



# *The Contemporary Gazette*

*relevant new legislation for your business*



## Legal Update Volume 15 Issue 8, 4 May 2020

### This Update

This newsletter overviews new relevant National laws up to **3<sup>rd</sup> May 2020**.

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### 1. NOTABLE ONE LINERS

#### Carbon Tax Act

The National Treasury media statement and presentation on further interventions (dated 23 April 2020, and available from the National Treasury) references a planned extension of the date for the filing requirement and the first carbon tax payment to 31 October 2020.

#### Collective Investment Schemes Control Act

- (i) FSCA general notice 2 of 2020 (available from the FSCA, and replacing general notice 1 of 2020) extends the period of compliance with certain [section 90\(2\)\(b\)\(iii\)](#) annual financial statements.
- (ii) FSCA communication 23 of 2020 (available from the FSCA) states the expectations regarding the duties of managers of collective investment schemes and treating customers fairly during the national lockdown (referencing compliance with portfolio risk limits, portfolio review applications, liquidity risk management, complaint management, and ensuring all forms of communication from the investors are monitored and managers apply the necessary security measures in order to ensure the optimal safety of their investors' information and of the business at large).

#### Community Schemes Ombud Service Act

The Community Schemes Ombud Services published an amended COVID-19 Directives on its website dated 21 April 2020 that, amongst others, scheme executives must publish a list of essential common property facilities (such as the laundry room or refuse removal area, if that is the case); scheme executives must ensure strict compliance with the COVID-19 regulations (such as limited number of individuals at a time in a essential common area, masks and gloves, sanitisation, and distances between individuals); owners, tenants and other occupants are not allowed to perform any activity on a common property unless classified as essential by the scheme executives; meetings may not be held in person; a community scheme will not be penalised for scheduling an annual general meeting after the lockdown period and will not need to file an application for condonation; executive committees are encouraged to enter into reasonable payment arrangements or relief plans with homeowners adversely affected by the COVID-19 pandemic and/or lockdown and are not able to meet their

monthly levy obligations in the short term; and where homeowners have paid their CSOS levies community schemes must pay such levies over.

*Note: This law applies to home owners associations, property owners associations, sectional titles, share block companies, housing schemes for retired persons, housing co-operatives etc (any scheme or arrangement where there is shared use of and responsibility for parts of land and buildings).*

*Final Note: Please visit the regulator's website independently as required from time to time, as non-gazetted information may be subject to change without formal general notification.*

### Customs and Excise Act

The National Treasury media statement and presentation on further interventions (dated 23 April 2020, and available from the National Treasury) references, in relation to the restrictions on the sale of alcoholic beverages and tobacco products, a planned deferral of payments due in May 2020 and June 2020 by 90 days for excise compliant businesses to more closely align tax payments through the duty-at-source system (excise duties are imposed at the point of production) with retail sales.

### Disaster Management Act

- (i) [COVID-19 directions \(risk-adjusted strategy for the communication and digital technologies sector\)](#) gazetted 3 May 2020 for the opening of communications and digital technologies sectors and additional specific mitigation measures.

*Note: Refers to telecommunications service and infrastructure, manufacturing of telecommunications infrastructure, telecommunications infrastructure, electronic communications facilities, wholesale and retail, ICT services for all private and business customers, broadcasting (including online and advertising agencies), postal (including courier), SA Postbank banking, and social grants.*

- (ii) [COVID-19 directions \(once off movement\)](#) gazetted for any person who was not at their place of residence, or work before the lockdown period and who could not travel between provinces, metropolitan and district areas during the lockdown, and wishes to make use of the once-off basis, to return to their places of residence or work until the end to the Alert Level 4.

*Note: The once-off window period is from 1 May 2020 to 7 May 2020, and such persons will not need to produce a permit to cross provincial, metropolitan or district boundaries during such once-off trip.*

(iii) The [COVID-19 directions \(once-off long distance inter-provincial transport\)](#) set the requirements for once off long distance inter-provincial transport between 1 May and 7 May 2020.

(iv) The [COVID-19 directions \(mining operations\)](#) requires that employers conducting mining operations and related activities at a mine, must implement appropriate measures to protect the health and safety of workers in respect of COVID-19 which measures must be contained in a consulted standard operating procedure.

(v) [COVID-19 directions \(higher learning and science, technology and innovation\)](#) amended 29 April 2020 to also reference science, technology and innovation sectors; and to add further designated essential goods and services (Stationery products needed to support teaching and learning; Raw materials and technical products used in research and development and the manufacture of products supporting the response to COVID-19; and Production of radio-pharmaceutical products, radioactive isotopes and devices that are used in the nuclear medicine industry for diagnostic and therapeutic medical procedures).

### **Employment Tax Incentive Act**

The Draft Disaster Management Tax Relief Bill 2020 [proposes expanding](#) the Employment Tax Incentive age eligibility criteria and amount claimable.

