

Power Outages – must employees be paid?

The recent power outages have given rise to the question as to whether employees can insist on payment of their salaries or wages for the duration of such outages. Our understanding is that following principles apply:

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 utilized due to circumstances beyond the employer's control, such as during the power outages experienced recently.
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 the need arises" basis, then the employer will only have an obligation to pay if the employee has already been called upon to work and the power outage then occurs during the time that the employee has agreed to work.
4. In order to override the normal rule, an employer can enter into an agreement with its employees that the obligations of both parties be suspended for any period during which performance becomes impossible due to circumstances beyond the control of both parties.
5. Some Bargaining Council agreements have provisions dealing with the consequences of impossibility of performance, in which case it will 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 payment during a power outage, but employers are not entirely at the mercy of Eskom. They can enter into a contractual arrangement with their employees to mitigate the situation.

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www.labourwise.co.za is an on-line labour relations service aimed at assisting employers with the implementation of effective labour relations. They can be contacted via the website or info@labourwise.co.za.