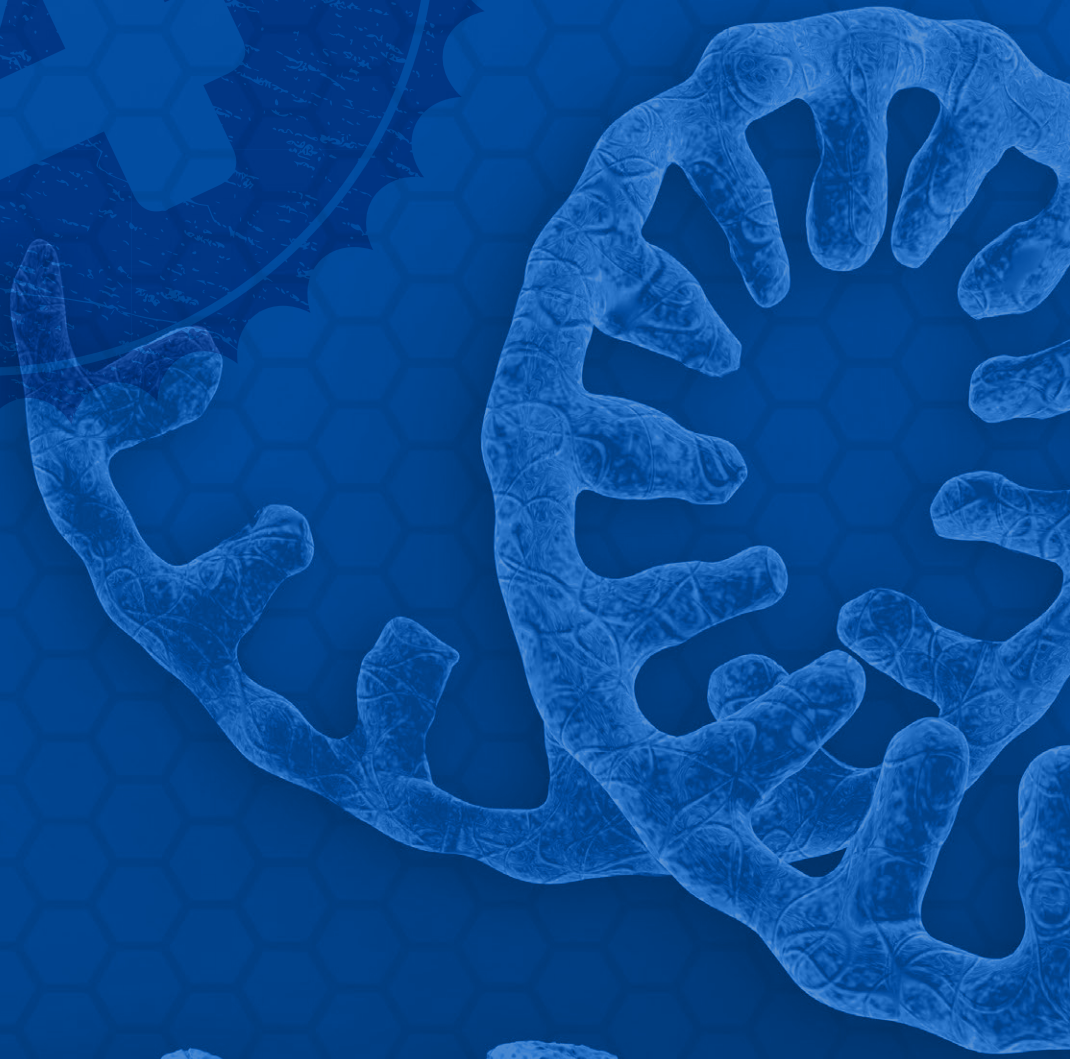


19 JULY 2021

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An Employer's Guide

ADJUSTED ALERT LEVEL 4 REGULATIONS



INCORPORATING
KIETI LAW LLP, KENYA

On 11 July 2021, the President once again addressed the nation on the increase in COVID-19 infections amidst the third wave as well as government's vaccine roll-out program. The President elected to continue to keep the country on Adjusted Alert Level 4 (AAL4), in accordance with the rapid rise in infections. AAL4 will remain in place for a further period of 14 days until 25 July 2021, whereafter the regulations will be reassessed in line with the rate of infections and the prevailing circumstances.

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.

1.2 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.

1.3 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.

2. EMPLOYER AND BUSINESS OWNER OBLIGATIONS

2.1 In terms of the AAL4 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 AAL4 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.

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.

CDH'S COVID-19 RESOURCE HUB

Click here for more information 

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. PROHIBITED ACTIVITIES AND PLACES CLOSED TO THE PUBLIC UNTIL 25 JULY 2021

4.1 The following places will remain closed to the public until the 25 July 2021:



Taverns, Shebeens or similar establishments.



Night clubs.



Fetes and bazaars.



Casinos.



Theatres and cinemas.



Museums, libraries, archives and galleries.



Conferencing, exhibition and entertainment facilities.



Older persons' residential facilities for visits.



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

4.2 The following activities are prohibited in terms of AAL4 regulations:



All social gatherings.



Political events and traditional community meetings (imibizo).



Initiation practices.



Post initiation practices (imigidi) 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.

5. CURFEW



5.1 THE CURFEW HAS BEEN EXTENDED. ALL PERSONS ARE NOW CONFINED TO THEIR PLACES OF RESIDENCE FROM 21H00 – 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 20H00:



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 AND EATERIES

(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

6. GATHERINGS

6.1 Prohibition on gatherings

All gatherings (social, religious, political and cultural), whether indoors or outdoors are prohibited for the duration of the 14 day AAL4 restrictions, save for funerals, when at the workplace or when buying goods and services. Where gatherings are permitted, they are subject to strict adherence to specified limitations.