*Note: The National Treasury media statement and presentation on further interventions (dated 23 April 2020, and available from the National Treasury) references a planned increase in the currently proposed wage subsidy of up to R500 per month for each employee that earns less than R6 500 per month, to R750 per month.*

### **Financial Advisory and Intermediary Services Act**

FSCA general notice 2 of 2020 (available from the FSCA, and replacing general notice 1 of 2020) extends the period of compliance with certain [section 19\(2\)\(b\)\(iii\)](#) annual financial statements.

### **Financial Intelligence Centre Act**

FSCA joint communication 2 of 2020 (available from the FSCA, and issued without prejudice to the supervisory and enforcement powers under the FIC Act) encourages accountable institutions to apply flexibility to the FATF's risk-based approach and explore full use of reliable digital customer on-boarding, while continuing to operate their businesses in a prudent and socially responsible manner in ensuring compliance with the FIC Act obligations.

*Note: The communication outlines some potential actions that can be considered, such as prioritising high and medium risk customers for on-going due diligence; working closely with a supervisory body on greater convenience for account opening and continued access to services; consideration of existing clients for whom on-going due diligence was required to take place from 1 March to 4 May 2020 in a face-to-face manner; and potential application for extension of a reporting period.*

### **Financial Sector Regulation Act**

(i) Joint directive (available from FSCA, and applicable 9 April 2020 until lockdown ends) to financial institutions to take appropriate precautionary measures when performing essential financial services in terms of the COVID-19 measures, to limit staff at offices to the minimum and to take other precautionary measures such as a COVID-19 workplace coordinator, infectious disease preparedness and response plan, screening procedures, procedures for staff who are sick at work, register of onsite staff and visitors, required quarantine in cases of contact with confirmed COVID-19 cases, respiratory etiquette and awareness, and housekeeping practices.

*Note: COVID-19 measures: Joint directive (available from FSCA) that financial institutions that operate local call centres and call centres providing services to international markets or item B30 call centres must comply with the above Joint Directive and the [Call Centre Directions](#).*

*Further Note: Financial institutions with call centre operations that fall within the above Joint Directive and the Call Centre Directions, due to shared facilities, must comply with the more onerous requirement contained in either the directive or the directions.*

(ii) Joint communication (available from FSCA) giving notice of revised implementation dates for the following joint standards: Margin requirements for non-centrally cleared OTC derivative transactions (Date to be determined); Significant owners fitness and propriety and related matters (1 November 2020); CCP application form (date of publication); and Recovery plans for market infrastructures - in development (Date of publication with 6 month transitional period).

### **Friendly Societies Act**

FSCA general notice 2 of 2020 (available from the FSCA, and replacing general notice 1 of 2020) extends the period of compliance with certain [section 22](#), [24](#) and [25](#) requirements.

## Income Tax Act

(i) The Draft Disaster Management Tax Relief Bill 2020 proposes measures to give effect to COVID-19 tax relief measures - see the [explanatory memorandum on the draft bill](#) (regarding [paragraph 2](#) and [17](#) of the Fourth Schedule, and [sections 18A, 30](#) and [30C](#)).

*Note: The National Treasury media statement and presentation on further interventions (dated 23 April 2020, and available from the National Treasury) references a planned increase in the proportion of employees' tax that can be deferred (to 35 per cent) and increase in the gross income threshold for both proposed deferrals (to R100 million).*

(ii) The National Treasury media statement and presentation on further interventions (dated 23 April 2020, and available from the National Treasury) references a planned postponement of the 2020 Budget measures to broaden the corporate income tax base by restricting net interest expense deductions to 30 per cent of earnings, and limiting the use of assessed losses carried forward to 80 per cent of taxable income.

*Note: These measures will be postponed to at least 1 January 2022.*

(iii) The National Treasury media statement and presentation on further interventions (dated 23 April 2020, and available from the National Treasury) references a planned increase of the tax-deductible limit for donations (currently 10 per cent of taxable income) by an additional 10 per cent for donations to the Solidarity Fund during the 2020/21 tax year.

(iv) The National Treasury media statement and presentation on further interventions (dated 23 April 2020, and available from the National Treasury) references a planned change to the provision that employers can factor in donations of up to 5 per cent of an employee's monthly salary when calculating the monthly employees' tax to be withheld. It proposes that an additional percentage that can be factored in of up to 33,3%, depending on the employee's circumstances, will be provided for a limited period for donations to the Solidarity Fund.

(v) The National Treasury media statement and presentation on further interventions (dated 23 April 2020, and available from the National Treasury) references a planned temporary allowance for individuals who receive funds from a living annuity to immediately either increase (up to a maximum of 20% from 17,5%) or decrease (down to a minimum of 0,5% from 2,5%) the proportion they receive as annuity income, instead of waiting up to 1 year until their next contract anniversary date.

