



The Contemporary Gazette

relevant new legislation for your business



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This Update

This newsletter overviews new relevant National laws up to **27th July 2020**.

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General

1. NOTABLE ONE LINERS

Border Management Authority Act

It seems a commencement date must still be gazetted as [the Act](#) states the President may proclaim different dates for different sections, or differentiate between parts of the [border law enforcement area](#) or different [ports of entry](#).

Note: The Act will apply to the exercise by the Authority of its border law enforcement functions within the border law enforcement area and at ports of entry.

Further note: Except where the Act will provide otherwise, it will not apply to the border protection functions exercised by the Defence Force, the postal services, or SARS customs related functions.

Final note: Related laws that may come into play include, amongst others, the [Animal Diseases Act](#), the [Civil Aviation Act](#), the [Customs and Excise Act](#), the [Game Theft Act](#), the [Immigration Act](#), the [Merchant Shipping Act](#), the [National Environmental Management Act](#) and its environmental laws (see related laws on right side of that Act), the [National Land Transport Act](#), the [National Regulator for Compulsory Specifications Act](#), the [Perishable Products Export Control Act](#), the [Precious Metals Act](#), the [Refugees Act](#), the [Stock Theft Act](#), and the [Tourism Act](#).

Civil Aviation Act

The [COVID-19 health directions](#) state persons going on [local air travel](#) must be screened before departure.

Note: Such persons must undergo a medical examination, which may include testing, if found to have an elevated temperature, or symptoms consistent with COVID-19, and may not board the aircraft.

Further note: An international travel crew member (that is not a direction 23 cargo and crew vessel), who may disembark, must be screened and quarantined for 14 days upon finishing an operation (presumably travel).

Further note: A crew member in transit or still required to undertake an operation or board or depart for international travel within the 14 days quarantine, must be quarantined at an employer identified and managed facility - all costs related to such quarantine must be borne by the employer.

Final note: A further direction also provides for persons or medical evacuation companies intending to undertake medical evacuations for emergency medical attention for a life threatening condition or critical medical treatment.

Collective Investment Schemes Control Act

CIS notice 3 of 2020 (available from the FSCA) exempts managers from [section 44\(2\)](#) and (3), and ensures a fair market price is determined for collective investment scheme in securities by a person requested by the manager, and acceptable to the trustee or verifier, considering all available information.

Compensation for Occupational Injuries and Diseases Act

The [COVID-19 directions \(employment- compensation for occupational injuries and diseases\)](#) clarifies claims for workplace-acquired novel COVID-19 based on confirmed temporary total disablement, permanent disablement, medical aid, and death benefits, and forms required.

Note: This direction will be replaced by a Compensation for Occupational Injuries and Diseases Act circular instruction, once the government declared national disaster or this direction has been withdrawn.

Compensation for Occupational Injuries and Diseases Act

The following draft regulations will be loaded in due course: Post-traumatic stress disorder; [Occupationally acquired HIV/Aids](#); Pulmonary tuberculosis in health workers; [Mesothelioma due to occupational asbestos exposure](#); [Irritant-induced asthma](#); [Work-related upper limb disorder](#); Contact dermatitis; Occupational asthma; Lung cancer; Work-related upper respiratory tract disorders; Work-related chronic obstructive pulmonary disease; Occupational pulmonary tuberculosis associated with silica dust exposure; and Appointment of assessors, presiding officers and interpreters.

Comment deadline 60 days from 17 July 2020

Control of Access to Public Premises and Vehicles Act

In terms of the [COVID-19 health directions](#) government departments, municipalities and private entities responsible for public places must ensure national public hygiene strategy 2020 measures; ensure public places are cleaned and disinfected; provide for hand hygiene; and enable physical distancing.

Note: The [Control of Access to Public Premises and Vehicles Act](#), which regulates safeguarding access to public premises, gives some guidance on what may be public places when it defines public premises as any building,

structure, hall, room, office, convenience, land, enclosure or water surface which is the property of, or is occupied or used by, or is under the control of, the State or a statutory body, and to which a member of the public has a right of access, or may be admitted to.

Further note: The Control of Access to Public Premises and Vehicles Act applies in addition to the provisions of any other law relating to the protection of people or property.

