

Labour Courts
Private Bag X52
Braamfontein, 2017
86 Juta Street
Braamfontein, 2016

Tel: (011) 359 5700
Fax: (011) 403 2825

Also in
Cape Town;
Durban and
Port Elizabeth

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To:

NEDLAC	:	**info@nedlac.org.za**
COSATU	:	**donald@cosatu.org.za**
FEDUSA	:	**admin@fedusa.org.za**
GENERAL BAR COUNCIL	:	**info@nationalbarcouncil.co.za**
LEGAL PRACTICE COUNCIL	:	**info@lpc.org.za**
LAW SOCIETY OF SA	:	**lssa@lssa.org.za**

NATIONAL ASSOCIATION OF DEMOCRATIC LAWYERS: fazoe@nadel.co.za

SASLAW	:	**clare@saslaw.org.za**
LEGAL AID SA	:	**communications2@legal-aid.co.za**
BLACK LAWYERS ASSOCIATION:		**admin@blaonline.org.za**

FROM THE OFFICE OF THE JUDGE PRESIDENT

DIRECTIVE IN RESPECT OF ACCESS TO AND CONDUCT OF PROCEEDINGS IN THE LABOUR COURT IN LIGHT OF THE COVID-19 PANDEMIC

This Directive will apply with effect from 18 January 2021 until such time as it is formally withdrawn. The previous Directives insofar as there differs with this directive is no longer applicable.

1. This Directive is issued in conformity with the Directives of the Chief Justice dated 17 March 2020 and 17 April 2020 and in terms of the authority vested in the Head of Court in terms of section 8(4) (b) of the Superior Courts Act 10 of 2013 and effective from 29 June 2020.

2. This Directive sets out how, and under what conditions, matters enrolled or sought to be enrolled in the Labour Courts will be dealt with until further notice.

3. Although the prospects of long term lockdown with restrictions in movement may remain, prudent behaviour to minimise exposure to infection informs the policy choices made in this Directive.

4. The general principle to be observed is that physical contact among persons be eliminated or minimised. To this end, any matter that is non-compliant with this Directive may not be entertained.

MOTION PROCEEDINGS (including Urgent matters)

5. Subject to what is set out here below, Motion Proceedings shall not, except where directed otherwise by the Judge seized with the matter, enjoy an oral hearing in

open Court. These matters will be heard in accordance with *ad hoc* directions issued by the Judge which are appropriate to the circumstances. More particularly:

5.1. The Parties shall endeavour to agree about whether the matter may be disposed of without oral argument; if agreed, Representative for any Party who wishes to supplement the papers with additional written submissions must do so and send a copy to the other parties to the proceedings by email and to the Registrar. The Registrar must be emailed at the address set out below by not later than noon on the Tuesday before the week in which the matter is set down. The other party may respond to the additional submissions by forwarding their "response" to the other parties and the Registrar by not later than noon on the Thursday before the week in which the matter is set down.

5.2. Parties may however agree to have their matter heard by way of video conferencing. This must be communicated to the Registrar by not later than noon on the Tuesday before the week in which the matter is set down. The Registrar will than refer the matter to the Judge who will then through her/his secretary or the Registrar confirm the date and time for the video conference, if the presiding Judge decides to proceed by way of video conference.

5.3. If no agreement is reached about forgoing oral argument or video conferencing, this must be communicated to the Registrar by email, not later than noon on the Tuesday before the week in which the matter is set down. The Registrar shall refer the matter to a Judge who will determine if a hearing shall take place and if so how is the matter to proceed, the option may include one or more of the following:

5.3.1. A hearing using video conferencing techniques may be convened: where this option is deemed appropriate, the Applicant shall, unless the Judge directs otherwise, organise the setting up of a video conference as host, and shall send a link to all Parties and

the Judge involved for a time and date stipulated by the allocated Judge.

5.3.2. A physical Court hearing, if the circumstances so require.

5.3.3. Any other procedure or technique that may afford an elimination or limitation of the risk of physical proximity among the people involved.

5.4. The Judge seized with a matter in which video conferencing is to be used shall exercise a discretion as to any responsibility to set this up as well as the liability for the costs implications of such utilisation.

5.5. The Applicant remains *dominus litis* and is ultimately responsible for the efficient disposal of the application. Where the Applicant is unrepresented, the responsibility will be that of the respondent's legal representative.

