

VIRGIN ISLANDS

STATUTORY INSTRUMENT 2020 NO. 99

**LABOUR CODE, 2010
(No. 4 of 2010)**

**Labour Code (Arbitration Tribunal) (Telephone and Video Hearing)
Guidelines, 2020**

[Gazetted 31st August, 2020]

The Labour Arbitration Tribunal in exercise of the powers conferred by section 35 of the Labour Code, 2010 (No. 4 of 2010) and rule 7(1) of the Labour Code (Arbitration Tribunal) (Procedure) Rules, 2020 (S.I. No. 98 of 2020) issues the following Guidelines:

1. These Guidelines may be cited as the Labour Code (Arbitration Tribunal) (Telephone and Video Hearings) Guidelines, 2020 and shall come into force on the 31st day of August, 2020.
2. In accordance with the Public Health Act (Cap. 194) and the Public Health (Covid-19 Control and Suppression Measures) Order (No.2), 2020 (S.I. No. 45 of 2020) it is a public health requirement to maintain social distancing measures, the Tribunal finds that conducting hearings and trials by videoconference is a reasonable alternative to an in-person hearing in light of the COVID-19 pandemic. Videoconferencing technology will provide the parties a fair and reasonable opportunity to present their case and will allow the hearing to move forward in accordance with the Labour Code (Arbitration Tribunal) (Procedure) Rules, 2010, therefore, these Guidelines shall apply to all hearings and trials before the Tribunal for which a Notice of Case Management Hearing or similar notice has been issued by the Tribunal on or after 01 August 2020 for as long as any public health measure, curfew order or emergency order is in effect in the Territory which prevents an in-person hearing, or the Tribunal otherwise orders these Guidelines to apply to any other hearing or trial or to any participant in a hearing or trial.
3.
 - (1) Any hearing or trial to which these Guidelines apply shall be conducted via Cisco WebEx videoconference in accordance with the procedures set forth in these Guidelines unless otherwise ordered by the Tribunal.
 - (2) The cost of the videoconferencing shall be borne by the Minister in exercise of his or her duty under section 29(7) of the Act.

4. Unless otherwise ordered by the Tribunal, the hearing or trial shall be deemed to take place at the Office of the Tribunal.
5.
 - (1) The hearing or trial's audio and video will not be recorded through Cisco WebEx, except in accordance with directions given by a court reporter for purposes of transcribing a trial in accordance with LPR 17(6).
 - (2) The parties shall not record, via audio, video or screenshot, or permit any other person to record, via audio, video or screenshot, the hearing, trial or any part of it and will ensure that each additional attendee at the hearing or trial for which that party is responsible is aware of this prohibition on recording.
6.
 - (1) The Tribunal will invite attendees via email to join the Cisco WebEx hearing or trial at least two (2) business days before the hearing or trial. To protect the security of the hearing or trial, access to the hearing or trial will be password-protected and limited to authorized attendees only. Attendees should not forward or share the link or password.
 - (2) Where the Tribunal is of the opinion that any person has forwarded or shared a link or password contrary to sub-paragraph (1), it shall refer any information it may have concerning any offence under section 9(1) of the Computer Misuse and Cybercrime Act, 2014 (No. 9 of 2014) to the Director of Public Prosecutions in addition to exercising any of its case management powers under LPR 25.
7.
 - (1) Each party will be responsible for testing the videoconferencing system with each of their witnesses who will be attending virtually. Each party also is responsible for ensuring that all logistical requirements of these Guidelines are satisfied.
 - (2) Each participant should test their equipment to determine their best audio connection – whether by phone, through their computer speakers/microphone, and with or without a headset.
 - (3) The video conference shall be of sufficient quality to allow for clear video and audio transmission of all participants.
 - (4) The Secretary to the Tribunal shall reserve an optional dial-in conference call number in case one or more participants has poor quality computer audio (after trying the audio connection through the computer-- with and without a headset – and by phone). In any event, the Tribunal may direct that any hearing, but not a trial, be

conducted by telephone only where all the participants are able to hear each other and to respond.

