

**Can I institute a Policy of no work, no pay in my Practice with immediate effect?**

The Legal position is that the employer does not have to institute a policy in this time of Lockdown.

Employees are not allowed to work at this stage by way of government restriction. This means that the government is not allowing Employees to tender their services to the Employer. Due to this, simply stated, on the principle of “no work, no pay” the Employer is not Legally obliged to pay Employees who are not working at the moment for the employer.

**Can the Employer institute a policy of no work, no pay in the practice when the Employees work remotely?**

Employees that can work from home needs to be remunerated for what the Employees do for the Employer.

**What options do Employers have, regarding employees who are not able to work from home?**

Although the principle of no work, no pay can be applied, the government has urged employers to try to assist Employees financially as far as possible.

Option 1: If you are in the position to keep paying your Employee's salaries, please assist as far as possible.

Option 2: Due to the future being unknown and employers can't pay salaries to the employees, the Government has provided certain relief options. These benefits are UIF related Benefits to Employees, and Employers are encouraged to apply for these benefits on behalf of their Employees.

**What Employee relief options are available to Employers from Government?**

The preferred method is the Covid-19 TERS relief fund via the UIF. The Employer applies on behalf of Employees for this benefit. The Employer and the employees need to be UIF registered to qualify for this benefit. The TERS option has been created specifically for the lockdown period of closure or partial closure during Covid 19 and it is de-linked from the normal UIF benefits or credits.

Other options that are normally available outside of the Covid19 pandemic:

Employees can apply when they are working on a reduced-time or when they become unemployed. These options still remain and are linked to certain credits, via the normal UIF System.

**Can I retrench Employees with an understanding that there's a possibility of re-employment when the Pandemic ends?**

Yes, it's possible to Retrench Staff if the practice can no longer afford to pay employees. An arrangement can be made to gainfully employ them for a period of time.

**What are the appropriate mechanisms in place to accommodate applying to UIF to compensate for lack of Salary for Employees during Covid19?**

There are two core mechanisms that allow for Application.

Option 1: The Employer email [covid19ters@labour.gov.za](mailto:covid19ters@labour.gov.za). without providing any information in this email. The Employer will receive a "reply" email with various documents attached. The Employer completes all the documents in terms of the information requested and submit the documents back to UIF. This email address was active as on 27 April 2020.

Option 2: This option is available on the "Online" Platform. The link to use is, [uifecc.labour.gov](http://uifecc.labour.gov). You use this online link, register? and submit your application with the relevant documents?

**Why would the employer apply for the TERS benefits through these platforms?**

Option 1: The Employer had to short-pay or lay off Employees.

Option 2: The employer is fearful that she/he is not going to be able to pay salaries in their full extent.

**How long in your view will it take for an Applicant's UIF to be paid?"**

The best-case scenario if everything works without delays, the Employer could be looking at payments coming through within four (4) or five (5) days into the Employers bank account.

However, if there are any delays in terms of information missing, a query on information provided, then delays can be expected.

**What about the position of Domestic Workers during this period?**

Domestic Workers falls within the same category as any other Employee. The Department of Labour has said you can Apply for the TERS Benefit for your Domestic Workers as part of your payroll. The department of Labour actually encouraged Employers to claim for the TERS benefits for their domestic workers.

**Who can claim from the TERS benefit fund?**

The Employee needs to be registered for UIF and the Employer needs to be registered with UIF.

**When can domestic workers return to their employment?**

In terms of Domestic Workers in support of Level 4 Workers, there's written correspondence and material that suggests that Domestic Workers who support Level 4 Workers which essentially are your Essential Workers, can return to work.

The process that will need to be in place to justify why a Domestic Worker is back at work or using Public Transport to go to work, will be more difficult. The logistic in terms of getting permission for a Domestic Worker to return to work needs to be finalised.

Domestic workers currently are indicated to return to work in Level 2.

