DEPARTMENT OF EMPLOYMENT AND LABOUR

NO. R. 499 **11 June 2021**

CONSOLIDATED DIRECTION ON OCCUPATIONAL HEALTH AND SAFETY MEASURES IN CERTAIN WORKPLACES

DIRECTION ISSUED IN TERMS OF REGULATION 4(10) OF THE REGULATIONS MADE UNDER SECTION 27(2) OF THE DISASTER MANAGEMENT ACT, 2002: MEASURES TO ADDRESS, PREVENT AND COMBAT THE SPREAD OF COVID-19 IN CERTAIN WORKPLACES IN THE REPUBLIC OF SOUTH AFRICA

I, **Thembelani Waltermade Nxesi**, the Minister of Employment and Labour, in terms of Regulation 4(10) of the Regulations, as published under Government Notice No. R.480 of 29 April 2020 and amended by Regulations published under Government Notices No. R.608 of 28 May 2020, R.714 of 25 June 2020, R.763 of 12 July, R.846 of 31 July 2020, R.891 of 17 August 2020, R.999 of 18 September 2020, R.1011 of 20 September 2020 and R1031 of 1 October 2020 in terms of section 27(2) of the Disaster Management Act, 2002 (Act No. 57 of 2002), hereby issue an Amended Consolidated Direction on Occupational Health and Safety Measures in certain workplaces as set out in the Schedule.

MR T W NXESI, MP
MINISTER OF EMPLOYMENT AND LABOUR
DATE: 28/05/2021

SCHEDULE

Consolidated Directions on Occupational Health and Safety Measures in certain workplaces

Issued by the Minister in terms of Regulation 4(10) of the National Disaster Regulations

ARRANGEMENT OF SECTIONS

1. Definitions 3
2. Application 5
3. Risk assessment and plans for protective measures 6
4. Administrative measures 8
5. Social distancing measures 13
6. Symptom screening 13
7. Sanitisers, disinfectants and washing of hands 17
8. Cloth masks 18
9. Measures in respect of workplaces to which public has access 19
10. Ventilation 20
11. Specific personal protective equipment 21
12. Small businesses 21
13. Worker obligations 22
14. Refusal to work due to exposure to SARS-CoV-2 virus infection 22
15. No deduction from employee's remuneration 24
16. Monitoring and enforcing Directions 24
17. Sectoral protocols and guidelines 25
18. Amendment of footnotes to Annexures A and C 25
19. Withdrawal of Directions 25
20. Commencement of Directions 25

ANNEXURE A: 26

ANNEXURE B 29

ANNEXURE C 31

1. Definitions

(1) In these Directions, a word or expression bears the meaning assigned to it in the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997) or the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993) and in the Regulations made by the Minister of Cooperative Government and Traditional Affairs in terms of section 27(2) of the Disaster Management Act, 57 of 2002, and published under Government Notice No. R.480, in Government Gazette No. 43258 of 29 April 2020, as amended, and unless the context otherwise indicates –

"**BCEA**" means the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);

"**COVID-19**" means Coronavirus Disease 2019 as a result of infection of the SARS-CoV-2 virus;

COVID-19 vaccines" means a vaccine that has been scientifically evaluated and recommended by the WHO and approved by the South African Health Products Regulatory Authority[1] to be effective in preventing severe disease and death, and likely to reduce SARS-CoV-2 viral transmission in order to contribute to herd immunity;

"**Department**" means the Department of Employment and Labour;

"**Disaster Management Act**" means the Disaster Management Act, 57 of 2002;

"**health services**" means –

(a) health care services, including reproductive health care and emergency medical treatment, contemplated in section 27 of the Constitution;

(b) basic nutrition and basic health care services contemplated in section 28(1)(c) of the Constitution;

[1] Established in terms of section 2 of the Medicines and Related Substances Act, 101 of 1965.

(c) medical treatment contemplated in section 35(2)(e) of the Constitution; and

(d) municipal health services;

"**health worker**" includes –

(a) a health care provider providing health services in terms of any law including-

(i) Allied Health Professions Act, 63 of 1982;

(ii) Health Professions Act, 56 of 1974;

(iii) Nursing Act, 50 of 1978;

(iv) Pharmacy Act, 53 of 1974; and

(v) Dental Technicians Act, 19 of 1979;

(b) any other person who is engaged in the provision of health services including those providing management and support services;

"**inspector**" means a person –

(a) designated as an inspector in terms of section 28 of OHSA;

(b) with the approval of the Minister responsible for Transport, a railway safety inspector appointed in terms of section 32 of the National Railway Safety Regulator Act, 2002 (Act No. 16 of 2002) in respect of a "network" and a "railway operation" as those terms are defined in that Act;

(c) law enforcement officers appointed with public health responsibilities by a local authority authorised in terms of direction 16(1);

"**OHSA**" means the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);

"**PPE**" means personal protective equipment;

"**Regulations**" means the Regulations made under section 27(2) of the Disaster Management Act, 2002 (Act No. 57 of 2002) in respect of the declaration of a state of national disaster under section 27(1) of the Act published under Government Notice No. R.303 in Government Gazette No. 43906 of 15 March 2020 as extended in terms of section 27(5)(c) of the Act;

"Vaccination guidelines" means the guidelines in Schedule C to this Direction;

"**virus**" means the SARS-CoV-2 virus;

"**vulnerable employee**" means any employee, as contemplated in the Department of Health Guidelines[2] –

(a) with known or disclosed health issues or comorbidities or any other condition that may place the employee at a higher risk of complications or death than other employees if infected with SARS-CoV-2 virus; or

(b) above the age of 60 years who is at a higher risk of severe COVID-19 disease or death if infected;

"worker" means any person who works in an employer's workplace including an employeeof the employer or contractor, a self-employed person or volunteer[3]; and

"workplace" means any premises or place where a person performs work.

