include, a mandatory consulting period of at least 60 days and the option of CCMA facilitation, should either the employer and/or employee request this.

In conclusion, it is too soon to say if the virus will bring longer-term workforce impacts and how employers might respond. However, employers should be proactive in managing immediate workforce challenges and should strike a “healthy” balance between business continuity with worker safety.

***DISCLAIMER***

*Prepared by SolomonHolmes Attorneys, specialist employment law advisors.*

*This note is published for general purposes only and is not intended to constitute legal advice. Please feel free to contact Anthony Solomon or Theresa Achada at SolomonHolmes Attorneys in relation to any employment law related query. SolomonHolmes Attorneys’ contact details are: Le Val Office Park, 45 Jan Smuts Avenue, Westcliff, Johannesburg (011) 646 4235 or on info@solomonholmes.co.za.*