**How long can I retain Employees without having to pay the salaries in a no work, no pay scenario?**

As long as there's a Lockdown, you have a justifiable reason why you're not paying the Staff subject to the Claiming of the UIF and the TERS Benefit.

**What future planning should the Employer do regarding Employees?**

The Employer will need to consider if the business/practice will return to normal after this lockdown or not. The Employer needs to plan strategically with regards to the practice and where the practice wants to go in the future.

Thoughts to consider: Restructuring of the business taking into consideration the amount of Employees needed in the future. If you find Employee numbers need to be adjusted, the Employer will need to follow a process for retrenchment.

**Is it possible to retrench Employees during the lockdown period?**

There are some hindrances at the moment when it comes to retrenchment because of the consultation processes that is needed for retrenchment. Where the Employee has access to phone or to Internet communication, the Employer might be able to do consultations in that manner. Where the Employees do not have access to phone or internet services due for instance lack of Airtime it might be more difficult to consult with the Employees regarding possible retrenchment. The Employer could find ways like providing airtime to the employee to start the consultation process.

**Can an Employer change permanent Employees to temporary Employees at this point in time?**

If you want to terminate the employment of the Employee and replace a permanent contract with a temporary contract you would need the consent of the Employee. Consultations with the Employee is needed to explain the situation to the Employee for the Employee to consent to the change of the Employment contract. It is mostly likely that the Employee will not agree to this as the Employee will be giving up the security of a Permanent Employee to become a Temporary Employee with a temporary or a limited time-period of Contract.

**Is there a ceiling or a cap for which an Employee can Claim from UIF?**

What the UIF does with the TERS benefit is that the maximum amount that will be used to calculate the TERS Benefit is R17 712.00 (seven thousand seven hundred and twelve rand). This is the maximum possible Salary. Further a guiding scale is used that varies between 38% to 60%. 60% goes to lower Earners and 38% goes to higher Earners. For example when the Employee earns normally R20 000.00 (twenty thousand rand) a month, the Employee will be regarded as if earning R17 712.00 (seven thousand seven hundred and twelve rand) per month for purposes of TERS. According to the grading scale, 38% of R17 712 is about R6 600.00 (six thousand six hundred rand) per month. That is essentially the top benefit that an Employee can get in terms of TERS.

**Can an Employer Claim from both UIF and TERS?**

No, there cannot be a duplication. They basically say is that you have to exercise a choice. So, you cannot double-up on the UIF Benefit, you have to decide what works best for you. It seems TERS are the preferred option. The Employer cannot apply for UIF for the Employer. The Employer's claim is on behalf of Employees and the benefits received must be paid out to the Employees. There is no separate benefit for an Employer, only for the Employees. So, all UIF Benefits are linked to the Employee who is Registered with the Employee's ID number. Whenever the Employee has claimed under their ID number for UIF and following

that the Employer applies for TERS benefit for the Employee with the same ID number the duplication will be picked up.

**Explain the flat rate of R3500 mentioned in UIF claims?**

There has been communication around a “Flat Rate” of R3 500.00 (three thousand five hundred rand). This was understood that there would be no payment from the TERS for less than R3 500.00 (three thousand five hundred) per month for lower income earners.

**Is there a difference between the R3500 UIF payment and the TERS calculated amount?**

We must be careful to distinguish, as much as they cap the TERS/UIF Benefit for the higher Earners they also said in terms of the TERS “no” Employee will earn less than R3 500.00 (three thousand five hundred rand). So let’s say an Employee earns a Salary of R4 000.00 (four thousand rand), based on that scale of 38% to 60% the Benefit is now calculated on the R4 000.00 (four thousand rand) and it comes to let’s say R2 000.00 (two thousand rand) odd. The Employee will still get R3 500.00 (three thousand five hundred rand). So, there is also a minimum that the benefit will not go below. This is the information available regarding TERS.

