

4 JANUARY 2021

An Employer's Guide

TO THE ADJUSTED LEVEL 3 REGULATIONS



A new year brings with it a new strain of COVID-19. In light of the new, more contagious strain of COVID-19, on 28 December 2020, the President announced that South Africa would move to an adjusted level 3 with immediate effect. The Adjusted Level 3 Regulations (AL3 Regulations) were gazetted on 29 December 2020 and contain further restrictions and stricter penalties for non-compliance with a view to curbing the spread of the virus while retaining a functioning economy insofar as possible. The purpose of this guide is to assist employers in complying with their obligations in terms of the AL3 Regulations, including advice in relation to considerations pertaining to the recommencement of work in 2021.

1. HOTSPOTS



1.1 WHAT IS A HOTSPOT?

A hotspot is an area identified by government as having a high infection rate and where greater COVID-19 restrictions have been imposed.

1.2 HOTSPOT AREAS AS AT 29 DECEMBER 2020



WESTERN CAPE

City of Cape Town
Garden Route
West Coast
Cape Winelands
Central Karoo
Overberg



EASTERN CAPE

Nelson Mandela Bay
Buffalo City
Sarah Baartman
Amathole
Chris Hani
OR Tambo
Alfred Nzo



GAUTENG

City of Tshwane
City of Johannesburg
West Rand
Ekurhuleni



KWAZULU-NATAL

Ethekwini
Umgungundlovu
Ugu
Harry Gwala
Ilembe
King Cetshwayo



LIMPOPO

Waterberg
Capricorn



NORTH WEST

Bojanala

1.3 Is an employer obliged to pay employees who are self-quarantining after returning from a hotspot area over the holiday season?



- 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 return from a hotspot area and that they will need to make use of annual leave or unpaid leave for this period where they are unable to work from home.
- Under the exceptional circumstances of COVID-19, requiring an employee who has returned from a hotspot area to self-quarantine, it can be argued that this does not amount to unfair discrimination.



1.4 Is an employer entitled to discipline an employee for failure to adhere to health and safety protocols during the holiday season, 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 post the holiday season 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 AL3 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 AL3 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;



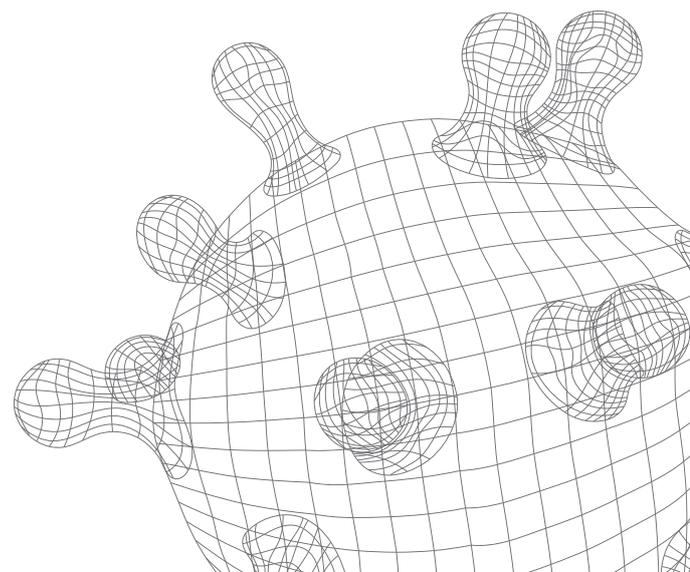
provide hand sanitisers outside its premises.



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;

2.2 Business owners

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



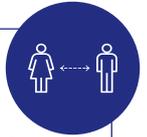
3. WORKPLACE GATHERINGS AND SOCIAL DISTANCING

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;



Swimming pools, save for the training of professional athletes or swimming contests permitted in the AL3 Regulations;



Bars, taverns and shebeens;



Parks and recreational activities where there are no access control measures; and



All other places determined by the Cabinet Minister responsible for cooperative governance and traditional affairs.