Copyright Act

Reminder that the [Independent Music Performance Rights Association accreditation](#) ends in August 2020

Correctional Services Act

The Draft Amendment Bill [proposes](#) alignment with the CCT 44/18 judgment regarding placing sentenced offenders under day parole, parole and correctional supervision, and for minimum periods before consideration for release and placement. Comment deadline 30 days from 24 July 2020.

Note: A related law here may include, amongst others, the [placement on parole of low risk offenders](#) who have or will reach their minimum detention periods within 60 months from 8 May 2020, if they provide a set of fingerprints and DNA samples for comparison with the SAPS database as a prerequisite for placement, and all parole board processes are finalised and rehabilitation and pre-release programmes are attended.

Cross-border Road Transport Act

The [COVID-19 health directions](#) require that a person operating [cross border trucking for the movement of goods](#) (Truck Operator) must be screened at the point of entry and, where necessary, receive medical examination - testing must be at the cost of the employer.

Note: A Truck Operator who tested positive for COVID-19 while outside SA must inform the port health official at the point of entry of the intention to return prior to returning to SA, and the employer must ensure arrangements are made for the safe transportation to the isolation area or medical facility.

Further note: A further direction also provides for persons or medical evacuation companies intending to undertake medical evacuations for emergency medical attention for a life threatening condition or critical medical treatment.

Disaster Management Act (Drought)

The classification of drought as a national disaster has been revoked.

Note: The revocation includes a call on organs of state, the private sector, NGOs, communities and individuals through formal and informal measures, to work together with government in implementing drought resilience and climate change adaptation measures to reduce the impact of drought.

Disaster Management Act (Extension)

Declared state of disaster second extension, to 15 August 2020, "taking into account the need to continue augmenting the existing mitigation measures undertaken by organs of state to address the impact of the disaster".

Disaster Management Act (Transport)

COVID-19 directions (travel - public transport driving licences, discs, permits and vehicle registrations) amended so that the validity period of all learner licences, driving licence cards, temporary driving licences and professional driving permits that expire during 26 March 2020 to 31 August 2020 is extended to 31 January 2021.

Note: The validity period of all motor vehicle licence discs, temporary permits and roadworthy certificates that expired 26 March 2020 to 31 May 2020 is extended to 31 August 2020.

Further note: The validity period of motor trade number licences that expire during 26 March 2020 to 31 May 2020 is extended to 30 November 2020.

Disaster Management Act (Transport)

COVID-19 directions (travel - public transport services) directs health and safety matters for public transport vehicles and public transport facilities, and loading capacity of public transport vehicles.

Note: The directions define public transport vehicle as a motorcar, minibus, midibus, minibus taxi-type service and bus as defined in terms of the Act and, for purposes of these directions, includes a sedan, e-hailing service, meter taxi, shuttle service, chauffeur driven vehicle, or rail operation.

Further note: The directions define public transport facility as any rank, train stations, terminal or any facility which may be used for public transport purposes.

Disaster Management Act (Transport)

[COVID-19 directions \(travel - air services\)](#) amended 24 July 2020 to include East London Airport, George Airport, and Kimberley Airport in the list of permitted domestic airports.

Electronic Communications Act

A [draft policy and policy direction on rapid deployment communications networks and facilities](#) is available from the Department. Comment deadline 30 working days from 22 July 2020.

Note: The policy proposes, amongst others, that electronic communications network service licensees may at their discretion identify properties, have the right to enter property, and use public and private land for the deployment of their networks and facilities.

Further note: The private land owner will be limited to limited compensation and objection to the fee, thereby ignoring any right to object to this form of intrusion - this seems to be, amongst others, contrary to the [Constitutional right to access to courts](#).

Final note: It may be argued that the public has an interest in reasonable respect being shown to property rights, and that regulatory creep (minor intrusion, or intrusion generally acceptable as reasonable, introduced by regulation and then systematically added to) is a regulatory risk worth noting.

Foodstuffs, Cosmetics and Disinfectants Act

A [food fortification mix manufacturer, supplier or an importer](#) who is required to register in terms of the Regulations Relating to the Fortification of Certain Foodstuffs, and whose registration has expired or will expire during the period of the national state of disaster is deemed to be registered for the duration of the national state of disaster or pending the conduct of an audit (in terms of the [COVID-19 health directions](#)).

