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New Covid-19 'Mask-up Orders' from Friday 7th October

New Covid-19 National Lockdown 'Mask-up Orders' were gazetted on Friday 7th October 2022, in Statutory Instrument 169 of 2022.

Given the widespread discarding of Covid-19 masks – observable in passing cars, in the streets and at shopping centres – SI 169 is obviously an attempt to impose some 'legal' order on the situation – and to give the police guidelines for continuing to impose fines for non-compliance.

The SI states, **"(2)(g) The wearing of masks is mandatory** (i.e. still legally compulsory) –

- (i) **indoors at workplaces to which the public have access** (so back-office employees don't need to wear masks, for example – if they ever did), **or** (this should be 'and') **in public conveyances (taxis** [which would include the unmentionable mshikashika's] **and commuter and other buses, goods** ('goods vehicles' presumably [but do they also carry passengers as a rule?]), **public service vehicles and trains and aeroplanes carrying passengers;**
- (ii) **outdoors in public places except for those individuals who are fully vaccinated** (that is to say those who have been vaccinated at least twice against Covid-19."

'Public places' are defined in section 2 ('Interpretation') of the principal **Public Health (Covid-19 Prevention, Containment & Treatment) (National Lockdown) (No. 2) Order, 2020** (SI 200 of 2020) as follows –

"(a) Public Places mean any road, thoroughfare, building, open space or other place of any description to which the public or any section of the public have access, whether on payment or otherwise and whether or not the right of admission thereto is reserved (Right from the start of the Lockdown, there was some argument about whether when driving your private vehicle you were "in a public place". The police position was that if you were on a road to which members of the public had access, then you were in a public place and liable to a fine for not wearing a mask. They may still pursue that line – so it would be advisable to carry proof you are 'fully vaccinated'.)

(b) Public Places include (but are not limited to) –

- (i) restaurants
- (ii) other tourist facilities, including private and public game reserves...
- (iii) backpackers' lodges and other guesthouses...
- (iv) places of worship
- (v) clubs, sports and other recreational facilities

- (vi) flea markets, vegetable markets and bazaars...
- (vii) liquor establishments
- (viii) theatres, cinemas, and shopping malls and centres...
- (ix) casinos and other gaming establishments..."

Recent mass media reports on SI 169 merely say people who have been vaccinated twice need not wear masks in public places, without looking at what is meant by 'public places' in the legislation.

While it would be a relief to only have to wear masks 'indoors at workplaces to which the public have access' and in public transport, I think the situation is (unfortunately, because of the police readiness to fine), a bit more complicated than that, as a result of the linking of the above 'public places' and 'outdoors'. As I understand it, if you are fully vaccinated and, for example, eating and drinking at a restaurant 'outdoors', then you need not don a mask. If you are indoors at **any** of the above 'public places', then in principle even if you are fully vaccinated you are legally required to mask up – as are staff etc. Perhaps the authorities have themselves overlooked the full definition of public places and in due course will clarify the situation.

Note

SI 169 of 2022 is the 42nd amendment to the principal National Lockdown Order in SI 200 of 2020.

The amendments have been so many, and so convoluted, that the Minister has long given up trying to integrate amendments into SI 200, preferring instead to amend earlier amending SI's.

So the 42nd amendment contained in SI 169 amends the 40th amendment contained in SI 18 of 2022, inserting the paragraph **reproduced in red above** at the end of section 2 of SI 18.

A minor point is that SI 169 purports to insert the above paragraph as paragraph (g) after paragraph (f). However, a new paragraph (g) – removing limits on numbers at gatherings that are 'not of a political nature' – was actually inserted into section 2 of SI 18 of 2022 by SI 67 of 2022 on 1st April 2022.

So the **above paragraph 2(g)** should actually be paragraph (h) – if anyone cares.

The Special Case of Terminal Benefits when an Employee Dies in Service

Thanks to Kim for this one. She wrote, "*Sadly, one of our employees recently passed away, and we would like to ensure we pay out all the relevant finances to the family. Would you be able to send me the details relating to funding paid out on the passing of an employee? He started with us on 12th October 2006 and passed away on 7th August 2022 (16 years' service). We operate in the international NGO/welfare sector.*"

I replied – The relevant legislation is found in sub-section (1) of section 13 ('Wages & benefits upon termination of employment') of the *Labour Act*, which specifies his 'estate' is entitled to wages and any benefits (including medical aid) up to his last day of employment; cash-in-lieu of vacation leave accrued and not taken; any outstanding notice period; social security and any pension. (In addition, a Gratuity for Service is usually stipulated in the relevant Collective Bargaining Agreement).

Regarding NSSA benefits ('social security'), I suggest you refer surviving relatives directly to NSSA after providing them with the relevant documentation from your records.

Regarding the Welfare NEC Gratuity for Service, section 20, as read with the Third Schedule ('Gratuities on Termination of Employment') of the principal Collective Bargaining Agreement for Welfare & Educational Institutions, contained in Statutory Instrument 102 of 2014, stipulates a Gratuity for 16 years' service of 21% of the last monthly wage multiplied by 16. So, just for illustrative purposes, assuming he was paid \$100 in his last month of service, the Gratuity would be $100 \times 21\% = \$21 \times 16 = \336 . (Sub-section (3) of section 20 says that no gratuity is payable if the employer has "made

provision... by means of a pension gratuity scheme... which provides benefits that are not less favourable than those in this section.”)

The Gratuity rarely amounts to much, unless the employee has as much as 30-40 years service. Historically, the now rather outdated rationale behind the Gratuity was that the ‘social security system’ after formal employment would consist not of a pension, as such, but of a return to a rural home and one’s roots and a subsistence village-based lifestyle with aged-care provided by one’s extended family.

