TUESDAY, 2 JUNE 2020

# irfa dispatch

THE RETIREMENT INDUSTRY NEWSLETTER

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# LOCAL NEWS

## Longevity and sequence risk: stop these from ruining your retirement

According to the most recent Sanlam Benchmark Symposium survey, 51% of pensioners can't make ends meet.

About a third don't have enough funds to cover their medical expenses. Also, about a third entered retirement in debt, and more than half still have to support adult dependants. As a result of these financial pressures, 61% simply can't afford to save for a 'rainy day' fund, leaving them unprepared for unexpected expenses. These statistics show that for many South Africans, retirement is a constant battle for survival.

**Longevity is only a blessing when it's well planned for**

Retirees have a choice between purchasing a living annuity or guaranteed annuity upon retirement. In this article we assume the choice made by the retiree is to take control of their own retirement capital by purchasing a living annuity. When doing so it's pivotal that the capital lasts at least as long as their remaining lifespan. How long that time frame would need to be is the million-dollar question and this is what is known as longevity risk.

Most people look towards their parents' and grandparents' lifespan when estimating how long their money needs to last. But unprecedented advances in the medical sciences over the past decades and improved remedial care have resulted in significantly improved life expectancy. According to Sanlam's actuarial team, a male born in 1967 can expect to live to age 91. A female will live even longer. In the light of increased longevity, how then do we make retirement savings last long enough?

**Run-of-the-mill returns don't keep up with drawdown rates**

One approach is to manage your living annuity in such a way that you only draw the income portion and keep the capital intact. It's important to bear in mind, though, that the remaining capital base after drawdowns would need to grow by inflation each year, for your income to sustain your lifestyle in the face of inflation eroding your purchasing power over the years. If, according to Asisa, the average living annuitant draws 6.5% of their investment value every year, this means that their investment returns would need to average a rate equal to inflation plus 6.5% per year after fees. Realistically, your standard SA balanced fund would not be up to this challenge.

**Sequence risk – the risk of timing your retirement badly**

Above we refer to investment returns needing to average 6.5% after adjusting for inflation. In reality, returns can range from exuberantly positive to dismally negative from one year to another, as the table below shows.

Table 1: SA asset class calendar year total returns (%) – 2011 to 31 March 2020

**Table 1: SA asset class calendar year total returns (%) - 2011 to 31 March 2020**

| | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | Q1\|2020 |
|---|---|---|---|---|---|---|---|---|---|---|
| **Equity** | 3 | 27 | 21 | 11 | 5 | 3 | 21 | -9 | 12 | -21 |
| **Property** | 9 | 36 | 8 | 27 | 8 | 10 | 17 | -25 | 2 | -48 |
| **Bonds** | 9 | 16 | 1 | 10 | -4 | 15 | 10 | 8 | 10 | -9 |

**Source: Sanlam Investments | Morningstar Direct**

In the decades leading up to your retirement you can 'absorb' the blow of years of negative or stagnant return years and wait for years with good returns to make up investment losses. But in retirement, every year of poor investment performance is felt immediately. The year in which you start your retirement journey can make a significant difference to your retirement income. Two retirees earning the same average return can see their capital behave very differently when they enter retirement at different phases of the market cycle. This phenomenon is known as sequence risk.

***Full Report:*** ***https://www.fanews.co.za/article/retirement/1357/general/1358/longevity-and-sequence-risk-stop-these-from-ruining-your-retirement/29218***

**FA News | 29 May 2020**

## Could with-profit annuities be an option for you?

Many soon-to-be retirees are understandably worried. Their retirement plans may be in disarray as they face a serious decrease in the value of their retirement savings, driven by a sharp decline in investment markets due to the impact of the Covid-19 pandemic on the global economy, the oil price shocks and a downgrade to South Africa's sovereign credit rating. However, all is not lost, according to Poobalan Govender, Manager of Income Solutions at Momentum Corporate. Somewhat of an unsung hero and underutilised retirement product option, with-profit annuities, could be the answer for many soon-to-be retirees in these uncertain times.