Health Professions Act

The [COVID-19 health directions](#) state that retired health personnel, community services personnel, extended public works programme workers, unemployed [health professionals](#) or graduates, community based organisations and non-governmental organisations may be requested to fill in positions on a temporary basis to assist in responding to the COVID-19 outbreak.

Note: The COVID-19 directions also gives directions for the recruitment and training of human resources, and deployment of human resources (stating that all health personnel must be available for deployment to the identified sites such as quarantine facilities and any other areas that require health services).

Immigration Act

The [COVID-19 health directions](#) interacts with the [Immigration Act](#) as it states that all persons exiting SA through a point of entry must be screened (and subjected to a medical examination which may include testing if found to have an elevated temperature or symptoms consistent with COVID-19).

Note: Based on the outcome of the medical examination, a delegated person may decide whether the person is allowed to exit the Republic.

Further note: Persons found to have contracted COVID-19 pursuant to the above may be placed under mandatory isolation, which may be in the form of self-isolation at their own private residence if they comply with the self-isolation criteria - as found in [paragraph 19](#) despite the direction referring to [paragraph 20](#).

Immigration Act

The [COVID-19 health directions](#) further interacts with the [Immigration Act](#) as it states that all persons entering SA through any point of entry must be subjected to screening at the point of entry and may be placed under mandatory quarantine for a minimum period of 14 days, which may be self-quarantine if the criteria are met - as found in [paragraph 19](#) despite the direction referring to [paragraph 20](#).

Note: A person who, during screening, is found to have had exposure to COVID-19 or is presenting with any signs and symptoms of COVID-19, must be subjected to a medical examination which may include testing.

Further note: A person who wishes to be placed under self-quarantine or his or her employer must submit a prescribed written application (that includes, for example, written declaration committing to all conditions for self-quarantine), 72 hours prior to the intended date of travel, to the Director-General: Health.

Further note: Where approval for self-quarantine has not been granted or it has been determined that the person has failed to adhere to the self-quarantine conditions, such a person will be placed at in a state identified quarantine facility.

Final note: Subject to screening at the point of entry (and where necessary medical examination and daily monitoring by a health officer), and precautionary measures and conditions, the Director-General: Health may exempt from the requirement of quarantine persons arriving in the country to attend the funeral of an immediate family member (that applied for exemption); persons who are unable to undergo quarantine for medical reasons (that applied for exemption), cross border truck drivers, and commuting cross border school learners, students, educators and persons transporting them.

Infrastructure Development Act

Strategic agriculture, digital, energy, government information, rural, settlements, transport, water and sanitation, and other infrastructure projects have been [designated](#) under the [Infrastructure Development Act](#).

Note: The stated intention of the Act includes identifying and implementing strategic integrated projects, to facilitate and expedite any approval, authorisation, licence, permission or exemption required by other laws, and to unblock obstacles to the expeditious implementation of the national infrastructure plan.

Further note: You may also wish to revisit the [past overview of the Act](#).

Legal Practice Act

The Council states that [rule 46](#) (procedure for election of legal practitioners to the Legal Practitioners Fidelity Fund board) amended without prior publication due to election required but not possible under the lockdown regulations.

Note: The Council further states that the amendment will allow legal practitioners to nominate candidates and cast their votes online and through email thereby avoiding the need for them to travel for voting stations and minimizing the risk of contracting the Covid-19 virus.

Liquor Act

The [COVID-19 directions \(travel - public transport services\)](#) interacts with the [Liquor Act](#) in that it directs that the transportation of liquor from manufacturing plants to storage facilities, and the transportation of liquor to ports of exit for export purposes, is allowed during the alcohol ban.

Marine Living Resources Act

The [COVID-19 health directions](#) is relevant within the [Marine Living Resources Act](#) environment, as those directions require that SA fishers from SA registered fishing vessels must be subjected to screening before embarking on a fishing vessel.

Note: Such fishers, upon returning to port directly from fishing grounds and without having transhipped cargo on the high seas, must be subjected to screening and may be permitted to self-quarantine at home.

Further note: Fishers undertaking operations within South African territorial waters may be screened upon completion of the operations.

Further note: Fishers disembarking from international registered fishing vessels must be subjected to screening and mandatory quarantine for a minimum period of 14 days.

