

29 JUNE 2021

COVID-19 Workplace Health and Safety Guideline

Redefining a "SAFE" workplace



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CLIFFE DEKKER HOFMEYR

INCORPORATING
KIETI LAW LLP, KENYA

COVID-19 Workplace Health and Safety Guideline.

Redefining a "SAFE" workplace

While South African businesses recommence or continue operations under Alert Level 3, it is imperative that health and safety guidelines are strictly adhered to in order to mitigate the risk of the dreaded "third 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 11 June 2021, 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 Accordingly, the Consolidated Health and Safety Directions issued on 10 October 2020 have since been withdrawn. The OHS Directions commenced with effect from 11 June 2021. 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.

Please note that the Directive does not apply to a workplace that is excluded in terms of section 1(3) of the Occupational Health and Safety Act 85 of 1993, which includes mines, mining areas or works as defined in the Minerals Act 50 of 1991, as well as ships, boats or cranes as defined in the Merchant Shipping Act 57 of 1951.

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:

- undertake a risk assessment to give effect to the OHS Directions having regard to the specific workplace circumstances and the OHSA regulations for Hazardous Biological Agents; and
- within 21 days of the OHS Directions coming into force, in accordance with section 8 and 9 of the OHSA, taking into account the operational requirements of the workplace determine whether it intends making vaccinations mandatory and if so, identifying those employees who by virtue of the risk of transmission, through their work, or their risk for severe COVID-19 disease or death due to their age or comorbidities (Specified Employees) must be vaccinated;
- develop or amend an existing to plan outlining the protective measures in place for the phased return of its employees before opening and outlining the measures that the employer intends to implement in respect of vaccination of its employees in accordance with the OHS Directions and the vaccination guidelines set out in Annexure C to the OHSA Direction.
- 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 two 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;
- a procedure to deal with an employee who has exercised their right not to perform work due to exposure to COVID-19;
- details of the Specified Employees; and
- whether, given the Specified Employees, vaccinations will be mandatory (as and when the vaccinations become available).



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:

- undertake a risk assessment as soon as reasonably practicable, so as to give effect to the minimum measures required by the OHS Directions.
- within 21 days of the Directive coming into force, determine whether an employer intends to implement a mandatory vaccination policy.
- consult with the health and safety committee on the risk assessment and updated plan.
- A copy of the risk assessment plan together with the updated workplace plan must be made available for inspection by the health and safety committee and an inspector appointed by the Department;
- 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 for 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;
- provide workers with information and raise awareness around various aspects related to COVID-19, including hygiene, transmission risks, screening and testing;
- provide information on the nature and benefits of the COVID-19 vaccines; and
- provide information on the risks of any serious side effects such as allergic reactions.

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;
- Provide support to the National Department of Health (DOH) in relation to contact tracing.
- provide electronic support to assist employees to register on the Electronic Vaccination Data System Registration Portal (EVDS) for COVID-19; and
- allow employees paid time off to be vaccinated provided that proof of vaccination is presented and that vaccination occurs during the employees working hours.

2. LARGE BUSINESSES...continued

2.3 What are the employer's further obligations if it decides that vaccinations are mandatory for the Specified Employees?



Employers must ensure that their vaccination plan complies with any applicable collective agreement and must take into account the guidelines set out in Annexure C to the OHS Directions.

2.4 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.

2.6 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.

2.5 What are the reporting obligations of employers with more than 50 employees?



- An employer with more than 50 employees must submit to the NIOH the following data:
- the details of every employee's vulnerability status, which is to be submitted on a once off basis;
- the information relating to the risk assessment, plan and policy, the health and safety of employees, information relating to the category of employees who must be vaccinated, information in relation to symptomatic employees, those who test positive and post outcomes shall be submitted as soon as possible before Tuesday of each week; and
- the details of post infection outcomes of employees testing positive will be submitted, for the previous calendar week, commencing on Sunday.

2.7 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 12 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;
- ensure that employees, wash their hands with soap and sanitizer, while at work;
- 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. SYMPTOM SCREENING...continued

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;
- provide hand sanitisers for use by the public at the entrance of workplace; 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.



12.2 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.



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 OHSA.



12. REFUSAL TO PERFORM WORK...continued

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.

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 OHSA 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 OHSA, offences and penalties provided for in the OHSA will apply.

CDH'S COVID-19 RESOURCE HUB

[Click here for more information](#)

DISCLAIMER:

The end of the national state of disaster was announced with effect from midnight on 4 April 2022 and accordingly all regulations and direction published pursuant to section 27(2) of the Disaster Management Act 57 of 2002 have been repealed save for limited transitional regulations. Please note that the Consolidated Directions on Occupational Health and Safety Measures in Certain Workplaces published on 11 June 2021 (Directive) is no longer in force. The Code of Good Practice: Managing exposure to SARS-COV-2 in the Workplace, 2022 (Code) published by the Department of Employment and Labour on 15 March 2022 (Code) is now in effect and replaces the Directive in guiding employers on the manner in which to fulfil their obligations to keep the workplace safe. This guideline is therefore only relevant for reference purposes.

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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