

# *The Contemporary Gazette*

*relevant new legislation for your business*



## Legal Update Volume 15 Issue 11, 22 June 2020

### This Update

This newsletter overviews new relevant National laws up to **22<sup>nd</sup> June 2020**.

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## Index





### General

1. Notable one liners



### Safety

2. Disaster Management Act: COVID-19 workplace safety for employers with 10 or less employees (as at 22 June 2020) 
3. Disaster Management Act: COVID-19 workplace safety for employers with more than 10 employees (as at 22 June 2020) 



## General

### 1. NOTABLE ONE LINERS

#### Agricultural Pests Act

[Draft control measures](#) for asian citrus psyllid, and citrus greening (asian and american strains) gazetted. Comment deadline 30 days from 12 June 2020.

*Note: A land user or owner will be expected to take to manage, eradicate and control these pests as prescribed.*

#### Carbon Tax Act

- (i) [Regulations on the greenhouse gas emissions intensity benchmark](#) gazetted and deemed commenced 1 June 2019.
- (ii) [Regulations on the allowance in respect of trade exposure in respect of carbon tax liability](#) gazetted and deemed commenced 1 June 2019.
- (iii) The [renewable energy premium](#) in respect of any tax period ending on 31 December 2019 has been gazetted.

#### Child Justice Act

Once a commencement date has been gazetted, the [Child Justice Amendment Act 2019](#) will, amongst others, increase the minimum age of criminal capacity of a child from the current 10 years of age to 12 years of age.

#### Competition Act

- (i) The [COVID-19 block exemption for the retail property sector](#) has been extended to include the cinema exhibition industry.
- (ii) The completion date for the [land-based public passenger transport market inquiry](#) to assess general competition in the market, analyse price setting and examine price regulation; to consider the impact of regulation, particularly route allocation, licensing and entry requirements; to consider operational subsidies provided to commuter buses, Metrorail and the Gautrain; and to consider government's

transport plans and assess transformation issues, including ownership patterns, has been further extended to December 2020.

*Note: The inquiry focuses on services offered by rail based public passenger transport services (Gautrain and Metrorail) and road based public passenger transport services (commuter buses, long distance buses, app based taxis eg Uber and Taxify, minibus taxis, metered taxis, and localised taxis).*

### Credit Rating Services Act

CRA notice 3 of 2020 (exemption of certain regulated persons from section 4) available from the FSCA.

### Disaster Management Act

(i) [COVID-19 directions \(small business development - personal care services\)](#) introduced to allow hairdressing, barbering, nail and toe treatment, facial treatment and make-up, body massage, and tattooing and body piercing to commence with operations upon ensuring full compliance with the relevant protocols for their services.

(ii) [COVID-19 directions \(mineral resources and energy - supply of energy and petroleum products\)](#) introduced to provide for the continuous supply of energy and petroleum products to society, and allow maintenance and construction work for energy projects to resume under strict safety, hygiene, sanitisation and social distancing protocols.

(iii) [COVID-19 directions \(financial - Financial Sector Conduct Authority, the Prudential Authority and the National Payment System Department\)](#) in the form of a communication that gives additional guidance to financial institutions (including preferably avoiding face to face meetings and home visits, and if not possible complying with additional protocols) and guidance to payment institutions;

*Note: The communication 12 of 2020 also confirms that payment institutions must continue to comply with Directive 2 of 2020 and the workplace safety directions, and that employees travelling between provinces and municipalities must have the required permit.*

(iv) [COVID-19 directions \(communications and digital - risk-adjusted strategy\)](#) revised to manage the extent to which electronic communications services and network, broadcasting and postal services are allowed to operate at alert level 3, and the additional mitigation measures made applicable to them.

(v) [COVID-19 directions \(communications- zero-rating education and health websites\)](#) introduced to provide a framework, including manner of application and technical parameters, for zero-rated access to local basic education, higher education and training content websites and identified COVID-19 websites.

(vi) [COVID-19 directions \(sport, cultural and religious events\)](#) revised to allow listed non-contact professional sport bodies to resume matches; to allow professional athletes in listed sports codes to resume training; and to set screening, testing, disinfecting, cleaning, mask, ventilation, isolation area, information, meal, beverage, compliance officer and compliance plan requirements and hotspot prohibitions.