Final note: Fishers embarking international fishing vessels permitted to operate from South Africa must self-quarantine for a minimum period of 14 days and be screened prior to joining and must be required to maintain a daily body temperature log for the duration of self-quarantine.

Merchant Shipping Act

The [COVID-19 health directions](#) require that a person disembarking from a cargo and passenger vessel, such as a crew member regulated by the [Merchant Shipping Act](#), must be subjected to screening and mandatory quarantine for a minimum period of 14 days.

Note: A crew member embarking a cargo or passenger vessel must self-quarantine for a minimum period of 14 days and must be screened prior to joining the vessel.

Further note: A crew member required to self-quarantine must maintain a daily body temperature log for the duration of self-quarantine.

Final note: A crew member undertaking operations within South African territorial waters must be screened and upon completion of the operations may be required to self-quarantine.

National Environmental Management Act

Amendment proposed to the [large scale wind and solar photovoltaic development activities](#), in geographical areas of strategic importance (in relation to the time-frame for decision-making for an environmental authorisation application or amendment application). Comment deadline 30 days after 17 July 2020.

National Environmental Management Act

The draft identification of geographical areas for the development of strategic gas transmission pipeline infrastructure, and the draft identification of geographical areas of strategic importance for the development of electricity transmission and distribution infrastructure, is available from the Department. Comment deadline 30 days after 17 July 2020.

National Health Act

The [COVID-19 health directions](#) gives directions on how human remains must be handled, including that human remains are moved, buried or cremated in the manner required by the [management of human remains regulations](#) (and the directions), and specific measures if a person passes at home.

Note: Specific requirements apply to mortuaries and funeral undertakers.

Further note: Provision is made for identification of suitably authorised mortuaries, suitable government mortuaries, additional mortuary capacity and multi-transportation for mortal remains should the need arise, and land available for multi-burials should the need arise.

National Health Act

The [COVID-19 health directions](#) require that all health care risk waste generated from the use of health equipment material and medical supplies must be treated in line with the [national environmental health norms and standards](#), and that personnel must be trained in the use of health equipment, sanitation material, medical supplies and personal protective equipment used to respond to COVID-19 infections.

Note: Health authorities in the 3 spheres of government must endeavour to source and provide health equipment, sanitation material and medical supplies to various sites as may be required to respond to the COVID-19 outbreak.

Further note: The segregation, storage, collection, treatment, handling and disposal of health care waste must be dealt with as per the national public hygiene strategy and implementation plan 2020.

Final note: All medical equipment used in the quarantine and isolation facility must be sterilised first before it can be used again.

Pension Funds Act

FSCA information request 3 of 2020 (RF), available from the FSCA, and requires that all retirement funds and administrators must provide annexure A historic information by the relevant due date, annexure B information upon registration of a participating employer in an umbrella fund, and annexure C information upon application for a rule amendment to effect a change of name of a participating employer.

South African Maritime and Aeronautical Search and Rescue Act

The COVID-19 health directions require that evacuation of seafarers, passengers, mariners on board all ships along the South African coastline must be allowed in terms of Search and Rescue as well as the Merchant Shipping Act.

Note: Search and Rescue probably refers to the South African Maritime and Aeronautical Search and Rescue Act.

Further note: Such rescue must comply with the South African Maritime and Aeronautical Search and Rescue Act requirements for medical evacuations and the Maritime Rescue Coordination Centre standard operating procedures, and marine notice 24 of 2020.

Note: All emergency medical evacuations to be conducted from vessels out at sea must be communicated by the shipping agent and Maritime Rescue Coordination Centre to Port Health Services of the nearest harbour.

South African Maritime Safety Authority Act

The COVID-19 health directions touches on the South African Maritime Safety Authority Act as it requires that masters of vessels must maintain a medical log of daily temperature screening of all persons on board and this must be presented to the port health officer on request.

Note: Persons disembarking and embarking vessels must wear personal protective equipment, maintain physical distancing, ensure good hand hygiene and their luggage must be sanitised.

Special Investigating Units and Special Tribunals Act

Investigation launched into State institutions procurement of, or contracting for, goods, works and services, including the construction, refurbishment, leasing, occupation and use of immovable property, during, or in respect of the government declared national disaster from 1 January 2020 to 23 July 2020.