**Information was also distributed regarding the NDB (National Disaster benefit)**

**What is this?**

In the beginning before the whole TERS came about the very first thing that the Department of Labour Published was a National Disaster Benefit that was a “flat” Rate of R3 500.00 (three thousand five hundred rand) per month. This benefit could possibly be linked to the normal UIF benefit. This is not the TERS benefit. Currently we are unaware of the National Disaster flat rate benefit featuring anywhere. We are unsure if this benefit design has been withdrawn but it seems all the Employers is claiming benefits via the TERS benefit and TERS is the benefit that the government encourages Employers to use as well.

**What Relief is available for Sole Proprietors?**

As long as you are an Entity and you can prove that you are an Operating Entity as such, there is a Relief for you as an Employer by claiming for UIF TERS for your Employees. The Employers must have a bank account and proof that you are Employing these Employees.

**If an Employee becomes allegedly contaminated with Covid-19 at the practice, what are the obligations and what are risks for the Employer?**

In terms of the List of Occupational Diseases, Covid-19 or the Corona Virus has now been declared an Occupational Disease which means that any Employee that contracts Covid-19 in the course and scope of their duties will be covered by the Workmen's Compensation Commissioner in terms of Temporary Disability in terms of Medical Costs and so forth.

**What are the duties of the employer to prevent the employees contracting Covid 19?**

An Employer has a duty in terms of the Health and Safety Act to provide a safe working environment. The near future will most likely bring new Regulations on exactly how the employer have to safeguard the workplaces to make sure that there's a minimum chance of infection of people.

**What happens if anyone that enters the practices comes in contact with a person with Covid 19?**

If anybody that enters the practice was in contact with a person who tests positively for covid 19, the practice environment has to be disinfected, Employees, patients and the Employer have to be tested for Covid 19 and all involved have to go into isolation for a two (2) week period.

**What implication does it have for Employees when someone at the practice tested positive for covid 19?**

All employees need to go into isolation because of the possibility of contracting Covid19. If the Employee tests positive for Covid 19, the Employee will claim from normal Sick Leave. Circumstances of how and where Covid19 was contracted will be investigated. If an Employee contracts Covid 19 outside of work, it is not the Employer's duty to keep the workplace safe. It is the Employers duty to not allow that Employee into the practice. The Employee will claim for normal sick leave.

**Is there a minimum amount of time that an Employee needs to be Employed at a particular place of work in order to be entitled to Claim from UIF?"**

The normal UIF Benefits is linked to the Employee with their ID number. TERS is not linked to the normal UIF Benefits.

If someone is Unemployed or they go on short-time there' has always been normal UIF Benefits that they can claim based on a System of Credit. So, if you have worked for four (4) days you're entitled to one (1) Credit. And based on those Credits the normal UIF has always applied.

**Is there a minimum amount of time that an Employee needs to be Employed at a particular place of work in order to be entitled to Claim from TERS?"**

Roughly by the middle of **March**, if an Employer and an Employee have been Registered before the Lockdown in other words with UIF, they would be able to get the TERS Benefit. And that will not be linked to how many Credits they might have at all or with a particular Employer they must just be Registered by that date on the System.

**Will TERS only pay out for the duration of the Lockdown or will they consider paying out for a longer period?**

The base Regulations that TERS comes from is that the TERS has only been put into effect for a period of three (3) months. (This is the current stipulation). Currently it is stated that after three (3) months, if the Employer still can't employ the Employee, as things stand at the moment they will Qualify for reduced work or maybe Unemployment or whatever the case may be

I do think it's fair to assume that the government, if we're going to have this 'phased' situation to go on for much longer and sort of the majority or a big part of the society can't go back to work that they will have a further, either an extension of TERS or some other kind of Benefit that they might put in place.

The current base Regulations for TERS is for a maximum of three (3) months from say roughly the end of **March**.

**I pay UIF on a monthly basis. Is there some form of correlation between SARS and the UIF, you know to ensure that I am on track and that I'm compliant?**

Yes, SARS has been Appointed as a Collection Agent for the UIF and for the Skills Development Levy, so the systems interlink.

