

# NEWS FLASH

TACKLING THE HARD ISSUES

LABOUR LAW

## GEO

GUARDIAN EMPLOYERS ORGANISATION  
Reg. No: LR2/6/3/316

Assisting Employers in Labour Law



## COVID-19, THE LOCKDOWN, LAYOFFS & THE POSSIBILITY OF STAFF RETRENCHMENT

Dear Members,

I trust that you are all well and coping with the effect that the COVID-19 virus is having on our lives and business.

Many companies are faced with the grim task of temporarily having had to close their businesses and lay staff off. We have received many requests for assistance with the COVID-19 UIF applications. This process was made unnecessarily more complicated by the Department of Labour (DoL) constantly changing the application process.

The COVID-19 UIF application process is now simpler and more streamlined. Applications are being processed online through the portal link: <https://uifecc.labour.gov.za/covid19/portal>. Employers and employees are currently receiving UIF payments. If correctly submitted, payments are being made within two weeks of the application being received by the DoL. Unfortunately, UIF payments range between R3500 and R6700. This does not provide much financial support for employees earning above these amounts.

The Honourable President Ramaphosa addressed the nation at 20h30 on the 23/4/20 stating that a process of graduated and controlled re-opening of businesses would commence from the 1st of May. This is described as a 'Level 4' Lockdown. (We are currently in a 'Level 5' lockdown).

Certain business sectors will be permitted to re-open but under strict conditions. One of the conditions mentioned is that certain businesses may only re-open with 30% of their staff returning to work. There will be limited travel permitted across provinces while borders will remain closed for now. Although this is a positive sign, a few important questions have been raised by employers:

### CAN I RETRENCH EMPLOYEES DURING THE LOCKDOWN?

Although there is no moratorium on the retrenchment of employees, the retrenchment procedure described under Section 189 of the Labour Relations Act must still be followed. This involves serving a Section 189(3) notice on the affected employees, communicating with trade unions, etc and embarking on a process of meaningful consultation.

The purpose of the consultation is to jointly seek alternatives to retrenchment. Failing to consult with employees before retrenching will be deemed to be an unfair dismissal resulting in the employees' reinstatement or compensation being awarded. Employees are also entitled to representation by a trade union, legal representative or a fellow employee and the assistance of an interpreter during these consultations.

It is important to note that the courts will, in all likelihood, only see retrenchment as a reasonable alternative if the employer can show that they have accessed ALL available industry and employee assistance options (UIF).

The COVID-19 lockdown has severely limited travel and prohibited meetings or gatherings of groups of people. Unless consultation meetings can be held through Skype, Zoom, or other group communication platforms, the obligation to consult will be difficult (if not, impossible) to comply with.

It is suggested that should an employer have no choice but to embark on a retrenchment process, that a Section 189 notice be issued as soon as possible to the affected employees and trade union. The employer should invite the affected employees and trade union to consult at the earliest possible opportunity to ensure that the Section 189 process is fully complied with.

It is also strongly recommended that a Section 189 process not be embarked upon without the assistance of a GEO official.

### CAN I CONTINUE TO UNILATERALLY IMPOSE LAYOFFS AND SHORTER WORKING HOURS, ETC AFTER THE LOCKDOWN IS LIFTED?

The country is faced with a Force Majeure situation. Essentially this means that due to the circumstances and restrictions imposed, employers and employees are unable to meet their contractual obligations to one another. The employer is unable to provide work and pay its employees and the employee is unable to provide his or her labour to the employer. The contractual obligations between the parties are temporarily suspended for the duration of the Force Majeure.

This situation required of employers to make robust and decisive employment decisions that would not normally be permitted. It is unlawful for employees to be laid off, placed on short-time or have their salaries reduced unless they have agreed to this or alternatively, a joint consensus-seeking venture was completed in terms of Section 189.

Therefore, if and when the lockdown is lifted, employers cannot simply continue with the layoffs, short-time and reduced salaries unless employees have signed an agreement to this effect. If employees refuse to agree, the employer will have to consider following a section 189 retrenchment process and possibly retrench staff.

The layoffs, short-time and reduced salaries could be tabled again during the retrenchment consultations as an alternative to retrenchment. Employees may prefer to accept layoff, short-time or reduced salaries as an alternative to the more final consequence of a retrenchment.

Please consult a GEO official should you require any further assistance.

Kind Regards

**Andre Rabe (Chairman)**

Guardian Employers Organisation

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**WE ARE OPERATIONAL!**



We are still able to provide the below services during lockdown:  
Disciplinary Hearings, Meetings and Assistance via Skype, MS Teams, Zoom etc.



We also offer Employer Strategy documents for Covid-19, available on our website