

EMPLOYMENT

Loadshedding – what should employers know?

5 October 2022 7 min read

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The recent announcement of the [resumption of load shedding](#) throughout the country may have severe implications for business and labour relations.

Employers and employees should know their rights and duties during periods of interrupted power supply. Employers need to ensure that they comply with labour law requirements while at the same time, implementing measures to reduce the negative impact that loadshedding has on their businesses.

Employer and Employee Obligations

Many employers are under the impression that when employees are unable to work due to loadshedding the ‘no work, no pay’ principle applies. This is not the case. Our common and [labour laws](#) are clear – if the employer expects the employees to be at work at a specific time and on a specific day and the employees comply with these requirements, the employer is obliged to pay them for that time. This is regardless of whether the employees were able to perform their duties or not.

The employment contract is a reciprocal agreement in terms of which an employer's obligation to pay an employee is subject to the employee doing work for or putting his/her product capacity at the disposal of the employer. The duty to pay and the corresponding right to remuneration do not arise from the actual performance of the work, but from the tendering of service or productive capacity.

Therefore, where an employee offers to do work and the employer does not want the employee to work or cannot provide the employee with work (due to loadshedding or any other reason), the employer is still obliged to pay the employee his/her wages or salary. An employer is therefore obliged to perform even when an employee is unable to perform due to circumstances beyond the control of the employer.

To reduce the losses associated with this cessation of work during loadshedding, some employers may wish to treat these stoppages as meal intervals. The limitation of this approach is not only that the break in supply of electricity may last several hours but also that, in terms of section 14 of the [Basic Conditions of Employment Act 75 of 1997 \(BCEA\)](#), an employer must pay employees for any lunch break in excess of 75 minutes, unless the employee lives on the premises.

A better strategy available to some employers is to rely on agreed procedures that apply to interruptions of production, such as in the metal and engineering industries.

In terms of section 7 of the Metal and Engineering Industries Bargaining Council Main Agreement (the Agreement), an employer may implement “short time” (i.e. reduced working time) owing to unforeseen contingencies and/or circumstances beyond the control of the employer. This includes (but is not limited to) power problems, interruptions and/or failures.

The Agreement differentiates between planned and unplanned loadshedding. Unplanned loadshedding is, for example, where Eskom cannot with complete certainty inform the public of exactly when load shedding will be implemented (what Eskom does rather, is inform us of the likelihood of when load shedding may be implemented). Planned loadshedding is load shedding that occurs at a pre-determined and published time and date.

The Agreement provides that, where the circumstances are unforeseen or unplanned (such as unplanned load shedding) the employer may:

1. Elect to send the employees home, provided they shall receive not less than four hours' work or pay in lieu thereof; or
2. Expressly instruct employees sent home to return, where the employer believes work can be resumed, provided the employees shall receive not less than four hours' work or pay in lieu thereof.

Unfortunately, loadshedding is sometimes unplanned with Eskom only announcing its implementation a few hours before it commences or changing it between stages during the loadshedding period, resulting in unexpected changes in planned loadshedding schedules. This may be hugely disruptive for employers and especially onerous on employers in the large metal and engineering industry who are subject to the Agreement.

An employer may implement short time, expecting loadshedding to commence on a specific day, at a specific time and for a specific duration; if the loadshedding does not go ahead due to a change from a higher stage of loadshedding to a lower stage, the employer is left with minimal staff capacity. Conversely, if loadshedding is implemented unexpectedly due to sudden stage increases, this leaves the employer with little choice but to send employees home, paying them at least four hours' wages even though they may not have worked at all.

Unfortunately, not all industries have an equivalent of the Agreement. For those employers who do not fall within the scope of the Agreement the choices are not easy.

Another question that arises during load shedding periods is: how much must employees be paid if they need to work past their normal work hours to make up for the hours lost during the day? According to the BCEA, any work performed after normal hours to catch up production will generally be regarded as overtime and will be subject to additional, overtime pay. However, employers and employees can agree to changes in working hours or shift structures to reduce the financial losses caused by loadshedding.

It is not compulsory in terms of the BCEA to work overtime; nevertheless, circumstances (such as operational requirements caused by loadshedding) may warrant extension of working hours. An employer may require employees to start work later than usual and finish later than usual. But, an employer may not unilaterally implement new working hours. In most cases employees must agree to such changes.

It may be possible for the employer and employee to agree in the employment contract that payment or remuneration will be suspended during load shedding. The difficulty with this is that the employees will have to agree to such terms (or changes to their contracts of employment). If they do not, these changes cannot be implemented unilaterally.

If employees do not agree to changes in working hours, shift structures, pay or any similar measure designed to relieve the burden on employers during loadshedding, the employer may be forced to implement retrenchment procedures in terms of sections 189 or 189A of the [Labour Relations Act 66 of 1995](#) (as amended) (LRA). The employer would have to follow certain steps and show that due to operational requirements brought about by continued loadshedding (being the technological, structural or similar needs of an employer), the employer needs to retrench a given number of employees.

Conduct Issues Arising from Loadshedding

Another problem for employers during load shedding periods is dealing with what might otherwise be considered to be misconduct by their employees, such as late coming. Employers should be cautious and understand that exceptional circumstances exist during loadshedding.

So, for instance, late coming due to loadshedding should be managed and employees counselled on how to work around the impact of loadshedding on travel, traffic and daily life. On the other hand, employees are also under an obligation to take the appropriate steps to reduce the potential problems that arise during load shedding periods such as increased travelling time or less time available during normal working hours to complete tasks.

Conclusion

Employers must be cautious not to contravene labour law requirements during these periods to reduce the consequences of loadshedding. It is advisable that employers negotiate a plan to minimise its effect with employees. For example, where load shedding is planned for the beginning or end of a shift, the times of the shifts could be amended to ensure there is no loss of work time. Employers may also have to be flexible – perhaps using the loadshedding times for training or staff meetings. It is important that employers and employees be

understanding of the serious implications loadshedding has on both sides of the employment relationship and engage in meaningful consultation to ensure the least disruptive outcome is achieved.



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