
COVID-19 and Labour Law: South Africa

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Abstract

South Africa's existing social security and labour law framework is inadequate to protect employees in the formal sector during the Covid-19 lockdown. However, commendable temporary income replacement measures have been introduced to counter this situation. Nevertheless, South Africa's biggest shortcoming lies in the lack of protection for its considerable informal sector. Government did not respond adequately. When informal sector workers don't work, they remain hungry.

Keywords: Covid-19; Labour Law; Lockdown; Social Security Law; Health and Safety.

1. Introduction.

South Africa is a developing country with an unemployment rate of 29,1%. Under the youth between 15 and 35 it is 40,1%¹. There is a significant divide between the rich who live and work under first world conditions and the poor who live in townships and rural areas. Last-mentioned make a living through low-end jobs and in informal trade. It is almost impossible for the informal sector who live in small over-crowded homes to maintain social distancing. Hadebe reports that "people should be careful ... not ... to overburden the poor in their push to deal with the spread of the virus." He says that the poor are "suddenly expected to ... listen to rules governing the lockdown", but "it is unlikely that they will have the propensity to listen to anyone"².

This contribution considers what steps were taken regarding the declaration of a lockdown and what measures were implemented to counter problems in employment relations.

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¹ StatsSA, *Quarterly Employment Survey*, 2019, <http://www.statssa.gov.za/publications/P0277/P0277December2019.pdf>, accessed 7 Apr. 2020.

² Hadebe S., "Will Covid-19 soon become a poor man's burden?", *Cape Times* 29 Mar 2020.

2. General Framework.

South Africa is fortunate because the disease spread here a couple of weeks after it started thriving in the northern hemisphere. The country also acted swiftly in announcing strict lockdown measures early after the first Covid-19 cases were detected.

Government announced an initial 21 day, and a subsequent two week, nationwide lockdown from 26 March 2020³. Country borders were closed, all non-essential employees were sent home, and schools, universities and restaurants were shut. This had a devastating effect on the formal sector, but even more so on the informal sector where people have no social security assistance. The existing social security and labour law frameworks are inadequate for a crisis like this.

3. Income support for temporarily unemployed persons.

Government requested employers not to dismiss employees during this time. However, some employers are already on the brink of bankruptcy. The current Unemployment Insurance Act (the “UIA”)⁴ provides some assistance. Employers and employees each contribute 1% of remuneration to the Unemployment Insurance Fund. Only contributing employees may claim unemployment benefits. However, it is problematic that a claim can mainly be lodged by a dismissed employee. The UIA does not assist employees during a situation of temporary suspension of services based on *force majeure*. In effect, the UIA encourages employers to dismiss workers to enable them to claim unemployment benefits.

After social dialogue, government implemented a temporary remuneration supplementation scheme. In terms of the Temporary Employer/Employee Relief Scheme (the “TERS”). All contributing employees to the UIF can claim a Covid-19 benefit where the employer has temporarily closed operations⁵. Successful applicants receive salary benefits on a scale between the minimum wage and a capped maximum amount. This can be claimed for a maximum period of three months, or the period of the lockdown, whichever period is the shortest⁶. This is a positive development, but it does not cover persons in the informal economy, or persons engaged in gig-work such as uber drivers. These categories remain hungry if they don’t work.

Employers and employees also considered the depletion of compulsory statutory leave. The Basic Conditions of Employment Act (the “BCEA”)⁷ provides all employees a

³ SA Government, *Disaster Management Act Regulations*, <https://www.gov.za/documents/disaster-management-act-regulations-address-prevent-and-combat-spread-coronavirus-covid-19>, accessed 8 Apr. 2020.

⁴ No 1963 of 2001.

⁵ Department of Labour and Employment, *UIF to process COVID-19 TERS benefit to assist employers and workers during Coronavirus (COVID 19) lockdown*, [http://www.labour.gov.za/uif-to-process-covid-19-ters-benefit-to-assist-employers-and-workers-during-coronavirus-\(covid-19\)-lockdown](http://www.labour.gov.za/uif-to-process-covid-19-ters-benefit-to-assist-employers-and-workers-during-coronavirus-(covid-19)-lockdown), accessed 9 Apr. 2020.

⁶ The amount of the benefit is based on a sliding scale of between 38% and 60% of earnings, where the lowest paid are at the top of the scale. See Paton C., *UIF to process COVID-19 TERS benefit to assist employers and workers during Coronavirus (COVID 19) lockdown*, <https://www.businesslive.co.za/bd/national/2020-04-08-uifs-r30bn-support-for-workers-hit-by-the-lockdown-is-ready-for-claims/>, accessed on 9 Apr 2020.

⁷ No 75 of 1997.

minimum of 15 work days' annual leave. Unless agreed differently, the employer may determine the time when annual leave should be taken. Some employers sent employees home on paid annual leave during the lockdown⁸. Sick employees could also be placed on statutory sick leave. Every employer must pay a sick employee 30 days paid sick leave over a leave cycle of three years⁹.

4. Health and safety of workers and social distancing.

The government appealed to employers to adhere to the Occupation Health and Safety Act (the "OHSA")¹⁰ in relation to COVID-19. There is an obligation on employers to ensure health and safety at work. Government has developed a COVID-19 guideline which entails the implementation of among others engineering controls (such as installing high-efficiency air filters); administrative controls (such as replacing face-to-face meetings with virtual communications); and safe work practices (such as the provision of gloves, masks and sanitisers).

5. Increased caregiving duties due to school closures.

South Africa did not introduce any special measures regarding caregiving to children due to the closure of kindergartens and schools. The BCEA does not make provision for any form of parental leave based due to *force majeure*. Parents are only entitled to 3 days family responsibility leave in instances where children are ill. Locked down parents look after their own children. Medical care workers and persons performing essential services are in a difficult situation due to a lack of assistance with caregiving.

6. The self-employed, freelancers and informal workers.

Domestic and farm workers are covered by the UIA and the BCEA. However, South Africa has a significant proportion of informal sector workers. Apart from some large corporations and charities that hand out food parcels and small donations of sanitising products, this vulnerable category of workers have been left out from any co-ordinated additional form of social assistance protection by government.

⁸ S 20 of the BCEA.

⁹ S 22 of the BCEA.

¹⁰ No 85 of 1993.

7. Small businesses and tax incentives.

The government has made funds available to small businesses who are 100% owned by South African citizens and are tax compliant¹¹. The South African Revenue Services has also granted tax-compliant small businesses a four-month payment deferral of 20% on their taxes deducted from employees' salaries and that has to be paid over to the fiscus.

8. Social Dialogue.

The social partners were comprehensively involved in developing plans for temporary income replacement for formal sector employees. Agreement was reached at the National Economic Development Council before the implementation of the TERS benefit. This is South Africa's central policy formulating body that is comprised of representatives of government, organised business, trade unions and community organisations¹².

9. Conclusions.

South Africa's current social security and labour law framework is not sufficient to deal with the pandemic. However, commendable temporary measures were introduced to provide limited income replacement for employees during the lockdown. South Africa's principal shortcoming is in respect of the informal sector. Meaningful and co-ordinated steps were not implemented to provide protection for this vulnerable segment of society.

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¹¹ Business Insider Today, *Small businesses in S.A can now register for help during the coronavirus disaster*, <https://www.businessinsider.co.za/how-to-register-for-the-small-business-coronavirus-relief-fund-2020-3>, accessed 9 Apr. 2020.

¹² <http://nedlac.org.za/>, accessed 9 Apr. 2020.