## Long-term Insurance Act

FSCA general notice 2 of 2020 (available from the FSCA, and replacing general notice 1 of 2020) references [section 36](#), FSCA Insurance (LT) notice 1 of 2019 and FSCA communication 1 of 2019 (Insurance) for long-term insurers required to submit their conduct of business returns by 30 April 2020, and extends the date to 31 May 2020.

## Meat Safety Act

An amendment was proposed 28 February 2020 [to which animals this Act applies](#), to include, amongst others, dwindling species such as giraffes and many others.

*Note: It also includes a very wide and vague reference to "animals that may be listed as threatened species in accordance with conservation provisions and therefore their slaughter for human and animal consumption must be in line with the relevant conservation provisions".*

*Further Note: Due to the COVID-19 events that took over from mid-February, it is suggested that the comment deadline of 60 days from 28 February 2020 be extended, as there does not seem to be any reason to make the amendment unduly fast.*

*Final Note: It is our view that the [National Environmental Management Act](#) (and its related laws, such as the [National Environmental Management Biodiversity Act](#) and the [threatened species regulations](#)) will apply above the Meat Safety Act where there is an irreconcilable conflict between the laws, as the National Environmental Management Act is a [direct requirement of the Constitution of the Republic of South Africa](#).*

## Medicines and Related Substances Act

COVID-19 measures: [Schedule 2, 3 and 4 substances exempted](#) from section 22A(6)(f) requirement that such substances may be dispensed for no longer than 6 months.

*Note: Such substances may not be dispensed for longer than 12 months from the date of issue of a prescription by an authorised prescriber where the date of issue of the prescription is on or after 6 months after 30 April 2020.*

*Further Note: Where the date of issue of the prescription is up to 6 months before 30 April 2020, then additional repeats may be issued for up to 6 months, and as per the original prescription to ensure therapy is not disrupted, if the dispenser is satisfied an authorised prescriber initiated the therapy with the intention that the therapy be continued, and is satisfied that the details of sale are recorded in a prescription book or permanent record.*



*Final Note: This exemption shall be effective immediately for a period not exceeding 18 months from 30 April 2020.*

### **National Payments System Act**

Second amendment of [directive 1 of 2017](#) (directive for conduct within the national payment system in respect of the collection of payment instructions for authenticated collections) gazette.

### **Pension Funds Act**

FSCA general notice 2 of 2020 (available from the FSCA, and replacing general notice 1 of 2020) extends the period of compliance with certain [annual report](#), [section 15](#) annual financial statements and [section 16](#) valuation reports.

### **Public Finance Management Act**

(i) The National Treasury Instruction Note 3 of 2020 (available from National Treasury) repeals NT Instruction 8 of 2019/2020 (Emergency procurement in response to national state of disaster), is applicable to all departments, [constitutional entities](#), [major public entities](#), and [other public entities](#), and relates to the COVID-19 disaster management central emergency procurement strategy.

(ii) The National Treasury Instruction Note 2 of 2020 (available from National Treasury) is applicable to all national departments, and relates to the use of funds withdrawn from the National Revenue Fund.

### **Short-term Insurance Act**

(i) FSCA Notice 8 of 2020 (available from the FSCA, and replacing FSCA INS notice 6 of 2020) states that short-term insurers that provide premium relief to policyholders due to the COVID-19 national state of disaster, and independent intermediaries that render services as intermediary in respect of policies that are subject to premium relief, are exempted from [regulation 5.2](#) and [5.3\(1\)](#) in respect of policies that are subject to premium relief.

*Note: Premium relief is defined as a temporary release from the obligation to pay the premium payable under an existing policy in whole or in part (without reducing or limiting any policy benefits under the policy), by allowing the non-payment of premium for a limited amount of time, by allowing for an extended period of grace for the payment of premium, or by reducing the amount of premium payable for a limited amount of time.*

*Further note: The exemption is subject to the conditions that the premium relief is granted in relation to an existing policy of which the policyholder is in good standing with the insurer, and any commission paid in respect of a policy that is subject to premium relief does not exceed the maximum allowable commission referenced in [regulation 5.3\(1\)](#) (with premium based on what would have been payable had it not been for the premium relief).*

(ii) FSCA general notice 2 of 2020 (available from the FSCA, and replacing general notice 1 of 2020) references [section 35](#), FSCA Insurance (ST) notice 1 of 2019 and FSCA communication 1 of 2019 (Insurance) for short-term insurers required to submit their conduct of business returns by 30 April 2020, and extends the date to 31 May 2020.

### **Skills Development Levies Act**

The National Treasury media statement and presentation on further interventions (dated 23 April 2020, and available from the National Treasury) references a planned 4-month holiday (starting 1 May 2020) for skills development levy contributions (1 per cent of total salaries) to assist all businesses with cash flow.

