



COVID-19 AND EMPLOYMENT Q&A

In this Q&A we will answer the most frequent questions we are receiving from our valued clients regarding COVID-19 and how such affects payment of Employees; Leave and Employment in general.

The Q&A will include questions that are not only applicable to the National lock down period but also to the period thereafter.

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TABLE OF CONTENTS

1.	Dealing with the National lock down period	3
1.1	Are Employers required to pay their Employees during lock down?	3
1.2	What if an Employer has already paid their Employees for the full month of March prior to the lock down which became effective Friday, 27 March?	3
1.3	What if some Employees cannot work from home during this lock down period OR do not wish to work from home?.....	3
1.4	How is sick leave applied during the lock down period?	3
1.5	What benefits are available to Employees during the lock down period?	4
2.	Source documents and disclaimer relating to UIF benefits and Covid-19 TERS	4
3.	What UIF benefits are available to Employees and Employers and are they applicable during and after the National lock down?	5
4.	What advice should we give our Employees regarding their Annual Leave and the UIF benefits which they are entitled to apply for?	8
5.	How should UIF claims for Reduced Work time, Illness and Death benefits be submitted?	8
6.	When should Employees submit their claims?	8
7.	When will Employees be paid their UIF benefits?	8
8.	How much can Employees expect to get paid during periods of Temporary Lay-Offs and Self-quarantine?	9
9.	What is the application process for Covid-19 TERS?	9
10.	What are the requirements to qualify for Covid-19 TERS?.....	10
11.	What is the Rapid Response Team?.....	10
12.	What is short time?	10
13.	What is a Temporary Lay-Off?	10
14.	How long may Employees be placed on a Temporary Lay-Off?	10
15.	What is the process for placing Employees on short time or a Temporary Lay-Off?	11
16.	May Employers use different strategies for different groups of Employees in the same business i.t.o. who is placed on a Temporary Lay-Off/Short-time and who are afforded the opportunity to continue working?.....	11
17.	How should Employers decide who and when to place Employees on short time, who to place on Temporary Lay-Off, when to grant annual leave, or when to allow remote work?.....	11
18.	May Employers revoke remote working arrangements?	12
19.	Why is it not advisable to retrench during the National lock-down period?.....	12
20.	What are possible alternatives to retrenchment?.....	13
21.	Can Employees claim from COIDA if they contract COVID-19 at work?	13

1. Dealing with the National lock down period

1.1 Are Employers required to pay their Employees during lock down?

The short answer is “No”. Employees who can work from home may be required to continue working and will be paid for such work. However where the Employee’s nature of job function is of such a nature that he/she cannot work from home, the prohibition on them not being able to work is through no fault of their own or that of the Employer hence “no work no pay” principle may apply.

1.2 What if an Employer has already paid their Employees for the full month of March prior to the lock down which became effective Friday, 27 March?

Employers can either grant the first 3 days of the Lock down which fell in March 2020 to their Employees as “special leave”, if it is financially possible; or allow Employees to convert the three days in question to Annual Leave; or afford them the opportunity to work back this time; or deduct the 3 days in the April 2020 payroll as an “overpayment”.

1.3 What if some Employees cannot work from home during this lock down period OR do not wish to work from home?

It is advisable to afford Employees the right to apply for and to take their accumulated Annual Leave, if Employers can afford for Employees to take paid leave over this period. Employers are also encouraged to allow Employees to go into negative Leave (for example up to 10 days) where financially possible for Employers.

It is however our opinion that Employees should not be compelled to take Annual Leave during the lock down period and Companies are not obliged to allow Employees to take leave or to even allow them to go into negative leave.

However, where possible, all possibilities to prevent Employees’ remuneration for April 2020 from being adversely impacted on should rather be consulted on and where possible agreed to by both the Employer and Employee parties. However, consultation does not need to lead to an agreement being reached and the Employer has the discretion to apply sound business rationale in their ultimate decision in this regard.