4.2 The following activities are prohibited in terms of AL3 Regulations:



Initiation practices and post-initiation practices;



Evictions, unless by order of a competent court;



The sale, dispensing and distribution of alcohol; and



All gatherings, including funerals, that do not comply with the restrictions imposed in relation to the specific activity.

5. CURFEW



ALL PERSONS ARE CONFINED TO THEIR PLACE OF RESIDENCE FROM 21H00 TO 06H00 UNLESS THEY ARE PERMITTED NOT TO DO SO, RESIDE IN A HOTSPOT AREA OR IN THE CASE OF A SECURITY OR MEDICAL EMERGENCY.

5.2 THE FOLLOWING BUSINESSES OR PUBLIC PLACES MUST CLOSE OPERATIONS AT 20H00:



CINEMAS



THEATRES



CASINOS



MUSEUMS.
GALLERIES AND
ARCHIVES



GYMS AND
FITNESS
CENTRES



RESTAURANTS



VENUES
HOSTING
AUCTIONS



VENUES HOSTING
PROFESSIONAL
SPORT

6. OFFENCES AND PENALTIES

6.1 Employers who commit, *inter alia*, the following offences will be liable to 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 20h00; and



Adherence to restrictions in relation to limitations pertaining to gatherings.

7. RECOMMENCEMENT OF OPERATIONS IN 2021

7.1 What measures can an employer implement to mitigate the risk of an outbreak of COVID-19 in the workplace once employees return from the holiday period?



An employer may implement the following measures:

- send communication to all employees ahead of the return to work encouraging them to adhere to all health and safety protocols outside the working environment;
- remind employees ahead of the return to work of the mandatory health and safety measures as required by government;
- it is advisable that all employees who visited a hotspot area over the festive period disclose same to the human resources department or the COVID-19 compliance officer;
- it is advisable that all employees returning from holidays in area's identified as hotspots observe the mandatory 10-day quarantine period;
- 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.

7.2 Can an employer institute a mandatory vaccination policy once a vaccine becomes available?



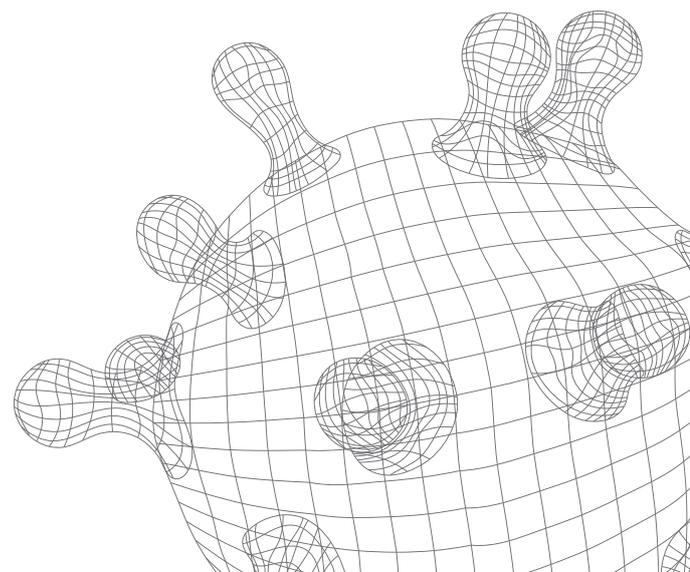
The gist behind mandatory vaccination is that employers have an obligation to protect their employees and maintain a healthy and safe working environment. When considering whether to implement a mandatory vaccination policy employers must have regard to their individual workplaces and access whether such a policy is in fact necessary taking into account, *inter alia*, the following factors: (i) the viability of continued remote work; (ii) the number of vulnerable employees in the workplace; (iii) the effectiveness of additional PPE where necessary; (iv) temporary alternative placements; (v) the employees exposure to the public and (vi) the number of employees with religious and/or medical grounds for objection.

The requirement for such a policy should be determined on a case-by-case basis and the objections of employees or potential employees must also be duly considered with regard to the requirement to balance various rights. Employers must ensure that their records of infected employees are kept updated as this is a factor to also be taken into account.

DISCLAIMER:

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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.



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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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