**What are my obligations as an Employer, as an Owner of my Practice to Locums who work at my Practice during Lockdown?**

In terms of the Business Models and the Ethical Rules prescribed, you can be an Employee or an Associate (An Associate Trades under their own Registration Number) or a Partner (you trade under a Registration Number)

Consider what the contractual arrangements are with the locum. Now in terms of Locums, we all know that there's only a six (6) month period that a Locum is supposed to be working in your Practice. I can imagine that a Locum will only come in as the Associate for that time period or as an Employee, a fixed-term Employee. If the Locum comes in as a fixed-term Employee, then the Benefits for that Employee will still be the same as for any other Employee in terms of TERS Covid-19 Benefit. If that Employee for instance should be working in Emergency Services and see a certain number of Patients one would have to pay the Employee a Pro-rata portion of the Salary for that period that the Employee works.

If the Locum Trades as an Associate under those circumstances with his/her own Employees or her own Practice Number, then obviously the normal arrangements that she placed between the Principal and the Locum will stand in terms of what percentage the Locum gets and what percentage the Principal gets in terms of the Benefits of the Services that the Principal gives to the Locum under the circumstances.

**If an Employee received and accepted an Offer of Employment with a start of employment on 1 April 2020 during the lockdown. The employee was not been able to travel to the practice to start employment and the employer could no longer afford the salary for the new Employee. "What are your views in such a situation?"**

First: In terms of Labour Law, the moment that the offer is extended and accepted that person becomes entitled to the Rights of an Employee even though the commencement of Employment has not taken place. Now for instance if one then reneges on the Deal to provide the Employment it would constitute to a form of Unfair Dismissal.

Second: If the person was appointed to start on the **1<sup>st</sup> of April** for instance and nothing has happened until the **1<sup>st</sup> of April** and after the **1<sup>st</sup> of April** despite the fact the person is not being paid, that person became an Employee because that was the contractual arrangement between them.

OPTION A: Now obviously the Employer would under those circumstances then say, but, if that person was Registered for UIF and the Employer's is Registered with the UIF, they would in all probability be able to Claim the TERS Benefit for that period that the person cannot be paid, otherwise it's just "no work no pay."

OPTION B: However, the second facet to this is that if it's no longer possible for the Employer to employ that person due to the intervention of the impact of the Covid-19 Pandemic then one would have to go through – either come to an agreement between the Parties that you will Terminate the Contract, but if that's not possible one would have to go through a normal Retrenchment Process with that prospective or actual Employee.

**What if an Employee was on Sick Leave prior to the Lockdown? How does the Lockdown impact on the Employee's Sick Leave?**

If a person has been on Sick Leave it's because they are too ill to work. The Sick Leave will remain in place. It is similar to when people go on Annual Leave and then they become ill during the Annual Leave period, it's been practised and accepted by Law that the Employee's Annual Leave can be reversed and processed as Sick Leave. The Employee will be on paid Sick Leave for the period that the Employee have been booked off for the illness by a medical practitioner. Administrative HR purposes will process sick leave for the Employee. When the sick leave date lapse and the Employee can't return to work due to the lock down,

then the Employee will be treated like any other Employee - no work, no pay; annual leave of TERS benefit claim.

**What if my Staff Members are Members of a Trade Union and I am in a position where I can no longer pay my Employees? What would be the appropriate Strategy or the appropriate approach to accommodate the change in Operational requirements?**

All right, it's a difficult one because people seem to think that because we have this unnatural/abnormal situation with the Lockdown and Covid-19 that now all Labour Relations and Labour Rights have now suddenly also disappeared. That hasn't happened.

