



CFC Africa Insights

Africa Labor & Employment Overview

COVID-19 Q&A Guide



Special Edition

#CFCForwardTogether

With the support of the CFC community HR working group



CASABLANCA FINANCE CITY
القنطرب المالي للدار البيضاء



Nasrollah & Associés
Baker
McKenzie.



Table Of Contents

Table Of Contents

FOREWORD	04
WORKING FROM HOME	07
GOVERNMENT FUNDING	13
FURLOUGH, WORKING TIME AND SALARY REDUCTIONS	19
LEAVE AND PAID TIME OBLIGATIONS	41

Foreword



Saïd Ibrahimî
CEO of Casablanca Finance City

In these challenging times of global pandemic, CFC is leveraging the 'CFC Africa Insights' series to release a COVID-19 special report, with the contribution and the expertise of some of our key CFC members.

This report features the analysis and the output of an active HR work group hatched in the core of the CFC community with a line-up including CWA, Baker & McKenzie and Sopra Banking, tackling the most critical issues currently facing companies with respect to labor and employment laws in Africa.

Although the following content is primarily addressed to employers, CFC is strongly advocating for job and employee protection whenever possible. We therefore encourage African based corporates to take a broader perspective beyond the direct economic burdens, and also consider the social and sanitary impacts – we believe it is paramount to continue to make sure that the workforce and their livelihoods remain the priority.

Finally, by leveraging our members' collective intelligence, we are fully committed to support our community in safely navigating these unprecedented times, and remain available to answer both your requests and queries. Please feel free to reach out to us should you require any help.



Mohamed Oulkhôir
CWA Morocco
Managing Partner



Kamal Nasrollah
Nasrollah & Associés - Baker McKenzie
Managing Partner



Bruno Piney
Sopra Banking Software
Associated Director, Retail Bank MEA

Time for solidarity: An unprecedented crisis that requires an unprecedented collective response.

Africa is facing an unprecedented crisis with potentially dramatic economic and social consequences due to the COVID-19 pandemic. Collective efforts and solidarity between employers and employees are critical to respond effectively to the impact of the COVID-19 pandemic.

Notwithstanding the legal possibilities that are described in this publication and that does not constitute a proper legal advice immediately applicable, we want to stress that it is the right moment to show solidarity and not use the “no work, no pay” principle even in case of a lockdown.

The non-payment of salaries should be the « ultima ratio regis », option for employers when dealing with such an unprecedented crisis. While alternatives may vary from one country to another, most companies are making every possible effort to ensure health and continuity, by encouraging remote work, when possible.

Other less frequent possibilities, especially for small enterprises may include:

- The use of accrued leaves
- The payment in advance of the 2020 not accrued leaves
- Reasonable pay and working time reduction
- Allowing “special covid19 leave” where normal leave days have been used, and require these employees to work unpaid leave hours back when normal production resumes
- The upfront payment of the yearly gratification if any
- The payment of 2020 paid public holidays upfront and consider the paid public holiday as unpaid when we reach that date
- Any other assistance options put in place by the government however keeping in mind that these might take longer to be implemented and might change with the time

We urge African employers, to initiate dialogues with their employees and/or their representatives to find workable solutions to ensure both business and wages continuity.

We are delighted to take part in CFC's human resources working group and are happy to share with you this Covid 19 special edition dedicated to the regional labor and employment landscape.



**WORKING
FROM HOME**

DO WE NEED CONSENT TO IMPOSE REMOTE WORKING?

Would contracting the Covid-19 while working from home be considered an occupational accident?

MOROCCO



Remote working is not regulated in Morocco. We believe that due to the State of sanitary emergency and the strain put on employers from the authorities in that regard, remote working could indeed be imposed on employees.

Remote working is a safety measure put in place mainly to protect the employee's health. Therefore, contracting Covid19 while working from home is unlikely to be considered an occupational accident.

This should not negatively impact the production and services necessary to meet the essential needs of citizens and the supply of the national economy.

The press release states that these measures are "applicable to the entire national territory for a period of fourteen (14) days", noting that they "could be lifted or renewed in the same forms, if necessary, depending on the evolution of the health situation in the country".

ALGERIA



Remote working is not regulated in Algeria. However, we believe that it can be imposed based on the Prime Minister's office declaration. This last one states that the personnel working in the economic and financial sector, public or private, are not concerned by the provisions of the Executive Decree number 20-69 corresponding to 21 March 2020 relating to the measures of prevention and fight against the spread of the Coronavirus (COVID-19).

However, managers of companies and organizations from this sector should take the measures they deem appropriate to reduce the mobility of their staff by considering the imperatives related to the nature of their activities.

TUNISIA



Companies from all sectors and particularly the digital sector, are encouraged by the national federations and relevant ministries to implement a remote-working strategy or any possible related arrangements, when permitted by law. This aims at preserving not only the health and safety of the citizens but also the job positions and stability of the economy and social well-being. The political situation of the country, highlighted by the recent election of the government does not allow for a swift nor smooth decision-making process, especially when it comes to the implementation of such measures. The uprising economic and social aftereffects are also factors that may drag any possible proactive actions for the time being.

SENEGAL



Remote working is not specifically regulated under Senegalese law but remains possible in practice. The employer may impose remote working to preserve the health and safety of its employees. Employees working from home are still subject to labor regulations. In practice, it seems however difficult to assess if contracting Covid-19 while working from home would be considered as an occupational accident.

It is strongly recommended to employers and the authorities to try all possible alternative measures (leaves, working time reduction, etc...) before implementing furlough. In case the latter cannot be avoided to maintain the best possible level of remuneration.

IVORY COAST



In this Covid-19 period, the government encourages companies to implement remote working. This measure is not subject particular regulation; however, it is safe to assume that employees are still abiding by labor regulations in general. It seems difficult, though, to consider Covid-19 as an occupational accident.