### **Superior Courts Act and Magistrates Courts Act**

The [COVID-19 April 2020 directives](#) (for removal from roll, urgent applications and urgent matters, criminal trials, civil trials, unopposed and opposed applications, appeals, applications for leave to appeal, and judicial case flow management) apply to the extended period of the lockdown.

*Note: The [COVID-19 March 2020 directives](#) (for restricted access to the court precinct, and use of Audio Visual Remand centres and other electronic communication means for postponing cases) apply for the duration of the lockdown.*

*Further note: Also see the related Disaster Management Act [COVID-19 directions \(courts\)](#).*

### **Tax Administration Act**

The National Treasury media statement and presentation on further interventions (dated 23 April 2020, and available from the National Treasury) references a planned approach that larger businesses (with gross income of more than R100 million) that can show they are incapable of making payment due to the COVID-19 disaster, may apply through their relationship manager directly to SARS to defer tax payments without incurring penalties.

*Note: Businesses with gross income of less than R100 million can apply through SARS directly for an additional deferral of payments without incurring penalties.*

### **Value-added Tax Act**

The National Treasury media statement and presentation on further interventions (dated 23 April 2020, and available from the National Treasury) references a planned temporary permission (1 April 2020 to 31 July 2020) for smaller VAT vendors that are in a net refund position to file monthly instead of once every two months, thereby unlocking the input tax refund faster and immediately helping with cash-flow.

*Note: SARS is working towards having its systems in place to allow this in May 2020 for Category A vendors that would otherwise only file in June 2020.*



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## 2. COVID-19 REGULATIONS AS AT 3 MAY 2020

### Validity, duration and parameters of COVID-19 regulations

[Directions](#), and related measures (type COVID-19 in the search area), are subject to [the regulations](#), which is subject to [section 27](#) of the Disaster Management Act (which is [subject to](#) the Constitution).

*Note: [Regulation 2](#) provides for the continued application of directions under the previous regulations.*

*Further Note: Other COVID-19 measures taken in line with the repealed regulations are not always clearly delineated as 'COVID-19 directions', but a possibility may be that such a conclusion was meant and achieved by the [definition of directions](#) read with [regulation 4](#) authority to issue directions.*

*Final Note: The new regulations do not provide for conflict of law provisions, for the meaning of levels ([to be determined](#) by a later direction), or for a specific commencement date (though it is [stated](#) that level 4 starts 1 May 2020 [unless another level is applied](#) to a national, provincial, metropolitan or district level).*

### COVID-19 regulations measures in the workplace (as at 3 May 2020)

*Note: In addition to these regulations, most workplaces must also comply with Workplace Directions, to the extent applicable - see the overview [COVID-19 directions for workplaces after this overview](#).*

#### Amongst others:

- (i) An employer must provide every employee who may come into direct contact with members of the public as part of their duties with a cloth face mask, homemade item or another appropriate item that covers the nose and mouth, when in a public place;
- (ii) Business premises must determine the area of floor space in square metres, and based on that determine the number of customers and employees that may be inside the premises at any time with adequate space available (i.e. not more than 1 person per 1,5 metres of floor space);
- (iii) Business premises must take steps to ensure that persons queuing inside or outside the premises are able to maintain a distance of 1,5 metres from each other;

(iv) Business premises must provide hand sanitisers for use by the public and employees at the entrance to the premises;

(v) Business premises must, assign in writing, an employee or other suitable person, as the compliance employee, who must ensure compliance with the business premises measures above, and that all relevant [directions](#) regarding hygiene and limitation of exposure to COVID-19 are adhered to;

*Note: The regulations state that business premises include, but are not limited to a supermarket, shop, grocery store, retail store, wholesale produce market or pharmacy. It is not certain what is meant by this or by sub-regulation 5(6) - it may be safer to simply regard business premises as premises of any business.*

(vi) All employers must adopt measures to promote physical distancing of employees, including enabling employees to work from home, minimising the need to be physically present at the workplace, and restricting face to face meetings;

(vii) Provide adequate space (i.e. not more than 1 person per 1,5 metres of floor space);

(viii) Give special consideration to employees with known or disclosed health issues or co-morbidities, with any condition which or may place such employees at a higher risk of complications or death if they are infected with COVID-19;

(ix) Give special consideration to employees above the age of 60 who are at a higher risk of complications or death if they are infected with COVID-19.