An annuity provides a monthly income during retirement. At retirement, many retirement fund members use all or a portion of their retirement savings to buy an annuity from an insurer. Like any big purchase decision, it's important to get sound financial advice and consider the features of the different annuity products available before choosing the option that is best suited to your needs. Govender explains, "A with-profit annuity will pay you a guaranteed monthly income for life. The guarantee includes the initial monthly income as well as any future increases, which are linked to the investment returns achieved in the underlying portfolio.

The monthly income ends when you pass away, unless you opt for your spouse to receive this income after your death or to have the income paid for the remainder of the guarantee period after your death if you selected a guarantee period. Despite the current sharp declines experienced in investment markets, those who bought with-profit annuities are sleeping easy knowing that their annuity will not reduce, thanks to the guaranteed income for life." Govender says that there is a high probability that many members of retirement funds who are invested in typical market-linked balanced funds experienced a decrease of around 15% in the investment value of their retirement fund savings between December 2019 and March 2020.

If you are one of these members, the good news is that this plunge has not decreased the value you will receive for your retirement savings if you buy a dynamically priced with-profit annuity. Govender demonstrates this by way of an example which compares the value you can expect from a with-profit annuity under market conditions in December 2019 and March 2020. Let's consider a male with retirement savings of R1 million in December 2019. He needs an initial monthly retirement income of R6 000, which then grows in line with inflation each year.

He could have received a quote for a with-profit annuity that would ensure that he receives a starting income of R6 000 guaranteed for the rest of his life, plus pension increases that target inflation over the long-term. Came March 2020, the same male finds he is no longer a millionaire since it is likely that his fund value has dropped due to the market decline, from R1 million to R850 000 (which is a 15% reduction in line with the earlier comment around market returns). Given that his capital reduced by 15% he might be expecting that if he purchased the with-profit annuity now, his income would also reduce to round R5 100 per month.

However, it's likely that a dynamically priced with-profit annuity that reflects the latest market conditions would still provide him with a starting monthly income of around R6 000 per month, guaranteed for the rest of his life. This is because the cost of the annuity became cheaper in March 2020 with the increase in longer-term interest rates and lower investment markets returns. It is important to ensure that you are in the correct risk profiled portfolio as you approach retirement, which is what the life stage approach looks to achieve. ***Full Report:*** ***https://www.iol.co.za/personal-finance/retirement/could-with-profit-annuities-be-an-option-for-you-48663688***

**IOL | 29 May 2020**

## OPINION | You're retrenched, stranded or unpaid. What happens to your retirement savings?

The Covid-19 pandemic is making the 2008 financial crash look like a dress rehearsal for the real thing, leaving millions across the world asking how they're going to keep up retirement fund contributions while their salary is shrinking, or done a Houdini and disappeared completely. When it comes to retirement funds in South Africa, the Pensions Funds Act (PFA) compels employers to deduct contributions and pay these over to the retirement fund. Don't panic! There are a few viable options to you with provide financial relief.

Bear in mind that not all retirement funds are governed by the same rules, but if you're part of a reputable fund that's well managed, you should be offered these three options.

**1. Reduce the fund salary**

The fund salary – the pensionable salary or retirement funding income – is determined by the employer and declared to your retirement fund on a monthly basis (if a risk salary is not declared). Contributions, risk premiums and benefits are based on the fund salary. Therefore, your employer could reduce the fund salary, which will reduce employer and/or employee contributions to your fund. If your employer is offering this option, make sure you fully understand how a reduction in contributions will impact your retirement savings and risk benefits. This should be clearly communicated by your employer and your retirement fund.

**2. Temporary absence**

If you're on unpaid leave and not rendering any service to your employer for an indefinite period – as many are during lockdown – most funds allow for you to be classified as a temporarily absent member. This means no contributions will go into your retirement savings for however long you are temporarily absent. However, your employer may still be liable to pay risk premiums, which means you are at least covered for risk benefits and any fund expenses, such as consulting and administration fees. For members seconded abroad and who many now be stranded in a foreign country due to the cancellation of flights, it is imperative that the insurer of the risk benefits is advised of the details.

