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COVID-19 Workplace Health and Safety Guideline

Redefining a "SAFE" workplace



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COVID-19 workplace health and safety guideline.

Redefining a "SAFE" workplace

While South African businesses recommence or continue operations under Alert Level 1, it is imperative that health and safety guidelines are strictly adhered to in order to mitigate the risk of the dreaded "second wave". A "changing work order" and the "new normal" demand that employers reassess the potential transmission risks in their respective workplaces and redefine workplace health and safety.

On 1 October 2020, the Department of Employment and Labour (Department) gazetted updated Consolidated Directions on Occupational Health and Safety Measures in Certain Workplaces (OHS Directions). Accordingly, the Consolidated Health and Safety Directions issued on 4 June 2020 have since been withdrawn. The OHS Directions commenced with effect from 1 October 2020. The purpose of this guide is to assist you in understanding and complying with your regulatory obligations in relation to health and safety in the workplace as contained in the OHS Directions.

1. APPLICATION AND OVERVIEW

1.1 Who does the OHS Directions apply to?



The OHS Directions apply to all employers who are permitted to commence operations during the national state of disaster, save for those excluded in section 1(3) of the Occupational Health and Safety Act 85 of 1995 (OHSA) or where a minister has issued specific directions dealing with health and safety for a specific workplace.

1.2 How long do the OHS Directions apply?



The OHS Directions shall apply for the duration of the state of national disaster, unless otherwise indicated.

1.3 The OHS Directions refer to both employees and workers. What is the distinction between an employee and a worker?



- An "employee" is a person who falls within the definition of an employee as contained in section 200A of the Labour Relations Act 66 of 1995. A worker however is a much broader category of persons and according to OHS Directions, a worker is defined as "any person who works in an employer's workplace including an employee of the employer or contractor, a self-employed person or volunteer".
- The obligations contained in the OHS Directions are predominantly in relation to "workers" as opposed to "employees", rendering an employer's obligations in relation to health and safety in its workplace very broad.

1.4 What are the obligations of all employers with more than 10 employees in terms of the OHS Directions?

10+

Every employer with more than 10 employees must:

- conduct a risk assessment to give effect to the OHS Directions;
- develop a workplace plan in line with the risks identified;
- consult with the relevant trade union and health and safety committee regarding the risk assessment and workplace plan;
- make the workplace plan available for inspection;
- take measures to screen persons entering the workplace for COVID-19;
- implement social distancing measures; and
- provide employees with 2 cloth masks, sufficient hand sanitizer and ensure the disinfection of the workplace on a regular basis.

1. APPLICATION AND OVERVIEW...continued

1.5 What information should be included in a workplace plan?

A workplace plan must contain the following information:

- operating hours;
- list of employees returning to the workplace and those working from home;
- a timetable for the phased-in return of employees;
- a list of vulnerable employees;
- ways to minimise the number of employees at the workplace;
- health and safety measures as required by law;
- symptom screening measures;
- details of the compliance officer appointed; and
- a procedure to deal with an employee who has exercised their right not to perform work due to exposure to COVID-19.



2. LARGE BUSINESSES

2.1 What are the obligations of employers with more than 50 employees in terms of the OHS Directions?

50+

Every employer who employs more than 50 employees must:

- submit a copy of their risk assessment and written health and safety plan as contemplated in section 7(1) of the OHS Act to its health and safety committee and the Department, within 21 days of the commencement of the OHS Directions;
- require employees to disclose whether they have any health concerns or co-morbidities as contemplated in the definition of vulnerable employees and thereafter take special measures to mitigate the risk to these employees upon their return to work or while working from home;
- notify all workers of the contents of the OHS Directions and the way it intends to implement them;
- notify their employees that if they are sick or have any symptoms associated with COVID-19, that they are to remain at home and make an application for paid sick leave in terms of section 22 of the Basic Conditions of Employment Act 75 of 1997 (BCEA);
- appoint a compliance officer;
- ensure compliance with the measures required by the OHS Directions and its risk assessment plan through monitoring and supervision;
- insofar as reasonably practicable, minimise the number of workers at the workplace through rotation, staggered working hours, shift systems, remote working arrangements or similar measures to achieve social distancing;
- take measures to minimise contact between workers as well as workers and members of the public; and
- provide workers with information and raise awareness around various aspects related to COVID-19, including hygiene, transmission risks, screening and testing.

