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Sex Workers Education & Advocacy Taskforce



**SEX WORKERS &
THE LAW UNDER
LOCKDOWN IN
SOUTH AFRICA
WHAT YOU NEED
TO KNOW**



Edition 1

25 August 2020



What is the purpose of this leaflet?

The purpose of this leaflet is to:

- provide you with information about lockdown
- inform you about your rights under lockdown
- inform you of what to do if you are in trouble with the law under lockdown



What is lockdown?

- Lockdown means that the government stops you from moving around freely and from mixing with other people.
- You need to stay home and not mix with people that you do not live with. When you are allowed to mix with people that you do not live with, the government has strict rules about when and how you can mix with them. For example, you can only have a certain number of people at your home and you and your visitors must wear masks.
- You may only leave your home to buy food or go to hospital, or for other purposes that the government allows.
- People are allowed to leave their homes for work but it is especially difficult for sex workers to leave their homes for work because sex work is a crime.



Why is South Africa under lockdown?

- South Africa is under lockdown because of the Coronavirus (COVID-19).
- The Coronavirus is highly contagious and the government decided to put South Africa under lockdown to stop the virus from spreading.
- Many other countries are under lockdown for the same reason.



Why are sex workers more vulnerable under lockdown?

- You were vulnerable before lockdown because sex work is a crime in South Africa.
- You are even more vulnerable under lockdown because there are new and additional laws that apply to you and your work. Your work is criminalised for more than one reason.
- Because your work requires you to mix with other people and to be in close contact with your clients, it is more difficult than usual for you to work during lockdown.
- Because you cannot work, you are unable to provide for yourself and your family financially. You cannot pay rent or buy food.
- You may be more exposed to the police than before because of increased police presence in your community or where you work. This means that there may be more chances of you being abused by the police.
- You may face increased stigma and violence from your partner/spouse, family members, community members or clients because of the new restrictive laws, because you cannot provide financially or for many other reasons.



Which laws deal with lockdown?

The Disaster Management Act 57 of 2002 (the DMA) is the main law that deals with lockdown.

Different regulations have been issued in terms of the DMA. These regulations are rules that you need to follow.

The regulations change when the government wants to change the lockdown rules or when circumstances change or new problems are identified. The major changes are referred to as different “Levels” of the Lockdown. For example, level 2 lockdown came into place on 18 August 2020 but if the Coronavirus spreads more or causes other issues, we could go back to Level 3, 4, or 5 lockdown again. These levels place more restrictions on people.

The regulations change as new information is known about the Coronavirus or as circumstances change in South Africa.



What are the laws that affect sex workers during lockdown?

1

You must be in your home at certain times unless you have a permit to work from the government. For example, under level 2 lockdown you must be in your home between 22h00 until 04h00.

2

You must wear a mask that covers your nose and mouth when you are in a public place.

3

You are not allowed to enter or be in a public building, place or public open space if you are not wearing a cloth face mask.

4

You must practice social distancing. This means that you must ensure that you maintain a physical distance of 1.5 metres from any other person. Social distancing also means that when you are in a closed space like a room, tavern, nightclub or bar, only a small number of people can be in that space at the same time.

5

You must sanitise your hands when you enter or exit any public building, including shops and spaza shops.

6

You must not interfere with or stop a law enforcement officer while s/he is doing her/his job. For example, if a law enforcement officer tells you to wear your mask in public, you must not refuse to wear a mask.



What are the consequences of breaking the lockdown laws?

- If you break the lockdown laws, you have committed a crime.
- You can be fined or imprisoned for a period not longer than 6 months or you can receive both a fine and imprisonment. The amount of a fine differs in various provinces and even in different areas in one province.
- If you pay the fine, you will get a criminal record.



Who can issue fines?

You can only be fined by a law enforcement officer. For example a police or military officer or a peace officer. Peace officers are police officers, magistrates, justices of the peace and correctional officials.



Should a fine be paid?

- You should speak to a lawyer before you pay a fine.
- When you pay a fine, you admit to committing a crime. In other words, you have paid an admission of guilt fine. There are consequences for committing crimes (see below).
- After seeking legal advice, if you do decide to pay the fine, always ensure that you are issued with a receipt. A receipt is proof of payment of the fine.



Where should a fine be paid?

