

## No water, no work – must employees be paid?

Some businesses need water in order to function. The prevailing drought in the Western Cape has led to unpredictable interruptions due to the implementation of water rationing measures. Interruptions of water supply can be also be due to a variety of other reasons. Contingency plans may be inadequate, which may result in employees not being able to work. Are the employees entitled to be paid?

The principles are similar to those that apply in the case of power interruptions. We addressed this in a newsletter a few years ago, but the principles can be applied as follows in the current context:

1. The normal rule is that the employer has an obligation to pay if the employee makes his or her services available to the employer. The obligation to pay is not dependent on any work actually being performed.
2. The employer, therefore, has an obligation to pay even if the employee's services cannot be utilised due to circumstances beyond the employer's control, such as interruptions in water supply.
3. If the nature of the contract is such that the employee is not paid for making his or her time available to the employer, but rather for producing a certain result (e.g. commission earners), then the employer's obligation to pay only arises once that result is delivered. Similarly, if the employee is appointed on an "as and when needed" basis, then the employer will only have an obligation to pay if the employee has already been called upon to work and the interruption in water supply occurs during the time that the employee has agreed to work.
4. In order to bypass the normal rule, an employer may negotiate an agreement with its employees that the obligations of both parties are suspended or changed for any period that performance becomes impossible due to circumstances beyond the control of both parties.
5. Some Bargaining Council agreements have provisions that deal with the consequences of impossibility of performance. Such agreements prevail over the common law position (par 1 above) or any agreement between the employer and its employees.

In short, employees are normally entitled to be paid for tendering their services during an interruption of water supply. Employers are not entirely powerless, though. They can negotiate a contractual arrangement with their employees with a view to mitigate the situation.

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