The novel coronavirus (COVID-19) is a rapid spreading virus that has taken the whole world into a whirl wind where people are torn between staying at home and follow health guidelines to keep the virus at bay and going out to work in search for the daily bread. A virus that first surfaced in a Chinese seafood and poultry market in the late 2019 manifesting pneumonia like symptoms currently knows no borders.\(^1\) By 6th April 2020, 1 244 421 cases of COVID-19 (in accordance with the applied case definitions and testing strategies in the affected countries) had been reported globally, including 68 976 deaths.\(^2\) Uganda is among the 54 African countries that have confirmed cases of COVID-19\(^3\) and as of 5th April, Uganda had registered 52 cases of COVID-19\(^4\).

To alleviate the impact of this pandemic, countries across the globe have adopted measures including social distancing, self-isolation, institutional quarantine and travel restrictions. In Uganda Government has issued measures aimed at stopping the spread and the subsequent impact of COVID-19 including suspending all forms of public gatherings of a political, social and religious nature, schools, cross border movement of non-residents for 30 days, public transport means including buses, taxi, coasters, passenger trains, tuku tuku and all boda boda were suspended for 14 days and the sale of non-food items in markets that bring together many people was also suspended.

These measure have pushed people from the work-places into their homes leaving employers with no plan to manage the turbulent times. According to the International Labour Organisation, the crisis has already transformed into an economic and labour market shock, impacting not only supply (production of goods and services) but also demand (consumption

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2. European Centre for Disease Prevention and Control, Situation update worldwide, as of 6 April 2020
and investment). All businesses, regardless of size, are facing serious challenges, especially those in the aviation, tourism and hospitality industries, with a real threat of significant declines in revenue, insolvencies and job losses in specific sectors.

While the President of Uganda has ordered ministry and government departments to work out a plan of the essential staff that need to remain on duty to work on a rotational basis, employers in the private sector have resorted to remote working to ensure that their businesses continue operating through the crisis even when there has been no pronouncement from the Government to the private sector.

Platform for Labour Action a non-government national civil society organization that promotes and protects the rights of vulnerable and marginalized workers in Uganda has keenly followed developments and the measure put in place by the Government to contain the spread of the virus and has examined their impact on the labour and employment sector of Uganda.

1. **COVID-19 unveils numerous gaps in the Employment Act and the laws governing occupational safety, health and worker’s compensation.**

**The 1995 Constitution of the Republic of Uganda**

The Constitution endows the government with powers to limit personal liberties to alleviate the spread of an infectious disease and places an obligation on employers to ensure that employees work under safe and healthy conditions. Article 23 of the Constitution prohibits the deprivation of personal liberty except in specified circumstances including the spread of an infectious or contagious disease. Similarly, Article 40 (1) (a) provides that Parliament shall enact laws to provide for the right of persons to work under satisfactory, safe and healthy conditions. Therefore, while the government is empowered to limit personal liberties, the need to enforce the right to health becomes the basis for limiting the right of the affected person from enjoying their personal liberty. Also, the right to work under satisfactory, safe and healthy conditions includes the right to protective equipment to minimize exposure to occupational and health hazards as well as the right to compensation for injuries suffered in the course or employment. This means that employers are mandated to provide the recommended sanitation measures to limit employee exposure to COVID-19.

**The Public Health Act 281 and the COVID-19 specific regulations.**

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5 International Labour Organisation, why are labour markets important? The Great Recession and other crises have shown that we can prevent the risk of a vicious downward cycle only through large-scale, coordinated and decisive policy measures.

6 [id](#)
Section 27 of the Public Health Act provides that the Minister may make rules applicable to all infectious or only to such infectious diseases as may be specified in the rules, regarding among other things the duties in respect of the prevention of infectious disease and in respect of persons suffering or suspected to be suffering from an infectious disease, of owners of land on which persons reside and of employers of labour, and of chiefs or headmen and others. The minister’s powers include the power to make rules concerning the measures to be taken for the prevention of the spread or eradication of an infectious disease requiring to be dealt with in a special manner. In addition, the Minister may make rules concerning the regulation and restriction of any trade or occupation entailing special danger to the health of those engaged in it, whether from infectious disease or otherwise, and the institutions of measure for preventing or limiting those dangers.