So we have an unusual situation for a period of time and you can maintain for a Lockdown period with no work no pay or a government Benefit. When you then go back to partial or full reopening you cannot just say, well, it's been Covid and now I can automatically just let people go. I mean that happens in America or other Global Companies, they sometimes have difficulty to understand how we do it in South Africa. But the Labour Rights and all of that and the Basic Conditions of Employment, the Labour Relations Act are still exactly the way that they were. So, you cannot change Conditions of Employment of Staff unilaterally, there has to be a Consultation Process and a Negotiation Process. And if all else fails it might get to a Retrenchment, but the Processes in the Labour Relations Act remains.

And if that means that you have to Consult with Unions in that regard then that is what you're going to have to do. It might not be a physical "sit across the table," but that's logistics, you might have to find a Technological option but the basic thing remains that you are going to have to Consult with your Staff or their Representatives the same way as you might always have been in terms of the Labour Relations Act.

**What advice would you give when Employers talk to unions?**

Just continue with the normal Consultation, engagement with the Unions, and keep Unions closer than normal. Communicate more with the Unions and we've Partnered more during this time and all within the realms of the normal Labour Law. Do not take any shortcuts and be more innovative in terms of how you engage and how you communicate.

**Are Employers allowed to swap around Annual Leave so Employees could take the annual Leave during the Lockdown period?**

We know that there would be other Bodies/Bargaining Councils or Unions that might not be following the same principle, but in general a solution could be found.

What we have actually instituted is a Policy in situations whereby if a person can't work, they want to work but they can't. In other words that their job is such that they have to be at the office, or they have to be on site to be able to work. In those situations, instead of going for "no work no pay" we have really tried to institute that employees wherever possible take annual Leave.

Now where this has become a problem is (a) is if a person doesn't have the leave. What do we do then? Or secondly, some employees have obviously been dissatisfied with this approach because they would have preferred to have extended their Leave and had it in **December** to go away and to take it at a time that they could actually enjoy that Leave.

We've been very sympathetic to that need, however, the other part of it is that it has been really important that instead of receiving "no pay" rather take Leave and get paid. So what we've done in those instances, and this is where this is not specifically across all areas, but I'm speaking in general, what we have done is we've reached a "negotiated point" where we would say to Staff, look, take your leave now.

When we get to **December** let's – what we're calling "pay it forward" a bit. So in other words, take Leave now, if we get to **December** and we are in a situation that we can have a five (5) day you know shutdown over the **December** period and you need five (5) days and you don't have five (5) days, we'll actually allow you to go into negative Leave balance, i.e., we take your Leave from next year and we offset it off now and next year you will start your new Leave Cycle with a minus five (5) for example days leave, but ultimately we will work that through.

And what we've done is we've – so in other words then the following Leave Cycle, you start off with a deficit but at least you are offsetting one year against another.

Now we've been criticised for this approach by some Parties saying, but you know you're just taking from one year to the next. And yes we are and there's no perfect scenario on the ground but what we are trying to do wherever we can is just be reasonable to say, instead of not getting paid, what do we do about finding whatever alternative we can so that we can actually have people earning what they need to earn on a month-to-month basis?

So Leave has been one area which has been quite contentious in terms of us using Annual Leave at this point, but I must say practically Harry on the ground it is one vehicle and one avenue that has been used quite extensively in my world where a number of people have actually taken Leave over this period.

**How does the Lockdown Period impact on those Employees, new Employees who are still within their Probation Period?**

There are different scenarios to consider with regards to the probation period.

First of all, you're going to have a scenario where a person is working from home, okay, and in that instance because the person is working I'm going to apply the Probationary Period. And obviously it's going to be a slightly different method of managing the person because they're not visible at all times and one would have to put plans in place to make sure that there are Key Deliverables around the Probation Period that you want to check.

Secondly a situation where the person is not working, there's no work taking place, it would be quite unfair on the Employee to institute the probation period from the point of the duration of the Contract because there's no evidence that one would be able to look at in terms of what they're delivering or checking their suitability to even the Organisation. So, my suggestion from an HR perspective I would probably institute some latitude with 2 options:

Option 1: I would give the person certain Tasks that I would deem suitable that they could do in their own time even if they are not working and test how they're doing against those Tasks.

