

# **HONOURABLE MINISTER'S UPDATE TO THE PUBLIC ON THE IMPLICATIONS OF COVID-19 IN THE WORLD OF WORK**

## **Introduction**

I wish to follow-up, and update the public on my briefing of the 5<sup>th</sup> April 2020 to the media and Batswana in general on the implications of the COVID-19 State of Emergency as it relates to the world of work, and other aspects of my responsibility as Minister of Employment, Labour Productivity and Skills Development (MELSD). The latest developments, which I wish to cover, entail both the employment and labour side and then the skills development side.

The update will be based on the principles, actions and commitments, which I narrated on the 5<sup>th</sup> April 2020. It will be recalled that—I mentioned that—apart from the call made by His Excellency the President, Dr. Mokgweetsi E. K. Masisi, I highlighted that the inputs were part-based on prior consultations and agreement by the Labour Sector Tripartite, which comprises, government, the two (2) trade union federations (BFTU and BOFEPUSU), and business (represented by Business Botswana).

Drawing from the above, my briefings, to date, have emphasised the importance of social dialogue as a means of not only dealing with the challenges of COVID-19, but also

promoting decent work arrangements in Botswana—both in the short and long-term. I have also buttressed the importance of the content of the guidelines produced by the Labour Tripartite, and publicly-shared through a Public Statement on the 21<sup>st</sup> of March 2020.

As I proceed with this update, in respect to employment and labour issues, it is important that we be reminded of a few key issues regarding this COVID-19 State of Emergency and the world of work.

Firstly, His Excellency the President (H.E) has emphasised, and through government, provided that priorities are to support workers, stabilise businesses and to promote opportunities for economic diversification, while preserving lives.

Secondly, as a labour tripartite, we have agreed not only to support H.E's call, but to realise and accept that the adversity caused by the corona virus pandemic is not only new to all of us—as a risk to lives and economies, but cannot be blamed on either the employers or the employees.

Thirdly, and as a consequence of the facts stated above, it was important that good-faith-based **give** and **take** be our *modus operandi* (way of doing things), when we navigate through our common challenges, during the State of Emergency.

Fourthly, we have agreed that in executing the give and take process, we must continually engage, explain and invoke enforcement only when nothing reasonable can work.

It is within the above context that in the actual implementation, it is necessary that I explain three (3) key areas. These are:-

**1. The effect of the Emergency Powers (COVID-19) (Amendment) (No2) Regulations,2020—through Statutory Instrument (S.I) No. 63 of 2020:** because of the State of Emergency this has, by the insertions of Regulations 30D and 30E suspended Part VI of the Trade Disputes Act, and pronounced that businesses will not be able to retrench or dismiss workers during the COVID-19 State of Emergency.

As indicated above, it is necessary that an explanation be given regarding each of the above. In respect to suspending part of the Trade Disputes Act—on the basis of Section 3(2)(e) of the Emergency Powers Act at the disposal of H.E, the regulations, primarily, seek to ensure that: during the State of Emergency (of six (6) months, the workers cannot go on strike, and the employers cannot lock the workers out on account of one or other dispute that might arise between the worker(s) and the employer(s).

In essence, the suspension is to the effect that: should any differences arise between the parties during the State of Emergency, such differences have to be managed by the two (2) parties—without resorting to industrial action, or until such time that the right to strike or to lock out is reinstated by law. This engagement is the type referred to as give and take, and supported by the labour tripartite for the kind of considerations I touched on earlier.

From the wider public good, the suspension of these rights is necessary or expedient for securing considerations such as public safety, the maintenance of public order, the suppression of rebellion and riot, the maintenance of supplies and services considered essential to the life of the community(ies).

It is considered that the exercise of industrial action rights during the State of Emergency by either or both workers and employers who are described as, or are involved in the value-chain of essential services as defined in Regulation 2 would frustrate the efforts to preserve the health and lives of Batswana or people, in general.

In the event that a dispute may arise, during the State of Emergency, the office of the Portfolio Minister (me in this case), or the Permanent Secretary can be approached to assist with resolution.

In respect to 30E, and disallowing retrenchments and dismissals of workers during the State of Emergency—let me introduce this subject by revisiting what the desire is. It is that workers be supported with a view to ensuring that lives are protected, while businesses are stabilised for the post COVID-19 period. Life has to go on after that. It is for this reason that the government has come up with a P5bn package, which is valued at 2.5% of the GDP-- aimed at providing wage relief and other concessions (tax and cashflow support), which though not a 100% will help all concerned to stay afloat.