2. Application

(1) Subject to sub-direction (2), these Directions apply to employers and workers in workplaceswho are permitted to continue or commence operations under the Regulations.

(2) This Direction does not apply to a workplace –

(a) excluded from the OHSA in terms of section 1(3) of the OHSA[4];

---

[2] *Guidance on vulnerable employees and workplace accommodation in relation to COVID-19* – see the link in Annexure A.

[3] The distinction between 'worker' and 'employee' in the Directions is used to ensure that all persons who in work in a workplace are protected and to locate the responsibility in respect of certain obligations imposed on the employer in respect of its employees such as an application for illness benefits or worker's compensation.

[4] Section 1(3) of OHSA excludes mines, mining areas or works in terms the Minerals Act, 1991(Act No. 50 of 1991) and ships, boats or cranes in terms of the Merchant Shipping Act, 1951 (Act No. 57 of 1951.

(b) in respect of which another Minister has issued a direction under the Regulations dealing with health and safety of employees.

(3) Subject to the employer's obligations under the OHSA to conduct a risk assessment, employers with less than 10 employees need only apply the measures set out in direction12 of these Directions.

(4) These Directions apply for the duration of the national state of disaster, unless otherwise indicated.

3. Risk assessment and plans for protective measures

(1) Every employer must –

(a) undertake a risk assessment –

(i) to give effect to the minimum measures required by these Directions, taking into account the specific circumstances of the workplace and the requirements of the OHSA Regulations for Hazardous Biological Agents; and

(ii) within 21 days of the coming into force of the amendment to this Direction, in accordance with sections 8 and 9 of the OHSA, taking into account the operational requirements of the workplace, whether it intends to make vaccination mandatory and, if so, to identify those employees who by virtue of the risk of transmission through their work or their risk for severe COVID-19 disease or death due to their age or comorbidities that must be vaccinated;

(b) on the basis of these risk assessments, develop a plan or amend an existing plan-

(i) outlining the protective measures in place for the phased return of its employees before opening; and

(ii) outlining the measures that the employer intends to implement in respect of the vaccination of its employees in accordance with this Direction and taking into account the Guidelines in Annexure C;

(c) consult on the risk assessment and plan with-

(i) any representative trade union, as contemplated by section 14(1) of the Labour Relations Act, 66 of 1995; and

(ii) any health and safety committee established in terms of section 19 of the OHSA or, in the absence of such a committee, a health and safety representative designated in terms of section 17(1) of the OHSA or employee representative; and

(d) make that plan available for inspection by an inspector and a person contemplated in sub-direction (c).

(2) The plan referred to in sub-direction (1)(b)(i) must include-

(a) the date that the workplace will open and the hours of opening;

(b) a list of employees permitted to return to work and those who are required to work from home;

(c) the plan and timetable for the phased-in return of employees to the workplace;

(d) identify the vulnerable employees for the purposes of direction 4(b);

(e) ways of minimising the number of workers at the workplace at any one time as contemplated in direction 4(h);

(f) the workplace protective measures required to be taken in terms of these Directions and any sectoral guideline to get the workplace COVID-19 ready;

(g) the measures for the daily screening of employees and the screening of clients, contractors and visitors to the workplace; and

(h) the details of the COVID-19 compliance officer appointed in terms of direction 4(f); and

(i) a procedure to resolve any issue that may arise from the exercise by an employee of the right to refuse to work in the circumstances contemplated in direction 14(1).

(3) The plan referred to in sub-direction (1)(b)(ii) must include-

(a) the identification of those employees contemplated in sub-direction (1)(a)(ii);

(b) the process by which the obligations in terms of this Direction are going to be complied with; and

(c) subject to any collective agreement that determines otherwise whether the employer is planning to make it mandatory for employees identified in terms of paragraph (a) to be vaccinated as and when COVID-19 vaccines become available in respect of those employees.

(4) In developing and implementing a plan in terms of subsection (1)(b)(ii) an employer must take into account the rights of its employees to to bodily integrity in section 12(2) and the right to freedom of religion, belief and opinion in section 13 of the Constitution.

4. Administrative measures

(1) Every employer must establish the following administrative measures:

(a) If the employer employs more than 50 employees, that employer must submit a record of its risk assessment, together with its plan and policy, including amendments made to that risk assessment, plan and policy, concerning the protection of the health and safety of its employees from SARS-CoV-2 infection and severe COVID-19 disease, as contemplated in section 7(1) of the OHSA to its health and safety committee established in terms of section 19 of the OHSA and-

(i) retain a written copy of that risk assessment, plan and policy; and

(ii) make that copy available to health and safety representatives appointed in terms of the OSHA and the inspectors of the Department.