SOUTH AFRICA



Generally, an employer may impose remote working policies on employees if the employment contract makes provision for the employer to impose such policy or not to attend work at any

time during their employment. If the employer does not have a contractual right and given the employers obligation to provide a safe working environment, it may be reasonable to instruct employees to work from home if they can do their job remotely.

In light of the lockdown imposed by the government, all employees who are able to, must work from home for the duration of the lockdown period.

Contracting COVID-19 while working from home will not be considered a work injury.

Occupationally acquired COVID-19 diagnosis relies on:

- Occupational exposure to a known source of COVID-19
- A reliable diagnosis of COVID-19 as per WHO guidelines
- An approved official trip and travel history of countries and/or areas of high risk for COVID-19 on work assignment
- A presumed high-risk work environment where transmission of COVID-19 is inherently prevalent; and
- A chronological sequence between the work exposure and the development of symptoms.

GABON



Despite the total silence of the Labor Code on remote working, the implementation of this work scheme is possible either as a result of the employer's unilateral decision or through the company's internal policies.

The use of work tools, attendance and compliance with working time limits and overtime legislation needs to be regulated in order to accommodate the Labor Code's provision on each topic and the general silence on teleworking.

RWANDA



Remote work is a measure to protect the health and safety of the employees. Therefore, contracting Covid19 when at home is highly unlikely to be considered as a workplace illness.

It is a decision of the employer following governmental guidelines that all employees working in non-essential services shall be working from home whenever possible or to refrain from working if not possible but in both cases, they should stay at home.

NIGERIA



This depends on the terms on each employee's contract. If under the employment contract, the employer reserved the right to require the employee to work from any other location as the

employer may direct, the employer does not require the consent of the employee to impose remote work.

Notwithstanding the terms of the employment contract, where as a result of governmental directives, all individuals are required to stay at home, the employer can also require the employees to work at home without the employee's consent.

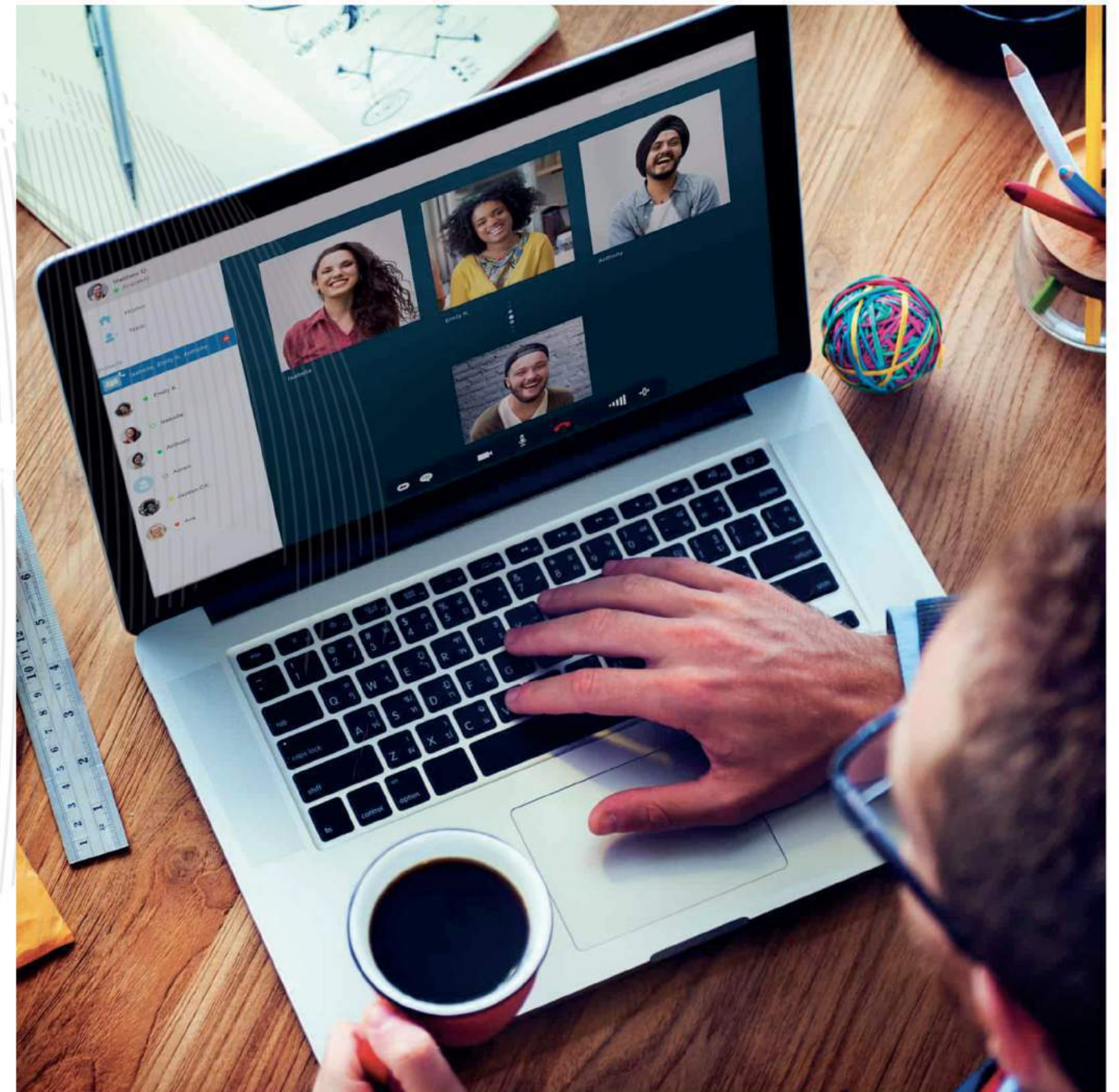
On the question of whether an employee who contracts COVID-19 while working remotely can be qualified as workplace injury, it is arguable that the employee may be able to oppose the argument that the illness is related to his work environment. Factors that will be taken into consideration include whether the employee contracted COVID-19 even though the employer complied with the health and safety directives issued by the governmental authorities.