(vii) [COVID-19 directions \(sports, arts and culture- live streaming of the creative sector services\)](#) revised to set level 3 mitigation measures for relevant performing arts institutions or playhouses, film and television productions using local cast, living legends and crew, creative sector services, visual arts, craft and design, music recordings, and performing arts.

(viii) [COVID-19 directions \(travel- entry into SA and exit from SA\)](#) revised to manage the process for the return of a SA national or permanent resident to his or her place of employment, study or residence outside SA at own cost and subject to capacity available on international flights permitted for evacuation and repatriation; and to state requirements for an owner or person in charge of an authorised entry or exit conveyance.

*Note: A person whose visa expired from 15 March 2020 and remained in SA during the national state of disaster will not be declared an undesirable person upon leaving SA during the national state of disaster up to and including 31 July 2020 - Any declaration of undesirability issued to any person who departed SA on or after 15 March 2020 is set aside.*

*Further Note: The directions also add late registration of birth and solemnisation and registration of marriages to Home Affairs level 3 services, and extend the validity period of certain asylum seeker permits, refugee statuses and Lesotho special permits.*

(ix) [COVID-19 directions \(higher education and training- return to university or campus\)](#) introduced to manage COVID-19 safety measures for campuses with contact classes; require ongoing plans for return to residences.

*Note: The directions require that any deviation from the identified risk-adjusted criteria must be approved by the Department and must fall within the maximum of 33% of the student population.*

*Further Note: The directions allow a small private higher education institutions with a student enrolment of less than 50 students to apply for exemption.*

(x) [COVID-19 directions \(environmental- biodiversity\)](#) level 3 manages permits, registrations, and certificates during alert level 3, allow or continue to allow culling, subsistence hunting, professional hunting, bioprospecting, biotrade and wildlife auctions, and allow moving, importing and exporting of specimens and products.

(xi) [COVID-19 directions \(environmental- fishing\)](#) level 3 confirms all fishing allowed under level 3 except charter fishing, place conditions on recreational fishing including prohibiting groups, and extend certain timeframes for rights, permits, exemptions, conditions or licences.

(xii) [COVID-19 directions \(environmental- national forests\)](#) introduced to manage specified licensing, evaluation of licence applications, inspections and issuing of licences under the National Forests Act during the pandemic.

(xiii) [COVID-19 directions \(environmental - processes\)](#) level 3 introduced to manage National Environmental Management Act, Air Quality Act, Waste Act, environmental impact assessment regulations, waste tyre regulations, and national appeal regulations during level 3.

(xiv) [COVID-19 directions \(employment - workplace safety\)](#) - see items 2 and 3 below.

(xv) Declaration of COVID-19 national state of disaster [extended to 15 July 2020](#).

(xvi) [COVID-19 directions \(justice - courts level 3\)](#) manages court and related services permitted under level 3 (including trials for violation of COVID-19 regulations), including specific COVID-19 safety measures.

*Note: The directions confirm that a judicial officer who presides over any matter in court may, where the interests of justice so require, order that the application of the directions be deviated from; and*

*Further Note: An accused person arrested for a petty offence must be released and warned to appear in court on a future date, unless the matter can be finalised at the first appearance.*

(xvii) [COVID-19 directions \(basic education - schools\)](#) revised to amend the phased in return to school of learners, educators and officials, and allow for reasonable variations.

(xviii) Declaration of drought as a national state of disaster [extended to 4 July 2020](#).

## Electoral Act

The Constitutional Court (CCT110/19) declared that the [Electoral Act](#) is unconstitutional to the extent that it requires that adult citizens may be elected to the National Assembly and Provincial Legislatures only through their membership of political parties. The declaration of unconstitutionality is prospective with effect from 11 June 2020, but its operation is suspended for 24 months to afford Parliament an opportunity to remedy the defect giving rise to the unconstitutionality.

## Electronic Communications Act

The [draft revised code for people with disabilities](#) contain, amongst others, (for example broadcasting audio description, sign language, subtitles, news text strapline, photosensitivity warnings and awareness campaigns, and cellular providers handset hearing/visual aid compatibility, and duties for individual-ECS licensees compliance reporting), and a national relay system. Comment deadline 30 working days from 12 June 2020.

## Foodstuffs, Cosmetics and Disinfectants Act

The [preservatives and oxidants regulations](#) have been amended to prescribe the quantity of sorbic acid permitted in all breads.