The insurer will then assess whether the member can remain covered under the risk policies. Here's the really important bit: if you or your employer misuses this option, your employer could fall foul of the law. Essentially, you cannot use this option if you are rendering *any* service to your employer, regardless of whether you're being paid for that service (in full or partially), or not being remunerated at all. A temporary leave of absence is strictly for employees who are not able to work due to unpaid leave, secondment or other clearly defined circumstances, such as maternity leave.

**3. Reduction or suspension of contributions**

The PFA allows employers to either reduce or completely suspend employees' contributions.
But beware: there is a big difference between reduction and suspension here. When suspending contributions, your employer will no longer be making *any* payments to the fund, and this includes risk premiums and fund expenses. Whereas with a reduction your employer will continue payments, and this may include some or no contributions to your retirement savings along with risk premiums and fund expenses.

It is therefore crucial for you to find out how a suspension or a reduction will affect your retirement savings and/or risk benefits for death, disability and so forth. It's equally important to note that this a temporary relief option (contributions may not be reduced or suspended indefinitely), and that your employer can only offer this option if they follow a set legal process that must be approved by the Financial Sector Conduct Authority (FSCA).

**Job loss options**

What happens if your employer becomes another victim of Covid-19 and has to retrench or, worse, go into liquidation? If the fund is well managed, you should be given three broad options: preserve your retirement savings (leaving it as is until you reach retirement age and are allowed to withdraw); transfer it to a preservation fund; take an early withdrawal, which has heavy tax implications.

The options depend on a number of factors: whether the employer is voluntarily or involuntary retrenching staff; whether you have elected to resign before your employer goes into liquidation; or if your employer has entered into liquidation. It's best to discuss your options with your funds retirement benefits counsellor and to then obtain financial advice from a certified financial planner.

**Hold trustees to account**

In South Africa, retirement funds – whether a private fund or an umbrella retirement fund – are separate legal entities to your employer. It is therefore up to the trustees to manage the fund within the set rules of that fund and within the legal framework (the PFA). While we do expect that trustees and employers will act in your best interest, it is your right to ask questions and receive clear, detailed answers. Exercise that right.

**Fin24 | 30 May 2020**

## 'Give workers their pension funds'

The Association for Savings and Investment South Africa (Asisa) is in the process of putting together a working group to deliberate on the issue of allowing workers access to their retirement funds. Asisa, which speaks for majority of asset fund managers in the country, wants to supplement salary losses for workers due to Covid-19 and the lockdown. This comes after labour federation, Cosatu this week, wrote to finance minister Tito Mboweni proposing that retirement funds should be one of the financial relief measures the government should consider as thousands of workers have either lost their jobs or had their salaries cut.

Cosatu believes that this would be an additional measure at the government's disposal which would not over indebt the already indebted citizens. Asisa's senior policy advisor Rosemary Lightbody said they would be looking into how retirement fund can be used to supplement the loss of salaries and make proposals to government.

**Sowetan | 29 May 2020**

## OPINION | You were about to retire when Covid-19 struck your savings - now what?

Pre Covid-19, many saved diligently for retirement, or perhaps not so diligently and were already worried about having enough to live comfortably. Then along comes a global pandemic, the ensuing market volatility and a Moody's downgrade, adding ginormous stress to those within six years or less of retirement. The key to riding this out is not to panic: take a deep breath, understand your options, consider them carefully and then make an action plan under the guidance of a certified financial planner.

**Step 1: Re-look at your investment strategy**

If you are invested in a default life-stage model, your retirement savings will automatically have switched from aggressive portfolios to more conservative portfolios as you approach normal retirement age. This reduces your exposure to riskier asset classes (like equities/shares and listed property), so that when markets go through the kind of turbulence we've experienced in February and March, your retirement savings are less vulnerable to significant loss. Conservative portfolios are not completely immune from adverse market movements, but they are better protected than the portfolios of younger members, whose portfolios need to be more aggressively invested over a longer period of time.

