



REDFERN & FINDLAY
ATTORNEYS

COVID-19

NEWS BLAST
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RISK ADJUSTED STRATEGY REGULATIONS

ALERT LEVEL 4 – WHAT DO YOU NEED TO KNOW

With the easing of the national lockdown and the implementation of the risk adjusted strategy, come new regulations and requirements for employers. In this issue, we set out some key requirements of the new regulations and what employers need to have in place should they intend operating during Alert Level 4.

REGULATIONS ISSUED IN TERMS OF SECTION 27(2) OF THE DISASTER MANAGEMENT ACT, 2002

In terms of these regulations, the general provisions stipulate that every employer must:

- Appoint, in writing, a compliance officer / employee who must ensure compliance with:
 - the measures required to be implemented; and
 - all directions in respect of hygiene conditions and limitation of exposure to persons with COVID-19 are adhered to.

- 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 workplace;
 - Provision of adequate space and maintaining safe working distance;
 - Restrictions on face to face meetings
 - Special measures for employees with known or disclosed health issues or comorbidities, which place such employees at a higher risk if infected;
 - Special measures for employees above the age of 60 who are at higher risk.

CIRCUMSTANCES SURROUNDING COVID-19 ARE DYNAMIC AND EMPLOYERS NEED TO BE AGILE. ADVICE PROVIDED IS ADAPTED WITH THE EVER-CHANGING DEVELOPMENTS.

THIS EDITION:

- REGULATIONS ISSUED IN TERMS OF SECTION 27(2) OF THE DISASTER MANAGEMENT ACT, 2002.

- COVID-19 OCCUPATIONAL HEALTH AND SAFETY MEASURES IN WORKPLACES – A DIRECTIVE FROM THE MINISTER OF EMPLOYMENT AND LABOUR.

In addition to these general requirements, Alert Level 4 requires the following of employers permitted to operate during this stage:

- Develop a plan for the phased in return to work by their employees to the workplace, prior to re-opening the workplace for business, which plan must correspond with Annexure E (attached hereto) and be retained for inspection.
- Phase in the return to work of their employees, to manage the return of employees from other provinces, metropolitan or district areas; and
- Develop measures to ensure that the workplace meets the standards of health protocols, adequate space for employees and social distancing measures for the public and service providers, as required.

For small businesses, the plan can be basic and the size of the business should be reflected therein. For medium and larger businesses, a more detailed written plan should be developed given the larger number of persons at the workplace. Annexure E sets out the requirements of the plan for medium and large businesses.

For further assistance with the implementation of this plan, do not hesitate to telephone our offices for assistance.

EMPLOYER RESPONSIBILITY ON BACK TO WORK READINESS FOR COVID-19 LEVEL 4

EVERY EMPLOYER MUST



- TAKE MEASURES TO PROTECT THE HEALTH AND SAFETY OF EVERYONE IN THEIR WORKPLACE. THIS INCLUDES EMPLOYEES OF CONTRACTORS, SELF-EMPLOYED PERSONS AND VOLUNTEERS. THE PROCESS STARTS WITH A RISK ASSESSMENT IN THE WORKPLACE AND A CLEAR PLAN TO IMPLEMENT THE MEASURES CONTAINED IN THE DIRECTION.



COVID-19 OCCUPATIONAL HEALTH AND SAFETY MEASURES IN WORKPLACES – A DIRECTIVE FROM THE MINISTER OF EMPLOYMENT AND LABOUR

The Minister of Employment and Labour has published a very detailed directive setting out the occupational health and safety measures to reduce and eliminate the escalation of COVID-19 infections in the workplace.

The Directive is a great starting point for employers and provides valuable guidance on a number of practical issues related to the implementation of the health and safety measures required by the both the Regulations to the Disaster Management Act and the Occupational Health and Safety Act (OHSA). We summarise some of the key concepts below.

1. **OHSA requires the employer to provide and maintain as far as is reasonably practicable a working environment that is safe and without risks to the health of workers and to take such steps as may be reasonably practicable to eliminate or mitigate the hazard or potential hazard.**
 - The identifiable hazard relating to COVID-19 that workers face, is the transmission of the virus by an infected person to workers in the workplace.
2. **Conduct a risk assessment**
 - Every employer must conduct a risk assessment to give effect to the health and safety measures set out in the directive and taking into account the specific circumstances of each business.
 - Employers employing less than 10 employees, are not required to have a written risk assessment, but must have a workplace plan in place.
 - Employers with more than 500 employees must submit a record of its risk assessment together with a written policy concerning the protection of the health and safety of its employees. Copies must be submitted to the:
 - Employer's Health and safety committee (S19 of OHSA) and
 - The Provincial Chief Inspector, at the Department of Employment and Labour.
3. **Appoint a manager to address employee or workplace representative and/or health and safety committees.**
 - Communicate and educate your workforce in respect of COVID-19 risks and health and safety measures.

ENFORCEMENT BY THE DEL

THE MINISTER OF EMPLOYMENT AND LABOUR HAS ON A NUMBER OF OCCASSIONS DURING THE STATE OF EMERGENCY AND LOCKDOWN, STRESSED THE IMPORTANCE OF COMPLIANCE WITH THE REGULATIONS AND HAS URGED PEOPLE TO REPORT NON-COMPLIANCE.

NON-COMPLIANCE CAN RESULT IN THE TEMPORARY CLOSURE OF A BUSINESS AND/OR THE IMPOSITION OF A FINE. WE WOULD THEREFORE ENCOURAGE ALL EMPLOYERS TO ENSURE THAT THEY COMPLY WHEN RE-OPENING FOR BUSINESS.

CONTACT US:

INDUSTRIAL RELATIONS DEPARTMENT:

DEREK REDFERN:

derek@redfernfindlay.co.za

082 947 4934

NATASHA CLUCKIE:

natasha@redfernfindlay.co.za

072 436 1584

COMMERCIAL AND LITIGATION DEPARTMENT:

ANGUS FINDLAY:

angus@redfernfindlay.co.za

082 041 8319

MERRICK JENNINGS:

merrick@redfernfindlay.co.za

082 891 5702

4. An employer should put in place administrative controls, including but not limited to:
 - Screening/ reporting of symptoms/ sick leave
 - Minimizing contact
 - Rotation and shift work
 - Work-at-home strategies
 - Communication and information strategies
 - Role of health and safety committees and representatives
 - Education and training
 - Reporting of incidents for regulatory purposes
 - Reporting for purposes of public health, contact tracing, screening, testing and surveillance
5. Procedures to be put in place where employees have been diagnosed with COVID-19.
6. Social distancing measures
7. Health and safety measures, policies and procedures related to:
 - Symptom screening
 - Sanitizers, disinfectants and other measures
 - Cloth masks
 - Measures in respect of workplaces to which public have access.
 - Ventilation
 - Other PPE
8. Worker obligations
 - Every worker is obliged to comply with measures introduced by their employer as required by the directive.

Employers will need to ensure that their risk assessment and workplace plans comply with the requirements from **both** the Disaster Management Act Regulations and the Directives from the Department of Employment and Labour in terms of the Occupational Health and Safety Act. Particular attention must therefore be paid to the special measures required to be put in place for employees over 60 and those employees with comorbidities, as required by the Disaster Management Act Regulations.

In doing so, it is important to avoid any form of discrimination or breach of confidentiality in dealing with employees and their personal circumstances.

FOR ASSISTANCE ON ANY OF THE ISSUES COVERED IN THIS EDITION, OR FURTHER ADVICE,

CONTACT US NOW: 033 347 0039