5.6. Any queries thereafter, by any Party must be made by email only and addressed to the Presiding Judge via the Registrar or the Judge's Secretary and copies sent to the other Parties.

5.7. If both Parties agree, an opposed motion may for good reason, be removed from the roll. There shall be no costs order for removal of a matter. Where matters are removed by agreement the matter may not be given a priority for allocation.

5.8. Where the parties cannot agree to postpone or for the matter to be heard in the given circumstances the Registrar must be informed by no later than noon on the Tuesday before the week in which the matter is set down. The Registrar will then refer the matter to a judge for directions.

6. In those cases where a Party appears in person:

6.1. that litigant shall approach the Registrar who shall designate an official at the Court who shall render assistance to that litigant; or

6.2. where such a litigant's contact details are known, the Registrar shall or, the Secretary of the Judge shall endeavour to make contact to communicate the relevant information to the unrepresented Party. Where such litigant has personal access to teleconferencing facilities, a link may be set up accordingly, if the Judge so directs.

TRIALS

7. These directives apply to all trials that have been set-down.

8. All trials that have been set down:

8.1. shall remain enrolled.

8.2. the Parties shall submit a JOINT PRACTICE note after a holding a meeting (telephonically or otherwise and recorded or confirmed in writing) at which the logistics of conducting the trial are addressed. If an Applicant or respondent cannot obtain cooperation from the other side, the party must submit its own practice note and in it explain why a joint practice note was not possible. Lack of co-operation by a Party may attract costs orders including punitive costs orders by the Court. Alternatively, the parties may be called upon by the Judge to attend a zoom meeting to deal with the logistics and the conduct of the trial and determine the way forward.

8.3. the practice note following the meeting to deal with the logistics of the trial must reach the Registrar of the seat of the Labour Court where the trial is allocated, not later than by noon at least seven court days before the set-down date. If no practice note is timeously received or if the practice note is non-

compliant with this directive, the matter may, unless one of the parties is unrepresented, be removed from the roll or the Judge allocated to hear the matter may, at its discretion, direct the way forward.

8.4. The practice note referred to in this clause must, in addition to the information required in terms of the Practice Manual, address the following issues:

8.4.1. The names, email addresses and cell numbers of all representatives who will represent the parties at the hearing. (The said representatives must hold themselves ready to receive communication from a Judge, Judge's Secretary or the Registrar during the two days preceding the set-down date).

8.4.2. in all matters in which the Parties are ready and wish to proceed to trial, the Parties must provide the following information in the practice note referred to in this clause:

8.4.2.1. What arrangements have been put in place to facilitate the hosting of a teleconference for the disposal of the matter.

8.4.2.2. What evidence can be adduced on affidavit.

8.4.2.3. To what extent a physical hearing is unavoidable.

8.4.2.4. That the witnesses have confirmed to the representatives that they are willing and will be present to testify on the allocated dates.

8.4.2.5. That there are no technical or preliminary issues to be resolved before the commencing of the trial.

8.4.3. On the direction of the Judge allocated to deal with the matter, the Judge's secretary or the Registrar shall communicate via email, or otherwise, with the Representatives of the parties. Having regard to the arrangements the Parties have made or are capable of making the Judge may exercise a discretion as to how the matter is to be disposed of and shall give *ad hoc* directions. Representatives must keep themselves available to be contacted. Such directions, without limiting the scope of the discretion being exercised, may include:

8.4.3.1. The admission of evidence remotely using video conferencing techniques;

8.4.3.2. A physical Court hearing for all or part of the evidence;

8.4.3.3. Admitting evidence by affidavit;

8.4.3.4. Any other procedure or technique that may afford an elimination or limitation of the risk of physical proximity among the persons involved.

LITIGANTS IN PERSON (TRIALS)

9. In those cases where a Party is unrepresented:
   9.1. If such litigant's contact details are known, the Registrar or the Secretary of the Judge to whom the matter is allocated shall endeavour to make contact to communicate the relevant information. Where such litigant has personal access to teleconferencing facilities, the necessary link may be set up, if the Judge so directs.
   9.2. In the event that a litigant's details are unknown and/or he/she could not be contacted, the matter will be removed from the roll.

REMOVAL OF MATTER FROM THE ROLL (trials)

10. If the Parties to any matter agree not to deal with the matter under these conditions, the Parties must, to enable Registrar to compose the roll, at least 5 clear Court days before the trial set-down date, formally remove the matter from the roll and email a copy thereof to the Registrar: No costs orders shall be made for removal of a matter unless the parties agree otherwise.
11. A matter removed from the trial roll by agreement may not be given a priority for allocation.

