

OHS: An overview for employers on the new Consolidated directive

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Consolidated Direction on OHS Measures in certain workplaces

Presenter

Lettie Janse van Vuuren CA(SA), RA, CBA(SA)

- Lettie joined SA Accounting Academy in November 2017 as Head of Technical. She is a Chartered Accountant, Registered Auditor and Certified Business Accountant.
- She is a **professional trainer and webinar host**, and with her relaxed and humorous presentation style, she is able to hold the attention of an audience. She has a unique ability to communicate with delegates at their respective levels of knowledge and experience. Over the last 20 years, she has trained thousands of partners, managers, trainee accountants and other professionals.
- She is responsible for our MCLU (Monthly Compliance and Legislation Updates).
- She was the Professional Development Manager at SAICA for 4 years and in charge of accrediting new training offices and monitoring existing ones (including the moderation of training offices and trainee assessments).
- Lettie is passionate about improving the efficiency and standardisation at practices. She has extensive experience on a variety of technical and practical topics which she consults on, including: SAICA re-accreditation assistance and preparation, IRBA inspection assistance and preparation, audit file reviews (post-issuance monitoring and EQCR), Quality control implementation, other office-specific manuals, and FASSET skills development facilitation.



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→ ***NB = Please include the topic that your question is about for easy identification purposes***

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Where appropriate, a **Q & A Summary will be uploaded to your profile as soon as all answers have been documented.**

WHAT'S ON THE AGENDA?



Contents

- **Introduction & The basics of the OHSA** (including Abbreviations used)
- **Legislative documents issued**
- **The new, latest Amended Consolidated OHS direction**
 - What is specifically applicable to small organisations?
 - Your Workplace Plan
- **Some labour-related cases**
- **Some practical considerations**
- **In closing...**

**OCCUPATIONAL
HEALTH &
SAFETY**



INTRODUCTION

Abbreviations used

- **OHS** = Occupational Health & Safety
- **OHSA** = Occupational Health & Safety Act, 1993 (Act No. 85 of 1993)
- **BCEA** = Basic Conditions of Employment Act, 1993
- **PPE** = Personal Protective Equipment

Introduction

- OHS measures are vital – especially since the return of even more workers under Alert Level 3 of our National Lockdown.
- As accountants, auditors and other financial professionals, we not only need to ensure that we comply with these OHS measures, but we can also assist our clients with compliance.
- During this webinar we look at the requirements as set out in the initial Regulations and Guidelines, and the details of the latest Consolidation Direction that was issued, as well as the new treatment of “vulnerable persons” in the workplace, and the resultant update of workplace plans.

The basics of the OHSA

- The OHSA, read with its regulations and incorporated standards, **requires the employer to provide and maintain** as far as is reasonably practicable **a working environment that is safe** and without risks to the health of workers and to take such steps as may be reasonably practicable to eliminate or mitigate the hazard or potential hazard
- The OHSA further requires **employers, to ensure**, as far as is reasonably practicable, **that all persons who may be directly affected by their activities** (e.g. customers, clients or contractors and their workers who enter their workplace or come into contact with their employees) **are not exposed to hazards to their health or safety.**
- **Also applies to self-employed persons** (e.g. plumbers or electricians) whose working activities bring them into contact with members of the public.

Who does the OHS NOT apply to

Refer to Clause 1(3) of the 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).Info

➤ *Refer to OHSA, which is available to you as a Source Document*

Penalties

Refer to Clause 38 of the OHSA

- Fines range from
 - Persons: Up to R50 000 and/or up to 1 year imprisonment
 - Employers: Up to R100 000 and/or up to 2 years imprisonment

➤ *Refer to OHSA, which is available to you as a Source Document*

LEGISLATIVE DOCUMENTS ISSUED

Legislation, etc. issued

- The Department of Employment and Labour has issued Regulations, Guidelines and additional directives to prevent the escalation of COVID-19 infections in the workplace
 - ❑ OHSA
 - ❑ OHSA Regulations
 - ❑ DoL_Guidance on vulnerable employees and workplace accommodation
 - ❑ Consolidated Directions