Notwithstanding the current uncertain times, it is advisable that employers continue to assess the effect of COVID-19 on their businesses to determine the most appropriate measures to protect both their business and employees. Some of the concerns that employers need to address include how to implement the mandatory remote working/home office on their obligations and to provide adequate work-tools, a safe work environment and to ensure the continued protection of their customers' personal data.

CAMEROON



The Labor Code is silent on remote working. However, in our view, the implementation of this work scheme can be possible either as a result of employer's unilateral decision or through the company's internal policies. The use of adequate work tools, attendance and compliance with working time limits and overtime legislation needs to be regulated in order to accommodate the Labor Code's provision on each topic.





**GOVERNMENT
FUNDING**

IS THERE ANY GOVERNMENTAL FUNDING AVAILABLE? IF SO, HOW MUCH AND FOR HOW LONG?

MOROCCO



A fund has been created for eligible COVID-19 impacted businesses resulting in some measures to support employees and businesses that had to stop partially or totally their activity. Support period is from March 15 to June 30.

For employees, the support measures include: the payment of 2000 MAD compensation to employees who lost their job as a consequence of the crisis, as well as serving family allowances and compulsory health scheme benefits. For the companies, the assistance measures include : the payment by the State of the employer's share of social security contributions and business or professional training tax, depending on the assessment of the company file by relevant committee, taking into consideration reduction of workforce implemented, where applicable.

Further clarifications and updates especially on the eligibility criteria will be released by the authorities based on the draft bill 20.25. Eligibility criteria may significantly change.

ALGERIA



Two measures have been implemented to prevent and control the spread of the coronavirus: Executive Decree N 20-69 (21st March 2020) and Executive Decree 20-70 (24th March 2020).

The first executive decree N20-69 aimed to establish social distancing measures to prevent and combat the spread of the coronavirus, this decree introduced the exceptional paid leave for a period of 14 days (renewable) for at least 50% of the staff of institutions and public administration.

The following list of personnel shall be excluded from the measure provided in Article 6:

- The health personnel
- Personnel under the authority of the General Directorate of National Security
- Staff reporting to the Directorate-General for Civil Protection
- Staff reporting to the Directorate General of Customs
- Staff reporting to the Directorate General of the prison administration
- Quality control and fraud control personnel
- Staff of the veterinary authority
- Personnel under the jurisdiction of the phytosanitary authority
- Staff assigned to hygiene and cleaning missions
- Personnel assigned to surveillance and guarding missions

However, the competent authorities responsible for the staff excluded from this measure may authorize exceptional leave for administrative staff, such as pregnant women, mothers, persons suffering from chronic diseases, and those with health vulnerabilities.

Public institutions and administrations may take any measures to encourage remote work in accordance with the laws and regulations in force.

TUNISIA



The following preliminary and circumstantial measures have been decided to support Tunisian operators affected by Covid-19:

- postponement until the end of May 2020 of the filing of corporate tax declarations (due March 25), except for companies subject to the corporate tax at the rate of 35%.

- Stop all tax audit operations and appeal deadlines until the end of May 2020.

- Tunisian authorities have set up a commission, which will speed up the decision process needed to reimburse tax credits and as a result accelerate reimbursements to businesses. This committee meets once a week instead of once a month and this measure will relieve businesses' cash flow.

- Reactivation of the role of the national and regional conciliation committee. For the most affected companies:

- Allow these companies to reschedule their tax debts over a period of up to 7 years.

- Suspend the application of delay penalties for these companies for a period of 3 months from April 1, 2020.

- Allow the refund of the VAT credit, without the application of the 6-month condition, within a maximum of one month.

- Allow these companies to obtain suspension tax certificates under certain conditions. For activities in the hotel industry, travel agencies, tourist restaurants, crafts, transport, cultural activities: Implementation of exceptional management credit procedures until December 31, 2020. With the possibility of repayment over 7 years, including 2 years of grace. A fund of 500 MTD will be allocated to these credits.

SMEs: Creation of a 300 MTD support fund for SMEs.

- Application of the decision to assume responsibility by the State for up to 3% of part of the interest rate on investment loans.

- Creation by CDC of an investment fund of 500 MTD, including 100 MTD for creation subscriptions. This fund will be used to strengthen companies' own funds to safeguard jobs.

- Creation by the CDC of a relay fund of 100 MTD. This fund will be used to buy back units of investment funds in strategic companies facing difficulties.

For Exporting companies: The companies operating in the food and health industry will have the opportunity in 2020 to sell on the local market up to 100% of their production instead of 30% previously.

- Exporting companies from other sectors of activity, it was decided to increase this quota by 30 to 50% in 2020.

For all companies, possibility of revaluing their assets at market price, particularly, with exemption from capital gain and with obligation of non-transfer.

- Extension of the payment period for the sticker to the end of April 2020

- Amnesty on customs penalties and PV established before March 20, 2020. With payment of duties and taxes due and a fixed penalty of 10%

- Exemption of public tender contracts from late payment penalties over a period of 6 months for companies affected by the coronavirus pandemic. Additional measures have been decided by the Central Bank (BCT) as regards transactions tariffs and loans:

-To grant companies the possibility of postponing the payment of the installments of loans maturities (principal and interest). And this, during the period from March 1 to the end of September 2020. As well as rescheduling the reimbursement according to the capacity of each beneficiary.

This provision will include professional loans granted to customers classified 0 and 1. They should file a request to this effect with banks and financial institutions.

- The possibility of granting new funding to beneficiaries of the deferral.

