

## Overview

COVID-19 has been declared a pandemic by the World Health Organization and as this virus continues its grasp on the global economy, it is pertinent to assess the labour law considerations that employers and employees need to be aware of in Uganda.

**Leave from work:** With currently 8 reported cases of the coronavirus in Uganda at the time of writing, diligent employers are going to grapple with the classifications of leave that their employees may be subjected in the future, and the impact this may have on wages, sick pay and paid leave.

Assuming an employer has instructed their employees, in accordance with the Ministry of Health Guidelines, to self-isolate, to remain away from their workplace, there will be issues as to whether this period should be paid for and as to what kind of leave this should be.

Due to the unprecedented nature of the current events, employers must ensure they are taking actions in line with the latest guidelines from the Ministry of Health when determining which employees should be required or requested to self-quarantine.

Ideally, this will depend on the nature of the Employment Agreement contractual provisions. In the event that an employee voluntarily elects to stay away from the workplace due to self-isolation without the consent of the employer, there is need to consider whether the said period will be paid or unpaid. If an employee exhibits symptomatic elements akin to the virus, employers should consider reviewing sick pay policies as well as the law in line with the Ministry of Health Guidelines.

## Self Isolation and Sick Pay

The most common queries currently amongst employers are centred around sick pay and self-isolation. In Uganda, Sick pay is catered for under Section 55 of the Employment Act 2006 and can cover an employee who has completed not less than one month's continuous service with an employer for up to 3 months.

The Ministry of Health guidelines for a person who may have been in contact with someone with COVID-19 or who may have come from a high-risk country however requires a self quarantine/covid-19 isolation period of 14 days. In the current circumstances, it follows that the 14-day isolation period would be counted under sick pay under the guidelines, but should your sickness exceed the 14-day period the provisions of Section 55 would then apply accordingly. Furthermore, if the employee has not been exposed but has been given instructions from either the Government or the Employer to work from home during a period of self-isolation then they will be entitled to be paid because they are still working.

## Redundancy - Can employers impose collective terminations/redundancies on account of the impact of COVID-19 ?

In Uganda , the Ministry of State for Labour, Employment and Industrial Relations issued a statement on 20<sup>th</sup> March 2020 that was instructive on the matter of how redundancy should be dealt with in unison with the Employment Act 2006. It is unfortunate but somewhat inevitable that the coronavirus (COVID-19) situation may lead to some businesses being forced to reduce the size of its workforce to survive. Sectors immediately affected include in Uganda (and globally) are hospitality, entertainment, manufacturing (due to disrupted supply chains) and retail but there will be an impact across all sectors.

**Redundancy-** the impact COVID-19 means that there will be a reduction in the need for employees to carry out work of a particular kind, or employers' businesses might cease, Employers are required under the law to provide work to their employees but such duty ceases where the performance of contract is prevented by an Act of God, or civil strife or where business is interrupted by natural calamities or economic, technological and structural reasons resulting into shortage or reduction of work beyond the employer's control, this exemption is limited to 15 days upon whose expiry the employer must either pay wages or terminate the employment. The Ministry of Labour's press brief spells out a number of steps employers should consider to mitigate the redundancy issues;

- (i) All affected employees should be given notice in accordance with provisions under Sections 58 and 81 of the Employment Act 2006;
- (ii) The processes should have a humane face and clearly written and signed agreement between parties and timeframe
- (iii) Workers should be prepared or counseled prior to termination or during the period of notice, including those that have been affected by the pandemic;
- (iv) Any temporary layoff should not break the continuous service of an employee as required by Section 84 of the Employment Act 2006;
- (v) There should be commitment that workers should be re-engaged when the work normalizes;

vi) Terminal benefits that accrue should be paid when an employer decides to terminate employment relationship unless otherwise agreed.

