South Africa - regulations and directive regarding COVID-19 measures in the workplace

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The Regulations issued in terms of section 27(2) of the Disaster Management Act, 2002 (Regulations) and the COVID-19 Direction on Health and Safety in the Workplace issued by the Department of Employment and Labour (Directive) set out specific measures that employers are required to take to protect their employees in the workplace from COVID-19. There have also been some sector-specific guidelines issued and it is anticipated that more sectors will issue sector-specific guidelines going forward. Every employer that is permitted to operate will need to adhere to the sector-specific guidelines that apply to their business in addition to the measures set out in the Directive and the Regulations. Employers with less than 10 employees are not required to comply with all the measures in the Directive and only need to comply with a list of measures applicable to them set out in the Regulations and clause 40 of the Directive. We set out below a summary of the requirements under the Regulations and the Directive.

Workplace plan and risk assessment

The Regulations provide that all businesses that are permitted to operate must develop a plan for the phased return of employees to the workplace prior to re-opening the workplace, which plan must be available for inspection. The plan must set out which employees are permitted to return to work, what the plans are for a phased return of employees to the workplace, what the health protocols are, and the details of the COVID-19 compliance officer.

The size of the business will determine the level of detail required and therefore smaller businesses can have a basic plan reflective of the size of the business whereas large and medium size businesses would require a more detailed plan to cater for the large number of persons at the workplace.

The plan must correspond with the requirements in Annexure E of the Regulations (for medium and large businesses) which entails:

- date of opening of the business and trading hours;
- timetable reflecting the phased return to work of employees, to enable appropriate measures to be taken to avoid and reduce the spread of the virus in the workplace;
- steps and measures taken to get the workplace COVID-19 ready;
- a list of employees who can work from home, including employees who are 60 years or older and/or those with comorbidities who will be required to stay at home or work from home;
- arrangements for employees in the workplace such as:
  - sanitary and social distancing measures and facilities at the entrance and exit to the workplace;
  - screening facilities and systems;
  - attendance record system and infrastructure:
- the work area of employees;
- any designated area where the public is served;
- canteen and bathroom facilities;
- testing facilities (for workplaces with more than 500 employees); and
- staff rotational arrangements (where less than 100% of employees are permitted work);

- arrangements for customers or members of the public, including sanitation and social distancing measures.

The Directive provides that every employer is required to undertake a risk assessment to give effect to the minimum measures required in the Directive with reference to the specific circumstances in a particular workplace. If an employer employs more than 500 employees that employer must submit a record of its risk assessment together with a written policy regarding the protection of employees from COVID-19 to its health and safety committee and the Department of Employment and Labour (Department).

Permits

According the Regulations there is a distinction between essential services (listed in Annexure D) and permitted services (as permitted in Table 1 Alert Level 4). Every employee who is permitted to return to work to perform an essential or permitted service must be issued with a permit by the head of the institution which is in the form of Form 2 in the Regulations. An employee must be in possession of the permit in order to perform an essential or permitted service and when travelling to and from work. The holder of the permit must present their identification document together with the permit when requested to do so. Form 2 of the Regulations is substantively similar to the Permit for Essential Service referred to and issued under the Previous Regulations, save for the inclusion of "Place of Residence of the Employee".

Awareness

The Directive provides that in order to ensure employee awareness, all employers must:

- create awareness of the virus and inform employees of the manner of transmission and measures to prevent transmission;
- notify their employees of the contents of the Directive and the manner in which the employer intends to implement the Directive;
- notify employees that if they are sick or have COVID-19 symptoms they must stay home and take sick leave;
- appoint a manager to address employee or workplace representative concerns;
- ensure that the measures required by the Directive and its risk assessment plan are strictly complied with through monitoring and supervision; and
- designate in writing an employee who is responsible for compliance with the Regulations insofar as they require a workplace plan.

Social distancing

The Regulations provide that employers must adopt measures to promote physical distancing of employees, including enabling employees to work from home or minimizing the need for employees to be physically present at the premises. The employer must also provide adequate space and restrict face to face meetings. Special measures should also be adopted for employees over the age of 60 and employees with any known or disclosed health issues, conditions or comorbidities which may increase their vulnerability to COVID-19.

