

3 MARCH 2021

An Employer's Guide

TO ALERT LEVEL 1 REGULATIONS



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INCORPORATING
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On the 28 February 2021, the President addressed the nation in respect of government's vaccine roll out and with the country's emergence from the second wave of infections, government has moved the country to Alert Level 1 (AL1) with effect from midnight on the 28 February 2021. The purpose of this guide is to assist employers in complying with their obligations in terms of the AL1 regulations, including other general advice in relation to the workplace in 2021.

1. REMOTE WORK AND A RETURN TO OFFICE

1.1 General obligations pertaining to the recommencement of work

- The President has called on all employees, who are able to work remotely, to continue to do so. However, those employees permitted to work outside of the home, may do so, subject to strict compliance with health protocols and social distancing.
- Where employees return to the workplace, employers are encouraged to implement a phased-in approach, to ensure that the workplace is COVID-19 ready and the requisite social distancing measures are maintained.
- Employers are also required to ensure that the return to work is in a manner that reduces and avoids the risk of infection and that the work being performed is not listed in the specific exclusions mentioned in the prohibited activity section of this guide.



1.2 Is an employer obliged to pay employees who are self-quarantining after returning from a hotspot area?

- It is not legally mandatory for an employer to require an employee to self-quarantine upon return from a hotspot area. However, an employer may wish to do so in order to protect the health and safety of other employees.
- Where an employee is able to work from home while quarantining, the employee may do so and will therefore be entitled to their full salary. In cases where an employee is unable to work from home, the employee may make use of their annual leave for the quarantine period. Where an employee has exhausted their annual leave, the principle of no work no pay will apply and the employee will be placed on unpaid leave.
- Employers should alert employees to the fact they will be required to self-quarantine upon their return from a hotspot area and that they will need to make use of their annual leave or unpaid leave for this period where they are unable to work from home.
- Under the exceptional circumstances of COVID-19, it can be argued, that requiring an employee who has returned from a hotspot area to self-quarantine does not amount to unfair discrimination.



1.3 Is an employer entitled to discipline an employee for failure to adhere to health and safety protocols, where the conduct of the employee is not related to the course and scope of their employment?

Unless the employer can show that the conduct of the employee has damaged the employment relationship in some way, the employer is not entitled to discipline the employee for their conduct outside of the workplace. A balance must be struck between an employer maintaining a safe working environment and an invasion of an employee's privacy. Employers can only encourage employees to adhere to government protocols outside of the workplace.



2. EMPLOYER AND BUSINESS OWNER OBLIGATIONS

2.1 In terms of the AL1 Regulations, an employer has the following obligations and responsibilities:



to adhere to all sector specific or other health and safety protocols issued to date;



to appoint a compliance officer to enforce compliance with the AL1 Regulations and all other health and safety protocols issued to date;



prohibit employees from entering the workplace or performing their duties unless an employee is wearing a face mask;



determine the floor plan area of the workplace and the number of persons who may enter the workplace based on the floor plan area, while still maintaining a physical distance of 1.5m;



ensure all persons queuing either inside or outside their premises maintain a physical distance of 1.5m;



take measures to enforce physical distancing of 1.5m in its workplace, including implementing measures such as remote work, restrictions on face-to-face meetings and taking special measures in relation to employees who are considered vulnerable due to their age or co-morbidities; and



provide hand sanitisers outside its premises.

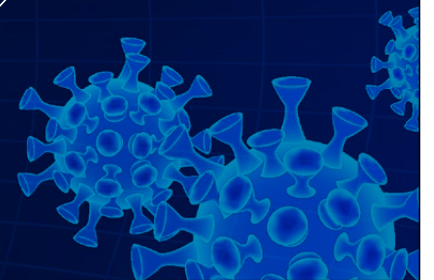
2.2 Business owners



All business owners or operators of indoor and outdoor facilities must display a certificate of occupancy detailing the capacity of the venue.

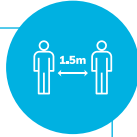
CDH'S COVID-19 RESOURCE HUB

Click here for more information 



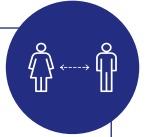
3. WORKPLACE GATHERINGS AND SOCIAL DISTANCING

3.1 Workplace gatherings



Workplace gatherings are permitted provided persons maintain a physical distance of 1.5m and adhere to all health and safety protocols including sanitation and the wearing of face masks.

