



REDFERN & FINDLAY
ATTORNEYS

COVID-19

NEWS BLAST
31.03.2020

CIRCUMSTANCES SURROUNDING COVID-19 ARE DYNAMIC AND EMPLOYERS NEED TO BE AGILE. ADVICE PROVIDED IS ADAPTED WITH THE EVER-CHANGING DEVELOPMENTS.

THIS EDITION:

- LOCKDOWN UNDERWAY AND OUR MESSAGE TO YOU.
- ANNUAL LEAVE UTILISATION CLARIFICATION

LOCKDOWN UNDERWAY

As we operate during this period of national lockdown and the uncertainty that it brings, we just want to check in with you, our valued clients, and let you know that we are here when you need us.

We, like a great many of you, are committed to supporting our President and our people in every way we can to prevent the spread of the Covid-19 virus so that we can play our part in 'flattening the curve'.

We will endeavour to provide you with updates on any developments during this time, so please keep a look out for our news blasts.

ANNUAL LEAVE UTILISATION CLARIFICATION

The BCEA recognises certain forms of leave which depending on the circumstances may be utilised by employers to ease the burden on employees during the lockdown.

S20(10) of the BCEA:

"Annual leave must be taken:

- (1) In accordance with an agreement between the employer and the employee; or
- (2) If there is no agreement, at a time determined by the employer in accordance with this section."

Accordingly, an employee may (in the absence of a specific leave agreement) be requested by the Employer to take paid annual leave against the employee's annual leave credits.

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Practically:

1. Check the annual leave provisions in your employment contracts.
2. Is there an agreed period of annual leave utilisation? For example, is there an agreed period of annual shutdown wherein employees agree to take annual leave.
3. If not, then employees may be placed on paid annual leave during the national lockdown, which leave can be taken against their annual leave credits or "advanced" by the employer.
4. If there is, one would ordinarily consult with employees and reach a new agreement whereby employees agree to utilise their annual leave during the national lockdown and forgo the annual shutdown. This is an issue that employers may have to address further down the line in instances where employees are not currently available to consult.

What if employers cannot afford to place employees on annual leave, which requires full payment, or employees refuse to reach a new agreement and utilise their annual leave:

- An employer would be entitled to temporarily lay-off employees as a result of the lockdown and employees may seek assistance from the UIF through either the COVID19_TERS relief scheme, the National Disaster Benefit or reduced working hours UIF benefits.
- The DOL encourages employers not to request employees utilise their annual leave credits, but rather utilise the financial assistance programmes the DOL has placed at the employers disposal.

Employers may also want to consider:

- Putting in place a programme for employees to work back the time taken as annual leave during the national lockdown, and restoring employee annual leave balances.
- This could, for example, include working additional hours over a weekend to be credited as leave later in the year.

There remains confusion over which UIF benefit scheme is the most optimal in the circumstances and to what extent employers can only make use of COVID19-TERS. We continue to seek clarity in this regard and we will keep you posted on any further developments.

A COPY OF THE APPLICABLE UIF FORMS ARE AVAILABLE ON REQUEST:

Please email Nasreen: nasreen@redfernfindlay.co.za