The Directive provides that an employer must, as far as is reasonably practicable, minimize the number of employees at the workplace at any given time through rotation, staggered working hours, shift systems, remote working arrangements or similar measures. The employer must also take measures to limit contact between employees as well as between employees and the public and must as far as is reasonably practicable ensure that there is a minimum of 1.5 m between employees when working. (In certain sectors, the sector-specific guidelines provide for a greater distance between employees, which must be adhered to.) If this is not possible then physical barriers must be arranged or appropriate Personal Protective Equipment (PPE) must be provided to employees free of charge.
Symptom screening

The Directive provides that every employer must take measures to screen employees when they report for duty to determine whether they have any observable COVID-19 symptoms such as fever, shortness of breath, cough, sore throat and redness of eyes. Furthermore, the employer must require every employee to report if they suffer such symptoms or any additional symptoms such as body aches, loss of smell or taste, nausea, vomiting, diarrhea, fatigue, weakness or tiredness. The employer must also comply with the guidelines issued by the Department of Health regarding symptom screening. (Certain sectors have issued sector-specific guidelines in terms of which temperature testing is mandatory, for example, the financial sector, mining sector and call centres). The mining sector guidelines specifically oblige an employer to collect the data from the screening and testing of employees and submit that data to the relevant authority. The call centre guidelines also state that it is mandatory for designated and adequately trained health and safety officers to take each employee’s temperature at the start of a shift and every four hours after the shift commences and records of the temperatures must be retained.

The Directive provides that if the employee presents with symptoms or advises the employer of such symptoms the employer must not permit entry into the workplace and must ensure that the employee is tested or referred to a testing site. If the employee is already at work then the employer must isolate the employee and provide the employee with a FFP1 surgical mask. The employer must then arrange transport for the employee to a location where the employee is able to self-isolate or transport to seek medical examination or testing. The employer must then disinfect the work area and refer those employees who may have been exposed for screening.

The Directive provides that in circumstances where an employee has been diagnosed with COVID-19, the employer may not allow the employee to return to work until the employee has undergone a medical evaluation confirming that they have tested negative for COVID-19.

Reporting obligations

The Directive provides that if an employee has been diagnosed with COVID-19 the employer must inform the Department of Health and the Department of Employment and Labour and investigate the cause and review its risk assessment to ensure that the necessary controls and PPE are in place. The employer must also give administrative support to any contact-tracing measures implemented by the Department of Health.

Hygiene and sanitizers

The Regulations provide that businesses must provide hand sanitizer for use by the public and employees at the entrance to the premises. This is confirmed by the Directive which provides that every employer must ensure that there are sufficient hand sanitizers available free of charge at the workplace, including at the entrance to the business. Every employee who works away from the office, other than from home, must be provided with hand sanitizer free of charge. The employer must also take steps to ensure that all work surfaces and equipment are disinfected before work begins, regularly during the working period and after work ends. There must also be adequate facilities and soap for washing of hands and paper towels must be provided as the use of fabric toweling has been prohibited. All biometric systems must be disabled unless they are COVID-19 proof.

Masks

The Regulations provide that an employer must provide employees who may come into contact with the public as part of their duties with a cloth face mask, homemade item or another appropriate item to cover his or her nose when in a public place. This is further expanded in the Directive, which provides that every employer must provide each of its employees, free of charge, with a minimum of two cloth masks to wear while at work and while travelling to work, including those employees who may come into contact with the public as part of their duties. Employers are required to regularly check the websites of the National Department of Health, National Institute of Communicable Diseases and the National Institute for Occupational Health to see if additional PPE is required or recommended given the nature of the workplace and the employees’ duties.

Ventilation
The Directive provides that every employer must keep the workplace well ventilated and ensure that filters are cleaned and replaced.

The measures set out in the Directive and the Regulations are consistent with employers' obligations under the Occupational Health and Safety Act to provide and maintain as far as reasonably practicable a working environment that is safe and without risks to the health of workers and with national strategies and policies that have been put in place to minimize the spread of COVID-19 and to facilitate a phased and cautious return to work. Because each work environment is unique, different businesses may require additional measures to prevent the transmission of COVID-19 and we therefore expect that these measures may be further refined in the sector guidelines or in amendments to the Directive.

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