3.2 Business Premises



All business premises are limited to 50% capacity of its floor space which includes both customers and employees, subject to strict health protocols and physical distancing restrictions.

4. PROHIBITED ACTIVITIES AND PLACES CLOSED TO THE PUBLIC

4.1 The following places will remain closed to the public:



Night clubs remain closed to the public and the 33 land borders remain closed, save for specific exclusions.

4.2 The following activities are prohibited in terms of AL1 regulations:



Night-vigils;



Post funeral gatherings;



Passenger ships for international leisure purposes (excluding small crafts in line with border law enforcement);



Attendance at sporting events by spectators; and



Exclusions relating to public transport and education as set by the relevant Cabinet member.

5. CURFEW



5.1 THE CURFEW HAS BEEN SHORTENED. ALL PERSONS ARE NOW CONFINED TO THEIR PACES OF RESIDENCE FROM MIDNIGHT 24H00 - 04H00 UNLESS THEY ARE PERMITTED NOT TO DO SO, OR IN THE CASE OF A SECURITY OR MEDICAL EMERGENCY

5.2 THE FOLLOWING BUSINESSES OR PUBLIC PLACES MUST CLOSE OPERATIONS AT 23H00 (WHETHER OUTDOORS OR INDOORS):



CINEMAS



THEATRES



CASINOS



MUSEUMS,
GALLERIES AND
ARCHIVES



PUBLIC SWIMMING POOLS

(limited to 50 people for indoor facilities and 100 people for outdoor facilities. Where the venue is too small for the number of aforementioned persons, capacity should not exceed 50 percent of the venue size)



BEACHES AND
PUBLIC PARKS



GAME PARKS,
BOTANICAL GARDENS,
AQUARIUMS AND ZOO'S



GYMS AND
FITNESS
CENTRES



RESTAURANTS



ESTABLISHMENTS
OFFERING WINE-TASTING
AND OTHER BREW
TASTINGS



VENUES
HOSTING
AUCTIONS



VENUES HOSTING
PROFESSIONAL
SPORT

6. RESTRICTIONS AT GATHERINGS

Gatherings (including religious, social, political and cultural) will be permitted, subject to limitations on size, adherence to social distancing and other health protocols. The maximum number of people allowed at any gathering is 100 people in respect of indoor venues or 250 people in respect of outdoor venues. In the event that the venue is too small to accommodate these numbers with appropriate social distancing, then no more than 50 per cent of the capacity of the venue may be used.



7. EXTENSION OF THE SPECIAL COVID-19 GRANT AND TERS RELIEF

In his State of the Nation address, the President announced the extension of the Special COVID-19 Grant by a further three months, until the end of April, given the effect COVID-19 has had on many households. Government has also extended the Unemployment Insurance Fund (UIF's) special COVID-19 wage support benefit until 15 March 2021 for those sectors of the economy that have not been able to operate over this period. There will be two payment iterations. The first will be for the period between 16 October to 31 December 2020 and the second from 1 January to 15 March 2021. It is important that employers who apply for the extended COVID-19 TERS benefits maintain a proper audit trail which can be made available to the Department of Employment and Labour when requested to do so.



8. OFFENCES AND PENALTIES

7.1 Employers who commit, *inter alia*, the following offences will be liable for a fine or imprisonment not exceeding 6 months, or to both such fine and imprisonment:



Exceeding the customer and/or employee allowance based on their floor plan determination;



The sale, dispensing and distribution of alcohol;



Where applicable, failure to adhere to the curfew of 24h00; and



Adherence to restrictions in relation to limitations pertaining to gatherings.

9. SALE OF ALCOHOL



The sale of alcohol will be permitted, for both on-site and off-site consumption, according to normal licence provisions. However, no alcohol may be sold during the hours of curfew.



The consumption of liquor is still prohibited in public spaces.



Registered wineries, wine farms, micro-breweries and micro distilleries may continue to operate in offering wine-tastings and other brew-tastings and selling of wine and brews to the public for offsite consumption is permitted.