(x) Entities permitted at level 4 must [designate a COVID-19 compliance officer](#) who will oversee the phased in return of employees to the workplace (prior to reopening the workplace for business), and adherence to the standards of hygiene and health protocols relating to COVID-19 at the workplace;

*Note: The [workplace plan](#) must be kept for inspection and state which employees may work; what the plans for the phased-in return of employees to the workplace are; what health protocols are in place to protect employees from COVID-19; and the details of the COVID-19 compliance officer.*

*Further Note: Such entities must phase in the return of employees to work, to manage the return of employees from other provinces, metropolitan and district areas.*

*Final Note: Such entities must develop measures to ensure the workplace meets the standards of health protocols, adequate space for employees, and social distancing measures for the public and service providers, as required.*

(xi) [Businesses and other entities](#) as set out in Table 1 of [the regulations](#) may commence operations;

(xii) Every person in control of a retail store or institution must take steps to ensure that customers keep a distance of at least one and a half metres from each other, and that all directions in respect of health protocols and social distancing measures COVID-19, are adhered to;

(xiii) Every person in control of a retail store or institution must designate a compliance official to ensure that the safety controls are strictly adhered to, and display the name of the official prominently in the store or in a visible area;

(xiv) Persons performing essential services or permitted services, must be duly designated in writing by the head of an institution, or a person designated by him or her, on a form that corresponds with Form 2 in Annexure A of [the regulations](#);

*Note: The Minister responsible for small enterprises may issue directions in respect of small and micro enterprises, cooperatives, informal traders and spaza shops in respect of those entities.*

*Further Note: Also see [SMMEs operating grocery stores directions](#).*

(xv) Retail stores selling goods as provided for the Table 1 of [the regulations](#) are prohibited from selling other goods that are not permitted in terms of the Table 1.

*Note: Also see further economic activity provisions (such as [energy and petroleum products supply](#), and [mining operations](#)).*

*Further Note: Also see economic activity [directions](#) (such as those in the [electronic communications providers, broadcasting and postal directions](#); [electronic communications providers, broadcasting and postal minimum standards directions](#); [environmental directions](#); [health personnel directions](#); [higher learning and science, technology and innovation directions](#); [mineral and petroleum resources directions](#); [municipalities, provinces and traditional leadership directions](#); [tourism accommodation directions](#); and [water and sanitation emergency procurement directions](#)).*

### **COVID-19 regulations general measures (as at 3 May 2020)**

(i) **A person must**, when in a public place, wear a cloth face mask, homemade item or another appropriate item that covers the nose and mouth (Faceguard);

*Note: A person that does not wear a Faceguard may not be allowed to use any form of public transport, or enter a building, place or premises.*

*Further Note: All courier and delivery services must provide for minimized personal contact during delivery.*

(ii) [Regulation 6](#) (refusal of medical examination, prophylaxis, treatment, isolation and quarantine) and [regulation 7](#) (isolation or quarantine of persons) can be read with [regulation 10](#) (shelters and sites, which includes the phrase "for persons who cannot isolate or quarantine in their homes");

(iii) The [contact tracing](#) provisions mirror the provisions that were contained in the repealed regulations;

*Note: Also see offences in [the regulations](#), and the [electronic communications providers, broadcasting and postal directions](#) (specifically [individual track and tracing requirements](#)).*

(iv) Donor funding received by institutions to assist with the national state of disaster must, subject to the [Public Finance Management Act](#) or the [Local Government: Municipal Finance Management Act](#) be used strictly for purposes of implementing the regulations and [directions](#);

*Note: Donor is defined as an individual, corporation or organisation that is a contributor of cash, kind and/or other assets.*

*Further note: Provision is made for [emergency procurement procedures](#);*

*Final Note: Also see relevant National Treasury instructions, DPISA circulars and procurement provisions made in [directions](#) (such as the municipalities, provinces and traditional leadership directions and the water and sanitation emergency procurement direction.*

(v) Possibility of choosing [mediation or arbitration](#) by parties to a civil dispute against the State or any organ of State, which dispute may potentially result in litigation;

(vi) [Offence](#) to publish any statement through any medium, including social media, with the intention to deceive any other person about COVID-19, COVID-19 infection status of any person, or any measure taken by the Government to address COVID-19;

(vii) [Offence](#) to intentionally misrepresent that one has been infected with COVID-19, or to intentionally expose another person to COVID-19;

(viii) [Residence confinement](#) except when performing an essential or permitted service allowed in Alert Level 4; going to work where a permit corresponding with Form 2 of [Annexure A](#) is issued; buying permitted goods; getting services [allowed to operate](#); [moving children](#) as allowed; or [attending a funeral](#);

*Note: One may walk, run or cycle between 6am to 9am, within a 5km radius of the place of residence (as long as this is not done in organised groups).*

*Further Note: Curfew from 8pm to 5am daily, except where granted a permit to perform a [listed](#) essential or permitted service, or attending to a security or medical emergency.*

*Final Note: Also consider further movement provisions in the [movement of persons](#) (foreign tourists and areas movement), [controlled visits](#) (health establishments and facilities, holding cells, youth care centres etc), and [directions](#) (such as entry into SA and exit from SA directions; once-off movement directions; social services directions; and correctional centres and remand detention facilities directions).*

(ix) A competent court may grant an order for the [eviction](#) of any person from land or a home in terms of the Extension of Security of Tenure Act and the Prevention of Illegal Eviction from and Unlawful Occupation of Land Act;

