

17 MAY 2021

EMPLOYMENT LAW ALERT

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The COVID-19 Vaccination Injury No-Fault Compensation Scheme

On 22 April 2021, the Minister of Co-operative Governance published the regulations (Regulations) establishing a COVID-19 Vaccination Injury No-Fault Compensation Scheme (Scheme). The purpose of the Scheme is to provide compensation to persons who have suffered harm, loss, or damages as a result of a "vaccine injury".

Extended COVID-19 Employer/Employee Relief Scheme (TERS) Benefits Update

On 20 April 2021, the Minister of Employment and Labour, Thembelani Nxesi, published a further Direction Providing COVID-19 TERS Benefits for Certain Categories of Employees (Updated Direction). The purpose of the Updated Direction is to make the process of applying for TERS benefits less cumbersome in order to ensure that employees who qualify, are more likely to receive the benefit.

The Department to the rescue: Vaccine funding for uninsured workers

On 14 May 2021, the Minister of the Department of Employment and Labour (Department) announced that through the Compensation Fund, in partnership with Rand Mutual Assurance (RMA) and Federated Employer's Mutual Assurance (FEMA), R1,35 billion has been set aside for the procurement of vaccines for approximately three million workers who are not covered by a medical aid scheme (Vaccination Scheme).

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The COVID-19 Vaccination Injury No-Fault Compensation Scheme

The Regulations do not define permanent or significant injury, serious harm or serious damage. The Minister of Health will publish a schedule with a list of vaccine injuries covered by the scheme.

On 22 April 2021, the Minister of Co-operative Governance published the regulations (Regulations) establishing a COVID-19 Vaccination Injury No-Fault Compensation Scheme (Scheme). The purpose of the Scheme is to provide compensation to persons who have suffered harm, loss, or damages as a result of a "vaccine injury".

To qualify for cover, a vaccine injury must result in one or more of the following:

- permanent or significant injury;
- serious harm to a person's health; or
- other serious damage or death.

The Regulations do not define *permanent or significant injury*, serious harm or serious damage. The Minister of Health will publish a schedule with a list of vaccine injuries covered by the scheme. Side effects such as headaches, diarrhoea and vomiting are unlikely to meet the test for serious harm or permanent injury.

Eligibility

According to the Regulations, claimants may lodge a in their personal capacity. If a vaccine injury results in a death, the

deceased's dependent may also lodge a claim. To succeed, a claimant must prove that they have suffered harm, loss or damage caused by a vaccine injury.

In terms of regulation 96, any person who elects to submit a claim to the Scheme waives and abandons their right to institute legal proceedings against *any* party for a claim arising from harm, loss or damage allegedly caused by a vaccine.

How to submit a claim

A claim must be submitted in terms of a form published by the Minister of Health. A claim will be assessed and adjudicated by a panel. If a claimant is unhappy with the recommendation by the panel, they may appeal to the Appeal Panel chaired by a retired judge.

Mandatory vaccine policy?

The Scheme brings relief to the employers who are considering introducing mandatory workplace vaccination policies because the Scheme introduces an avenue to mitigate the risk of litigation resulting from claims of harm, loss, or damage as a result of taking a vaccine.

Thabang Rapuleng, Tamsanqa Mila and Aubrey Mazibuko

RETRENCHMENT GUIDELINE



CLICK HERE for the latest thought leadership and explanation of the legal position in relation to retrenchments, temporary layoffs, short time and retrenchments in the context of business rescue.

Extended COVID-19 Employer/Employee Relief Scheme (TERS) Benefits Update

The Updated Direction is the latest publication in a series of alerts that CDH has published on TERS benefits.

On 20 April 2021, the Minister of Employment and Labour, Thembelani Nxesi, published a further Direction Providing COVID-19 TERS Benefits for Certain Categories of Employees (Updated Direction). The purpose of the Updated Direction is to make the process of applying for TERS benefits less cumbersome in order to ensure that employees who qualify, are more likely to receive the benefit.

