

Can employees refuse to come to work for fear of the pandemic?

By [George Herbst](#)

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As a natural consequence of the prevailing pandemic, businesses continue to endure tremendous financial pressure, struggling to keep afloat in this miserable economic climate. Notionally, the only certainty that the business sector can expect, is uncertainty.



Image source: Getty Images

It is unfortunate that many businesses' dire financial positions are exacerbated by an abundance of health and safety obligations that have been introduced - mostly justifiably - to slow the pandemic's rapid spread and transmission. Health protocols such as temperature screening, hand sanitising, face masks and social distancing have become synonymous with daily work routines. And to avoid various sanctions, employers are required to strictly enforce such requirements at their workplaces.

Whilst employers can introduce various measures to ensure their enterprise's sustainability, they cannot control all aspects that may directly impact their operations. During Covid-19, many employees and workers are still absent from the workplace because of the cautious approach to curb the spread of the virus. Government requires employers to comply with newly introduced disaster management legislation, and as such, employees are permitted to be absent from work during this time for several reasons, including possible exposure to someone who has tested positive for Covid-19; showing symptoms of the virus; previous travel to high-risk areas; and testing positive for the virus.

So, can employers insist that their workers return to work? And can employees legally refuse to do so? It's a contentious and delicate issue, but it is now necessary to determine the correct position should an employee, out of fear for the virus, decide to stay at home. What recourse would the employer have and how should such instances be handled?

Scenario handling

In the Consolidated Directions on Occupational Health and Safety Measures in certain workplaces, the Minister of Labour addressed these scenarios to some extent and proffered how to handle such scenarios. (Direction issued in terms of

Regulation 4(10) of the Regulations made under section 27(2) of the Disaster Management Act, 2002: Measures to address, prevent and combat the spread of Covid-19 in certain workplaces in the Republic of South Africa)

Clause 14 of the Directions (Refusal to work due to exposure to Covid-19, sub direction (1)) states that an employee might refuse to work if circumstances arise which - with reasonable justification - it appears to that employee to pose as a serious or imminent risk to the exposure of Covid-19.

The directive goes on to explain that any employee refusing to work must, as soon as possible, notify their Employer or Health & Safety representative of such a refusal and the reason for their decision. Once the employer has been notified of the refusal, they would have to consult with the various bodies, i.e. Health & Safety representative and Health & Safety committee, if any - and try to resolve the employee's issue.

If it is clear that the matter cannot be resolved internally, the employer will need to notify an inspector of the issue raised, within 24 hours, and communicate this with all parties involved. The employer is then obliged to comply with the prohibition issued by an inspector in terms of section 30 of the Occupational Health and Safety Act.

It is worth noting that the Directions also say it is not a pre-requisite for an employee to have exhausted all internal and external procedures before relying on sub direction 1, with the effect that an employee who exercises their right in terms of this sub direction may not be threatened with action. They also cannot be dismissed, disciplined, harassed or prejudiced for refusing to perform work as contemplated in sub direction 1.

What is reasonable justification?

That said, the refusal of the employee should still be reasonably justified. In a scenario where the employer has failed to provide staff with the necessary PPE; or there is no social distancing in the workplace; the wearing of masks is not practised; or there is no proper ventilation, an employee will have grounds to refuse to work, as the circumstances pose an imminent risk of being exposed to the Covid-19 virus. The employer, in this instance, disciplines or dismisses an employee at its own peril.

If an employee communicates a fear that they have regarding the workplace, the employer has a duty to heed their concerns. And if there is merit to the concerns raised, the employer should quickly take the necessary steps to ensure that the issues are adequately addressed and rectified.

For employees that have no reasonable justification for refusal to work or attend the place of work, the remedy of disciplinary action is available to the employer. An employee cannot unreasonably refuse to work during the pandemic. Naturally, everyone is fearful of contracting the virus, but proper adherence to health and safety protocols will provide the employer with the necessary justification for disciplinary measures.

Ensuring that your business complies with all the necessary health and safety protocols should be a top priority, as well as dealing with employees' fears and concerns satisfactorily. This will be the foundation of building a safe work environment

for all and significantly contributing to the company's bottom line.

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