## Financial Advisory and Intermediary Services Act

FAIS notice 32 of 2020 (amendment of exemptions relating to private equity funds) available from FSCA.

## Financial Intelligence Centre Act

Reference updates (for example Insurance Act, Legal Practice Act, and National Credit Act), new listings (for example co-operative banks, money or value transfer providers, certain high value goods dealers, certain crypto asset activities, and certain clearing system participants), streamlining of supervisory bodies, and removal of reporting institution references, have been proposed for schedule 1 (accountable institutions), schedule 2 (supervisory bodies) and schedule 3 (reporting institutions) of [the Act](#). Comment deadline 60 days from 19 June 2020.

## Financial Markets Act

FM Notice 4 and 5 of 2020 (extended compliance period for certain [section 11](#) and [90](#) requirements), and FM notice 3 of 2020 (exemption regarding physical shareholders meetings), available from FSCA.

## Financial Sector Regulation Act

- (i) The joint standard 1 of 2020 (fitness, propriety and other matters related to [significant owners](#)), and exemption notice 1 of 2020/ general notice 3 of 2020 (exemption of certain persons from joint standard 1 of 2020), is available from the FSCA.
- (ii) The joint standard 2 of 2020 (margin requirements for non-centrally cleared OTC derivative transactions) is available from the FSCA.

## Foreign Service Act

Once a commencement date is gazetted, the [Foreign Service Act](#) will regulate the management, administration, functioning and operational requirements of the Foreign Service.

*Note: The Act will also exclude provisions of the [Government Immovable Asset Management Act](#), and will exclude the need to gazette regulations relating to security matters.*

## Hydrographic Act

Once a commencement date has been gazetted, the [Hydrographic Act](#) will enhance monitoring of safe navigation by the Hydrographic Office, including a duty for gazetted entities to communicate and submit information regarding navigational dangers that has an influence on the safety of navigating the area.

## Income Tax Act

- (i) Reminder that amendments are set for 1 July 2020 for [sections 49E, 50E, 64FA 64G, and 64H](#).
- (ii) Amount of [R125 000 prescribed](#) for the purposes of paragraph (b) of the definition of living annuity.
- (iii) Provision made for [special elections by an annuitant](#), during 1 June 2020 to 30 September 2020, regarding amounts referred to in paragraph (b) of the definition of living annuity.



## Independent Police Investigative Directorate Act

Once a commencement date has been gazetted, the [Independent Police Investigative Directorate Amendment Act 2019](#) will give Parliament an oversight role in relation to the suspension, discipline or removal of the executive director of IPID.

*Note: CCT255/15 held that [section 6\(6\)](#) of the Independent Police Investigative Directorate Act must be read as applying sections 17DA(3) to (7) of the SAPS Act to the suspension and removal of the Executive Director of IPID (until Parliament rectifies the section).*

## Insurance Act

Communication 34 of 2020 INS (available from the FSCA) sets out the Financial Sector Conduct Authority's stance on business interruption insurance.

## International Trade Administration Act

[COVID-19 Export control regulation](#) amended 11 June 2020.

## Labour Relations Act

New Commission for Conciliation, Mediation and Arbitration [fees](#) apply as from 1 June 2020.

## Long-term Insurance Act

INS Notice 12 of 2020 (long-term insurers that offer investment policies, and any person who acts as intermediary between such an insurer and a medical scheme in respect of an investment policy or proposal for an investment policy, are exempted from [regulation 4.2\(1\)](#) insofar as it relates to an investment policy where the policyholder is a medical scheme) available from the FSCA.

## Medicines and Related Substances Act

- (i) [Draft fee increases](#) proposed for human and veterinary medicine registration, unregistered medicine use, licensing, permits, certificates, inspections, entry amendments, and certificate transfers. Comment deadline 2 months from 12 June 2020.
- (ii) The formula for calculating [appropriate dispensing fees](#) has been updated.

### National Environmental Management Biodiversity Act

The notice prohibiting the carrying out of certain restricted activities involving rhinoceros horn , and the trade in rhino horn regulations, will both commence on a date to be gazetted.

*Note: The trade in rhino horn regulations state that it will prevail, if it conflicts with the threatened or protected species regulations or the CITIES regulations.*

### National Nuclear Regulator Act

Draft regulations on the long-term operation of nuclear installations gazetted. Comment deadline 60 days from 19 June 2020.

