



## GUIDANCE TO CORONA VIRUS AND EMPLOYMENT LAW IN TANZANIA

### GUIDANCE TO CORONA VIRUS AND EMPLOYMENT LAW IN TANZANIA

By Winnie Kawandakamu

For months the world has been in suspense due to the COVID-19 famously referred to as the Coronavirus. There are hundreds of thousands confirmed Coronavirus cases worldwide; the widespread of this particular virus has attracted the World Health Organization to declare it as a world Pandemic.

The most common symptoms of COVID-19 are similar to a cold or flu and include fever, fatigue, cough and difficulty breathing. In severe cases, COVID-19 may cause pneumonia, kidney failure and death. According to guidance published by Health Canada and the World Health Organization as of the date hereof, symptoms may take up to 14 days to appear after exposure to COVID-19. Most people recover from COVID-19 without needing special medical treatment. The likelihood that a person will become severely ill as a result of COVID-19 is higher in elderly people and people that have a weakened immune system.

The virus is having a major negative effect on international business, disrupting numerous global supply chains and labour relations. Most employers and employees have been entangled in a dilemma trying to establish who bears the risk in case the employee fails to perform his obligations and if the operational requirements of the employer are not met. Employees also want to understand their standing in fear of contracting this deadly virus in the course of their employment and their rights in case they fail to perform as they are expected to by their employers.

### THE RELATIONSHIP BETWEEN EMPLOYEES AND EMPLOYERS

Essentially the relationship between employees and his employers in Tanzania is guided by the employment contracts under the spauses of the Employment and Labour Relations Act. Most of the contracts provide for the assumption of risks in case the parties fail to perform their obligations due to force majeure events. Force majeure events are what are sometimes known as acts of God; meaning actions that out of the control of the parties which would affect their performance in employment contracts. The COVID-19 falls under this category as it is a pandemic out of the parties' control and was unforeseeable by the employers and the employees. The Coronavirus interferes with the obligations of the employer and employee in an employment contract; a simple example is "employees shall work and employers have the obligation to pay the employees" but now that there is the Coronavirus and employees are unable to work are employers still required to pay the employees for no work done?

The force majeure clauses chip in to excuse a party's nonperformance under a contract



## GUIDANCE TO CORONA VIRUS AND EMPLOYMENT LAW IN TANZANIA

when extraordinary events prevent a party from fulfilling its contractual obligations. If the employment contract between the employers and the employees does provide for the force majeure clause parties will rely on such clause and each party may be relieved of their obligation until the situation is managed.

Additionally, under a force majeure clause or in the absence of a force majeure clause the employers/employees have the option to:

- Cancel the employment contract; or
- Propose new terms to accommodate the emergence of Coronavirus; or
- Suspend performance or claim an extension of time for performance of the contract.

### Safety at work place

In a general perspective, and as per the OSHA Act (Occupational Safety and Health Authority) 2003, and the regulations thereto, the law requires employees and employers in Tanzania to co-operate to ensure a safe working environment. . Usually, this comes up more in the context of exposure to occupational chemicals or bloodborne pathogens (especially for healthcare workers), but infectious diseases like the coronavirus pose risks to workers, too. There is no specific OSHA standard covering COVID-19, but some OSHA requirements may apply when it comes to preventing exposure to the coronavirus in your workplace. For example: The General Duty Clause requires employers to provide a workplace “free from recognized hazards that are causing or are likely to cause death or serious physical harm.”

To achieve this and to prevent employees from contracting the Coronavirus, employers in Tanzania should take appropriate measures, such as providing the employees with the necessary hygiene products and disinfectants and remind them of elementary hygiene procedures. It is also important to ensure the cleaning of frequently used rooms and to avoid unnecessary meetings (meetings may be done electronically instead of having physical meetings) and unnecessary business trips. Given the employers’ statutory obligation to ensure a safe working environment for their employees, employers have a justified interest in knowing whether any of their employees are infected or If they have recently travelled to a high-risk area. Therefore, an employer may ask the employees for information regarding the above.