*Note: Any order of eviction must be stayed and suspended until the last day Alert Level 4, unless a court decides that it is not just and equitable to do so.*

(x) [Public transport](#) requirements will be managed through [directions](#) for the resumption of different modes of public transport to cater for the gradual return to work of people, in respect of rail, bus services, taxi services; e-hailing services; and private vehicles;

*Note: Also consider further transport measures in the regulations (such as [closure of borders](#), [movement of cargo](#), [essential goods for import](#), and [permitted goods for export](#)), and in the [directions](#) (such as the cross-border transport directions, and once-off long distance inter-provincial transport directions).*

(xi) All [gatherings](#) are banned, except for funerals, when at a workplace, or when buying or obtaining goods and services, as [allowed](#);

(xii) Any place or premises normally open to the public where religious, cultural, sporting, entertainment, recreational, exhibitional, organisational or similar activities may take place is [closed](#). Any place or premises normally open to the public or where people may gather, are prohibited;

*Note: Persons rendering security and maintenance services may continue to perform these services at the places or premises listed in this regulation.*

*Further Note: Other place or premises that must be closed may be determined by gazette, if there is a risk to any person or members of the public being exposed to COVID-19.*

*Final Note: Also see the [sport, cultural and religious events directions](#).*

(xiii) The sale, dispensing and distribution of liquor is [prohibited](#); and

*Note: The transportation of liquor is prohibited, except where alcohol is required for industries producing hand sanitizers, disinfectants, soap, alcohol for industrial use and household cleaning products, or where liquor is transported for export purposes.*

(xiv) The sale of tobacco, tobacco products, e-cigarettes and related products is [prohibited](#). [Back to index](#)





## Safety

### 3. COVID-19 DIRECTIONS FOR WORKPLACES AS AT 3 MAY 2020

*Note: The COVID-19 regulations provisions for workplaces must also be considered - see the overview on COVID-19 regulations (measures in the workplace) above.*

#### Reminders

The [COVID-19 directions \(workplaces\)](#) ("Workplace Directions") contain several important [reminders](#) including:

- (i) The identifiable COVID-19 hazard that workers face is the transmission by an infected worker, supplier, a consumer, or other person present in the workplace;

*Note: The Workplace Directions define a worker as any person who works in an employer's workplace, including an employee of the employer, or a contractor, self-employed person or volunteer.*

- (ii) The object of updating a risk assessment is to specifically focus on COVID-19, and adapt the measures required by the Workplace Directions to specific work environments;

*Note: Updates must consider the National Department of Health risk assessment guides published online.*

- (iii) The Workplace Directions do not reduce any existing requirements on an employer in terms of the [Occupational Health and Safety Act](#), and its [regulations](#) (such as the [hazardous biological agents](#));

*Note: The directions also apply in addition to other safety requirements, where relevant, under the [Foodstuffs, Cosmetics and Disinfectants Act](#), the [Consumer Protection Act](#), the [National Regulator for Compulsory Specifications Act](#), the [Hazardous Substances Act](#), the [Medicines and Related Substances Act](#), the [National Health Act](#) etc.*

- (iv) The Workplace Directions do not prevent an employer from implementing more stringent measures to prevent the spread of the virus; and

*Note: The Directions define a workplace as any premises or place where a person performs work.*

- (v) Every worker [must comply](#) with Workplace Directions measures introduced by their employer, in addition to the existing safety duties of employees under the Occupational Health and Safety Act,.

## Application

The Workplace Directions [apply](#) to employers and workers in respect of the manufacturing, supply or provision of essential goods or essential services, and to any workplace permitted to continue or commence operations before *the previous regulations ended*.

*Note: The Workplace Directions reference to essential services and goods under the previous regulations should probably be read as a reference to [essential services](#), [essential goods for import](#), and [permitted goods for export](#) under the latest regulations.*

*Further Note: Provision is made for the possibility of [sector specific guidelines](#).*

The Workplace Directions do not apply to workplaces:

- (i) [Excluded](#) from the Occupational Health and Safety Act;

*Note: Also see the [mining operations directions](#).*

- (ii) In which medical and health care services as defined in schedule 2 [which should be B] of the previous regulations (other than retail pharmacies) are performed;

*Note: This reference should probably be interpreted as a reference to [annexure D](#) essential services of the current regulations, specifically medical, health (including mental health), laboratory and medical services and the NICD (other than retail pharmacies).*

- (iii) Where another Minister has issued a [direction](#) dealing with health and safety (such as, seemingly, in the air services directions; call centre directions; court directions; public transport services directions; railway directions; risk-adjusted strategy for the communication and digital technologies sector directions, and sea ports directions).