### National Road Traffic Act

The National Road Traffic Amendment Bill 2020 proposes, amongst many others, introducing a total prohibition for the use and consumption of alcohol by all motor vehicle operators on South African public roads, allowing traffic officers to impound vehicles in certain instances, registration of body builders and various manufacturers, registration of driving schools and driving instructors, duty on owner or controller to first ascertain a driver has the necessary licence, amendments to who may exceed speed limits, and prescribing response by emergency vehicles.

*Note: This proposal is problematic as, amongst others, medicine, mouth rinsing aids and some foods may contain a slight amount of alcohol - it will also require a revisitation of existing vehicle insurance by both insurers and insured persons.*

*Further note: The misrepresentation prohibition will be reworded to state no person shall use any other person's learner's licence, provisional driving licence or driving licence and present such licence as his or her own.*

*Final note: Also proposes an emergency vehicle, including one responding to a Disaster Management Act disaster, that approaches an intersection, must stop at the intersection and proceed only when it is safe to do so whilst a traffic signal is displaying a steady or flashing red light or is at a stop sign.*

## Occupational Health and Safety Act

- (i) Employers have been exempted, until 30 June 2021, from the duties created by the [ergonomics regulations](#) to perform an ergonomics risk assessment and to place an employee under medical surveillance in certain instances.
- (ii) Compliance in relation to [first aid training](#) accreditation with Quality Assurance Bodies extended to 31 March 2021.

*Note: An employer with more than 10 employees must have a certified first aid person available per 50 employees (per 100 employees in the case of a shop or office), which person must be certified by the SA Red Cross Society, St John's Ambulance, SA First Aid League, or a person approved by the chief inspector.*

## Pension Funds Act

Communication 33 of 2020 (RF) (which suggests that during this time of high market volatility, funds consider adapting their minimum individual reserve assumptions to be in line with market yields at exit date), is available from FSCA.

## Postal Services Act

Reminder that the [unreserved postal services regulations](#), for a registered operator or registrant who provides unreserved postal services listed in [Schedule 2](#) of the Act, commence 90 days from 27 March 2020.

## Public Finance Management Act

The [COVID-19 related exemption from the Act and regulations](#) has been amended.

## Standards Act

New, proposed, amended, and withdrawn [standards](#) have been gazetted for 19 June 2020.



[Back to index](#)



## Safety

# 2. DISASTER MANAGEMENT ACT: COVID-19 WORKPLACE SAFETY FOR EMPLOYERS WITH 10 OR LESS EMPLOYEES (AS AT 22 JUNE 2020)

Revised [workplace safety directions](#), that remain in force for as long as the declaration of a national disaster remains in force, were introduced on 4 June 2020.

*Note: This direction does not apply to an [excluded workplace](#) where a direction was issued under those regulations dealing with health and safety - also see [Mine Health and Safety Act COVID-19 guidelines](#).*

*Further note: This direction is linked to the [regulations](#), though it could comfortably fall under the Occupational Health and Safety Act (except for lack of opportunity to comment on draft changes and other oversight).*

*Further note: The Gauteng High Court found the regulations generally unconstitutional as there is a need to have each regulation duly considered in terms of the limitation it had on [Constitutional rights](#) - the tobacco prohibition was excluded as it was being heard in a different court. The government appealed the matter which indicates the regulations will remain in force until the Constitutional Court makes an order.*

*Final note: As on 21 June 2020 there were no amendments to the [regulations or directions](#) relating to restaurants, accommodation, conferences, meetings for businesses, cinemas, theatres, or casinos.*

Employers with 10 employees or less will have to consider:

- (i) The Occupational Health and Safety Act risk assessment duty (contained in [section 8](#) and [9](#));
- (ii) The [regulations](#) (specifically [movement](#), [compliance officers](#) and [level 3 blocked economic activity](#));
- (iii) [Clause 46](#) of the workplace safety directions (as set out below); and
- (iv) Any additional safety measures that may be made applicable to them in [other directions](#) (such as the [COVID-19 directions small business development - personal care services](#) if applicable).

*Note: The Gauteng High Court found the [SMMEs permits and PPE clothing directions](#) invalid.*

*Further note: Although the ecommerce directions have not been expressly repealed or withdrawn, it seems to be an [inactive direction](#) as it references level 4, and states that it applies for the duration of level 4.*

### Plan for returning employees

Permitted operations must have a basic plan for phasing in employees return, with special attention to those that can work remotely, those over 60 years, and those with comorbidities.

