

NEWSLETTER

The Official Newsletter of SEENA
Legal Consult.



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Voorwoord

27 Maart 2021 was die eerste verjaarsdag van die Covid-19 grendeltyd in Namibië. In die afgelope 12 maande het ek persoonlik deur talle emosies gegaan in my private hoedanigheid en as besigheidsman. Hierdie emosies het gewissel tussen vrees en moedeloosheid maar helaas ook hoop.

Ons almal is in meerdere of mindere mate geraak deur Covid. Ongeag Covid nog lank met ons gaan wees en of ons in 'n post Covid fase inbeweeg, bly dit noodsaaklik dat ons besighede se deure oopbly ten einde 'n bestaan te maak.

If the pandemic had an adverse effect on your business's operational requirements, our labour legislation provides for certain solutions. Please contact your nearest SEENA office for assistance.

During April and May this year, there will be several long weekends. This usually strains business in general and provides for an increase in labour related matters. Make sure that your employees understand the consequences of absence without leave and alcohol related misconduct.

Kindly also take note in this issue of the proposed changes to the Employment Equity (Affirmative Action) legislation, which is set to come into operation this time next year.

We wish you all a blessed Easter.

Lekker werk.

Koos Barkhuizen

ABSENTEEISM IN THE WORKPLACE AS IT RELATES TO COVID-19

Everything about "business as usual" has changed as a result of the COVID-19 pandemic, with absence management presenting a particular challenge. Staff absenteeism in the context of this article relates to periods of absence from work that can become frequent and habitual. It is different from pre-approved absence from work, such as annual or maternity leave.

We all know that employee absenteeism can disrupt business continuity, reduce productivity levels and often result in wasted time, all at the expense of the employer. It can also have a detrimental impact on the remaining employees, who are often required to make up the shortfall with an increase in workload and having to work additional overtime, all in order to keep up with the workload. This can lead to employee fatigue and burnout, all of which further negatively impacts on the quality of work and performance.

The Covid-19 pandemic has led to significant increases in absentee rates. Absences are mainly attributable to:

1. employees waiting on Covid-19 test results and having to self-isolate in the interim;
2. employees who, after having tested positive for Covid-19, are compelled to self-isolate;
3. employees being required to self-isolate on account of family or household members having symptoms, or having tested positive for Covid-19;
4. employees who are required to self-isolate after travelling outside of the borders of Namibia; and
5. those who simply seek to take advantage of an uncertain situation, claiming to have suffered uncertain exposures and doubtful symptoms.

Managing employee absences during COVID-19 is further complicated by public health guidelines mandating that any employee who:

- a) has symptoms and who has tested positive for COVID-19 must isolate for at least 10 days from the last symptom; or
- b) where the individual is asymptomatic, but has been tested positive for COVID-19, must isolate for at least 10 days from the date of being tested.

In order to better manage employee absenteeism, Employers should consider establishing a set of rules and an organisational response plan that will apply in the different scenarios that can occur as a result of COVID-19's spread. These rules should be conveyed to employees in a simple and consistent manner.

Acceptable criteria for determining whether there is a reasonable apprehension of COVID-19 exposure includes considerations such as:

- Whether or not an employee has recently travelled to a country with a high incidence of COVID-19;
- Whether or not an employee has been in close proximity with someone who has recently tested positive for COVID-19; and

- Whether or not the employee is displaying flu like symptoms such as coughing, fever, and having trouble breathing.

Cases of claimed exposure, or the alleged experiencing of symptoms are often hard, if not impossible to verify. To a large extent employers are reliant solely on the word of their employees, when they claim to have suffered such exposure or presentation of symptoms. That being said employers:

- Can insist on proof of a verified exposure;
- Should consider the time lapse between the date of an exposure to a person who tested positive and the actual date on which the test result becomes known. Often the lapse is so great that no legitimate purpose is served by further quarantine; and
- May verify that employees claiming to be in self-quarantine, actually self-quarantine.

Travelling between towns and after hours socialising is not permitted when self-isolating and disciplinary steps may be taken against individuals who are found to be less than honest in this regard.

Staff shortages may result in severe operational problems, especially where staff members are quarantined and unable to return to work for prolonged periods of time. Although there is no universal solution to all practical challenges, all employees remain entitled to:

1. Utilise the statutory sick leave available to them. Normal, internal company rules and policies applies, as with any other form of illness. Where an employee is absent for more than two consecutive working days, the employer remains entitled to insist on a medical certificate. Where sick leave entitlements have been depleted Employers may consider granting further time off as annual leave.
2. In certain instances statutory compassionate leave may be warranted, such as cases where a direct family member, such as a spouse, father/mother (or adoptive parents) or father-in-law/mother in-law, brother/sister, child or adoptive child, is seriously ill or has passed away.

Although the practice of working from home has reduced dramatically as restrictions have eased, it remains an option when employees are sporadically subjected to quarantine periods. Where an employee is able to work remotely during the quarantine period, the Employee should not suffer any leave deduction as he/she would still be fulfilling their contractual obligations during the period of their absence. Whether or not remote working is permissible however, remains the prerogative of the Employer.

Maintaining a safe and healthy working environment is a legal obligation universally applicable to all employers and employees. This is a two-way street and only through the buy-in of employer and employee alike, can a healthy and safe working environment be ensured.

Compiled by: Daniel Mulongeni

EMPLOYMENT EQUITY DEVELOPMENTS

We recently had the opportunity to meet with the Employment Equity Commissioner, Mr. Otniel Podewiltz, who visited our offices in Swakopmund. During our meeting we have been informed of imminent changes to the review process, the most noteworthy of which we believe you should take cognisance:

1. A new rating process will be introduced and in future all submitted reports will be evaluated in accordance with a fairly complicated scoring system, which will ultimately determine the level of compliance with the Act. At this stage the final manner of scoring compliance has not been finalized, so you need only take note of the fact that such a system of evaluation is likely to be implemented in the near future.
2. In going forward a minimum of three Employment Equity Committee meetings per annum shall be a pre-requisite for compliance, with more meetings regarding Affirmative Action awareness welcomed.
3. A greater emphasis on formal policies that belie an Employer's Affirmative Action strategy shall henceforth apply, with proof of such policies and strategies to be attached to annual reports.
4. A greater emphasis on the actual implementation of Employment Equity plans shall also apply. Employers are expected to implement the stated objectives/targets, and deviations from a stated plan will have to be clearly justified.
5. A reduction of the current threshold, that requires only employers with 25 or more employees to comply with the Affirmative Action Act, is being considered.

We at SEENA take great pride in providing an unrivalled service to our clients and we will make every effort in order to assist all our clients in getting/staying compliant. As and when we have more information on the latest developments we will communicate it to you.

In the interim, should you require any further information, please do not hesitate to contact our offices.



VET LEVY CLAIM DEADLINE

Employers who have invested in skills development over the past year are entitled to claim up to 50 % of their VET Levy (Vocational Education and Training) back from the NTA (Namibia Training Authority) for Employer Training done and up to 35 % of that levy for Key Priority Training by simply submitting a skills development report to the NTA by the 30th of April each year.

Clients are reminded to submit their reports on time. Assistance with the submission of these reports is not a service rendered by SEENA. Should you however, be in need of assistance in this regard please contact Ronelle van Niekerk at 081 038 5244. Ronelle is knowledgeable in the submission and facilitation of these claims and will be happy to assist. Note that rates are not included in your SEENA membership and should be negotiated independently.

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