It is our opinion, that Employees should be afforded the right to preserve their accumulated Annual Leave or elect to only take part of their Annual Leave should they wish to, and exercise their right to access the UIF benefits available to Employees during this period.

Employees who cannot work remotely (or where there is no work for them during this time); or where they do not have sufficient Annual Leave during this lockdown period; or in the event that they do not wish to take their Annual Leave during this time, may be placed on a Temporary Lay-Off during which time they will be entitled to claim UIF - refer to section 5 below.

1.4 How is sick leave applied during the lock down period?

Employees who work remotely during this time, but who cannot work because they have been infected with CoVID-19 will be entitled to sick leave on full pay if they submit a valid medical certificate. The same applies where Employees become ill/incapacitated to work due to other valid factors.

Employees who fall ill whilst on a Temporary Lay-Off, can also claim sick leave if they submit a valid medical certificate.

In the event that an Employee’s sick leave entitlement is exhausted and the Employee has been booked off by a registered Medical Practitioner for longer than 7 days, (for whatever nature of illness), he or she can claim Illness Benefits from UIF (this is separate to the Illness Benefits explained in section 2.2 above).

1.5 What benefits are available to Employees during the lock down period?

Refer to section 3 for benefits available during but also after the National lock down.

2. Source documents and disclaimer relating to UIF benefits and Covid-19 TERS

During the past weeks, some misinformation has been shared with the public through various sources, including the media. It is our priority to only use and share information which we have received from or which was verified by Government Departments. For your ease of reference, we have attached some of these documents to our correspondence with you: i.e.

- Easy Aid to Corona UIF Benefits
- Easy Guide for Electronic Claims
- Department of Labour COVID-19 Circular
- Department of Labour Notice 215 of 2020: COVID-19 Temporary Employee/Employer Relief Scheme Directive

It should be noted that the information provided may change due to the uncertainty of the current circumstances and we urge Employers to confirm information with the Department of Labour or Department of UIF when submitting UIF claims relating to Covid-19 or applying for Covid-19 TERS support.

We will also update our clients as more relevant information becomes available.

3. What UIF benefits are available to Employees and Employers and are they applicable during and after the National lock down?

What is the benefit called and what is it for?	When should Employees claim?	How does it work?	What application forms are required?
<p>Reduced work time benefit</p> <p>This benefit applies where a Company shuts down for a certain period and where Employees are laid off temporarily or where Reduced/Short Time is implemented.</p>	<p>Employees can claim for this benefit during and after lockdown, but Employees will still be able to claim for short time and Temporary Lay-Offs which took place prior to lockdown.</p>	<ul style="list-style-type: none"> • Employees will be able to claim UIF for the difference between their normal salaries and that earned during short time and during Temporary Lay-Offs. • The UIF formula of 38-60% of an Employee’s salary but to a maximum of the UIF threshold of R17 712 will be applied, and the Employees’ period of contributions to the UIF fund as well as the previous times they claimed from the fund may be taken into account to determine what percentage of the UIF benefit they will be entitled to. • If employees have credits available at the time of their claim, these credits will be de-linked from their previous credits taken. • The maximum UIF benefit will be paid as per the benefit structure if the Employer pays R 0.00 amount to the Employee during the shutdown period. However, if a certain Rand value is paid during the shutdown period, then the UIF benefit will be reduced (i.e. the difference between the benefit level and amount received as income from the Employer). 	<ul style="list-style-type: none"> • UI19 and UI2.7 (completed by Employer- and Employer to indicate Code 17 on the UI19 form. • UI 2.1 (application form to be completed by the Employee). • UI 2.8 to be completed by the Employee). However, a Bank statement/confirmation from all verifying banks will be accepted instead of a UI 2.8 during this time. • A declaration letter from the Employer confirming Reduced Work Time or Employee’s Temporary Lay-Off is directly due to the Corona Virus. • Copy of Employee’s ID document.
<p>Illness benefit/14-days quarantine</p> <p>This benefit applies in cases where companies decide or where Employees elect that an Employee has to be self-quarantined for 14 days and</p>	<p>This benefit will apply after lockdown, but Employees who were placed on 14-day quarantine prior to the lockdown will still be able to claim for that period retrospectively.</p>	<ul style="list-style-type: none"> • A written declaration from both the Employer and Employee must be submitted together with the application as proof that both the Employer and Employee have agreed to the 14 days “special self-quarantine leave”. • In this instance the declaration letters will be deemed to suffice in place of a medical certificate on the illness application form (UI2.2) as the beneficiary would have self – quarantined without prior consultation 	<ul style="list-style-type: none"> • UI19 and UI2.7 (completed by Employer) - indicate Code 10 on the UI19 form • UI2.2 - Completed in full except the medical portion • The medical portion is replaced by the declaration letters from the Employer and Employee. • Bank statement/confirmation from all verifying banks will be accepted instead of UI 2.8 during this time.