*Note: The text probably meant employees with voluntarily disclosed or clear comorbidities - consider, for example, the definition of **vulnerable employees** that refers to 'known or disclosed health issues or comorbidities or any other condition that may place the employee at a higher risk'.*

### Give employees space

Arrange the workplace to ensure employees are at least 1,5m apart.

*Note: Use physical barriers between employees, if 1,5m spacing not practical.*

### Let sick employees rest

Do not allow employees to work if they present with a cough, sore throat, shortness of breath (or difficulty in breathing), loss of smell or taste, fever, body aches, redness of eyes, nausea, vomiting, diarrhea, fatigue, weakness or tiredness.

*Note: Such employers may wish to consider **clause 20**, though not expressly made directly applicable, that states an employer should notify its employees that if they are sick or have symptoms associated with COVID-19 that they must not come to work and must take paid sick leave.*

Immediately contact the 0800 02 9999 for instruction, and direct the employee to act on those instructions.

*Note: The Gauteng High Court 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.*

### Provide safety materials and check on their use

Provide:

- (i) Cloth masks or require an employee to wear some form of cloth covering mouth and nose while at work;
- (ii) Each employee with hand sanitizers, soap and clean water to wash hands, and ensure each employee while at work washes with soap and sanitizes their hands; and

- (iv) Each employee with disinfectants to sanitize their workstations, and ensure their workstations are disinfected regularly.

*Note: It is suggested a hand sanitizer must have at least 70% alcohol content.*

### Take further steps

Take any other measures indicated by a risk assessment of the workplace.

*Note: In addition to the Occupational Health and Safety Act [employee duties](#), every worker (works in an employer's workplace including an employee of the employer or contractor, or self-employed persons or volunteer) must comply with measures introduced by their employer as required by this direction.*

Clause 46 specifically includes in 'other measures' the following [clause 43](#) measures, as appropriate and as reasonably practicable, if the public has access:

- (i) Determine floor area in square metres to allocate the number of customers and workers that may be inside the workplace at any one time with adequate space available;
- (ii) Arrange the workplace so there is a distance of at least 1,5m between workers and the public, or between members of the public;

*Note: Alternatively, put in place physical barriers at counters or provide workers with face shields or visors.*

- (iii) If appropriate, symptom screen persons other than employees entering the workplace, with due regard to available technology and any guidelines issued by the Department of Health;
- (iv) If appropriate, display notices advising non-employees entering the workplace of the precautions they must observe while in the workplace;
- (v) Require members of the public, including suppliers, to wear masks when inside premises;
- (vi) Ensure customers queuing inside or outside the workplace can maintain 1,5m from each other;
- (vii) Provide hand sanitizer for use by the public at the entrance to the workplace; and
- (viii) Assign an employee as a compliance officer to ensure adherence to these measures, and [all directions](#) in respect of hygienic conditions and limitation of exposure to persons with COVID-19.

## Right to refuse to work

Clauses 48 to 56 state that:

- (i) An employee may refuse to do any work where there appears to be **reasonable justification** to that employee that there is an imminent and serious risk of his or her exposure to COVID-19;
- (ii) Such an employee must, as soon as is reasonably practicable, notify the employer personally or through a health and safety representative of the refusal and reason for refusal; and
- (iii) An employer must, after consulting the compliance officer, try to resolve any issue that may arise from the refusal to work - the employee may refer the dispute to the CCMA or an accredited bargaining council if there is a dispute on whether this duty has been contravened.

*Note: The above applies whether or not the person refusing to work used or exhausted any other applicable external or internal procedure.*

*Further note: A prohibition is placed on promising benefits if an employee does not use the right to refuse, on deducting from an employee for anything an employer must do under the clauses, or on threatening any action, disciplining, prejudicing or harassing a person for using the right to refuse.*

*Final note: Legal discipline, in terms of Acts and common law, and based on an employee not acting with reasonable justification should not necessarily be automatically set aside by this delegated law. Legal advice may be required in a specific circumstance.*



[Back to index](#)



## Safety

### 3. DISASTER MANAGEMENT ACT: COVID-19 WORKPLACE SAFETY FOR EMPLOYERS WITH MORE THAN 10 EMPLOYEES (AS AT 22 JUNE 2020) 🚩

Revised [workplace safety directions](#), that remain in force for as long as the declaration of a national disaster remains in force, were introduced on 4 June 2020.

