

17 AUGUST 2021

An Employer's Guide

ADJUSTED ALERT LEVEL 3 REGULATIONS



CLIFFE DEKKER HOFMEYR

INCORPORATING
KIETI LAW LLP, KENYA

On 25 July 2021, the President addressed the nation on the country's COVID-19 infections as well as government's vaccine roll-out program. The President elected to move the country to Adjusted Alert Level 3 (AAL3), in accordance with the reduction in daily infection rates. The country's move to AAL3 commenced Monday 26 July 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.



2. EMPLOYER AND BUSINESS OWNER OBLIGATIONS

2.1 In terms of the AAL3 Regulations, an employer has the following obligations and responsibilities:



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



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



to appoint a compliance officer to enforce compliance with the AAL3 Regulations and all other health and safety protocols issued to date;



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



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



provide hand sanitiser outside its premises.



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;

2. EMPLOYER AND BUSINESS OWNER OBLIGATIONS...continued

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.



2.4 Expansion of the tax incentives

Government is extending the Employment Tax Incentive (Incentive) for a period of four months to include employees earning below R6,500 and to increase the Incentive amount by up to R750 per month to encourage employers to hire and retain employees, particularly those in the retail and hospitality sectors.

Payment of PAYE taxes, will be deferred, for a period of three months to provide businesses with additional cash flow, with an automatic deferral of 35% of PAYE liabilities for employers with revenue below R100 million.



2.3 Extension of Business Licenses and Permits

Business licenses and permits that have expired between March 2020 and June 2021 will remain valid until 31 December 2022. New business licenses or permits issued from the 1st of July will also be valid until 31 December 2022. Furthermore, no license fee will be payable.



3. WORKPLACE GATHERINGS AND SOCIAL DISTANCING

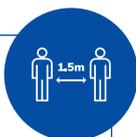
3.1 Remote Working

All employers are directed to allow employees to work from home, wherever possible. In addition, employers are to postpone all non-essential travel and workplace gatherings.



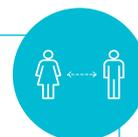
3.2 Workplace gatherings

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



3.3 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. PERMITTED ACTIVITIES, PROHIBITED ACTIVITIES AND PLACES CLOSED TO THE PUBLIC

4.1 The following places will remain closed to the public:



Night clubs.



The 33 land borders remain closed, save for specific exclusions.

4.2 The following activities are permitted in terms of AAL3 regulations:



Traditional community meetings (imibizo).



Initiation practices are permitted subject to the submission of a risk adjusted plan for conducting initiation practices to the relevant Cabinet members by the provincial executive responsible for traditional affairs and subject to strict social distancing protocols.



Post initiation practices (imigidi) (subject to a limitation of 50 people or less for indoor venues and 100 people or less for outdoor venues).

4.3 The following activities are prohibited in terms of AAL3 regulations:



Night vigils.



Post funeral gatherings, including "after tears" events.



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



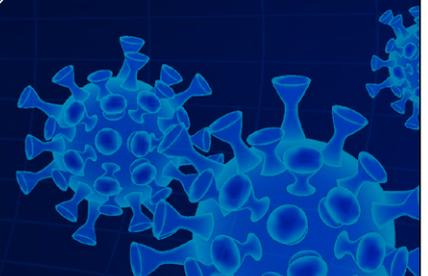
Attendance at sporting events by spectators.



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

CDH'S COVID-19 RESOURCE HUB

Click here for more information 



5. CURFEW



5.1 THE CURFEW HAS BEEN EXTENDED. ALL PERSONS ARE NOW CONFINED TO THEIR PLACES OF RESIDENCE FROM 22H00 – 04H00 UNLESS THEY ARE PERMITTED NOT TO DO SO, OR IN THE CASE OF A SECURITY OR MEDICAL EMERGENCY OR WHERE ARRIVING FROM A FLIGHT OR ARE TRAVELLING TO AND FROM THE AIRPORT FOR A FLIGHT WHICH NECESSITATES TRAVELLING DURING RESTRICTED HOURS OF MOVEMENT.