<p>or in special circumstances more than 14 days.</p>		<p>with a medical practitioner. Benefits will be paid based on these declaration letters.</p> <ul style="list-style-type: none"> The maximum UIF benefit will be paid as per the benefit structure if the Employer pays R 0.00 amount to the Employee during the quarantine period. However, if a certain Rand value is paid during the quarantine period, then the UIF benefit could be reduced (the combined value should not be more than the remuneration the Employee would have received if not on quarantine). 	<ul style="list-style-type: none"> Employer and Employee declaration Letters - use the Department of Labour templates in this regard. Copy of Employee's ID document
<p>Extension of 14-day quarantine period</p> <p>This applies in the event that an Employee is quarantined for more than 14 days.</p>	<p>Employees who were placed on 14-day quarantine and such quarantine was extended prior to the lockdown, will still be able to claim for that period retrospectively.</p>	<ul style="list-style-type: none"> The Employee does not necessarily have to be sick, but if their registered Medical Practitioner advises that they should remain in self-quarantine due to, for example, still being exposed to the Corona virus or in the event that the Employee's immune system is still compromised. 	<p>A medical certificate from a registered Medical Practitioner must be submitted together with the Continuation Form UI3, at the expiry of the 14 days in order for the Employee to be able to continue claiming UIF illness benefits.</p>
<p>Death benefit</p> <p>This benefit applies in the undesirable event where a UIF contributor passes on.</p>	<p>It applies during and after lockdown.</p>	<ul style="list-style-type: none"> Benefits are paid to the beneficiaries of the deceased. People eligible to apply for such benefits are a Spouse, Life Partner, Children and nominated persons, in that order. In relation to the Reduced Work Time Benefit, the Illness Benefit and the Death Benefit, the normal rule that for every four days worked the Employee accumulated one credit day and maximum credit days payable is 365 for every four completed years, will apply. 	<ul style="list-style-type: none"> UI19 and UI 53 (completed by the Employer) UI 2.5 or UI2.6 Death Certificate ID of deceased and applicant Bank statement/confirmation from all verifying banks will be accepted instead of UI 2.8, during this time. Copy of ID document Claim needs to be submitted within 6 months after the death of the employee
<p>Normal Illness benefit</p>	<p>Employees will be able to claim during or after lockdown.</p>	<ul style="list-style-type: none"> This benefit becomes applicable when an Employee's normal paid sick leave entitlement is exhausted, and the Employee has been booked off by a registered Medical Practitioner for longer than 7 days. 	<ul style="list-style-type: none"> UI19 and UI2.7 (completed by Employer) Bank statement/confirmation from all verifying banks will be accepted instead of UI 2.8, during this time.

