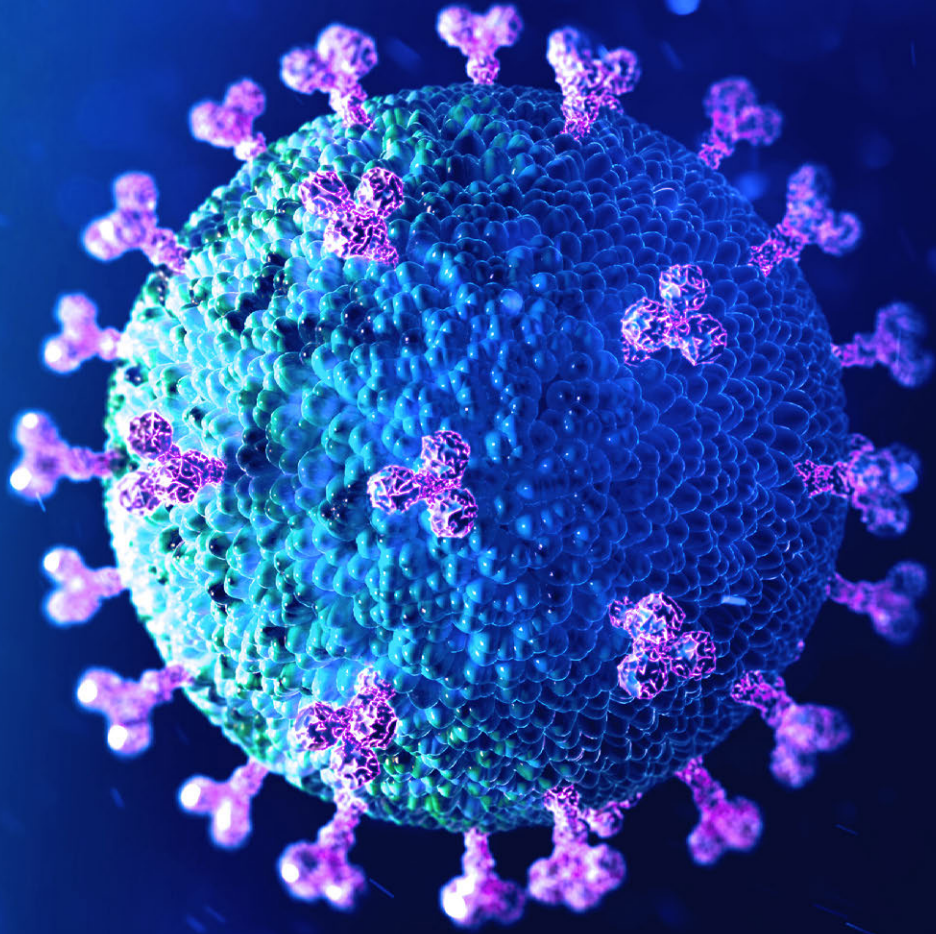


9 APRIL 2020

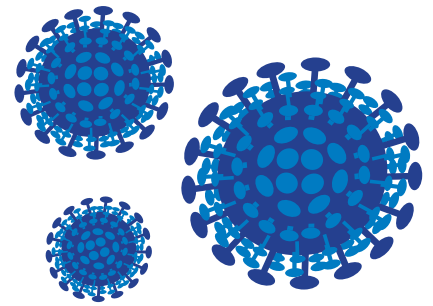


Updated Employment Survival Guide

Know your employment rights

Employment Survival Guide

Know your employment rights



SHUTDOWN! What about employees? Options below

Annual Leave



Employees may be asked to use their annual leave during this time. This only applies to the statutory portion of annual leave (i.e. 15 business days).

Statutory annual leave is regulated by the BCEA. Section 20 sets out the framework for statutory annual leave. An employer must grant statutory annual leave in accordance with an agreement between the parties. In the absence of an agreement the employer may determine the time for statutory annual leave to be taken. When an employer wishes to send employees home on statutory annual leave to keep them away from the office during a pandemic such as this, it may determine the time for them to take statutory annual leave.

Reduced salary



Employees and employers may negotiate and agree on a reduced salary.

Temporary Employee Relief Scheme



Should an employer as a result of the COVID-19 pandemic close its operations, or a part of its operations, for a 3 (three) months or lesser period affected employees shall qualify for a COVID-19 benefit. The salary to be taken into account in calculating the benefits will be capped at a maximum amount of R17,712.00 per month, per employee and an employee will be paid in terms of the income replacement rate sliding scale (38%-60%) as provided in the UI Act. Should an employee's income determine in terms of the income replacement sliding scale fall below R3,500, the employee will be paid a replacement income equal to that amount.

An employee may only receive COVID-19 benefits in terms of the Directive if the total of the benefit together with any additional payment by the employer in any period is not more than the remuneration that the employee would ordinarily have received for working during that period.

For the company to qualify for the temporary financial relief scheme, it must satisfy the following requirements:

1. The company must be registered with the UIF;
2. The company must comply with the application procedure for the financial relief scheme; and
3. The company's closure must be directly linked to the COVID-19 pandemic.

Leave Credit or taking of non-statutory leave



Subject to the applicable leave policies, employers may agree with employees to take a leave credit or use the non-statutory portion of their annual leave entitlement.

UIF Special Leave

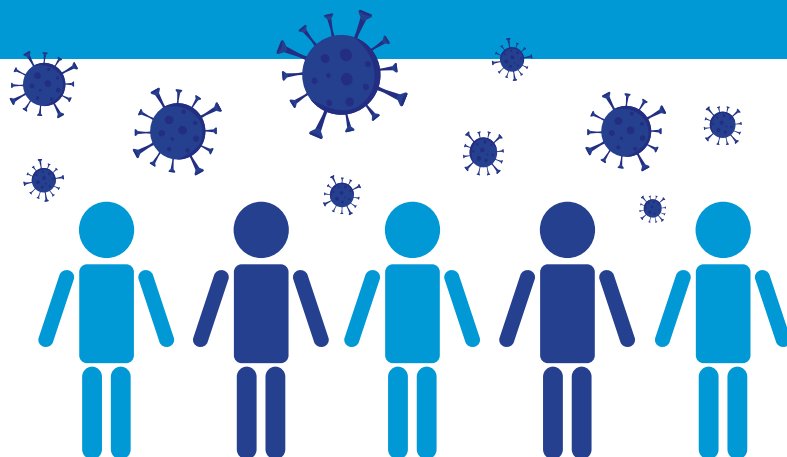


If employees must subject themselves to be self-quarantined for 14 days (or longer) such leave will be recognised as "special leave" and employees will be permitted to apply for UIF benefits which will be paid on condition that the reason for the quarantine meets the necessary requirements.

Employment Survival Guide

Know your employment rights

The COVID – 19 (or “Coronavirus”) is spreading. Employers and employees have a role to play in limiting its impact. In this alert, we answer some of the most pressing questions that have been asked over the past few days.*



1. What is an employee’s sick leave entitlement?

The Basic Conditions of Employment Act 75 of 1997 (BCEA) regulates sick leave entitlement. In terms of section 22 of the BCEA, the “sick leave cycle” means the period of 36 months’ employment with the same employer immediately following an employee’s commencement of employment. During every sick leave cycle, an employee is entitled to an amount of paid sick leave equal to the number of days the employee would normally work during a period of six weeks. Usually (for an employee who works five days a week) this equates to 30 days’ sick leave per 36 months of employment.



3. When is an employer not required to pay sick leave?

In terms of section 23 of the BCEA, an employer is not required to pay an employee for sick leave if the employee has been absent from work for more than two consecutive days or on more than two occasions during an eight-week period and, on request by the employer, does not produce a medical certificate stating that the employee was unable to work for the duration of the employee’s absence on account of sickness or injury.



5. What if sick leave is exhausted?

An employer is not required to pay employees for sick leave taken when the sick leave entitlement has been exhausted.



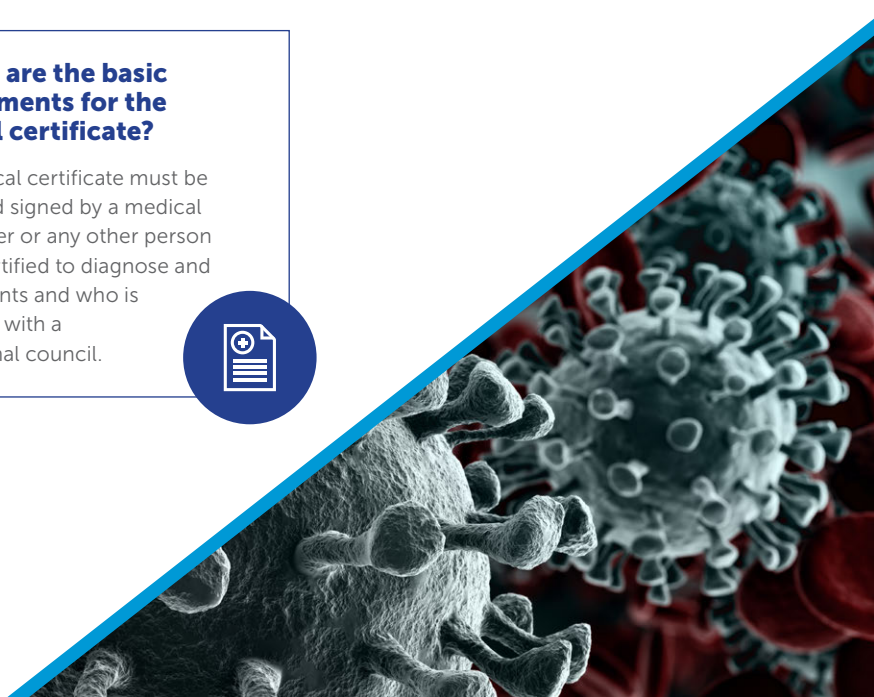
2. Must an employee be paid for sick leave?

Subject to section 23 of the BCEA, an employer must pay an employee for sick leave: a) the wage the employee would ordinarily have received for work on that day; and b) on the employee’s usual pay day.



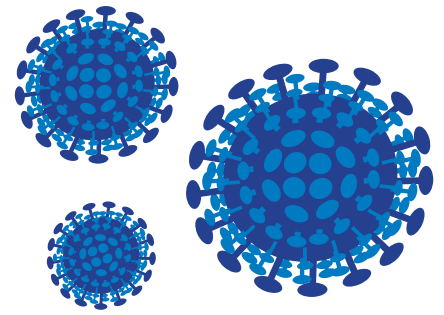
4. What are the basic requirements for the medical certificate?

The medical certificate must be issued and signed by a medical practitioner or any other person who is certified to diagnose and treat patients and who is registered with a professional council.



Employment Survival Guide

Know your employment rights



6. What about “special leave”?

The Minister of Employment and Labour, Mr Thulas Nxesi, announced on 17 March 2020 that if employees must subject themselves to be self-quarantined for 14 days (or longer) such leave will be recognized as “special leave” and employees will be permitted to apply for UIF benefits which will be paid on condition that the reason for the quarantine meets the necessary requirements.*



7. Will the Department of Labour assist employers in distress?

The Minister of Employment and Labour, Mr Thulas Nxesi, announced on 17 March 2020 that a period of reprieve will be considered in order for companies not to contribute to the Unemployment Insurance Fund (UIF). He said the Employee Relief Scheme will be used to avoid workers being laid off. Companies contemplating a short term shut down must notify the Department who will dispatch a team to visit these companies to provide assistance with the processing of UIF claims.**



8. When can an employee be dismissed due to the Coronavirus?

In terms of Schedule 8: Code of Good Practice Dismissals, an employer must investigate the extent of the illness if the employee is temporarily unable to work. If the illness may result in a prolonged absence from work, alternatives to a dismissal must first be considered. The factors to take into account in considering alternatives to dismissal include, the seriousness of the illness, the period of absence, the nature of the employee’s job and whether a temporary replacement may be secured. During this process, the ill employee should be given an opportunity to make recommendations as well. Only once all these processes have been followed and no alternative to dismissal found, may an employer consider dismissal.