### Working from home

Due to the outbreak of the Coronavirus has officially invaded Tanzania, employers in Tanzania may recommend for employees to work from home at least until the virus is contained. If an employee has fallen ill, a wise move for an employer should be to immediately send the employee home. With regard to other employees, the employer should



## GUIDANCE TO CORONA VIRUS AND EMPLOYMENT LAW IN TANZANIA

ask them to monitor their health and remain at home if they sense any symptoms.

### Payment during leave

Also, employers may decide to close the workplaces as a preventive measure. In this case, employers must continue to pay the employees and grant other rights and benefits to them under their employment contracts and the labour legislations.

### Sick Leave

The employees showing symptoms of the Coronavirus should be granted sick leave per the labour laws of the United Republic of Tanzania. The employer may propose during this period of emergency for the employees to take their annual leave as per their leave cycles to help reduce the spread of the Coronavirus and to preserve the safety of the employees as his statutory obligation requires him to. After the Pandemic is contained, the employees may resume work as usual and this will have very minimal effect on the employment contracts.

If an employee is not sick but the employer tells them not to come to work

If an employee is not sick but their employer tells them not to come to work, they should get their usual pay.

If an employee needs time off work to look after someone

Employees are entitled to time off work to help someone who depends on them (a 'dependant') in an unexpected event or emergency. This would apply to situations to do with coronavirus. For example:

- if they have children they need to look after or arrange childcare for because their school has closed

- to help their child or another dependant if they're sick, or need to go into isolation or hospital.

There's no statutory right to pay for this time off, but some employers might offer pay depending on the contract or workplace policy.

### COVID-19 AND REMUNERATION OF EMPLOYEES

The Legislature has enacted a number of labour legislation, the interpretation of which shows the rights and obligations of employers and employees.

In the midst of the COVID-19 catastrophe, attention should not be deviated from these labour legislation specifically section 15(1) of the Employment and Labour Relations Act (ELRA), 2004 which dictates terms that must form part of employment contracts.



## GUIDANCE TO CORONA VIRUS AND EMPLOYMENT LAW IN TANZANIA

An employment contract is the basic guide for employers and employees; and is crucial for the protection of employees' rights.

### REMUNERATION DURING THE PANDEMIC

Remuneration of employees is the central role of employers. Remuneration survives any unforeseeable acts that can cause the non performance of obligations under employment contracts. But, it is no secret that owing to the COVID-19 outbreak a number of businesses have been operating at a loss thus affecting directly and indirectly the capacity of employers to effectively remunerate their employees.

### OPTIONS AVAILABLE FOR EMPLOYERS AND EMPLOYEES

#### 1. Salary Reduction

Employers are not barred from considering this option during the fight against this pandemic, but again, this must be done in contemplation of section 15(4) of the ELRA. Thus, before effecting any change in employees' salaries employers must promptly notify employees and their trade union(s) of the intention to reduce the employees' salaries. Thereafter, active consultation between employers and employees, where the employers will explain and give evidence that their business is actually running at a loss and employees will their opinion. This arrangement may continue until when the pandemic is contained.

#### 2. Annual Leave

Employers may urge employees to take their annual leaves for those who have not done so in a particular leave cycle or propose that employees take early leave. However, the latter option is dependant on discussions and mutual agreement between employers and employees.

#### 3. Unpaid leave

This is another option available for employers who are unable to pay salaries to their employees due to COVID-19 outbreak. However, unpaid leave is not a creature of any Tanzania labour legislation. It can only be granted by employers after successful mutual agreements between employers and employees. The employers and employees are free to dictate the terms of the leave, meaning the duration of the unpaid leave, may be until the virus is contained and the the employers' business runs at profit once again.

#### 4. Retrenchment

This should be the last resort for employers. Retrenchment is termination of employment driven by employers' operational requirements in this case following economic crisis. Despite the changes that the Coronavirus has forced on employment and labour relations, employers must follow the lawful procedure before retrenchment; giving notices to



## GUIDANCE TO CORONA VIRUS AND EMPLOYMENT LAW IN TANZANIA

employers, engaging in active consultations with the employees and their representatives and paying all deserved employees' terminal dues.