

THE IMPLICATIONS OF COVID-19 IN THE WORKPLACE IN SOUTH AFRICA

Baboolal-Frank, R., University of Pretoria

ABSTRACT

COVID-19 created chaos across the globe. The effect and impact of the virus brought economies and countries to a standstill as lockdown conditions were imposed. Companies were forced to close, as they could not operate virtually. Mass retrenchment packages were undertaken for permanent staff. In South Africa, there were no retrenchment packages for contract workers and independent contractors as they were forced to resort to the unemployment insurance fund for financial relief. The companies in South Africa that operated remotely, used online mechanisms such as Zoom, Skype, Google Meet and Microsoft teams, for virtual interactions. Staff were imposed with the tasks and responsibilities of providing proof of productivity in the form of progress reporting via email to their line managers. These actions illustrated a monitoring mechanism by management to measure productivity of employees. The employees were pressurised to resume to a new normality, despite the abnormal conditions that surrounded them. The aim of this paper is to postulate the labour law protection of employees against the impact of COVID-19 in the virtual workplace and the way forward for employers during this novel period in South Africa.

Keywords: Virtual Workplace, Unfair Practices, Protection, Covid-19, South Africa

INTRODUCTION

In South Africa, President Cyril Ramaphosa announced a level 5 lockdown and the consequential effect thereof allowed only for the continuum of essential work as from the 26th March 2020 at midnight. This meant that except for a handful of employees, a majority of the population were confined to their residence. Companies had to enable their employees to work virtually where possible in the comfort, and in other instances discomfort, of their homes where possible. This necessitated for extreme measures that caused companies to go insolvent where they were unable to operate virtually, especially with contact services where it was impossible to work from home virtually, without the physical presence of customers, such as hairdressing, nail beautician, make-up artists, garden services, manual labour in construction, agriculture, travel and tourism, hotels and restaurants. This also caused the conversion of businesses to attend to the current need of supplies such as medical supplies of masks, material masks for people, screen visors, surgical gloves, hand sanitisers, oxygen, medical equipment, medication and personal protection equipment. As from the 1st May 2020, level 4 measures were imposed, which allowed more of the workforce to resume work at their respective workplaces in order to start churning the economy again. Amidst the reduction to level 4, there was still panic to return to work from the majority of South Africans in the blue-collar sector, which is the unskilled physical labour force. This represented the majority of the workforce that was in financial distress as for the most part these were unprotected workers. From the 3rd June 2020, level 3 measures were imposed that allowed for more workers to return to their places of employment. The structure of this paper shall discuss the different types of employees and the labour implications and impact in relation to COVID-19. This paper addresses the weaknesses in the labour legislation to provide for labour protection to both the protected and unprotected worker. The implication of COVID-19 should not lead to unemployment and consequential impoverishment of

unskilled workers of the South African population.

Background

In this unparalleled period, management and executives of companies are placed in a position to think differently and innovatively with regards to their companies and their employees working from home. The goal still remains unchanged which is ultimately the generation of revenue. COVID-19 created an extraordinary platform for employees to adapt to an environment of social distancing. It created a new territory for the navigation of protecting the employee in a virtual workplace. In instances where certain employees cannot work from home, due to *inter alia* a toxic environment of abuse, or the tending to minor children, virtual work platforms seem an impossible feat. Alternative arrangements need to be made, as well as justifiable salary compensation, as employees work longer hours at home and use their own utilities. Some companies coerced their employees to take leave because they were not working or, it was impossible for them to perform their work functions, due to the fact that they could not operate remotely. These employees had to take vacation leave, an absurdity in these unprecedented circumstances. Other Corporations who experienced problematic operational issues and revenue cuts, were forced to restructure salaries. This necessitated that their employees and executives take salary cuts to ensure that payment of salaries of employees was still possible in a bid to avoid mass retrenchments. The Commission for Conciliation, Mediation and Arbitration (CCMA) received over 17 mass retrenchment applications, which is still ongoing, along with mass dismissals for certain companies, due to liquidity and revenue issues as a result of the COVID-19 pandemic and its associated destruction. The halting of the economy and businesses resulted in the rise of unemployment and retrenchments, which caused a massive economic loss and a further disparity between the poor and wealthy. It is and remains a disastrous situation beyond repair, as people literally starve to death and the numbers of people living below the breadline and in poverty drastically increase. The food parcels distributed by government was a massive failure, as corruption and stealing percolated a good deed. Non-governmental organisations began the distribution of food parcels to the impoverished, but it was not sufficient for all the hungry mouths struggling against overcoming starvation.

