

LABOUR WORKING GROUP: INDUSTRY SUB-STREAM

Document as at 27 March 2020

NO	DATE	INDUSTRY	QUESTION / PROBLEM STATEMENT	RESPONSE	STATUS
1.	25 March	Retail	Can an employer force its employees to take annual leave during the lockdown period? Both Unions and Department of Labour are coming out with statements to say that employees can't be forced or required to take annual leave during this period.	Yes.	COMPLETED: 27 March 2020
2.	25 March	Retail	Do the LRA provisions applicable to essential services under that Act apply equally to those businesses declared essential services under the National Disaster Management Regulations (ie: the right to the strike).	No.	We have not yet issued a formal communication to members on this given the complexities
3.	25 March	Retail	For those retailers that have been declared an essential service during the lock down and will continue to operate, will there be any scope to engage Government and Labour on relaxing labour laws in so far as short-time is concerned (ie: to	To be considered. In principle, the working hour regime set out in applicable collective agreements will apply, unless otherwise agreed with the	COMPLETED: 27 MARCH 2020

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			implement unilaterally without agreement)? It is envisaged that after the first week of lockdown, retailers will be in a better position to assess what their trading hours should be during this period, taking into account the health and safety of employees. It may be that some retailers decide, that they want to reduce trading hours and not remain open for as long as they ordinarily would.	unions/employees concerned.	
4.	25 March	Retail	If a company cannot afford to pay the National Disaster Benefit to employees up front, what process would it follow to be put in funds by the UIF before making payment to employees?	TERS COVID19 Directive published in the Government Gazette on 26 March 2020	The Gazette has been sent to members. Completed: 28 March
5.	25 March	Retail	Employers need to urgently know what forms/documents need to be completed by employees themselves to lodge a claim for Disaster Benefits as most of the employees affected do not have computer/wi-fi access at home to complete forms and send them back to the employer. Employers urgently need to know if employees need to fill out the forms before the lockdown at midnight	Directive issued in Government Gazette on 26 March 2020 with the process	Answer to this question to be provided in the Q&A issued on 28 March

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			on 26 March 2020 or is it anticipated that only the employer will have to complete forms?		
6.	25 March	Engineering Firms	<p>For companies that are closed during the lockdown but may need to send an employee urgently to the office to attend to an emergency – are they covered under the regulations?</p> <p>For example: if there is load shedding and the generators automatically kick in so that the IT equipment and servers don't stop working (for employees who are working from home on projects). What if the generators need to be re-fueled during the lockdown? Another example, if there is a break in at an office and an employee needs to physically go to the office to meet the security company.</p>	<p>Yes, these activities are now covered. Regulation 11B(4A)(a) provides that all businesses or premises must have care and maintenance that is essential to the prevention of the destruction or significant impairment of working areas, plant, machinery or inventory, or to permit orderly shutdown arrangements. The Ministers for Trade and Industry and Employment and Labour may issue directives in this regard.</p>	Completed: 27 March

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7.	26 March	Agriculture	Should employers issue employees with masks for work and travel, if employed in an essential service?	Masks are not necessary and not prescribed in the Disaster Management Regulations. According to the World Health Organisation: If a person is healthy, they only need to wear a mask if they are taking care of a person with suspected 2019-nCoV infection. Masks are effective only when used in combination with frequent hand-cleaning with alcohol-based hand rub or soap and water. If a person wears a mask, then they must know how to use it and dispose of it properly.	Completed: 27 March

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8.	26 March	Retail	Please confirm whether the National Disaster Benefit is a R3500 flat rate (as stated in the UIF Guide) or whether it is a maximum of R3500 (ie: in the retail sector, some employees earn less than R3500 per month, would those employees however be entitled to the full R3 500 benefit?) The reason we ask is that employers are, given the limited amount of information provided by the UIF, very nervous to pay upfront, only for the DEL to say, after the fact, that those employees qualified for a lesser amount.	TERS COVID19 Directive published in the Government Gazette on 26 March 2020.	COMPLETED: 28 MARCH
9.	27 March	Unknown	What steps can an employer take if employees working in designated essential services refuse to work on the grounds of fears for their health?	If employees do not want to come to work for fear of infection, then the circumstances of the workplace must be taken into account before deciding on an appropriate reaction. If the refusal to work is	COMPLETED: 28 MARCH

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				<p>unreasonable, disciplinary action may be considered but disciplinary steps should be a last resort and must be carefully considered before implemented.</p>	
10	27 March	Unknown	<p>Many employees are members of medical aid schemes as part of their conditions of employment. They either pay the membership contribution in full (but the employer deducts it from their salary and pay it over to the scheme), or the employer subsidises the contribution, or part of it.</p> <p>If employees are not paid their remuneration, the employer would also not make the medical aid contribution deduction and pay over to the scheme, and this may trigger the suspension of medical aid membership under the rules of the scheme.</p> <p>I don't know if medical aid service providers are implementing a "contribution holiday" in to ensure continued membership, but if not, this is perhaps something we should raise with the industry.</p>		

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11	27 March	Unknown	Is an employer who is designated as an essential service during the lock down, required, in addition to arranging transport for employees' to travel to and from work, legally obliged to pay for such transport?	No – there is no obligation on employers to pay for the cost of the transport. What is required is that the employer ensures that it arranges transport that meets the safety and health requirements as prescribed by the Disaster Management Regulations.	Completed – 28 March
	27 March	Unknown	Can employers who pay employees during the lockdown (as special paid leave), claim a reimbursement from UIF in terms of the COVID19 TERS Scheme to recover at least a portion of the salaries paid in that these businesses that have shutdown will not be generating any income during this period?		
	27 March	Unknown	In terms of a Directive issued by the Minister of Transport on 26 March 2020, public transport that shall be permitted to ferry essential services workers will operate from 5H00 to 9H00 and again from 16H00 to 20H00. The manufacturing sector (of food) operate within shift patterns, not all shifts falling within these prescribed times. Can employers then, given the circumstances under which they are operating, unilaterally amend the hours of work of these shift employees to coincide with the prescribed transport hours?		

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