<p>This benefit applies when normal sick leave is exhausted.</p>			<ul style="list-style-type: none"> • Medical certificate from a registered Medical Practitioner • Comprehensive medical report • A follow-up form
<p>Covid-19 TERS</p> <p>In the event that an Employer close its operations for a 3 months or lesser period and suffer financial distress, as a direct result of the Covid-19 pandemic, the Company may be eligible for a Covid-19 Temporary Relief Benefit.</p>	<ul style="list-style-type: none"> • Employers can apply during or after lockdown. • Employees who are being paid by their Employer, will not be entitled to this benefit. 	<ul style="list-style-type: none"> • Employers apply for this benefit. • The Scheme will pay the benefit into the Employer’s account and the Employer will then pay its Employees in accordance with the agreement with the UIF department. • The salary benefits will be capped to a maximum gross amount of R 17 712 per month, per employee. • Employees will be paid in accordance with the income replacement sliding scale (38% - 60% of their salaries) to a maximum gross amount of R 17 712 per month, per employee • Benefits will only pay for the cost of salary for the Employees during the temporary closure of the business operations. • Benefits will be delinked from the UIF’s normal benefits. I.e. claims are not dependent on an employee’s UIF credits. Employees will be entitled to benefits irrespective of how long they have contributed. • In the event that an Employee’s income determined in terms of the income replacement sliding scale fall below the minimum wage of the sector, the Employee will be paid a replacement income equal to minimum wage of the sector. This means that the benefit will be at of not less than the minimum wage of the sector (often referred to as a ‘flat rate’ of R3500 per month in the media) 	<p><i>See process and documents required in section 11 below.</i></p>

4. What advice should we give our Employees regarding their Annual Leave and the UIF benefits which they are entitled to apply for?

Statutory annual leave is regulated by s20 of the BCEA. which states that an Employer must grant statutory annual leave in accordance with an agreement between the parties. However, in the absence of an agreement the Employer may determine the time for statutory annual leave to be taken. However, such decision is furthermore subject to the Employees' contracts of employment, the Employer's Leave policy or any applicable collective agreement.

As per Question 1.3, it is our opinion, that Employees should be afforded the right to preserve their accumulated Annual Leave or elect to only take part of their Annual Leave should they wish to and exercise their right to access the UIF benefits available to Employees during this period.

Employees who cannot work remotely (or where there is no work for them during this time); or where they do not have sufficient Annual Leave during this lockdown period; or in the event that they do not wish to take their Annual Leave during this time, may be placed on a Temporary Lay-Off during which time they will be entitled to claim UIF - refer to section 5 below:

Where Employers can afford to offer Employees an advance whilst they await payment from the Department of Labour, such is advisable.

5. How should UIF claims for Reduced Work time, Illness and Death benefits be submitted?

Employers must complete the required forms. **The Employer or Employee** should then submit the completed forms through the following methods:

- A claim for illness can be lodged online at: www.ufiling.co.za. (Illness benefits)
- Email the application to the nearest UIF processing Centre. (Illness/ Reduced Work Time/Death benefits)
- Fax the application to the nearest UIF processing Centre. (Illness/ Reduced Work Time/Death benefits)
- Application forms can be downloaded from the Department of Employment and Labour website: www.labour.gov.za
- *We have also attached the "Easy Guide for Electronic Claims" to our correspondence for further explanation pertaining to the claim submission process.*

As per the UIF Commissioner's Circular regarding UIF processes, the UIF has relaxed some of their processes to accommodate the current circumstances as a direct result of the Covid-19 pandemic.

- The UIF department will now accept ALL applications through email, fax and Dropbox. Please find email addresses and fax numbers in the "*Easy Aid for Corona UIF Benefits*" document.
- Bank statements/confirmations (from verifying banks only) will be accepted instead of the UI2.8 form.

6. When should Employees submit their claims?

As soon as the circumstances warranting the benefit applications arises. i.e. when an Employee is placed on a Temporary Lay-Off/Short-time or opts to go in to self-quarantine.

Employers can also submit such application in bulk on their Employees' behalf.

7. When will Employees be paid their UIF benefits?

Unfortunately, this is unclear, however it seems that the UIF are committed to process and pay out UIF benefits as quickly as is reasonably possible.