Presumption of an Employee in the Law

In terms of the Labour Relations Act 66 of 1995, sets out in precise terms, one or more factors that constitutes a person as an employee. The factors are in terms of section 200A:

- a) The manner in which the person works is subject to the control or direction of another person;
- b) The person's hours of work are subject to the control or direction of another person;
- c) In the case of a person who works for an organisation, the person forms part of that organisation;
- d) The person has worked for that other person for an average of at least 40 hours per month over the last three months;
- e) The person is economically dependent on the other person for whom he or she works or renders services;
- f) The person is provided with tools of trade or work equipment by the other person; or
- g) The person only works for or renders services to one person.

The white-collar worker is a worker that is employed on a permanent basis in the corporate sector or for a specific purpose of the particular job designation. Usually it is not physical labour, but intellectual labour. Whereas, blue-collar work requires physical labour, utilising the strength and capabilities of physique, such as *inter alia*, construction workers, domestic workers, and garden services. This type of worker is usually employed on a fixed term contract. Both these workers are presumed to be employees in terms of section 200A of the Labour Relations Act. The difference is the protection of the LRA in their

termination of employment. Unfortunately, the blue-collar worker is not protected in relation to termination based on operational requirements, and in most cases for fixed term contracts there are no benefits. However, with permanent employment, the benefits of a pension fund and unemployment insurance fund are almost automatic benefits and offers labour protection and security. This disparity was exposed when millions were retrenched due to the consequences of the COVID-19 virus, and specific regulations that prohibited the sale of alcohol, as well as restricting the numbers at restaurants and prohibiting international travel in certain instances. The COVID-19 relief fund as well as the unemployment insurance fund was COVID-19 monetary relief. Unfortunately, it did not reach the millions that desperately required it because of corruption, embezzlement, fraud and stealing of funds in South Africa. This left the blue-collar worker, desolate and abandoned.

Essential Service Worker

In terms of section 71 of the Labour Relations Act, an essential service is declared by the Government through publication in the Government Gazette. The aspects of essential service are public servants in the delegation of the duties and services together with health care workers and the health services of hospitals and pharmacies in the supply and distribution of medication and medical supplies. The medical scientists that continue their research and work against the fight to overcome the COVID-19 virus and the different variants of the virus are the classification of an example of essential service provided to the public. The public servants' scope of duties and roles are expansive in relation to court officials and the court, police officers, post office workers, government departments such as home affairs and municipal officers who continue to work during the various lockdown levels because these functions and roles are quintessential to the proper functioning of the mechanisms of the country.

Health care workers are the frontline workers, whom are in direct contact with the patients that are infected with the virus. The support that is needed from support staff, nurses, sisters, doctors, various specialists, technologists and medical managers, makes them vulnerable to the virus due to the daily exposure. The long working hours and compromised immune system due to the stressful conditions with very little rest due to hospitals being shortstaffed. The reality is that many frontline workers have already succumbed to the virus, leaving a short-staffed capacity, and the imposition of patients being admitted is acutely curbed.

Soldiers were deployed to different provinces to ensure that there was compliance with the COVID-19 regulations, relating to the curfew imposed, social distancing, banning alcohol and ensuring all protocols were followed for the safety and protection of the citizens. This meant that brutality was prohibited, although there were some instances of brutality. The court prohibited the government from the infliction of brutal force upon its citizens.