(b) it must require employees to disclose whether they have any of the health issues, comorbidities or conditions contemplated in the definition of vulnerable employees and thereafter take special measures to mitigate the risk of SARS-CoV-2 infection for those employees in accordance with the

Department of Health's Guidelines[5] to facilitate their safe return to work or their working from home;

(c) it must notify all workers of the contents of this Direction and its plan and the manner in which it intends to implement it;

(d) it must notify its employees that, subject to section 6(8), if they are sick or have symptoms associated with COVID-19, that they must-

(i) not come to work; and

(ii) must take paid sick leave in terms of section 22 of the BCEA;

(e) it must appoint a manager as a COVID-19 compliance officer to –

(i) oversee the implementation of the plan contemplated in direction 3(1)(b);

(ii) oversee the adherence to the health and safety measures established in the workplace to give effect to requirements of this Direction including appointing employees to perform this function if the employer has more than one workplace; and

(iii) address employee or workplace representative concerns and to keep them informed and, in any workplace in which a health and safety committee has been elected, consult with that committee on the nature of the hazard in that workplace and the measures that need to be taken;

(f) it must ensure that the measures required by this Direction and its risk assessment plan are strictly complied with through monitoring and supervision;

(g) it must, as far as practicable, minimise the number of workers at the workplace at any given time through rotation, staggered working hours, shift systems, remote working arrangements or similar measures in order to

[5] *Guidance on vulnerable employees and workplace accommodation in relation to COVID-19* – see the link in Annexure A.

achieve social distancing as contemplated in direction 5 and to limit congestion in public transport and at the workplace;

(h) it must take measures to minimise contact between workers as well as between workers and members of the public;

(i) it must provide workers with information that raises awareness in any form or manner, including where reasonably practicable leaflets and notices placed in conspicuous places in the workplace informing workers of-

(i) the dangers of the virus, the manner of its transmission, the measures to prevent transmission such as personal hygiene, social distancing, use of masks, cough etiquette and where to go for screening or testing if presenting with COVID-19 related symptoms;

(ii) the nature of vaccines used in the country, the benefits associated with these COVID-19 vaccines, the contra-indications for vaccination and the nature and risk of any serious side effects such as severe allergic reactions[6];

(j) if a worker has been diagnosed with COVID-19, it must –

(i) inform the National Institute for Occupational Health[7] in accordance with the National Department of Health Guidelines[8] either directly or through an employers' association;

(ii) inform the Compensation Commissioner in accordance with the Directive on Compensation for Workplace-acquired Novel Corona Virus Disease (COVID-19)[9];

---

[6] See the information supplied in the NIOH site: https://www.nicd.ac.za/covid-19-vaccine-faq/

[7] Report must be made to the OHSworkplace@nioh.ac.za or via the online platform at https://ohss.nioh.ac.za/

[8] National Department of Health Guid line: **Guideline on the submission of COVID-19 related health data from workplaces to the National Department of Health** – see link in Annexure A.

[9] *GN* 387, 23 July 2020, *GG* 43540.

(iii) investigate the mode of exposure, including any control failure, and review its risk assessment to ensure that the necessary controls and PPE requirements are in place;

(iv) determine the need to temporarily close the affected work area for decontamination using an incident-based risk assessment with due regard to the Department of Health's Guideline[10] after consultation with the health and safety committee, if there is one, or with a health and safety representative; and

(v) give administrative support to any contact-tracing measures implemented by the Department of Health;

(k) give administrative support to assist its employees to register on the Electronic Vaccine Data System Registration Portal for COVID-19[11]; and

(l) give its employees paid time off to be vaccinated on the date and time that may be required provided that the employee provides proof of the vaccination that has occurred or is to occur during hours that the employee is ordinarily at work.

(2) If the employer decides that vaccination is mandatory in respect of the employees identified in terms of section 3(1)(a)(ii), the vaccination plan must comply with any applicable collective agreement and take into account the guidelines set out in Annexure C to this Direction.

(3) In addition to the duties listed in sub-directions (1) and (2), an employer who employs more than 50 employees in a workplace –

[10] *Guidance note for workplaces in the event of identification of a COVID-19 positive employee* - see link in Annexure A.
[11] vaccine.enroll.health.gov.za/#/

(4) must submit the following categories of data t]o the National Institute for Occupational Health[12] in the manner set out in the National Department of Health Guidelines[13]:

(i) Each employee's vulnerability status for serious outcomes of a SARS-CoV-2 infection;

(ii) details of the COVID-19 screening of employees who are symptomatic;

(iii) details of employees who test positive in terms of a positive laboratory test for the COVID-19 virus[14];

(iv) the number of employees identified as high-risk contacts within the workplace if a worker has been confirmed as being positive;

(v) details on the post-infection outcomes of those testing positive, including the return-to-work assessment outcome; and

(b) must submit the data referred to in para (a) –

(i) once in respect of each employee's status contemplated in sub-para (i);

(ii) as soon as possible before Tuesday of each week in respect of the data referred to in para (a)(ii) to (v) for the previous calendar week commencing on Sunday;

(c) must inform its employees of the submission made in terms of sub-direction (a) and advise them of its adherence to the Protection of Personal Information Act, 4 of 2013;

(d) may submit that data to an employer association if the association has –

---

[12] At the following email address: OHSworkplace@nioh.ac.za or via the online platform at http://ohss.nioh.ac.za/.

