



**CENTURION**

Lawyers and Business Advisors

**COVID-19 LEGAL  
UPDATE:  
ZAMBIA**

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# EMPLOYMENT

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## **REDUCING EMPLOYEES' WORKLOAD AND PAY DURING THE COUNTRY PANDEMIC/ LOCKDOWN WITHOUT TRIGGERING REDUNDANCIES.**

Generally, a unilateral variation of condition(s) of employment by employer (in an adverse manner) without the consent of employee would trigger payment of severance pay in the form of redundancy package. However, there is provision under the Employment Code Act No.3 of 2019 (the "Employment Code") regarding placing employee(s) on forced leave upon which they would be entitled only to basic pay. Basic Pay has been defined as standard rate of pay before additional payments such as allowances and bonuses for a period not exceeding one month. Thus, if the net pay was more than (or not the same as) the basic salary then the employer would have, in essence, legally cut the wages for employees.

Further, it is important to note that section 48(2) of the Employment Code makes reference to the authority given to the Minister of Labour to prescribe, by way of Statutory Instrument (SI), circumstances under which an employee would be required to be sent on forced leave. To date, no SI has been passed in that regard. On 26 March 2020 a ministerial statement was issued communicating resolutions of the Tripartite Labour Council (TCLC), among others, an agreement to restrict usage of the forced leave during the COVID-19 epidemic to employers in the tourism and hospitality industry while for those in other sectors available only upon an assessment of business entities undertaken by authorized officers from the ministry of labour. TCLC is composed of the Government, the Zambia Federation of Employers and the Labour Movement and thus the resolutions thereof should (although have no force of law), ordinarily, bind the parties and the entities or individuals they represent.

### Reducing Work Hours and Pay

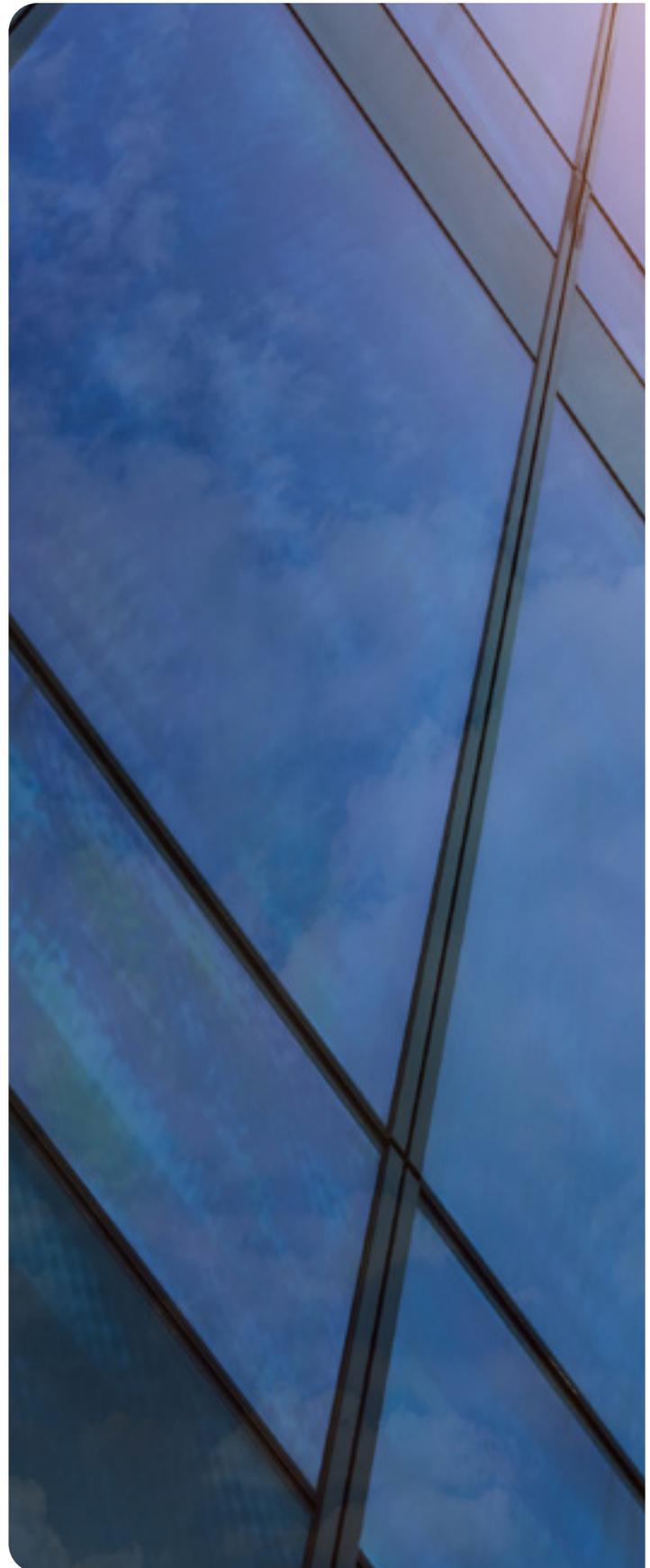
This can be applicable to casual employees whose terms of engagement, by law, are required to provide for payment at an hourly rate.