The Updated Direction is the latest publication in a series of alerts that CDH has published on TERS benefits. The Updated Direction's primary change relates to the application process for benefits. The Directions, as explained in our [previous alert](#), previously required proof that employers are unable to make alternative arrangements for employees with comorbidities, and employees over the age of 60 to work from home. The employer was required to submit a report or affidavit in this regard depending on the number of employees that they employed.

A report or affidavit is now no longer required. The employer is now required to submit categories of data to the National Institute for Occupational Health in the manner set out in the National Department of Health Guidelines, namely:

- a. each employee's vulnerability status for serious outcomes of a COVID-19 infection;
- b. details of the COVID-19 screening of employees who are symptomatic;
- c. details of employees who test positive in terms of a positive laboratory test for the COVID-19 virus;
- d. details of employees identified as high-risk contacts within the workplace if a worker has been confirmed as being positive; and
- e. details on the post-infection outcomes of those testing positive, including the return to work assessment outcome."



Extended COVID-19 Employer/Employee Relief Scheme (TERS) Benefits Update...*continued*

When an employee was in quarantine and isolation, the employer and employee were previously each required to submit an affidavit confirming that the employee had a high-risk contact.

Furthermore, the employee declaration returns by the employer will confirm loss of income and thus inability to make alternative arrangements for the affected employees.

When an employee was in quarantine and isolation, the employer and employee were previously each required to submit an affidavit confirming that the employee was in contact with a person who had tested positive for COVID-19. The Updated Direction consolidates this requirement, instead requiring the employer to submit the categories of data in order to qualify for, and receive, the benefit.

Accordingly, the Updated Direction has two important changes that employers should be aware of:

1. Firstly, it standardises what must be submitted in the application for TERS benefits; and
2. Secondly, the Department of Employment and Labour have aligned with the Department of Health's requirements regarding the submission of COVID-19 health-related data from workplaces.

The Updated Direction is a further step by the Department of Employment and Labour to improve the process of applying for TERS benefits, in order to ensure that those who qualify are not at risk of failing to receive the benefits due to process-related complications.

Employers will now no longer be required to follow separate procedures for employees with comorbidities, employees over the age of 60 and employees in quarantine or isolation. We invite our readers to read our previous alerts which cover the full details of the TERS benefit.

Sean Jamieson and Michael Bailey

AN EMPLOYER'S GUIDE
TO MANDATORY WORKPLACE VACCINATION POLICIES

FOR A COPY OF THE CDH
EMPLOYMENT PRACTICE
GUIDE, [CLICK HERE](#)

The Department to the rescue: Vaccine funding for uninsured workers

The Vaccine Scheme is a welcomed initiative for employers who wish to encourage employees to be vaccinated prior to attending the workplace but are unable to provide funding to employees in this regard.

On 14 May 2021, the Minister of the Department of Employment and Labour (Department) announced that through the Compensation Fund, in partnership with Rand Mutual Assurance (RMA) and Federated Employer's Mutual Assurance (FEMA), R1,35 billion has been set aside for the procurement of vaccines for approximately three million workers who are not covered by a medical aid scheme (Vaccination Scheme).

The Vaccination Scheme is a collaborative effort by the public and private sector to ensure the health and safety of workers who are not covered by a medical aid provider and an attempt to close the funding gaps in relation to procurement of vaccines in the government vaccination programme. The Vaccination Scheme is a commitment by the Department to ensure the safety of all workers irrespective of

their financial status and to ensure that workers are not disadvantaged as a result of not being a member of a medical aid scheme. The Vaccine Scheme is set to commence in phase 2 of the government vaccine roll out programme.

The Vaccine Scheme is a welcomed initiative for employers who wish to encourage employees to be vaccinated prior to attending the workplace but are unable to provide funding to employees in this regard.

The Vaccine Scheme will also reduce the burden on the Department and in particular, the Compensation Fund, who have already received a total of 22 333 claims and has accepted liability for 11 466 claims made in terms of the Workplace-Acquired COVID-19 Directive issued by the Department in July 2020.