[13] *National Department of Health Guideline: Guideline on the submission of COVID-19 related health data from workplaces to the National Department of Health* – see link in Annexure A.

[14] The type of test (antigen or antibody) must be specified in the submission.

(i) entered into an agreement with the National Institute for Occupational Health to receive, process and submit the data to the Institute; and

(ii) undertaken to submit the data on behalf of the employer.

5. Social distancing measures

(1) Every employer must arrange the workplace to ensure minimal contact between workers and, as far as practicable, ensure that there **is a** minimum of one and a half metres between workers while they are working, for example, at their workstations.

(2) Depending on the circumstances of the workplace or the nature of the sector, the minimum distance may need to be greater, but reducing the number of workers present in the workplace at any time in terms of direction 4(h) may assist in achieving the required social distancing.

(3) If it is not practicable to arrange workstations to be spaced at least one and a half metres apart, the employer must –

(a) arrange physical barriers to be placed between work stations or erected on work stations to form a solid physical barrier between workers while they are working; or

(b) when required, supply the employee, free of charge, with appropriate PPE based on a risk assessment of the working place.

(4) Every employer must ensure that social distancing measures are implemented through supervision, both in the workplace and in the common areas outside the immediate workplace, through queue control or within the workplace, such as canteens and lavatories. These measures may include dividing the workforce into groups or staggering break-times to avoid the concentration of workers in common areas.

6. Symptom screening

(1) Every employer must take measures –

(a) to screen workers when they report for work in order to –

(i) ascertain whether they have any of the symptoms associated with COVID-19 as per the current National Institute for Communicable Diseases definition[15], namely a cough, sore throat, shortness of breath (or difficulty in breathing), or loss of smell or taste;

(ii) determine whether they suffer from any of the following additional symptoms: fever, body aches, redness of eyes, nausea, vomiting, diarrhoea, fatigue, weakness or tiredness; and

(b) require workers to immediately inform the employer if they experience any of the symptoms in sub-direction (1)(a) while at work.

(2) Employers must comply with any guidelines issued by the National Department of Health, in consultation with the Department, in respect of –

(a) symptom screening and testing[16] and

(b) if required to do so, medical surveillance and testing.

(3) Subject to sub-direction (8), if a worker presents with COVID-19-related symptoms, or advises the employer of these symptoms, the employer must –

(a) not permit the worker to enter the workplace or report for work; or

(b) if the worker is already at work immediately –

(i) isolate the worker, provide the worker with a surgical mask and arrange for the worker to be transported to a public health facility in a manner that does not place other workers or members of the public at risk either to be self-isolated or to be referred for a medical examination or testing;

(ii) assess the risk of transmission, disinfect the area and the worker's workstation, undertake contact tracing and refer those workers who may

---

[15] Clinical management of suspected or confirmed COVID-19 disease – see the link in Annexure A.
[16] For more specific guidelines see Guidelines for symptom monitoring and management of workers for SARS-CoV-2 infection – see the link in Annexure A.

be at risk for screening and take any other appropriate measure to prevent possible transmission;

(iii) place its employee on paid sick leave in terms of section 22 of the BCEA or if the employee's sick leave entitlement under the section is exhausted, make application for an illness benefit in terms of section 20 of the Unemployment Insurance Act, 2001 (Act No. 63 of 2001);

(iv) take steps to ensure that the employee is not discriminated against on grounds of having tested positive for COVID-19 in terms of section 6 of the Employment Equity Act, 55 of 1998; and

(v) if there is evidence that the worker contracted COVID-19 arising out and in the course of employment, lodge a claim for compensation in terms of the Compensation for Occupational Injuries and Diseases Act, 130 of 1993, in accordance with Notice No. 193 published on 3 March 2020.[17]

(4) If a worker has been diagnosed with COVID-19 and isolated in accordance with the National Department of Health Guidelines,[18] an employer may only allow a worker to return to work –

(a) without requiring viral testing if the worker has completed the mandatory 10 days of isolation either from the onset of symptoms –

(i) in mild cases of infection (not requiring hospitalisation for COVID-19); or

(ii) in moderate to severe cases of infection (requiring supplemental oxygen or hospitalisation) from the date of achieving clinical stability or earlier if the worker has undergone a medical evaluation confirming fitness to work;

(b) if the employer ensures that personal hygiene, wearing of masks, social distancing, and cough etiquette is strictly adhered to by the worker;

---

[17] *GN* 387 *GG* 4350 of 23 July 2020 – see link in Annexure A.
[18] *Clinical management of suspected or confirmed COVID-19 disease* – see the link in Annexure A.

(c) if the employer closely monitors the worker for symptoms on return to work; and

(d) if the worker, on return to work, wears a surgical mask[19] for 21 days from the date of diagnosis.

