
COVID-19 and Labour Law: Kenya

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Abstract

The Kenyan government has implemented some measures to counter the impact of the Covid-19 pandemic on the economy and labour market. However, the most significant shortcoming lies in the lack of targeted protection for the informal economy. The national curfew and partial lockdown – in some areas – disrupted economic activities for informal workers who are mainly daily wage earners. In addition, the government has not developed rescue measures for businesses that have ceased operations as a result of the pandemic.

Keywords: Covid-19; Labour Law; Tax relief; Micro, Small and Medium enterprises; Informal economy.

1. Introduction

The world is currently grappling with the Covid-19 virus which first emerged in Wuhan, China and rapidly expanded its global reach. As this public health emergency began to take hold in Kenya, from the middle of March 2020, the national government responded with measures to curb the spread of the disease and protect the community¹. President Uhuru Kenyatta declared the Covid-19 virus an emergency on the 25th of March, 2020². The restrictions that followed this pronouncement began with the Public (State Curfew) Order, 2020 on the 27th of March, which instituted a curfew for all Kenyans (except essential workers) between 7pm and 5am daily. This progressed further to a three weeks partial lockdown in regions most affected by the pandemic³. These regions were Nairobi,

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¹ Within this context, Kenya is also dealing with a locust invasion which is expected to significantly impact agricultural output.

² “Uhuru's speech in full as more Covid-19 measures announced” Daily Nation (25th March, 2020) <https://www.nation.co.ke/news/Coronavirus-in-Kenya-Uhuru-full-speech-/1056-5504094-80g9lqz/index.html>.

³ “COVID-19: Kenya bans travel in and out of Nairobi, other areas” Aljazeera News (6th April) <https://www.aljazeera.com/news/2020/04/covid-19-kenya-bans-travel-nairobi-areas-200406163601579.html>: Public Health (Covid-19 Restriction Of Movement Of Persons And Related Measures) Rules, 2020.

Mombasa and the counties of Kwale and Kilifi. Within these regions, citizens were required to stay at home unless they had to go to the shops for food.

The introduction of the curfew across Kenya and partial lockdown in certain regions had devastating effects on both the formal and informal economies. This also laid bare the gaps in the social security and labour law framework. Consequently, on the 25th of March, the government announced some measures aimed at cushioning Kenyans from the impact of Covid-19. In accordance to the Constitution of Kenya, some of these proposals which required mainly amendments to the tax legal framework were sent to the National Assembly for deliberation and approval. The President signed these amendments into law on the 25th of April, 2020.⁴ This article considers relevant measures implemented to counter the problems which emerged in labour relations and the world of work as a result of the disruptions caused by the Covid-19 pandemic.

2. Tax relief for workers

To cushion workers against the effects of the Covid-19 pandemic, the government amended the Income Tax Law to provide 100% percent tax relief for low-income earners. This affects employees earning less than Ksh 24,000 per month. The implication of this new threshold is that more low-income earners will be shielded as it significantly increases the scope of employees to be covered. Those earning above this new threshold will benefit from a PAYE tax relief, charged a maximum of 25% tax rate. Furthermore, personal relief has been increased from Ksh 16,896 to Ksh 28,800.⁵ Overall employees are expected to have more disposable income and they will be cushioned further in the event of salary reductions during this pandemic.

3. Tax incentives for Micro, Small and Medium enterprises (MSMEs).

To cushion the economic impact of Covid-19, the government reduced the turnover tax rate from three per cent to one per cent.⁶ Small businesses whose annual income is less than five hundred thousand shillings have been exempted from paying the new turnover tax rate.⁷ However, the cap for SMEs liable to pay the turnover tax has been increased from the previous five million shillings to fifty million shillings during any year of income.⁸ This overhaul of the turnover tax regime expands the tax base and is expected to capture most of the SMEs in the country.

⁴ “Kenyan leader signs tax bill to help fight coronavirus” 25th April, 2020

<https://www.aa.com.tr/en/africa/kenyan-leader-signs-tax-bill-to-help-fight-coronavirus/1818747>

⁵ Section 29(1) & Paragraph 1, Head A, Third Schedule of the Income Tax Act (CAPE. 470), Tax Laws (Amendment) Bill 2020.

⁶ Paragraph 9, Third Schedule of the Income Tax Act (CAPE. 470), Tax Laws (Amendment) Bill 2020.

⁷ Section 12C (1) of the Income Tax Act (CAPE. 470), Tax Laws (Amendment) Bill 2020.

⁸ *Ibid.*

4. Large Businesses and Tax Incentives

To support employers during this pandemic, the government reduced the corporate tax to 25% for the year 2020 and subsequent years of income. This affects all resident corporations in Kenya. Through this tax reduction, the government is hoping employers will retain employees during the Covid-19 pandemic. Many businesses in Kenya's hardest-hit-sectors – floriculture, accommodation, food services, aviation as well as the entertainment industry – have been struggling to remain afloat amidst the disruptions caused by the Covid-19 pandemic.

5. Health and safety of workers

The government directed all civil service employees aged 58 years and above in job Group S and below or their equivalent, to take leave or work from home.

6. Temporary suspension of listing

The government temporarily suspended the listing with Credit Reference Bureau of any citizen, Micro, Small and Medium Enterprises (MSMEs) and corporate firms whose loan facility falls overdue or is in arrears. This was made effective from the 1st April, 2020. This is to buffer Kenyans from an already battered economy which has been weakened by the movement restrictions adopted to curb the spread of Covid-19.

7. Vulnerable workers: the self-employed and informal workers

To mitigate the effects of the Covid-19 pandemic, the national government appropriated additional Ksh. 10 billion to pilot a cash transfer program that will support the elderly, orphans and vulnerable children, and people living with severe disabilities. However, this does not specifically include vulnerable workers such as the self-employed and informal workers. Apart from donations from large corporations and non-governmental organisations, this vulnerable category of workers has been largely left from any coordinated additional form of social assistance protection by the government.

8. Conclusions

Kenya's existing social security and labour regulations are insufficient to deal with the Covid-19 pandemic. While the above measures are commendable, Kenya's shortcoming in

respect of the informal economy and lack of rescue measures for businesses that have ceased operation as a result of the impact of Covid-19 need to be addressed.

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