Option 2: I would actually delay the onset or the start of the Probationary Period until such a point that I can actually measure. Because remember the point of a Probation is to Assess whether that Employee is able to work according to what's

required in the Role that they Appointed to, whether they fit into the Organisation and whether they're a suitable match. So, if you can't test those things my view would be that you would have to apply some sort of flexibility in terms of how you manage the Probation Period.

From a Legal perspective you are going to have to be able to say that you have grounds in a case like this to actually agree to an extension of the Probationary Period. Because I mean obviously you cannot Assess. And that is why Probation is there for, it's not just something that you put in a Contract as sort of a Standard Clause it has a meaning. So the meaning of Probation is to Assess if the person is a fit and is capable of doing their job and you can't do that if you can't practically Assess them. So I would say just make sure if you're an Employer and you have that situation that you formally communicate with such an Employee and you enter into a specific Formal Document or Letter or something so that there's a Paper Trail in terms of extending, and maybe link that from whenever you are able to return to work for a period of say three (3) months or whatever the case may be, so that you don't have to just [indiscernible] [1:11:20.6] because we don't know how long this phase-in period will last. So instead of just saying "three (3)" months and then three (3) months and then three (3) months, maybe/potentially, just say, when we are capable of starting to Assess you for a period of so long. And then have that in Writing because otherwise you might end up with people saying, but I have Probationary Period, it expired, the Employer didn't

communicate with me. So now I can say I'm Permanent. And you don't want that to happen. So have a very clear Paper Trail and Process that you have followed in that regard.

**Can the Employer pay a portion of the Salary and TERS will pay the rest as per a sliding-scale?**

Yes, according to the amended Regulations and Directives that's been issued has basically made it clear that the Employer can do that.

You can do that or the net-effect of it will be that you have a UIF Benefit and the Employer can top-up or whatever the case is. I mean they've even said, I think it was the **16<sup>th</sup> of April** that people that has been required to go on Leave or has gone on Annual Leave, the Employer can Claim for TERS and then can set it off and credit back that Leave to the Employers, that was the **16<sup>th</sup> of April**.

**Does this proportional payment by TERS and the employer work practically?**

Currently, there is some uncertainty on how UIF offices implement this. I don't know if it's necessarily applied that way. So, I'm not sure exactly how it's going to be to be interpreted in practice but the Regulations definitely makes provision for it.

**Any situation of payment combinations between UIF and the employer that is not allowed?**

The only *proviso* in terms of the Regulations is that an Employee cannot be put in a position where the Employee has total earnings more than what their normal salary would be. The Employee's salary plus the UIF Benefits cannot be more than their normal salary.

**Can I pay a portion of the total salary and claim for the remainder so that in the end the Employee gets paid in full on a sliding-scale?**

Since the **16<sup>th</sup> of April** the Regulations definitely makes provision, also for Annual Leave to be credited back proportionally to what the UIF/TERS benefit is. But the UIF from what we hear on the ground is that the UIF doesn't necessarily apply to that, it's not entirely clear how they do these calculations, and we've had employers come back to say, but that's not what they do in practice. And that you know they don't want to give the full Benefit of say R6 000.00 (six thousand rand) odd for the top earners if you pay a part of the Salary. So there's sure to be some litigation or something coming up, but there seems to be ambiguity between what the regulation is saying and how the UIF apply it at the moment.

**Can a Practice pay Staff on a Per Patient basis?**

In terms of the Ethical Rules the Council frowns upon incentivising employees on a per patient basis. The question is “how” does one interpret the idea of incentivising on the basis of per patient?

I think in my opinion at least the background behind that would be to try to push through as many as possible patients so that you can earn more. I’m not quite sure why people would want to remunerate on the basis of a Per Patient, because if it’s an Employee who remunerates on the basis not of Performance but in terms of time, so one would then do a proportioned payment in terms of time. If it is an Independent Contractor by an Associate then there clearly must be some Contractual Agreement behind that that indicates the basis of payment, and on what basis the payment is calculated. That might very well be in terms of every Patient seen, X percent goes to the Practice for Overheads and Supervision and the rest goes to the Locum.

