

Profit or workers lives? Employer responses to the Covid-19 pandemic



Executive summary

This report analyses the response of 75 companies to the state of lockdown, 35 who remain operating as an essential service and 40 who have ceased operating. While the sample of companies is not nationally representative, the findings provide important insights into the challenges workers are facing.

The key findings highlight:

- Companies that are still operating are largely failing to provide basic or adequate health and safety provisions. Out of 35 companies that are still operating, 30 had not provided personal protective equipment (PPE), 29 had not undertaken measures to ensure social distancing in the workplace, 28 had not provided transport to workers and 22 had not provided hand sanitizer.
- For companies that have ceased operations, only 9 out of 40 companies have applied the Covid-19 Temporary Employee/Employer Relief Scheme (C19 TERS). Most employers are shifting the economic burden of the crisis onto their workers through forcing them to take paid and unpaid leave.
- Some companies that may be categorized as essential services, particularly in the food and beverage and chemical sectors, produce non-essential and luxury goods that are not required in the fight against the virus. At these companies, continued production risks the lives of workers unnecessarily.
- High levels of employer non-compliance with registering their workers for the Unemployment Insurance Fund (UIF) will severely limit the relief that workers may be able to seek and many workers, through no fault of their own, who should qualify to access the benefit will receive nothing.

To address the urgent needs of workers, their families and communities the report makes the following recommendations.

- The Department of Employment and Labour (DEL) must intensify inspections and halt operations at all companies that fail to comply with Occupational Health and Safety Act and the specific guidelines that have been issued in response to the risks posed by Covid-19.
- Further that the DEL should prioritise inspections at large workplaces where workers are most at risk.
- That the classification of essential goods and services be reviewed so that workers lives are not jeopardized for the production of luxury goods.
- That employers be compelled to apply for the C19 TERS if they are unable to pay salaries to workers during the lockdown period.
- That the C19 TERS fund be extended to all workers, regardless of whether their employer has made contributions to the fund or not.

1. Introduction

This report has been compiled by the Centre for Social Change, University of Johannesburg and the Casual Workers Advice Office (CWAO), a registered non-profit organisation based in Germiston, Gauteng. The CWAO was established in 2011 to assist workers, particularly precarious workers, to access rights and to organise.

The report provides an insight into the response of employers following the lockdown that was instituted in terms of the Disaster Management Act 2002 and its amendments. It is intended to provide a snapshot of employer responses and to highlight the significant gaps in protections for workers during this period.

The analysis presented is based on 75 company reports compiled by the CWAO. These reports were generated through discussions with workers at companies around Gauteng where the CWAO has previously organised as well as through discussions with workers who have phoned in from all around the country. The sample of companies is therefore biased towards those that have self-reported problems. While this may not be a representative sample, these reports come from a range of large as well as small-to-medium enterprises and provide an important insight into what is currently unfolding. This is the first report of its kind to provide this kind of quantitative and qualitative detail. In order to protect the workers who made these reports, their names and the names of their companies have been concealed and only the sector provided.

The report first details what employers are expected to do under the lockdown and then examines what has been happening in practice.

2. Government provisions for companies during lockdown

The regulations and government circulars that have been published regarding the lockdown direct employers as to what they are required and expected to do.¹ 32 essential goods and services are able to continue to operate, providing adequate health and safety measures are taken. Companies that are not essential services and where employees cannot work from home are required to cease operating. In each case, the government has made provisions as to what should happen.

2.1 What companies operating as essential services are expected to do.

In order to operate as an essential service companies must apply to the Companies and Intellectual Property Commission's (CIPC) Bizportal website. The application and registration process is automatic and certificates have been made available instantly. As has been reported,

¹ Our sincere thanks to Adv. Suzanna Harvey who provided summarized and simplified summaries of the regulations. Any misinterpretations remain our own.

this system has been open to abuse with a number of businesses fraudulently obtaining certificates.²

For companies still operating under lockdown, they are required to take the necessary health and safety precautions. On 17 March 2020, the Department of Employment and Labour issued a circular entitled *Workplace Preparedness: Covid-19*³, which required employers to take new risk assessments and implement enhanced safety measures. These included but are not limited to:

- Engineering controls. Taking measures to isolate employees from hazards such as installing physical barriers between people, ensuring proper ventilations and installing air filters.
- Administrative controls. Discontinuing or minimizing meetings and contact.
- Safe work practices. Taking measures to limit the duration and frequency of potential exposure to the virus such as: requiring frequent hand washing, providing no-touch refuse bins and disposable paper towels.
- PPE. Providing gloves, goggles, masks, aprons, hair and shoe covers and provide adequate training on their use.

Furthermore, under the Occupational Health and Safety Act and ILO Conventions, which South Africa has ratified, workers cannot be expected to work in unsafe conditions and have the right to refuse to comply with instructions that put them in danger.