Police officers were also stationed in different areas for the respective patrolling to ensure compliance with the COVID-19 regulations. The police officers are an essential service in relation to upholding and protection of the law. This meant that there must be a police presence at the police stations in relation to various crimes that continued to occur during the lockdown such as housebreaking, robbery, petty thief, illegal selling of alcohol, amongst some of the offences.

The statistics of the South African police services exposed that burglaries are very common, with daily burglaries amounting to 838, meaning that there is forced entry by an invader and goods have been stolen from the residential home compared to robbery. (Bertelsmann, Walker, Meyer, Bantjes & Nel, 2009; Mohamed, 1999) Robbery is using force inflicted with a weapon such as gun, knife, shambock to commit theft at the residential home against the people of the home, which is nearly 50 incidents daily, which illustrates the desperation of these criminals. Crime Statistics 2019-2020 Available at www.saps.gov.za

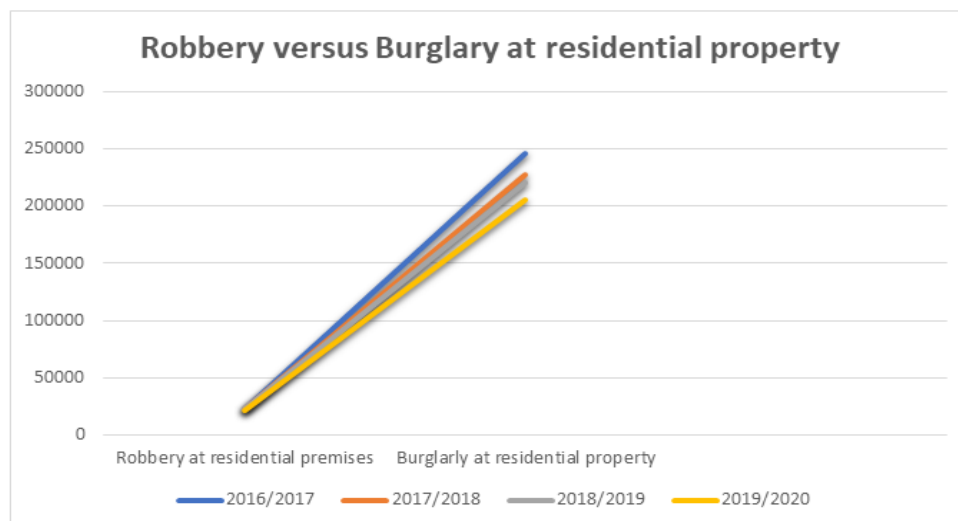


FIGURE 1
CRIME STATISTICS 2019-2020

Available at www.saps.gov.za

It is apparent from these statistics coupled with the rise (Statistics SA ‘Mbalo Brief-June, 2020’) (30.1%) in the unemployment rate in South Africa, that women are more than likely to also be victim to the violent crime of robbery at their residential property as a result of being forced to stay at home.

The CCMA received 221 547 referrals for the period 2019/2020. (CCMA In-Touch Quarterly Newsletter, December 2020) This was 14% increase of cases heard on referral, which amounted to 879 new referrals daily. (CCMA In-Touch Quarterly Newsletter, December 2020) There were approximately 59% of all case referrals constituted as unfair dismissals and 9% of cases that related to unfair labour practice disputes. (CCMA In-Touch Quarterly Newsletter, December 2020) The number of conciliation matters were 145 611 which was heard in 30 days, illustrating a (98% compliance rate). There were 21 963 arbitration awards given to the parties on the 14th day after completion of the arbitration process, which is a 99% compliance rate. (CCMA In-Touch Quarterly Newsletter, December 2020) The turnaround time on average for the CCMA was that cases were conciliated within 23 days and the Commissioners had 59 days to deal with the arbitration cases. (CCMA In-Touch Quarterly Newsletter, December 2020) The source of the referrals stemmed from the business professional services namely 29% constituted of the accounting sector, thereafter the Safety and Private sector and the Retail sector and Building and Construction Sector. (CCMA In-Touch Quarterly Newsletter, December 2020) In terms of enforcement of national minimum wage Act, there were 35 767 matters which deals with over 16 % of the referrals. (CCMA In-Touch Quarterly Newsletter, December 2020) There were a total of 28 514 claims that were for outstanding monetary payments made and 40 365 referrals relating to the Basic Conditions of Employment Act and the National Minimum Wage Act, which were finalised and 51% of the claims were settled. (CCMA In-Touch Quarterly Newsletter, December 2020)

