

Pandemics, civil unrest, floods: Managing staff in times of crisis

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Employer guidance needed to deal with employee no-shows and workplace disruption

More government intervention, legislation and regulation is needed to manage employer and employee relationships in times of unprecedented crisis and disaster, including pandemics, civil unrest and floods.



On the back of Covid-19 lockdowns, the July riots in KwaZulu-Natal, and the recent storms that left thousands in the same region without homes, water and power, employers have faced high staff absenteeism, no-shows and workplace disruption. Dealing with legal and compliance obligations and the principal of no-work no-pay under these circumstances is tricky.

In a webinar, [Employee Management in Trying Times](#), hosted by legal technology company [LexisNexis South Africa](#), to guide employers on the do's and don'ts during times of crisis, employment equity and labour law expert Michelle Naidoo suggested government could do more to manage and guide the employer-employee relationship.

"Given the amount and frequency of disasters we have experienced recently," Naidoo said, "it comes as a surprise to me that not more guidance is given to employers to steer through these trying times." Webinar participants polled during the session agreed with Naidoo, with more than 80% calling for more government guidance.

Naidoo, a partner at Mooney Ford Attorneys and a panelist at Aequitate Dispute Resolution Services, said while employers should not rush to discipline staff for events outside of their control, there was no obligation on employers to pay staff who couldn't report for duty. She said she was asked daily whether it was legal not to pay employees when the Disaster Management Act applied, or during incidents like riots and extreme weather events like the recent floods.

"The answer to that is trite and settled in law ... there is no obligation on the employer to remunerate employees during periods where services cannot be rendered during circumstances beyond the employer's control," said Naidoo.

While there is much debate in legal circles around this, Naidoo cited the labour court judgement of *Macsteel Service Centres SA v National Union of Metal Workers of South Africa and others* handed down on 3 June 2020. It provided unequivocal clarity that companies were well within their rights to invoke the principle of no-work no-pay for the Covid-19 lockdown period.

But Naidoo warned that one-size-fits-all doesn't apply in crisis situations and the CCMA would certainly be critical of employers "rushing off to seize an opportunity to discipline an employee with compelling mitigation factors."

The issue needed to be understood within the parameters of the legal concept of "reasonable accommodation" in the Employment Equity Act, as well as the Code of Good Practice and the new Code of Good Practice: Managing Covid-19 in the workplace, updated in terms of the Labour Relations Act and Occupational Health and Safety Act.

"The definition and scope under SA law spelt out requirements for employers to make modifications and adjustments to working environments to essentially lift any barriers people with disabilities may experience in the workplace," Naidoo said. "This may have valuable application in crisis management times - this same code says employers must also reasonably

accommodate employees when the work, or the work environment, changes or impairment varies which affects the employees ability to perform the essential functions of a job.

“The reason this is relevant in the current times is that many of us woke up during the flooding in KZN and were literally unable to move out of homes and when we managed to get out of our homes, there was not much left at our work environment.”

However the obligation to provide reasonable accommodation under various circumstances was not unlimited, Naidoo said, with most labour laws attempting to maintain a balance between affording rights to employees and equal consideration of burdens on the employer.

Naidoo's advice to employers following a crisis:

- Consider each case on its own merits.
- Take time to understand whether it's an incapacity situation or a possible misconduct situation, because the procedure and substantive requirements are distinguishable.
- Establish a crisis management committee comprising of management and employee representatives.
- Consult on measures to mitigate impacts of distress, anxiety and loss of income.

The webinar is housed on a free [online portal](#) set up by LNSA to provide easy access to critical legal information and resources for severe weather events. The launch of the Severe Weather Events Resource Centre is in keeping with LNSA's focus on the [rule of law](#), and follows the launch of two other key online portals in the last few years, namely a [Covid-19 resource centre](#) and a [GBV resource centre](#).

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