

## **COVET 19 AND THE SMALL TO MEDIUM ENTERPRISE**

(This article is not legal advice and is purely based on the opinion of the writers hereof)

Business owners have been challenged with events of catastrophic consequences in the past and will face unforeseen disastrous events in future.

The global Pandemic has resulted in an abnormal situation which nobody could have foreseen. Globally it struck us at the heart of the employment relationship, and in many instances will have destructive consequences. We can speculate over its consequences at length.

We are now confronted with different phases in our business planning and the operation of our businesses.

Any business have two major objectives namely short term survival and long term sustainability with a final strategy of planned and strategic exit from the market.

Accordingly we are faced with three important phases:

- the period of reflection
- The period of uncertainty
- The period of action

### **1. Reflection:**

With the current lockdown we are in the period of reflection:

- Prepare a bussiness plan as if you commence with an entirely new business.
- Check the inventory ie stock at hand
- Cost of Rental
- Cash flow currently/Own capital available
- Labour cost currently
- Creditors
- Debtors

Get back to basics ie:

- what is my primary goal, product or service
- How can I improve my business profile and structure
- Do I need the people currently in employment of the business
- Check **your legal compliance**
- **UIF**
- **Tax**

### **2. Uncertainty:**

It is inevitable that we will see changes in our employment legislation and specifically in terms of Occupational Health and Safety Regulations.

**Government actions are unpredictable and in some instances non-sensensical.**

**What is predictable is the gradual lifting of restrictions in the various business sectors. We will not see a total lifting of restrictions in the short term**

Despite the uncertainty we must have contingency plans for the survival or closure of businesses.

### **3. Action:**

We must face our current legal obligations pertaining to employment legislation and obligations. We will have to consider how to absorb the adjustments and financial consequences thereof. No doubt we cannot ignore the financial and psychological effects thereof.

Labour law comprise mainly of six Acts namely the Basic Conditions of Employment Act, the Labour Relations Act, Skills Development Act, Skills Development Levies Act and the Occupational Health and Safety Act, all impacting on the employment relationship. It contains Regulative Guidelines and also Codes of Conduct to be adhered to.

Any decision regarding employment practices, it being changes in work hours, termination of fixed term contracts or termination for operational reasons; is based on the Golden Rule in our labour relations arena namely: CONSULTATION.

1. Wat kan ek doen as ek personeel nie meer kan bekostig na inperking?

Once you have established that you can no longer afford your labour complement, you need to inform the affected staff or your respected Labour Union of your intention to curtail your operations. The LRA act specifies that when you

contemplate retrenchment, you should consult with the affected staff. These are often sensitive and emotional acts requiring great skills, accuracy and sensitivity. Conflicts of this nature are being referred to the CCMA and Labour Court for adjudication. There are many pitfalls and must not be seen as an opportunity to remove old wood or based on selectivity. You cannot enter such a process without proper record keeping of proceedings. As an employer you remain responsible for salaries, UIF payments and other statutory deductions until the employment relationship is finally severed. Remember that these proceedings are strictly in-house activities without the aid of legal practitioner's. The few remarks on this critical topic is hopelessly insufficient but serves as a guideline and to sensitise the effected employer of the seriousness thereof. It is really advisable to become conversant with the many intricate aspects in meeting the legal obligations of the relevant Labour Acts.

## 2. Hoe werk die afleggingsproses indien tydelik aflegging tydens die inperkingstydperk permanent moet word

In this instance the decision still remains that of the employer who must ultimately decide to continue the status quo or to lower his financial obligation, reduce his labour complement and in severe instances to close down the business. Any agreement to alter existing employment agreements or alterations thereto must be in writing and by agreement. Bear in mind you cannot alter benefits to lesser values than what the Legislation prescribe. You cannot even let a person work overtime unless by agreement. Similarly you cannot alter working hours unilaterally unless by agreement.

You cannot dismiss an employee unless for a dismissible offence. An operational dismissal falls under the category of being automatically unfair and needs to be handled in terms of the Labour Relations Act and specifically the section dealing with Operational Dismissal Requirements i.e. economic basis. A person may not be laid off for an unreasonable period, nor without compensation.

Notification of your intention to dismiss for operational reasons must be effected at the earliest opportunity. You need to seriously consider any avoidance measures preferably in collaboration with your employees prior to entering consultations and formulating date of implementation. You are reminded that where there are large volumes of people affected it is advisable for you to approach the CCMA to assist you in facilitating the entire process.

## 3. Hoe gaan ek te werk om alternatiewe diensooreenkomste te sluit byv korttyd?

To my mind you will entertain this as a cost saving arrangement which strictly means a temporary arrangement meaning you cannot maintain your side of the existing contract. Concluding a short (or fixed) term contract does not cancel the employer's obligations towards long term contracts and is not a means of forfeiting the benefits of a severance pay as warranted by the curtailment of the existing contract.

## 4. Wat gebeur met die diensverhouding indien die besigheid sukkel om te herstel?

It is normal practice in industry to keep employees updated on production targets, costs, safety and accident statistics and relative market shares. Successes and failures are used in compensation models and short, medium and long term strategies for survival. Transparency and effective communication, keeping employees informed continually will assist in cost/wastage curtailment and ensure that employees are in a position to see where the organisation is heading. Ultimately, if survival is not possible alternatives to structures and processes must be considered. Currently no alternative exists to the machinery and mechanisms provided by the various Employment related legislation.

Small businesses in the past have used the Variable Hour Contract format during the start-up and business development phase. ie employees are paid for hours actually worked and is treated on the same terms as full time employees (eg 1 days leave for every 17 worked etc)

Any termination of employment must be both Procedurally and Substantively fair.

Cognizance must be taken of the individual employment contracts and its specifications as it must be honored in terms of obligations it may hold. It can be expected that the CCMA will be flooded for months in dealing with the backlog of newly reported cases.

Business in South Africa will never be the same again.