(5) If a worker has been in contact in the workplace with another worker who has been diagnosed with COVID-19, the employer must assess that worker's exposure in accordance with the Department of Health's Guidelines[20] to ascertain whether the exposure carries a high or low risk of transmission between the workers.

(6) If there is a low-risk exposure, the employer –

(a) may permit the worker to continue working using a cloth mask complying with standard precautions; and

(b) must monitor the worker's symptoms for 10 days from the first contact.

(7) If there is a high-risk exposure –

(a) a health worker must remain in quarantine for 7 days or with the agreement of theworker, 5 days;

(b) all other workers must remain in quarantine for 10 days; and

(c) the employer of that worker must place the worker on sick leave in accordance with sub-direction (3)(b)(iii) for that period;

---

[19] A surgical mask is Class A medical device (3-ply mask) categorised by the South African Health Products Regulatory Authority. Surgical masks must be fluid-resistant, disposable, and loose-fitting devices covering the mouth, nose and chin that create a physical barrier between the mouth and nose of the wearer and the immediate environment. The surgical mask must protect the wearer's nose and mouth from contact with droplets, splashes and sprays that may contain germs and filter out large particles in the air. Surgical masks may also protect others by reducing exposure to the saliva and respiratory secretions of the mask wearer.

[20] The *Guidelines for symptom monitoring and management of workers for CoV-2 infection* and the Guideline: *Clinical management of suspected or confirmed COVID-19 disease* – see the links in Annexure A.

(d) if the worker remains asymptomatic, no further testing is required prior to return to work, except in respect of health workers returning to work in less than 10 days.

(8) Sub-direction (3) does not apply to workers who present with symptoms commonly between one to three days contemplated in sub-direction (1) as a result of a COVID-19 vaccination.

(9) Should an employee suffer side effects as a result of a COVID-19 vaccination and is unable to attend work following vaccination, the employer must in accordance with section 22 of the BCEA place its employee on paid sick leave. For the purposes of this sub-direction, an employer may accept a COVID-19 vaccination certificate issued by an official vaccination site in lieu of a medical certificate.

7. Sanitisers, disinfectants and washing of hands

(1) For the purposes of this direction –

(a) a hand sanitiser must be one that has at least 70% alcohol content and is in accordance with the recommendations of the Department of Health[21];

(b) a surface disinfectant must be in accordance with the recommendations of the Department of Health[22].

(2) Every employer must, free of charge, ensure that –

(a) there are sufficient quantities of hand sanitiser based on the number of workers or other persons who access the workplace at the entrance of, and in, the workplacewhich the workers or other persons are required to use; and

---

[21] see paragraph 6 of the National Department of Health: *Practical Manual for Implementation of the National Infection Prevention and Control Strategic Framework, March 2020 (ppII-20)* – see the link in Annexure A.

[22] National Institute for Occupational Health: *Cleaning and Decontamination of Workplaces in the Context of COVID-19 (10 June 2020)* – see Annexure A.

(b) every employee who works away from the workplace, other than at home, must beprovided with an adequate supply of hand sanitiser.

(3) If a worker interacts with the public, the employer must provide the worker with sufficientsupplies of hand sanitiser at that worker's workstation for both the worker and the person with whom the worker is interacting.

(4) Every employer must take measures to ensure that –

(a) all work surfaces and equipment are disinfected before work begins, regularly duringthe working period and after work ends;

(b) all areas such as lavatories, common areas, door handles, shared electronic equipment are regularly cleaned and disinfected; and

(c) disable biometric systems or make them COVID-19-proof.

(5) The employer must ensure that-

(a) there are adequate facilities for the washing of hands with soap and clean water;

(b) only paper towels are provided to dry hands after washing – the use of fabric towelling is prohibited;

(c) the workers are required to wash their hands and sanitize their hands regularly whileat work;

(d) the workers interacting with the public are instructed to sanitize their hands between each interaction with a member of the public; and

(e) surfaces that workers and members of the public come into contact with are routinelycleaned and disinfected.

8. Cloth masks

(1) The main benefit of everyone wearing a cloth mask is to reduce the amount of virus containing droplets being transmitted by those with the infection and transmitted to others and to surfaces that others may touch. Since some infected persons may not have symptoms or may not know they are infected, the

Department of Health requires that all persons wear cloth masks when in a public place.

(2) For the reasons underlying the Department of Health's requirement, every employer must –

(a) provide each of its employees, free of charge, with a minimum of two cloth masks, which comply with the Recommended Guidelines Fabric Face Masks,[23] for the employee to wear while at work and while commuting to and from work; and

(b) require any other worker to wear masks in the workplace.

(3) The number and replaceability of cloth masks that must be provided to an employee or required of other workers must be determined in accordance with any sectoral guideline and in the light of the employee or worker's conditions of work, in particular, where these may result in the mask becoming wet or soiled.

(4) Every employer must ensure that workers are informed, trained, instructed and supervised · as to the correct use of cloth masks.

(5) The general requirement for workers to wear masks does not derogate from the fact that, where a risk assessment indicates that specific personal protective equipment is required, those categories of workers must be provided with the accredited personal protective equipment in accordance with Department of Health guidelines.