8. How much can Employees expect to get paid during periods of Temporary Lay-Offs and Self-quarantine?

Government has announced that they will implement various means of assisting employees in such times of Unpaid Leave and businesses in distress, and whilst Government have provided some clarification on how the assistance will be provided and/implemented and how Employees and Employers will be able to apply for such - however updates in this regard are received almost daily during this uncharted territory for all Employees and Employers.

Whilst we have received a General Notice from the Department of Labour (i.e. Notice 215 of 2020 - C19 TERS); which includes in point 3.4 that: Employees are entitled to apply for benefits and that such will be paid in terms of the income replacement sliding scale of 38-60% of Employees' salaries but to a maximum of Gross R17 712 per month, no person can provide any assurance as to what each individual will receive from UIF as such claims may be dependent on factors such as the Employees' period of contributions to the UIF fund as well as the previous times they claimed from the fund may be taken into account to determine what percentage of the UIF benefit they will be entitled to.

9. What is the application process for Covid-19 TERS?

As per the *Covid-19 TERS Easy Aid* issued by the UIF Office, Employers must follow these steps to apply for Covid-19 TERS benefits:

Step 1: Apply	Employers must apply by reporting their closure to email box Covid19ters@labour.gov.za and will receive an automated email response outlining the application process.
Step 2: Submit	<p>Employers must submit the documents required to the UIF at Covid19claims@labour.gov.za.</p> <p>Key documents required include:</p> <ul style="list-style-type: none"> • Letter of authority on an official company letterhead granting permission to an individual specified to lodge a claim on behalf of the Company. • MOA (completion of the agreement between UIF, Bargaining Council and Employer). Note: the MOA also provides more valuable information. • A Prescribed template that will require critical information from the Employer. • Confirmation of bank account details in the form of certified latest bank statement. • Evidence / payroll as proof of the last three months of Employee(s) salary(ies). <p>NB: If the spreadsheet is complete; valid and accurate, it will be dumped into an automated calculator to produce the benefit amount due to the beneficiaries and the total amount to be transferred to the Employer or bargaining council or whichever method agreed to in the MOA.</p> <p>It would seem that this benefit is only available to Companies who may close their operations entirely for up to 3 months and not be applicable to those who only place some of their Employees on a Temporary Lay-Off.</p>
Step 3: Conclude MOA	Conclusion of the MOA between parties. Payment will only be affected after the MOA is signed off between the Fund and the Employer/Bargaining Council.

The UIF will provide a dedicated line that will assist all Employers/Employees/Bargaining Councils on COVID19TERS. The contact number is 012 337 1997.

10. What are the requirements to qualify for Covid-19 TERS?

For the Company to qualify, it must satisfy certain requirements, including:

- The Company must be registered with the Department of UIF.
- The Company must comply with the application procedure for the relief scheme.
- The Company has to enter into an agreement with the UIF.
- The Company has to fulfil a number of administrative requirements, e.g. proof of payroll for the last three months.
- The Company has to open a dedicated UIF bank account.
- The Company's closure must be directly linked to the Covid-19 pandemic.

In terms of the TERS process, the Unemployment Insurance Fund (UIF) may fund the distressed Companies directly in relation to the TERS Allowance. The distressed Company will only be funded if it meets the key requirements.

11. What is the Rapid Response Team?

In instances where Companies have to close for a short period, the Employer is requested to inform the department. The Departmental rapid response team will visit and or contact the Companies to provide the necessary assistance with the application and payment of this benefit type.

The Departmental rapid response team has been established to provide assistance in cases of retrenchment of more than 50 Employees but will also consider assisting Companies with less than 50 Employees depending on the circumstances at that point in time.

12. What is short time?

When Employees work for less hours and/or less days per week/per month than they would normally do as per their employment contract. Needless to say, they would then also be paid less proportionate to the hours/days worked.