CONTEMPT OF COURT APPLICATIONS

12. Applications for contempt of Court are brought ex-parte and it is expected that the sheriff will serve the order. The problem of compelling a party to appear in this period of Pandemic with the added insecurity of businesses being able to operate and the possibility of raising impossibility of compliance with the court orders, does create its own issues, this however does not mean that a party with a valid court order who has sought compliance and met with non-compliance may not proceed with a contempt application.

13. An application for contempt may be brought but the return date should only be allocated on a Friday on a date provided by the Registrar in writing.

14. Parties must be mindful of the fact that the Pandemic may restrict movements, or fear of travel, or the fear of court attendance linked to the Pandemic may hinder proper hearing of the matter, hence the court will have a discretion, notwithstanding proper service to postpone the matter.

15. The applicant in a contempt matter must provide the court with contactable details of the party/parties against whom contempt order is sought.

COMMUNICATION

The practice note as well as any other communication which has to be addressed to the Registrar must be sent by email to:

15.1.1. In **Johannesburg** email(s) to the Registrar must be sent to FNtuli@judiciary.org.za

15.1.2. In **Cape Town,** email(s) to the Registrar must be sent to FIsmail@judiciary.org.za.Or Labourcourtcapetown@judiciary.org.za

15.1.3. In **Durban,** email(s) to the Registrar must be sent to TVilakazi@judiciary.org.za.

15.1.4. In **Port Elizabeth**, email(s) to the Registrar must be sent to SGerber@judiciary.org.za.

GENERAL CONDITIONS UNDER WHICH PARTIES MAY ENTER THE COURT BUILDING WHERE A PHYSICAL HEARING HAS BEEN DIRECTED BY A JUDGE

16. Representatives and litigants, who are required to travel to the Court building, must comply where applicable with any restrictions that may be imposed. If travel is not lawful, the matters shall be removed from the roll.

17. Anyone seeking access into the Court buildings must submit to compulsory screening must wear a face mask and must adhere to applicable social distancing rules or such directions as set by the Registrar of that seat of the Labour Court.

18. Only the Parties, where they do not exceed ten in number, and their Representative shall enter the Court building unless otherwise arranged with the Registrar.

19. Any Party who does not wish to have the matter dealt with under the conditions described above must inform its opponent and the matter may be removed from the roll, where no agreement can be arrived at the Registrar must be informed in writing with a copy of the email being copied to the opponent at least by noon seven days before the date of the hearing. The Registrar will then forward the matter to a judge for directions.

ETIQUETTE IN VIDEO CONFERENCE HEARINGS

20. The Judge and persons appearing in video hearings shall wear formal attire but need not be robed.

21. Participants shall ensure that there is no ambient noise in the room which can interfere with the audio quality during the hearing.

22. In general, subject to any *ad hoc* directives given by the Judge, the participants shall mute their microphones when not actually speaking.

23. The Judge shall invite participants to speak and everyone shall be alerted to the Judge's directions in this regard.

24. Participants shall remain in the hearing and leave it only when the proceedings have concluded.

25. No photos may be taken or distributed/ published of the proceedings.

26. The Judge shall give instructions as to the recording of the proceedings;

    26.1 Where a party is responsible therefor, an audio file shall immediately, at the close of the proceedings be sent to the Judge at a stipulated email address for retention by the Judge until such time as the Registrar can take custody thereof.

26.2 If the Judge or the Judge's Secretary or a Stenographer records the proceedings, the Judge shall retain the audio file, until such time as the Registrar can take custody thereof.

TAXATION OF BILLS OF COSTS

27. The taxing master will not tax a bill in the absence of an order of Court directing the payment of costs.

ORDERS AND JUDGMENTS

28. Orders and judgments of the Court shall be prepared in hard copy, signed, a copy retained by the Judge, a copy sent to the Registrar, and communicated to the Parties by email.

REGISTRAR'S DIRECTIONS

29. If they deem this necessary the Registrars of the different seats of the Labour Court are hereby authorised to issue Directions, with regard to practise that will apply in relation to the running of their seat of the Labour Court. These directions may only deal with: access to the Courts; pro-bono office; paginations of Court files; taxations; issuing of writs; set-downs; and urgent applications.

B WAGLAY
JUDGE PRESIDENT
THE LABOUR COURT OF SOUTH AFRICA