- The possibility of making classified customers 2 and 3 benefit from the above-mentioned deferral procedures according to the client's situation.

SENEGAL



Yes - the Senegalese government has created a fund of FCFA 1000 billion. The length and duration of this fund have yet to be announced.

IVORY COAST



Yes – The Ivoirian government has implemented several measures to face the present COVID-19 challenges

Among these measures, there is a health response plan amounting to 95 Billion FCFA and an economic and a social support plan amounting to 1,700 billion (about 5% of the national GDP).

In the framework of the social and economic plan, the government has implemented a fund to support the private sector for an amount of FCFA 250 billion including support to small and medium sized companies for at least FCFA 100 billion. Ivoirian government has also set up guarantee funds in order to have a leverage effect on credit access. The government has also implemented a specific support fund to support informal sector businesses affected by the crisis for an amount of 100 billion FCFA. This measure will be perpetuated after the crisis with simple taxation and innovative ways of funding.

SOUTH AFRICA



Yes - The Unemployment Insurance Fund (UIF) has implemented a Temporary Employer / Employee Relief Scheme (TERS) to assist employers who cannot afford to pay their employees due to the financial stress as a direct result of the pandemic.

In order for an employer to qualify for TERS, it must satisfy certain requirements, including:

- the employer must be registered with the UIF
- the employer must comply with the application

for the financial relief scheme; and
- the employer's closure must be directly linked to the Covid-19 pandemic.

Employees are entitled to a salary benefit which is calculated on a capped salary of R17,712 per month. The normal rule stating that, for every 4 days worked, the employee accumulates one day credit and the maximum credit day's payable of 365 days, will not apply.

GABON



Although no statute has been yet adopted, the Gabonese President has already announced the establishment of a redundancy allowance amounting to 50% to 70% of monthly gross salary (excluding bonuses).

RWANDA



A fund has been created by the Central Bank of Rwanda and commercial bank are being flexible and allowing borrower to delay the date of payment of their loan up to 3 months. There is no system allowing payment of the staff losing their job as consequence of the COVID-19 crisis.

Government organized food distribution to the population negatively impacted by this crisis and the country's senior leaders have fully renounced their April's monthly salary.

NIGERIA



As of today, the Federal Government has not offered any pay support to employees.

The Federal Government has, however, approved the conditional cash transfer to the most 'vulnerable citizens' and internally displaced persons.

In addition, the National Assembly is considering the Emergency Economic Stimulus Bill (the "Bill"), that if enacted into law, will offer tax breaks to employers who do not lay off employees during this period.

CAMEROON



Measures are currently under discussions, but no statute has been yet adopted.



**FURLOUGH, WORKING
TIME AND SALARY**



3

IS FURLOUGH PERMITTED IN THE CONTEXT OF COVID-19 CRISIS?

If so, under what circumstances and how flexible will it be?

MOROCCO



If a company can demonstrate the existence of a force majeure situation, then an immediate closing can be considered. It is recommended to inform the staff delegates or unions of such a closing.

Employment contracts may be suspended during this period if it appears that other options cannot be implemented. Ordinarily, employers are not required to pay employees during the suspension of the employment contract, such as in the event of force majeure. The qualification of force majeure in Morocco is still likely to be discussed as there is no governmental decision to stop business activities.

However, and depending of the activity, there may be ground to have the force majeure recognized and therefore suspend payments.

Please note that ultimately force majeure will be a judge decision in case it is challenged.

ALGERIA



No specific measures.

In order to recourse to technical unemployment, the consent of the employee is required.

The employer and the social partner must negotiate a technical stop in order to determine the terms and conditions (working hours, workers concerned....).

TUNISIA



Currently, there are no measures announced to ban, purely and simply, the dismissals which would be decided in connection with the measures of general sanitary confinement decreed by the public authorities.



In this respect, article 14 of the Labor Code states that definite and indefinite term contracts shall terminate in the event of impediment of execution resulting either from a fortuitous event or force majeure occurring before or during the execution of the contract.

The Covid-19 epidemic, due to its unpredictable, sometimes even unbearable and, in any event, beyond the control of the employer, could easily assume the characteristics of a case of force majeure meaning of article 14, paragraph 3, c) of the Labor Code and it would be highly regrettable to consider the employment contracts of thousands of companies as being broken or even simply suspended in the event that the impossibility of performance is found limited in time. In fact, regardless of the appreciation we make of the

curfew thus decreed and the consequences that it may entail for the activities of the companies thus affected, whether these are forced to dismiss their employees or only suspend their employment contracts, no compensation is provided to employees. The salary, in any event, "... is due to the worker in return for the work performed for the benefit of his employer" (Article 134-2 of the Labor Code). No work, no salaries due to workers.

SENEGAL



Yes - According to article L65 of Senegalese Labor Code, some specific events may allow the employer to recourse to furlough. Such events are: (a) conjectural events (b) accidental events (accidents to equipment, interruption of driving force, bad weather, accidental shortage of raw materials, tools, transport). As a result, Covid-19 may constitute a conjectural cause allowing the employer to implement furlough.

As per remuneration during furlough, an agreement between the parties may specify the duration of furlough and, if any, the intended remuneration granted to the employee. In practice, this remuneration constitutes an allowance granted and established either by both parties (under a specific agreement) or at the employer's discretion.

Agreement between parties remains optional, but for an appeased social climate, it is strongly recommended.

IVORY COAST



Yes - According to article 16.11 of Ivoirian Labor Code, an employer can implement furlough, if, he is facing serious economic difficulties or unforeseen events of force majeure hindering the company's economic and material operations and making it impossible to continue its operation.

COVID-19 Pandemic may constitute a conjectural cause allowing the employer to implement furlough.

