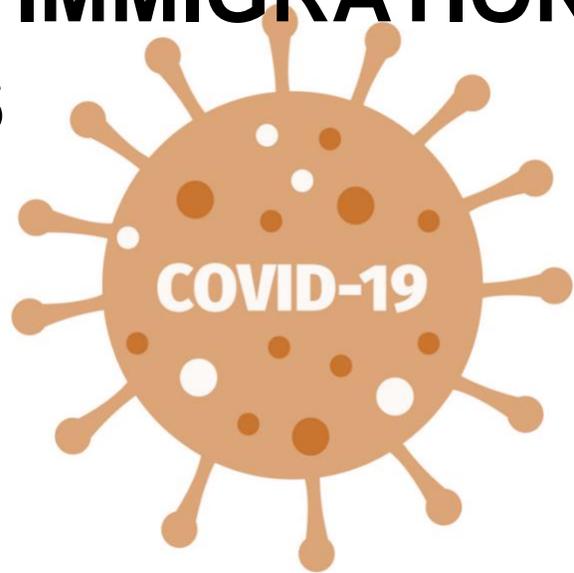




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IMPLICATIONS OF COVID-19 ON CONTRACTS, LABOUR & EMPLOYMENT, IMMIGRATION AND TAX LAWS





Contract:

A contract is an agreement between two or more parties creating obligations that are enforceable or otherwise recognizable at law. However, the Tanzania Law of Contract Act, recognizes that there may be situations where a party may fail to perform his or her obligations as stipulated in a contract.

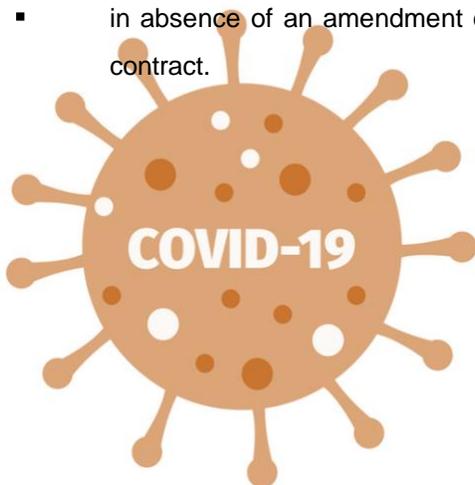
The effect of the Corona pandemic may lead to failure to sufficiently or substantially perform contractual obligations. This may apply to any type of contract, including supply contracts, transaction contracts, employment contracts, to name but a

few. Failure to perform a contractual obligation on grounds of reasons beyond a party's control, cannot be a breach and the other party cannot demand performance. The failing party may seek to have the contract varied or terminated for reasons of frustration.



Amendment of a Contract: parties must renegotiate the contract considering the effect of the Corona pandemic to the contract.

- a contract may be amended automatically using an existing amendment clause in the contract; or
- parties signing an addendum to the existing contract to effect the relevant amendments; or
- in absence of an amendment clause the parties may sign an agreement to amend the existing contract.





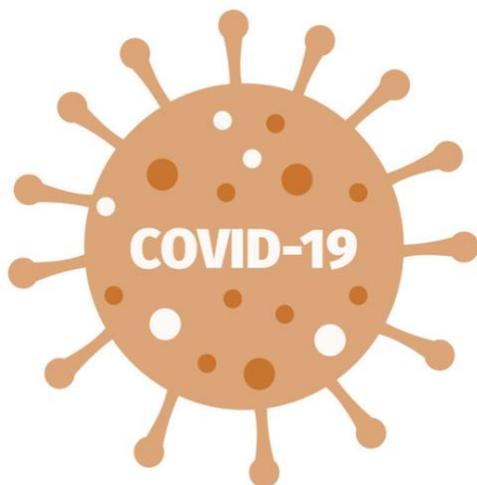
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Variation of Contract

Contract variation may be to delay performance or to reduce consideration or remove certain provisions. A pandemic situation as it is the Corona pandemic is good ground for contract variation.

