

GOVERNMENT NOTICE

MINISTRY OF LABOUR, INDUSTRIAL RELATIONS AND EMPLOYMENT CREATION

No.

2020

**LABOUR DIRECTIVES RELATING TO COVID-19:
STATE OF EMERGENCY - COVID-19 REGULATIONS, 2020**

Under regulation 14(1) and (3) of the State of Emergency-COVID -19 Regulations published under Proclamation No. 9 of 28 March 2020, with the authorisation of the President and the approval of the Attorney-General, I issue the directives set out in the Schedule.

U. NUJOMA

MINISTER OF LABOUR, INDUSTRIAL RELATIONS

AND EMPLOYEMENT CREATION

Windhoek,

2020

SCHEDULE

Definitions

1. In these directives, a word or expression to which a meaning has been assigned in the Regulations has that meaning, and unless the context otherwise indicates -

“COVID -19” means the coronavirus disease of 2019 which is a respiratory disease caused by the novel coronavirus (SARS-CoV-2);

“employee” means an employee as defined in section 1 of the Act;

“employer” means an employer as defined in section 1 of the Act;

“isolation”, in relation to COVID-19, means the separation of individuals who have tested positive from COVID-19 from individuals who have not contracted COVID-19;

“lockdown period” means the restriction of movement of persons during the period specified in regulation 3;

“recognised trade union” means a trade union that has been recognised as such in terms of section 64 of the Act ;

“Regulations” means the State of Emergency-COVID -19 Regulations published under Government Notice No. 9 of 28 March 2020;

“the Act” means the Labour Act,2007 (Act No. 11 of 2007).

Job security

2. (1) An employer may not during the lockdown period -

- (a) dismiss an employee or serve a notice of collective termination in terms of section 24 of the Act;
- (b) terminate the employment relationship with an employee; or
- (c) summarily dismiss or send an employee home on unpaid leave, forced annual leave or sick leave.

(2) An employer who intends to change any conditions of employment during the lockdown period must negotiate such change in conditions with a recognised trade union, a workplace union representative or with the affected employees.

Dismissal procedures

3. (1) An employer who dismisses employees due to the impact of COVID-19 on their business operations, without following statutory procedures, is deemed to be in contravention of section 34 of the Act and must, as soon as practicable -

- (a) reinstate such dismissed employees; and
- (b) engage the dismissed employees about their conditions of employment during the lockdown period.

(2) If an employer has notified his or her employees of an intended dismissal in terms of section 34 of the Act, the date of the intended dismissal is deemed to be 28 days after the end of the lockdown period, unless a later date is specified in the notice.

(3) Subject to subdirective (1), an employer must at the end of the lockdown period recall his or her employees to return to their positions before the lockdown period or to comparable positions that they could perform with a reasonable amount of training.

Retrenchment procedures

4. (1) An employer who intends to retrench employees in terms of section 34 of the Act due to the impact of COVID-19 on the employer's business operations must negotiate with a recognised trade union, a workplace union representative or the affected employees over the means to avoid retrenchment or to mitigate the negative impact of retrenchment.

- (2) The following topics must be the subjects for the negotiation:
 - (a) categories and manner of selection of employees to retain;
 - (b) support for retraining of affected employees;

- (c) severance pay for employees;
- (d) recall rights of retrenched employees.

(3) If negotiations in terms of section 34 fail, the parties may refer the dispute to the Labour Commissioner for a thirty-day period of conciliation.

(4) An employer may, for a period of 24 months after retrenching employees, give a preference to such retrenched employees to be recalled back to work as his or her business operations recovers.

(5) An employee referred to in subdirective (4) may be recalled by his or her employer to work -

- (a) in his or her position before the retrenchment or in a comparable position; or
- (b) in any position that the employee will be able to perform with a reasonable amount of training.

Health and safety of in work place

5. (1) An employer must put in place safety measures at the workplace that will assist with the prevention of the further spreading of the COVID-19.

- (2) An employee who -
 - (a) considers his or her place of work to be dangerous;
 - (b) considers his or her place of work is not a safe and healthy environment; or

- (c) observes that safety measures have not been put in place to prevent the further spreading of the COVID-19,

may, leave the place of work in terms of section 42 of the Act and not be penalised for invoking the provisions of section 42.

(2) An employee who chooses to rely on section 42 of the Act may rely on section 42(3) for his or her continued benefits and his or her job security may not be compromised in any way.

Remuneration options of employees

6. (1) An employer is not required to pay the travel allowances of employees who have been sent home on account of temporary closure or reduction in operations due to the impact of COVID-19 on business operations.

(2) An employer including an employer performing critical services, a recognised trade union or a workplace union representative or in the absence of a recognised trade union a workplace union representative, the affected employee or employees may, subject to the provisions of section 12(6) of the Act, negotiate -

- (a) a temporary reduction of full remuneration or hours of work; or
- (b) defer the payment of a portion of remuneration.

(3) Despite subdirective (2), an employer may not reduce the remuneration for employees who continue to work full-time, including employees working full-time from home.

Sickness and Employee Compensation Benefits

7. (1) An employee who -

- (a) contracts COVID-19;
- (b) is required to be quarantined or to self-isolate; or
- (c) must stay at home to care for a family member who has contracted COVID-19 or who has been ordered to self-isolate,

may take paid sick leave in terms of Section 24 of the Act, and may claim extended sickness benefits in terms of the Social Security Act 1994 if such employee is a member of the Social Security MSD Fund.

- (2) If an employee -
 - (a) contracts COVID-19 or suffers from COVID-19 related post-traumatic stress disorder during the course of their employment; and
 - (b) is eligible to receive benefits from the Employees' Compensation Fund,

the employee may receive such benefits in terms of the Employees' Compensation Act 30 of 1941 for an industrial disease.

Offences and penalties

8. A person who contravenes or fails to comply with directive 2, subdirective 3(1),(2) or (4), directive 4 or subdirective 5(1) commits an offence and is on conviction liable to a fine not exceeding N\$2 000 or imprisonment for a period not exceeding six months or to both a such fine and such imprisonment.