6.2 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 TERS RELIEF

The Unemployment Insurance Fund (UIF) has elected to extend the COVID-19 TERS scheme to sectors that are affected by AAL4.

The details of the extension will be published in due course following the finalisation of the scheme, which is said to include details on who will be eligible for COVID-19 TERS support.



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 21h00; and



Adherence to restrictions in relation to limitations pertaining to gatherings.

9. SALE OF ALCOHOL



The sale of alcohol is prohibited for both on-site and off-site consumption.

10. GAUTENG SPECIFIC TRAVEL RESTRICTIONS UNTIL 25 JULY 2021

Travel to and from Gauteng for leisure purposes is prohibited (this excludes travel for work, business or commercial travel, transit through airports or the transport of goods).

Visits to old age homes, care facilities and other congregant settings will be restricted.



11. PERMITTED TRAVEL TO AND FROM GAUTENG UNTIL 25 JULY 2021



Persons who are currently not in their places of residence may return home to or from Gauteng.



Persons doing so in the course of employment.



Persons rendering services permitted under AAL4.



Attendance at a funeral.



Persons transiting through the province.



Transportation of mortal remains.



Moving to a new residence.



Commuting to and from education institutions that are allowed to remain open.



Caring for a family member.



Obtaining medical treatment.



Returning to a place of residence from a quarantine or isolation facility.



The exercise of oversight responsibilities and community engagements by: members of Parliament, members of Provincial Legislatures, councilors, leaders of political parties, religious leaders and traditional leaders.

12. RE-OPENING OF AIRPORTS AND INTERNATIONAL TRAVEL

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



13. WORKPLACE SAFETY IN 2021

13.1 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;
- 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;
- ensure that all health and safety measures are strictly adhered to, as many employees may be asymptomatic;
- encourage all employees to get vaccinated as and when the said employees become eligible for vaccination;
- assist employees to register on the Electronic Vaccination Data System and where necessary and reasonable provide transport, to employees, to and from a vaccination site;
- provide employees with a paid day off from work to receive the vaccination; and
- allow the employees sick leave in the event that they suffer adverse reactions following the receipt of the vaccine.

DISCLAIMER:

AN EMPLOYERS GUIDE TO THE NEW AAL4 REGULATIONS

The end of the national state of disaster was announced with effect from midnight on 4 April 2022 and accordingly all regulations and direction published pursuant to section 27(2) of the Disaster Management Act 57 of 2002 have been repealed save for limited transitional regulations. Please note that the regulations that forms the subject of this guideline are no longer on force and this guideline is therefore only relevant for reference purposes.

MARKET RECOGNITION

Our Employment Law team is externally praised for its depth of resources, capabilities and experience.

Chambers Global 2014–2022 ranked our Employment Law practice in Band 2 for employment. *The Legal 500 EMEA 2020–2022* recommended us in Tier 1 for employment.

The way we support and interact with our clients attracts significant external recognition.

Aadil Patel is the Practice Head of the Employment Law team, and the Joint Sector Head of the Government & State-Owned Entities sector. *Chambers Global 2015–2022* ranked him in Band 2 for employment. *The Legal 500 EMEA 2021–2022* recommended Aadil as a leading individual for employment and recommended him from 2012–2020.

The Legal 500 EMEA 2021–2022 recommended **Anli Bezuidenhout** for employment.

Jose Jorge is the Head of the Consumer Goods, Services & Retail sector, and a director in our Employment Law practice. *The Legal 500 EMEA 2020–2022* recommended Jose for employment.

Fiona Leppan is the Joint Head of the Mining & Minerals sector, and a director in our Employment Law practice. *Chambers Global 2018–2022* ranked her in Band 2 for employment. *The Legal 500 EMEA 2022* recommend Fiona for mining. *The Legal 500 EMEA 2019–2022* recommended her as a leading individual for employment and recommended her from 2012–2018.

Chambers Global 2020–2022 ranked **Gillian Lumb** in Band 3 for employment. *The Legal 500 EMEA 2020–2022* recommended her for employment.

Chambers Global 2021–2022 ranked **Imraan Mahomed** in Band 2 for employment and in Band 3 from 2014–2020. *The Legal 500 EMEA 2020–2022* recommended him for employment.

The Legal 500 EMEA 2022 recommended **Desmond Odhiambo** for dispute resolution.

Hugo Pienaar is the Head of the Infrastructure, Logistics, and Transport sector, and a director in our Employment Law practice. *Chambers Global 2014–2022* ranked Hugo in Band 2 for employment. *The Legal 500 EMEA 2014–2022* recommended him for employment.

The Legal 500 EMEA 2022 recommended **Njeri Wagacha** for employment.

Chambers Global 2020–2021 ranked **Michael Yeates** as an up and coming employment lawyer. *The Legal 500 EMEA 2020* recommended him for employment.

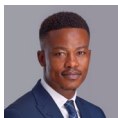


OUR TEAM

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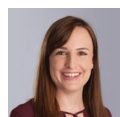
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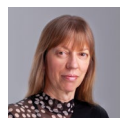
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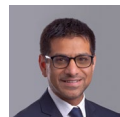
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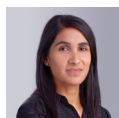
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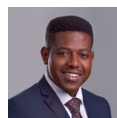
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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

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.

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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