In a bid to respond to the fast spreading COVID-19, the government of Uganda has issued several regulations, including Public Health (Notification of COVID-19) Order, SI No 45/2020; Public Health (Prevention of COVID-19) (Requirements and Conditions of Entry into Uganda) Order, SI No 46/2020; Public Health (Control of COVID-19) Order, SI No 52/2020, Public Health (Prohibition of Entry into Uganda) Order, SI No 53/2020 and the Public Health (Control of COVID-19) Rules SI No. 55/2020. According the Public Health (Control of COVID-19) Rules, the government has (i) imposed a curfew throughout Uganda starting an 19:00 hours each day and ending at 06:30 hours on the following day, (ii) prohibited the sell of non-food items except pharmaceuticals, agricultural chemicals and seeds, veterinary drugs and detergents, (iii) ordered the closure of all shops selling non-food items, salons, gymnasiums and massage parlours, hotels and lodging houses as well as motor repair garages and workshops and (iv) prohibited the use of motor vehicles and engineering plants except for medical, police, UPDF, electricity, water, fuel, agricultural, banking, Uganda Revenue Authority, Uganda National Roads Authority and other services that are deemed essential.

With these rules in place, people providing medical, security, electricity, water, fuel, agricultural, banking, funeral services and other services that are considered essential will bear the risk getting exposed to the virus. While the general public has been encouraged to maintain social distance by avoiding crowded and public spaces, doctors, nurses, carers and paramedics around the world will are facing an increase in the workload in over stretched health facilities. This means that employers of these categories of people have to take extra measures to minimize their exposure to risk by providing the appropriate personal protective equipment, gloves and masks. Similarly, domestic workers whose work is mainly within the household will most likely face additional cooking, cleaning, and caring demands with entire families at home all day and children out of school.7

7 Aljazeera, Domestic workers in Middle East risk abuse amid COVID-19 crisis, Rothna Bugum, 4th April 2020
The Employment Act 2006

The Employment Act is marred with inconsistencies that have rendered employers completely bewildered and unprepared to manage the situation. Section 40 (1) of the Employment Act 2006 is to the effect that “every employer shall provide his or her employee with work in accordance with the contract of service, during the period for which the contract is binding, and on the number of days equal to the number of working days expressly or impliedly provided for in the contract. However, section 40 (2) provides that the duty to provide work shall not apply if (a) the contract is frustrated, (b) its performance is suspended, or (c) it is prevented by an act of God or civil strife. Similarly, it is stipulated under section 40 (3) that an employer is not to be liable to provide work where interruption to his or her business activities are caused by natural calamities beyond the employer’s control. While the provisions seem to insulate the employer from the obligation to provide work to the employee during the duration of the pandemic, the section is silent on whether the employer’s obligation to pay wages can be suspended. This means that the employer may still be required to pay wages even when the law allows such an employer not to provide work during the duration of the pandemic.

According to section 41 (7) of the Employment Act, a worker who has completed at least three months’ continuous service and is absent from work on account of situations specified in subsection (6), is entitled to receive wages as though he or she has not been absent from work and had fully performed his or her duties under his or her contract of service throughout the absence, and his or her wages shall not, by reason of his or her absence, be subject to any deduction. The circumstances laid down in section 41 (6) include absence attributable to the occurrence of exceptional events preventing the employee from reaching his or her place of work or from working. We can safely argue that the current prohibition of public and private transport can suffice as occurrence of exceptional events preventing the employee from reaching his or her place of work and thus entitled to full payment of wages. Furthermore, the Act does not state for how long an employer should continue paying an employee who is prevented from working under such circumstance. The question that arises from the provisions then would be whether it is makes legal sense to pay a person that has not performed any work even when the law allows an employer not to provide work where the contract is frustrated due to the occurrence of an act of God such as COVID 19.