2.2 What is the process an employer must follow if an employee is diagnosed with COVID-19?



- Inform the National Institute for Occupational Health (NIOH), either directly or through an employer's association;
- Inform the Compensation Commission in accordance with the Directive on Compensation for Workplace-acquired Novel Corona Virus Disease- COVID-19 (COIDA Directive);
- Investigate the mode of exposure, including any control failures;
- Review the risk assessment to ensure the necessary control measures and personal protective equipment (PPE) are in place;
- Determine the need to temporarily close the work area for decontamination using an incident-based risk assessment in consultation with the relevant health and safety committee or representatives; and
- Provide support to the National Department of Health (DOH) in relation to contact tracing.

2. LARGE BUSINESSES...continued

2.3 What are the reporting obligations of businesses with more than 50 employees?

Businesses with more than 50 employees must submit the following data to the NIOH in the manner prescribed in the DOH guidelines:

- Each employee's vulnerability status for serious outcomes related to COVID-19;
- Details of the screening of symptomatic employees;
- Details of employees who test positive for COVID-19;
- The number of employees identified as high-risk contacts where a worker tests positive for COVID-19 in the workplace; and
- Details of the post-infection outcome of those who test positive, including the return to work risk assessment.



2.5 What are an employer's obligations in terms of the Protection of Personal Information Act 13 of 2014 (POPI) with respect to the information submitted to the NIOH?



An employer must inform employees that the data submissions as required in terms of the OHS Directions have been made, as well as the steps it has taken to ensure adherence with the provisions of POPI.

2.4 When should employers with more than 50 employees submit the necessary data to the NIOH?

- The details of every employee's vulnerability status are to be submitted to the NIOH once, within 21 days of the commencement of the OHS Directions.
- The data in relation to symptomatic employees, those who test positive and post outcome assessments must be submitted weekly, before the Tuesday of the week following the week for which the data was collected.



2.6 May an employer submit the data to the NIOH through an employer association?



Yes. An employer may submit the data prescribed in the OHS Directions through an employer association if the association has undertaken to submit the data on their behalf or if the employer association has entered into an agreement with the NIOH to collect, collate and submit the data on behalf of employers within their association.

3. SMALL BUSINESSES

3.1 How does the OHS Directions define a small business?

As a business with 10 or less employees.



3.2 What are the obligations of small businesses as contained in the OHS Directions?

If permitted to recommence operations, small businesses are only required to take the measures set out in paragraph 10 of the OHS Directions, which include the following:

- develop a basic plan for the phasing in of employees in the workplace considering those who can work remotely, those over the age of 60 and those with co-morbidities;
- if reasonably practicable, arrange the workplace to maintain social distancing of 1.5m or arrange for physical barriers between workers to mitigate transmission risks;
- ensure workers who present with symptoms are not permitted to enter the workplace;
- provide employees with cloth masks or require them to make use of a face covering while at the workplace;
- provide hand sanitiser, soap and clean water for the washing of hands and disinfecting work areas;
- disinfect workstations regularly; and
- take any other necessary measures as indicated by their risk assessment, including the measures outlined in paragraph 9 of the OHS Directions where members of the public have access to their workplaces.



4. SYMPTOM SCREENING

4.1 Is it mandatory for all employers to perform symptom screening of workers?

Yes, every employer must screen workers for common and additional symptoms of COVID-19 upon reporting at the workplace.



4.2 What is the procedure to be followed if a worker develops symptoms during the course of the day?

A worker must immediately report the development of symptoms to the employer.



4.3 What must an employer do when a worker presents with symptoms??

DO NOT PERMIT THE WORKER TO ATTEND WORK.

If the worker is already at work:

- immediately isolate the worker; provide the worker with a surgical mask and arrange for the worker to be transported to a health facility in a manner that does not pose a risk to other workers or members of the public;
- assess the contamination risk, disinfect the work area and identify those who may have encountered the worker and refer them for screening or take other appropriate measures;
- If the worker is an employee, place them on sick leave in terms of section 22 of the BCEA. If the employee's sick leave is exhausted, make an application for the employee to receive TERS benefits;
- Take steps to ensure the worker is not discriminated against; and
- If there is evidence that COVID-19 was contracted in the workplace and the worker is also an employee, make an application for the employee to receive compensation in terms of Compensation for Occupational Illness and Diseases Act 130 of 1993 (COIDA).



4.4 If a worker tested positive for COVID-19, when can an employer allow them to return to the workplace?

An employer may allow a worker to return without undergoing viral testing where the worker has completed the mandatory 10-day isolation period, from the onset of mild symptoms. Where a worker suffered moderate to severe infection, from the date the worker has undergone medical examination or has been declared medically fit to return to work.