9. May employers consider retrenchments due to the impact of the Coronavirus?

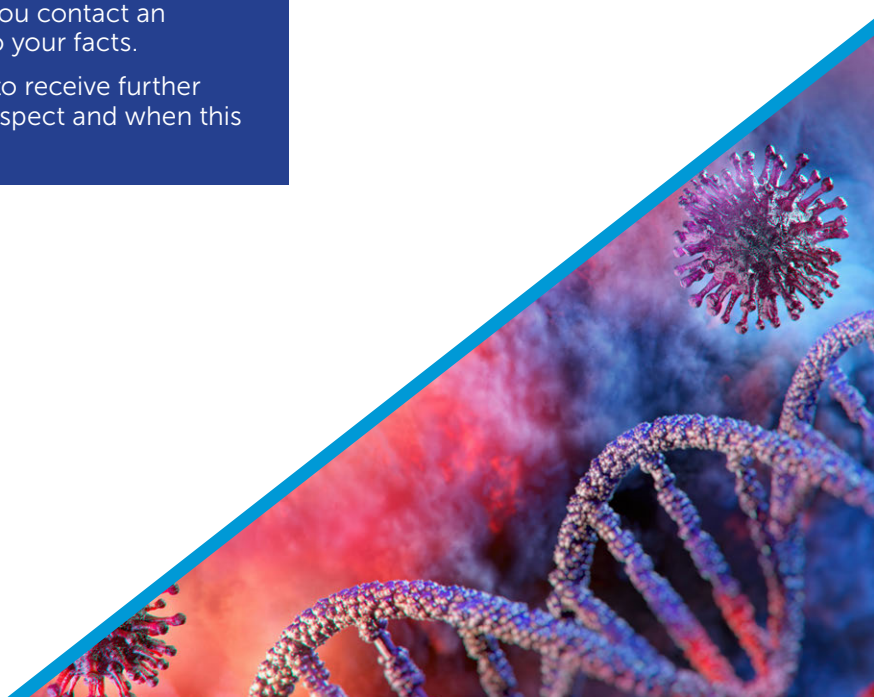
Section 189 of the Labour Relations Act 66 of 1995 applies if an employer contemplates dismissing one or more of its employees for reasons based on its operational requirements. “Operational requirements” is defined as requirements based on the economic, technological, structural or similar needs of the employer.

A retrenchment is as a result of no fault on the part of the employee. In the circumstances, it is not an opportunity for an employer to terminate the employment of ill employees.



*The answers to these questions are always subject to the specific facts of each matter and we recommend that you contact an employment law expert for advice applicable to your facts.

** These issues are developing and we are still to receive further detail on Governments considerations in this respect and when this will become effective.



10. May an employer require an employee to use annual leave?



Yes, however this should not be done for periods of self-isolation or quarantine and only applies to the statutory portion of annual leave (i.e. 15 business days). This measure is also subject to the contents of the contract of employment, leave policy or any applicable collective agreement.

Statutory annual leave is regulated by the BCEA. Section 20 sets out the framework for statutory annual leave. An employer must grant statutory annual leave in accordance with an agreement between the parties. In the absence of an agreement the employer may determine the time for statutory annual leave to be taken. When an employer wishes to send employees home on statutory annual leave to keep them away from the office during a pandemic such as this, it may determine the time for them to take statutory annual leave. The employees are paid as they are on statutory annual leave.

11. May employees be required to work from home?



Yes. Working from home may be permitted. This is not always viable but could be considered in a corporate environment. Should employers consider this option, we recommend that clear guidelines be set for employees. This may include that the working environment must be safe, the employee must have a secure telephone line and Wi-Fi connection and employees should remain within travelling distance of the office.

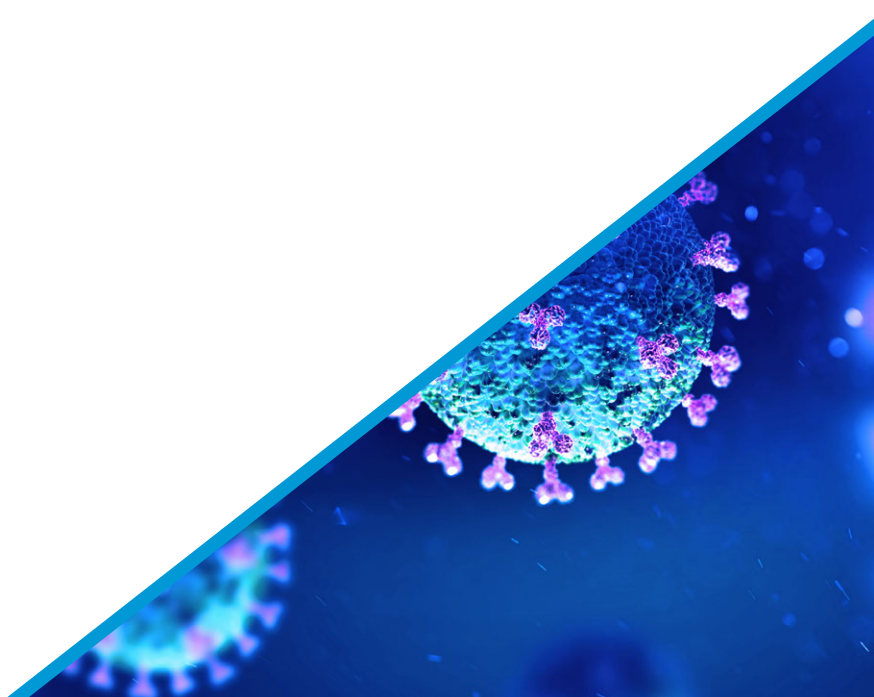
12. As an employer, what are my obligations whilst the workplace is open?

The Occupational Health and Safety Act 85 of 1993 (OHSA), requires an employer to bring about and maintain, as far as reasonably practicable, a working environment that is safe and without risk to the health of its employees. For this reason, we recommend that employers adopt contingency plans and communicate with its employees regarding the measures it will adopt in securing the workplace. This may include:

- the prohibition of handshakes or physical contact;
- limitation on meetings;
- sufficient supply of hand sanitizer; or
- requiring employees to work from home, should they feel sick in any way.

- It may also be necessary to relax the sick leave policy or to permit more flexibility in working arrangements.

On 17 March 2020, the Minister of Employment and Labour urged employers to conduct a health and safety risk assessment in consultation with its employees, whilst ensuring that measures are put in place to ensure a healthy workplace in terms of its health and safety obligations such as the provision of the necessary protective equipment and put in place systems to deal with the outbreak, as well as including all mitigating measures that are to be put in place until the outbreak has been dealt with.**



Employment Survival Guide

Know your employment rights



13. As an employee, what are my obligations, if the workplace is open?



The employee and the employer share the responsibility for health in the workplace. Therefore both the employee and employer must pro-actively identify dangers and develop control measures to make the workplace safe. For this reason, employees should abide by any policies adopted by the employer to curb the spread of the Coronavirus. Employees should also inform their employer if they are aware of any risk to the health of their colleagues.