*Note: This direction does not apply to an [excluded workplace](#) where a direction was issued under those regulations dealing with health and safety - also see [Mine Health and Safety Act COVID-19 guidelines](#).*

*Further note: This direction is linked to the [regulations](#), which the Gauteng High Court found generally unconstitutional as there is a need to have each regulation duly considered in terms of the limitation it had on [Constitutional rights](#) - the tobacco prohibition was excluded as it was being heard in a different court. The government appealed the matter which indicates the regulations will remain in force until the Constitutional Court makes an order.*

*Final note: As on 21 June 2020 there were no amendments to the [regulations or directions](#) relating to restaurants, accommodation, conferences, meetings for businesses, cinemas, theatres, or casinos.*

Employers with 10 or more employees will have to consider:

- (i) The Occupational Health and Safety Act duty to conduct a risk assessment (as per [section 8](#) and [9](#));
- (ii) The [regulations](#) (specifically [movement](#), [compliance officers](#), [operation of sector](#) and [blocked activity](#));
- (iii) The workplace safety directions (as set out below); and
- (iv) Any additional safety measures that may be made applicable to them in [other directions](#).

*Note: Although the ecommerce directions have not been expressly repealed or withdrawn, it seems to be an [inactive direction](#) as it references level 4, and states that it applies for the duration of level 4.*



## Phase-in return

Phase in, or continue to phase in, the return of employees as per the [clause 17](#) plan, that includes:

- (i) The date the workplace opens, hours of opening, and COVID-19 compliance officer details;
- (ii) A list of employees allowed to return, and of employees required to work from home;
- (iii) The plan and timetable for the phased-in return;
- (iv) Identification of vulnerable employees for special measures as per Department of Health Guidelines;
- (v) Ways of minimizing number of workers at the workplace at any one time;
- (vi) Measures required by this direction, and any [sectoral guideline](#), to get the workplace COVID-19 ready;
- (vii) Measures for daily screening employees, and screening clients, contractors and visitors.

*Note: Vulnerable employees are defined as any employee, as contemplated in the Department of Health Guidance on vulnerable employees and workplace accommodation in relation to COVID-19:*

- *with known or disclosed health issues or comorbidities or any other condition that may place the employee at a higher risk of complications or death than other employees if infected with COVID-19; or*
- *above the age of 60 years who is at a higher risk of complications or death if infected.*

## Administrative measures

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

Undertake [clause 20](#) administrative measures, including:

- (i) A risk assessment to effect the minimum direction measures considering the employer specific situation;

*Note: Further submission and policy expectations are placed on employers with 500+ employees.*

- (ii) Special measures for vulnerable employees, as per the guidance on vulnerable employees and workplace accommodation in relation to COVID-19, for their safe return to work or working from home;
- (iii) Notifying all workers of this direction contents, and the intended manner of implementing it;
- (iv) Notifying employees that if they are sick or have symptoms associated with COVID-19 that they must not come to work and must take paid sick leave;

*Note: The symptoms are described as cough, sore throat, shortness of breath (or difficulty in breathing), loss of smell or taste, fever, body aches, redness of eyes, nausea, vomiting, diarrhea, fatigue, weakness or tiredness.*

- (v) A manager acting as a COVID-19 compliance officer to oversee the clause 17 plan, and compliance with the workplace health and safety measures, to give effect to the requirements of this direction;

*Note: This includes appointing employees to perform this function if there is more than one workplace.*

- (vi) Addressing employee or workplace representative concerns and keeping them informed;

*Note: Where there is 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.*

- (vii) Monitoring and supervising the measures required by this direction, and the risk assessment plan;

- (viii) Minimizing, as far as practicable, the number of workers at the workplace at any given time through rotation, staggered working hours, shift systems, remote working arrangements or similar measures to achieve social distancing, and to limit congestion in public transport and at the workplace;

- (ix) Measures to minimize contact between workers, and between workers and members of the public;

- (x) Information in any form or manner to workers that raises awareness on the dangers of the virus, how it transmits, measures to prevent transmission, and where to go for screening or testing if presenting with COVID-19 related symptoms;

*Note: A worker here refers to any person who works in an employer's workplace including an employee of the employer or contractor, or self-employed persons or volunteer.*

- (xi) Informing the Department of Health and of Employment and Labour, if a worker is diagnosed with COVID-19, investigating the mode of exposure, determining the need to temporarily close, and administrative support to any [contact-tracing measures](#) implemented by the Department of Health.

