

EMPLOYMENT LAW

ALERT

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INCORPORATING
KIETI LAW LLP, KENYA

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As the government prepares for the end of the National State of Disaster, the Disaster Management Act will not be the empowering legislation for many COVID-19 related protocols, and new legal directions are required in terms of other empowering legislation such as the Labour Relations Act, the Occupational Health and Safety Act, as well as the National Health Act to manage the ongoing challenges that COVID-19 presents with or without a state of disaster in place.



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The odd one out: Impacts of the draft regulations regarding the surveillance of notifiable medical conditions

As the government prepares for the end of the National State of Disaster, the Disaster Management Act will not be the empowering legislation for many COVID-19 related protocols, and new legal directions are required in terms of other empowering legislation such as the Labour Relations Act, the Occupational Health and Safety Act, as well as the National Health Act to manage the ongoing challenges that COVID-19 presents with or without a state of disaster in place.

To this end, a flurry of directions, codes and regulations dealing with the various aspects of the pandemic were published between 15 March 2022 and 23 March 2022 to ensure the ongoing regulation of COVID-19 related matters.

The move away from a National State of Disaster is a necessary change to address the reality of increasing levels of immunity, and the need to support the recovery of the economy while minimising the likelihood of severe disease or death due to COVID-19.

One such development includes the draft Regulations relating to the surveillance and the control of notifiable medical conditions: Amendment Bill (Draft Bill) published in terms of the National Health Act on 15 March 2022 by the Department of Health (DOH). The Draft Bill looks to introduce amendments to regulations relating to the surveillance and the control of notifiable medical conditions, among other changes.

At the onset of the pandemic in 2020, the DOH classified Covid-19 in a category for the most serious notifiable medical conditions, other medical conditions in this category include cholera, yellow fever and smallpox. Although, COVID-19 is not specifically mentioned in the Draft Bill, the new regulations may be targeted at increasing the country's vaccination rate against Covid-19, as the Draft Bill states that *"Any person with a confirmed or suspected case of a notifiable medical condition may not refuse to submit to mandatory prophylaxis, treatment, isolation or quarantine in order to prevent transmission"*. People who have a confirmed case of a notifiable medical condition may not refuse to have a blood sample taken or be taken for quarantine.

The presidency announced that 60% to 80% of the population has some form of immunity to the virus, either from previous infection or vaccination as at 22 March 2022. However, only 48% of adult South Africans had received at least one vaccine dose, falling short of the target of an 80% vaccination rate.

The Draft Bill states that a full vaccination certificate or a negative polymerase chain reaction (PCR) test taken 72 hours from departure would be required for people leaving the country and people who test positive for a notifiable medical condition prior to their departure out of the country, can be subjected to mandatory quarantine. If a person refuses to quarantine or go to a site of isolation or quarantine facility as directed, a court order must be obtained to compel such a person to quarantine.

The odd one out: Impacts of the draft regulations regarding the surveillance of notifiable medical conditions

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Another notable change sought through the Draft Bill relates to face masks and social distancing. The draft bill proposes to make face masks mandatory in public spaces, shops, certain workplaces and in public transit as part of the general measures instituted to contain the spread of notifiable medical conditions that can spread through droplets or aerosol.

Employers will be required to take special measures for employees with comorbidities to prevent them from being infected by a virus. The provisions of the Draft Bill are not exclusively aimed at COVID-19 but rather all communicable diseases, however there are concerning contradictions arising in respect of COVID-19 in particular, having regard to other regulations published

recently, such as the Adjusted Alert Level 1 Regulations published on 22 March 2022 announcing relaxed regulations regarding the requirement to wear a facemask in certain circumstances.

As COVID-19 steadily becomes more endemic, the thrust of regulatory change appears to focus on a life after the disaster, while the Draft Bill is the odd one out expressing sentiments in conflict with the Adjusted Alert Level 1 Regulations published on 23 March 2022.

The public has a period of 30 days to comment of the Draft Bill which will lapse on 14 April 2022.

**CDH'S EMPLOYMENT
LAW PRACTICE**

WEBINAR INVITATION

From disaster to recovery: The time to act is now

As we transition out of the National State of Disaster, we are stepping into the oft proclaimed "new normal". Our Employment Law experts will be on hand to guide you from a strategic and practical standpoint to enable a seamless transition from the Directive to the Code.



Tuesday, 29 March 2022



08h30 – 09h30

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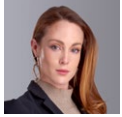
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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

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.

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