They will be able to claim from the UIF for the difference between what they used to earn and what they will earn during the period of the National Lock down and possibly thereafter.

13. What is a Temporary Lay-Off?

When Employees do not work at all for a certain period. This period can be days, weeks or months depending on the circumstances.

In such circumstances, the Employees would not be paid, but would still be the Company's Employees.

They will be able to apply for UIF benefits during a Temporary Lay- Off.

14. How long may Employees be placed on a Temporary Lay-Off?

Our legislation does not prescribe time periods within which Temporary Lay-Offs must be applied.

The prevailing circumstances and any agreement achieved with the impacted Employees will dictate these time periods. Should the Temporary Lay-Offs become indefinite or endure for an unreasonably long period of time, the Employer may elect to (permanently) retrench Employees, after following the provisions of s189 or s189A of The LRA (as amended).

15. What is the process for placing Employees on short time or a Temporary Lay-Off?

Employers may not unilaterally change Employees' conditions of employment without first consulting with their Employees. However, consultations relating to Temporary Lay-Offs is much less onerous than retrenchment consultations, in light of COVID-19 and the resultant National Lock down.

As mentioned above, whilst the options need to be discussed with Employees, they do not have to agree to the decision to be placed on short-time or Temporary Lay-Off during the National Lock down as the Lock down was imposed by Government and is thus a decision beyond the Employer's control. However, if the employer needs to place Employees on a further period of Temporary Lay-Off/short-time then it would be advisable to consult with the affected Employees. In the event that consensus is not reached the Employers still has the right to place Employees on Temporary Lay-Off/short-time, provided the Employer bases their decision on sound business rationale.

Here are the steps Employers should take in the event that Employers elect to and need to place staff on short time/Temporary Lay-Offs after the National lockdown:

- Issue Employees with a notice of intention to introduce short time/Temporary Lay-Off.
- During the consultation period, give Employees the opportunity to propose alternative solutions.
- Once you have consulted with your Employees, issue them with a notice of short time/Temporary Lay-Off.
- Assist Employees with the documentation required to claim UIF benefits.

Feel free to contact us for the necessary notices/documents.

16. May Employers use different strategies for different groups of Employees in the same business i.t.o. who are placed on a Temporary Lay-Off/Short-time and who are afforded the opportunity to continue working?

Yes, as long as Employers can clearly justify their business rationale and reasons for the different working arrangements.

17. How should Employers decide who and when to place Employees on short time, who to place on Temporary Lay-Off, when to grant annual leave, or when to allow remote work?

Employers should keep in mind that they may implement various options dependent on their specific circumstances. Decisions will be dependent on, for example, whether the company shuts down for a period or not, what work still needs to be done and what can be done remotely, what work cannot be done remotely, how much work is available, etc. Here are a few options:

- First identify the Employees who can work from home and grant them the concession to do so, assuming that there is enough work to do.
- If a company shuts down completely for a specific period, Employees can be placed on a Temporary Lay-Off.
- Employers may also encourage Employees to take their accrued Annual leave, if financially viable for the Company, to attempt to avoid large reductions in their average monthly remuneration over this time. Employees may also be afforded the right to only take a few days' Annual leave and be placed on a Temporary Lay-Off for the remaining days when they cannot work.
- In the event that there is no work available for certain departments or positions; or the work is of such a nature that it cannot be done remotely, those affected Employees can also be placed on a Temporary Lay-Off.

- If there is work available but not enough to justify an Employee to work full-time, such Employees can be placed on short time/reduced hours of work.

Remember that the circumstances may change, and Employers may amend their decisions accordingly. Employers may, for example, initially implement a Temporary Lay-Off and then start introducing short-time for certain Employees as circumstances improve.

Please note, that it is not recommended to force people to take unpaid leave because they will not be able to claim UIF. We need to safeguard our Employees' ability to receive an income in these times.