*Note: 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.*

## **Social distancing**

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

Comply with [social distancing requirements](#):

- (i) Every employee must arrange the workplaces to ensure minimal contact between workers and, as far as practicable, to ensure there is a minimum of 1,5m between workers while working;

*Note: Reducing the number of workers present in the workplace at any time may assist.*

*Further note: If not possible to arrange work stations at least 1,5m apart, then arrange physical barriers between or on work stations to form a solid physical barrier between workers while working.*

*Final note: Depending on the workplace or sector, the minimum distance may need to be greater.*

- (ii) When required, supply appropriate personal protective equipment free of charge based on a risk assessment of the workplace; and
- (iii) Ensure social distancing measures, such as queue control, are implemented through supervision in the workplace and in the common areas inside (eg canteens and lavatories), and immediately outside.

*Note: This may include dividing the workforce into groups or staggering break-times to avoid concentration in common areas.*

### [Symptom screening](#)

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

[Screen](#) any worker when they report for work to determine whether they have any of the symptoms associated with COVID-19 and/or suffer from any of the Additional Symptoms, and:

- (ii) Require workers to immediately inform the employer if experiencing any of the symptoms while at work;
- (iii) Comply with any relevant Departmental screening or medical surveillance and testing guidelines; and
- (iv) Do not allow a worker with symptoms, or stating he or she has symptoms, to enter or report for work.

*Note: Associated symptoms are currently listed as cough, sore throat, shortness of breath or difficulty in breathing, or loss of smell or taste.*

*Further note: Additional symptoms are currently listed as fever, body aches, redness of eyes, nausea, vomiting, diarrhoea, fatigue, weakness or tiredness.*

If a worker with symptoms is already at work:

- (i) Immediately isolate, provide a surgical mask, and arrange transportation, in a manner than does not place other workers or the public at risk, to be self-isolated or to be referred for a medical exam or test;
- (ii) Assess transmission risk, disinfect the area and workstation, undertake contact tracing, refer workers who may be at risk for screening, and take any appropriate measure to prevent possible transmission;
- (iii) Place him or her on paid sick leave, or if the employee's sick leave entitlement under the section is exhausted, make application for an UIF illness benefit; and
- (iv) 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.

*Note: If there is evidence that the worker contracted COVID-19 arising out of and in the course of employment, lodge a [claim for compensation](#).*

If a worker has been diagnosed and isolated as per the Department of Health Guidelines (Clinical management of suspected or confirmed COVID-19 disease), only allow that worker to return if:

- (i) The mandatory 14 days of self-isolation is completed;
- (ii) A medical evaluation confirmed fitness to work (where there was moderate to severe illness);
- (iii) The employer can ensure the worker will strictly adhere to personal hygiene, wearing of masks, social distancing, and cough etiquette;
- (iv) The worker is closely monitored for symptoms on return to work; and
- (v) The worker wears a surgical mask for 21 days from the date of diagnosis.

*Note: The Gauteng High Court 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.*

If a worker has been in contact in the workplace with another worker diagnosed with COVID-19, assess that exposure as per the guidelines to ascertain if there was a high or low risk of transmission:

- (i) If low risk, the worker may be allowed to continue working using a cloth mask and following standard precautions, and the worker's symptoms must be monitored for 14 days from first contact;

- (ii) If high risk, the worker must remain in quarantine for 14 days, and the employer of that worker must place the worker on paid sick leave (or if the employee's sick leave entitlement under the section is exhausted, make application for an UIF illness benefit).