It is understood that the relief packages are not perfect substitutes, but what is aimed to achieve is to aid meaningful engagement between the contracting parties (employers and employees) to maintain their contractual relationship or to rearrange it through consultation and come up to some agreement on how to manage their common interests.

Within the spirit espoused by H.E and the labour tripartite, and on the basis that none of the two (2) contracting parties can alter the terms and conditions of the employment contract without mutual consent, give and take conversations are encouraged as a means of harmonious industrial relations. What ultimately gets agreed—whether it is full-pay, half-pay, quarter-pay, taking paid leave, taking unpaid leave has to be something, which is agreed upon, or consented to on the basis of the facts available. These facts may

include, but not be limited to the financial status of the business, and the packages on offer by the Botswana Government.

Regulation 30E does recognise that: circumstances may prove difficult for a business to carry on in operation during the course of the State of Emergency or beyond. In the first instance; if after all else, it is clear that the business has to cease—there is no expectation that the business must carry on with the employees, because it will have no life. The provision just allows that, to the extent that the contract between the employer exists, until terminated by process of law—the two (2) parties must engage and come to a conclusion of how they may separate. What is outlawed is dismissal, or a retrenchment on the basis of and during the state of emergency.

In the second or related instance, which may come up, or have to be considered as a cure, which can come about through consultation, or by mutual consent, is for the parties to both accept that the COVID-19 circumstances are not a fault of either, and that because they are lawfully engaged they have to explore the reality of the concept of *force majeure*. The effect of this would be for both parties to agree to suspend their employment contract on account that their contractual obligations are frustrated by temporary circumstances, which neither of them could foresee, and cannot control. Under the circumstances they could mutually agree to suspend their relationship, until things return to normal. At that stage they would resume on the same terms as existed before.

In essence, what the pronouncement seeks to achieve is to ensure that there is an opportunity to retain workers and to protect lives, while looking at the future, but to allow for negotiations if things cannot just work out.

Batswana, betsho—at this point it will be recognised that the **give** and **take** we are talking about is not just about the relationship between the employer and the employee- it is about government, business and society (workers and their families) collaborating and working to support each other towards securing the nation and our economy through what we must all consider to be the very challenging, but temporary hiccups.

As a government, we cannot force that which is totally impractical, but we would not have done our duty to build this nation if we do not remind each other of our culture and principles of Unity and Self-Reliance.

There is no better time to demonstrate that goodwill and resilience, but that we must do through reasoned engagement.

**2. the reality that; except for suspension of industrial action and the prohibition of dismissals and retrenchments during the state of emergency, as alluded to above, labour laws of Botswana remain in force and effect:** Bagaetsho, as

indicated above, and in my previous address of the 5<sup>th</sup> of April 2020, it must be understood that the State of Emergency has not suspended or set aside all other employment-related laws and regulations. They remain in force and must be followed.

What we recommend is that laws be adhered to the extent that they have not been suspended in line with the guidelines provided by the Labour Sector Tripartite in their Public Statement of the 21<sup>st</sup> March 2020.

That statement, which is a result of consultations involving government, labour and business is not law and is not a substitute for existing contracts, but is something that can help engagement and the development of workable arrangements in the workplace. Remember that the government of the Republic of Botswana and social partners—including the International Labour Organisation (ILO), have signed and are, actively, promoting and implementing the Botswana Decent Work Country Programme (BDWCP) 2020-24. Please support it as a basis of sustainably creating wealth; as well as growing and developing our economy for posterity.

**3. The need to review labour laws (the Workers Compensation Act and the Factories Act); in order to account for COVID-19 emerging issues:** it is necessary that a review of other labour laws be undertaken in light of the challenges

presented by COVID-19; in order to offer desirable and enhanced protection in the workplace.

Out of necessity, and partly as a consequence of COVID-19, the Workers Compensation Act and Factories Acts have to be improved at the earliest.

In terms of Section 27 of the Workers Compensation Act, I am in the course of publishing a notice in the Government Gazette with the aim of inserting COVID-19 to the Second Schedule as a scheduled disease.

The insertion is intended to protect those who may contract the disease in the course and scope of their jobs, and thus enable them to be compensated per Section 11 as read with Section 21 of the same Act.