In addition, the Ivoirian Labor Code provides that furlough shall be implemented for a fixed period, which can be renewed. Furlough cannot be imposed to the employer for more than 2 months (either continuous or not) during the year. Once the two-month period has elapsed, the employee has the option of considering himself or herself as dismissed. Before this period, the employee maintains the right to resign.

As per remuneration, it remains optional during the furlough period but is strongly recommended in practice to maintain a peaceful social climate.

However, if the employees agree to an extension of the two-month period (set as a limited per year) for a period of not exceeding four months. In this case, the employer has an obligation to grant his/her employee at least one third of his/her gross salary. If the employees refuse to accept the furlough renewal after two months period referred to above, it will be deemed as a legitimate dismissal, except if the employee is able to prove a detrimental intent related to dismissal.

Finally, in the event of dismissal of several employees resulting from their refusal to renew

furlough, the employer would be obliged to abide by the procedure for collective dismissal on economic grounds.

SOUTH AFRICA



Yes -Generally, an employer may place an employee on furlough only when the parties involved reach a common agreement.

However, during the government mandated lockdown period (until at least 1 May 2020), the employer can implement a policy of "no work, no pay" as the employee cannot legally tender their services, and the employer cannot legally accept their services.

Only employees that provide essential goods and services can continue to attend work during the lockdown.

Employees who can meaningfully work from home during the lockdown and essential service employees must consent to furlough.

GABON



Yes, the temporary lay-off is permitted in such context although it is subject to the approval of the Labor Inspector after consulting the staff representatives.

RWANDA



If the company can demonstrate the existence of a force majeure situation, then an immediate suspension of the activities of the company and related employment contract can be considered by the employer.

It is recommended to inform the staff delegates and the district's labor inspector in which the company is operating before the implementation of such decision.

It is also recommended to discuss with the employees before suspending the employment contract for 90 days maximum. The employer can consider a temporary reduction in the employee's salary to an acceptable level for both the company and the staff during the crisis.

The employer can also consider a situation of paid leave for employees during the crisis if the company financial situation can accommodate such measure.

NIGERIA



Furloughs are a suspension of employment and is not regulated in Nigeria

Any employer wishing to use furloughs as a strategy for managing its workforce and employee costs in the context of COVID-19 would only be able to do so, pursuant to provisions in the employee's contract, the employee handbook (if applicable), collective bargaining agreement ("CBA") or by mutual agreement between employer and employee.

The employment contract, employee handbook and CBA are for ease of reference, referred to as the Employment Documents. In the absence of any provisions in the Employment Documents, the employer would only be able to do so, pursuant to the terms of the negotiated terms of agreement between the employer and the employee and/or trade union officials, if any of the employees are members of a trade union.

CAMEROON



Yes, the economic lay-off is allowed and shall be authorized by the Labor Inspector, after consulting the staff delegates.

4

IS THE EMPLOYEE'S CONSENT REQUIRED?



MOROCCO



The up to 50% working time reduction can be implemented without employee consent and can only take place one week after informing the staff delegates and unions or works council (for company with more than 50 employees).

IVORY COAST



No - Employees consent is not required if the event triggering furlough (as set forth in article 16.11 of the Labor Code) has been confirmed and established.

ALGERIA



Consent is required, the employer will have to negotiate with the workers' representatives (social partner). (Article 13 of Decree N 94-09 on the preservation of employment).

SOUTH AFRICA



Yes, unless the employees cannot legally tender their services and the employer cannot legally accept the employees' services (in these circumstances, an employer may unilaterally implement furlough).

TUNISIA



Employee consent is required

GABON



Consent provided through the staff representatives is required.

SENEGAL



No - Employee consent is not required if the event triggering furlough (as set forth in article L65 of the Labor Code) has been confirmed and established.

RWANDA



Yes, an employee's approval is needed to consider the period of the crisis as a paid leave. The employee's approval is also required in case the employer is willing to reduce the salary of the employees due to the case of force majeure during the crisis period.





NIGERIA



The employer does not need the employee's consent for deciding the suspension of the employment contract with no pay for a maximum period of 90 days.

Yes. Under the Nigerian law, the employment contract is primarily regulated by the terms of the contract between the employer and the employee. The employer would, therefore, be required to negotiate with each individual employee, unless the employees agree to be represented by trade union officials or by an employee representative(s).

CAMEROON



Consent provided through the staff representatives is required.

MOROCCO



If the company considers that it is in a force majeure case and needs to close all its activities, then such closing can take place immediately.

TUNISIA



Consulting with staff delegates if any or Union representatives are required.

Information of the Labor Inspection is required as well.

ALGERIA



The employer and the workers' representatives negotiate an agreement to provide compensation for work stoppage to the workers. The resulting compensation must be declared as wages, and therefore the social security will have to be informed.

In the case of employees who have been made redundant due to downsizing or cessation of the employer's activity, it is the body responsible for managing the unemployment insurance scheme that will have to be informed.

Indeed, article 22 of decree N 94-09 provides that "an employee who has been dismissed in the context of a workforce reduction and who benefits from admission to the unemployment insurance scheme is entitled to an indemnity equal to three (03) months' salary payable by the employer. It is paid at the time of dismissal.

SENEGAL



No - the employer shall consult employee's representatives (ERs) before implementing furlough. However, ERs shall only be consulted. Such consultation rights do not include prior approval to furlough. As a result, the employer can still implement furlough even though ERs did oppose to it during the consultation process.

In addition, please note further that article L.65 of Senegalese Labor Code provides that the employer shall inform the labor inspector before implementing furlough in the event that the collective agreement does not provide for such furlough or if the company has not ratified such collective agreement.



IVORY COAST



No - Labor inspector and ERs shall be informed of the furlough implementation. Simple information is required not prior approval,

SOUTH AFRICA



No - only employee consent is required.

GABON



Negotiations between employer and staff representatives and/or unions delegates (if any) are required.