18. May Employers revoke remote working arrangements?

If Employers are able to accommodate some Employees working from home during these current times, then they should consider such. The concession can be revoked in the event that Employees abuse the conditions pertaining to working from home or where there is no longer an operational requirement to allow them the concession.

We recommend that clear guidelines be set for Employees in terms of requirements, management expectations, deadlines, communication, etc.

In the event that the concession is revoked due to abuse or if there is no longer an operational requirement to work from home (such as no work available), Temporary Lay-Offs or short time may be implemented.

19. Why is it not advisable to retrench during the National lock-down period?

Retrenchment during the lock-down period is not recommended.

The first priority should be to consider strategies to try and circumvent retrenchment. It is advisable to first consider which of the Employees are critical to the business, especially in the coming months. It will make no financial sense to retrench some Employees now for the following reasons:

- Keep in mind that for 12 months of their being made redundant, Employers are legally obliged to offer such Employees "first right of refusal" when suitable vacancies arise - provided that they meet the inherent requirements of the available positions. In other words, an Employer might have to rehire the same people they retrench now.
- It is not a good strategy to protect cash flow as the Employer would have to pay out severance packages (and may not arrange payment plans for those). Employers would need to pay any accrued annual leave, notice periods and severance pay (i.e. one week for every completed year of service).
- Retrenchment processes as per section 189 and section 189A of the Labour Relations Act (LRA) are onerous and there is a duty on Employers to meaningfully engage with Employees being contemplated as being made redundant before being able to procedurally and substantively fairly retrenching certain Employees.
- Normal section 189 processes do not stipulate how long the process should take, but to be procedurally fair Employers should not rush the process. It should take nothing less than 2 weeks but consultations often take longer.
- If Employers employ more than 50 staff and there is a good chance that they would need to retrench more than 10 people, such retrenchments would automatically be regulated by section 189A of the LRA. This means that Employers would be required to consult for at least 60 days before they may make Employees redundant. This also means Employers would have to cover the costs for at least 60 days unless such Employees wave their rights, which they are unlikely to do in today's times.
- Note: Section 189 is the section in the Labour Relations Act that governs restructuring processes. There is also section 189A which deals with large scale retrenchments.

To summarise, it is neither a cost effective nor a quick way to retrench Employees at this point. Employers should consider putting some staff on short time or even on a temporary lay –off – albeit for weeks on end – as an alternative to making them redundant.

20. What are possible alternatives to retrenchment?

Alternatives to retrenchments in these times may include:

- affording Employees', the option to work from home, where possible;
- applying a reduction in working hours and proportionate deduction in salary;
- placing Employees on a Temporary Lay-Off; or Short-time
- agreeing on a reduced salary;
- granting Employees annual leave; or
- a combination of the above.

The above would be deemed to be feasible alternatives to possible retrenchments. Whilst the aforementioned options need to be consulted with Employees, they do not have to agree to such if the Employer positions this decision as being reasonable alternatives to retrenchments.

Employees can thus be placed on a Temporary Lay-Off /Short-time without pay even after the 16th April as a fair alternative to possible retrenchments.

21. Can Employees claim from COIDA if they contract COVID-19 at work?

COIDA is the Compensation for Occupational Injuries and Diseases Act. When an employee falls ill with the Covert-19 virus because they came to work, they may claim from the Workman's Compensation Fund.

For the first three days if an Employee is booked off from work due to a work-related disease or injury, the Employer must pay the Employee in full. This is called COIDA/WCA leave and means that the first three days does not come out of the Employees' sick leave entitlement.

From day 4, the Employer pays 75% of the Employee's rate of pay. If the Employee is still booked off after three months, he or she can continue claiming but then such claim will go through the Compensation Fund.

For further information and advice on when and how to submit COIDA claims, please contact Berna Muller at Berna@fvtconsulting.co.za.

Please note that the labour advice provided in this Q&A is always subject to the specific facts of each business case. We therefore recommend that you contact a labour relations expert for advice applicable to your specific labour challenges before carrying out any labour practices which may put the business at risk.
