

REPUBLIQUE DE VANUATU

DEPARTEMENT DU TRAVAIL ET DE L'EMPLOI

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Date: 22nd March 2022

ATTENTION TO ALL EMPLOYMENT & BUSINESS HOUSES IN VANUATU

DEPARTMENT OF LABOUR & EMPLOYMENT SERVICES DIRECTIVES IN THIS COVID-19 SITUATION

On 04 March 2022, an active COVID-19 case was confirmed at Vila Central Hospital, indicating transmission at community level. This falls under Scenario 3 of the Health Sector Preparedness and Response Plan:

Scenario 3. Large outbreak of local transmission (community transmission).

CONSIDERING on the one hand the current scenario of Covid confirmed cases, as well as containment, lock-down and curfew measures.

GAUGING AND MEASURING on the other hands the impacts of this unprecedented situation on the employment sector across Vanuatu.

ANALYSING AND NOTING furthermore the financial, psychological AND social impact of this pandemic on the welfare/wellbeing of workers, male, female, and people with special needs.

NOW THEREFORE the Department of Labour & Employment Services hereby directs the following measures to be complied with during this challenging time.

The Department of Labour & Employment Services takes the following directives to be submitted to the Ministry of Health in relation to the Ministry of Health Orders and Business houses listed as Essential services that are providing service in this situation to members of the public: **(I)** period and to provide options for policy response to be taken to protect most vulnerable workers **(II)**.

I. LABOUR DIRECTIVE FOR BUSINESSES AND WORKPLACES DURING CONTAINMENT, LOCK-DOWN AND CURFEWS.

1. The necessity of compliance with containment measures established by M.O.H

All workers and employers to strictly follow all the containment measures and COVID19 protocols established by the Ministry of Health.

2. The mechanisms to be taken into consideration to avoid Termination

DoL acknowledges the financial pressure that a lock-down implies. DoL encourages employers to find mechanisms to avoid termination of contracts of their workers/employees from employment. For instance: subsistence salary for workers ceasing Labour activities, use of outstanding annual leave and use of unpaid annual leave.

The following are some options:

- Re-assigning the position of workers who are vaccinated to replace those who are not vaccinated and are working as frontline staffs during repatriation phase and exercise.
- For those who refuse vaccination to occupy positions that are not regarded as front line positions.

3. Vaccination and Employment in light of the Constitution and Employment Act

DOL further notes that vaccination in Vanuatu is not compulsory but optional. Meaning that one cannot force another person to be vaccinated against his/her will. It is an entire and pure question of personal choice.

- Article 5 of the Constitution* safeguards the fundamental rights of any person including but not limited to life, liberty, freedom from inhuman treatment and forced Labour and security of the person; but subject to the legitimate public interest in defense, safety, public order, welfare and health. It means that every person can enjoy the benefits of his/her constitutional rights protected under the Constitution.
- However, these rights have to be exercised in such a way to respect other individual rights and the public interest in the area of defense, safety, public order, welfare and health of the population. The vaccination of the population falls under safety, welfare and health of the population of Vanuatu which is of public interest.
- Therefore, as far as the health and safety of the population of Vanuatu is concerned the Vanuatu Government through Health team within the Ministry of Health does encourage vaccination as a preventive measure to minimize the risk of the spread of the deadly virus to our communities hence to protect the health of our population from Covid-19 virus.
- In the workplaces in Vanuatu Frontlines Employers and Employees on essential services are encouraged to take vaccinations to protect themselves, families, communities, work colleagues and customers of their Businesses. Should they refuse to take vaccine employers are encouraged to place them on annual leave and/or make them work from home OR explore options enunciated at Clause 2 above.
- In the event an Employer had no other options (placement on annual leave, work from home) and proceed to termination, he must comply with the Employment Act and settle workers with all lawful benefits provided under the law (notice, severance payment, annual leave...).

- f. However, terminating an employee on the ground of failure to take vaccination is in principle questionable in law. One cannot in principle terminate someone's employment just because he was not vaccinated from a deadly virus since vaccination is not yet compulsory in Vanuatu. If an Employer so proceed to termination then this can be regarded as an ill-treatment hence a breach pursuant to *Section 53 of Employment Act*. Furthermore, refusal of vaccination is not a lawful requirement under the law to so proceed with a termination of contract. It will only become a requirement if the law permits so by rendering vaccination compulsory across Vanuatu.
- g. It is of essence to note that Covid pandemic is a force majeure. A force majeure is by definition characterized by three characteristics:
- i. It is exterior: Covid is exterior to the Employment contract of parties.
 - ii. Irresistible: No one can resist the Covid-19 and its variants. It is beyond our control.
 - iii. Unpredictable/ unforeseeable: No one can foresee neither predict the virus and mutations of different variant, so it is out of our control.

The force majeure nature of Covid exclude in principle contractual liabilities of contracting parties unless the Employment contract stated otherwise. Also in the current Employment Law, there is no provision which can guide us to manage the employment of our Employees/workforce during this challenging time of COVID19.

4. Non-vaccinated and Non-Essential staff/employees:

Employer must not abuse this situation to terminate non-vaccinated and non-essential staff employees but provide best options for them to either:

- work from home or
- place them on annual leave; or
- place them on leave without pay for 6 months and if after 6 months they will re-engage them, to sort out their lawful entitlements as per the provisions of the Employment Act. The period on leave without pay will be regarded as continuous employment

5. The authority of Section 21 of Employment Act

As per Section 21 of the Employment Act, DoL further wishes to emphasize that considering the impacts that this current pandemic can have on the welfare and well-being of employees, it will disapprove any deduction from remuneration of both hourly and fixed salary workers since this situation constitutes a force majeure and hence beyond our control. Therefore, Employees' remuneration nor any lawful entitlements must not be deducted. Any deduction without approval of DoL constitute a serious breach of Section 21 of Employment Act warranting sanctions.