RWANDA



If the company considers that it is in a force majeure case and needs to close all its activities, such closing can take place immediately without requesting the employees/union representative's consent. However, it is recommended to inform the labor Inspector of the district in which the company operates.

NIGERIA



If any of the impacted employees are members of a trade union, the employer would be required to negotiate the terms of the furloughs/reduction of workhours with the officials of the relevant trade union.

This would, however, not be required if the Employment Documents already provide a mechanism for addressing such concern. For employees who are not members of a trade union, the employer is required to negotiate with each individual employee unless employees agree to nominate representatives to the negotiate with the employer.

CAMEROON



Negotiations between employer and staff representatives and/or unions delegates (if any) are required.



IS IT ALLOWED TO REDUCE WORKING HOURS?

If yes what are the prerequisites?
Is there a process, or a consultation to follow?

MOROCCO



When the shutdown is based on a governmental decision (airlines, restaurants, transportation, private schools etc..), we are of the opinion that it may be considered as a "force majeure" case compelling the employer to close the premises to suspend the employment contracts without pay. Force majeure can also eventually be demonstrated on a case by case basis even if there is no specific government instruction on the matter.

If there is no force majeure, then the provisions of the relevant sections of the labor code will have to be enforced and respected.

ALGERIA



Under the law, any employer who decides to resort to adjustments in employment levels and wages must include those provisions in the protection mechanism, which encompasses a social component.

Negotiations between the employer and workers' representatives, pursuant to Decree N 94-09 on the preservation of employment, must be summarized in minutes signed by both parties. Those minutes record the points of agreement and the issues on which there are reservations or disagreements.

In the case of "technical unemployment" which actually occurred before the dissolution or partial cessation of the company's activities, workers are entitled to unemployment insurance as long as they can prove that they actually paid contributions for 6 months before the occurrence of these events.

For all other special situations not provided for in the regulations, they must be submitted for thorough examination, on a case-by-case basis, to the Local Committee and then forwarded to the bodies responsible for the administration of the National Unemployment Insurance Fund (CNAC), which alone is empowered to rule on the claimant's request.

TUNISIA



Part-time working arrangements may be agreed with employees through the signing of new agreements. Part-time contracts cover working time not exceeding 70% of the ordinary working hours. Compensation for the time worked should be proportionate and mutual consent is required.

Temporary shutdown of sites because of temporary economic difficulties is not precisely addressed by the Tunisian labor code and cannot be implemented without legal risks unless a situation of force majeure can be proven.

SENEGAL



In principle, any amendment on the terms and contract conditions is subject to the agreement of both parties (including the reduction of working hours).

It is recommended to involve / consult ERs in the process of reducing working hours. However, it is not mandatory to seek for their agreement with respect to such reduction if the employee has agreed to it.

However, an exception may apply if the employer is facing some economic difficulties. Indeed, the Senegalese labor code provides that any contract amendment (including salary amendments - if it is subsequent to a reduction of working hours) arising from the employer because of its economic situation should be submitted in advance to the employee. If the employee agrees to such change, it can only take place after a period equivalent to his notice period.

If the employee refuses the modification, a redundancy plan can eventually take place. The reason for redundancy must not be inherent to the

person of the employee, and must derive from the important modification of the employment contract refused by the employee. Consequently, the employer will have to prove the existence of strong economic impacts linked to the consequences of the Covid19 pandemic.

IVORY COAST



In principle, any amendments on the terms and contract conditions is subject to the agreement of both parties (including the reduction of working hours). It is recommended to involve / consult ERs in the process of working hours' reduction. However, it is not mandatory to seek for their agreement with respect to such reduction if the employee has agreed to it.

The employer may also implement part-time work if he faces serious economic difficulties but only for a period limited to three months per year, which may be renewed one single time.

A formalized agreement between the employer and the employee stating the reduction of working hours and the correspondent salary reduction is however required.

SOUTH AFRICA



Yes, but only with the consent of the employees.

GABON



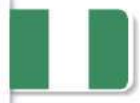
Working time reduction is permitted if it prevents a payroll downsizing. Staff representatives and/or union delegates must be consulted, and the Labor Inspector must give approval for such measures.

RWANDA



It is possible and it can lead to a change of the employment contract and salary reduction. It however requires the approval of the employee and the official notification of the local labor inspector covering the company's district.

NIGERIA



The number of working hours is a fixed term in the Employment Document(s). Consequently, the employer cannot unilaterally change any of the contractual terms.

Reducing the working hours is therefore only permitted based on a mutual agreement between the employer and the employee(s).

The employer must therefore seek and collect consent from each employee. If the employees are members of a trade union, the employer is required to notify and negotiate with the officials of the latter. If the employees do not belong to any trade union but maintain an employee consultative forum, the employer shall negotiate with that forum. In the absence of institution, the employer shall negotiate with each individual employee or require the employees to appoint a representative with whom the negotiations will take place.

CAMEROON



Under the Labor Code, reducing employees' working hours is one of the measures that the employer may take to avoid a collective redundancy. Such measure must be discussed with the staff delegates in the presence of the Labor Inspector.



7 **CAN WE UNILATERALLY REQUIRE EMPLOYEES TO USE VACATION LEAVE AND OVERTIME BANKS?**

MOROCCO



Under such exceptional circumstances, the employer is entitled to unilaterally require employees to use acquired vacation leaves.

The employee's consent will however be required if the employer wants to put in place additional leave with reduction of pay or unpaid leave.

ALGERIA



In accordance with article 51 of the 90-11 Act, the program of annual leave departures and its split shall be determined by the employer after consulting the participation committee.

TUNISIA



Article 117 of the Labor code allows the employer, in the interest of the company to set the dates of annual leaves after consultation of the staff delegates and union representatives where applicable.

SENEGAL



It depends on the situation and the context - Paid leave / vacation period is in principle agreed upon between the employer and the employee under Senegalese law.

However, in some specific circumstances ("pour les nécessités du service"), the employer may "anticipate" annual leaves and impose to employees to go on vacation on a certain period.

Please note that anticipating annual leaves is among the recommendations issued by Senegalese labor authorities in order to avoid implementing more drastic measures such as technical unemployment / furlough.

In addition, if the business is not ensured for a number of days exceeding the duration of statutory annual leave, the employer shall be required for each working day of closure exceeding that duration to pay the workers an indemnity, which may not be inferior to the daily allowance for paid leave. (Article L 154 of the Labor Code).

IVORY COAST



Indeed, Ivorian labor law gives the employer the rights to set the dates and period of vacation /

annual leave provided there is no specific timelines set forth for annual leave by relevant collective labor agreements. While setting those dates, employers shall consider (to the extent of possible) the employees wishes. The only obligation is the notification of the employee 15 days in advance. If an agreement is reached between the employer and the employee with respect to the "anticipation of annual leaves", respecting the 15-days period is not necessarily required since an agreement between both parties was reached.

SOUTH AFRICA



Yes, an employer may unilaterally require employees to take their accrued annual leave.

GABON



As a rule, the period of leave is set by mutual agreement between the employer and the employee and if no consent is reached, the employer may impose the period of leave depending on the needs of the company. However, due to this exceptional situation, we are of opinion that employees' consent is obtained.

Overtime bank can only be implemented if duly authorized by the Labor Inspector.

RWANDA



No, the employer shall secure the employee's consent which is usually obtained considering that we are under such exceptional circumstances. If the employee refuses, the employer can suspend the contract and the employee with a salary freeze for maximum 90 days. It is, therefore, a win – win situation to secure an agreement between the employer and the employee for salary reduction or considering additional leaves or canceling the overtime hours of the employee depending on the situation. For such action, the employer is required to involve the labor inspector in order to avoid post crisis litigation with the employees.

NIGERIA



Employers may unilaterally require employees to utilize annual leave and overtime banks. However, employees who are required to utilize their annual leave or overtime banks cannot be required to work during the period.

CAMEROON



Considering that the COVID-19 epidemic can be deemed as a case of force majeure, the employer may unilaterally take the decision of putting the personnel on paid leave. However, in our view, it is advisable to seek the employees' consent, to prevent any subsequent claims.



8

IS MUTUAL CONSENT REQUIRED TO IMPOSE A SALARY REDUCTION?



In case of employee rejection, what other options exist for salary cuts?

MOROCCO



Yes, employee consent is always required except in the case of a temporary working time reduction up to 50% as stated in the provisions of articles 185 and 186 of the labor code (employee representative information only).

ALGERIA



The employer cannot act unilaterally without the consent of the employee.

In order to avoid recourse to downsizing, the social partners within the employing body can decide on a work-sharing policy, the rates of wage reduction may in no case exceed that of the reduction in working time and are fixed by collective agreement in relation to the level of wages. (Art 33 of Decree 94-09).

TUNISIA



The employer cannot act unilaterally without the consent of the employee.

SENEGAL



In principle, any amendments to the terms and contract conditions are subject to the agreement of both parties.

However, an exception may apply if the employer is facing some dire economic difficulties. In that case, Senegalese labor code provides that any contract amendment (including salary conditions) arising from the employer because of its economic situation should be proposed in advance to the employee. If the worker agrees to such change, it can only take place after a period equivalent to the notice period. If he refuses, the contract will be deemed as terminated by the employer who will be then subject to the dismissal rules and restrictions. Finally, any reduction of salary cannot be below category base salary as fixed by collective branch agreements, for each workers category.

IVORY COAST



Yes - Salary is agreed upon in the employment contract. As such, we would assume that any modification is subject to consent of the employee. However, the salary reduction may not be less than the category's base salary as established by collective branch agreements, for each workers category.

SOUTH AFRICA



Yes, if an employee refuses consent then the employer should consider its operational requirements and whether it needs to retrench the employee for operational reasons.

GABON



Yes. Any substantial changes to the employment contract such as salary reduction is subject to the employee's consent.

RWANDA



If the employee refuses the other proposed solutions, the employer can suspend the contract and the employee's salary will be suspended during that period, limited to a maximum of 90 days.

NIGERIA



In order to vary the terms of an employment contract including the reduction of salary, an employer is required to obtain the consent of the employee. Where an employee does not agree to the proposed salary adjustments, depending on the circumstances of each case, the employer may elect to re-consider the continued employment of any such employee.

CAMEROON



Yes. Any substantial changes to the employment contract such as salary reduction is subject to the employee's consent.





**LEAVE OF ABSENCE
REQUEST**

**LEAVE AND PAID
TIME OBLIGATIONS**

9 ARE WE REQUIRED TO PAY OUR EMPLOYEES?

MOROCCO



When the shutdown is based on a governmental decision (airlines, restaurants, transportation, private schools etc..), we believe such situation may be considered as a Force Majeure case imposing on the employer the closure of the premises and the suspension of the employment contracts without pay. Force majeure can also eventually be demonstrated on a case by case basis even if there is no government instruction to suspend activities.

If there is no force majeure, then relevant provisions of the labor code will have to be applied and respected.

ALGERIA



Yes, the employer is obliged under article 70 of the Labor Law 90-11 to use all possible means to reduce the number of dismissals before reducing the number of employees, particularly through:

- Reducing working hours,
- or through part-time work.

The Algerian law does not include a definition of technical unemployment. In practice, it is an unforeseeable and exceptional situation that does not allow the company to continue its activity. In this case, the employer negotiates a technical stoppage with the social partner in order to determine the terms and conditions, in particular, the working hours, the workers concerned, the allowances to be allocated during this period, etc.) in accordance with Legislative Decree N94-09 on job preservation and protection of employees likely to lose their jobs involuntarily.