14. Practical Tips if the workplace is open



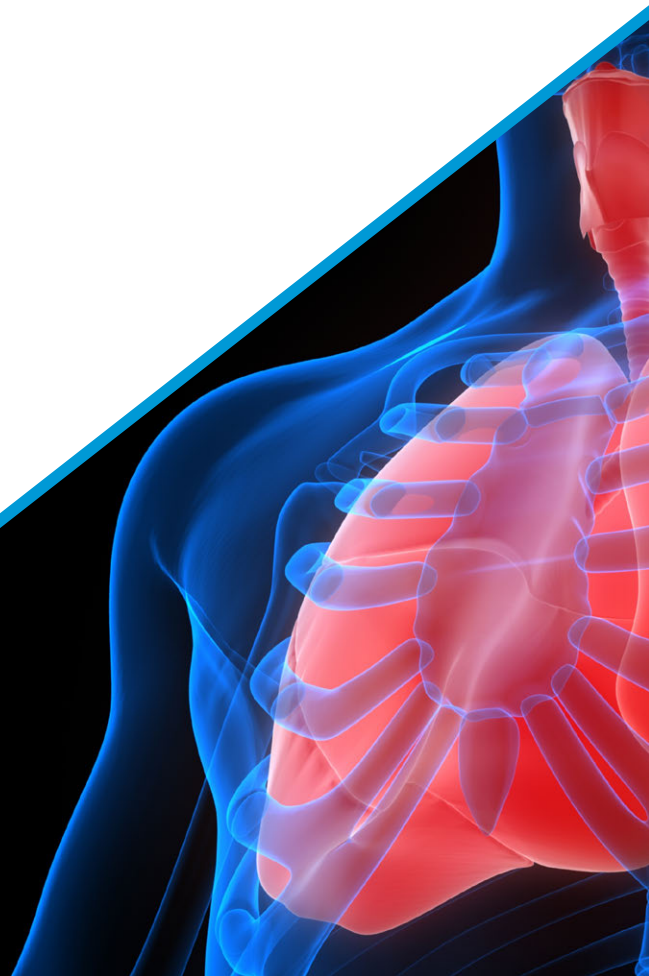
The following practical tips may be considered:

- 14.1 The prohibition of unnecessary meetings and the increased use of video conferencing facilities.
- 14.2 The prohibition of any form of physical contact, specifically hugs and handshakes.
- 14.3 Requiring employees to report to their manager if they feel unwell in order to possibly allow that employee to work from home.
- 14.4 Requiring employees to disclose if they have travelled to a high-risk area recently.
- 14.5 A rule that requires employees to wash their hands regularly.

15. As an employer, what are the options during the shutdown?



The options are set out in the option schedule, included with this survival guide. It includes, annual leave, reduced salaries, the temporary employee relief scheme or the disaster management fund.



CORONAVIRUS (COVID-19)

Employee Options

1. INFECTED AT WORK

- A notice has been issued in terms of section 6A of the Compensation of Occupational Injuries and Diseases Act 130 of 1993 (COIDA). In terms of this section, the commissioner has prescribed (inter alia) the particulars to be furnished in connection with a notice of occupational injuries and diseases for the administration of COIDA.
- In terms of the notice, an occupationally-acquired COVID-19 diagnosis relies on all of the following factors being present:
 - Occupational exposure to a known source of COVID 19;
 - A reliable diagnosis of COVID-19 per WHO guidelines;
 - An approved official trip and travel history to countries and/or areas of high risk for COVID-19 on work assignment;
 - A presumed high-risk work environment where transmission of COVID-19 is inherently prevalent; and
 - A chronological sequence between the work exposure and the development of the symptoms.
- Only in instances for confirmed cases of occupationally-acquired COVID-19, and where the Compensation Fund has accepted liability, temporary total disablement shall be paid from the date of diagnosis.
- The employer is liable for payment of compensation for the first 3 months and then the employer may reclaim the amount from the Director-General or mutual association concerned
- For suspected/unconfirmed cases, the employer remains liable for payment of remuneration.

2. SELF QUARANTINE FOR 14 DAYS

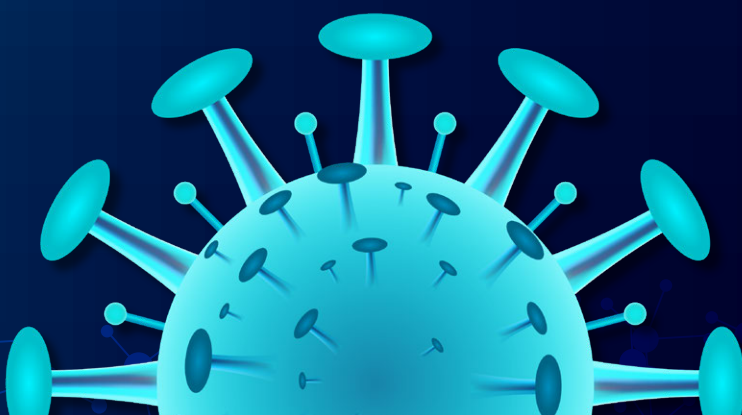
- In terms of the COVID-19 directive issued by the Minister of Employment and Labour, an employee who is in quarantine for 14 days due to COVID-19 shall qualify for an illness benefit under the UIF 'special leave' provisions.
- This will require confirmation from both the employer and the employee along with an application as proof that the employer and employee was in an agreed pre-cautionary self-quarantine for a period of 14 days.
- In this instance, the confirmatory letters from the employer and employee shall suffice.

3. QUARANTINE FOR MORE THAN 14 DAYS

- If an employee is quarantined for more than 14 days, a medical certificate from a medical practitioner must be submitted together with continuation form U13 for payment for the illness benefit under the UIF 'special leave' provisions.

4. GENERALLY ILL AND SENT HOME

- The Basic Conditions of Employment Act 75 of 1997 (BCEA) regulates sick leave entitlement. Employers who are on sick leave must produce a medical certificate to claim sick leave.



CORONAVIRUS (COVID-19)

Employee Options

1. INFECTED AT WORK

The employer may claim from COIDA provided that all the factors of occupationally-acquired COVID-19 are present. The employer shall pay the compensation to the employee and then reclaim the compensation paid from the Director-General or the mutual association concerned.

