

8 FEBRUARY 2021

EASED  
REGULATIONS

# An Employer's Guide

TO THE **EASED** ALERT LEVEL 3 REGULATIONS



On 1 February 2021, the President addressed the nation on the status of the ongoing COVID-19 global pandemic. With the decrease in the rate of infections and the arrival of 1 million doses of the Covishield vaccine on 1 February 2021, the President announced eased Alert Level 3 regulations (AL3), with effect from 1 February 2021. The purpose of this guide is to assist employers in complying with their obligations in terms of the eased AL3 regulations, including other general advice in relation to the workplace 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.

### THE HOTSPOT AREAS IDENTIFIED BY GOVERNMENT ON 29 DECEMBER 2020 REMAIN THE SAME AND ARE AS FOLLOWS:



#### 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 Cetswayo



#### LIMPOPO

Waterberg  
Capricorn



#### NORTH WEST

Bojanala

## 2. REMOTE WORK AND A RETURN TO OFFICE

### 2.1 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.



## 2.2 Is an employer obliged to pay employees who are self-quarantining after returning from a hotspot area?



- It is not legally mandatory for an employer to require an employee to self-quarantine upon return from a hotspot area. However, an employer may wish to do so in order to protect the health and safety of other employees.
- 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 their return from a hotspot area and that they will need to make use of their annual leave or unpaid leave for this period where they are unable to work from home.
- Under the exceptional circumstances of COVID-19, it can be argued, that requiring an employee who has returned from a hotspot area to self-quarantine does not amount to unfair discrimination.

## 2.3 Is an employer entitled to discipline an employee for failure to adhere to health and safety protocols, 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 and an invasion of an employee's privacy. Employers can only encourage employees to adhere to government protocols outside of the workplace.

## 3. EMPLOYER AND BUSINESS OWNER OBLIGATIONS

### 3.1 In terms of the eased 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;

### 3.2 Business owners

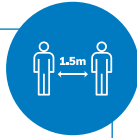


All business owners or operators of indoor and outdoor facilities must display a certificate of occupancy detailing the capacity of the venue.



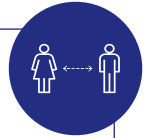
## 4. WORKPLACE GATHERINGS AND SOCIAL DISTANCING

### 4.1 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.

### 4.2 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.

## 5. PROHIBITED ACTIVITIES AND PLACES CLOSED TO THE PUBLIC

### 5.1 The following places will remain closed to the public:



Night clubs remain closed to the public and land borders remain closed, save for specific exclusions.

### 5.2 The following activities are prohibited in terms of AL3 regulations:



Night-vigils;



Post funeral gatherings;



All social gatherings;



Initiation practices (save for certain exceptions) and post initiation practices;



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



Attendance at sporting events by spectators; and



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

## 6. CURFEW



**6.1 THE CURFEW HAS BEEN IMPOSED FOR AN EXTENDED PERIOD, ALBEIT FOR A SHORTER PERIOD. ALL PERSONS ARE NOW CONFINED TO THEIR PLACE OF RESIDENCE FROM 23H00-04H00 UNLESS THEY ARE PERMITTED NOT TO DO SO, RESIDE IN A HOTSPOT AREA OR IN THE CASE OF A SECURITY OR MEDICAL EMERGENCY**

### 6.2 THE FOLLOWING BUSINESSES OR PUBLIC PLACES MUST CLOSE OPERATIONS AT 22H00 (WHETHER OUTDOORS OR INDOORS):



CINEMAS



THEATRES



CASINOS



MUSEUMS,  
GALLERIES AND  
ARCHIVES



**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



GYMS AND  
FITNESS  
CENTRES



RESTAURANTS



ESTABLISHMENTS  
OFFERING WINE-TASTING  
AND OTHER BREW  
TASTINGS



VENUES  
HOSTING  
AUCTIONS



VENUES HOSTING  
PROFESSIONAL  
SPORT

## 7. OFFENCES AND PENALTIES

### 7.1 Employers who commit, *inter alia*, the following offences will be liable for 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.

## 8. SALE OF ALCOHOL



Alcohol sales are permitted for off-site consumption from 10h00 to 18h00 from Monday – Thursday's. (This does not apply to duty-free shops, registered wineries, wine farms, micro-breweries and micro distilleries.)



Alcohol sales by a licence premises, are permitted, for on-site consumption from 10h00-22h00.



The consumption of liquor is still prohibited in public spaces.



Registered wineries, wine farms, micro-breweries and micro distilleries may continue to operate in offering wine-tastings and other brew-tastings and selling of wine and brews to the public for offsite consumption is permitted.

## 9. WORKPLACE SAFETY IN 2021

### 9.1 What measures can an employer implement to mitigate the risk of an outbreak of COVID-19 in the workplace and to continue to encourage employees to abide by health and safety protocols notwithstanding "COVID-19 fatigue"?

An employer may implement the following measures:

- remind employees ahead of the return to work of the mandatory health and safety measures as required by government;
- educate employees on the importance of ongoing measures to mitigate the spread of the virus, dispel any myths that may be circulating pertaining to the virus and empower employees with knowledge pertaining to the vaccine roll-out;
- require all employees who visited a hotspot area over the festive period to disclose same to the human resources department or the COVID-19 compliance officer;
- 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.

#### DISCLAIMER:

#### AN EMPLOYERS GUIDE TO THE EASED LEVEL 3 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 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.

## OUR TEAM

For more information about our Employment Law practice and services, please contact:



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



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



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



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



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



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



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



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



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



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



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



**Mohnsina Chenia**  
Executive Consultant  
T +27 (0)11 562 1299  
E mohnsina.chenia@cdhlegal.com



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



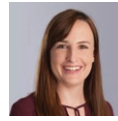
**Jean Ewang**  
Consultant  
M +27 (0)73 909 1940  
E jean.ewang@cdhlegal.com



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



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



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



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



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



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



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



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

### 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.

### 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

### STELLENBOSCH

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

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