## **OUTSTANDING LEAVE DAYS AND FORCED PAID LEAVE OR UNPAID LEAVE DURING THE PANDEMIC/LOCKDOWN. DEDUCTING QUARANTINE PERIOD FROM ANNUAL OR SICK LEAVE**

### Outstanding Leave Days:

An employee (except one employed as casual or temporal) who has served the same employer for a continuous period of 12 months is entitled to take annual leave on full pay at the rate of two days per annum. Thus, it is legally possible to compel the employee proceed on annual leave taking into account the outstanding leave days.

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Forced Paid/Unpaid Leave:

Employees may proceed on forced leave within the limits of the provision of Employment Code elucidated above which include an entitlement to a basic pay.

Deducting quarantine period from annual or sick leave:

The days taken during the quarantine period may only be deducted from an employee's annual leave if the 'time-out' period was taken as such. However, sick leave falls in a different category with a pre-cursor of there being a medical certificate relating to the employee's inability to perform normal duties of the employer due to illness or injury. It would, therefore, appear that the same may not be imposed nor days taken during the quarantine period be deducted as such.

#### **RENEGOTIATING TERMS OF EMPLOYMENT**

Terms of employment can be renegotiated, though regard must be had to the fact that the re-negotiated terms must meet the minimum employment benefits as set out in the Employment Code.

#### **REMOTE WORK**

Employees who cannot work remotely may be forced to take annual leave as long it meets the minimum requirement set by the law and the contract of employment.

Where an employee is unable to work remotely because of the nature of their job but needs to stay home, the employer may, under this circumstances, opt to place the employees on forced leave upon which they would be entitled to basic pay otherwise the normal terms of employment may continue.

#### **EMPLOYMENT ENTITLEMENTS AND BENEFITS WHILE WORKING REMOTELY DURING PANDEMIC/ LOCKDOWN**

Save where there is an agreement to the contrary (which agreement should include the minimum employment benefits under the Employment code) or where an employee is placed under forced leave or contract of employment is terminated, the employee will be entitled benefits as per prevailing contract of employment.

#### **PERFORMING OTHER JOBS WHERE CORE FUNCTIONS ARE DOWN DURING PANDEMIC/LOCKDOWN**

It will depend on whether or not the taking of such other jobs would be considered as a unilateral variation of condition(s) of employment by employer in an adverse manner in which case the consent of the employee to 'carry on' would be imperative.

#### **REDUNDANCY/TERMINATION OF EMPLOYMENT**

Redundancy may be triggered either by the entity ceasing to carry on business or ceasing/diminishing of requirement of work of particular kind of which the employee is engaged or adverse alteration of condition of service without consent of employee. Thus, mere existing of the pandemic may not, in itself, make employees redundant.

Termination employment ought to be done accordance with the terms of contract of employment or in any manner in which a contract of employment is deemed to be terminated under the Employment Code or any other law. Thus, while there is nothing, per se, preventing the termination of the contract during the pandemic, the same must be done in accordance with contract and/or law.

#### **COMPANY COVID-19 POLICY AND COMPANY LIABILITIES**

At the moment there is no mandatory requirement for a written COVID-19 policy at the work place. However, guidelines have been issued by the government pursuant to SI No. 22 of 2020 relating to regulations for facilitating the management and control of COVID-19. Non-compliance with the said regulations is an offence and thus persons' responsible can be punished.

#### **EMPLOYMENT INSURANCE POLICIES (GOVERNMENT OR PRIVATE) DURING THIS PERIOD AND ACCESSING THESE POLICIES.**

There are statutory schemes such as the Workers Compensation Fund and National Health Insurance Authority. The former was established under an Act of parliament relating to compensation of workers for disabilities suffered or diseases contracted during the course of employment. The later was recently established, also under an Act of parliament, to administer a national health insurance fund. The contributions to the above is a legal requirement and therefore accessible to all.

## **IMMIGRATION**

#### **CURRENT SITUATION IN THE COUNTRY**

Partial lockdown for 14 days from 26 March 2020 with restrictions on public gatherings and closure of bars, gyms, casinos, among others.

#### **TRAVELLING TO ZAMBIA**

There is still entry into Zambia at the moment.

However, person arriving the country will be subjected to mandatory screening and quarantine period of not 14 days.

