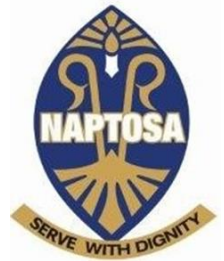


# NATIONAL NEWS FLASH



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NNF 23 of 2020

1 June 2020

## SGB AND INDEPENDENT SCHOOL MEMBERS:

### RIGHTS IN THE COVID-19 ENVIRONMENT

The COVID 19 pandemic is an unprecedented event in the world and in our country. Because the situation could not be foreseen, laws and contracts of employment, in many instances, do not carry provisions to deal with the situation. It is therefore the principles of fairness and reasonableness that must prevail.

For members of NAPTOSA employed by School Governing Bodies (SGB) or Independent Schools, the contract of employment is the source of all your conditions of service. However, where the contract of employment is silent or ambiguous, the Basic Conditions of Employment Act, 75 of 1997(BCEA), MUST be considered. In addition to the BCEA, consideration must be given to the Occupational Health and Safety Act, 85 of 1993(OHSA), the Labour Relations Act, 66 of 1995(LRA) and the Department of Employment and Labour document on Workplace Preparedness: COVID - 19.

The OHSA requires an employer to bring about and maintain, as far as reasonably practicable, a working environment that is safe and without risk to the health of its employees. In this context the employer (SGB /Independent School) must provide workplace guidelines and policies to mitigate any risk that may exist. Within the COVID-19 environment, these guidelines and policies must be guided by the fact that schools are considered high risk areas for the spreading of the virus. Also, the requirements of social distancing and the hygiene protocols of the Department of Health must be considered.

Employees are responsible for their own safety and the safety of others and one will be held accountable or disciplined in the event of any contraventions of the workplace policies.

#### Responsibility of the **EMPLOYER** to keep you safe in the workplace:

1. Ensure daily screening of employees, that temperatures are taken and recorded and a basic questionnaire is completed relating to the symptoms of COVID-19.
2. Provide resources and a work environment that promotes personal hygiene - this should include, hand soap, alcohol-based hand rubs containing at least 70 % alcohol, disinfectants and disposable paper towels and a prohibition to touch refuse bins.
3. Provide face masks or shields.
4. The school environment must be cleaned and sanitised daily with particular attention given to door handles, handrails, desks and tables.
5. Ensure social distancing at all times.

6. Set up a designated isolation room that will house persons who show symptoms.
7. Appointment of a health compliance officer.

*Responsibility of the **EMPLOYEE** to keep a safe workplace:*

1. Comply with the health and safety guidelines and policies of the employer.
2. Inform the employer if tested positive for COVID-19.
3. Inform the employer if you have come into contact with a COVID -19 positive person.
4. Inform the employer if you are experiencing any of the COVID-19 symptoms.

**LEAVE:**

Leave is regulated by the employment contract. Leave provisions may, however, be more favourable than the provisions in the BCEA, but they may not be less favourable.

**Sick Leave** - An employee who tests positive for COVID 19 will be granted “normal sick leave”. The employer may require a certificate indicating that you are COVID 19 “free” upon your return to work.

**Quarantine Leave** - Quarantine is used to keep someone who might have been exposed to COVID-19 away from others. It is likely that the employment contract is silent on quarantine leave and the BCEA does not provide guidance in this regard either. It is the prerogative of the Employer to develop a policy regarding quarantine leave.

The Department of Labour and Employment have made provisions for employees to claim UIF compensation through its existing illness benefit. The benefit applies to the employee who is quarantined for 14 days, irrespective of whether the employee is ill or not. The employer and employee must provide a confirmation letter to the UIF, together with the employee’s application, which will indicate the employer and employee have agreed to the 14 days special leave. There is no requirement for a medical certificate, however, if the employee quarantines for more than 14 days a medical certificate must be submitted.

**COMORBIDITIES:**

Based on information and clinical expertise available, older adults (60 years and above) and people of any age who have impaired function of certain organs (heart, lungs, kidneys) or a depressed immune system are at higher risk for serious complications and serious illness from COVID-19. ELRC Collective Agreement 1 of 2020 (to be posted on the website) contains the comorbidities identified by the Department of Education as COVID-19 risk factors. This may be used as a guide.

For employees with high risk comorbidities it is required that the employer put measures in place to accommodate them in the work environment. The operational demands of the employer and the circumstances of employees must be balanced to accommodate either work from home or for

special workplace arrangements to be made. If the employees in this category cannot be accommodated at the workplace nor work from home, the employer must provide guidance. The BCEA is silent on this and it is the employer's responsibility to put in place policy and guidelines for employees who produce a medical report containing the necessary information relating to their condition.

The Department of Health has issued a document, ***“Guidance on vulnerable employees and workplace accommodation in relation to COVID-19 (V4: 25 May 2020)”***. The following temporary workplace accommodations is suggested by the Department of Health (Paragraph 2.2):

- Alternative temporary placement/redeployment to a different role and responsibility which has a negligible risk for transmission.
- Restriction of certain duties.
- Protective isolation (e.g. providing a dedicated, clean office, etc.)
- Provision of specific PPEs appropriate to the risk of the task/activity identified in the workplace, risk assessment and adherence to PPE usage protocols.
- Stricter physical distancing protocols (including staggering of shifts), barriers or additional hygiene measures.
- Limitation of the duration of close interaction with clients, colleagues and/or the public.
- Reducing external risks (use of public transport) by providing alternative transport arrangements where feasible.

If the above steps are not possible, then consideration should be given to allowing the employee to work from home if able to do so, and the necessary equipment (internet access, etc.) is available (Paragraph 2.3).

The health and job security of our SGB and Independent School members remain our priority and NAPTOSA will do all in its power to protect these rights. Please seek advice or report to your provincial office should any of the COVID -19 regulations be flouted, if you do not feel safe at your schools or if your job security is threatened.

**BASIL MANUEL**

**EXECUTIVE DIRECTOR**