Retrenchment

The CCMA aimed to contribute to the “alleviation of the triple crisis of poverty, inequality and unemployment. (CCMA In-Touch Quarterly Newsletter, December 2020). During the period 2019/2020 there were 42% of employees likely to be retrenched with the possibility of saving a few jobs and targeting 35% retrenchment as the targets. (CCMA In-

Touch Quarterly Newsletter, December 2020) This means that 21 846 employees were not retrenched. The CCMA dealt with 4756 mutual interest disputes, which amounted to a 58% settlement rate. (CCMA In-Touch Quarterly Newsletter, December 2020) The reliance that the workforce places on the CCMA elucidates the labour market trust to determine the collective bargaining disputes. (CCMA In-Touch Quarterly Newsletter, December 2020) There were 144 public interest matters and 114 of the matters were settled which translates into 79% settlement rate. (CCMA In-Touch Quarterly Newsletter, December 2020) The Presidential project of the financial year of 2019/2020 was an amount of R196 970 559.28, which was allocated for 44 applications for the Temporary/Employer/Employee Relief Scheme “to provide a lifeline and hope for many businesses and workers during these uncertain times.”

Trade Unions

Trade Unions have been fighting for the rights of their members for years from salary increases to wage earners to increase hourly rates to improve conditions at employment for a safe environment to minimum wage increases. In the COVID-19 pandemic it is no different, with the insistence of personal protection equipment for all members aligned to the national COVID-19 regulations. However, the trade unions need a greater presence in securing the results for their members, such as health care workers who are forced to reuse their masks, since there has been a dire shortage of PPE equipment, which, in turn has forced them to make their own makeshift equipment such as using scuba diving masks, and construction masks to ensure their safety and protection.

Dispute Resolution

Dispute resolution forms of mediation, conciliation and arbitration are used at the CCMA. Private forums of dispute resolution are also encouraged to speedily resolve disputes and virtually to protect all parties involved from infection. Virtual dispute resolution is utilised more often during the pandemic to protect all the parties involved from risk of infection. Governments need to do more, to fund and encourage virtual dispute resolution to dispense with conflict during the pandemics to ensure that life is preserved and fostering good employee and employer relations. The positive aspect to virtual dispute resolution is that the costs of the venue and the stenographer are saved, in that virtual programmes allow for the recording of the proceedings and no venue costs are incurred as each party attends from their own place of convenience.

International Labour Organisation

The COVID-19 pandemic has caused a 94% closure of workplaces globally. (ILO, 2020) This is apparent for the safety of the workers, in the prevention and curbing the spread of the virus, and in fostering the preservation of life. Essential workers have been allowed to work however, this has impacted the entire economy, as the majority workforce is suspended. (ILO, 2020) The working hour losses for employees are higher than previously estimated. (ILO, 2020) The working hour losses are estimated at 495 million for full time employment. The revised working hours losses estimate are at R400 million. The low-income earners have experienced a 240 million loss in working hours. The latest data illustrates that the higher rates of employment elucidates that there is an employment crisis, as the decline in employment has more affected women than men. (ILO, 2020) The monetary labour losses translates into a global decline of 10.7% of the first three quarters of 2020. This amounts to in 3.5 trillion dollars or 5.5 percent of global domestic product. (ILO, 2020) Numerous countries have adopted fiscal packages to address the unemployment crisis due to the

pandemic. (ILO, 2020) In the absence of any fiscal stimulus packages for the working force and businesses equals to global working losses of high as 28 percent. (ILO, 2020) The estimated fiscal stimulus gap is estimated at 982 billion dollars in low income and lower middle-income countries namely of 45 billion dollars and 937 billion dollars. (ILO, 2020) This gap illustrates the resources that are necessary for the countries to provide to address the gap of the average level of losses relative to the higher income countries. (ILO, 2020)