3. QUARANTINE FOR MORE THAN 14 DAYS

If an employee is quarantined for more than 14 days, a medical certificate from a medical practitioner must be submitted together with continuation form U13 for payment for the illness benefit under the UIF 'special leave' provisions'.

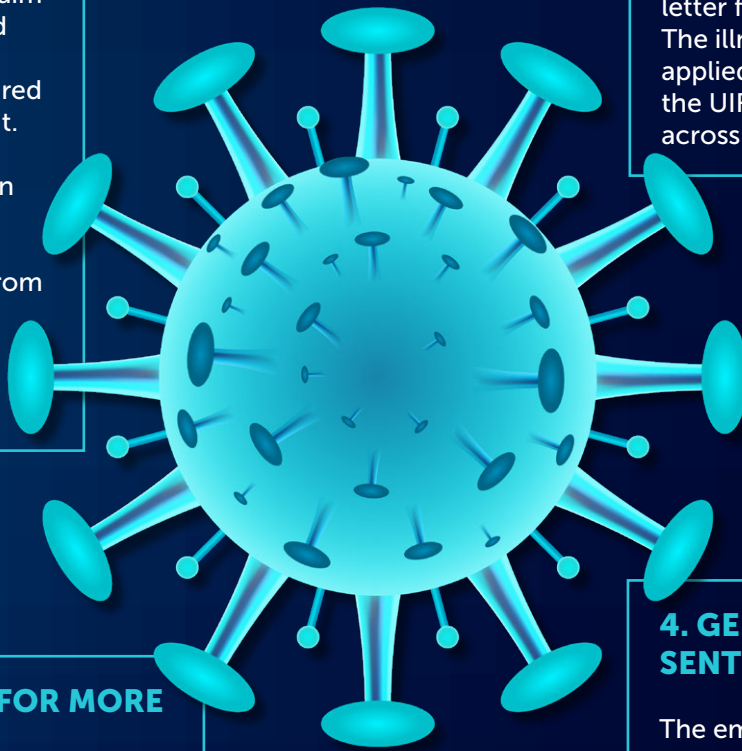
The illness benefit must be applied for from the UIF and the UIF shall pay the benefit across to the employee.

2. SELF QUARANTINE FOR 14 DAYS

An employee may quarantine themselves for 14 days due to infection of COVID-19 and can qualify for an illness benefit under the UIF 'special leave' provisions' provided the employee has a confirmatory letter from their employer. The illness benefit must be applied for from the UIF and the UIF shall pay the benefit across to the employee.

4. GENERALLY ILL AND SENT HOME

The employee can take their sick leave entitlement as per the BCEA or make an agreement with employer on taking annual leave. If no agreement or leave entitlement the employee must take unpaid sick leave.



Welcome amendments to COVID-19 temporary employee/ employer relief scheme: government lending a helping hand

Following the declaration of the National Disaster, the Minister of Employment and Labour (Minister) issued a directive governing the COVID-19 Temporary Employee/Employer Relief Scheme (TERS). This directive was amended on 8 April 2020 (New Directive). TERS is a special benefit aimed at minimising the dire economic impact on employees of the loss of income where employers are forced to shut their businesses and employees are temporarily laid off.

The most significant changes brought about by the New Directive are as follows:

- The term “*temporary lay-off*” has been expanded to include a reduction in work following a temporary closure of not only the whole of an employer’s business operations due to COVID-19 for the period of the National Disaster, but also a partial temporary closure.
- Affected employees shall qualify for a TERS benefit, if their employer as a result of the COVID-19 pandemic closes the whole or part of its operations, for a period of three months or less. Significantly reference is no longer made in the qualifying criteria to the requirement that the employer suffer financial distress.
- The salary to be taken into account in calculating the benefits is capped at a maximum of R17,712.00 per month, per employee. An employee is paid in terms of the income replacement rate sliding scale of between 38% and 60% (Sliding Scale). Previously, if an employee’s income determined in terms of the Sliding Scale fell below the minimum wage of the sector concerned, the employee was to be paid their minimum wage. In terms of the New Directive that employee is to be paid an amount equal to R3,500 (based on a full day work week).
- Where employees are entitled to receive TERS benefits from a bargaining council their employer is not permitted to apply for the benefit (Restriction). In such instance the affected employees will only be entitled to receive payment of the benefit from the bargaining council.
- The Restriction is only applicable if the parties to the bargaining council have concluded a collective agreement which has been extended by the Minister in terms of section 32 of the Labour Relations Act 66 of 1995 and the agreement provides for the disbursement of TERS benefits. The bargaining council must have also concluded a memorandum of agreement with the UIF for the bargaining council to pay the TERS benefits on behalf of the UIF to the employees who fall within the scope of the collective agreement and any other employees identified in the agreement.
- The requirement that a signed memorandum of agreement from the employer or bargaining council with the UIF is submitted as part of the application process has been expanded upon so as to allow, in the alternative, for submission of written or electronic confirmation of acceptance by an employer or bargaining council of the terms and conditions of TERS provided to the employer or bargaining council or published in writing by the UIF.
- Another significant amendment is that whilst previously an employee who is being paid by his or her employer during this period is not entitled to the TERS benefit, the New Directive provides that an employee may receive TERS benefits if the total of the benefit combined with any additional amount paid by the employer in any period does not exceed the remuneration that the employee would ordinarily have received for working during that period.
- The New Directive introduces a clause which enforces the aim of TERS and provides that all benefits received by employers or bargaining councils under TERS are to be utilised solely for the purposes of TERS and for no other purpose.



Coronavirus and the workplace: What to do?

On 5 March 2020, South African Minister of Health, Dr Zweli Mkhize, confirmed the first incident of COVID-19, commonly known as the corona virus in South Africa. This is likely to create a panic in workplaces across the country because of the way in which the virus spreads. What do we know so far?

Corona virus spreads through:

- coughing or sneezing;
- close personal contact; and
- touching an object or surface on which the virus is found.

The advent of the virus will most likely result in employees wanting to work remotely and take extended leave because of the virus. The Basic Conditions of Employment Act 75 of 1997 has a closed list of recognised forms of leave – sick leave, family responsibility leave, adoption leave, annual leave and paternity leave – with the exception of annual leave, none of these forms of leave accommodate employees who do not wish to report for fear of contracting a virus. Sick leave should only apply to employees who are showing symptoms of the virus (i.e. actually sick) as opposed to those who fear contracting the virus.