2.2 What companies that have ceased operations are expected to do

On 25 March 2020 the DEL signed a Directive establishing the Covid-19 Temporary Employee/Employer Relief Scheme (C19 TERS). The C19 TERS will pay employers the cost of employees' salaries for up to three months. In companies with more than 10 employees the employer must apply for the benefit on behalf of their employees. In companies with fewer than 10 employees the worker must apply for the benefit themselves.

The benefit payable comes from the national disaster fund, and is delinked from the usual UIF benefits. For each affected employee, the scheme will pay a replacement salary, calculated on a sliding scale, that will pay at least the minimum wage for that sector up to a maximum of R17,712 a month and not R6,730, as has been reported.⁴ Furthermore, unlike under normal UIF benefit scheme rules, employers are allowed to supplement these benefits in order to allow employees to receive 100% of their salary.

However, companies can only apply if they have registered their workers with the fund. Unfortunately, a significant number of employers are failing to register and pay their workers UIF

² See <https://www.timeslive.co.za/news/south-africa/2020-03-31-essential-service-permits-wrongfully-awarded-to-small-businesses-will-be-revoked/>

³ See <https://www.labourguide.co.za/workshop/1773-covid-19-guideline-mar2020/file>

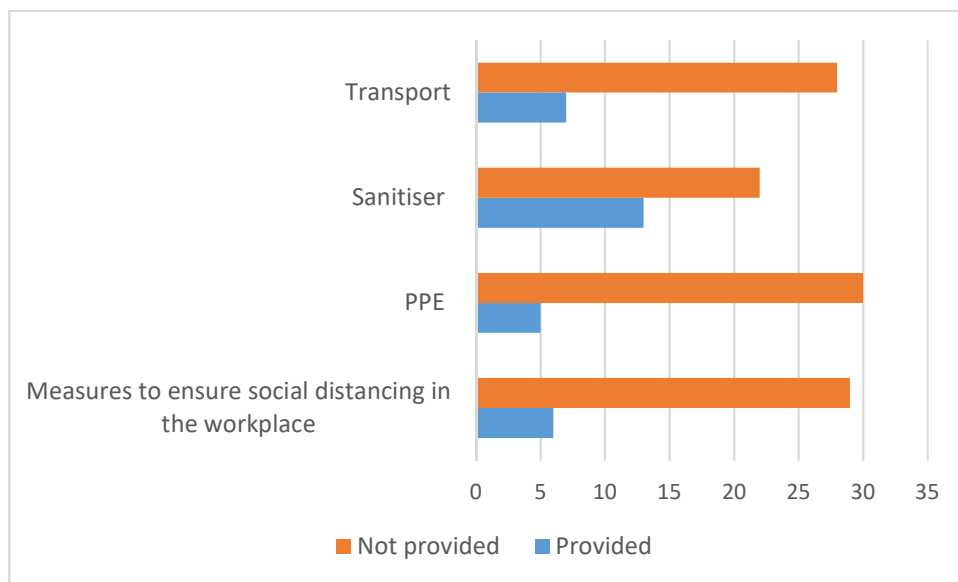
⁴ See <https://www.businesslive.co.za/bd/national/2020-04-08-uifs-r30bn-support-for-workers-hit-by-the-lockdown-is-ready-for-claims/>

benefits, as required by law. The 2017 annual report from the then Department of Labour found non-compliance that it uncovered through payroll audits to be as high as 28%.⁵ The real figure of non-compliance is likely to be much higher.

A further problem with the C19 TERS benefit is that the directive from the Department of Employment and Labour, as it currently stands, does not compel employers to apply for the benefit. Relatively quickly it became apparent to the Department that employers were not utilising the fund but rather forcing workers to take a combination of paid and unpaid leave. This led the Minister to issue a statement a mere 3 days after the C19 TERS benefit was established to implore employers to show 'social solidarity' by not forcing employees to take paid and unpaid leave.⁶

3. How essential service companies are operating under lockdown

Figure 1: Reports of health and safety measures being provided or not provided



This report analyses what health and safety measures 35 companies, which remain operational, have put in place following the lockdown. All of the companies fall into the category of industries that have been declared as producers of essential goods or providers of essential services. However, the blanket coverage given to certain industries to continue production, such as Food and Beverage, has also allowed the continued production of goods that we may question the extent to which these can be regarded as essential services. For example, the Ferrero chocolate factory obtained an essential services certificate as the food and beverage sector is classified as an essential service. However, during this serious health crisis it must be questioned whether

⁵ See https://www.ufiling.co.za/docs/annualreport_2017.pdf

⁶ See <http://www.labour.gov.za/update-on-employment-and-labour-issues-arising-from-the-lockdowns>

goods, such as luxury chocolates, that do not support the response to the crisis should be allowed to be classified as an essential service.