*Note: It is not clear whether this exclusion will apply even where a direction only covers an aspect of health and safety, and not comprehensive workplace considerations.*

*Further Note: It is also not clear why this direction should be excluded at all, and cannot be interpreted additionally, especially as a direction cannot override the [Occupational Health and Safety Act](#) requirements to ensure safe premises, as far as reasonably possible.*

### Application of Workplace Directions to small business

In terms of clause 40 the Workplace Directions only applies the following requirements to employers with less than 10 employees, subject to the employer's duties under the [Occupational Health and Safety Act](#) to conduct a risk assessment:

- (i) Arrange the workplace to ensure employees are at least 1,5 metres apart or, if not practicable, place physical barriers between them to prevent the possible transmission of the virus;
- (ii) Ensure employees that present with fever, cough, sore throat, redness of eyes or shortness of breath (or difficulty in breathing), body aches, loss of smell or loss of taste, nausea, vomiting, diarrhoea, fatigue, weakness or tiredness, as set out in clause 21, are not permitted to work;

*Note: It states one should immediately contact 0800 02 9999 for instruction, and direct the employee to act in accordance with those instructions.*

- (iii) Provide cloth masks or require an employee to wear some form of cloth covering over their mouth and nose while at work;
- (iv) Provide each employee with hand sanitizers, soap and clean water to wash their hands and disinfectants to sanitize their workstations;
- (v) Ensure employee regularly wash their hands with soap and sanitise their hands while at work;
- (vi) Ensure workstations are disinfected regularly; and
- (vii) Take any other measures indicated by a risk assessment.

### Application of administrative measures in Workplace Directions to medium to large business

#### Administrative measures:

- (i) Undertake a risk assessment to give effect to the minimum measures of the Workplace Directions taking into account the specific circumstances of the workplace;

*Note: An employer with more than 500 employees must submit a record of risk assessment (with a OHS Act section 7 health and safety policy) to its OHS Act section 19 health and safety committee, and the Provincial Chief Inspector of the Department of Employment and Labour.*

- (ii) Notify all workers of the contents of the Workplace Directions, and the manner in which the employer intends to implement it;
- (iii) Notify employees that if they are sick or have symptoms associated with the COVID-19, they must not come to work, and to take paid sick leave in terms of the Basic Conditions of Employment Act;

(iv) Appoint a manager to address employee or workplace representative concerns, and to keep them informed;

*Note: In any workplace with a health and safety committee, consult with that committee on the nature of the hazard in that workplace, and the measures that need to be taken.*

(v) Ensure the measures required by the Workplace Directions, and the risk assessment plan, are strictly complied with through monitoring and supervision;

(vi) As far as practicable, minimize the number of workers at any given time through rotation, staggered working hours, shift systems, remote working arrangements or similar measures to achieve social distancing (see social distancing and screening below);

(vii) Take measures to minimize contact between workers, and between workers and members of the public;

(viii) Provide workers with information that raises awareness in any form or manner, including where reasonably practicable, leaflets and notices placed in conspicuous places informing workers of the dangers of the virus; manner of transmission; prevention measures; and where to go for screening or testing if presenting with the symptoms;

(ix) Inform the Department of Health (0800 02 9999) and Department of Employment and Labour if a worker is diagnosed with COVID-19; investigate the cause including any control failure; and review the risk assessment to ensure necessary controls and personal protective equipment requirements are in place; and

(x) Give administrative support to any contact-tracing measures implemented by the Department of Health.

*Note: Any contact tracing measures must be in line with the COVID-19 regulations, which must be in line with the Disaster Management Act and the Constitution.*

### **Application of health and safety measures in Workplace Directions to medium to large business**

#### **Social distancing and screening:**

(i) Arrange the workplace to ensure minimal contact between workers and, as far as practicable, ensure a minimum of 1,5 metres between workers while working;

*Note: Depending on the circumstances of the workplace or sector, the minimum distance may need to be longer - reducing the number of workers present at any time may assist in achieving social distancing.*

*Further Note: If 1,5 metre work stations are not practical, arrange physical barriers between or on work stations or to form a solid physical barrier between workers, or if necessary, supply the employee free of charge with appropriate personal protective equipment based on a risk assessment of the workplace.*

(ii) Ensure social distancing measures are implemented through supervision both in the workplace and in the common areas such as canteens, lavatories or immediate outside spaces (through, for example, queue control, dividing the workforce into groups or staggering break-times);

(iii) Screen a worker, at the time they report for work, to ascertain whether they have any of the observable symptoms associated with COVID-19 (fever, cough, sore throat, redness of eyes, shortness of breath or difficulty in breathing);

*Note: Require workers to immediately inform the employer if they experience any of the symptoms at work.*

(iv) Require a worker to report whether they suffer from body aches, loss of smell or loss of taste, nausea, vomiting, diarrhoea, fatigue, weakness or tiredness, and require workers to immediately inform the employer if they experience any of the symptoms while at work;

*Note: The Directions also refer the reader to the Department of Health “Guidelines for symptom monitoring and management of essential workers for COVID-19 related infection”.*