If the virus escalates, employers across the country may be required to consider flexible working arrangements such as – allowing employees to work remotely instead of reporting to the office, and even limiting traveling for employees. The option of remote working will be subject to operational requirements of that particular employer.

Also, the option of remote working is only open to a small percentage of South African employees – retailing, banking and fast-moving company goods companies cannot afford to extend the same arrangement. In those instances, the employers should consider the following questions:

Employers must be proactive and take charge and encourage calm. These are some ideas:

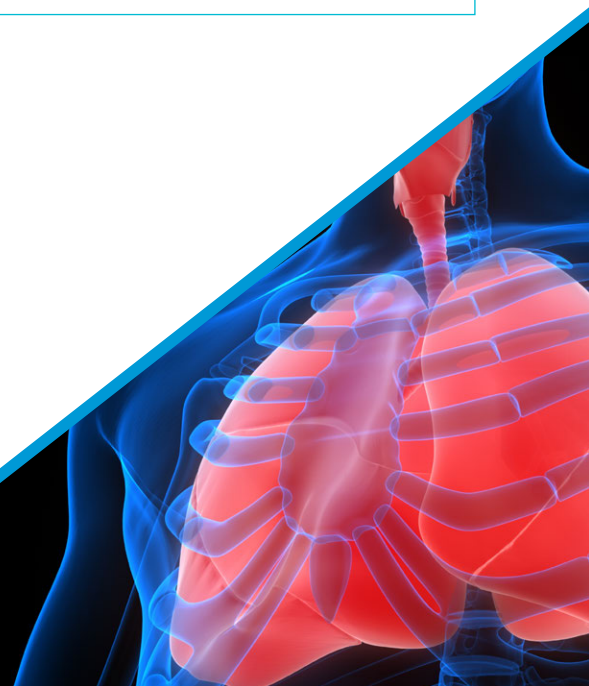
1. Does the threat of infection have the potential of impacting or affecting organisational culture?
 - Human touch is part of everyday work life, therefore, organisational culture such as human interactions, and handshakes amongst other things will likely decrease.
 - Therefore, launching a hygiene campaign, including instructional guides on how to wash hands effectively and keeping an employee's workspace clean and hygienic is an option.

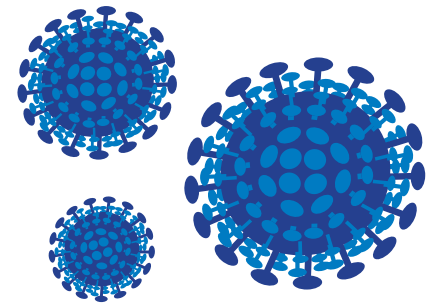
2. Can employees wear a face mask to work?

- Unlike industries such as mining and firefighting where protective clothing is a requirement, employers are not legally obliged to provide masks.
- Therefore, wearing face masks to work would be at the employer's discretion and informed by its risk to exposure to the virus.

In conclusion, employers need to be proactive in their efforts to mitigate the spread of the virus. Subtle changes in workplace culture such as declaring the workplace a handshake free environment and creating awareness for visitors, clients and other external stakeholders to manage expectations are an option. For those employees experiencing symptoms the virus, the employer may encourage those employees to wear masks as a precautionary measure. This is dependent on the prevalence of the virus across the country.

At the time of publishing this article, there was only one reported incident in the country.





IMMIGRATION

Coronavirus – temporary concession for Chinese Nationals currently in South Africa

Since the outbreak of the COVID-19 virus in 2019, the world's authorities learnt that swift action was needed in order to prevent the widespread distribution of the illness across international borders.

Some countries and airlines have embargoed flights to and from China and have even gone so far as to deny Chinese Nationals who from the Wuhan district (situated in Hubei), entry into state territory.

South Africa has also taken precautionary measures and introduced a temporary visa concession for Chinese nationals currently holding visitors visas and temporary residence visas, in light of the corona virus outbreak.

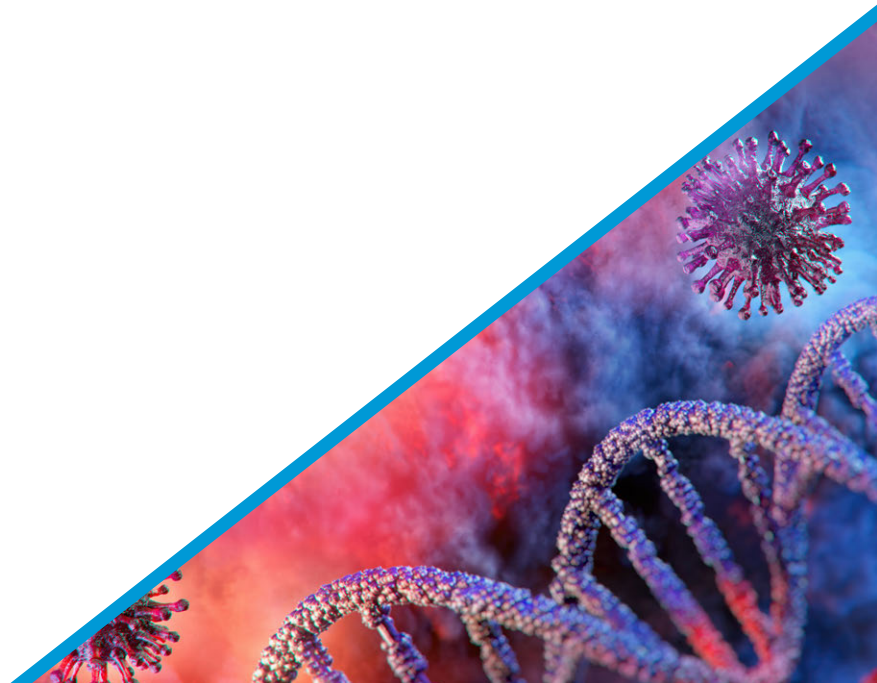
It has been communicated that until further notice, Chinese Nationals whose visitor's visas have already reached the maximum validity period, will be allowed to apply for a new visitor's visa on the same visa conditions for a further three-month period.

Chinese Nationals who hold intra-company transfer visas, which visas are due to expire on or before 31 July 2020, will be permitted to apply for three-month visitor's visas (with authorisation to work) in terms of section 11(2) of the Immigration Act.