TUNISIA



Technical unemployment or temporary layoff is subject to the prior approval of the regional Employment Authority Commission, who should examine the employer's project based on economic or technological grounds, and either approve it or propose alternative measures. Exceptions may include force majeure cases and layoff with the employees' agreement.

If the employer is forced to reduce the staff for economic reasons or for job loss, it is required to comply with the legislation in force.

SENEGAL



Depends - In case of legitimate suspension or shut down of a site / interdiction of activity, it is strongly recommended for the employer to implement furlough (in the sense of technical unemployment) and to notify its employee, individually of such furlough. Otherwise, salaries would be still due as usual.

In addition, furlough / technical unemployment shall be implemented in accordance with the provisions of the Labor Code provisions and the collective branch agreements, if any.

If the employer has not implemented technical unemployment / furlough, provisions of article L154 of the Senegalese Labor Code would apply. In such case, when the continuation of an activity is not ensured for a number of days exceeding the duration of the statutory annual leave period, the employer is required to pay its employees an indemnity, which, should not be below the daily allowance for paid leave.

IVORY COAST



Depends - In case of legitimate suspension or site shutdown / interdiction of activity following a governmental order, the employer has two options: either implementing (i) a collective dismissal on economic grounds (ii) or implementing a furlough ("in the sense of technical unemployment "chômage technique").

(i) Collective dismissal on economic grounds is

subject to information / consultation of employee's representatives (ERs) and union's representatives (URs). A reunion supervised by the labor inspector shall be organized at the initiative of the employer, which shall convene ERs and URs. Fifteen days before the meeting, the employer shall address to the national council for social dialogue, employee representatives and the local labor and social laws inspector, a file specifying the reasons for the planned dismissal, the list of staff concerned and the date of dismissal, as well as any document required in order to assess the situation.

If the mass dismissal for economic reasons is implemented, employee will receive the relevant corresponding compensation. The company will be then put to slumber ("mise en sommeil") and employer shall contact relevant tax and social authorities in order to suspend payment of tax and social charges.

(ii) The employer can also implement technical unemployment / furlough. In such case, the compensation's attribution is left to the employer discretion, however it is strongly recommended in order to ensure a peaceful social climate.

Furlough cannot be imposed to the employer for more than 2 months (either continuous or not) per year

Once the two-month period has elapsed, the employee has the option of considering himself or herself as dismissed. Before this period, the employee maintains the right to resign. However, if the employee agrees to an extension of the two-month period (per year) for an additional period not exceeding four months, the employer has an obligation to grant the employee at least one third of the gross salary.

SOUTH AFRICA



During the government mandated lockdown period (until at least 1 May 2020) only business that provide essential goods and services can remain open. Non-essential services employers can implement a policy of "no work, no pay" as employees cannot legally tender their services, and that the employer cannot legally accept these services.

When work during the national lockdown can be done (for example employees providing essential goods and services or employees meaningfully working from home), the employer must continue to pay the employees, unless these consent to a non-payment of remuneration.

Occupationally-acquired COVID-19 diagnosis relies on:

- Occupational exposure to a known source of COVID-19;
- A reliable diagnosis of COVID-19 as per WHO guidelines;
- An approved official trip and travel history of countries and/or areas of high risk for COVID-19 on work assignment;
- A presumed high-risk work environment where transmission of COVID-19 is inherently prevalent; and
- A chronological sequence between the work exposure and the development of symptoms.

GABON



In such situation, the employer is forced to implement a temporary lay-off, defined as the suspension of an employment contract by the employer due to technical or economic reason. Although not expressly provided in the labor laws, such temporary layoff implies the payment by the employer of part of the salaries.

RWANDA



When the lockdown is based on a government decision forcing the employer to stop its activities (close its shop or close the premises of its enterprise...), it is considered as a case of force majeure in Rwanda.

NIGERIA



The principal law that governs employment in Nigeria is the Labor Act, chapter L1, Laws of the Federation of Nigeria 2004 (the "Labor Act").

The scope of the Labor Act is fairly limited, and prescribes the minimum standards and conditions of employment for "Workers" - which the Labor Act defines as employees who perform manual labor or clerical worker and they are required by law to enter into an employment contract with their employer.

Employees who provide administrative, executive, technical or professional services are not covered by the provisions of the Labor Act and their employment is governed by the terms of their contract of employment. The extent to which the law interferes with the freedom of the employer and employee to contractually regulate their relationship depends on the exact nature of the employment and the legal category an employee falls under.

Unless specified in the employment contract, an employer is obliged to continue to pay salaries to the employees based on the terms of their employment contracts.

The modification of terms in the employment contract to include a non-payment of salaries during this period requires to obtain the consent of the employee. It is advisable for employers to negotiate and to agree the terms of any salary or other benefits adjustments with their employees.

If an employee does not agree with the proposed salary adjustments, then the employer may, depending on the circumstances, choose to reconsider the employment continuation of such employee. When the employees are members of a trade union, the employer will be required to hold the discussions with the Union and based on the terms of the Collective Bargaining Agreement ("CBA").

CAMEROON



The case of force majeure allows the employer to suspend the employment contract with its employee for a maximum of 90 days under the law regulating labor in Rwanda.



About the Authors

Mohamed Oulkhair is the Managing Partner at CWA Morocco
For further information you may contact him at
mohamed.oulkhair@cwassocies.com

Keltoum Boudribila is a Senior Associate at Nasrollah & Associé - Baker & McKenzie
based in Casablanca, Morocco. For further information you may contact her at
keltoum.boudribila@bakermckenzie.com

Imane Mguired is the Director of Human Resources at Sopra Banking Software Middle East & Africa
For further information you may contact her at
imane.mguired@soprabanking.com