**Covid-19 and Employers**

**Introduction**

Section 8 (1) of the [Occupational Health and Safety Act, 1993](https://www.golegal.co.za/wp-content/uploads/2018/02/Occupational-Health-and-Safety-Act-85-of-1993.pdf) requires every employer to *“… provide and maintain, as far as is reasonably practicable, a working environment that is safe and without risk to the health of his employees*”. This begs the question: what does compliance with this obligation entail in this time of the rampant spread of Covid-19 (“the virus”)?

Broadly speaking, this provision obliges an employer to manage the risk of employee infection, whether duties are performed in the workplace or away from it but, as always, the devil is in the detail. Some thoughts and suggestions are set out below.

**Implementing a Plan**

At a practical level, employers should assess the risk of infection/contamination in the workplace and put in place a plan of action. This could be done by appointing a committee or, in smaller enterprises, a nominated officer of the company, with responsibility for assessing the risk of an implementing steps to ensure that the workplace is healthy and safe.

An employer must firstly ensure that workplace is physically clean and hygienic in all respects and that it is kept that way by implementing measures which ensure frequent cleaning and ongoing decontamination.

Secondly, promoting good habits and training employees in good hygiene, specific to the virus, such as frequent handwashing, containing coughs and sneezes and the like, is essential.

Thirdly, training employees to understand the risks of, and constantly keeping them informed developments related to, the virus will foster awareness and encourage employees to act responsibly to avoid being infected.

In the fourth place, it may be necessary to introduce frequent medical screening of employees and those who have been exposed to or infected by the virus must be removed from the workplace.

**Testing Positive**

If an employee contracts the virus he/she must be removed from workplace at once. The provisions of section 22 of the Basic Conditions of Employment Act, 1997 (“the BCEA”) relating to sick leave then come into play. Such employee must thus be paid while on sick leave, subject of course to the usual medical certificate being produced.

If/when the employee has exhausted his/her sick leave then, given the extent and severity of the pandemic, it is suggested that good employment practice calls for the employee to be given the option of using whatever vacation leave he/she may have available, rather than being placed on unpaid leave.

On the employee’s return to work, it would be reasonable and perhaps even necessary, as part of the measures to provide a safe workplace, for an employer to insist on a medical certificate to the effect that the employee is free of the virus.

**Quarantine**

If an employee is quarantined as a result of having the virus (as will almost inevitably be the case), the employee must produce a medical certificate and the employee must be dealt with as being on sick leave.

A more difficult scenario plays out when an employee who is not infected, is nevertheless quarantined. According to the World Health Organisation 14 days is an appropriate period of quarantine.

Such quarantine may arise, firstly, through the employer insisting that an employee who has been exposed to the virus stays away from work to minimise the risk of infection to other employees. Since such an employee is not sick, his/her absence from work cannot be regarded as sick leave. However, because such absence from work is at the instance of the employer, it is suggested that such an employee should continue to be paid. An employer may also require such an employee to work at home if the employer is able to make suitable arrangements for him/her to do so.

Secondly, the quarantine may be at the instance of the relevant health authorities. If such quarantine requirement is lawful, the same principles as are set out in the preceding paragraph should apply.

In the third place, the quarantine may be self-imposed – for example, an employee may want to stay at home to care for a relative who has been infected. In such a case section 27 of the BCEA would apply and at least part of such employee’s absence from work should be treated as family responsibility leave. If, however, the period of absence exceeds the statutory 3 days allowed as family responsibility leave, consideration should be given, in consultation with the employee, to allowing such further absence to be deducted from his/her annual vacation leave entitlement.

**Conclusion**

There is no doubt that employers need to take the threat of the virus seriously and to put measured in place to ensure that their businesses survive the numerous threats posed thereby. In keeping with sound industrial relations practice, employees (and trade unions, if applicable) must be informed and consulted in relation to all proposed measures and courses of action which may affect them.