Who to pay Terminal Benefits to when an employee dies without a Will can be a legal minefield, due to emotional and cultural factors. Below I have reproduced an extract from one of George Makings’ handbooks (which I edit and keep up-to-date with legislative changes) that addresses some of the issues.

George Makings writes as follows on –

“The special case of terminal benefits following death in service

Obviously, if an employee dies while in service or on sick leave, strictly speaking his estate should receive his terminal benefits.

Common practice in regard to deceased employees with relatively few assets would be to pay to immediate dependants. It is advisable to get anyone claiming to be entitled to a deceased worker’s terminal benefits to bring along a few other family members to vouch for his or her *bona fides*. The first to arrive on the scene claiming to be a ‘wife’, or ‘brother’, or uncle, or son etc is not necessarily the strongest claimant. (Traditional kinship terminology can be a complex matter.)

Always record full details of names and National Registration Numbers of the claimant and supporters, taken from ID’s (the last two digits enable police to trace the place of origin of relatives, in case of need).

Always get a signed receipt/document in case of later disputes between surviving relatives.

“For reasons of compassion, you may choose to make up a financial package to assist the deceased worker’s dependants in their time of stress and need.

Should you include cash-in-lieu of notice for a deceased worker? Differing views exist about this. Although it seems anomalous – and probably is – section 13(1) of the **Labour Act** does refer to ‘any outstanding notice period’ where an employee dies in service. If you do decide to pay something extra, depending on the amount you have in mind you may wish to consider labelling this as ‘cash-in-lieu of notice’ which would cater for any subsequent eventuality where this was raised.

On the other hand, if you do not want to pay cash-in-lieu of notice, you could logically take the position that a strict interpretation of the law permits you to restrict the application of the phrase ‘any outstanding notice period’ to a situation where the employee has given notice, is serving his notice and then dies during the notice period.”

Extract from George Makings’ ***The Law on Employment of Domestic Workers***, 2nd edition, updated 2022

“Is Tax Payable on a Gratuity for a Deceased Employee?”

Thanks to Theresa, who asked if there is any tax payable on a Gratuity for a deceased employee.

I don’t recall this ever being raised before. I think the answer is found in the following extract from the 13th Schedule (‘Employees Tax’) of the **Income Tax Act** (Chapter 23:06 of the Statute Law) –

“13th Schedule – Employees Tax

Remuneration means any amount of income which is paid or payable to any person by way of any salary, leave pay, allowance, wage, overtime pay, bonus, **gratuity**, commission, fee, emolument, pension, superannuation allowance, retiring allowance, stipend or commutation of a pension or an annuity, whether in cash or otherwise and whether or not in respect of services rendered.”

The Third Schedule (‘Exemptions’) to the Act lists many forms of income that are exempt from tax (e.g. a portion of annual bonuses) but I see no reference to gratuities for past performance of ‘ordinary’ employees (gratuities for Judges; and for those awarded various Honours *are* exempt from tax). So I would say that the Gratuity would form part of a deceased employee’s annual taxable income. Seems a pity when it is so often a mere pittance anyway.

TOURISM Industry – USD Wages & Allowances for June-September 2022

Thanks to Precious for sending the Tourism Industry’s Circular 002 of 13th July 2022, plus the accompanying draft of a Statutory Instrument containing a ‘USD Salary Schedule 01 June 2022 - 30th September 2022’, being the outcome of Collective Bargaining agreed on 1st June 2022.

The draft SI states, “All Wages indexed in USD across the board.

- (i) 50% of gross wage (i.e. including housing and transport allowances) to be paid in USD and 50% in RTGS at the prevailing interbank rate.
 - (ii) The lifespan of agreement to run concurrently with the April USD Wages up to 30 September 2022.”
- Basic monthly wages for Sector I (Leisure) ranged from US\$257 for Grade 1 to US\$414 for Grade 12. The Housing Allowance for all grades was US\$50 per month. The Transport Allowance for all grades was US\$40pm.
 - Basic monthly wages for Sector IB (Hunting & Photographic Safaris) ranged from US\$208 for Grade 1 to US\$269 for Grade 9. The monthly Fuel Allowance was US\$10 and the Lights Allowance was US\$10 for all grades.
 - Basic monthly wages for Sector II (Conservancies & Natural Resources Preservation Sector) ranged from US\$114 for Grade 1 to US\$270 for Grade 9. Again, the monthly Fuel Allowance for the period was US\$10 and the Lights Allowance was US\$10 for all grades.

The draft SI also stipulates, “NB: Computation of NEC & Union dues shall be deducted from both USD and RTGS wage.”

The CBA does not expressly say NEC Dues and Union Dues should be paid 50% in USD and 50% in RTGS. However, a draft SI date-stamped 23rd February 2022 containing the CBA for February-March 2022 does expressly state, “Those companies remunerating their employees in USD shall pay NEC and Trade Union Dues in USD.” It seems unlikely that the NEC would have dropped this requirement, so the overall import points to 50/50 USD/RTGS deductions and remittances to NEC and Union.

The 13th July Circular says, “*It is understood that not every Tourism Company receives their income in USD and that most companies have not yet recovered from the effects of the Covid-19 Pandemic, hence Companies who have no capacity to pay the above shall apply for exemption to pay in ZWL at the prevailing interbank rate & the NEC will expedite the process on an urgent basis. A template for the application shall be availed by the NEC Secretariat upon request.*”

The USD salary payments will be revisited in the event that the 100 percent forex retention by the Tourism Industry is no longer applicable.”

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This Bulletin has been sent directly to subscribing Members of the [Labour Relations Information Service](#)

And to Members of [Business Information Zimbabwe](#), in view of the general applicability of the item on Covid-19 Masking

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