Unlike employment contracts, in commercial contracts a non performing party to a contract may be discharged from performing a contractual obligation by relying on force majeure clauses or the doctrine of frustration. In fact, section 66 (1) of the Contract Act 2010 provides that where a contract becomes impossible to perform or is frustrated and where a party cannot show that the
other party assumed the risk of impossibility, the parties to the contract shall be discharged from further performance of the contract. This is not the position for employer-employer contracts where force majeure clauses have not been a common practice.

Should an employer consider termination, the law requires that such termination should follow the laid down procedure. Section 65 (1) (a) states that termination shall be deemed to take place where the contract of service is ended by the employer with notice. In addition, section 68 (1) stipulates that in any claim arising out of termination the employer shall prove the reason or reasons for the dismissal, and where the employer fails to do so, the dismissal shall be deemed to have been unfair. This provision applies to an employer who wishes to terminate less than 10 people. Where an employer wishes to terminate more than 10 people, he/she should comply with the section 81 of the Act.

The procedure for collective termination as laid out in section 81 (1) of the Act which provides that where an employer contemplates termination of not less than ten employees over a period of not more than three months for reasons of an economic, technological, structural or similar nature, he or she shall (a) notify representatives of the labour union with the relevant information (as prescribed) at least four work before the first terminations takes effect unless the employer is hindered from giving notice depending on the reason of that termination and (b) notify the Commissioner in writing of the reasons for the terminations, the number and categories of workers likely to be affected and the period over which the terminations are intended to be carried out. The different modes can be utilized by different categories of employers. However, the two strategies require the employer to provide the employee with notice of the termination indicating the reason and pay to the employee their entitlements under the Act. The employees will be entitled to unpaid salary, payment for accrued leave not taken, payment in lieu of notice in case the company does not intend for the employees to continue working during the notice period. The question that we need to ask ourselves is whether it is practicable for employers to fulfill the laid down requirements in the current COVID-19 circumstances.

The Workers Compensation Act 2000

Generally, an employee is entitled to compensation for any personal injury resulting from an accident arising out of and in the course of his employment. It however remains unsettled as to whether death of an essential employee who suffers COVID-19 complications can be treated as death in the course of employment. According to section 3 (1) of the Act, an employer is liable for personal injuries sustained by accident of it arises out of or in the course of the worker’s employment. Subsection 2 is to the effect that the employer’s liability does not extend to injury which does not either result in permanent incapacity, or incapacitate the worker for at least three
consecutive days from earning full wages at the work at which he or she was employed. Under the Act, an act done out of and in the course of employment to qualify for accident compensation is when (a) a worker acts to protect any person on the employer’s premises whom the worker believes to be injured or imperiled, (b) personal injury by accident arising while the employee is travelling directly to or from his or her place of work for purposes of employment. Currently, people providing essential services including health officials, bankers, people working in the electricity production, generation and transmission, water and sewerage and those selling food items have been allowed to continue working even with the probable risks associated with the virus. It is possible that such people especially the medical practitioners may be exposed to the virus which may spread to other family members leading to loss of lives. While the period of sickness can be treated as sick leave under section 55 of the Employment Act, the question of loss of life an employee remains unresolved by the Workers Compensation Act, 2000.

**Occupational Safety and Health Act (OSH) 2006**

Under the Occupational Safety and Health Act, employers have a legal obligation to ensure the safety, health and welfare at work of their employees. Section 13 (2) (d) of the Act provides that it is the responsibility of an employer to ensure, as far as is reasonably practicable, regarding any workplace under an employer’s control, the maintenance of the workplace in a condition that is safe and without risks to health. Section 13 (2) (e) requires an employer to ensure the provision and maintenance of a working environment for the workers that is, as far as is reasonably practicable, safe, without risk to health and which is adequate, regarding facilities and arrangements for the welfare of workers at work. To fulfill their statutory obligation under the OSH, employers have duty to get their work-places ready for COVID-19 by providing the recommended sanitation measures to minimize risk of exposure by their employees.