5.2 THE FOLLOWING PLACES MAY CONTINUE TO OPERATE SUBJECT TO THERE BEING NO ON-SITE GATHERINGS AND ADHERENCE TO OTHER LIMITATIONS, PROVIDED THEY CLOSE OPERATIONS AT 21H00:



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



RESTAURANTS, TAVERNS AND BARS

(limited to 50 patrons or less. Where the venue is too small than no more than 50% of the capacity of the venue may be used)



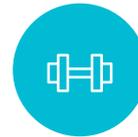
VENUES HOSTING PROFESSIONAL SPORT

(subject to directions from sports matches being issued by the cabinet member. Journalists, radio and television crew, security personnel, emergency medical services and the necessary employees employed by the venue may attend. The required number of players, match officials, support staff and medical crew may also attend)



AGRICULTURAL LIVESTOCK AND GAME AUCTIONS

(subject to strict health and social distancing protocols)



GYMS AND FITNESS CENTRES

(limited to 50 persons or less. Where the venue is too small than not more than 50% of the capacity of the space may be used subject to strict health and social distancing protocols)



HOTELS, LODGES, BEDS AND BREAKFASTS

(allowed at full capacity and subject to strict health and social distancing protocols)



CONFERENCING, EXHIBITIONS, DINING AND ESTABLISHMENT FACILITIES

(subject to a limitation of a maximum of 50 people for indoor venues and 100 people for outdoor venues. Where the venue is too small than no more than 50% of the capacity of the venue may be used)



MUSEUMS, GALLERIES AND ARCHIVES



THEATRES



CINEMAS



CASINOS

6. GATHERINGS

6.1 Faith-based or religious gatherings, social, political and cultural gatherings



Gatherings will be allowed limited to a maximum of 50 people for indoors events and 100 people for outdoor events. Where the venue is too small to accommodate these numbers, with appropriate social distancing, then no more than 50% of the capacity of the venue may be used.

6.2 Gatherings at Funerals



Attendance at funerals and cremations may not exceed 50 people and all social distancing and health protocols must be observed

Funerals services are further restricted to 2 hours.

6.3 Permitted gatherings



Gatherings at community engagements, held by members of Parliament, members of Provincial Legislatures, councilors, leaders of political parties, religious leaders and traditional leaders, to deal with emergency matters that impact on the management, treatment and prevention of the COVID-19 pandemic are permitted subject to a limitation of 50 persons. Where the venue is too small than no more than 50% of the capacity of the venue subject further to adherence to strict social distancing protocols.

7. EXTENSION OF THE SPECIAL COVID-19 GRANT AND TEMPORARY EMPLOYER-EMPLOYEE RELIEF SCHEME (TERS) RELIEF

Applications to the COVID-19 TERS Relief Fund, for this period are open, and the Unemployment Insurance Fund (UIF) will facilitate payments as expeditiously as possible to support employees who have not received an income.

On 11 August 2021, the Minister of Employment and Labour Gazetted the Temporary Financial Relief Scheme known as the: "*Destroyed, Affected or Looted Workplaces: Temporary Financial Relief Scheme, 2021*". The Scheme is created under the Unemployment Insurance Act, 2001 and will be reviewed bi-weekly by the Minister on the advice of the Unemployment Insurance Commissioner in respect of its continued operation. The Scheme is not linked to the normal Unemployment Insurance benefits.

Building upon the lessons of 2020, the Scheme applies not only to employees but to workers. Where a worker who is receiving part or no remuneration because of the civil unrest (experienced between 9 to 18 July 2021), such worker is entitled to an income replacement, calculated on a sliding scale of 38% to 60% based on remuneration.

The remuneration that would be taken into account in calculating the relief cannot exceed R17,712.00 per month. However, if the income replacement is below R3,500.00 then the worker must be paid a replacement income equal to such amount. Accordingly, the payment will not exceed R6,700.00 and shall not be less than R3,500.00 per month. A flat rate may also be determined by the Minister if financial considerations dictate.