Note: The investigation will consider whether such actions were not fair, competitive, transparent, equitable or cost-effective; were contrary to legislation or Treasury protocols; was conducted by or facilitated through the improper or unlawful conduct of employees or officials or any other person or entity to corruptly or unduly benefit; was fraudulent; or equated to unauthorised, irregular or fruitless and wasteful expenditure.

Further note: The investigation includes any improper or unlawful conduct by the officials or employees of the State institutions or any other person or entity, in relation to the allegations covered in paragraph 1, including the causes of such improper or unlawful conduct and any loss, damage or actual or potential prejudice suffered by the State institutions or the State.

Further note: State institution here refers to any national or provincial department, municipality or municipal entity, any institution in which the State is the majority or controlling shareholder or in which the State has a material financial interest, or any public entity.

Final note: There is no immediate information as to whether and which of the 100+ investigations into [education and training authorities, entities, municipalities, provincial departments, national departments, and SETAs](#) have been concluded, and what the results thereof may have been, or if any other steps in terms of other laws such as the [Prevention and Combating of Corrupt Activities Act](#) have been taken.

Tourism Act

The [COVID-19 directions \(travel - public transport services\)](#) interacts with the [Tourism Act](#) in that it directs that the validity period of all public transport operating licences and accreditation certificates for tourist transport services, that expired during 26 March 2020 to 31 May 2020, is extended to 90 days from 22 July 2020.

Note: The offices of the National Public Transport Regulator and provincial regulatory entities resume their duties from 22 July 2020.

Draft Victim Support Services Bill

It seems that the Draft Bill proposes, [amongst others](#), that a facility must be registered so that the Minister may prescribe the management and control of that facility and what services it may deliver; that a support programme must be accredited by the policy framework decided by the Minister; that a person may only establish or manage any victim support facility that renders physical, psychological, spiritual or social services if it is registered; and the Minister may prescribe any other matter he or she deems necessary or expedient to achieve the objects of this proposed law. No comment opportunity or deadline appears in the gazetted notice.

Note: It seems a number of persons providing support to victims will have 12 months from the commencement of this proposed law to be compliant.

Further note: Victim is defined as any person who has suffered physical, emotional, spiritual or psychological harm as a result of a violent crime, against him or her, or his or her family members, irrespective of whether any perpetrator is identified, apprehended, and prosecuted or convicted.

Further note: The ambit of the proposed law may be further limited in terms of other proposed provisions of the law such as section 4.

Further note: Facility is defined as any physical structure irrespective of the nature of its construction, which is established by any person and from which any service to victims is rendered.

Further note: The Bill also proposes suspending a service provider's registration for any non-compliance with any part of the proposed law or conditions placed on registration (apparently whether or not such measure would actually be considered a substantive measure deserving suspension by a reasonable person). Also consider the wide open regulatory uncertain ambit of the phrase 'any enforcement order' in section 30, and the phrase 'any other matter' in section 40.

Final note: The Draft Bill proposes that the SAPS must provide a private room where victims may be interviewed and statements taken in a confidential respectful and dignified manner.



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Employee

2. EMPLOYMENT EQUITY ACT: AMENDMENT BILL 2020

The Amendment Bill proposes, [amongst others](#):

(i) Amending the [definition of designated employer](#) by removing one of the grounds that triggers this status (namely a person who employs fewer than 50 employees but has a total annual turnover equal to or above the applicable annual turnover of a small business in terms of the schedule 4);

Note: In any [assessment of its compliance](#) or in any court proceedings, a designated employer may raise any reasonable ground to justify its failure to comply.

(ii) Removing the current certification requirement from [psychometric testing](#);

(iii) Repealing [section 14](#) (voluntary compliance with affirmative action chapter), [section 64A](#) (schedule 4 amendment), and [schedule 4](#) (designated employers turnover threshold);

(iv) Inserting [section 15A](#) to allow the Minister to gazette numerical targets for identified sectors (to be defined as an industry or service or part of any industry or service) or their subsectors or a region within a sector or on the basis of 'any other relevant factor' (which equates to high regulator uncertainty);

Note: Also see the draft [regulation 7A](#) (determination of numerical targets for national economic sectors in terms) that was proposed in September 2018.

