

Labour implications on BCEA leave provision during Coronavirus COVID19 lockdown

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South Africa will be under lockdown from midnight and this will force many employees to stay away from work. All employees in South Africa as a condition of their employment are entitled to leave provisions as set out in the Basic Conditions of Employment Act (BCEA).

As such the BCEA recognises certain forms of leave, which may, depending on the circumstances, be applicable to the employees' absence as a result of COVID-19.

In order to combat the COVID-19 epidemic, President Cyril Ramaphosa announced on the 23rd of March 2020 that the National Coronavirus Command Council has decided to enforce a nationwide lockdown for 21 days with effect from midnight on Thursday 26 March, ending on April 16, 2020. This will be enacted in terms of the Disaster Management Act. During this period all employees, with the exception of a few categories, will have to stay at home.

The effect of the three-week lockdown will most probably have a negative impact on employers and employees in South Africa.

All employees in South Africa as a condition of their employment are entitled to leave provisions as set out in the Basic Conditions of Employment Act. The BCEA recognises certain forms of leave, which may, depending on the circumstances, be applicable to the employee's absence as a result of COVID-19.

During the lockdown period, an employee may be requested by the employer to take annual leave from his/her annual leave credits. The BCEA allows employers to determine the time that employees can take their annual leave.

“In as much as employers are within their rights to insist that employees take annual leave during the lockdown, as the Department, we encourage employers not to request employees to utilise their annual leave credits for the lockdown, but to rather utilise the financial assistance that the department has placed at their disposal through the COVID-19 Temporary Employer/Employee Relief Scheme (TERS) in cases where companies cannot afford to pay employees”, said Department of Employment and Labour, Chief Director of Labour Relations Thembinkosi Mkalipi.

For more information contact:
Thembinkosi Mkalipi
Chief Director: Labour Relations
Cell: 082 854 4358

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