

Occupational Health and Safety in the Workplace: A Strategy to Combat the Spread of Covid-19

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Introduction

As of 1 May 2020, South Africa entered an "Alert Level 4" of lockdown, down from the previous Alert Level 5. This has warranted amendments to specific regulations in order to enable the safe and compliant reopening of certain permitted business enterprises across the country.

This article looks at the measures that must be taken by employers in order to protect the health and safety of workers and members of the public who enter the workplace or who are exposed to business activities.

Overview

As permitted employers endeavour to reopen their business from 4 May 2020, the Minister of Employment and Labour issued a directive on 28 April 2020 ("the directive") which seeks to ensure that the measures taken by employers under the Occupational Health and Safety Act 85 of 1993 (as amended) ("OHSA") are consistent with the overall national strategies and policies to minimize and prevent the further spread of Covid-19.

The directive is based on infection transmission prevention and specific occupational hygiene practices that focus on the need for employers to implement measures to mitigate or eliminate the transmission of the virus in the workplace.

a) Who does it apply to?

The directive applies to any workplace permitted to continue or commence operations before the expiry of the Regulations issued in terms of section 27(2) of the Disaster Management Act ("the regulations") and excludes workplaces in which

medical and health care services as defined in the regulations are performed, and in respect of which another Minister has issued a directive under the regulations dealing with health and safety.

The measures taken by employers are enforceable against all persons entering the workplace (clients, customers, contractors, employees, suppliers and the general public), as well as persons interacting with employees outside of the workplace.

b) Duration of the directive?

The directive came into effect upon publication on 29 April 2020 and remains enforceable for as long as the declaration of a national disaster published in Government Gazette 43096 on 15 March 2020 remains in force.

c) What should I do to get my workplace ready?

i. Covid-19 risk assessment

Prior to reopening offices, employers must conduct a Covid-19 risk assessment to identify exposure levels of each employee, "high contact" activities and vulnerable workers. Where workers have been identified as vulnerable, employers must indicate the special measures for their protection including protection against unfair discrimination or victimization.

ii. Covid-19 screening and reporting

Every employer must take measures to screen workers and, where appropriate, any other entrants upon entering the workplace to determine whether they have any observable primary symptoms associated with Covid-19, namely, a fever, cough, sore throat, redness of eyes or shortness of breath or difficulty in breathing. Employers must require employees to report whether they suffer from any of the additional symptoms such as body aches, loss of smell or loss of taste, nausea, vomiting, diarrhoea, fatigue and weakness or tiredness.

If a worker presents with any of the above-mentioned symptoms, according to the directive, the employer must place the employee on sick leave effective immediately and must report this incident to the Covid-19 hotline at: 0800 02 9999 whereby the employer will obtain further instructions for and in relation to the sick employee.

iii. Engineering controls for workplace readiness

The workplace must be well ventilated by natural or mechanical means (where mechanical, a competent person must ensure that filters are cleaned and replaced in accordance with the manufacturer's instructions), workstations must be adapted to increase social distancing of a minimum of one and a half meters apart (or, if not practicable, place physical barriers between them to prevent the possible transmission of the virus), employers must disable and/or Covid-19-proof all biometric systems and disinfect all surfaces, door handles, equipment and common areas several times daily. Furthermore, employers must ensure that there are adequate facilities, easily accessible for the frequent washing of hands with soap and clean water and must provide paper towels for drying of hands – the use of fabric drying towels is prohibited.

iv. Sanitizers

Employers must ensure that every employee, and persons interacting with its employees for the purposes of work, has sufficient access to a supply of hand sanitizer, free of charge, at the employee's workplace, whether office bound or elsewhere (outside of the office or home). The sanitizers provided must contain at least 70% alcohol content in accordance with the recommendations of the Department of Health.

v. Provision of cloth masks

The Department of Health requires all persons to wear a cloth mask when in a public place. In light of this, employers must provide all employees with a minimum of two cloth masks free of charge and compliant with the guidelines issued by the Department of Trade, Industry and Competition. These masks are for employees to

wear at work and whilst commuting to and from work. Employers are also required to train employees on the correct use of these cloth masks. To ensure the reusability of the masks provided, employers must make appropriate arrangements for the washing, drying and ironing of cloth masks, where necessary.

Employers must also require that members of the public wear masks when inside their premises, however, an employer's obligation to provide cloth masks only extends to its employees.

d) How much time do I have to get my workplace ready?

There is no time period specified, however employers must ensure that they are compliant with the requisite health and safety measures before reopening its business to employees or to the general public.

e) Does the directive apply to all industries?

Yes. However, the directive acknowledges the fact that sector specific measures have to be taken into account and has therefore directed that a Chief Inspector as appointed in terms of section 27 the OHS Act facilitate the development of sector specific guidelines and will do so by engaging with the social partners through the offices of the National Economic Development and Labour Advisory Council.

The sector specific guidelines as contemplated by the Chief Inspector will not replace the directive but will rather supplement the above measures and will be published in due course.

f) What about employers with less than 10 employees?

Small businesses with 10 or less employees must also adhere to the above measures at minimum and may take any additional measures as indicated by their own risk assessment outcomes. This is subject to supplementary sectoral guidelines, if applicable.

g) What is the key takeaway?

Whilst it is important for the phased reopening of businesses for the economy, it remains imperative that businesses work with government bodies to minimize physical contact in the workplace. Employers should make every effort to facilitate and enable rotational or shift work and/or work-at-home strategies and should only require employees to attend at the workplace, with a duly authorised permit, if absolutely necessary. Non-compliance with the health and safety measures may result in business shutdown, a monetary fine or imprisonment as contemplated in section 38 of the OHS Act.

Conclusion

Employers should continue to stay abreast of the developments in relation to Covid-19 and the workplace and must be sure to regularly check the websites of the National Department of Health: <http://www.health.gov.za/>, the National Institute of Communicable Diseases: <https://www.nicd.ac.za/> and the National Institute for Occupational Health <http://www.nioh.ac.za/> to ensure that they remain informed and armed against the fight of the spread of Covid-19.

Please note: this article is for general public information and use. It is not to be considered or construed as legal advice. Each matter must be dealt with on a case by case basis and you should consult an attorney before taking any action contemplated herein.



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