

Remuneration for COVID 19-related employee absence from work

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Remuneration for COVID19-related employee absence from work

1. COVID-19 is a Notifiable Disease and the COVID-19 epidemic is a National Disaster
2. These designations cause a number of uncommon work absences
3. The right to remuneration during absence from work emanates from different aspects of the employment relationship in South Africa:
 1. Common law
 2. Labour statutes
 3. The employment contract, and
 4. Directives and Regulations under the Disaster Management Act

Work absence during the COVID 19 epidemic

1. Full lock-down: employer is not operational; absence as employee cannot present for work
2. Alert levels: employer may gradually and/or partially operate; absence as certain employees cannot present for work
3. Vulnerable employees: comorbidity risk severity- and workplace exposure may lead to high risk requiring work absence
4. COVID-19 Illness and self-isolation
 - a. Workplace-acquired COVID-19
 - b. Not workplace-acquired
5. Close (high risk) contact and self-quarantine
 - a. Workplace close contact
 - b. Close contact not at workplace
 - i. Suspected COVID-19 case (as defined)
 - ii. High risk behaviour

Right to remuneration in employment in South Africa

- 1. Remuneration paid by employer:** employment is a contract of service in which the service of the employee to the employer is exchanged for remuneration paid by the employer to the employee.
- 2. Remuneration paid through social networks:** employee benefit structures may also remunerate an employee at the instance of collective bargaining, unemployment, occupational disease, insured illness benefits and, now, funds released through the state of national disaster.

Type of COVID 19 leave	Right to remuneration for sick absence		
	Common and Labour Law	Contract of employment	COVID-19 Disaster arrangements
Full lock-down			
Alert levels			
Vulnerable employees			
Workplace-acquired COVID 19 ill			
Not workplace-acquired COVID 19 ill			
Workplace close contact self-quarantine			
Private close contact self-quarantine			
High risk behaviour- self-quarantine			

Common law principles

Rights and duties

1. The employee must present for work
2. The employer must engage the employee for the employment which was offered
3. The employer must remunerate the employee for the work done

Statutory law principles

Right to remuneration for sick absence	Employee paid by
1. BCEA: employee right to (conditional) sick pay from employer	Employer
2. LRA: in collective bargaining - employee right to additional sick pay (from collective fund) & temporary total disability payment (via insured benefit)	Fund
3. COIDA: employee right to OD TTD and compensation for workplace-acquired COVID-19	Employer / CF
4. DMA-Consolidated Directive: high-risk (close contact) at work = BCEA sick pay right	Employer
5. UIF: UIF illness benefits or TERS illness benefit clause 4 TERS Directive 25 March	UIF / employer

Statutory law sick pay rights

1. BCEA: for certified illness, maximum 30 days in 3 years
2. LRA: BC sick pay may be reduced quantum – TTD dependent on insured terms
3. COIDA: TTD for 30 days or longer at 75% wages with statutory maximum
4. High-risk contact at work, in self-quarantine = same as 1
5. UIF- sick-pay: directly to employees and not readily cash
6. UIF-TERS: reduced quantum paid to employer

The employment contract and illness

Rights and duties

1. Automatically includes statutory (BCEA, LRA, COIDA, UIF)
2. Includes employer-policies (e.g. COVID 19 Policy, working from home etc.)
3. May include sector-specific additional **sick pay** rights; e.g. municipal, government
4. May include contract-provisions of extended rights

Type of COVID-19 leave	Right to remuneration for sick absence		
	Law	Contract	COVID-19 arrangements
Full lock-down	No work, no pay	COVID 19 policy	TERS-UIF
Alert levels	No work, no pay	COVID 19 policy	TERS-UIF
Vulnerable employees	Sick pay	Working from home & COVID 19 policy	TERS-UIF
Workplace-acquired COVID-19 ill	OD TTD		
Not workplace-acquired COVID-19 ill	Sick pay		
Workplace close contact self-quarantine	Sick pay		
Private close contact self-quarantine	No work, no pay	COVID 19 policy	
High risk behaviour- self-quarantine	No work, no pay	COVID 19 policy	

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Questions?