

## **COMPENSATE EDUCATORS WHO CONTRACT COVID-19 AT WORK**

**W**ith the date of the reopening of schools in the country yet to be determined by the powers-that-be, one takes stock of what transpired in schools last year during the first wave of the global pandemic [COVID-19]. Ordinarily, the panacea in dealing with a crisis is adopting a proactive approach instead of being myopic.

There is no denying that when the Ministry of Education and Training [MoET] summoned educators to schools on June 29, 2020, ahead of the proposed reopening July 6, 2020, schools were not safe to welcome educators, support staff and learners. The SNAT did not take lightly the looming risk of prematurely reopening schools, thus articulated requirements that were to be met by the MoET before teachers commenced work in schools. As anticipated, the MoET was adamant; burying its head in the sand on the demands. Subsequent to this happy-go-lucky attitude, the SNAT filed an urgent application at the Industrial Court a quo on the 6<sup>th</sup> of July 2020, challenging the reopening of schools.

We correctly contended that we had conducted independent inspections in more than 22 schools and found that the conditions in schools were not compliant to COVID-19 Safety Protocols. We further averred that in the event we proceeded to resume duties, there was a high likelihood of infections among teachers thus the need for sufficient Personal Protective Equipment [PPE] as prescribed by the World Health Organisation [WHO], United Nations Children's Fund [UNICEF], International Labour Organisation [ILO], Education International [EI] etc. We prayed that government complies with the provisions of Section 9 and 18 of the Occupational Safety and Health Act No.9 of 2001, together with the directive issued by the PM [then] to the effect that all persons, including teachers, staff and learners should wear face masks in public spaces such as schools.

We all know what transpired thereafter with a number of educators falling in the battlefield as a result of contracting COVID-19. Families, relatives and friends lost their loved ones due to gross recklessness by the MoET in failing to provide the necessary PPE for educators in schools in the mist of spike in cases of COVID-19 last year. It took us three [3] full months to

realise justice for our members. We can't afford that again this year with the second wave already in our shores.

November 20, 2020, we all woke up to the headline in the daily publications: **“Schools Opening: Government Breached COVID-19 Rules.”** The SNAT had emerged victorious in Court. The Industrial Court found that the opening of schools on July 6, 2020 was in breach of Regulation 27 of the COVID-19 Regulations 2020. Regulation 27 provides that: “Schools and tertiary institutions shall be closed until the decommissioning of the declaration, which period may be extended for the duration of the national emergency by the Prime Minister (PM).”

Judge Dumisani Mazibuko pronounced that in the event the SNAT intends to pursue the issue of irregular opening of schools between July 6, 2020 and September 9, 2020, it shall make an appropriate application to penalise whomsoever may be responsible for the breach of Regulation 27 stating that as from September 10, 2020, government was legally entitled to open and operate schools subject to proof that the health and safety requirements, as provided for in the COVID- 9 regulations and any other law, have been complied with. The Court of Equity in its balanced jurisprudence and matured eye concurred with what the SNAT had raised before the inadvertent reopening of schools by the MoET on the 6<sup>th</sup> of July 2020.

Fast forward to 2021, the reality is that any survey on institutional compliance to the porous Standard Operating Procedures [SOPs] from the MoET would reveal a gloomy picture in schools. The base line being that schools were not compliant last year to the SOPs and Checklist aimed at curbing the spread of the virus. This year, the SNAT shall not yield at pinning the MoET to ensure that workstations adhere, not only to the SOPs and Checklist; further, to the provisions of the Occupational Safety and Health Act of 2001.

Section 9 [1] of the Act makes a provision that;

*An employer or an occupier shall ensure the safety and health of all employees during employment by securing safe and healthy working conditions in that employer's or occupier's workplace.*

It is even disturbing that Section 14 [5] of the Act assigns the responsibility to the employer in ensuring that each establishment has a Safety and Health Representative.

*An employer shall within three months of the commencement of this Act or from such time the provisions of subsections (1), (2) 13 and (3) are applicable ensure that the employees elect their safety and health representatives and further ensure that the safety and health representatives are functional in carrying out the duties imposed by section 15.*

The advent of COVID-19 has exposed this glaring deficiency in the operations of shopfloors [schools]. There is no other opportune moment than now to ensure that Safety and Health Representatives are elected in schools to work with the Schools Rapid Response Teams [RRT] during COVID-19.

The ILO, in its paper, ***‘Covid-19: How do OSH professionals impact public-policy?’*** posits that protecting people should be the top priority for public-policy and decisionmakers. As part of this, responsible workplaces act to safeguard workers’ physical and mental health, prevent exposure to COVID-19, monitor the disease and its spread, seek access to the best treatment for any workers who become ill and provide wellbeing support for those who are quarantined. Mouthful indeed.

As per the dictates of the ILO, the country’s Commissioner of Labour, Mthunzi S.F. Shabangu, released a Memorandum, dated 10th June, 2020, to All Principal Secretaries in the Ministry of Public Service. The Commissioner was giving a clear line of march on General Notice No.22 of 2020, categorically stating that Section 5 (c) of the Guidelines on Employment Contingency Measures in Response to the Coronavirus (COVID-19) Pandemic, General Notice No. 22 of 2020 has widened the scope of coverage of the Workmen’s Compensation Act, No. 7 of 1983, particularly Section 36 as read together with the First Schedule, to include coronavirus (COVID-19) as an occupational disease. The same is true in South Africa where COVID-19 is recognized as an occupationally acquired virus disease.

The Commissioner further explained that in case an employee of any company or a civil servant contracts the coronavirus whilst on duty

effective from March 27, 2020, the case will be treated within the ambit of the occupational safety and health provisions of the workmen's compensation Act No. 7 of 1983 both in terms of medical assistance, sick leave and any warranted compensation.

This also meant that the employer has to pay for all the medical expenses which might be incurred by the employee as a result of contracting coronavirus. Our clarion call as a Union has been that the SOPs should include a Return-to-Work Protocol [RtWP] which will explicitly specify what shall happen in the case of an educator discovered to be positive in an institution. Currently, the SOPs deal with Boarding Schools than a mainstream institution. The RtWP should also state what should happen to those educators with known underlying chronic conditions such as kidney failure, diabetes, heart conditions, asthma, liver disease etc. Like City Council grading restaurants, schools should be categorised/graded depending on the level of compliance as per the checklist. This should be done by Inspectors from Labour to ensure compliance to the agreed checklist before the duty station welcomes staff and learners.

The Commissioner in issuing the Practice Directive went on to state that since 1st April, 2011 to date, the maximum monetary value of medical expenses (medical bill) which can be paid by an employer for an employee who has contracted an occupational health disease or any injury on duty currently stands at E136, 903-08. This is in terms of the Schedule of the Workmen's Compensation (Medical expenses) Regulations Legal Notice No. 121 of 2011. Thing is: the MoET should be ready to pay all our members who contracted the virus at work last year as well as this year in the event they [MoET] become thick-headed in exposing teachers to the deadly second wave.

As always, we are, however, cognisant of the fact that the MoET shall bring a defence that these teachers contracted the virus outside the duty station; still, the ILO has cautioned that employers should be aware of a higher onus to establish safe protocols at the workplace in relation to COVID-19, to decrease the "risk differential" between their workplace and the public at large, as far as possible. This is what we subscribe to as the SNAT. We submit.

For comments and feedback, send to [motsamcolisi@gmail.com](mailto:motsamcolisi@gmail.com) or +268 7606 5972.