Chinese Nationals who are holders of temporary residence visas which have already expired since 1 December 2019, and those which will be expiring by 29 February 2020, will be allowed to submit renewal applications for those expired visas without the need to first legalise their status in South Africa (form 20-authorisation for an illegal foreigner to remain in the Country pending an application for status).

These temporary concessions are only valid until 31 July 2020 and is only available to Chinese Nationals who were legally admitted into South Africa.

Unfortunately, these concessions do not seem to provide any relief to non-Chinese citizens, but who are ordinarily resident in China. Non-Chinese citizens who are required to return to China, may need to apply for special authorisation to benefit from these concessions.





The Coronavirus and the workplace: #coughcoughsneeze?

In light of the Coronavirus (COVID-19) pandemic, it has become increasingly important for employers to develop strategies and procedures and to reconsider their workplace policies so as to better protect both employees and clients. The varying sources and confusing statistics have made it more incumbent on employers to adopt a radical approach to dealing with the virus.

Managing the risks associated with contracting the virus has not only affected the way employees engage with each other, but has also affected the ways in which employees engage with their clients, especially in a corporate setting. The Occupational Health and Safety Act 85 of 1993 places several obligations on both employers and employees to ensure a safe and healthy working environment.

What we know so far:

- as of Tuesday 10 March 2020, 3,642 people have been tested for the virus in South Africa;
- the total number of coronavirus cases in South Africa is now at 13;
- all 13 cases in the country have been diagnosed in patients who have travelled out of South Africa and have returned to the country with the virus;
- thus far, there have been no reported internal transmissions;
- the number of people the 13 patients have come into contact with has been a mere estimation; and
- the regions in which the patients have been diagnosed are Gauteng, Kwa-Zulu Natal and the Western Cape.

Despite the absence of reported internal transmissions, precautionary measures still need to be put in place especially in the workplace where employees are susceptible to contracting to virus due to close contact with other employees and clients.

Preparing the workplace for COVID-19

Firstly, follow the advice from authorities in your community.

1. How Covid-19 spreads – COVID-19 spreads in a similar way to the flu. One can catch COVID-19 by the following:
 - 1.1. Touching contaminated surfaces or objects, and then touch your eyes, nose or mouth;
 - 1.2. By standing within one meter of an infected person – you stand a chance of breathing in droplets coughed out or exhaled by them.
2. Ways of preventing the spread of Covid-19 in the office environment:
 - 2.1. Wipe down surfaces (desks; counters) and objects (telephones; keyboards; stationary) regularly with disinfectant regularly;

2.2. Encourage regular and thorough hand-washing by all employees, clients and contractors:

- 2.2.1. Put sanitising hand rub dispensers in prominent places in the office. Examples of such places include elevator buttons, bathrooms, frequently used doors, printing rooms, and kitchens;
- 2.2.2. Display posters promoting hand-washing in all bathrooms and frequently used pathways;
- 2.2.3. Use routine meetings and communications to reinforce the importance of regular hand-washing;
- 2.3. Promote good 'respiratory hygiene' in the workplace:
 - 2.3.1. Encourage employees and clients to sneeze into their bent elbows;
 - 2.3.2. Make tissues readily available. Encourage employees to cough/sneeze into these. Make sure that this is accompanied by closed bins for safe disposal.



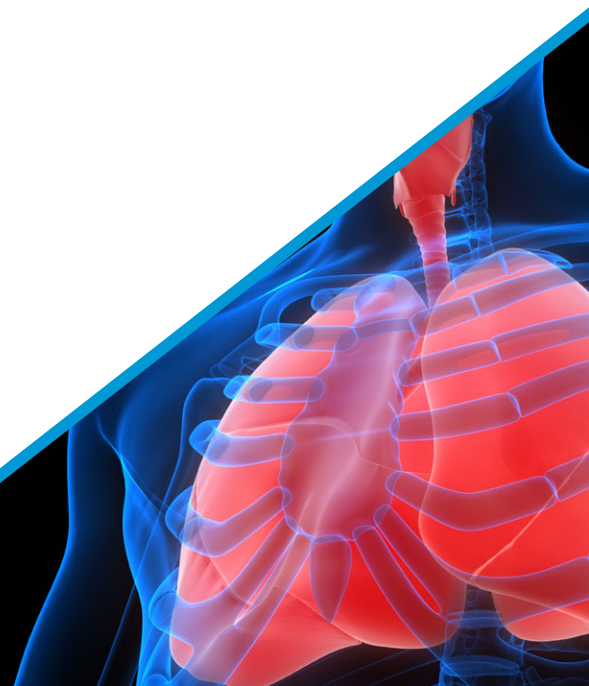
Employment Survival Guide

Know your employment rights



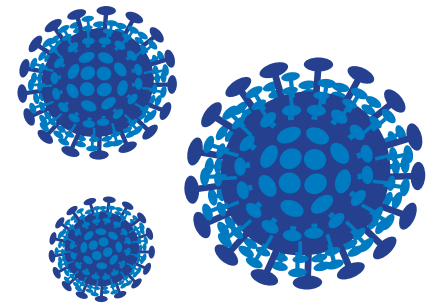
The Coronavirus and the workplace: #coughcoughsneeze?

- 2.4. Brief your employees on the symptoms of COVID-19 and what they should look out for. Advise that they seek medical attention should they develop symptoms.
- 2.5. Considerations when organising meetings and events:
 - 2.5.1. Before the meeting:
 - 2.5.1.1. Consider whether a face-to-face meeting is necessary, or whether it can be replaced by a teleconference or internet-based meeting;
 - 2.5.1.2. Could the meeting be scaled down? Is everyone invited absolutely essential?
 - 2.5.1.3. Pre-order supplies such as tissues and hand-sanitizer for all participants.
 - 2.5.1.4. It is advisable to ensure that all parties (participants, caterers etc) provide contact details. Communicate clearly that their details will be shared with local authorities should any parties show symptom and the need thereof arise.
 - 2.5.1.5. Ensure that all parties to the meeting are aware of the 'no handshake' policy. It may be useful to inform parties of this policy prior to the meeting.
 - 2.5.2. During the meeting:
 - 2.5.2.1. Try and seat each participant at least 1 metre away from one another;
 - 2.5.2.2. Provide tissues and a closed-bin should any participants need to cough or sneeze;
 - 2.5.2.3. If possible, open windows and doors.
 - 2.5.3. After the meeting:
 - 2.5.3.1. Should the need arise, keep the names and contact details of all participants for at least one month. This is in the event that public health officials need to contact participants if one participant develops symptoms.