Bagaetsho, it is necessary that I highlight as I do now that: an employer will only be liable to compensate an employee under the conditions specified under Section 11 (2). Those conditions are basically to the effect to benefit—an employee has to either be incapacitated, or not have caused harm to him or herself through such as self-infliction or misconduct leading to injury.

As far as the Factories Act is concerned, I am—in terms of Section 55 (1) (e), considering it expedient to extend Parts IV, V,VI and VII to ensure that all places of work have the basic health and safety measures to safeguard both workers and members of the public from COVID-19.

It is a matter of gearing ourselves to promoting a safe working environment to give the necessary comfort to the business owners, the workers and the customers.

It is also necessary to strengthen our monitoring mechanisms if we are to enhance compliance with labour laws, policies, regulations as well as tripartite agreements. Pursuant to this my ministry is building capacity within the labour and factory inspectorate functions. This is an issue that we consider it not only critical, but also urgent.

Having discussed regulatory reviews in some detail, which I hope will help all the workplace-sustaining measures that are needed, I wish to briefly update you on the status of what happened between the 5<sup>th</sup> of April 2020 and now regarding the world of work.

The last time, when I was here (5<sup>th</sup> April 2020), I expressed concern about some employers who had chosen not to comply with the agreed guidelines by issuing retrenchment notices to employees or forcing them to take leave or unpaid

leave, or taking such other action, which was inconsistent with the spirit or intention of the law. I had highlighted that certain unpalatable action had been taken to the detriment of employees--despite the relief packages provided by the Botswana Government aimed at alleviating cash flow problems for those businesses affected by COVID 19.

From the 12<sup>th</sup> of March through to the 10<sup>th</sup> of April, the Commissioner of Labour and Social Security received notices from 53 companies: giving notice of their intention to retrench employees.

I was very unhappy, because a number had gone ahead, evidently, without regard being given to either His Excellency the President's call for solidarity in action, or seeking to obtain financial support from the efforts being put in place, by the Botswana Government, to secure the country.

I now return a happier minister, because—as a consequence of ongoing and collective efforts, by the labour tripartite members (Business Botswana) and other stakeholders, in government and elsewhere, we have started experiencing the right behaviours:-

26 companies of the 53 have indicated to the Commissioner of Labour that: since the 5<sup>th</sup> of April 2020 they have reversed their initial positions to retrench staff—further that they are

in dialogue with their employees—in relation to retaining them.

Discussions are ongoing—within businesses to agree on retention strategies, and quantum of pay (whether full, half or quarter), and proper and legal leave arrangements are being made. Only one (1) company has confirmed the intention to proceed with retrenching 27 employees. That intention will be subject to the law as discussed above.

Overall, we are delighted that more and more businesses are informing themselves of the relief packages provided by the Botswana Government—and have, in fact, commended the scope of those reliefs, and their usefulness to their business circumstances. More are informing themselves of, and agreeing to adopt the best-practice guidelines recommended by the labour sector tripartite as best practice, during the COVID-19 State of Emergency and beyond.

It is essential that during this period of uncertainty we should all be promoting stability in the workplace. For this reason, social dialogue is deemed the best method of resolving issues of concern to employers and employees.

In conclusion, I wish to point out that I am encouraged by all the companies that have either indicated, or are actively, and

presently, putting in place work arrangements which will enable them to retain employees, or to continue paying them full salaries or agreed proportions thereof.

I am also encouraged by the number of businesses which are engaging Botswana Unified Revenue Service (BURS) for assistance to pay employees.

As for those businesses that have not responded positively, or are not heeding the call to cooperate towards saving our economy and nation from the COVID-19 pandemic, and its effects, I can only advise them that it is not only the interest of this country, but also in their interest.

Government is committed to working with employers and workers, as well as their organisations to ensure that we all overcome the adversities associated with COVID-19.

## **DEPARTMENT OF SKILLS DEVELOPMENT (DSD)**

It is necessary that I give a brief on the skills development aspect, as you may be aware that part of my ministry mandate is to deliver skills development through Brigades and Certificate offering Technical Colleges.

### **1.1 Academic Calendar**

1.1.1 All our institutions were closed with effect from the 23<sup>rd</sup> March 2020 pursuant to Regulation 20 of the Emergency Powers (COVID-19) Regulation 2020. This has caused a disruption to our academic calendar.

