

Covid-19: What are your rights as an employee?

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With the implementation of the national lockdown by President Cyril Ramaphosa on 26 March, there has been understandable confusion. While some employees have been told that continuing to work is unlawful, others are legally obliged to continue working. How do you know which category you fall into, and what are your rights in each case?



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Whether or not you are required to continue working during the national lockdown depends on whether you or your employer provides an essential service or a service that provides essential goods.



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Essential services employees

If you are employed by a company or a division of a company that provides essential goods or essential services, you are obliged to continue working during the lockdown.

Essential goods include food and non-alcoholic beverages; cleaning and hygiene products; medical supplies, personal protective equipment, chemicals and packaging of medical supplies; fuel and basic goods such as airtime, electricity and withdrawal of cash.

The list of essential services is longer and includes medical services, grocery stores (including spaza shops and informal food traders with written permission from the municipality), media services, waste and refuse removal services, production and sale of hygiene products, disaster management services, police and transport (for people who are providing essential goods and services).

The full list of essential services is attached as Annexure B to the lockdown regulations published on 26 March 2020 under the Disaster Management Act, 2002. The lockdown regulations are subject to change and at any stage during the lockdown, there may be changes made to the regulations. For example, the list of essential services and essential goods was amended on 2 April 2020.

If your work falls under an essential service, you must have a permit in terms of the prescribed form in the regulations. Employers must provide you with this permit, preferably on a company letter head, so that you can commute to and from work without encountering any trouble from law enforcement officers.



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Non-essential services employees

If your employer does not provide essential goods or services, then it cannot legally force you to work during the lockdown. However, there are two exceptions to this:

- the employer can require certain employees (particularly those who perform work related to care and maintenance at the workplace) to report for duty; and
- employees who are able to work from home may also be required to continue working during the lockdown period. This is permissible under the regulations.

What are your rights under these circumstances?

You cannot be dismissed for not reporting to work during the lockdown period (subject to the exceptions above). An employer that does not provide an essential good or service but nevertheless continues to operate during the lockdown period is acting unlawfully.

An employer may legally implement the no-work-no-pay principle during the lockdown. However, whether or not this can be implemented in each employer-employee relationship depends on the terms of your employment contract. If an employer has implemented this principle, it is advisable for you to check the wording of your contract. If a force majeure clause exists, it is likely that the employer is able to implement this principle. If not, the common law principle of impossibility of performance can come into play, which means that the employer can still legally implement no-work-no-pay. In the extraordinary circumstances of Covid-19, this principle should be used by employers as a measure of last resort. The employer should consider broader principles relating to ethics and morality when deciding on the most appropriate course of action.

An employer can also legally require employees to take annual leave during the lockdown. Some employers may opt to do this instead of implementing the no-work-no-pay option for their employees.



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Government assistance: Who can apply?

The good news is that if an employer and its employees do not fall under the essential services or goods category, and the business is unable to continue operating during the lockdown, government has set up assistance for both employees and employers. Some of these measures may also apply to essential services employees.

The Unemployment Insurance Fund (UIF) has introduced the Temporary Employer-Employee Relief Scheme (TERS) for employers who are financially distressed and unable to pay salaries of employees during the Covid-19 crisis. TERS is available to employers who are required to close their operations for a period of three months (or less). Only employers may apply to the Department of Employment and Labour for TERS support, for themselves and their employees.

If employers cannot obtain assistance from TERS, employees can apply to the UIF for the reduced work time benefit. This will apply to employees who lose income due to a reduction of the amount of time they are able to work.

The UIF has also made available a special illness benefit for employees who are placed in quarantine for 14 days or longer. Both essential and non-essential services employees can apply for this.

In addition to the UIF, the Compensation Fund has announced that if you become infected with the SARS-CoV-2, the coronavirus that causes Covid-19, at the workplace, you may be able to claim compensation. To qualify, you will need to show that you contracted the virus in the course and scope of employment.

In addition, tax subsidies of up to R500 a month are available for the next four months for private sector employees earning below R6,500 a month.

Lastly, the Department of Small Business Development has also provided relief for Small Medium and Micro Enterprises (SMMEs) through the Debt Relief Fund and the Business Growth/Resilience Facility:

- The Debt Relief Fund is available to provide relief on existing debts and repayments which SMMEs may be unable to afford due to the Covid-19 crisis. The fund will also assist with acquiring raw materials and covering labour and operational costs. To qualify, SMMEs will need to show the direct link between the inability to service debts and Covid-19.
- The Business Growth/Resilience Facility enables qualifying SMMEs to continue to participate in supply value-chains, particularly those who manufacture locally or supply various products that are currently in demand due to the pandemic. This only applies to SMMEs that are 100% South African owned.

We are living in unprecedented times; knowing your rights and obligations is an important first step as we navigate our way back to ordinary life.

For further information on the measures introduced by the UIF, go to www.labour.gov.za.

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