



▶ integrated **labour** solutions

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TO: ALL CLIENTS

PROPOSALS TO MITIGATE THE ADVERSE EFFECTS OF COVID-19 AT THE WORKPLACE

All of the proposals below will depend on the level of the effect on the business operational need at any given time. It would be imperative to have set frequent reviews of the operational situation and to have the ability to quickly and effectively communicate with all staff re the operational needs (whether they are at home or at work) – i.e. via WhatsApp.

Moreover, bear in mind that certain departments may be differently affected. Your HR or Admin related may be busier as they need to constantly be in communication with staff regarding the changing landscape, whilst operational and sales staff have nothing to do.

Please note that, before consulting with staff in terms of this document, you need to assess your operational needs **upfront**. The manpower needed for business that may be remaining, should be pro-rated fairly between the staff.

Coronavirus – Employee and Client Health and Safety

1. In order to meet the requirement of providing a safe working environment, companies should take action to ensure that staff are educated about the virus, how it spreads and what measures to take to mitigate this. This is necessary in order to ensure the safety of staff, service providers and clients/guests. This will include:
 - a. Regular handwashing of at least 20 seconds, particularly after touching others or touching surfaces which may be infected
 - b. Avoiding physical contact especially hand shaking, hugging and kissing

Building Productive Working Relationships

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- c. Wiping down surfaces regularly with disinfectant
 - d. Avoiding sharing of cups, spoons etc.
 - e. Avoiding international and domestic travel unless absolutely necessary
2. Implement a policy with regard to rights and responsibilities of staff who may be infected with the virus. We can suggest the following guidelines:
- a. An employee who suspects that he/she may have COVID-19 due to having the symptoms or from having been in a high-risk area or situation, must inform his/her manager immediately. In this case, the company may require the employee to be isolated in order to ensure that the risk of the spread of infection is reduced, until such time as the employee has been tested. The period between being isolated and tested, will be considered to be sick leave, and a sick certificate must be provided. (A company could consider having a policy which allows this period to be special paid leave, instead of paid sick leave – however, this is not a legal requirement. The special paid leave would be granted in order to discourage employees from returning to work prematurely). An employee who has been isolated in terms of this section will still be required to remain professionally engaged as far as is reasonably possible, i.e. to work from their place of isolation as far as is reasonably possible. After the employee is tested, he/she will either return to work or will be placed on sick leave by a registered medical practitioner.
 - b. An employee who is confirmed to have COVID-19 must stay away from the workplace and obtain a sick certificate, which should be sent electronically to the company. If the employee has utilised his/her sick leave, he/she will be entitled to claim illness benefits from UIF.
 - c. An employee who voluntarily isolates him/herself without there being an obvious risk of infection, and without presenting a sick certificate, will not be entitled to take sick leave. However, he/she may take annual leave or unpaid leave. Employees who unreasonably refuse to come to work without a genuine belief that they are infected, may be subjected to normal disciplinary action.



Coronavirus – Operational Requirement and Economic Considerations

Informal

3. Review the use of TES and outsourcing contracts. Reduce the number of TES or outsourced services as far as possible, given the constraints of the contract governing the relationship.
4. Employment Freeze: Not to employ any further employees until further notice, unless it is a position where the operational need demands an incumbent to be appointed.
5. Sunday, overtime and night work: Ensure that senior managers and staff earning above the threshold, who are not entitled to this additional pay, cover Sunday and night work. Overtime should not be a requirement if staff are rostered properly, unless operationally necessary.
6. The period of low occupancy/bookings/business activity can be utilised to undertake deep cleaning, maintenance and renovations which are more effective and feasible during low occupancy periods.
7. Annual Leave and Accumulated Leave: Employees are asked to take their annual leave and accumulated leave during the upcoming period of low occupancy/bookings/business activity. In addition, employees who go on leave are politely but informally offered that, if they want to take extended unpaid leave of another few weeks (in addition to their annual paid leave off), this must be approved and signed off as an additional unpaid leave line item on their leave form. These employees can also be contacted telephonically whilst on leave if their services are not yet required and encouraged to extend their stint of unpaid leave. This is not a formal consultation process, but rather by way of a discussion with the employee and if there is a mutual appetite, the parties simply agree, dates are established and leave forms are completed. The extended leave can be staggered over a period of time.
8. In a non-unionised workplace where there is no agreement in place which includes substantive negotiations with a union/s, a freeze can unilaterally be placed on salary increases and discretionary bonuses. (If a unionised environment – see item 11 below).



Formal – Consultation with Staff/Union

9. Formal consultations do not initially have to take the form of a 189 process (termination for operational requirements), as at this stage, no termination is contemplated. Review dates can be put in place as part of the consultations at which assessment points the 'volume' can be turned up or down depending on the situation

10. Reduce the hours of work/short-time with a commensurate reduction in compensation due to only being paid for hours worked. This would be when employees do work, but do not work the usual full hours i.e. only 2 - 3 shifts per week, or 1 or 2 weeks per month, etc.

This can be implemented in stages – matching the operational needs based on occupancy confirmations. If this happens, in the case of reduced working times, staff members can claim benefits from UIF in terms of Section 12 (1B) of the UIF Act*. This allows for the employee to claim benefits for the loss of income due to reduced working time.

11. Implementation of unpaid or partially paid Lay-Offs: This would be where employees are sent home for an extended period of time, i.e. a few weeks or a few months with a "return" or a "review" date.

12. In a unionised workplace where there is an agreement in place which includes substantive negotiations, consultations should commence with the relevant union/s regarding a freeze on salary increases and discretionary bonuses. We recommend not waiting until negotiation time before the union is informed. A pre-emptive approach should rather be taken.

13. A freeze on wage increases and discretionary bonus'. Where there is a union present with whom the company negotiates, this will have to form part of a consultation process. Possibly where relevant, as part of the union negotiations.

14. Management and/or high earners may agree to take a salary cut through consultation.



Formal - S189 Consultations with Staff/Union

15. This process can be embarked upon if the above does not work (resistance from the union/staff), or if the occupancy situations worsens or drags out to such a dramatic extent that it is necessary – one can still, under this situation offer some of the above as alternatives to retrenchment. However, we will identify positions to become redundant and consult with the effected parties.

16. As an alternative to retrenchment, the employment relationship can be suspended and the company and employees/union can agree to make use of the Training Layoff Scheme. Employees will not work during this period but will receive training and a training allowance. The company will pay UIF, provident funds etc. The training programme may last up to 6 months and will be done via the relevant SETA. The company will have to provide financial information to show that it is in distress and must prove at least a 10% decrease in turnover, bookings etc. The Training Layoff Scheme can be applied for through the CCMA. Please note that, although this is an alternative, it is a cumbersome process.

*A very important thing to keep in mind regarding steps to mitigate losses and the effect on staff, is the amendment made to the UIF Act in 2017, which allows for benefits being paid to workers who lose income as a result of reduced working times. See below:

Section 12 of the principal Act is hereby amended— (a) by the insertion after subsection (1A) of the following subsection: “(1B) A contributor employed in any sector who loses his or her income due to reduced working time, despite still being employed, is entitled to benefits if the contributor’s total income falls below the benefit level that the contributor would have received if he or she had become wholly unemployed, subject to that contributor having enough credits.”;

So, if an employer wants to discuss ‘short time/reduced hours’ with employees, it should be much easier to do if there is the possibility of the employees getting ‘topped up’ by UIF. The **UI-2.7 form** can be downloaded from the Department of Labour’s website. See sample attached.

Should you have any further queries, please do not hesitate to contact us.

Kind Regards
The ILS Team