(v) Comply with any screening guidelines issued by the National Department of Health with the Department of Employment and Labour and, if in addition required to, medical surveillance and testing;

(vi) Do not permit a worker to enter the workplace or report for work if he or she presents with the above symptoms, or advises the employer of these symptoms;

(vii) If a worker with the above symptoms is already at work immediately isolate the worker, provide the worker with a FFP1 surgical mask, and arrange for the worker to be transported (in a manner that does not place other workers or members of the public at risk) to be self isolated or for a medical exam or testing;

*Note: Ensure such worker is tested or referred to an identified testing site.*

*Further Note: Place such employee on [paid sick leave](#) or if the employee’s sick leave entitlement is exhausted, make application for an [illness benefit](#). If there is evidence that the worker contracted COVID-19 as a result of occupational exposure, lodge a [claim](#).*

*Final Note: Ensure 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.*

(viii) If a worker with the above symptoms is already at work immediately assess the risk of transmission; disinfect the area and the worker's workstation; refer those workers who may be at risk for screening; and take any other appropriate measure to prevent possible transmission; and

(vii) Only allow a worker, diagnosed with COVID-19, and isolated as per the Department of Health Guidelines, to return if the worker has undergone a medical evaluation confirming tested negative for COVID-19; the employer ensures that personal hygiene, wearing of masks, social distancing, and cough etiquette is strictly adhered to by the worker; and the employer closely monitors the worker for symptoms on return to work.

#### Sanitisation:

(i) Free of charge, ensure sufficient quantities of hand sanitizer based on the number of workers or other persons who access the workplace at the entrance of, and in, the workplace which the workers or other persons use;

*Note: A hand sanitizer must have at least 70% alcohol content and meet the Department of Health recommendations.*

(ii) Free of charge, ensure every employee working away from the workplace, other than at home, is provided with an adequate supply of hand sanitizer;

(iii) Provide a worker, who interacts with the public, with sufficient supplies of hand-sanitizer at that worker's workstation, for both the worker and the person with whom the worker is interacting;

*Note: Instruct such workers to sanitize their hands between each interaction with public.*

(iv) Ensure all work surfaces and equipment are disinfected before work begins, regularly during the working period and after work ends;

(v) Ensure all areas such as toilets, common areas, door handles, shared electronic equipment are regularly cleaned and disinfected;

(vi) Disable biometric systems or make them COVID-19-proof;

(vii) Ensure adequate facilities for the washing of hands with soap and clean water;

*Note: Also consider the [facilities regulations](#).*

(viii) Provide only paper towels to dry hands after washing - fabric toweling is prohibited;

(ix) Require workers to wash their hands and sanitize their hands regularly while at work; and

(x) Routinely clean and disinfect surfaces that workers and members of the public come into contact with.

### Masks, public access and ventilation:

- (i) Free of charge, provide each employee with at least 2 cloth masks that comply with the Department of Trade, Industry and Competition guidelines, to wear while at work and while commuting to and from work;

*Note: Make appropriate arrangements for washing, drying and ironing masks as per those guidelines.*

*Further Note: The Department of Health requires that all persons wear cloth masks when in a public place as some persons with the virus may not have symptoms, or may not know they have it.*

- (ii) Require any other worker that is not an employee (such as a contractor, self-employed person or volunteer) to wear masks in the workplace;

*Note: The above are minimum requirements - the number and replaceability of cloth masks must be further determined considering the specific conditions of work (for example where work areas where a mask may become wet or soiled), and as per any relevant sectoral guideline.*

- (iii) Ensure workers are informed, instructed, trained on the correct use of cloth masks;

*Note: The general requirement to wear masks does not derogate from the fact that accredited personal protective equipment as per Department of Health guidelines must be provided, where a risk assessment shows such equipment is required.*

- (iv) As reasonably practicable given the nature of the workplace, ensure a distance of at least 1,5 metres between workers and members of the public, or between members of the public; or put in place physical barriers or provide workers with face shields or visors;

- (v) If appropriate, also undertake symptom screening measures of non-employees entering the workplace with due regard to available technology and any Department of Health guidelines;

- (vi) If appropriate, display notices advising non-employees entering the workplace of the precautions they are required to observe while in the workplace;

- (vii) Require members of the public, including suppliers, to wear masks when inside premises;

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

*Note: Also consider the [environmental regulations](#).*

- (viii) Where reasonably practicable, have an effective local extraction ventilation system with high-efficiency particulate air HEPA filters, regularly cleaned and maintained, and with vents that do not feed back in through open windows;

- (ix) Ensure filters are cleaned and replaced as per the manufacturer's instructions by a competent person;
- and
- (x) Check regularly on the Department of Health, National Institute of Communicable Diseases, and National Institute for Occupational Health websites if any additional personal protective equipment is required or recommended in any guidelines, given the nature of the workplace or of worker duties.



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