10. RE-OPENING OF AIRPORTS AND INTERNATIONAL TRAVEL

The following five airports: OR Tambo, Cape Town, King Shaka, Kruger Mpumalanga and Lanseria airports will be open for international travel with standard infection control measures.



11. WORKPLACE SAFETY IN 2021

9.1 What measures can an employer implement to mitigate the risk of an outbreak of COVID-19 in the workplace and to continue to encourage employees to abide by health and safety protocols notwithstanding "COVID-19 fatigue"?



An employer may implement the following measures:

- remind employees ahead of the return to work of the mandatory health and safety measures as required by government;
- educate employees on the importance of ongoing measures to mitigate the spread of the virus, dispel any myths that may be circulating pertaining to the virus and empower employees with knowledge pertaining to the vaccine roll-out;
- require all employees who visited a hotspot area over the festive period to disclose same to the human resources department or the COVID-19 compliance officer;
- encourage employees who display any symptoms of COVID-19 to remain at home and, in serious cases, to submit themselves for testing;
- maintain strict screening protocols upon entrance to the workplace in 2021 including enforcing the wearing of masks and the use of hand sanitiser before entering the workplace; and
- ensure that all health and safety measures are strictly adhered to, as many employees may be asymptomatic.

DISCLAIMER:

AN EMPLOYERS GUIDE TO THE AL1 REGULATIONS

is an informative guide covering a number of topics, which is being published purely for information purposes and is not intended to provide our readers with legal advice. Our specialist legal guidance should always be sought in relation to any situation. This version of the employers guide reflects our experts' views as of December 2020. It is important to note that this is a developing issue and that our team of specialists will endeavour to provide updated information as and when it becomes effective. Please contact our employment team should you require legal advice amidst the COVID-19 pandemic.

MARKET RECOGNITION

Our Employment Law team is externally praised for its depth of resources, capabilities and experience.

Chambers Global 2014–2022 ranked our Employment Law practice in Band 2 for employment. *The Legal 500 EMEA 2020–2022* recommended us in Tier 1 for employment.

The way we support and interact with our clients attracts significant external recognition.

Aadil Patel is the Practice Head of the Employment Law team, and the Joint Sector Head of the Government & State-Owned Entities sector. *Chambers Global 2015–2022* ranked him in Band 2 for employment. *The Legal 500 EMEA 2021–2022* recommended Aadil as a leading individual for employment and recommended him from 2012–2020.

The Legal 500 EMEA 2021–2022 recommended **Anli Bezuidenhout** for employment.

Jose Jorge is the Head of the Consumer Goods, Services & Retail sector, and a director in our Employment Law practice. *The Legal 500 EMEA 2020–2022* recommended Jose for employment.

Fiona Leppan is the Joint Head of the Mining & Minerals sector, and a director in our Employment Law practice. *Chambers Global 2018–2022* ranked her in Band 2 for employment. *The Legal 500 EMEA 2022* recommend Fiona for mining. *The Legal 500 EMEA 2019–2022* recommended her as a leading individual for employment and recommended her from 2012–2018.

Chambers Global 2020–2022 ranked **Gillian Lumb** in Band 3 for employment. *The Legal 500 EMEA 2020–2022* recommended her for employment.

Chambers Global 2021–2022 ranked **Imraan Mahomed** in Band 2 for employment and in Band 3 from 2014–2020. *The Legal 500 EMEA 2020–2022* recommended him for employment.

The Legal 500 EMEA 2022 recommended **Desmond Odhiambo** for dispute resolution.

Hugo Pienaar is the Head of the Infrastructure, Logistics, and Transport sector, and a director in our Employment Law practice. *Chambers Global 2014–2022* ranked Hugo in Band 2 for employment. *The Legal 500 EMEA 2014–2022* recommended him for employment.

The Legal 500 EMEA 2022 recommended **Njeri Wagacha** for employment.

Chambers Global 2020–2021 ranked **Michael Yeates** as an up and coming employment lawyer. *The Legal 500 EMEA 2020* recommended him for employment.



BBBEE STATUS: LEVEL ONE 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.

PLEASE NOTE

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

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