9. Measures in respect of workplaces to which public has access

(1) The principal purpose of the measures contained in the following clause is to protect workers from being exposed to the virus through their interaction with the public and to protect members of the public from being exposed to virus through their interaction with workers or other persons present in such a workplace.

(2) Depending on what is reasonably practicable, given the nature of the workplace contemplated in sub-direction (1), every employer must –

(a) determine the floor area of the workplace in square metres in order to determine the number of customers and workers that may be inside the workplace at any one time with adequate space available;

(b) arrange the workplace to ensure that there is a distance at least one and a half metres between workers and members of the public or between members of the public;

(c) put in place physical barriers at counters or provide workers with face shields or visors;

(d) undertake symptom screening measures of persons other than its employees entering the workplace with due regard to available technology and any guidelines issued by the Department of Health;

(e) display notices advising persons, other than employees entering the workplace, of the precautions they are required to observe while in the workplace;

(f) require members of the public, including suppliers, to wear masks when inside their premises;

(g) take steps to ensure that customers queuing inside or outside the workplace are able to maintain a distance of one and half metres from each other;

(h) provide hand sanitiser for use by the public at the entrance to the workplace; and

(i) assign an employee as a compliance officer to ensure that these measures are complied with and that all directions in respect of hygienic conditions and limitation of exposure to persons with COVID-19 are adhered to.

10. Ventilation

(1) Every employer must –

(a) keep the workplace well ventilated by natural or mechanical means to reduce the SARS-CoV-2 viral load;

(b) where reasonably practicable, have an effective local extraction ventilation system with High-Efficiency Particulate Air filters that –

(i) is technically assessed to be functioning effectively;

(ii) is regularly cleaned and maintained;

(iii) does not recirculate the air;

(c) ensure that ventilation vents do not feed back in through open windows; and

(d) ensure that ventilation filters are cleaned and replaced in accordance with the manufacturer's instructions by a competent person.

11. Specific personal protective equipment

(1) Every employer must check regularly on the websites of the National Department of Health[24], National Institute of Communicable Diseases[25] and the National Institute for Occupational Health[26] whether any specialised PPE for COVID-19 is required or recommended in any guidelines given the nature of the workplace or the nature of a worker's duties and the associated level of risk.

12. Small businesses

(1) Employers with 10 employees or less must take the following measures:

(a) If the employer is permitted to recommence operations under the Regulations, it must develop a basic plan for the phasing in the return of its employees taking into account those that are able to work remotely and those over the age of 60 years or who have comorbidities;

---

[24] htt p:// www.health.gov.za/.
[25] https://www.nicd.ac.za/.
[26] http://www.nioh.ac.za/.

(b) arrange the workplace to ensure that employees are at least one and half metres apart or, if not practicable, place physical barriers between them to prevent the possible transmission of the virus;

(c) ensure that employees that present with the symptoms set out in direction 6(1)(a) are not permitted to work;

(d) immediately contact the relevant provincial inspectorate[27] for instruction and direct the employee to act in accordance with those instructions;

(e) provide cloth masks or require an employee to wear some form of cloth covering over their mouth and nose while at work;

(f) provide each employee with hand sanitizers, soap and clean water to wash their hands and disinfectants to disinfect their workstations;

(g) ensure that each employee while at work washes with soap and sanitizes their hands;

(h) ensure that their workstations are disinfected regularly; and

(i) take any other measures indicated by a risk assessment of the workplace, including such measures as are appropriate in direction 9(2), if the public has access to the workplace.

13. Worker obligations

(1) In addition to the obligations of employees under the OHSA, every worker is obliged to comply with measures introduced by their employer, as required by these Directions.

14. Refusal to work due to exposure to SARS-CoV-2 virus infection

(1) An employee may refuse to perform any work if circumstances arise which, with reasonable justification, appear to that employee or to a health and safety

representative to pose an imminent and serious risk of their exposure to SARS-CoV-2 virus infection.

(2) An employee who has refused to perform work in terms of sub-direction (1) must, as soon as is reasonably practicable, notify the employer, either personally or through a health and safety representative, of the refusal and the reason for the refusal.

(3) Every employer that has been notified in terms of this paragraph must –

(a) after consultation with the compliance officer and the health and safety committee or, if there is no committee, a health and safety representative, endeavour to resolve any issue that may arise from the exercise of the right in terms of sub-direction (1);

(b) if the matter cannot be resolved internally, notify an inspector[28] of the issue within 24 hours and advise the employee and all other parties involved in resolving the issue that an inspector has been notified; and

(c) comply with any prohibition issued by an inspector in terms of section 30 of the OHSA.

(4) Sub-direction (1) applies whether or not the person refusing to work has used or exhausted any other applicable external or internal procedure.

(5) No person may benefit from, or promise any benefit to any person for, not exercising his or her right in terms of sub-direction (1).

(6) No person may threaten to take any action against a person because that person has exercised or intends to exercise the right in terms of sub-direction (1).

(7) No employee may be dismissed, disciplined, prejudiced or harassed for refusing to perform any work as contemplated in sub-direction (1).