Since the labour market disruptions is continuous have continued through the third quarter of 2020 and persists in the fourth quarter. The policy responses are required to be sustainable and agile to address the five key challenges as follows: (ILO, 2020)

1. Striking the “balance and sequence of health and economic and social policy”
2. To secure the “policy interventions are maintained at the necessary scale while made increasingly effective and efficient.”
3. Ensuring addressing “the stimulus gap in emerging and developing countries, which requires greater international solidarity” while addressing that there is sufficient fiscal provisions and measures are provided.
4. To protect the “vulnerable and hard-hit groups” these include women, young people and informal workers. The hard-hit groups need to be targeted.
5. To use “social dialogue as an effective mechanism for policy responses to the crisis”

LITERATURE REVIEW

Relating To the Pandemic and Employment Issues

Eichhorst, Marx & Rinne (2020) postulate that the Covid-19 pandemic has forced countries to intervene to provide financial support for stabilising jobs and to smaller firms. The social assistance provided by States was to provide for the lack of implementation of the unemployment insurance fund. (Eichhorst et al., 2020) The purpose of the research is to explore the different State funding to alleviate unemployment from short term contract work, to social assistance, to grants and stipends to assist in the economic survival of the people. (Eichhorst et al., 2020) The research question of this paper is investigating the different economic measures to navigate through the Covid-19 pandemic that has drastically affected the labour market causing an unprecedented crisis. (Eichhorst et al., 2020) The data suggests that because this research is constantly evolving, as it is the present context, the pandemic also evolves due to the complexity of the crisis. (Eichhorst et al., 2020) In each country, the population and labour market is heterogenous will means that the data keeps changing, the governments are responding immediately to the crisis, in different methods, sometimes it is effective other times it is ineffective, as implementation and access becomes problematic for novel challenges. (Eichhorst et al., 2020) The digital access and innovation is proposed a method to improve all aspects from the medical crisis to the labour market crisis, as employees work from home, and at times depending on the industry employee output is significantly reduced. (Eichhorst et al., 2020) The strength of the paper is that it documents the grants and social assistance as relief provided by the government in Europe. However, the weakness of this paper is that data is not always easily available relating to the evolving changes and mechanisms that government is using to combat the labour market crisis, so this translates that the research presents becomes quickly outdated as new solutions are implemented by the respective States.

Ewing & Hendy (2020) elucidate the impact of the implication of COVID-19 is a failure of the labour protection. The data suggest in the United Kingdom that there is a disparity between the rich and the poor labourer that divide is grown deeper due to the pandemic. The risk of exposure is different relating to the type of work for example the essential workers are at a higher risk of exposure to the virus. The employer has not been capable of supplying sufficient personal protective equipment to the respective employees in the frontline, due to the shortage of the supply as the demand is greater than the production of

the equipment. The trade unions have not been able to play a significant role in the protection of all employees being the vulnerable worker that has been reduced to poverty. Not all workers are able to work from home as the essential work is exposed to the virus in their daily duties due to the direct contact with the public without compensation for infection and even fatalities. This paper illustrates that South African and the English workers all have a common problem in relation to the labour legislation falls short in the protection of the employees relating to the pandemic.

Statistics Relating to the Workforce in South Africa

The Quarterly Labour Force Survey is a survey that is conducted by Statistics South Africa (Stats SA). The data is collected from the labour market activities from individuals that are 15 years and older that reside in South Africa. (Stats SA, 2020) The labour market activities are reported on the individuals aged 15-64 years. (Stats SA, 2020)