You can pay a fine at the Magistrates' Court or at the police station. If you pay the fine at the police station, the documents will be sent to the Magistrates' Court.



What are the consequences of paying a fine?

- If you pay a fine you admit to committing a crime.
- You will have a criminal record.
- A criminal record can negatively affect any job or travel visa that you apply for.
- You will have to apply to have the criminal record removed after 10 years.



What will happen if you ignore a fine?

- You will receive a summons to appear in court.
- If you do not appear in court on the date in the summons, you will be held in contempt of court which is a crime.
- You can be arrested or fined for contempt of court, unless you can show a good reason why you were unable to attend court on the date of the summons.



What can you do if you have been fined but you did not commit the crime you were fined for?

- You can defend the charge that the fine is based on.
- You must obtain assistance from a lawyer if you want to defend the charge that the fine is based on as you will need to appear in court.
- If you succeed in defending the charge, you will not be found guilty and will not have a criminal record.
- Lawyers are allowed to work under lockdown so you can contact a lawyer during any level of the lockdown.



What should you do if you are arrested?

Call the SWEAT/Sisonke Helpline as soon as you can after being arrested. A police officer at the police station must allow you to make a phone call. If you cannot, then try to get a friend to call SWEAT or Sisonke immediately.

THE SWEAT/SISONKE HELPLINE NUMBER IS:

0800 60 60 60



What rights do you have when you have been arrested?

If you are arrested, it is important that you know that you have following rights:

1

You have the right to speak to a lawyer. If you cannot afford a lawyer, you will be provided with a Legal Aid lawyer who you do not need to pay. SWEAT/Sisonke will assist you in finding a lawyer once you call SWEAT/Sisonke Helpline.

2

A police officer may not arrest you with the intention of punishing, harassing or frightening you to teach you a lesson because you are a sex worker.

3

A police officer may only arrest you without a warrant of arrest because s/he has a 'reasonable suspicion' that you committed a crime. If you are arrested with a warrant, you have the right to ask to see the warrant.

4

A police officer must explain the reason for the arrest to you.

5

You have the right to NOT answer any questions that the police officer asks you to answer. This is commonly known as the right to remain silent.

6

A police officer cannot force you to confess or admit to committing a crime. They also cannot force you to sign anything that would amount to a confession.



What rights do you have when you have been arrested?

7

If you are under 18 years of age, you have the right to be assisted by your parent/s or legal guardian.

8

You have the right to decent living conditions, access to food and medical treatment while detained.

9

You have the right to be released from the police cells, if you are not charged or if you are given bail at the police station. You may be given police bail for minor offences. A lawyer will need to assist you in applying for bail at the police station.

10

You have the right to appear in court within 48 hours of arrest but if you are arrested on a Friday afternoon, on a weekend or public holiday, you must appear in court on the next court day (which is usually the next working day).

11

You have the right to open a criminal case against any person who violated your rights during the arrest or while you are detained at the police station.

12

If you are arrested for a petty offence a police officer may release you and warn you to appear in court on a future date.

13

If you are accused of committing a crime but you are not detained, you may not appear in court during lockdown. You will be given a date to appear in court after lockdown.



What powers do the police have that are important for you to know in terms of arrest?

It is useful for you to know what powers the police have, to avoid unnecessary conflict. These powers include the power to:

- Stop and search any vehicle on the road if they reasonably suspect that you have committed a crime. A refusal for a police officer to search the vehicle is treated as an act to cause reasonable suspicion that you have committed a crime.
- Ask the occupants of a vehicle for personal information such as names and addresses, and to see the licence of the driver.
- Ask you to show them your I.D. book/card at any time.
- Search you or your home if they reasonably suspect that you committed a crime. They must have a search warrant to search your home/premises. A male police officer may only search men, not women. Women can only be searched by a female police officer, or a woman appointed by the police.

References:

Legislation, Regulations, Guidelines and Directives

Criminal Procedure Act 51 of 1977

Disaster Management Act 57 of 2002 (DMA) and Regulations issued in respect of COVID-19 lockdown.

National Crime Combating Forum (NCCF) Supplementary Instruction 5 to NCCF Instruction 3 of 2020.

SAPS Use of Force and Torture: Guidelines on the Implementation and Enforcement of Regulations Issued in terms of Section 27 of the DMA

Online Sources

<https://www.lawsoc.co.za/default.asp?id=1486>

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