---

[28] Notification by contacting the relevant provincial inspectorate at the telephone numbers listed in Annexure C or at an address in http://www.labour.gov.za/Contacts/Provincial-offices.

(8) If there is a dispute as to whether sub-direction (7) has been contravened, the employee may refer the dispute to the Commission for Conciliation, Mediation and Arbitration or an accredited bargaining council for conciliation and arbitration in accordance with the procedures contained in section 191 of the Labour Relations Act, 66 of 1995.

(9) If the arbitrator, appointed as contemplated in sub-direction (8), finds that the employer has contravened sub-direction (9), the arbitrator may make any appropriate order contemplated in section 193, read with 194(3) or (4) of the Labour Relations Act, 1995.

15. No deduction from employee's remuneration

(1) No employer may make any deduction from an employee's remuneration, or require or permit an employee to make any payment to the employer or any other person, in respect of anything which the employer is obliged to provide or to do in terms of these Directions.

16. Monitoring and enforcing Directions

(1) To the extent that this Direction gives effect to the OSHA, the Minister responsible for Employment and Labour may authorise local authorities to perform certain inspectorate functions in terms of section 42(3) of the OSHA.

(2) If a person fails to comply with this direction, an inspector may perform any of the functions in section 29 of the OHSA and exercise any of the powers listed in section 30 of the OHSA to monitor compliance with this Direction.

(3) In so far as any contravention of these Directions constitutes a contravention of an obligation or prohibition under the OHSA, the offences and penalties provided for in section 38 of the OHSA apply.

(4) An inspector may, for the purpose of promoting, monitoring and enforcing compliance with the OHSA, advise employees and employers of their rights and obligations in terms of these Directions in accordance with section 64 of the BCEA.

17. Sectoral protocols and guidelines

(1) Sectoral or industry associations must, in the event of high health risks, develop sector-specific health protocols in consultation with the Department of Health to limit the spread of COVID-19 in the sector including providing for those circumstances where a firm within the sector cannot stagger working hours or provide transport for its employees.

(2) The Chief Inspector appointed in terms of section 27 the OHSA must facilitate the development of sector specific guidelines to supplement this Direction by engaging with the social partners through the offices of the National Economic Development and Labour Council.

(3) The sector specific guidelines should include the matters referred to in Annexure B.

18. Amendment of footnotes to Annexures A and C

The Minister may from time to time amend the footnotes and Annexure A and publish the amendments online without issuing an amended direction in order to update the links to any new applicable guideline or recommendation.

19. Withdrawal of Directions

The Directions issued in terms of regulation 10(8) of the Regulations made under section 27(2) of the Disaster Management Act and published under Government Notice No. 1031 *GG* 43751 of 1 October 2020 are hereby withdrawn.

20. Commencement of Directions

These Directions come into effect on the date of publication in the Government *Gazette.*

ANNEXURE A:

DEPARTMENT OF EMPLOYMENT AND LABOUR LINKS

Hazardous Biological Agents Regulations

https://www.gov.za/documents/occupational-health-and-safety-act-regulations-hazardous-biological-agents

Directive on Compensation for Workplace-acquired Novel Corona Virus Disease (COVID-19)

https://www.nioh.ac.za/wp-content/uploads/2020/08/DoEL-Directive-Compensation-for-Wplace-acquired-COVID-19-GG-No.-43540-23July2020.pdf

DEPARTMENT OF TRADE, INDUSTRY AND COMPETITION LINKS

Department of Trade, Industry and Competition: Recommended Guidelines Fabric Face Masks

http://www.thedtic.gov.za/wp-content/uploads/Updated_Recommended_Guidelines_Fabric_Face_Masks_May2020.pdf

DEPARTMENT OF HEALTH LINKS

Guidance on vulnerable employees and workplace accommodation in relation to COVID-19 (Version 4: 25 May 2020)

https://www.nioh.ac.za/wp-content/uploads/2020/05/20_2020-V4.-Guidance-on-vulnerable-employees-and-workplace-accommodation....pdf

Guidance note for workplaces in the event of identification of a COVID-19 positive employee (Version 5: 14 May 2020)

https://www.nioh.ac.za/wp-content/uploads/2020/05/guidelines_positive_worker_19_May_20.pdf

Clinical management of suspected or confirmed COVID-19 disease (March 2021)

https://www.nicd.ac.za/diseases-a-z-index/covid-19/covid-19-guidelines/clinical-management-of-suspected-or-confirmed-covid-19-disease/

Guidelines for symptom monitoring and management of workers for SARS-Covid-2 infection (Version 6: 12 December 2020)

https://www.nioh.ac.za/wp-content/uploads/2020/12/V6-Guidelines-for-symptom-monitoring-and-management-of-workers-for-C-19-FINAL.pdf

Guideline on the submission of COVID-19 related health data from workplaces to the National Department of Health (Version 4, 27 November 2020)

https://www.nioh.ac.za/wp-content/uploads/2020/11/Updated-Workplace-Data-Submission-Guideline-27-November-2020.pdf