Annexure A = Department of Employment and Labour Links

➤ *Refer to Source & Bonus Documents available to you*

22 Regulations

- The key areas that have been updated in the 2020 amended regulations are:
 - Return to work policy
 - Workplace Plan
- The new concept of the Vulnerable employee policy was added
- The Department of Employment and Labour has issued 22 separate Regulations for various sectors/operations over the years

<https://www.labourguide.co.za/health-and-safety/848-health-and-safety-downloads>

OHS Directives issued

- Initial publication on 28 April 2020
 - Updated Consolidated published on **5 June 2020** (replaces 28 April 2020 Directive) showed NB changes relating to:
 - Vulnerable persons – clause 20.3
 - Refusal by employee to work – clause 48 to 56
 - Updated Consolidated published on **28 September 2020** (replaces June 2020 Directive)
 - **LATEST NEW (Updated) Consolidated directive published on 28 May 2021**
(replaces September 2020 version)
- *Refer to Bonus & Source Documents available to you*

THE NEW & LATEST AMENDED CONSOLIDATED OHS DIRECTION

Latest OHS Direction

- Published on 28 May 2021
 - *33-page document*
 - **Applies to:**
 - employers and workers in workplaces who are permitted to continue or commence operations under the Regulations
 - Effective on 11 June 2021 (date of publication in the Government Gazette)
 - Period applicable = for the duration of the national state of disaster
 - *Employers with less than 10 employees need only apply the measures set out in direction 12 of these Directions*
 - **PLUS** they still need to conduct a risk assessment as per the employer's obligations under the OHSA
- *Refer to Source Document available to you*

What's new?

- New direction with regard to **vaccination in the workplace**
- In a nutshell:
 - The Consolidated OHS Direction **requires employers**, among other things, **to decide within 21 days if they intend making vaccination mandatory**.
 - An employer is also required to include in its risk assessment whether it intends to make vaccinations compulsory – this consists of 3 steps.

Annexure C = Guidelines if an employer makes vaccination mandatory

Contents of the Direction

- 20 Sections
- Annexure A = Department of Employment and Labour Links
- Annexure B = Sectoral Guidelines
- Annexure C = Guidelines if an employer makes vaccination mandatory

➤ *Refer to this **new Direction** which is available to you as a Source Document*

➤ *Refer to the **CDH COVID-19 Workplace Health and Safety Guideline**, which is also available to you as a Source Document*

Some other important Sections

Risk assessment and plans for protective measures

- Refer to **Section 3** of the Consolidated Direction
- What must be included in the Workplace Plan?
 - Refer to **Section 3(2)** of the Consolidated Direction

Symptom Screening

- Refer to **Section 6** of the Consolidated Direction
- What to do when an employee displays symptoms of COVID-19

Measures in respect of workplaces to which public has access

- Refer to **Section 9** of the Consolidated Direction
 - Focus remains on protecting the employee from being exposed to the virus through their interaction with workers OR other persons present in the workplace

Those identified for Vaccination

- Remember that Section 4(1)(i) provides, among others, that employer's must provide workers with information raising awareness on "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."
- Every employee identified in terms of section 3(1)(a)(ii) must be notified of the obligation to be vaccinated as and when a vaccine becomes available for the employee.
- In addition, the employee should also be notified of his/her right to refuse to be vaccinated on constitutional or medical grounds.
- Employees must be given an opportunity to consult with a health and safety representative, worker representative or trade union official.

Refusal of Vaccination

➤ Refer to **Section 14** of the Consolidated Direction

- Where an employee refuses to be vaccinated, the employer should counsel the employee, refer them for further medical evaluation should there be a medical contraindication for the vaccination or, if necessary, take steps to reasonably accommodate the employee in a position that does not require the employee to be vaccinated.
- This may include an adjustment that permits the employee to work from home or in isolation within the workplace.
- Annexure C to the Direction expressly mentions the Code of Good Practice: Employment of People with Disabilities (which is published in the Employment Equity Act).
- Presumably, an employee that cannot be so accommodated can have their services terminated for incapacity provided the proper process and procedures are adhered to.

Small Businesses

Employers with 10 employees or less MUST take these 9 measures!