If you created your own investment strategy – whether independently or with a certified financial planner – you may be invested in portfolios that have a much higher allocation to riskier asset classes, and your retirement savings may be more exposed right now. If this is the case, consult a certified financial planner to evaluate your investment strategy and determine whether immediate corrections are required. Most importantly, do *not* try to time the market, because no one is capable of doing so when markets are (arguably) acting more unpredictably than ever before. Any panic-induced investment decisions may have actually put you in a worse position now than you were at the end of March 2020.

**Step 2: Change your focus**

If you are on the verge of retirement, your mind-set should shift from the accumulation of retirement savings (saving phase) to decumulation (spending or income-generation phase). The focus now should be on how you will draw your income in retirement – assuming you have sufficient savings to retire on – and how sustainable that income will be for the rest of your life. The Covid curveball made what is always a difficult decision far trickier. But what hasn't changed is that this decision can ultimately only be made by you, based on your personal circumstances.

**Step 3: Weigh up the options**

When I say that we've never seen market conditions like this, it's no understatement: it's a largely unpredictable jungle out there right now, much like every facet of life in these extraordinary times. This is why it's more important than ever before to fully understand the pros and cons of the different post retirement products.

**Life annuity**

With this product, your income never decreases, regardless of what happens to investment markets or how long you (and possibly your spouse) live. Your income can increase annually, but this depends on the type of life annuity you elect. For example, a level annuity means that your income never increases, whereas an inflation-linked annuity means your annual increase is linked to the inflation rate. South African bonds have been hammered by Covid-19, along with Moody's downgrading the South African economy to "junk" and the two recent interest rate cuts, which have resulted in bond yields actually spiking.

Higher bond yields directly impact life annuities rates (for the better!) by driving up the starting income of the annuity. That's the good news for life annuities. The bad is that some types of life annuities, such as with-profits annuities, generally have a low to moderate investment in shares, therefore future earnings will come under pressure. The conclusion here is that, under current market conditions, purchasing a life annuity that is providing a relative higher starting income may offset some of the losses in your retirement savings.

In fact, if you were invested in a conservative investment portfolio and elected a life annuity at retirement, you would have been better off at the end of April 2020 than you were at the start of the year – despite your retirement savings having decreased over this period. However, a life annuity will not make you completely immune to economic downturns – you still need to manage your expenses carefully.

**Living annuity**

This product allows retirees to remain invested in their investment portfolios while drawing down a percentage of their savings as retirement income. While it's not recommended you draw more than 6%, sticking to 4% (known as the Rule of 300) will ensure your retirement savings last a lot longer. Living annuities give you the option to change your drawdown once a year and sometimes, when times are tough, more often.

For example, to help retirees through the current crisis, National Treasury has put forward an amendment that would allow for a significant increase in drawdown rates until 31 August 2020 – between 0.5% and 20%. On the flipside, a living annuity does make you more vulnerable to market fluctuations. While you may have watched in horror as your savings dwindled in the first three months of 2020, April would have (hopefully) brought a smile to your face.

**Hybrid Annuity**

A unique offering is a hybrid annuity. Instead of having a separate living annuity and a life annuity, a hybrid annuity is an all-in-one package: a living annuity where one of the available investment portfolios is a unitised with-profits annuity. Essentially, this option gives you the best of both worlds and is worth considering if you'd like some income stability *and* the flexibility to increase your drawdown and/or potentially increase your savings (or recover lost savings) by changing investment strategies in response to market conditions.

As I stressed initially, deciding what to do with your hard-earned retirement savings is a tough choice, especially when the world is as labile as it is at the moment. This is why it's crucial to get good understanding of your retirement options, and why I would encourage all those within retirement age to utilise the retirement benefits counselling that all funds must provide to retiring members at no cost, as well as consult an independent, certified financial advisor.

**Fin24 | 31 May 2020**

# INTERNATIONAL NEWS

## U.K. groups working together to help participants during virus pandemic

Seven U.K. retirement savings watchdogs collaborated on a **guide** to demystify the most common dilemmas faced by plan participants during the coronavirus pandemic.

In an effort to clarify the impact of the COVID-19 crisis on participants' retirement savings, the £32 billion ($38.7 billion) Pension Protection Fund, London; U.K. Department for Work and Pensions; Financial Services Compensation Scheme, which provides compensation if financial firms fail; Money and Pensions Service, which develops strategies to improve people's financial acumen; The Pensions Regulator; Financial Conduct Authority; and the Pensions Ombudsman developed a guide to help retirees make better decisions during the pandemic.

The guide alerts plan participants to fraud and consequences of accessing retirement savings early during the crisis. To help participants avoid fraud or reducing their retirement savings through untimely financial decisions, the watchdogs are encouraging participants to verify with independent organizations the information they are receiving from providers. The guide also provides information about retirement benefit protection with the PPF, the lifeboat fund for the defined benefit plans of U.K. insolvent companies, in case the pandemic puts participants' employers out of business.

"Keeping people informed is vital, and I welcome the coordinated approach being taken by the different pension bodies to assist anyone who needs advice or guidance," said Guy Opperman, the U.K. minister for pensions and financial inclusion, in a news release. Oliver Morley, CEO of the PPF added in the news release: "There are over 10 million members of corporate defined benefit schemes across the U.K. who may not be aware of our role in protecting them should their scheme or sponsoring employer be unable to pay their pensions in the future."

**Pensions & Investments | 1 June 2020**

## US pension plans warned they will run out of money by 2028

Seven struggling public funds could have a severe impact on state finances as their funded ratio drops The weak financial condition of seven US public pension plans threatens to deplete their assets by 2028, leading to severe risks for the living standards of thousands of American employees and retired workers .Many US public pension plans had not fully recovered from the 2007/08 financial crisis before coronavirus struck, triggering turmoil across financial markets. The correction in the US stock market has increased the long-term structural problems across the entire US public pension system, particularly for the weakest funds.

“Public plans with extremely low funded ratios in 2020 may face the risk of running out of assets in the foreseeable future if markets are slow to recover,” said Jean-Pierre Aubry of the Center for Retirement Research at Boston College, which carried out a detailed study on the plight of US public pensions. More than 320,000 members of the New Jersey Teachers and Chicago Municipal public pension plans face the biggest risks as severe cash outflows are draining the assets of these two schemes. A slow recovery for the US stock market could result in Chicago Municipal’s funded position falling from 21 per cent this year to just 3.6 per cent by 2025.

This would leave assets to cover just three months of the fund’s retirement payments, according to CRR’s analysis. New Jersey Teachers is also burning through cash, with its funded position projected to decline from 39.2 per cent to 23.2 per cent over the next five years. By that time, New Jersey Teachers would have assets to cover 19 months of retirement payments. Mr Aubry did not expect any US public pension plan to run out of money over the next five years, but more severe problems could then emerge.

If stock market weakness persists, the public pension plans of Kentucky and Providence along with Dallas Police and Fire, Charleston Fire and Chicago Police could all end up with less than three years of retirement benefit payments saved as assets. The Chicago Teachers fund, which is also bleeding cash, might have enough assets to cover a little more than three years of benefit payments. Thomas Aaron, a senior credit officer at Moody’s, the rating agency, said that the unfunded liabilities of Chicago’s pension funds would continue to grow for more than a decade even if investment return targets were met.

“Chicago has particularly high pension risks. The city has built up very large unfunded liabilities through years of very weak pension contributions,” said Mr. Aaron. The crunch point of a plan running out of assets is known as the “depletion date”. After this point, a US plan would move to a so-called “pay-as-you-go” arrangement where retirement benefits are paid solely from contributions by employers and employees.

