



HOW TO HANDLE EMPLOYEES' CLAIMS OF CONTRACTING COVID-19 AND THEIR SUBSEQUENT ABSENCE

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Employers have had to adapt to continue with their business operations during the Covid-19 pandemic, the ensuing lockdowns, and strict government regulations. Those companies able to work online from home have greatly mitigated the risks of staff contracting Covid-19 and potentially affecting their business operations; while many other companies with staff that are only able to render their services when physically on the company premises, are finding it much more difficult to carry on as normal.

Irrespective of how a company may currently be operating, the growing question by employers, from all sectors, is how to deal with the employees claiming to have been in contact with infected individuals or claiming to themselves be sick with Covid-19, whilst also ensuring that the employee in question is not simply lying to claim paid sick leave and time off from work.

Employers are legally obliged to follow all Covid-19 workplace health and safety regulations and should not simply insist that employees report to work when an employee claims that they recently came into contact with an individual who is confirmed to have Covid-19, and there is a strong possibility that they too may have contracted the virus. Likewise, the employer cannot simply be expected to fork out sick leave pay every time without sufficient proof of illness or probable infection.

Here-follows a general guide on how to handle such circumstances:

1. Should an employee call in sick, they are in accordance with Section 23 of the Basic Conditions of Employment Act 75 of 1997 (BCEA) entitled to two days paid sick leave, in an eight-week period, without having to provide a medical practitioner's note and irrespective of the days on which they were absent. Should they be sick for more than two days within an eight-week period, they are obliged to provide a medical practitioner's note. Failure to do so could result in unpaid sick leave and even possible disciplinary action as there is in essence no proof that the employee was truly sick.
2. After the two days in an eight-week period, in cases where there is no medical practitioner's note submitted, the employer may agree that the employee may use annual leave days

pending the outcome of the Covid-19 test result. However, short of the employee agreeing to this, no payment is owing by the employer in such circumstances unless the employee was able to render his/her services while awaiting the test results. Should the test result be positive we recommend that the employer pay sick leave with retrospective effect. Should it be a negative result the employer is not legally obliged to pay those days if the employee could not render services.

3. Where there is a genuine and reasonable likelihood that an employee may have contracted the virus, they must get tested. Every case must be assessed on its own facts. If the employee has not already provided the employer with a Covid-19 test result (bearing their personal particulars), the employer may request that they get tested. The employee's absence from work naturally affects a business's operations and it is within reason that employees may request proof that the employee does in fact have Covid-19.
4. If a test result is presented showing that the employee is Covid-19 positive but the employee is well enough to work and is able to work from home, the employer may request that the employee do so. Naturally the employer cannot insist that the employee work remotely without proof that the employee is well enough to do so.
5. Should the employee claim to be too ill, he/she is entitled to sick leave in accordance with the BCEA up until such time that a Doctor says he/she may return to work or until he/she feels better and has waited the prescribed time period. If an employee is extremely ill and exceeds all the available sick leave, annual leave may be used by the employee to recover. Likewise, if that too runs out, the employer must consider affording a reasonable amount of unpaid time off for recovery.
6. Should the employee not have Covid-19 but present with other illnesses they may likewise claim sick leave so long as proof is provided that they have been booked off by a medical practitioner.
7. In the event when an employee has Covid-19 but is asymptomatic, the employee should wait the 10-day period as per the regulations, before returning to work. It is not recommended that the employee re-test at this stage. The follow up test is not a definite indicator whether you are clear of the virus and is not always practically viable as test results can take a while to come out and the testing centres are inundated with tests.
8. It is important to note that in accordance with the Unemployment Insurance Act 2001 Section 19 to 23 if an employee is absent from work in excess of seven days the employee is eligible to apply for the UIF illness benefits.
9. Employer's must keep in mind that an employee falsely claiming sick leave under the pretence that they have Covid-19 is a dismissible offence. In terms of the law, a disciplinary hearing must be conducted to determine guilt and the appropriate sanction.

The above is merely a general guide and the facts of each matter may change the employer's necessary course of action.

Contact us at albert@thomsonwilks.co.za should you have any queries or need legal assistance in handling your employment relations issues.



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