Employment Survival Guide

Know your employment rights



Important developments impacting occupational health and safety in the wake of COVID-19

On 15 March 2020, the COVID-19 pandemic was declared a national disaster given its magnitude and severity. The impact is being felt in South Africa, but swift measures are being taken to co-ordinate and manage this health hazard.

In this past week, the National Disaster Act Regulations were published and relief provided for small and distressed employers in terms of the UIF Fund, for example, a reprieve where such employers could apply to be exempted from making contributions to the Fund. It also provides benefits for employees who are required to self-isolate for a 14-day period.

On 20 March 2020, two further important steps were taken by the Minister of Employment and Labour, namely:

1. an appeal to employers to take guidance from the Hazardous Biological Agents Regulations in terms of the Occupational Health and Safety Act, 85 of 1993 (the OHS Act); and
2. a Notice issued by the Compensation Commissioner in terms of the Compensation for Occupational Injuries and Diseases Act, 130 of 1993, as amended (COIDA), making COVID-19 a compensable occupational disease if contracted by an employee arising out of and in the course of his or her employment (occupationally acquired COVID-19)

The Hazardous Biological Agents Regulations

To whom does it apply?

It normally applies to those employers whose business it is to produce, process, use, handle, store or transport a hazardous biological agent ("HBA") in the normal course of business. It is an incidental measure where an event occurs that does not involve a deliberate intention to work with an HBA, but where the potential to result in inadvertent exposure occurs.

These Regulations, in the same way as the OHS Act, do not apply to the mining industry as those employers are covered by different legislation. The Minister of Mineral Resources and Energy can declare that any provision of the OHS Act or regulation will apply, but this would be unprecedented.

What type of workplaces fall under the Regulations?

Workplaces where an HBA would normally be encountered are:

- in-food production plants
- sewerage purification plants
- where there is contact with products of an animal origin
- diagnostic laboratories etc.

In relation to other types of workplaces, these Regulations have incidental application.

What is an HBA?

It includes different types of viruses, bacteria and parasites. The "coronaviridae" is included under the category of viruses.

What are some of the relevant components of the Regulations of use to employers combatting the spread of COVID-19?

The nature of many businesses is such that work cannot be performed remotely. In these instances, the focus is on reducing the role of the virus spreading.

These Regulations are useful, for example, the requirement to share information and provide training in consultation with health and safety committees, raising awareness of the risks of an HBA, adherence to workplace instructions, provision

of appropriate personal protective equipment (PPE), adherence to guidelines governing best practice around hygiene and health.

The mechanism of the risk assessment is critical to identify areas of work that pose a risk of contamination and to determine how those risks might be eliminated, controlled or reduced.

Notice on Compensation for Occupationally-Acquired Coronavirus Disease (COVID-19) under COIDA (the Notice)

The Notice extends compensation under COIDA to occupationally acquired COVID-19 if it is contracted by an employee arising out of and in the course and scope of his/her employment.

What test is applied to establish an occupationally-acquired COVID-19 diagnosis?

The following factors have relevance:

- occupational exposure to a known source of COVID 19;
- a reliable diagnosis of COVID-19 per the World Health Organization guidelines;
- an approved official trip and travel history to countries and/ or areas of high risk for COVID-19 on work assignments;



Important developments impacting occupational health and safety in the wake of COVID-19

- a presumed high-risk work environment where transmission of COVID-19 is inherently prevalent; and
- a chronological sequence between the work exposure and the onset of the symptoms.

The Notice is aimed primarily at employees who are engaged in very high risk or high risk occupations. The categories set out in the Notice are as follows:

- Very high risk occupations include healthcare workers including doctors, nurses and hospital staff, healthcare or laboratory personnel collecting or handling specimens from known or suspected COVID-19 patients and morgue workers involved in performing autopsies etc.
- High exposure risk occupations include healthcare delivery and support staff, medical transport workers and mortuary workers.
- Medium risk occupations involve those persons who require frequent close contact (within two meters) of other persons who may be infected with COVID-19.
- Low risk occupations involve persons who do not require contact with other persons known to be or suspected to be infected by COVID-19.

However, the emphasis remains on whether or not the employee suffered an occupationally-acquired case of COVID-19.

The overall test for benefits is whether there is a confirmed diagnosis of temporary total disablement, for a period not exceeding 30 days, or permanent disablement.

What does the employer have to pay?

- The employer is obliged to pay the first three months compensation and thereafter seek a recoupment from the Compensation Fund or recognised mutual association. There are limits that apply.
- Sick leave entitlements under the BCEA would still apply.
- UIF sick benefits remain a separate entitlement.

COIDA special provisions

COIDA defines an occupational disease as:

"a disease contracted by an employee that has arisen out of and during the course of employment,"

Occupationally-acquired COVID-19 refers to a disease contracted by an employee arising out of his or her course and scope of employment. Some occupations present a very high risk of exposure and infection to COVID-19.

The recently published "Notice on Compensation for Occupationally-acquired Novel Corona Virus Disease (COVID-19) under COIDA" (Notice) broadly provides for different categories of risk.

Importantly, an occupationally-acquired COVID-19 diagnosis relies on the following factors being present:

- Occupational exposure to a known source of COVID-19;
- A reliable diagnosis of COVID-19 as per World Health Organisation (WHO) guidelines;
- An approved official trip and travel history to countries and/or areas of high risk for COVID-19 on a work assignment;
- A presumed high-risk work environment where transmission of COVID-19 is inherently prevalent; and
- A chronological sequence between the work exposure and the development of the symptoms.

COVID-19 is not a disease contemplated in Schedule 3 of COIDA, so the presumption provided in COIDA is not applicable to COVID-19.

The operative question remains whether an employee (or a contractor) is able to demonstrate that, whilst performing his or her ordinary duties, he or she contracted COVID-19 in accordance with the COIDA criteria.

DISCLAIMER:

The Employment Survival Guide is an informative guide covering a number of topics, which is being published purely for information purposes and is not intended to provide our readers with legal advice. Our specialist legal guidance should always be sought in relation to any situation. This version of the survival guide reflects our experts' views as of 25 March 2020. It is important to note that this is a developing issue and that our team of specialists will endeavour to provide updated information as and when it becomes effective. Please contact our employment team should you require legal advice amidst the COVID-19 pandemic



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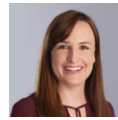
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