4.5 What measures is an employer required to take upon the return of a worker who was diagnosed with COVID-19?

An employer must ensure that the worker wears a surgical mask for 21 days after their return to the office, that the worker is monitored closely for any symptoms of COVID-19, maintains social distancing and complies with all workplace hygiene standards.



4.6 What are the steps an employer is required to take in relation to those who were exposed to a worker who tested positive for COVID-19?

- If the risk of exposure is low, the employer may permit the worker to continue working with a cloth mask and monitor them for symptoms for 10 days following the date of contact.
- If the risk of exposure is high, a healthcare worker must quarantine for 7 days which may be reduced to 5 days by agreement. All other workers are to quarantine for 10 days. Workers must be placed on sick leave for the quarantine period. Where a worker is asymptomatic, no further testing is required upon a return to work, save in relation to health care workers who quarantine for less than 10 days.



5. COIDA

5.1 How does an employer determine whether an employee contracted COVID-19 within the course and scope of their employment?



In order to establish whether COVID-19 was contracted in the workplace, employers will look at the following factors:

- Risks that the workplace poses in relation to certain categories;
- Exposure to a known source at the workplace;
- Business travel to high risk areas;
- A reliable diagnosis; and
- Chronological sequence between exposure at work and development of symptoms.

5.2 What are the documents to be submitted when an employer makes a claim in terms of the COIDA Directive?



The following documents must be submitted when a claim is made:

- W.CL.1 form completed by the employer;
- W.CL.14 form;
- exposure and medical questionnaire;
- first medical report;
- exposure history;
- medical report on symptoms;
- progress medical report for each consultation;
- final medical report; and
- an affidavit by employee if employer cannot be reached or timeously complete W.CL.1 form.

6. HAND SANITISER AND DISINFECTANTS

6.1 What are the required hand sanitiser specifications in terms of the OHS Directions?



Hand sanitiser must contain at least 70% alcohol and disinfectants must comply with the recommendations of the DOH.

6.2 What are an employer's obligations in relation to the provision of hand sanitiser and disinfectant?



- Every employer must take measures to ensure that there is sufficient hand sanitiser available based on the number of employees, and that workers who work outside of the workplace, other than those working from home, are provided with hand sanitiser.
- An employer must ensure that workers who interact with the public are provided with sufficient hand sanitiser, including hand sanitiser for members of the public whom they interact with.
- In addition, measures must be taken to ensure that work areas, common areas and common surfaces are disinfected regularly and that biometric systems are disabled or made COVID-19 safe.

6.3 Does the OHS Directions provide specifications in relation to hand washing facilities?



- Yes. An employer must ensure that workers are provided with soap and clean water to wash their hands and that they do so throughout the workday.
- Paper towel must be provided for the purposes of workers drying their hands and cloth towels are strictly prohibited.
- Workers who interact with the public must wash their hands after every interaction. In addition, surfaces that workers and members of the public come into contact with routinely must be disinfected regularly.

7. SOCIAL DISTANCING

7.1 What is the minimum social distancing that must be maintained in the workplace?

Insofar as reasonably practicable, 1.5m. However, this may be greater depending on the employer's sector and the nature of the workplace.



7.2 What alternatives are provided for where an employer cannot arrange their workplace to meet the minimum social distancing requirements?

An employer must erect physical barriers between workers or provide workers with appropriate PPE based on the risk assessment of the working place, as required.



7.3 Does an employer's obligations to enforce social distancing extend beyond the workplace?

In terms of the OHS Directions, an employer's duty to enforce social distancing only extends to common areas immediately outside the workplace.



7.4 What strategies are recommended in the OHS Directions to achieve social distancing?

An employer may stagger tea and lunch breaks, utilise a phased-in reintroduction to the workplace, continued remote work, implement a roster or shift system for attendance at the workplace and the implementation an effective queuing system in common areas such as canteens.



8. PPE

8.1 What are an employer's obligations with respect to the provision of PPE?

Every employer must provide employees with at least two face masks which comply with the Recommended Guidelines Fabric Face Masks. In addition, an employer must ensure that workers always wear a mask while at the workplace and are trained on the proper use and disposal of the mask.



8.2 How often is an employer obligated to replace employee cloth masks?

Replaceability of masks is to be determined with reference to sector guidelines and the working conditions of employees.



8.3 May an employer deduct money from an employee's remuneration for the provision of PPE or hand sanitiser?

No. In terms of paragraph 15 of the OHS Directions, an employer may not make any deductions in respect of anything the employer is obliged to provide as per the OHS Directions.



8.4 How does an employer know when an employee requires specialised PPE?

An employer must regularly check the websites of the DOH, the National Institute of Communicable Diseases and the NIOH with regards to the guidelines pertaining to specialised PPE given the nature of the workplace, the tasks performed by the employee and the appropriate risk level.



