

COVID-19: FREQUENTLY ASKED QUESTIONS:

During the course of the last few days we have had many enquiries around the management of employees as organization's start to feel the impact of COVID-19 on their business models. This is as a result of the proclamation of a National State of Disaster by President Ramaphosa. In this set of FAQs we answer the most frequently asked questions.

1. What are the leave entitlements for TES employees?

TES employees are entitled to all the same leave benefits as a permanent employee. However, for the first 6 months of employment the sick leave entitlement is one day's paid sick leave for every 26 days worked. (BCEA Chapter 3, Section 22, 23, 27)

2. When is a doctor's note required?

A sick note is required for more than two consecutive days of absence or absence of more than two occasions during an eight-week period. (BCEA Chapter 3, Section 23)

3. Can an employee automatically stay home if they are feeling ill in case they infect others at work?

It is recommended that if an employee declares that they are feeling ill and believe that they have contracted COVID-19 or been exposed to COVID-19, they should immediately self-isolate and contact their health care provider. Should they be away from work for more than two days they will need to produce a medical certificate.

4. What happens if an employee has exhausted all their sick leave?

If an employee has exhausted their sick leave and they have contracted COVID-19 or been exposed to COVID-19, then it is recommended that they are allowed to use their annual leave. Should their annual leave be exhausted then they will be required to take unpaid leave. Some organizations have made special considerations such as leave in advance or granted extended sick leave, given that this has been declared a National State of Disaster.

5. Is an employee entitled to stay at home for fear of contracting the COVID-19?

Generally, not as long as the employer has provided a working environment that is safe and without risk to the health and safety of employees (s8 OHSA). It is important to educate employees and rule out the possibility of actual risk by assuring the employee of the precautionary measures taken by the business.

Should an employee request to stay home for fear of contracting the disease, the employer should assess if remote work is possible. If not, the employee could be given the option to take annual or unpaid leave.

6. If an employee refuses to come to work in fear of contracting the disease, how do we deal with this?

If the employer has provided a working environment that is safe and without risk to the health and safety of employees (s8 OHSA) and the employee still refuses to come to work, this could be construed as misconduct and normal misconduct procedures can be implemented.

It is important to educate employees and rule out the possibility of actual risk by assuring the employee of the precautionary measures taken by the business.

7. What happens if an employer decides staff must work from home as part of social distancing and prevention, but they don't have access to a laptop and the internet? Are they paid for the period they are at home, even if they are unable to work?

If an employer decides that remote working is a feasible option, then reasonable steps should be taken by the employer to provide resources such as connectivity and computers and to cover legitimate expenses. As the employee will be performing his duties remotely, he is entitled to his normal remuneration.

Should an employer decide that all employees need to work remotely but some of the positions do not lend themselves to remote work, then the affected employees can be given an option to take annual leave failing which a principle of *no work no pay* will apply. Given that Government has declared a National State of Disaster, some organizations have made additional considerations by granting special paid leave or leave in advance.

8. When can temporary layoffs be used as an attempt to prevent the spread? Temporary layoffs will always have to be part of s189 process as an alternative to retrenchment and as such will have to pass the rationale and justifiability of s198(3). If your business is covered by a Bargaining Council, their process will be applicable.

Our thanks to the team at Global Business Solutions for assistance in compiling this FAQ.

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