*Note: The guidelines refer to the Department of Health guidelines for symptom monitoring and management of essential workers for COVID-19 related infection, and guidelines for clinical management of suspected or confirmed COVID-19 disease.*

### **Cleaning measures**

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

Comply with the **cleaning measures**:

- (i) Free of charge ensure sufficient hand sanitizers based on number of persons who access the workplace at the entrance of the workplace, and in the workplace areas that workers or persons are required to use;
- (ii) Free of charge ensure every employee who works away from the workplace, other than at home, has an adequate supply of hand sanitizer;
- (iii) Provide a worker that 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;
- (iv) Disinfect all work surfaces and equipment before work begins, regularly during the working period, and after work ends;
- (v) Regularly clean and disinfect all shared areas such as toilets, common areas, handles, and electronic equipment;
- (vi) Disable biometric systems or make them COVID-19-proof;
- (vii) Provide adequate facilities for washing hands with soap and clean water, and only supply paper towels for drying hands, not fabric towelling;
- (viii) Require workers to wash and sanitize their hands regularly while at work;
- (ix) Instruct workers interacting with the public to sanitize their hands between each public interaction; and
- (x) Routinely clean and disinfect surfaces that workers and members of the public come into contact with.

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

### **Wear a mask**

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

Comply with the **cover measures**:

- (i) Free of charge give each employee at least 2 cloth masks that meet the Department of Health's guideline on how to use a mask cloth, for the employee to wear at work and while commuting;
- (ii) Require any other worker to wear masks in the workplace;
- (iii) Determine the number and replaceability of cloth masks provided to employees or required of other workers as per any sectoral guidelines and the employee or worker's specific conditions of work (for example environments where a mask may become wet or soiled); and
- (iv) Inform, train, instruct and supervise workers on the correct use of cloth masks.

*Note: Where a risk assessment indicates specific personal protective equipment is needed, provide those workers with the accredited personal protective equipment as per Department of Health guidelines.*

### **Public access**

Depending on what is reasonably practicable given the nature of the workplace where the public has access, comply with the **public access measures**:

- (i) Determine floor area in square metres to allocate the number of customers and workers that may be inside the workplace at any one time with adequate space available;
- (ii) Arrange the workplace so there is a distance of at least 1,5m between workers and the public, or between members of the public;

*Note: Alternatively put in place physical barriers at counters or provide workers with face shields or visors.*

- (iii) If appropriate, symptom screen persons other than employees entering the workplace, with due regard to available technology and any guidelines issued by the Department of Health;
- (iv) If appropriate, display notices advising non-employees entering the workplace of the precautions they must observe while in the workplace;
- (v) Require members of the public, including suppliers, to wear masks when inside their premises;

- (vi) Ensure customers queuing inside or outside the workplace can maintain 1,5m from each other;
- (vii) Provide hand sanitizer for use by the public at the entrance to the workplace; and
- (viii) Assign an employee as a compliance officer to ensure adherence to these measures, and all directions in respect of hygienic conditions and limitation of exposure to persons with COVID-19.

## Ventilate

Comply with the [ventilation measures](#):

- (i) Keep the workplace well ventilated by natural or mechanical means to reduce SARS-CoV-2 viral load;
- (ii) If reasonably practicable, have an effective local extraction ventilation system with high-efficiency particulate air HEPA filters, regularly cleaned and maintained, that do not feedback in open windows; and
- (iii) Ensure filters are cleaned and replaced as per manufacturer's instructions by a competent person.

## Personal protective equipment

[Check regularly](#) on the Department of Health, NCID and National Institute for Occupational Health websites if any specialised personal protective equipment for COVID-19 is required or recommended in any guidelines given the nature of the workplace or the worker's duties and the associated level of risk.

## Right to refuse to work

Clauses 48 to 56 state that:

- (i) An employee may refuse to do any work where there appears to be **reasonable justification** to that employee that there is an imminent and serious risk of his or her exposure to COVID-19;
- (ii) Such an employee must as soon as is reasonably practicable notify the employer personally or through a health and safety representative of the refusal and the reason for the refusal; and
- (iii) An employer must, after consultation with the compliance officer and any health and safety committee, endeavour to resolve any issue that may arise from the exercise of the right to refuse to work - the employee may refer the dispute to the CCMA or an accredited bargaining council if there is a dispute on whether this duty has been contravened.

*Note: The above applies whether or not the person refusing to work used or exhausted any other applicable external or internal procedure.*

*Further note: A prohibition is placed on promising benefits if an employee does not use the right to refuse, on deducting from an employee for anything an employer must do under the clauses, or on threatening any action, disciplining, prejudicing or harassing a person for using the right to refuse.*

*Final note: Legal discipline, in terms of Acts and common law, and based on an employee not acting with reasonable justification should not necessarily be automatically set aside by this delegated law. Legal advice may be required in a specific circumstance.*



[Back to index](#)

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