

Covid-19 is going to radically change labour relations



Covid-19 will bring a mix of negative and positive consequences for labour relations, but particularly so for collective bargaining in South Africa.

The Covid-19 pandemic had one initial positive impact in SA — labour, business and government representatives quickly reached agreement in the National Economic Development and Labour Council (Nedlac) on initial economic stimulus measures, thus promoting social cohesion. Positive outcomes also came in the form of amendments to the Unemployment Insurance Fund (UIF) and pension fund regulations to accommodate employers that are experiencing severe financial pressure.

Covid-19's biggest negative impact on labour relations will undoubtedly be job losses. The National Treasury's conservative prediction that there may be 1,79 million job losses due to Covid-19 means that many employees will be completely unable to keep their jobs, especially in cases where a business is closing or downsizing for the sake of its survival. This has already started, although the flood gates will only really open after the pandemic reached its peak and employees in almost every economic sector will be exposed to radical changes in conditions of employment, retrenchment, liquidation and business rescue processes, while conglomerates could break up into smaller companies, leading to further job losses.

Similarly, Covid-19 may also force trade unions to reduce their headcount because retrenchments mean a loss of trade union members or potential trade union members. The result could also be that struggling unions may merge or be dissolved.

Due to Covid-19 and SA's downgrade to junk status, the balance of power will swing, and unions will be on the back foot as job security for members and the well-being of their dependents will have to become a priority. Trade unions along with employers will have to find creative solutions to make up for lost production and employee remuneration and to mitigate the retrenchment bloodbath.

Sacrifices

To achieve this, employees and employers alike will have to make major concessions, and at various workplaces employees will have to temporarily commit themselves to sacrifices when it comes to salaries and longer working hours, which may well mean work on weekends and public holidays, or, alternatively, working short-time. In exchange, the senior executives need to make remuneration sacrifices, and companies will hopefully be able to bear the losses for longer during the transition period without having to drastically reduce staff or change their conditions of service in the hope of reaching financial break-even within a reasonable period.

New bargaining model

Such a give-and-take approach will pave the way for the implementation of a win-win, interest-based employer/union bargaining model that could replace the current positional bargaining model. The confrontational, positional model means unions submit endless lists of wage demands and employers kick off with an unrealistically low wage increase offer, while unions start with unrealistically high wage demands. That is followed by drawn-out power games.

In the interest-based model developed by Americans Roger Fisher and William Ury, which is being used successfully in the US and some European and Scandinavian countries, the focus is on shared interests and seeking mutual benefit.

Here, an interest refers to the basic need — such as employees needing job security and the employer's need to be sustainable — that is addressed, and the objective measures used to find collaborative solutions in the absence of enforcing a self-centred interest. William Thomson, a respected mediator and Part Time Senior Commissioner for the Conciliation, Mediation and Arbitration (CCMA), has already been tasked to “market” this model locally among role-players.

Where the outdated positional model will live on, it should take a different form because at the start of negotiations after lockdown employers and unions will not only experience the pressure of the economic and financial legacy of Covid-19, but there will also be time pressures to conclude deferred negotiations as soon as possible. During the lockdown, unions and employers are starting to learn to deal with preliminary issues and wage demands, and the motivation and responses to the demands, in writing. If this practice can become established, it will speed up future negotiations.

Furthermore, given the catastrophic effects of Covid-19, the emphasis will shift from above-inflation increases to the “social wage”, such as pension benefits, medical care, occupational health and safety, and skills-development. Also, employers will inevitably need to start linking increases to output. And

wage agreements should typically be multi-year in nature and mostly three-year agreements to increase long-term workplace stability and allow sufficient time to reach agreed production targets.

Individual labour law issues

Due to lockdown restrictions, there will be a major backlog in disciplinary and grievance processes at workplace level, while the CCMA and bargaining councils too will experience a major backlog in cases. This will compel the parties involved to resolve pending workplace and external cases promptly, which would mean following shorter and more informal processes, as well as making use of telephonic, virtual and written consultations. There should be more scope for settlements, while the less serious internal cases that do not justify dismissal could be settled without following a formal process.

All of the above can lead to an established practice of settling individual labour disputes faster and with less formalities in future.

Covid-19 also revealed deficiencies in legislation and regulations especially insofar as dealing with short-time and temporary lay-offs, forced paid leave versus unpaid leave and the submission of unemployment insurance claims are concerned. All of these processes will need to be reviewed and refined.

The Marikana incident of 2012 substantially altered the SA labour relations dispensation. The Covid-19 disruption of labour relations will be far more radical.

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