

## CIRCULAR 11 / 2020

**FROM : CHIEF EXECUTIVE OFFICER**

**TO : EXECUTIVE MAYORS / MAYORS  
SPEAKERS, POLITICAL HEADS OF CORPORATE SERVICES PORTFOLIO  
COMMITTEES  
MUNICIPAL / CITY MANAGERS**

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### **GUIDELINE ON THE INTERPRETATION OF DESIGNATED ESSENTIAL SERVICES DURING THE NATIONWIDE LOCKDOWN PERIOD**

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#### **1. PURPOSE OF THE CIRCULAR**

The purpose of this circular is three fold:

- (a) Firstly to clarify the relationship between essential services as defined in Section 213 of the Labour Relations Act (Act 66 of 1995) and those set out in Annexure B of the Disaster Management Act (Act 57 of 2002) Final Lockdown Regulations, commonly referred to as the COGTA COVID -19 Disaster Response Directions, 2020.
- (b) 2ndly to provide an advisory guideline on the correct interpretation to be applied regarding these measures. The need for this guideline stems from numerous enquiries from municipalities wishing to be clarified on which of the two sets of essential services applies during the national lockdown period announced by President Ramaphosa on 23 March 2020. To this end, the Minister for Cooperative Governance and Traditional Affairs (COGTA) then published these Regulations on 25 March 2020.
- (c) 3rdly to advocate for a common approach to be adopted by municipalities on these measures when it comes to employees in the designated essential services.

#### **2. BACKGROUND CONTEXT AND ADVISORY THRUST**

The Labour Relations Act, No 66 of 1995 as amended, defines, in terms of its Section 213 essential services as services the interruption of which endangers the life, personal safety or health of the whole or any part of the population. To give effect to this definition, the Minister of Labour establishes the Essential Services Committee (the ESC) in terms of Section 70 of the same Act. The ESC then, after following due processes, designates services in terms of Section 71(8) of the LRA, as essential. All designated essential services are published in a

Government Gazette that is signed by the Minister of Labour. Such designations then become law and affected employees have to subject themselves to the said provisions.

Thus, given the afore-stated definition, it is compulsory that employees who perform work that falls within the ambit of such designated essential services must always be on duty as, if the contrary were to occur, the life, personal safety or health of citizens would be endangered. The designation of essential services happens across many sectors, industries, institutions and businesses. The municipal sector is no different as illustrated by the following examples of essential services already designated by the ESC:

- Disaster Management
- Fire and Emergency Services
- Municipal Traffic Services and Policing
- Municipal Security
- Municipal Health
- Generation, Transmission and Distribution of Power(Electricity)
- Supply and Distribution of Water
- Sanitation Services
- The Collection of Refuse left uncollected for 14 days or longer, including domestic refuse and refuse on public roads and open spaces.

With the emergence of the COVID – 19 pandemic in South Africa and the subsequent issuing of COGTA COVID – 19 Disaster Response Directions, 2020 **the list of designated essential services applicable to municipalities has been expanded to include essential municipal services on a broad scale and more specifically cleaning, sanitation,sewerage,waste and refuse removal services.** For purposes of the national lockdown and as provided for in Clause 11A of the COGTA COVID – 19 Disaster Response Directions, 2020 the list of designated essential services has included additional services not catered for in the services designated by the ESC such as waste removal. This is intended to ensure that from Day 1 of the National Lockdown, no service deemed essential in terms of the Disaster Management Act (Act 57 of 2002) is not accounted for in the operations of the municipality. In addition to that and given that the Regulations are law, no discretion applies to municipalities regarding compliance to these directives as Clause (7) (2) is clear that any person is guilty of an offence if that person fails to comply with or contravenes the applicable provisions of these regulations.

Thus and without ambiguity municipal employees within designated essential services provided for in Paragraph B of Annexure B are compelled by law to work during the lock-down period. Employees who refuse to work citing the non – appearance of their work from list of services designated in terms of the Labour Relations Act (Act of 66 of 1995) as the basis for doing so do not have justifiable grounds as Clause 11A makes it clear that the definition of essential services in these Regulations has a dual meaning. In other words there is both a Labour Relations Act and Disaster Management Act meaning and thus both pieces of legislation must of necessity and for purposes of proper interpretation be read together to form a clear understanding.

For the record, the COGTA COVID – 19 Disaster Response Directions, 2020 additionally place an obligation on Municipal Managers as Heads of Municipal Institutions to determine essential services to be performed in municipalities and these are guided by the list stipulated in Paragraph B of Annexure B contained in same Regulations while simultaneously complying with statutory obligations set out in Clauses 11B (2 -8).

### 3. PROACTIVE MEASURES TO PROMOTE A HEALTHY AND SAFE WORK ENVIRONMENT

Municipalities, as employers, are obligated to ensure that they provide their employees with a safe and healthy environment. The provisions of the Occupational Health and Safety apply to municipalities and must be observed to the latter. There is a duty on both employers and employees to limit the spread of COVID-19. In ensuring that preventative measures to mitigate the spread of the disease are put in place, all municipalities are required to ensure adherence to the following:

- ***Stop shaking peoples' hands. Rather use other non-contact methods of greeting such as a friendly wave, elbow bump etc.;***
- ***Disinfect hands with a sanitizer at all municipal entrances;***
- ***Schedule regular hand washing reminders by email or morning meetings;***
- ***Put up posters everywhere reminding people to wash their hands;***
- ***Remind employees not to touch their faces and cover their faces when they cough and sneeze and then wash their hands immediately thereafter;***
- ***Disinfect surfaces like doorknobs, tables, desks and handrails regularly;***
- ***Increase ventilation by opening windows or adjusting air conditioning;***
- ***Leave access doors open to prevent people from touching door handles; and***
- ***Ensure that biometric attendance systems are cleaned before and after every person touches the system, if no alternative access management system cannot be deployed.***

The **COGTA COVID – 19 Disaster Response Directions, 2020** and the **List of ESC Designated Essential Services** have been incorporated as attachments to this circular for ease of cross referencing and to draw attention of municipalities to specific provisions contained therein.

For further enquiries on this circular or related matters, you are encouraged to contact **Mr. Zwe Ndlala as the designated SALGA official** at e mail address [zndlala@salga.org.za](mailto:zndlala@salga.org.za) or via cell phone on **083 257 7174**.

Yours sincerely,



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