(v) Numerical goals set in a designated employer's [employment equity plan](#) must comply with any [section 15A](#) sectoral target decided for an employer (regardless of their size or trade union presence);

(vi) A [designated employer must submit a report](#) to the Director-General once a year on such date and in such manner as may be prescribed; and

Note: Also see the proposed amendment to [regulation 10](#) (duty to report) that was proposed in September 2018.

(vii) [Updating references](#) to the National Minimum Wage Act and Commission.

Note: Also see the proposed amendment to [regulation 12](#) (income differentials and discrimination) that was proposed in September 2018.

The Amendment Bill also proposes, [amongst others](#):

- (i) That an [undertaking to comply](#) can also be given to prepare an employment equity plan;

Note: The Act does not provide much guidance on protection of business information. For example, it only provides for a fine of up to R30 000 for [illegally disclosing any confidential information](#) acquired in the performance of a function - other legal remedies may need to be pursued when protection of business information may be at stake.

- (ii) A labour inspector, or any person acting on behalf of a labour inspector, may serve a [section 37](#) compliance order on a designated employer in the prescribed manner;

Note: Also see proposed [regulation 14A](#) (service of compliance order) that was proposed in September 2018.

- (iii) [Compliance assessment](#) may also consider whether sectoral numerical targets decided for employers are met; and

- (iv) Adding certificate requirements (for example, show sectoral targets met) before certification in terms of [section 53](#) state contracts (which section has not commenced yet).

Note: Also see the proposed [regulation 16](#) (certificate in terms of section 53) that was proposed in September 2018, and consider the [Promotion of Administrative Justice Act](#).



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Safety

3. DISASTER MANAGEMENT ACT: SELF-ISOLATION AND SELF-QUARANTINE

The COVID-19 directions (health - isolation, quarantine, public places, foodstuffs, human resources, supplies, facilities, mortal remains, entering and exiting SA) state, amongst others, that an applicant may self-quarantine or self-isolation if there is:

- (i) A separate well ventilated bedroom with a bathroom and toilet (or a residence that is not shared with persons who are not subject to quarantine);
- (ii) Meals served in the room in disposable utensils or utensils that are separate and are washed properly (if there are persons who are not subject to quarantine);
- (iii) Support from friends or family that can facilitate the drop off of food and medicine at the gate if they are not able to make use of online shopping facilities and contactless deliveries;
- (iv) A thermometer that will allow him or her to measure his or her temperature daily;
- (v) Access to the internet and a phone that allows the daily reporting of symptoms;
- (vi) Access to a private physician that he or she can contact should he or she be in need of medical advice or care; and a contact number where he or she can be reached during the period of self-quarantine or self-isolation.

Reminder: The High Court in Pretoria ruled the government may not force patients who test positive for COVID-19, and who are able to self-isolate (access to separated room, and to contacting or getting to a health facility if their condition worsened), into compulsory state quarantine.

Note: The direction refers to applicant and states that if a person's application is approved by the Director-General: Health he or she will be allowed to self-quarantine or isolate on arrival and will be subjected to health reporting protocols and regular follow-ups by the Department of Health - this indicates that the application relates to [persons entering SA](#).

Further note: The track and tracing liberties taken by government currently state that the National Department of Health may, on a voluntary basis, implement electronic systems or applications to be used on mobile devices or computers to collect information from members of the public for inclusion in the COVID-19 Database, and may, on a voluntary basis, receive information regarding members of the public from electronic systems or applications operated by private entities for inclusion in the COVID-19 Database.

The directions also state that:

- (i) Self-quarantine and self-isolation are at own or the employer's expense, and employers who wish to have their employees in quarantine or isolation facilities of the employers' choice must pay all costs incurred;
- (ii) Where exceptional circumstances make it necessary for the mandatory quarantine or isolation of a person entering SA to take place in a manner which involves the incurring of additional costs beyond those ordinarily incurred as a result of mandatory quarantine or isolation, the Director-General: Health may direct that such person, or his or her employer, is to pay the additional costs incurred;
- (iii) Quarantine or isolation facilities must adhere to the criteria stipulated in the approved guidelines for quarantine and isolation; and
- (iv) Monitoring and testing of employees in quarantine or isolation remains the responsibility of the employer and this would be at no cost to the state.



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