**If I’m not Registered with UIF, what is the best way for me to rectify the situation? Will I be panelised completely, or will I be allowed to apply for compensation?**

If you’re not Registered as an Employer for UIF you must Register as soon as possible. There might be some form of penalty in terms of calculating backwards when the Employee started with you, but as you know we’re talking about 1%

contribution by the Employer and 1% by the Employee. Even if you have to pay 2% of the Employee's salary over a time period, it will not be a big amount of money. This does mean that the Employers has unfortunately missed the deadline to be able to claim for the TERS Benefit, because the Employee has not been registered at the time when the TERS Benefit requires you to have been Registered to qualify to claim.

**What are my obligations to my Staff if I want to consider Bankruptcy?**

Bankruptcy is regulated by the Insolvency Act. The Employment Relationship does not come to an end when the Employer file for Liquidation. The Employment Relationship continues and it's in the hands of the Liquidator to decide whether he wants to Terminate the Employment Relationship or not. Your other Contracts (all your supplier contracts, your rental agreement, your lease agreement) stay in place and the Liquidator does not have the authority to cancel these contracts. These contracts will only come to an end once the final Liquidation has taken place or the Liquidator has given Notice in terms of the Notice requirements.

So, it is a difficult issue because there is no duty on the Liquidator to actually retrench the employees. So many times my suggestion to Employers is that if you see that you will be having to file for liquidation or in the case of an individual for insolvency, then it might be worth your while to start a Process of Retrenchment beforehand so that there's Accrued amount for severance pay by the time that

you actually file for Liquidation or Insolvency, then the Employees would at least get their Severance Pay and that's always preferred relative to terms for all Creditors.

**Can the Employer unilaterally decrease Salaries of Employees during this Lockdown period?**

Harry you have to distinguish now, talking "Lockdown" when your Staff is prohibited from actually working, that is where we start out with the principle of "no work no pay." So, if you then cannot pay them at all or you can only pay them a small amount, or you can only Apply for them for UIF Benefits that is what you can do.

**Can I as an Employer unilaterally decrease Salaries of my Staff After the initial level 5 lockdown period?**

When employees are in a position to actually come and tender their Services to the Employer, and if the Employer can't afford to pay the Employees, the employer needs to adhere to the Labour laws. The Employer cannot unilaterally decide to pay an Employee less for the Services that the Employee tendered in terms of their Contract. If the Employee has a Contract, the basic Conditions of Employment have to be adhered to and it states that if Services are tendered the Employees are "entitled" to get paid in terms of those Terms and Conditions.

**How can an Employer unilaterally decrease Salaries of Employees after the initial level 5 lockdown period?**

The employer has to enter into your consultation process negotiate on alternatives. And you know it should be easier than maybe your normal Pre-Covid Retrenchments sort of scenarios in the sense that everyone knows that there's an economic crunch and why that is. It's not just a matter of an Employer saying "suddenly" I can't afford it I want to pay you less. So in that sense there's a solid source, expansive basis for saying, well, you know let's work together we need to produce salaries otherwise we can't stay afloat and the alternative is that I have to close business ; so let's find a solution.

**Please explain more about this consultation process:**

With regard to consultation, there is discussion where an employer has approached r staff saying, "look, we can't afford to pay full salaries so what we're going to do is we're going to suggest that everybody take for example a 20% cut ". And in most cases – and this is particularly in small Businesses that I'm explaining or expressing where I've seen this happening, in most cases Staff are more than happy to take the 20% cut as opposed to losing jobs or half the people have to go and the other people remain. So, it's a middle of the road solution that employers are instituting in consultation with Staff.

I am finding that, in most cases, it's deemed to be the fairest way to deal with Remuneration for now.