Payments under the Scheme will be made directly into the workers bank account unless the Commissioner allows payment directly to the employer. However, an employer is required to apply for the temporary financial relief on behalf of the affected employees and must satisfy the following conditions (an application cannot be made by the employee):

1. It must register and be registered with the Unemployment Insurance Fund;
2. The closure of the employer's business must be directly linked to the destruction, damage or looting of its workplace;
3. The employer must confirm in writing or electronically that the terms of the Scheme and/or the procedure document issued by the UIF is accepted;
4. Details of the destruction or damage or looting or closure of the workplace must be provided. Additionally, documentary proof of a report to the SAPS (case number issued) and if the business is insured proof of submission and acknowledgement of receipt of the insurance claim must be submitted; and
5. Any other information the Commissioner may require.



8. OFFENCES AND PENALTIES

7.1 Employers who commit, *inter alia*, the following offences will be liable for a fine or imprisonment not exceeding six 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 22h00; and



Adherence to restrictions in relation to limitations pertaining to gatherings.

9. SALE OF ALCOHOL

The sale of alcohol from retail outlets for off-site consumption is permitted between the hours of 10h00 and 18h00 from Mondays to Thursdays (excluding Fridays- Sundays).



Alcohol sales for on-site consumption is permitted as per license conditions up to 20h00.

Registered wineries, wine farms, micro -breweries and micro-distilleries may continue to operate and offer wine-tastings and other brew-tastings. The selling of wine and other brews to the public for off-site and on-site consumption is permitted until 20h00 subject to social distancing and health protocols.

Transportation of liquor is permitted.

10. INTER PROVINCIAL TRAVEL



Inter provincial travel for leisure may resume.

11. RANGE OF MEASURES TO SUPPORT THE RECOVERY OF THE ECONOMY FOLLOWING THE CIVIL UNREST



To support those who have no means of supporting themselves, government is reinstating the Social Relief of Distress Grant (Grant) to provide a monthly payment of R350 until the end of March 2022.



The number of eligible people for this Grant is extended to allow for unemployed caregivers who currently receive a Child Support Grant (CSG) to apply. Full Details on the reinstatement of the Grant, will be announced shortly.



The food relief being provided by the Department of Social Development, government is contributing R400 million to the Humanitarian Crisis Relief Fund (HCRF) established by the Solidarity Fund to assist with the immediate needs of affected communities.



Government is also implementing measures to assist businesses to rebuild so that they may re- open expeditiously.



Businesses that are insured will be covered by SASRIA (the state-owned insurance company which provides cover against incidents of civil unrest). SASRIA has committed to expedite the payment of all valid claims, and is working together with private insurers to ensure that assessments are completed without delay.



Government is working to extend support to uninsured businesses that were also affected by the civil unrest. Government will set aside dedicated funds for this purpose and will announce a mechanism for these businesses to apply for support, in due course.



Funding for SMMEs affected by the pandemic, will be prioritised through a once-off business survival funding mechanisms.

12. RE-OPENING OF AIRPORTS AND INTERNATIONAL TRAVEL

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



DISCLAIMER:

AN EMPLOYERS GUIDE TO THE AAL3 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 17 August 2021. 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. This guide is not intended to serve as medical advice nor does this guide intend to make any evaluations in relation to the efficacy of COVID-19 vaccines or the correctness of the decision to implement a mandatory vaccination policy in all instances.

OUR TEAM

For more information about our Employment Law practice and services in South Africa and Kenya, please contact:



Aadil Patel
Practice Head
Director
T +27 (0)11 562 1107
E aadil.patel@cdhlegal.com



Bongani Masuku
Director
T +27 (0)11 562 1498
E bongani.masuku@cdhlegal.com



Hedda Schensema
Director
T +27 (0)11 562 1487
E hedda.schensema@cdhlegal.com



Anli Bezuidenhout
Director
T +27 (0)21 481 6351
E anli.bezuidenhout@cdhlegal.com



Phetheni Nkuna
Director
T +27 (0)11 562 1478
E phetheni.nkuna@cdhlegal.com



Njeri Wagacha
Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E njeri.wagacha@cdhlegal.com



Jose Jorge
Director
T +27 (0)21 481 6319
E jose.jorge@cdhlegal.com



Desmond Odhiambo
Partner | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E desmond.odhiambo@cdhlegal.com