Termination of a Contract

Contracts may be terminated by mutual rescission by the parties to the contract agreeing to rescind it, or by release where one party simply relieves the other party of any further obligation under the contract. It is advised that in both cases, the variation should be in writing. As intimated above, some contracts contain specific termination provisions which should be observed. However, if the contract is silence in this regard, the parties should reduce any understanding in writing.





Labour & Employment:

(a) Governing Laws

1. The Employment and Labour Relations Act, 2004 (Labour Act)
2. The employment and Labour Relations (Code of Good Practice) Rules, 2007 (the Labour Rules)
3. The Labour Institutions Act, 2004

(b) Labour Laws and Pandemics

There are no specific provisions under the Labour Act or the Labour Rules that address states of emergency like the Corona Pandemic however, one can borrow from the general provisions of the referred legislations. The corona pandemic has without any doubt disrupted business and the way we do things leading to some businesses closing while others may be contemplating downsizing or even closure due to reduced operations or activities and drastic reduction in revenues while overheads including payment of salaries. And related HR costs remain high.



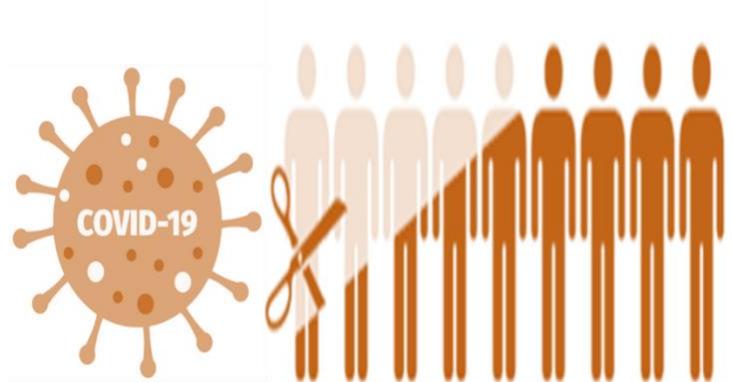
Issues for the employer to consider

Employers have to respond to the disruptive elements resulting from the Corona Pandemic and while there is no one specific legal solutions, there are options within the prevailing legal framework.



(c) Reduction of Employee Salary

- Rather than retrench staff, employers may consider the alternative of reducing salaries. In this regard, employers should hold **consultations** with the employees proposing a reduction of salaries as a temporary measure to respond to the Corona pandemic.



Disruption. In this way,

employers will have the advantage of retaining their workforce to continue business when the pandemic eases. On the other hand, employees will retain their jobs and some income, albeit reduced.

- A reduction in salary is a major change of an employment contract as such Section 15 of the Labour Act require the employer to effect such change in the employee's written statement of particulars and in particular the contract of employment. And since salary is a contractual term the change must be agreed to by the employee who must acknowledge the agreement by countersigning the amending document.

An employer may wish to take this option as an alternative to retrenchment.

(d) Leave Without Pay

Employers may also opt sending employees on leave without pay, as another temporary measure, in dealing with employees during the Corona pandemic disruption of business. This option is particularly relevant especially where there is closure of business and/or reduction in operations while employer is looking to reopen after the pandemic. To send employees on leave without pay, the employer is obliged to:

- consult with employees to explain the reasons for the leave without pay;