#### **RESTRICTIONS OR CANCELLATION ON VISAS APPLICATIONS/ISSUANCE**

There is restriction all foreign travel for Zambian nationals pursuant to regulations under SI No. 22 of 2020, with the public urged to re-schedule avoidable travel.

#### **EXPIRATION OF LEGAL STATUS WHILE IN ZAMBIA**

There appears to be no wholesale restriction on exiting the country especially as it relates to foreign nationals. However, if for some reason related to results of mandatory screening being undertaken pursuant to regulation for the management and control of the spread of COVID-19 and one is required to be quarantined for period outside the visa expiration, the same could be used as a ground for extension of stay in the country.

#### **LEAVING ZAMBIA**

Expats are allowed to leave the country so long as it is within the confines of the regulations under SI No. 22 of 2020.

## **TAX**

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#### **TAX EXEMPTIONS/RELIEFS DURING THIS PERIOD – EITHER GENERAL OR RELATED TO A PARTICULAR SECTOR**

The Government of the Republic of Zambia has taken the following tax relief measures:

- suspended exercise duty on imported ethanol for use in alcohol based sanitizers and other medicine related activities;
- removed VAT on imported spare parts, lubricants and stationery;
- suspended import duties on importation of concentrates in the mining sector; and
- suspended exercise duty on precious metals and crocodile skin.

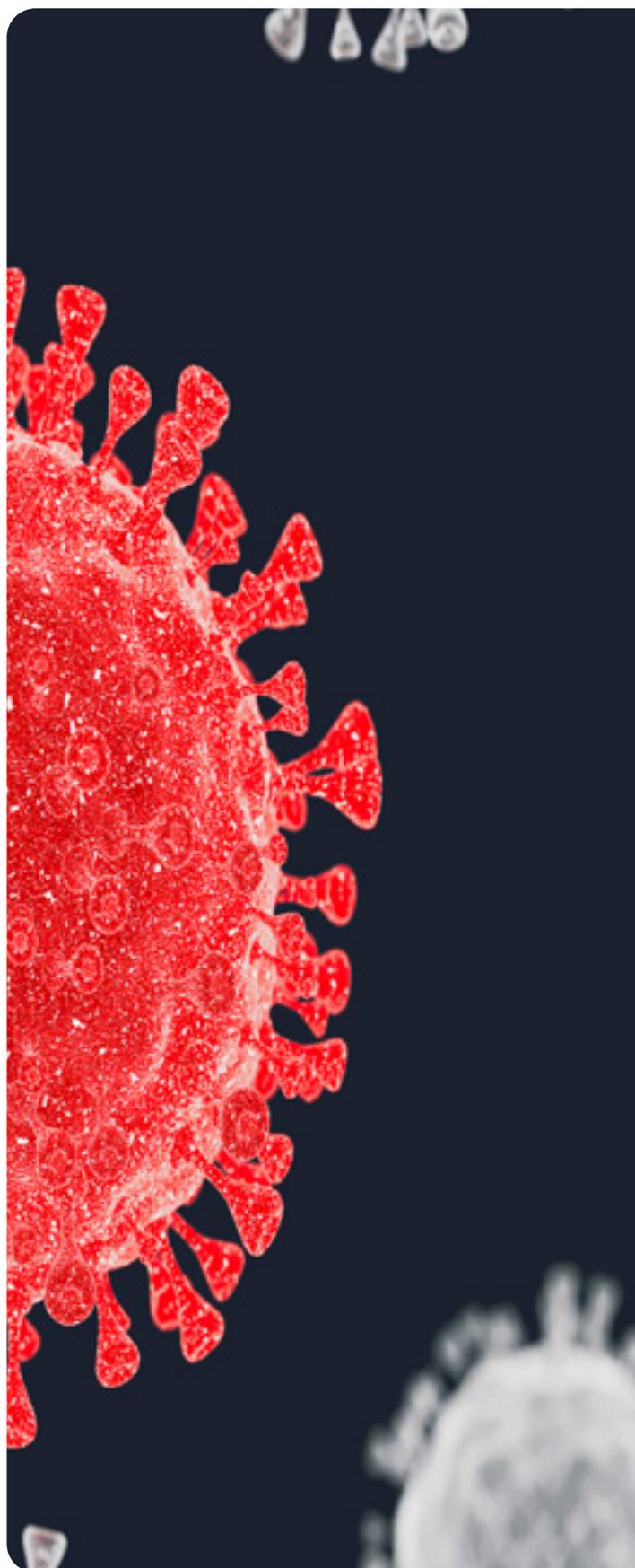
#### **GRACE PERIOD FOR THE FILING OF TAX RETURNS**

None yet as at the date of this update

## **CORPORATE**

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#### **SUSPENDING OBLIGATIONS UNDER A CONTRACT IN LIGHT OF COVID-19. (CONSIDERING FORCE MAJEURE)**



Parties may suspend their obligation under a contract. However, it depends on the facts of the matter in relation to the ability a party to perform the obligations under contract in the light the COVID-19. For instance, in Zambia there is no complete shutdown to economic activities and therefore it may not be deemed impossible yet to fulfil certain contractual obligations notwithstanding the advent of the pandemic. Further, it may also boil down to what and how force majeure or event of force majeure is described in specific contracts.