1.1.2 The most affected academic activities are as follows:

#### **a) National Craft Certificate (NCC) Examinations**

The examinations, administered by Madirelo Training and Testing Centre (MTTC), were scheduled as follows:

- i. theory examinations scheduled from 11<sup>th</sup> to 15<sup>th</sup> May 2020; and
- ii. practical examinations scheduled from 8<sup>th</sup> to 26<sup>th</sup> June 2020;
- iii. A total of two hundred and seventy-four (274) 4<sup>th</sup> year candidates were scheduled to sit for May/June **examinations**. This number excludes private candidates and re-sits because at the

time of closure, registration was ongoing and the numbers were not yet verified.

**b) Certificate in Accounting and Business Studies and National Certificate in Secretarial Studies:**

- i. Students on these programmes were on industrial attachment at the time of closure.
- ii. A total of one hundred and sixty one (161) trainees on attachment at the time of closure are affected.

1.1.3 The time lost will be compensated by the same duration to facilitate syllabus coverage and preparation for the examinations therefore, examinations will be re-scheduled to a later date. The academic calendar will be rescheduled as follows; the May/ June 2020 examinations will be in November/December 2020 and November/December 2020 examinations will be re-scheduled to May/June 2021. And this rescheduling will also cater for those who were on attachment at the time of closure.

1.1.4 As a consequent of the said rescheduling of the academic calendar, the next intake for new trainees in January 2021 will also be affected. Stakeholders will be consulted to consider how the next academic calendar can be scheduled, including review of the related processes and procedures related to that.

## **1.2 Allowances**

- 1.2.1 The Ministry will continue to pay monthly allowances for eligible Brigades and Technical Colleges trainees for the duration of the state of public emergency. Trainees have been paid their April 2020 monthly allowance;
- 1.2.2 Former work-based learning trainees (*trainees engaged to carry out maintenance in institutions as temporary assistants*) who are now enrolled as apprentices in the Institutions will be paid monthly allowances arrears.

## **1.3 Boarding Facilities**

- 1.3.1 The Department of Skills Development has thirty-six institutions across the country, fourteen of the institutions have boarding and kitchen facilities, with a total capacity of 1386 beds. These facilities are available for use by Front Line Staff,
- 1.3.2 Currently six (6) institutions are being used for accommodation of Frontline workers (Botswana Defence Force and Health staff) and one is being used as a quarantine site. They are:

INSTITUTIONS WITH BOARDING FACILITIES				
#	INSTITUTION	LOCATION	CAPACITY	COMMENTS
1	Okavango Brigade Centre	Shakawe	50	<i>Operating as a quarantine so far 18 people</i>
2	Nswazwi Brigade Centre	Nswazwi	48	<i>Accommodating health personnel</i>
3	Mosetse Brigade Centre	Mosetse	96	<i>Accommodating BDF</i>
4	Ngethu Brigade Centre	Gumare	96	<i>Accommodating BDF</i>
5	Ghanzi Brigade Centre	Ghanzi	96	<i>Accommodating BDF</i>
6	Jwaneng Technical College	Jwaneng	360	<i>Accommodating BDF</i>
7	Palapye Technical College	Palapye	120	<i>Reserved for BDF</i>
8	Barolong Brigade Centre	Pitsane	96	<i>Available</i>
9	Tswapong Bokone Brigade	Lerala	48	<i>Available</i>
10	Serowe Brigade Centre	Serowe	96	<i>Available</i>
11	Marobela Brigade Centre	Marobela	94	<i>Available</i>
12	Zwenshambe Brigade Centre	Zwenshambe	48	<i>Available</i>
13	Chobe Brigade Centre	Kasane	42	<i>Available</i>
14	Kang Brigade Centre	Kang	96	<i>Available</i>

- 1.3.3 The various Departments using the facilities determine how the rooms are shared by their staff, they also assist with the cleaning, disinfection and basic maintenance to make them conducive for occupation. They also provide requisite PPE for their staff to carry out their duty.
- 1.3.4 Institutions without hostel accommodation are also available to be utilized for COVID-19 as and when needed. Plans are underway for general maintenance of hostels, ablutions as well as fumigation of facilities to make them conducive for occupation. Institutions have been sub-warranted to provide requisite PPE for staff members on duty.

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