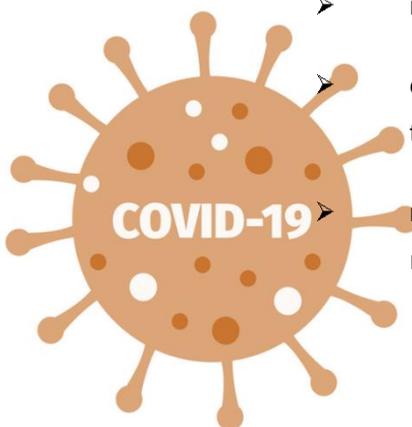


- since the disruption caused by the Corona pandemic is apparent employees will cooperate knowing that the leave is the lesser evil as more disruption could lead to loss of jobs;
- the leave without pay arrangement must be documented because again it a variation of employment terms. The record should include the reasons for the leave without pay and that it is a temporary measure, leaving room for possible retrenchment should it become necessary;
- leave without pay will allow the employer to plan the future with or without the pandemic while retaining the workforce to continue operations after the pandemic or when it eases to allow gradual resumption of business operations. And for the employee, is guarantee of continued employment rather than possible retrenchment.

(e) Retrenchment

- the Labour Act allows employers to terminate employment contracts on grounds of economic reasons or operational requirements. Business closure or reduced operations/activities due to the disruptions caused by the Corona pandemic is one such economic reason because the employer is no longer in position to pay salaries or continue with business. In the circumstances, the employer may opt to retrench some or all employees due to economic reasons caused by the Corona pandemic.
- the prescribes the manner in which retrenchment of employees may be effected and it is imperative that the employer follows the prescribed procedure to avoid possible labour disputes.
- prescribed retrenchment procedures include:

- issuing notices of the intention to retrench;
- disclosing all relevant information related to the intended retrenchment, in this case the disruptions caused by the Corona Pandemic;
- mandatory consultations with the effected employee prior to the retrenchment on reasons for the intended retrenchment, measures taken by employer to avoid





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retrenchment (if there was prior salary reduction, or leave without pay and the disruption persists or if employer introduced new measures which as well did not help to alleviate the effects of disruption), selection of employees to be retrenched, timing of the retrenchment and severance pay as prescribed by the Labour law in respect of the retrenchment.

NOTE: Retrenchment should be an option of last resort for the employer.



Immigration:

Due to the Corona pandemic, the Ministry of Home Affairs through its Immigration Department issued the following guidelines:

1. Prospective visitors who had already been granted Visa Grant Notices but have not been able to travel to Tanzania, have been granted an extension of 3 months from the date of their visa start date.
2. Visitors whose Visa/Visitors passes have expired, or about to expire, and are unable to travel outbound from Tanzania, can report to the nearest immigration offices and will be granted a 1-month extension free of charge. After expiry of the 1 month, if the situation persists, such holders will be required to report at the Immigration Office - Kurasini in Dar es Salaam for further directives.
3. Holders of Residence Permits, Visitors Pass, Exemption Certificate and Dependent Pass holders which have expired, have been granted a 1-month grace period to stay in the country. After expiry of the 1 month, if the situation persists, such persons will be required to report at the Immigration Office - Kurasini in Dar es Salaam for further directives.
4. Holders of Residence Permits/Passes who have already surrendered their respective documents are required to report promptly to the Immigration Office - Kurasini, Dar es Salaam for further directives.



The guidelines have offered flexibility on holders of visas, passes, and permits to enable them legally to reside in Tanzania and or for their documents to remain valid for a certain period. The Immigration department also invites holders of such permits, visas and passes to discuss and negotiate the best way forward for each holder.



Tax Laws:

The Government has yet to provide tax relief in the form of tax payable or filing delays to provide some relief to business due to the Corona pandemic.

This means filing of tax returns remain the same as if business has not been affected by the Corona pandemic.

Businesses are advised to continue filing their tax returns. Every registered company and individuals are required to prepare audited accounts for filing with the Tanzania Revenue Authority which include a statement showing the estimated tax payable in each year of income. The tax estimate (provisional return) is payable quarterly. If revenue has declined due to the Corona pandemic businesses must still file their tax returns showing the loss. The taxpayer can amend the provisional return by filing a revised provisional tax return either upwards or downwards in the financial year. Where a taxpayer had not yet filed a tax return, it may file the same such return to reflect the true business income. Where a tax return had already been filed, taxpayers are advised to file revised provisional tax returns to reflect up-to date estimated tax payable.



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