Whether or not COVID-19 constitute force majeure is question of facts and/or construction of the relevant clause(s) under contract. Aside from the generic definition, there is no legal definition for force majeure specific to Zambia. Therefore, the threshold will, by and large depend, on the list and extent (scope) of the definition of force majeure in a contract. Further, under the common law doctrine of frustration a party may recover payment and/or expenses made towards the performance of the contract prior to the occurrence of the 'frustrating' event.

#### **COVID-19 AS A MATERIAL ADVERSE CHANGE IN A CONTRACT**

It depends on the definition of material adverse effect in the contract and the effect of occurrence thereof. If established that the outbreak in the context a particular agreement does not give rise to a MAC with the effect of discharging a party of obligations under a contract then usual remedies for breach of contract such as damages, specific performance and declaration could be resorted to by the injured party.

#### **REMEDIES FOR A PARTY'S FAILURE TO PERFORM ITS OBLIGATION UNDER CONTRACT**

If it is established from the facts of the matter that the COVID-19 situation does not constitute force majeure, the injured party can have recourse to normal remedies for breach of contract such as damages, specific performance and declaration.

Note that civil hearings in court have been suspended for 14 days from the 30th of March 2020. Only urgent matters such as injunction and stay of execution matters will be heard during the suspension.

#### **REQUIREMENTS TO REGISTER DOCUMENTS UNDER THE COMPANIES REGISTRY**

The filing of annual returns ought to be made within 90 days from the end of financial year of a corporation. The Companies Act (the "Act") provides that failure do so will attract a payment of penalties. The Act, however, does empower the Registrar of Companies to waive such fees as are payable under the Act subject to the rules issued by the Board of the Patents and Companies Registration Agency.

The Government of the republic of Zambia has not issued any extensions of statutory timelines applicable under the Act. A company, in an event of failure to lodge documents within time due to closure of registry as a result of the COVID-19, may apply for waiver of penalties to the Registrar.

#### **EFFECTS OF COVID-19 ON DELAYS TO OBTAIN REGULATORY APPROVALS**

The delay may affect the effectiveness or binding nature of the contract. Further, such delay may amount to a 'frustrating event' capable of discharging the parties of further obligations under the contract.

There are no extension specific to corporate regulatory compliance a situation which could be attributed to the fact that the country has not been shut down completely by the authorities despite to the COVID-19.

## **GENERAL**

#### **FISCAL MEASURES TOWARD COUNTERING THE ECONOMIC EFFECTS OF THE PANDEMIC**

The Government of the Republic of Zambia (GRZ) has set up an Epidemic Preparedness Fund under the Ministry of Health amounting to ZMW57 million (around USD 3 million). Further, cabinet approved a COVID-19 Contingency and Response Plan with a budget of ZMW659 million (around USD35 million) under the Disaster Management Unit. Furthermore, a sum of ZMW2.5 billion (around USD 132 million) was announced to be released by government for purposes of easing liquidity in the country by applying to payment of arrears owed to domestic suppliers of goods and services, reduction of outstanding arrears to pensioners and retirees, reduce outstanding third party arrears and other employee related commitments and specifically apply ZMW140 million (around USD 7 million) thereof to payment of local contractors in the road sector.

#### **NEW LAWS/REGULATIONS TOWARDS COMBATING THE PANDEMIC**

Two Statutory Instruments (SIs) pursuant to the Public Health Act were passed on 17 March 2020. These are SI No. 21 of 2020 designating COVID-19 as a notifiable disease and SI No. 22 of 2020 relating to regulations for facilitating the management and control of COVID-19.

#### **EFFECT OF THE PANDEMIC ON THE COUNTRY'S ECONOMY AND ANY RECESSION RISKS**

The most noticeable effect on the economy since the advent of the pandemic



has been the continuous slide in the value of the local currency as against major currencies such the United States Dollars. It is almost impossible to rule out a risk of a recession in the light of reduced economic activity as result of the pandemic.

#### **BANKING RESTRICTIONS**

None at the date of this update

#### **BORROWER PROTECTIONS AND MORATORIUM ON LOAN REPAYMENTS**

None at the date of this update

#### **OTHER RELEVANT INFORMATION OR GOVERNMENT MEASURES**

GRZ in in the process of making applications to multilateral partner organisations such as the IMF and the World Bank in order access additional funds for COVID-19 support.

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