



t: 012 436 0900 / e: regsdienste@saou.co.za / w: www.saou.co.za

Regsdienste Nuusbrief | Legal Services Newsletter

Insig 10 van 2020 | Insight 10 of 2020

01/05/2020

VRAE EN ANTWOORDE VIR BL WERKNEMERS	QUESTIONS AND ANSWERS FOR SGB EMPLOYEES
KAN MY MAAND TOT MAAND OOREENKOMS GEKANSELLEER WORD NA DIE GRENDEL OPGEHEF IS?	UPON RETURN FROM LOCKDOWN – CAN MY MONTH TO MONTH AGREEMENT SIMPLY BE CANCELLED?
<ul style="list-style-type: none">Dit kan gebeur. Moet nie goedsmoeds enige dokument daaroor teken nie. Kontak die Unie.Hierdie situasies kan regstegnies meer ingewikkeld wees as wat dit voorkom en die Unie sal die werkewer wil betrek.Dit is goedskiks moontlik dat die Wet op Arbeidsverhoudinge (WAV) bepaal dat so 'n kontrak permanent geword het.	<ul style="list-style-type: none">It is certainly possible that the employer may attempt to do so. Do not sign any documents regardless the threat. Contact the Union.These situations are frequently more complicated than they appear – and the Union would want to engage the employer.Quite possibly the Labour Relations Act (LRA) determines that the contract has in any event become permanent.
KAN DIE DIENSVOORWAARDES EENSYDIG VERANDER WERKGWER MY – MET COVID AS VERSKONING?	CAN THE EMPLOYER SIMPLY CHANGE MY TERMS AND CONDITIONS OF EMPLOYMENT – USING COVID AS THE MOTIVATION?
<ul style="list-style-type: none">Daar sal werkgewers wees wat dit probeer, en sommige mag dit selfs implementeer.Moet nie goedsmoeds enige dokument	<ul style="list-style-type: none">The employer could try, and may go as far as to implement.Do not sign any documents regardless the

<p>daaroor teken nie. Kontak die Unie aangesien daar 'n dispoot by die KVBA (CCMA) verklaar kan word.</p>	<p>threat. Contact the Union. A dispute could be lodged with the CCMA.</p>
<p>KAN DIE WERKGEWER MY OPGEHOOPTE OF TOEKOMSTIGE VERLOF DEBITTEER – MET COVID AS VERSKONING?</p>	<p>CAN THE EMPLOYER USE OR DEBIT MY ACCUMULATED OR FUTURE LEAVE – USING COVID AS THE REASON?</p>
<ul style="list-style-type: none"> • Weereens mag die werkgewer poog om dit eensydig te doen. Moet nie goedsmoeds enige dokument daaroor teken nie . Kontak die Unie. • Die werkgewer is beklee met die bevoegdheid om te bepaal wanneer verlof geneem word. Die Departement van Arbeid het egter aangedui dat dit onder die omstandighede onaanvaarbaar is. Dit is juis waarom TERS se aanwending na heelwat wikk en weeg uitgebrei is. 	<ul style="list-style-type: none"> • Again the employer may do so unilaterally. Do not sign any documents regardless the threat. Contact the Union. • It is so that the Employer may lawfully decide when the employee takes leave. The Department of Employment and Labour has deemed this unacceptable and that is one of the reasons access to TERS was broadened from the original narrower plan.
<p>MAG DIE WERKGEWER 'N VERNINDERDE PERSENTASIE OF NIKS BETAAL NIE; OF MAG DIT "KORT TYD" OF 'N AFLEGGING AANKONDIG?</p>	<p>MAY THE EMPLOYER PAY A LESSER %, OR NOT AT ALL OR IMPLEMENT SHORT TIME OR A FURLOUGH?</p>
<ul style="list-style-type: none"> • 'n Dingende rede (soos 'n skielike opdroog van inkomste), mag die werkgewer dalk aanspoor om presies dit te doen . Daar is 'n sterk argument dat daar eers gekonsulteer moet word met die werknemer, (en as 'n minimum moet daar 'n TERS eis ingedien word). • Konsultasie sou nodig wees om te bepaal of daar werkbare alternatiewe is. • Voormalde kan gebeur saam met 'n poging om werktyd te verander ("kort tyd" synde korter werksure vir minder geld, of 'n aflegging sonder enige betaling vir 'n 	<ul style="list-style-type: none"> • Essential reason (such as a sudden drop in income), may tempt the employer to do so. There is some argument to be made that this needs at least be consulted with employees, (and as a minimum a TERS claim be lodged). • The need for consultation is to determine if there are viable alternatives. • The above goes with the attempted or possible alteration of working hours (short time or a furlough) (short time being shorter working hours for less money and furlough

<p>periode).</p> <ul style="list-style-type: none"> Die voorgaande waarskuwings oor instemming of ooreenkomste is van toepassing aangesien 'n erg kort tyd of aflegging steeds 'n ontslag kan wees. Dit is krities om indien so iets plaasvind, daar onderhandel moet word om die onderbreking so kort as moontlik te maak en daar 'n oplossing bewerkstellig word om die verlies in te haal. 	<p>being a period of 'no work no pay').</p> <ul style="list-style-type: none"> The above cautions apply. a severe short time or furlough may be equal to a dismissal. Important is to try and negotiate as short as possible an interruption, and a way to make up lost earnings.
<p>KAN DIE WERKGEWER VEREIS DAT EK DEUR DIE GRENDELSTAAT " ELEKTRONIES" KLAS GEE?</p> <ul style="list-style-type: none"> Ja dit mag, maar met die nodige toerusting nl. data, lesplanne, elektroniese platform en internet toegang. Dit spreek vanself dat sodanige aksies betaald is. 	<p>CAN THE EMPLOYER EXPECT ME DURING A LOCKDOWN TO TEACH "ELECTRONICALLY"?</p> <ul style="list-style-type: none"> Yes it may, provided the wherewithal is present or created, i.e. data, lesson plans, the electronic platform and internet access. The understanding would be that these actions are paid for.
<p>KAN DIE GRENDELSTAAT DIE REDE WEES VIR UIT DIENSSTELLING ('RETRENCHMENT')?</p> <ul style="list-style-type: none"> Dit kan beslis. Die werkgewer kan besluit dat die effek op hul finansies so dramaties is dat geen keuse gelaat word as om personeel uit diens te stel nie (om byvoorbeeld minder posisies te red). Dit is krities om te verstaan dat uit diensstelling in terme van art 189 van die WAV 'n interaktiewe en ingewikkeld proses is. Dit behoef nie enige persoon om net vir 'n ander te vertel dat dit moet of gaan gebeur nie . Die vereistes van proses en substansie is ingewikkeld en moet in detail uitgevoer word. Sentraal tot die proses is die interaksie met en oorweeg van 	<p>COULD THE LOCKDOWN OCCASION EVENTUAL RETRENCHMENT?</p> <ul style="list-style-type: none"> It certainly could. The employer may aver that the effect on its finances has been so dramatic that it has to retrench to preserve (for instance) fewer jobs. It is important to understand that retrenchment in terms of sect 189 of the LRA is an involved and technical process. It does not simply happen because someone says so. The process and fairness requirements are onerous and have to be observed minutely, and central to such an engagement is the consideration and exploration of reasonable alternatives.

alternatiewe.

#WantOnsGeeOm

SMS "HELP" NA
071 456 4375

*Normale SMS tariewe geld

#BecauseWeCare



SMS "HELP" TO
071 456 4375

*Normal SMS rates apply



+27 12 023 1333

SAOU DIENSSENTRUM
SAOU SERVICE CENTRE

sau@sau.co.za