## Occupational Health and Safety Considerations

Employers should be mindful of the duties they owe their employees under the Occupational Safety and Health laws of Uganda. They have a duty of care to their employees and are consequentially liable if they knowingly allow an individual who should be under self-isolation onto their premises or fail to take the necessary steps to implement the Government Guidelines in order to ensure a safe work environment.

Careful consideration must be especially taken for employees falling within the category of vulnerable individuals such as pregnant employees, elderly employees or employees with long-term health conditions.

Employers should consider reasonable means of enforcing such measures if an employee refuses to adhere to the Ministry of Health Guidelines in a manner that does not impinge on their employment rights. Suspension from work could be an option if an employee fails to adhere to these Guidelines.

Employers must implement the safety measures as laid down by the Ministry of Health. Additionally, both employers and employees have a duty to ensure that their actions or omissions do not put their colleagues at risk of contracting the virus.

Employers should provide training of workers on preventive measures for COVID-19, provide personnel protective equipment and treatment of affected workers in line with Part III of the Occupational Safety and Health Act 2006. Failure to show that they provided a safe working environment may expose them to claims under Sections 27 and 29 of the Workers' Compensation Act Cap 225 in the event that COVID-19 is transmitted to an employee during the course of an employee's work.

In relation to financial institutions, The Bank of Uganda, through the office of the Executive Director Supervision, also sent out a circular on the 24<sup>th</sup> March 2020 obligating financial institutions to observe the highest standards of occupational health and safety in their respective offices in a bid to fight COVID-19.

**Data Protection and Discrimination:** It is prudent that data protection and privacy obligations are not ignored when informing employees about a potential case of infection without jeopardizing the infected employee's privacy.

## THE EMPLOYEES' PERSPECTIVE

There are a number of questions that have been raised by the uncertainty created by the outbreak of COVID-19 globally and in Uganda in particular. Many issues in relation to employees' rights have already been addressed above under the employer's obligations but some other pertinent questions do arise such as;

***Does the employee have an obligation to inform his/her employer of possible exposure to the virus (e.g. travel to an affected region, contact with a person returning from an affected region, etc.)?***

**YES.** Despite the Ugandan Government guidance through the Ministry of Health guidelines, there is no legal obligation on the part of the employee to inform his/her employer of a possible exposure to the virus. However, based on the obligations of loyalty and good faith that must govern all employment relationships, the employer is entitled to expect to receive such information, which will enable him to take the preventive measures he considers necessary.

- The employer must communicate with his employees and stress the importance of transparent information. Current government guidance is that these employees should self-isolate. Other considerations/actions the Employees should have in mind and/or take in this regard are ;
- Tell their employer if they are unable to work, whether because of sickness or advice to self-isolate, or because they are in quarantine, according to the employer's usual absence procedures.
- Employees may also be a risk factor because they have been in contact with a confirmed case. Our view is an employee is under an express and implied duty to inform their employer such.

***What options are available to vulnerable employees such as pregnant women, people with underlying medical conditions, people over 70 years of age etc.?***

***Pregnant employees.*** As the rate of infection rises, pregnancy risk assessments may need to consider the risk of a pregnant employee being infected with Covid-19. If the risk is high and there are no suitable alternative roles available for a pregnant employee, it may be necessary to suspend on full pay or allow them to work at home if their job type allows for this.

***People with underlying health conditions and the Elderly( 70 years and above )***

Regarding older and disabled people and those with underlying medical conditions, these are the people that are the most at risk from COVID-19 if infected. First and foremost it is advised that those in this category should be particularly stringent about social distancing.

If you have an underlying health condition it is advised that you strongly follow the conditions laid down in President's press statements and the Ministry of Health guidelines that have strongly advised that you:

- work from home if possible;
- avoid non-essential travelling;
- avoid large gatherings or those in small spaces, including pubs, clubs, restaurants, cinemas or theatres;
- avoid gatherings with friends or family

### ***Disabled Employees.***

Disabled employees may request changes to their working arrangements (for example travelling outside rush hour or working from home) as a reasonable adjustment if the virus poses a greater threat to them. Consider on a case-by-case basis whether changes to working arrangements might be reasonable in the circumstances.