Michael Yeates
Director
T +27 (0)11 562 1184
E michael.yeates@cdhlegal.com



Fiona Leppan
Director
T +27 (0)11 562 1152
E fiona.leppan@cdhlegal.com



Hugo Pienaar
Director
T +27 (0)11 562 1350
E hugo.pienaar@cdhlegal.com



Mohsina Chenia
Executive Consultant
T +27 (0)11 562 1299
E mohsina.chenia@cdhlegal.com



Gillian Lumb
Director
T +27 (0)21 481 6315
E gillian.lumb@cdhlegal.com



Thabang Rapuleng
Director
T +27 (0)11 562 1759
E thabang.rapuleng@cdhlegal.com



Faan Coetzee
Executive Consultant
T +27 (0)11 562 1600
E faan.coetzee@cdhlegal.com



Imraan Mahomed
Director
T +27 (0)11 562 1459
E imraan.mahomed@cdhlegal.com

OUR TEAM

For more information about our Employment Law practice and services in South Africa and Kenya, please contact:



Jean Ewang
Consultant
M +27 (0)73 909 1940
E jean.ewang@cdhlegal.com



Asma Cachalia
Associate
T +27 (0)11 562 1333
E asma.cachalia@cdhlegal.com



Peter Mutema
Associate | Kenya
T +254 731 086 649
+254 204 409 918
+254 710 560 114
E peter.mutema@cdhlegal.com



Avinash Govindjee
Consultant
M +27 (0)83 326 5007
E avinash.govindjee@cdhlegal.com



Jaden Cramer
Associate
T +27 (0)11 562 1260
E jaden.cramer@cdhlegal.com



Taryn York
Associate
T +27 (0)21 481 6314
E taryn.york@cdhlegal.com



Riola Kok
Professional Support Lawyer
T +27 (0)11 562 1748
E riola.kok@cdhlegal.com



Rizichi Kashero-Ondego
Associate | Kenya
T +254 731 086 649
T +254 204 409 918
T +254 710 560 114
E rizichi.kashero-ondego@cdhlegal.com



Dylan Bouchier
Associate Designate
T +27 (0)11 562 1045
E dylan.bouchier@cdhlegal.com



Sean Jamieson
Senior Associate
T +27 (0)11 562 1296
E sean.jamieson@cdhlegal.com



Jordyne Löser
Associate
T +27 (0)11 562 1479
E jordyne.loser@cdhlegal.com



Mayson Petla
Associate Designate
T +27 (0)11 562 1114
E mayson.petla@cdhlegal.com



Tamsanqa Mila
Senior Associate
T +27 (0)11 562 1108
E tamsanqa.mila@cdhlegal.com



Christine Mugenyu
Associate | Kenya
T +254 731 086 649
T +254 204 409 918
T +254 710 560 114
E christine.mugenyu@cdhlegal.com



Kgodisho Phashe
Associate Designate
T +27 (0)11 562 1086
E kgodisho.phashe@cdhlegal.com

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.

JOHANNESBURG

1 Protea Place, Sandton, Johannesburg, 2196. Private Bag X40, Benmore, 2010, South Africa. Dx 154 Randburg and Dx 42 Johannesburg.
T +27 (0)11 562 1000 F +27 (0)11 562 1111 E jhb@cdhlegal.com

CAPE TOWN

11 Buitengracht Street, Cape Town, 8001. PO Box 695, Cape Town, 8000, South Africa. Dx 5 Cape Town.
T +27 (0)21 481 6300 F +27 (0)21 481 6388 E ctn@cdhlegal.com

NAIROBI

CVS Plaza, Lenana Road, Nairobi, Kenya. PO Box 22602-00505, Nairobi, Kenya.
T +254 731 086 649 | +254 204 409 918 | +254 710 560 114 E cdhkenya@cdhlegal.com

STELLENBOSCH

14 Louw Street, Stellenbosch Central, Stellenbosch, 7600.
T +27 (0)21 481 6400 E cdhstellenbosch@cdhlegal.com

©2021 10069/AUG



CLIFFE DEKKER HOFMEYR

INCORPORATING
KIETI LAW LLP, KENYA



EMPLOYMENT LAW | cliffedekkerhofmeyr.com