National Department of Health: Practical Manual for Implementation of the National Infection Prevention and Control Strategic Framework, March 2020 (pp17-20)

https://www.nicd.ac.za/wp-content/uploads/2020/04/Practical-Manual-for-implementation-of-the-National-IPC-Strategic-Framework-March-2020-1.pdf

Cleaning and Decontamination of Workplaces in the Context of COVID-19 (10 June 2020)

https://www.nioh.ac.za/wp-content/uploads/2020/06/disinfection_ohs_academic_june-20.pdf

COVID-19 Vaccine FAQ (14 April 2021)

https://www.nicd.ac.za/covid-19-vaccine-faq/

ANNEXURE B

SECTORAL GUIDELINES

1. Workplace Risk assessment

1 Identify high risk exposure work processes

2 Identify high risk work practices

2. Engineering controls

1 Ventilation

2 Physical barriers

3 Adaptation of workstations to increase social distance

3. Administrative controls

1 Screening/ reporting of symptoms/ sick leave

2 Minimising contact

3 Rotation and shift work

4 Work-at-home strategies

5 Communication and information strategies

6 Role of health and safety committees and representatives

7 Education and training

8 Reporting of incidents for regulatory purposes

9 Reporting for purposes of public health, contact tracing, screening, testing and surveillance

10 Management of COVID-19 positive employees and workplace contacts (symptomatic and asymptomatic)

11 Management of vulnerable employees and special measures for their protection, including protection against unfair discrimination or victimisation

12 Development and implementation programmes

13 COVID-19 Vaccination programmes

4. Healthy and safe work practices

1 Disinfectants, sanitisers and personal hygiene

2 Other

5. PPE

1 Masks

2 Gloves

3 Facial shields

4 Other

6. Provision of safe transport for employees

1 Personal hygiene

2 Social distancing

3 Arrangements to minimise exposure associated with commuting

4 Cloth masks (if commuter)

5 Employer provided transport

6 PPE (driver/conductor of employer-provided transport)

ANNEXURE C

GUIDELINES IF AN EMPLOYER MAKES VACCINATION MANDATORY

1. These guidelines are intended to guide employers, employer organisations, employees, trade unions, conciliators, arbitrators and the courts in determining the fairness of a mandatory vaccination policy and its implementation

2. These guidelines deal with the key aspects of a policy requiring mandatory vaccination in the workplace. The guidelines are stated generally and departures from them may be justified in proper circumstances. For example the size or the nature of the workplace may warrant a different approach.

3. The LRA emphasises the primacy of collective agreements. These guidelines are not intended as a substitute for collective agreements or agreed procedures between employers, their employer organisations and trade unions.

4. The key principle of these guidelines is that employers and employees should treat each other with mutual respect. A premium is placed on public health imperatives, the constitutional rights of employees and the efficient operation of the employer's business.

5. Subject to any applicable collective agreement, a plan contemplated in direction 3 that requires all employees identified in terms of that direction to be vaccinated in accordance with the national COVID-19 vaccination roll out plan should provide the following:

   (a) Every employee identified by the employer in terms of section 3(1)(a)(ii) should be notified of-

      (i) the obligation to be vaccinated as and when a vaccine becomes available for that employee;

(ii) the right of an employee to refuse to be vaccinated on constitutional[29] or medical grounds;[30]

(iii) the opportunity for the employee, at the employee's request, to consult a health and safety representative or a worker representative or trade union official;

(b) The employer should provide, in addition to the obligations contained in direction 4 in respect of COVID-19 vaccinations and, if reasonably practicable, transport to and from the vaccination site allocated in terms of the Electronic Vaccine Data System Registration Portal.

(c) Should an employee suffer side effects as a result of a COVID-19 vaccination, the employer should give the employee paid time off to recover if the employee is no longer entitled to paid sick leave in terms of the BCEA or any applicable collective agreement or lodge a claim for compensation in terms of the Compensation for Occupational Injuries and Diseases Act, 130 of 1993.

(2) If an employee refuses to be vaccinated on any constitutional or medical ground, the employer should-

(a) counsel the employee and, if requested, allow the employee to seek guidance from a health and safety representative, worker representative or trade union official;

(b) refer for further medical evaluation should there be a medical contraindication for vaccination;

---

[29] The constitutional grounds are the right to bodily integrity in section 12(2) and the right to freedom of religion, belief and opinion in section 13 of the Constitution.

[30] Medical grounds for the contra-indication of vaccination: an immediate allergic reaction of any severity to a previous dose or a known (diagnosed) allergy to a component of the COVID-19 vaccine. See also https://www.nicd.ac.za/covid-19-vaccine-faq/

(c) if necessary, take steps to reasonably accommodate the employee in a position that does not require the employee to be vaccinated;

(3) For the purposes of these guidelines, reasonable accommodation means any modification or adjustment to a job or to the working environment that will allow an employee who fails or refuses to be vaccinated to remain in employment and incorporates the relevant portions of the Code of Good Practice: Employment of People with Disabilities published in terms of the Employment Equity Act, 1999 (Act No.97 of 1999). This might include an adjustment that permits the employee to work offsite or at home or in isolation within the workplace such as an office or a warehouse or working outside of ordinary working hours. In instances of limited contact with others in the workplace, it might include a requirement that the employee wears an N95 mask

---