6. Maternity Leave for women: Sections 36 & Section 37 of Employment Act

An Essential woman employee who is pregnant just before this current situation began and during this current situation must provide maternity leave certificate to her employer.

Employers must not abuse this situation to terminate pregnant mothers.

This would be a breach of sections 36 and 37 of the Employment Act.

7. Sick leave: Section 34 of Employment Act

Any Essential employee/worker on duty in this situation who is sick must provide sick leave to his/her employer for reasons for absence of work.

Employers must not terminate his/her employees because he /she has provided sick leave or notified employer or provided sick leave because of Covid.

8. Employment Complaints: Section 50 subsection 2 (b), and (c) of Employment Act

Employers must Not abuse this situation and must Not terminate an employee who makes a complaint to the Department of Labour in good faith or taking part in any proceedings against the employer as per Section 50 subsection 50 (2) (b) (c) of the Employment Act Chapter 160.

9. Risk Allowance for Essential employees working

This allowance is within the discretion of the employer. Risk allowance for Essential staff employed would be a positive incentive for essential staff.

10. Occupational Health & Safety (OHS) Construction companies, employees/workers, and companies engaged in industrial, heavy duty and outdoor work

Employers must ensure their employees are wearing personal protective equipment's (PPE) for work Safety to prevent any major and minor injuries and death. They are also encouraging to continue adhere to the COVID19 protocols issued by MOH.

We are again reminding every Business houses of their roles and responsibilities to provide safe, healthy workplace for their workers.

11. Management and Lodgment of Labour Work Permit Applications

As for work permit, the following shall be executed:

- a. Lodgment of Application of renewal of work permit and new work permit will proceed as follow:

- 1a. For New work permit, the DOL will facilitate the request of work permit of foreign employee who actually reside in Vanuatu.

- 1b. The DOL will also facilitate the request of new work permit of Foreign employer who is not residing in Vanuatu during this lock down period, but will be sourced out of Vanuatu.

- 1c. With reference to clause 1b above, it will be the responsibility of the business houses to sought the approval of entry from the Ministry of Health for their foreign Employee/worker to enter Vanuatu and after the approval of Entry is granted by MOH, the DOL will proceed with the granting of work permit Card.

1d. It will be the responsibility of the Business House to also facilitate the residency permit of the Foreign Worker through the Department of Immigration.

- b. All these categories of work permit application must be submitted online on the following email: hchristophe@vanuatu.gov.vu
- c. In submitting application, the Applicant must also submit Original Work Permit card.
- d. Original Work Permit card shall be furnished to DoL office ONLY on Monday, Wednesday and Friday morning from 9 AM to 12 O'clock mid-day.
- e. Payment of work permit fees has to be done at Finance Department. It is the responsibility of the Business houses to make the payment of the work permit fees at the Finance Department.
- f. Receipt of payment must be attached to the submitted application
- g. DoL cannot receive any work permit clients on any other day than Monday, Wednesday and Friday.
- h. ALL work permit applications for business houses located in other parts of Vanuatu must be lodged online to hchristophe@vanuatu.gov.vu
- i. All Temporary and Exemption of work permit application are put on hold until further notice.
- j. DOL will only facilitate the request of permanent (1 year) work permit.
- k. ALL requirements of categories of work permit applications listed above must be met.
- l. For any queries please drop us an email on the following address: hchristophe@vanuatu.gov.vu or jowillie@vanuatu.gov.vu
- m. You can also call us on 33130 and ask to speak with a work permit officer.
- n. The above instructions will be effective until further notice depending on the circumstances and directives from the Ministry of Health (MoH).

II. OPTIONS FOR POLICY RESPONSE TO PROTECT MOST VULNERABLE WORKERS

In the current context of the Labour market in Vanuatu, DoL has identified four group of workers:

- 1. Essential staff that will keep working by rotation or shifts (as listed in Essential services of MoH Order).
- 2. Staff working remotely from home.
- 3. Staff that by the nature of their job cannot work from home and need to cease their Labour activities.
- 4. Workers already affected by the global pandemic that have lost their jobs.

So far, there is no confirmation of budget availability to implement these measures of policy response. Funding alternatives, including Government budget are the following:

- A) Universal cash transfer
- B) Cash transfer to affected workers
- C) Universal allocation of Food Rations
- D) Allocation of Food Rations to affected workers

Amidst this current covid pandemic, to adapt to the situation, we again reiterate that business houses are encouraged to develop their Business Continuity Plan (BCP) and work within those BCP.

Labour Department can be contacted anytime on 33130 for further queries on the same. *Further inquiries can also be directed to email: mmetsan@vanuatu.gov.vu / stavoa@vanuatu.gov.vu / mtokataam@vanuatu.gov.vu / msakari@vanuatu.gov.vu / gikalnpel@vanuatu.gov.vu.*

Or you can visit us on Department of Labour & Employment Services Website to download Complaint form and Information Brochures: <https://dol.gov.vu>

Yours Sincerely,



Murielle MELTENO EN

COMMISSIONER

*Department of Labour & Employment Services
Ministry of Internal Affairs*



Cc: DG-MOIA

Chrono- DOL