According to the World Health Organization guidelines on “getting your workplace ready for COVID-19, employers to ensure that their workplaces are clean and hygienic, surfaces (e.g. desks and tables) and objects including telephones, keyboards are regularly wiped with disinfectants, promote regular and thorough hand-washing by employees as well as displaying posters promoting hand-washing among others. However, it is still unclear whether the employer’s obligation to ensure that employees work under safe and healthy conditions extends to the coronavirus which exhibits unique aspects and said spread not just by sneezes or coughs, but also just by talking, or possibly even just breathing.

2. Remote working present serious challenges to employers and does not cater for informal sector workers who form the biggest majority of workers in Uganda.

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As a means of practicing social distancing in the fight against the COVID-19 pandemic, employers have encouraged their employees to work from home. The traditional office is defined by a physical facility housing work teams to facilitate coordination of activities. This necessitates that team players must each move from their places of abode to congregate in one place and execute their jobs from there. It is important to note that the concept of remote working is fairly new and has not taken root in Uganda’s employment sector. In other words, most employees will be working from home for the first time, which means that they have to figure out how to stay on task in a new environment that may not lend itself to productivity. Employers too may not be in position to provide the necessary tools (computers, laptops and internet connections) to all their employees to facilitate their remote working, monitor productivity when the employee is working from the comfort of their homes. While experts on remote working suggest that the key to successful remote working is self-discipline requiring setting and following a work routine, clear guidelines defined within an organization’s working policies specifying tools and strategies for successfully executing work roles outside office; having clear and concise communication between the employer and employee; Uganda’s labour force is accustomed to working in close proximity with their employers which usually makes communication easy and effortless, remote working therefore possess challenges concerning communication breakdown because employees will be working in a very unstructured manner.

Remote working only favours employees in formal employment who can easily access and apply digital tools and technology which are not available to informal sector workers. It is should be noted that according to the 2017 National Labour Force survey, only 19.5% of the labour force are in formal employment while 74.8% are self-employed. Also, the nature of work done by informal sector workers cannot be performed from home. As such, people working as waiters, security guards, drivers, porters, machine operators among others may not be able to perform their tasks from home.

3. Restrictions on public transport will cripple the informal sector workers
As soon as Uganda confirmed 14 COVID-19 cases, the use of buses, taxis, and boda bodas among other public means of transport was suspended in order to curtail the spread of the deadly COVID-19. Whereas the restrictions are inevitable in the fight against the pandemic, banning public transport will further cripple the informal sector because workers in the informal sector largely depend to public transport where prices are fair and affordable. Even those who could have requested for a pick up from a family member, friend of neighbor, the private

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10 Ibid
vehicles have been limited to three passengers including the driver. It is important to note that these categories of workers are surviving hand to mouth and a prohibition on public transport means taking away their source of livelihood. Further, the prohibition directly affected people working in the transport sector whose livelihood and survival depends on the number of trips made in a day.

4. **The Pandemic will lead to unprecedented job loss in Uganda**

The restrictive measures restricting international travel, closure of schools, suspension of public, social and religious gatherings have directly affect employers operating business of that nature. People working in the aviation, tourism and hotel business have been terminated because their employers are not making any profits. The entertainment industry including the musicians, comedians, bar owners, among other sections of workers are no longer working and thus unable to sustain their employees. While it appears that the aviation, tourism, transport, sports, entertainment, and hotel sectors have been hit hard by the restrictions imposed so far, all sectors in Uganda’s economy have been affected in as far as sustaining employees and smooth operations are concerned. For instance, the suspension of public transport will leave most workers regardless of the distance between their homes and workplaces with no option but walk to work. Some employers will have no option but to lay off workers because of their inability to salary obligations during the pandemic. We have already witnessed the floriculture sector laying off 30% of its work-force. According to Ms Esther Nekambi, the executive director of UFEA (Uganda Flowers Export Association), all exporting flower farms laid off approximately 30 per cent of their workforce due to the inability to sustain salary payments during this pandemic. She explained that floriculture sector has reached a near total collapse, seeing a drop of 90 per cent in the industry’s exports and 50 per cent drop-in price rate. She added that COVID-19 is heavily affecting the horticulture industry and if there is no intervention, about 10,000 to 15,000 people will be jobless, taxes will be affected and foreign currency worth $84.98m incoming to the economy will be lost.