“Reaching an actual depletion date can have a severe impact on a state’s finances because a sudden transition to a pay-as-you-go plan may result in costs [benefit payments to retirees] that far exceed recent employer contributions,” said Les Richmond, an actuary at Build America Mutual, a New York-based bond insurer. Mr. Aubry noted that pay-as-you-go costs for both New Jersey Teachers and Chicago Municipal were more than 50 per cent higher than their contributions, emphasising the high costs that both states would face if assets in these vulnerable plans became exhausted.

**Financial Times | 1 June 2020**

## Canadian pension fund chief warns there is ‘no place to hide’ in crisis

Head of CPPIB Mark Machin is sticking with private equity and emerging markets investments

The Canada Pension Plan Investment Board, one of the world’s biggest retirement funds, entered the crisis in decent shape. With assets of C$409.6bn ($297.6bn) at the end of March it is far smaller than mega-groups such as BlackRock and Vanguard but, unlike commercial businesses, it can rely on steady quarterly inflows from the millions of Canadian workers who are compelled to save into the fund. The body manages the investments of the Canada Pension Plan, a key plank of the country’s retirement savings system with more than 20m contributors and beneficiaries that has been lauded by policymakers.

But, as with all groups, CPPIB is entering uncharted waters. “We do depend to some extent on inflows,” says Mark Machin, chief executive of the CPPIB, who is British. Despite the immediate impact of Covid-19 on financial markets, Mr Machin is relatively relaxed. “The strategy of diversifying around the world is paying off,” he says, even though the group made a net return of 3.1 per cent in the year to March, down from 8.95 per cent for the prior financial year.

At the time of publication, Canada had 6,982 confirmed Covid-19 deaths according to the Johns Hopkins Coronavirus Resource Center. This stands in stark contrast to the US, which hit 100,000 deaths last week. But the outgoing governor of the Bank of Canada, Stephen Poloz, recently warned that the country is “dealing with unparalleled uncertainty”. Mr Machin expected lower returns even before the virus struck, calling the prospect of double-digit returns year on year “too optimistic”. He says his views have not changed, but the group is not rushing to make big changes to its allocations in response to the crisis.

The independent CPPIB, in common with other Canadian pension funds, is known for being a proponent of “direct” investment, in which it bypasses intermediaries to make deals or buyouts of its own. Private equity is a large focus: just under a quarter of its portfolio is invested in the asset class. Like other Canadian groups it is also known for its focus on so-called real assets: airports, office blocks and energy projects as opposed to complex derivatives, which accounted for about a fifth of assets at the end of March. CPPIB’s portfolio includes stakes in UK mega-shopping centres Westfield Stratford City and Birmingham’s Bullring & Grand Central, as well as a 50 per cent stake in Ontario’s Highway 407, a toll road.

Those bets — made for good reasons such as hedging against inflation and providing steady returns for pensioners — look less certain now. Across the industry, commercial property valuations have taken a hit in expectation of the coming recession with uncertainty over demand from retail and office tenants. But Mr. Machin says demand for private equity has not gone away.

“When the history books are written this [won’t be] a surprise,” he says of the pandemic. “China was shut down at the time of Davos, but people didn’t believe economies would be shut down. That’s the surprise.” He adds: “The central banks and governments have moved with huge speed and huge size — that’s really dampened the blow in the financial markets. The question is how long will this continue?”
Mr Machin is better placed than most to follow the minutiae of medical developments, having trained as a doctor before switching to banking and a career at Goldman Sachs

“I was always interested in how the human body works,” he says. “I’m amazed at how people have little curiosity over what they are. That was an easy choice.” He practiced medicine in a hospital for a year before considering other careers. “The possibilities of the world I became more aware of,” he says. “Who owns this building, where’s the capital? It seemed a massive hole in my understanding of the world.”
***Full Report:[https://www.ft.com/content/12ad073c-2a9a-4cb0-8452-ce4e50b216be](https://www.ft.com/content/12ad073c-2a9a-4cb0-8452-ce4e50b216be)***

**Financial Times | 1 June 2020**

# OUT OF INTEREST

## Covid-19: Can employees withdraw from the workplace?

Employees returning to work from the Covid-19 lockdown will need to show reasonable justification if they halt work on the basis that they are exposed to the virus. Legal provisions allowing employees to withdraw from a hazardous working situation could, in the context of Covid-19, be open to abuse by unprincipled employees or trades unions.

