

# COVID-19: Effects on Employment Contracts

## ZAMBIA

**Client Alert**

**March 2020**



# Introduction

The COVID-19 pandemic which first emerged in Wuhan, China last December has now spread to almost all countries in the world, in each of them threatening the long-term livelihoods and wellbeing of millions. The pandemic has also directly impacted on employment relationships arising from the measures individual countries are undertaking to deal with the situation.

The pandemic continues to steer the employer and employee relationship into uncharted waters, where both sides are striving to sort out their rights and responsibilities in ensuring the safety of individuals and the sustainability of businesses.

## Disclaimer

The content of this article is general in nature and not intended as a substitute for specific professional legal advice on any matter and should not be relied upon for that purpose.

Though the crisis is global, some employers in certain sectors are still able to continue their operations normally, while others in sectors such as the tourism and hospitality, aviation, restaurants and entertainment industries (bars and night clubs) have been hard hit in terms of revenue flows. The effects are already filtering down to employees, even more, once employers fully adopt measures and procedures to help ensure the continuity.

The measures could include sending their employees on unpaid leave, paid leave, forced leave, reduction of employee salaries, terminating employee contracts, and reducing their employment workforce. However, in adopting these measures, employers must remember that these steps carry various legal

implications and if not implemented in line with the law may motivate employees to bring legal suits against their employers or file complaints with the labour authorities.

It should also be noted that employment relationships in Zambia are largely regulated by statute and whatever options employers decide to adopt, should be in line with the law.

Therefore, without downplaying both health and safety in the workplace, and the effect of Covid-19 on employment contracts, employers should give some thought around the options at their disposal.

In this alert, we set out a few options addressing the concerns raised above. To



note that this is for guidance purposes only and may not apply in every situation as terms in applicable contracts of employment, collective agreements, etc. would have to be considered.

### 1. Annual leave

Under Zambian law, both protected and non-protected employees are entitled to a minimum of 24 days in a year as annual leave. Employers can therefore request employees to take their accrued annual leave days to ensure that health and safety in the workplace is maintained. This can be taken alternatively to achieve working in smaller numbers or outrightly, should the intention be to shut down operations for a while.

### 2. Unpaid leave

This can be considered should an employee's entitlement to paid leave be exhausted or should an employer's revenue streams drastically dwindle. Zambian employment laws do not provide for the circumstances under which an employee can be sent on unpaid leave. However, this may be contained in applicable conditions of service.

Were contracts do not provide for unpaid leave, employee consent would be required prior to sending the employees on unpaid leave. It is imperative that consent is obtained to mitigate against the effects of prolonged business shut down and unilateral variation of contracts

### 3. Forced leave

This leave is provided for in the Employment Code Act No. 3 of 2019. The Act allows an employer to send an employee on forced leave. An employer is however required to pay an employee his/her basic pay during this period of forced leave.

The Act requires the Minister of Labour and Social Security to prescribe via statutory instrument the circumstances under which an employee is required to be sent on forced leave. This prescription is yet to be made. In the absence of a prescription, our view is that this leave can be invoked should an employee exhaust all their leave days but is still required to be on leave. The cost on an employer is equally minimised as only the basic pay is paid to an employee on forced leave.

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### 4. Salary reduction

To mitigate against prolonged business shut down, salary reductions can be considered. This however requires the prior consent of the employee to avoid the effects of unilateral variation of contracts.

Wash your hands often with soap and water for at least 20 seconds. Use hand sanitizer with at least 60% alcohol if soap and water are not available.

## 5. Requesting employees to work from home

Employers can request employees to work from home. This would only be feasible if the employee's tasks can be performed from home. Employees working from home are still entitled to their pay unless the parties agree to a variation of some terms in the employment contract e.g. salary reduction.

## 6. Sick leave

If an employee is tested positive for COVID – 19, his/her sick leave would be used during the period of absence from work. Both protected and non-protected employees are entitled to paid sick leave.

With the exception of employees on short term contracts, an employee is entitled to a total of 6 months sick leave with the first 3 months on full pay and the last 3 months at half pay.

Employees on short term contracts are entitled to a total of 52 working days sick leave with the first 26 working days at full pay and last 26 working days at half pay.

If the sick leave is exhausted, parties can either agree for an employee to go on unpaid leave, or for the employee to receive a reduced salary or for the employer to still pay

the full salary.

If none of these options are viable, parties can consider terminating the contract on medical grounds.

## 7. Family responsibility leave

This leave is available to enable an employee nurse a sick spouse, child or dependant and the total number of days that an employer can grant is 7 days in a calendar year. In addition, an employee is also entitled to 3 paid leave days per year for any responsibilities relating to the care, health or education of the employee's child, spouse or dependant.

## 8. Redundancy

This can be considered in circumstances where an employer is not able to maintain a full staff complement due to limited financial resources and none of the other options mentioned above would be viable.

Redundancy is regulated by statute and accordingly, laid down procedures should be followed. This involves the employer notifying the labour commissioner 60 days prior to effecting the redundancy, engaging in consultation with the employees or their unions on measures to be taken to minimise the termination and adverse effects on the employees, as well as giving the employees 30 days' notice of the impending redundancies.

It is still possible, at the consultation stage, for

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Practice social distancing by avoiding large gatherings and maintaining distance (approximately 6 feet or 2 meters) from others when possible.





parties to agree on alternative options such as salary reduction or unpaid leave. This should be explored as a mitigatory measure against termination of contracts.

Where employees agree and consent to alternative options, an employer would then not be required to continue with the redundancy process. Should none of the alternative options be viable, an employer would then proceed to terminate the contracts and pay redundancy benefits, currently set at 2 months' pay for every year served.

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[Click here to download our previous alert: COVID-19 and Performance of Contracts in Zambia: Key Considerations](#)



**Cover your mouth and nose with a tissue when you cough or sneeze or use the inside of your elbow. Throw used tissues in the trash and immediately wash hands with soap and water for at least 20 seconds.**





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