Aadil Patel and Riola Kok



SEXUAL HARASSMENT IN THE WORKPLACE

Including the virtual
world of work

**A GUIDE TO MANAGING
SEXUAL HARASSMENT**

The purpose of our 'Sexual Harassment in the Workplace – Including the Virtual World of Work' Guideline, is to empower your organisation with a greater understanding of what constitutes sexual harassment, how to identify it and what to do if it occurs.

[CLICK HERE TO ACCESS
THE GUIDELINE](#)



COVID-19 WORKPLACE HEALTH AND SAFETY ONLINE COMPLIANCE TRAINING

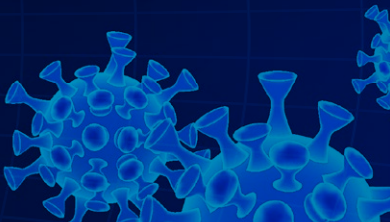
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CDH'S COVID-19 RESOURCE HUB

[Click here for more information](#) 



A CHANGING WORK ORDER

[CLICK HERE](#) to access CDH's 2020 Employment Law booklet, which will assist you in navigating employment relationships in the "new normal".

CASE LAW UPDATE 2020



2021 RESULTS

CHAMBERS GLOBAL 2014 - 2021 ranked our Employment practice in Band 2: Employment.

Aadil Patel ranked by CHAMBERS GLOBAL 2015 - 2021 in Band 2: Employment.

Fiona Leppan ranked by CHAMBERS GLOBAL 2018 - 2021 in Band 2: Employment.

Gillian Lumb ranked by CHAMBERS GLOBAL 2020 - 2021 in Band 3: Employment.

Imraan Mahomed ranked by CHAMBERS GLOBAL 2021 in Band 2: Employment.

Hugo Pienaar ranked by CHAMBERS GLOBAL 2014 - 2021 in Band 2: Employment.

Michael Yeates ranked by CHAMBERS GLOBAL 2020 - 2021 as an up and coming employment lawyer.



2021 RESULTS

Our Employment Law practice is ranked as a Top-Tier firm in THE LEGAL 500 EMEA 2021.

Fiona Leppan is ranked as a Leading Individual in Employment Law in THE LEGAL 500 EMEA 2021.

Aadil Patel is ranked as a Leading Individual in Employment Law in THE LEGAL 500 EMEA 2021.

Gillian Lumb is recommended in Employment Law in THE LEGAL 500 EMEA 2021.

Hugo Pienaar is recommended in Employment Law in THE LEGAL 500 EMEA 2021.

Jose Jorge is recommended in Employment Law in THE LEGAL 500 EMEA 2021.

Imraan Mahomed is recommended in Employment Law in THE LEGAL 500 EMEA 2021.

Anli Bezuidenhout is recommended in Employment Law in THE LEGAL 500 EMEA 2021.



POPI AND THE EMPLOYMENT LIFE CYCLE: THE CDH POPI GUIDE

The Protection of Personal Information Act 4 of 2013 (POPI) came into force on 1 July 2020, save for a few provisions related to the amendment of laws and the functions of the Human Rights Commission.

POPI places several obligations on employers in the management of personal and special personal information collected from employees, in an endeavour to balance the right of employers to conduct business with the right of employees to privacy.

[CLICK HERE](#) to read our updated guide.

EMPLOYMENT REVIVAL GUIDE Alert Level 1 Regulations

On 28 February 2021, the President announced that the country would move to Alert Level 1 (AL1) with effect from 28 February 2021. AL1 of the lockdown is aimed at the recommencement of almost all economic activities.

[CLICK HERE](#) to read our updated AL1 Revival Guide.
Compiled by CDH's Employment law team.

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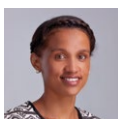
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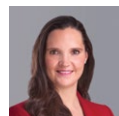
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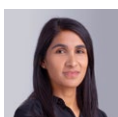
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BBBEE STATUS: LEVEL TWO CONTRIBUTOR

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.

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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