Table 1 INCORPORATED FROM STATS SA, 2020			
	July-Sept 2019	April-June 2020	Jul-Sept 2020
Population 15 -64 thousand	38582	39021	39167
Labour Force	23109	18443	21224
Employed	16375	14148	14691
Formal sector (non- agricultural)	11214	10064	10306
Informal sector (non-agricultural)	2995	2280	2456
Agriculture	880	799	808
Private Households	1286	1005	1121
Unemployed	6734	4295	6533
Not economically active	15474	20578	17944
Discouraged work-seekers	2793	2471	2696
Other (not economically active)	12681	18107	15248
Rate (%)			
Unemployment rate	29.1	23.3	30.8
Employed/population ratio (absorption)	42.4	36.3	37.5
Labour force participation rate	59.9	47.3	54.2

The problem with these figures is that it illustrates a very small amount of the working population, considering that South Africa has a population of over 65 million people, so this is a small lens into the occurrence of the labour force, a minute lens into a small number of people that participated in the survey. The cause for concern is the number of unemployed people that keeps on increasing which is over 3.5 million people being unemployed.

RECOMMENDATIONS

The recommendations are that for South Africa:

- The government needs to create more jobs, in providing for the essential goods that are in high demand, but are short of stock, such as personal protective equipment, medical supplies, medications, produce and other goods that were imported and now cannot be sourced due to the close of the borders.
- Government needs to provide social assistance to the failing business and the independent and low-income workers that are short staff.

- Covid care packages needs to supply those in dire need, that have no access to hospitals but just need the basis supplies in order to have a fighting chance of survival due to the lack of any water access or ablution facilities, and hence keeping clean and hygiene becomes an impossible task together with social distancing.
- Temporary housing facilities creating to ensure that people that are homeless are able to social distance.
- Social assistance provided for the security and protection for vulnerable groups against crime and abuse, as women are constantly the victims of violence abuse.
- Employers to provide support and subsidies for working from home, such as data subsidies for accessing the internet, the necessary laptops, screens and tablets where necessary. Cellphone subsidies in relation to phone calls that need to be made, photocopying access where necessary if that is part of the job, so that employees are provided with the essential equipment to work from home without any challenges or barriers.
- Integrity and ethics from Government in eliminating corruption, theft and embezzlement of Covid-19 relief fund.

CONCLUSION

The data received evolves, since this is a novel pandemic, and each day that passes the circumstances changes. The pressure is on Government and its people to be the change they want effected in order to overcome the pandemic. In order to flatten the curb each person has to take responsibility for their safety, in wearing a mask and sanitising, social distancing from their peers, family and colleagues. History will illustrate that our compliance dictates the survival of humanity. The numbers of deaths and people sick globally illustrates the mammoth war that each person faces against the pandemic. Work conditions needs to be befitting of the protection of the employees as the number one priority to ensure that lives are not lost but are preserved. The recommendations are necessary to be implemented to ensure that the virus is overcome and that the labour force is protected, and that the unemployment crisis is addressed, as the more people that are unemployed, the more crime will be committed for their desperate survival.

REFERENCES

- Bertelsmann, E., Walker, C., Meyer, L., Bantjes, B., & Nel, G. (2009). *Criminal Procedure in the Magistrates' Court: A Practical Guide*-16.37.
- Commission for Conciliation, Mediation and Arbitration In-Touch Quarterly Newsletter, December 2020
- Cook, M.L., Dutt, M., Gallas, A., Nowak, J., & Scully, B. (2020) "Global Labour Studies in the Pandemic: Notes for an Emerging Agenda" *Global Labour Journal*, 11(2), 74-88.
- Crime Statistics 2019-2020 Available at www.saps.gov.za
- Ewing, K.D., & Lord Hendy, Q.C. (2020) "Covid-19 and the Failure of Labour Law: Part 1" *Industrial Law Journal* Vol. 49 No.4 pp.497-538.
- International Labour Organisation Monitor: COVID-19 and the world of work. (*Sixth edition*). Updated estimates and analysis. 23 September 2020.
- Labour Relations Act 66 of 1995.
- Milton (2017). *The South African Criminal Law and Procedure Volume 2* at 642.
- Mohamed, S.V. (1999). (1) SACR 287 (O).
- Statistics South Africa 'Quarter Labour Force Survey' Quarter 3: 2020 Published 12 November 2020.