### ***Asymptomatic Employees:***

These are employees that have been exposed to COVID-19 but are not showing any symptoms of the virus. These employees should inform their employer immediately of their exposure to the virus and should self isolate/quarantine themselves in their houses for the requisite 14- day period while giving daily updates of their condition. These employees would be entitled to sick pay as provisioned under Section 55 of the Employment Act, 2006.

### ***Employees under Quarantine.***

Employees under quarantine are likely to be those that have recently travelled from high risk countries although they are not showing any symptoms. Under the Ministry of Health directives and the World Health Organization guidelines this quarantine should last for a 14-day period in which they must self isolate in their homes. It is advised that employees in this category contact their employers, advise them on their situation and keep the Human Resource Department of their Employer updated throughout the quarantine period on their health status. They are entitled to full pay as this is a government directive and they are also doing this in the interests of preserving the health of their co-workers and the wider public.

### ***Potentially discriminatory policies.***

Policy changes to take account of the risk posed by the virus may place certain ethnic groups at a substantial disadvantage. Any new or revised policies, and the reasons for them, should be clearly communicated so that employees understand that the changes are being made in response to Covid-19. Ensuring the changes are a proportionate response to the threat posed by the virus is crucial.

## Practical Solutions :

It is imperative that an employer addresses the mitigating mechanisms internally and anticipates the potential impact of different actions during this period.

- Importantly, employers should be careful to avoid discrimination or harassment of employees from countries or nationalities that are perceived to have prevalent cases of the virus, as well as those that could be infected.
- Keep your workforce well-informed of the ongoing developments and official advice from the Government of Uganda and the Ministry of Health and promote resources that are available.
- Advise employees to take precautions, such as working from home where possible and avoiding non-essential social contact
- Advise them of the latest advice with regards to self-isolation for anyone (or anyone who lives with someone) who develops a new, continuous cough or a high temperature of 37.8 degrees or above (in line with official guidance).
- Reduce the spread of infection by providing soap and hand sanitizer gels with alcohol, especially in communal areas like kitchens and coffee areas. Provide staff with hand sanitizers.
- Increase the frequency and intensity of office cleaning; consider a deep clean; think about frequent wiping down of communal spaces such as kitchens, handrails on stairs, lift buttons, door handles, etc. Some workplaces are banning handshakes.
- We also recommend that employers providing contractual sick pay should provide this if a member of staff is asked to self-isolate by a medical professional, even if they have no symptoms.
- If you have employees that have roles that do not suit home working, consider other measures to limit the spread of the virus, including team segregation (in and out of the premises) and team rotation/shift arrangements to reduce contact between teams and limit the number of people on the premises at any given time.
- When encouraging/requesting employees' return to your premises, consider those who need to take care of their children because of delayed day care or school re-opening.

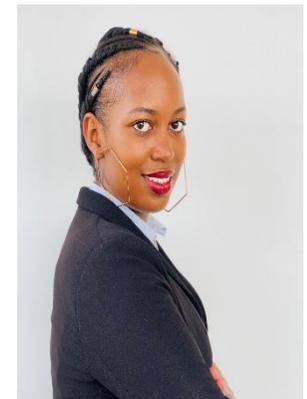
- Make sure your recommendations and instructions comply with any quarantine or other health-related measures, including remote working if an employee was stranded in a foreign country.
- Alternative options to providing sick pay are to allow people who are asked to self-isolate to work from home wherever possible and continue to pay as normal.
- Employers should use discretion around the need for medical evidence for a period of absence where an employee is advised to self-isolate.
- Employers should ensure that employees understand their reporting obligations, employers should develop a clearly communicated policy on what and when an employee is expected to inform their employer of risk factors.



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