5. **The Pandemic will frustrate government measures to reduce unemployment.**

According to the Uganda Bureau of Statistics (2018), the national unemployment rate is 9.7%, and is particularly higher among the youths at 11.0%. The government of Uganda has over the years, implemented a number of interventions and measures to curb the unemployment problem especially among the young people. These interventions and measures include; the Youth Livelihood Program (YLP), Skilling Uganda, Students Loan Scheme, Youth Venture

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11 The Daily Monitor, Flower exports drop by 90%, prices dip by half, Thursday March 26 2020
12 The Daily Monitor, Flower exports drop by 90%, prices dip by half, Thursday March 26 2020
13 id
Capital Funds (YVCF), Uganda Women Entrepreneurship programme (UWEP), Youth Entrepreneurship Scheme (YES), entandikwa, education loan scheme, Micro Finance Support Programme (MFSP), PRDP, NAADS, NUSAF I and II, UPE, USE, CDD and externalization of labour strategy as a temporary measure to curb the ever-growing unemployment challenges. The outbreak of COVID 19 has resulted into suspension of some of these strategies that aimed at addressing unemployment challenges and subsequently the measures taken to control the spread will automatically affect many of the strategies. For instance, the State Minister for Labor, Employment and Industrial Relations Hon. Mwesigwa Rukutana, suspended externalization of labour to countries like United Arab Emirates, Qatar, Jordan, Kuwait, Bahrain, Afghanistan and Iraq effective 18th March 2020. This prompted recruitment agency to suspend all activities concerning externalization of labour which left prospective unemployed persons who had started the process of going to work abroad in distress. According to Economists, the pandemic will result into downsizing of workforce at the different work places and in the different sectors. The tourism sector which constitutes 7.7 percent of the country’s GDP and employs close to 700,000 people has already registered its effect on employment. According to PLA records for the two weeks of March 2020, a total of 50 cases had been registered reporting claims of unfair termination and lay off by their employers. For the youth livelihood groups and UWEP groups they are unable to effectively implement their business ventures given the different control measures the Government has undertaken with some resorting to sustaining their lives during this period on the capital investments. In a speech on March 19, Uganda’s Minister of Finance, Planning and Economic Development noted that Uganda has already revised its GDP growth rates downwards from 6% to anywhere between 5.2% to 5.7%

Following what has been done in other countries and guidelines by the International Labour Organisation, we make the following recommendations

1. In order to make remote work effective, employers should come up with policies and guidelines to ensure that there is productivity. Also, employers who opt for the work-from-home model should avail employees with the digital equipment that is needed to deliver.

2. For employees who get infected or are suspected of having been exposed to the virus, the period they are unwell or quarantined should be treated as sick leave under the Employment Act.

3. Should termination become necessary, the employer is required to provide employees with the prescribed notice periods indicating the reason and pay to the employee their entitlements under the Act. Generally, the employee is entitled to accrued salary, accrued leave, payment in lieu of notice in case continuation of work during the notice period is
impossible. Where the employer considers collective termination, 4 weeks’ notice should be given to the Commissioner of Labour and Representative of workers prior.

4. Employers should comply with the Occupational Safety and Health Act in as far maintaining safety at work places by following WHO guidelines getting your workplaces ready for COVID-19.

5. Employees providing essential services especially medical practioners should be provides with personal protective equipment, face masks, gloves. Employees on the frontline should also be provided with counselling services to recharge from the mental stress suffered from handling patients with complications from the virus.

6. There is need for swift and coordinated policy responses at a national level to limit the direct health effects of COVID-19 on workers and their families, while mitigating the indirect economic fallout across the global economy. Protecting workers and their families from the risk of infection needs to be a top priority

7. Government should come up with measures to support the informal sector including providing subsistence wages, food and domestic supplies, reduce the cost of utilities and engage mobile network operators to reduce mobile money charges, reach out to the financial institutions to suspend interest on the loans for the duration of the pandemic.

8. Employers of workers providing essential services should provide their staff with alternative transport and secure a sticker from the relevant authority as part of ensuring employee safety to and from work.