The table in appendix 1 provides a detailed analysis by sector and the actions taken by employers. Figure 1 (above) provides a summary of this information. The vast majority report a lack of safety measures are being implemented. Out of 35 companies that are still operating, 30 had not provided personal protective equipment (PPE), 29 had not undertaken measures to ensure social distancing in the workplace, 28 had not provided transport to workers and 22 had not provided hand sanitizer. Only 6 of the 35 companies had instituted measures to ensure social distancing in the workplace.

Even in cases where sanitizer is being provided, as the table in appendix 1 highlights, often the supply is inefficient or intermittent. The inadequate health and safety measures are highlight in the following reports by workers,

We are provided with a mask that we must wear and wash, of which some employees don't wash it. They wear it Monday to Friday without washing it until they get another one. And another thing, we are overcrowded and we are not supposed to be overcrowded when we work. The place we are working in is dirty, last week Thursday and Friday there was no soap. How are we supposed to wash our hands?

We are working but we are risking our life and what bothers me is that they only provide us with gloves once, since lockdown, and then they said it was finished. So, you see, we are working under risk.

Furthermore, as one report from a worker demonstrates, employers appear to be making arbitrary rules about what health and safety measures they are putting in place, contrary to the DEL guidelines.

He [the employer] does not provide us with mask and gloves. He told us it is not supposed to be used, according to him. The only thing they are providing is sanitizers. According to me all they care about is the profit they are making, they do not care about our lives

In cases where employers are providing transport, as the table in appendix 1 shows, often it is restricted to permanent workers only or that workers are asked to financially contribute to this transport.

Where workers have attempted to refuse to work because of a lack of safety measures, as is their rights under the Occupational Health and Safety Act, workers have been threatened with no pay. Given the high levels of unemployment and poverty in South Africa, some workers have felt compelled to continue working despite the risks to their health. As one worker reports, poverty and desperation compel workers to work despite the risks they know they are taking, 'Our

problem as employees is that we are so desperate for money, more than for our life, that is why the employers use us’.

4. Employer responses in companies that have ceased operating.

The CWAO contacted or received reports from 40 companies that have ceased operations during the lockdown. The companies covered 11 sectors, as demonstrated in the table appendix 2.

Figure 2: Employer responses in companies that have ceased operating

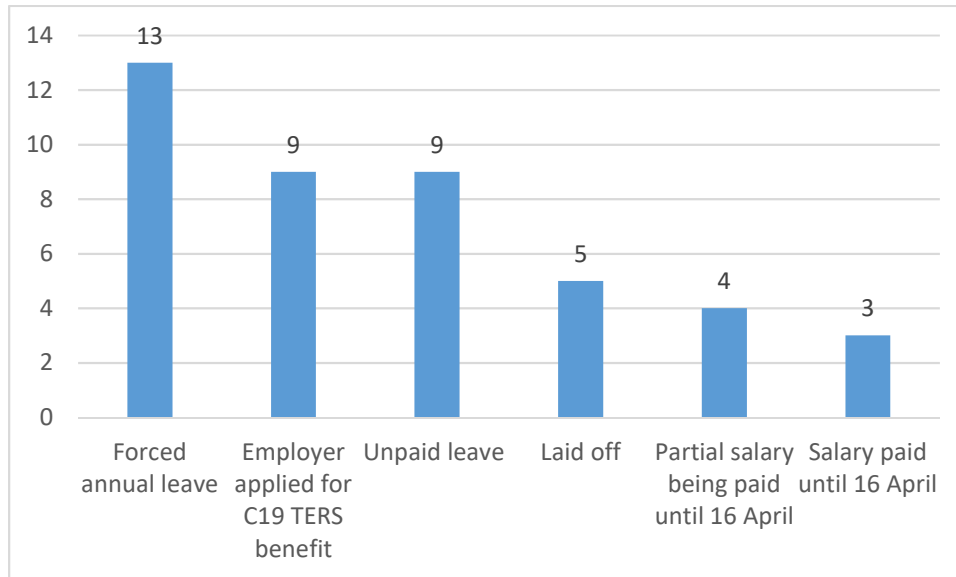


Figure 2 demonstrates that despite the pleas from the Minister of Employment and Labour most employers have not applied for the C19 TERS benefit on behalf of their workers. Indeed, 22 of the 35 companies analysed have compelled their employees to take either paid or unpaid leave. Worker reports make clear how they feel about this.

I'm a hard worker in this company but he didn't even pay me during for these 21 days. It feels so bad to work for someone who only thinks of himself...he is paying me small change compared to the work I do for him. I need to buy groceries and pay rent. Really our bosses are so unfair and cruel. They are thinking only of their income.

I feel let down by my company... I feel like the company cannot put employees first when we face things such as this epidemic as a country. It is possible for us to work from home... but they are putting us off work during lockdown and still taking off from our leave days. I feel that it is wrong, it's not right and they know it's not right. But then since they are the big guys in power they feel like they can do anything to us.

Only 7 companies analysed for this report have heeded the call for 'social solidarity' by the Minister of Employment and Labour and have undertaken to pay either a full or partial salary

until 16 April, when the lockdown is currently scheduled to end. In 14 of the companies analysed workers are on unpaid leave or have been laid off, leaving them with an uncertain future.

5. Recommendations

The Covid-19 pandemic poses unique and complex socio-economic challenges for South Africa. The analysis within this report highlights some of the immediate gaps between the policy responses from government, the response from employers and the experiences of workers. In order to address these gaps this report makes the following recommendations.

- The DEL must intensify inspections and halt operations at all companies that fail to comply with Occupational Health and Safety Act and the specific guidelines that have been issued in response to the risks posed by Covid-19.
- Further that the DEL should prioritise inspections at large workplaces, where workers are most at risk.
- That the classification of essential goods and services be reviewed so that workers lives are not jeopardized for the production of luxury goods.
- That employers be compelled to apply for the C19 TERS if they are unable to pay salaries to workers during the lockdown period.
- That the C19 TERS fund be extended to all workers, regardless of whether their employer has made contributions to the fund or not.

Appendix 1

Table 1: Working conditions in companies operational under lockdown

Sector	Measures to ensure social distancing in the workplace	PPE provided	Sanitizer provided	Transport provided	No safety measures reportedly taken	No work, no pay	Lay offs	No transport	Salary reduction	Other
Banking and Finance					x					
Banking and Finance									x	
Food & Beverage					x	x				
Food & Beverage				For permanent workers only			Labour broker workers laid off			
Food & Beverage		x		x						
Food & Beverage	x	x								
Food & Beverage		x		Workers must pay 50% of cost						
Food & Beverage		Only gloves provided	Only in the morning					x		
Manufacturing			x							
Manufacturing						x				
Manufacturing						x				
Manufacturing										

Sector	Measures to ensure social distancing in the workplace	PPE provided	Sanitizer provided	Transport provided	No safety measures reportedly taken	No work, no pay	Lay offs	No transport	Salary reduction	Other
Manufacturing				x			x			
Manufacturing				Only for permanent workers						
Manufacturing						x				
Manufacturing						x				Only permanent workers told to report for work
Manufacturing			x	x						
Manufacturing	x		x			x		x		
Manufacturing								x	x	
Manufacturing							x			Only permanent workers told to report for work
Manufacturing			x	Only for workers with particular duties.						
Manufacturing			x				x			

Sector	Measures to ensure social distancing in the workplace	PPE provided	Sanitizer provided	Transport provided	No safety measures reportedly taken	No work, no pay	Lay offs	No transport	Salary reduction	Other
Manufacturing	x		x							Only workers living locally to the factory are being told to report at work
Manufacturing					x			x		
Manufacturing			Only in the morning					x		(but only in the morning)
Manufacturing	x								x	
Manufacturing			x							
Retail	x	x	x							
Retail	x		x							A risk benefit is being provided to permanent workers only

Sector	Measures to ensure social distancing in the workplace	PPE provided	Sanitizer provided	Transport provided	No safety measures reportedly taken	No work, no pay	Lay offs	No transport	Salary reduction	Other
Retail			Only in the morning					x		Workers report warehouse is overcrowded
Retail			X					X		Workers report warehouse is overcrowded
Security						x		x		
Service										
Service										
Service					x	x				

Appendix 2

Table 2: Employer responses in companies that have ceased operating under lockdown

Sector	Salary paid until end of lockdown	Partial salary being paid	Forced annual leave	Employer applied for C19 TERS benefit	No work, no pay	Laid off
Agriculture						x
Banking and Finance			x			
Construction					x	
Food & Beverage				x		
Food & Beverage		x				
Food & Beverage						x
Food & Beverage			x			
Hospitality			x			
Hospitality			x			
Hospitality					x	
Hospitality			x			x
Manufacturing			x			
Manufacturing				x		x
Manufacturing					x	
Manufacturing				x		
Manufacturing			x			
Manufacturing				x		
Manufacturing			x			
Manufacturing				x		
Manufacturing	x					
Manufacturing	x					
Manufacturing			x			
Manufacturing				x		
Manufacturing					x	
Manufacturing	x					
Manufacturing					x	
Retail					x	
Retail					x	
Retail				x		
Retail				X		
Retail		x				

Sector	Salary paid until end of lockdown	Partial salary being paid	Forced annual leave	Employer applied for C19 TERS benefit	No work, no pay	Laid off
Retail			x			
Retail						
Road freight and logistics			x			
Security			x			
Services		x			x	x
Services					x	
Services				x		
Transport		x				

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