This is because employers will be obliged to continue remunerating employees who have withdrawn their labour on the basis of their belief that they may contract Covid-19, unless it can be proven that employees acted in bad faith (which may be difficult or even impossible to do). Only if bad faith can be proven would there be a justification to withhold remuneration (on the basis of no work no pay). The Mine Health and Safety Act (MHSA) and the Occupational Health and Safety Act (OHSA) grant employees the right to withdraw from a dangerous working place.

Disaster Management Act (DMA) Regulations or related directives could also confer this right, when drafted. Under the MHSA, employees may withdraw from the workplace if there is “reasonable justification” to believe that there is a serious danger to their health and safety or if a health and safety representative directs them to withdraw. We believe this section contemplates what may be called "a clear and present danger". The act also requires employees to hold dialogue with their employers on these issues to mitigate the danger so work can be conducted safely.

The OHSA does not grant employees an express right to withdraw from a dangerous working place but requires them to report the situation to their employers or health and safety representatives. The first difficulty with managing the workplace hazard of Covid-19 virus is that it is invisible, because it is a microscopic virus, and even its host may be unaware and be asymptomatic. The second difficulty is that, even though we still know relatively little about the virus, what we do know is that it is highly contagious.

Where employers have provided all relevant instruction, health and safety protocols and personal protective equipment (PPE) to safeguard employees, is it reasonable and rational for employees to exercise the right to withdraw from the workplace because they are (subjectively) apprehensive of contracting Covid-19 there? Practically speaking, there can certainly be no issue with granting employees the right to withdraw from a workplace due to Covid-19, where they have reasonable justification.

However, in our view, in the absence of some objective criteria, it will be impossible for employees to show reasonable justification. Only if employees present symptoms of the virus to their co-workers or test positive for Covid-19 (and that information becomes known to their co-workers), can other employees be said to have reasonable justification to withdraw from the workplace. Even then, this may not constitute reasonable justification when the employer has taken appropriate steps, such as disinfecting the workplace and screening (on an ongoing basis) all employees who came into contact with the infected employees.

In our view, employers should at least:

• constructively engage with Government to set clear parameters on what will be acceptable measures to establish and maintain a safe workplace;
• ensure that an adequate risk assessment is conducted prior to the commencement of work, specifically dealing with any potentially unsafe areas or conditions, and ensure that adequate control measures, including the availability and suitability of PPE, are implemented;
• comply with physical distancing requirements in accordance with the risk assessment, sanitising, screening, isolation and all other requirements set out in the DMA Regulations, where applicable;
• comply with all requirements of employers prescribed in the Department of Labour's Occupational Health and Safety Directive, where applicable; and
• regularly and frequently convene health and safety committee meetings to proactively monitor the workplace and address any concerns raised by employees about Covid-19 transmission risk.

If, despite all these measures, employees withdraw from the workplace, employers should first consider whether, under the circumstances, employees have a reasonable justification for doing so. If they believe it is reasonable, employers must remedy the allegedly unsafe working conditions.

If employers do not agree that a reasonable justification exists, they may consider the following legal recourse:

• notify employees that their withdrawal from the workplace is unjustified and accordingly unlawful and call upon employees to return to work. If they do not return, it may be regarded as either unauthorised absence or unprotected industrial action. In those circumstances, the employer could, in our view, advise that it will apply the principle of no work, no pay;

• initiate legal action seeking to inter alia interdict employees' withdrawal from the workplace and/or refusal to tender their services or mandate the employees to tender their services.

Employers should engage practically and constructively with employees and trade unions to attempt to resolve concerns when they arise.

**FA News | 29 May 2020**


Switchboard : 011 450 1670 / 081 445 8722
Fax : 011 450 1579
Email : reception@irf.org.za
Website : www.irf.org.za

2nd Floor Leppan House
No 1 Skeen Boulevard
Bedfordview 2008