

EXEMPTION PROCEDURE SPECIFICALLY INTENDED TO REDUCE THE IMPACT OF COVID – 19

EXEMPTION PROCEDURE:

1. The applicant should notify the Council of the business intentions to apply for an exemption.
2. The applicant must consult the representative employees or members of the Trade Union and notify them of the intention to apply for an exemption due to COVID-19 Impact on the business.
3. The employer should ensure that the reasons for applying for the exemption are shared with the union and only then proceed with the application for an exemption.
4. The employer must prepare information to support the application for COVID-19 specific exemption in order to:
 - 4.1 Prove that the business was not able to operate at all or it is not able to operate at full capacity due to the impact of COVID-19 National Lockdown regulations.
 - 4.2 Illustrate evidence of loss of income as a result of the lockdown.
 - 4.3 The applicant has no obligation to disclose financial statements considering that the COVID-19 specific exemption addresses the loss of revenue during the National lockdown period.
5. The employer will present a COVID-19 exemption application form (appended) together with supporting evidence to the exemption committee for its consideration and determination.
6. The COVID-19 specific exemption application is submitted directly to the exemption committee, whether the employees support or disagree with the merits of the COVID-19 exemption application.
 - 6.1 There is no expectation for parties to reach an agreement prior to the submission of the COVID-19 exemption application.
 - 6.2 The representative employees or members of the Trade Unions must be given an opportunity to make submissions to the Exemptions Committee.
7. The applicant will provide specific provisions of the clause in the collective agreement for which the exemption is sought.
 - 7.1 The exemption committee will hear the matter and make its determination considering:
 - 7.2 The prevailing conditions and how other sectors are likely to be affected by the exemption.
 - 7.3 All representations made by the parties.
 - 7.4 If the employer is currently fully compliant to the collective agreement.
 - 7.5 The nature and size of the business in respect to the application for exemption.

7.6 The extent to which the COVID-19 exemption application undermines collective bargaining and labor peace.

8. Once the matter is heard, a decision should be communicated to the parties in writing within 30 days.
9. Once a decision to grant the exemption is taken, a certificate will be granted by the Council within 14 days. In a case where an exemption is dismissed, reasons will be provided in writing within 14 days.

ANNEXTURE 1: EXEMPTION APPLICATION FORM

Case Number: _____

EXEMPTION APPLICATION

1. NAME OF APPLICANT:

(a) If Labour Broker:

2. ADDRESS: (a) Physical:

3. CONTACT PERSON:

CONTACT TELEPHONE NO.:

CONTACT E-MAIL ADDRESS :

4. ACTIVITIES OF BUSINESS:

5. DATE OF COMMENCEMENT OF BUSINESS:

6. DATE OF REGISTRATION WITH COUNCIL:

7. IS THE BUSINESS A MEMBER OF A REGISTERED EMPLOYERS' ORGANISATION?

YES NO

(a) If yes – particulars of employers' organization:

EXEMPTION APPLICATION

Case Number: _____

NAME OF APPLICANT:

I, the undersigned _____ do hereby make oath and state as follows:

1. I am an adult _____, the Applicant's _____ and am duly authorized to submit this application and my main place of work is:

2. The facts contained in this application are within my personal knowledge and are true and correct.

3. The Applicant is:

4. NATURE OF APPLICATION: (Applicant must refer to specific Clauses of Collective Agreement he/she wants to be exempted from because a company is not being able to operate in its full capacity or partly as a direct result of the impact of COVID-19)

5. STATEMENT OF MATERIAL FACTS (Applicant must provide sufficient details or grounds why he/she is unable to comply with Clause(s) of the Collective Agreement as stipulated above (NB: Applicant must be able to demonstrate with supporting documentations that he /she is not able to operate at all or not at full capacity due to the impact of the COVID-19).

5.1 The applicant must provide details of the capacity at which the company operated with supporting documentations that demonstrates the extent to which he /she is not able to operate at all or the extent of partial operation due to the impact of the COVID-19).

(a) The applicant did not operate at all and the loss of income is demonstrated, and the supporting documents are provided:

(b) The applicant partially operated and the capacity at which the business operated is demonstrated and the supporting documents indicating a loss of income are provided:

6. GROUNDS FOR GRANTING OR REJECTING THE EXEMPTION APPLICATION [NB: You may submit fuller typed grounds attached to this application]:

6.1 (a) Any special circumstances that exist that the applicant would like to bring to the attention of the Exemptions Body:

(b) Any precedent that might be set:

(c) How does the Exemption Application impact on the interests of the Industry with regards to the following?

(i) Unfair competition:

(ii) collective bargaining:

(iii) potential for labour unrest:

(iv) increased employment:

(d) How does the Exemption Application impact on the interests of employees with regards to the following?

(i) exploitation:

(ii) job preservation:

(iii) sound conditions of employment:

(iv) possible benefits:

(v) health and safety:

(vi) infringement of basic rights:

(e) How does the Exemption Application impact on the interests of the employer with regards to the following?

(i) financial stability:

(ii) impact on productivity:

(iii) future relationship with employees or employees' trade union:

(iv) Operational requirements

STATEMENT OF LEGAL ISSUES (if necessary and applicable, sufficient detail must be given in order to enable any Party to reply to it)

7. PERIOD EXEMPTION REQUIRED FOR: _____

8. Number of affected employees (please attach list of names and their respective allocated employee numbers):

8.1 An applicant must provide a letter confirming that they were unable to operate in its full capacity or they were operating on partial basis due to the National Lockdown Regulations, as a result applicant was unable to conduct consultations with affected employees during the lockdown period.

9. Proof of loss of income must be attached in this application indicating clearly that applicant has lost income because of not operating in its full capacity or operating on partial basis due to due to National Lockdown Regulations

10. LIST OF ANY DOCUMENTS THAT APPLICANT IS OF THE VIEW THAT ARE MATERIAL AND RELEVANT TO THE APPLICATION

(these documents are to accompany the Application and if more space is required, attach annexures to this Application, utilizing this space to inform of such annexures which must be properly numbered):

Name and Signature of the authorised person to submit an application (electronic signature will suffice during the lockdown period)

Dated at _____ this day _____ 2020

NB: THIS APPLICATION FORM AND ADDITIONAL INFORMATION REGARDING THE APPLICATION SHOULD BE SUBMITTED TO THE FOLLOWING ADDRESS:

E-MAIL: