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# Going to work during the pandemic – The fine line between when employees should and shouldn't be attending the workplace



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**By** [TASSO ANESTIDIS](#)

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Following the national state of disaster declared in early 2020 from the Covid-19 pandemic, the government has been encouraging employers to allow employees to work from home. However, there appears to be a rise in the number of employers who are expecting employees to fulfill their employment duties from the workplace as opposed to their homes, especially when the country moves to a lower Alert level and restrictions are eased.

The growing call to return to workplaces has left some employees facing a difficult question: do they really have to return to their workplaces if their employment duties can be fulfilled from home, where they will feel safer and face a lower prospect of contracting Covid-19?

## **When you should be going to work**

There are very few industries (nightclubs being one example) where employers are explicitly prohibited from requiring their employees to attend the workplace. The current adjusted Alert Level 3 Disaster Management Regulations make provision for the operation of our economic sector and, on this basis, permits workplace gatherings subject to: (i) the strict adherence of all health protocols (ii) the implementation of social distancing measures and (iii) the adherence to sector specific protocols.

In the case of *Botha v TVR Distribution*, the [CCMA](#) reaffirmed the principle that employees have a common law duty to render services to their employers and further confirmed that the dismissal of an employee who refused to attend his workplace during the lockdown was substantively fair. Covid-19 does not simply exempt employees from obeying the lawful and reasonable instructions of their employers.

In short, if employers are adhering to the necessary rules and regulations, their instruction to employees to attend the workplace will be regarded as a lawful and reasonable instruction. The refusal to comply therewith may be regarded as an offense giving rise to disciplinary action.

## **When you should not be going to work**

Despite the above, there will be circumstances when employees simply may not leave their places of residence, let alone attend the workplace, despite what employers may require or instruct. This will occur if: (i) employees have tested positive for Covid-19 (ii) employees have been in direct contact with someone who has tested positive for Covid-19 and (iii) if there are reasonable grounds for employees to suspect that a colleague/employer has been infected or contaminated with Covid-19.

The Labour Court in [Eskort Limited v Mogotsi](#) and others reiterated the importance of both employers and employees alike adhering to the measures in place to mitigate the effects of the pandemic and spread of the Covid-19 virus. The court held that the dismissal of an employee who attended the workplace after receiving a positive Covid-19 test result, who did not notify his employer that he had tested positive and who also conducted himself recklessly by not wearing a mask and hugging other employees was fair.

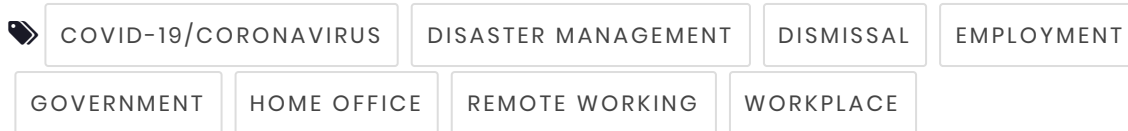
The adherence to obligations arising from an employment relationship can be challenging in ordinary circumstances. The advent of the pandemic, however, has given rise to new challenges to the relationship, which need to be carefully navigated by both parties. They will now need to perform somewhat of a balancing act and

maintain both a healthy and successful employment relationship, while at the same time complying with the measures which have been put in place in order to mitigate the effects of the Covid-19 pandemic.

See also:

- [Is having a home office a tax benefit for employees?](#)
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Tasso Anestidis is a senior associate in Eversheds Sutherland's employment law group. He specialises in a variety of employment law aspects including, but not limited to, prosecuting and chairing disciplinary... [Read more about Tasso Anestidis](#)

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