SHORT TIME WORK

INTRODUCTION

"Short time" work means a temporary reduction in the number of ordinary hours of work owing to reasons including, but not limited to, a reduction of trade, shortage of raw material, vagaries of weather, breakdown of plant machinery or buildings that are unfit for use or are in danger of becoming fit for use.

An employee is classified as being on short time if the following applies:

- it is for a temporary period, and there is only a limited amount of work for an employee to do with the usual employer;
- the employee is still under the contract of employment with his/her employer; and
- the employee is still expected and or expects to return to full-time employment with the same employer.

CIRCUMSTANCES

Traditionally, short-time is worked as an alternative to retrenchment. If there is less work and still the same number of employees to do it, short time means that the little work that remains can be equitably shared amongst employees.

Short-term work should not be imposed unilaterally by the employer as it entails a change to working hours and a reduction in remuneration. Therefore, the consent of the employees is necessary before the employer can do so. If employers were to unilaterally impose short-term work, it may be an unlawful breach of the employment contract. This can amount to a dispute of unilateral changes to the terms and conditions of employment. Therefore, an employer should notify and consult its employees or union representatives prior to introducing it.

In instances where employees refuse to consent to short-time work and the employer has a sound reason for implementing it, employees may run the risk of dismissal for operational reasons. The correct procedure would still apply.

Short time may also be worked, for instance, if orders for the employer's product fall significantly. However, if demand for the employer's product picks up, employees would be expected to perform their duties as normal in order to meet the demands.

Furthermore, employers may put employees on short time if it is contained in the contracts of employment, a collective agreement or if it is a custom and practice of the company to do so and employees are aware of this.

DURATION

A short time has always been regarded as a temporary measure. However, there is no prescribed period to put employees on short time. For example, it may last for a day, weeks, or months, but the timing should be reasonable and justifiable, and both parties must agree to it.

SELECTION OF EMPLOYEES TO BE AFFECTED BY SHORT-TIME WORK

When selecting employees for short-term work, an employer should apply the same standard of selection criteria used when contemplating dismissal in terms of section 189 of the Labour Relations Act 66 of 1995 (LRA). For example, the Last in First Out criteria and /or a combination of skills, depending on operational needs. The criteria should be reasonable and applied in a fair manner. It should not discriminate against employees on grounds included under section 6 of the Employment Equity Act 55 of 1998, e.g., gender, marital status, age, sex, sexual orientation, disability, religious belief, race, *etc*.

Employers should explain to the affected employees the reason for the short time and also keep them informed of the situation during that time.

A short time may also be introduced as an outcome of a retrenchment consultation process.

PAYMENT ON SHORT TIME AND DEDUCTIONS

Ordinary statutory and contractual deductions may be aligned with the change in payment. Where employees belong to a pension or medical aid fund, the employer should engage with the fund in order not to prejudice the future of the employee's contribution and benefits.

CAN EMPLOYEES CLAIM UNEMPLOYMENT INSURANCE FUND (UIF)?

Employees cannot claim UIF benefits when they are put on short-time work as they are still considered to be employed.

DISPUTE RESOLUTION

Disputes regarding unilateral changes to terms and conditions of employment are disputes of interest and, therefore, cannot be arbitrated by the CCMA. In the case where the employer unilaterally imposes short-time work without consulting its employees, employees may seek an interdict against the employer. In terms of the proposed amendments to the Basic Conditions of Employment Act (BCEA), employees who earn below the threshold may refer a claim of underpayment to the CCMA.

The application form can be downloaded from the CCMA Website (https://www.ccma.org.za/advicecategories/ccma-referral-forms/).

The other option for an individual employee is to directly refer the matter to the Labour Court for adjudication. If the change(s) affect a number of employees, they can go on strike after proper procedures have been followed. (See information sheet on Terms and Conditions of Employment).

In instances where the implementation of short time is applied inconsistently, on discriminatory grounds (e.g., applied to women only), affected employees may lodge an internal grievance. If the grievance remains unresolved, the employees may refer a dispute of alleged unfair discrimination to the CCMA. (See information sheet on Discrimination)

RELEVANT LEGISLATION

- Basic Conditions of Employment Act 75 of 1997 as amended
- Code of Good Practice on Dismissal based on Operational Requirements
- Employment Equity Act 55 of 1998 as amended
- Labour Relations Act 66 of 1995 as amended
- Unemployment Insurance Act 63 of 2001 as amended