

## COVID-19 SA – AMCU Judgment and the effect on all mines

7 May 2020

On 1 May 2020, the Labour Court handed down a highly anticipated order in the application instituted by the Association of Mineworkers and Construction Union (AMCU) against the Minister of Mineral Resources and Energy (Minister) and the Chief Inspector of Mining (CIM), amongst others.

The Court ordered that the CIM's decision not to require employers to prepare and implement a code of practice on the COVID-19 pandemic in terms of section 9(2) of the Mine Health and Safety Act, 1996 (MHSA) and not to issue guidelines in terms section 9(3) of the MHSA was reviewed and set aside.

As a consequence, by no later than 18 May 2020 the CIM is obliged to publish a notice (Notice) in the *Government Gazette* which:

- a) contains guidelines for the mining industry; and
- b) requires employers (as defined in the MHSA) to prepare and implement a code of practice to mitigate the effect of COVID-19 on the health and safety of employees and other persons who may be directly affected at the mine.

Before publishing the required Notice, the CIM must:

- c) consult with the Mine Health and Safety Council, if constituted;
- d) consider all available expert advice, including that of the experts relied upon by AMCU in its application;
- e) meaningfully engage with certain parties including relevant trade unions, employer organisations and other interested persons as the CIM may determine;
- f) consider the directions issued by the Minister on 29 April 2020 in terms of the Disaster Management Act, 2002 (Directions); and
- g) after having completed the steps above, publish the draft guidelines for public comment by no later than 11 May 2020.

Pending the publication of the Notice, and in addition to complying with any regulations and directions issued under section 27(2) of the Disaster Management Act, employers shall, at a minimum, have to comply with the Standard Operating Procedure (SOP) attached to the Court Order, read with the directives issued by the CIM to employers on 26 March 2020 and paragraphs 1 and 3(a)-(d) of the Directions.

In the reasons for judgement, it was stated that the Minister's Directions of 29 April 2020 are not in themselves adequate to meet the purposes of the MHSA. The Directions only required the development of a standard operating procedure by each and every individual mine. The evidence overwhelmingly indicates that a single, national and enforceable standard, with built-in flexibility, is necessary in the current circumstances.

The interim SOP provides guidelines for the management of employees returning to work at mines following the national lockdown. It specifically sets out the procedures which mining companies should follow prior to employees arriving back at work and once employees have returned to work. It also details their reporting and monitoring obligations.

The Court Order was published in the *Government Gazette* on 5 May 2020 and is binding on all employers (as defined in the MHSA).

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