- Refer to **Section 12** of the Consolidated Direction
- Develop a basic **plan** for phasing in the return of employees
 - Those that are able to work remotely, and
 - Those >60 years OR those who have comorbidities
- Arrange the workplace to facilitate social distancing
- Symptom screening
- Provide masks OR require employee to wear cloth covering
- Provide hand sanitizers, soap and clean water for hands AND disinfectants for work stations
 - Ensure that both are used regularly
- If public has access to the workplace, take the measures per 9(2)

8-point Summary:

What to do re Vaccination

1. Perform risk assessment on whether you intend to make vaccinations compulsory
2. Decide within 21 days from commencement of directions whether entity is going to make vaccination compulsory
3. Update your vaccination plan
4. Identify employees that must be vaccinated & Communicate to them
5. Provide administrative support to register for the vaccine
www.vaccine.enroll.health.gov.za
6. Give the employee paid time off to go for the vaccine
 - Provide (if reasonable & practicable) transport to & from the vaccination venue

8-point Summary *(continued)*

What to do re Vaccination

7. Section 3 of Symptom screening (Direction 6) does not apply to these employees
 - Employee would normally not be permitted to enter the premises
8. If symptoms prevent employee to come to work, employer must give paid sick leave as per BCEA
 - vaccination certificate will suffice instead of a medical certificate
 - If no more sick leave available, assist employee to claim UIF

NB! Follow Annexure C

SOME LABOUR-RELATED CASES

Consider the following principles

❑ **Fired for coming to work with COVID**

➤ <https://www.bizcommunity.com/Article/196/548/215495.html>

- **Is it fair to dismiss an employee who came to work, knowing that he was exposed to Covid-19?**
- Absolutely, said the Labour Court in a recent judgment (Eskort Limited v Stuurman Mogotsi and others).
- The court was not only critical of employees who act with scant regard for the health and safety of their colleagues and customers, but also cautioned employers to act more decisively in ensuring the health and safety of their staff

❑ **Can staff be dismissed for disregarding Covid-19 protocol after hours?**

➤ <https://www.bizcommunity.com/Article/196/548/214227.html>

- Employers are within their rights to discipline employees who flout Covid-19 regulations outside of work, which could even result in dismissals...

Time to evaluate

- **Are you prepared for a positive COVID-19 case in the workplace?**
 - *Refer to Section 6(3) in the latest Direction*
 - *Paragraph 27 of the Consolidated COVID-19 Direction on Health and Safety in the Workplace published on 4 June 2020 details the steps an employer must take where a worker presents with symptoms related to COVID-19*

SOME PRACTICAL ISSUES

Consider the following:

- **Vulnerable groups**
 - Clinically extremely vulnerable groups are strongly recommended to stay at home at all times and avoid contact
 - *Refer to CDH Summary re Vulnerable employees*
- **Those with childcare responsibilities**
 - Discuss with employees how they are impacted
- **Those concerned about coming to work**
 - Listen to concerns
 - Engage and communicate with employees concerned
- Staffing level issues – identify & act accordingly

Source & Bonus Documents

The following 3 SOURCE Documents are available to you:

1. Consolidated Direction on OHS measures in certain workplaces_May 2021
2. DoL_Amended Act Occupational Health and Safety
3. CDH_Employment-Law-COVID-19-OHS-Guide-June-2021

The following 5 BONUS Documents are available to you:

1. CDH_Vulnerable persons_19 June 2020
2. DOL_Consolidated OHS Directive_5 June 2020
3. DOL_Consolidated OHS Directive_28 Sep 2020
4. DoL_Guidance on vulnerable employees and workplace accommodation
5. NEASA example_COVID_19_READY_WORKPLACE_PLAN

Remember that these are uploaded to your profiles & should be available immediately after the webinar has ended

In closing...

As an employer:

- You have to comply with OHS legislation
- You have to implement OHS measures in your workplace
 - To protect employees and 3rd parties entering your premises
- Always remember:
 - Social distancing
 - Regular sanitizing
 - PPE
- You have to decide if you are going make vaccination compulsory
 - ✓ NB to Follow Annexure C

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QUESTIONS





for your participation!