- (5) In the event any of the logistical requirements of these Guidelines are not satisfied or the quality of the video conference is unsatisfactory so that it does not allow the participants to adequately present their case or that it would be unfair to any participant to continue the hearing or trial, the Tribunal may exercise its case management power under LPR 25(1)(a) to adjourn the hearing or trial or take any other appropriate steps as may be necessary to ensure the fairness and integrity of the proceedings.
- 8.** Each participant shall disclose at the start of each hearing or trial all people in the room with the participant. Should an individual join the participant after the hearing or trial has begun, that individual should be identified to the Tribunal at the earliest opportunity.
- 9.** During the hearing or trial, the participants shall always be in view of the camera. If two or more people are attending the hearing together in a room, they shall use a single camera, which shall be placed to provide a view of a reasonable part of, if not the entire, room.
- 10.** At the Tribunal's request, unknown participants shall identify themselves by showing a piece of identification to the camera or by responding to the Tribunal's questions regarding their identity.
- 11.** All participants shall make best efforts to ensure that there will be clear video and audio transmission during the hearing. Participants should
 - (a) consider steps that may be taken to establish a high-speed internet connection (e.g., if possible, a hard-wired internet connection is generally preferable to a wireless internet connection);
 - (b) use the computer microphone, with or without a headset, for audio transmission or use a phone to dial into audio portion of the Cisco WebEx (or if necessary, use the back-up conference call number if the computer and platform audio are of poor quality);
 - (c) eliminate any background noise;
 - (d) consider camera positioning and lighting (e.g., avoid sitting near a window, positioning a light in front of (instead of behind) the participant);

- (e) access Cisco WebEx via desktop or laptop rather than by smartphone or tablet;
 - (f) ensure computing devices are adequately charged and that power cables or back-up batteries are available as may be necessary; and
 - (g) not join the hearing from a public setting or using unsecured, public Wi-Fi to ensure the privacy and security of the hearing or trial.
12. All participants shall speak one at a time and not while another is speaking, other than as may be required to interpose an objection to a question asked or to alert other participants of technical difficulties.
 13. All participants who are not actively being questioned as a witness, asking questions of a witness, defending a witness, or providing or responding to closing addresses, or other arguments, shall maintain their audio on mute to limit potential interruptions. The video hearing host also will have the ability to mute and unmute any participant if needed.
 14. With the exception of the parties, who may attend the entirety of the hearing, all witnesses are to be sequestered in a virtual waiting room until they are required by the Tribunal.
 15. The time allotted for the hearing or trial may be adjusted by the Tribunal during the hearing or trial to take into account that extra time may be needed if there are technical problems that cause delays.
 16. Upon joining the hearing or trial by Cisco WebEx, participants will be admitted to a virtual Waiting Room. The Tribunal will admit all participants to the hearing or trial at the same time. To avoid delay and difficulty reconnecting, hearing attendees should not disconnect from the Cisco WebEx meeting during any recess. However, lines may be muted during this time, and the Tribunal may move participants to “break-out” and/or the virtual Waiting Room.
 17. The Tribunal may use virtual break-out rooms to facilitate private conversations between participants as may be appropriate (e.g., upon request, to allow members of a party’s legal team to confer with each other directly, outside of the presence of the Tribunal).
 18. (1) Should a participant’s connection fail, the Tribunal will ask the remaining participants to immediately mute their audio and to turn off their video to avoid concerns regarding potential *ex parte* communications.

- (2) Once the Tribunal sees that the dropped participant has re-joined the videoconference or teleconference, the remaining counsel will be directed to unmute their audio and turn on their video, if applicable.
- 19. If a participant is disconnected or experiences some other technical failure and connection cannot be re-established within 5-minutes
 - (a) the Tribunal may recess the hearing or trial, which may include moving participants into a virtual waiting room or one or more separate break-out rooms to accommodate any reconnections or technical issues;
 - (b) such participant shall e-mail all other parties and the Tribunal, by replying all to the Cisco WebEx invitation circulated by the Tribunal, and shall monitor e-mail for any further instructions from the Tribunal.
- 20. All Rules and Orders, not otherwise varied, suspended or set aside, shall continue in force and shall be complied with as though the hearing or trial was taking place at a single physical location and not virtually.

Made by the Chairman of the Labour Arbitration Tribunal this 25th day of August, 2020.

Jamal S. Smith
Chairman
Labour Arbitration Tribunal