9. WORKPLACES TO WHICH THE PUBLIC HAVE ACCESS

9.1 Are there specific requirements in relation to workplaces to which the public have access?



Yes, the OHS Directions detail specific requirements for workplaces to which the public have access.

9.2 What are the specific requirements in relation to workplaces to which the public have access?



In terms of the OHS Directions, an employer of a workplace to which the public has access is required to take the following additional measures:

- determine the workplace floor space and the number of persons to be allowed on the premises at any given time;
- arrange the workplace to maintain social distancing of 1.5m;
- place physical barriers at counters or provide employees with visors or face shields;
- undertake symptom screening of persons other than employees entering the premises and provide hand sanitiser at the door;
- display notices advising persons, other than employees, of the safety and hygiene precautions to be taken in the workplace.
- always require members of the public to wear a face mask while on their premises;
- arrange for a queuing system in terms of which persons maintain social distancing of 1.5m; and
- assign a compliance officer to ensure adherence with the OHS Directions.

10. VENTILATION

10.1 What are the OHS Directions requirements in terms of ventilation?

The workplace is to be well ventilated. Where possible, the workplace is to be ventilated with an effective local extraction ventilation system that functions effectively, is cleaned, maintained and does not recirculate air. Employers must ensure that vents do not feed air back through open windows and that ventilation filters are cleaned and replaced in accordance with the manufacturer's instructions, by a person competent to do so.



11. WORKER OBLIGATIONS

11.1 Do workers have obligations in terms of the OHS Directions?



Yes. In terms of paragraph 13 of the OHS Directions, workers are obliged to comply with measures introduced by employers as required by the OHS Directions.

11.2 What recourse does an employer have where an employee fails to comply with the workplace health and safety plan?



An employer may institute disciplinary action against employees for misconduct in that the employee has failed to comply with company policy in relation to health and safety.


12. REFUSAL TO PERFORM WORK

12.1 May an employee refuse to work due to COVID-19 exposure?



- Yes. In terms of paragraph 14 of the OHS Directions, an employee may refuse to work if circumstances arise which appear to the employee or the health and safety representative to pose an imminent risk of exposure to COVID-19 for the employee. The proviso to this is that the employee or health and safety representative must have a reasonable justification for their belief of the imminent risk of exposure to COVID-19.
- An employee may refuse to perform work in terms of paragraph 14 of the OHS Directions irrespective of whether they have exhausted any other internal or external procedure.


12.3 What are an employer's obligations once an employee has reported an imminent risk of exposure to COVID-19?



Provided the employee has reasonable justification for their refusal, an employer must:


- after consultation with its compliance officer/ health and safety committee or health and safety representative, endeavour to address the issue giving rise to the refusal to work;
- if it cannot be resolved internally, notify the inspector within 24 hours and inform the parties involved in resolving the issue that same has been done; and
- comply with any prohibition issued by the inspector in terms of section 30 of OHS Act.

12.4 Is an employer permitted to take action against an employee who has exercised their right to refuse to work in terms of paragraph 14 of the OHS Directions?



No. An employer is expressly prohibited from taking any action against employees for exercising their right in terms of paragraph 14 of the OHS Directions.

12.5 Can an employer incentivise employees not to exercise their right in terms of paragraph 14 of the OHS Directions?



No, employees may not benefit or be promised a benefit in exchange for not exercising their right of refusal to perform work in terms of paragraph 14 of the OHS Directions.

12.2 What must an employee do once they have identified an imminent risk of exposure to COVID-19 in the workplace?



In addition, an employee who chooses to exercise their right not to perform work must, as soon as reasonably practicable notify the employer, either directly or through a health and safety representative of their refusal to perform work together with reasons for same.

13. MONITORING AND COMPLIANCE

13.1 Who is responsible for monitoring compliance with the OHS Directions?



The Minister may authorise local authorities to act as inspectors in terms of the OHS Directions. Inspectors may perform any function set out in section 30 of OHS Act where an employer fails to comply with the OHS Directions.

13.2 What are the consequences for non-compliance with the OHS Directions?



Insofar as the non-compliance constitutes a contravention of the OHS Act, offences and penalties provided for in the OHS Act will apply.

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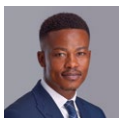
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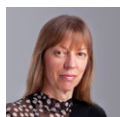
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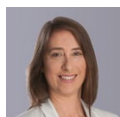
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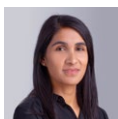
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BBBEE STATUS: LEVEL TWO CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

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