

## **Circular to the Industry**

### **Consolidated Directive on Occupational Health and Safety Measures**

On 11 June 2021, the Department of Employment and Labour (Department) issued an updated Consolidated Directive on Occupational Health and Safety (Directive). Important additions have been made to the Guidelines from the Consolidated Directive on Occupational Health and Safety Measures in Certain Workplaces published on 1 October 2020.

It is critical that employers be aware of these requirements and start taking steps to ensure compliance.

Section 6(3)(b)(iii) of the Guideline provides that where an employee who presents with Covid-19 related symptoms must not report for work and such employee is entitled to paid sick leave. If the employee's sick leave entitlement is exhausted, such employee must make application for an illness benefit in terms of section 20 of the Unemployment Insurance Act, 2001.

If there is evidence that the employee contracted COVID-19 arising out and in the course of employment, the employer should lodge a claim of compensation in terms of Compensation for Occupational Injuries and Diseases Act, in accordance with Notice No.193 published on 3 March 2020.

The Directive also provides for a number of additions relating directly to the vaccination of employees in the workplace. They are discussed below.

Section 3(1)(a)(ii) of the Directive provides that every employer must undertake a risk assessment within 21 days of the coming into effect of the Directive. The risk assessment must stipulate, among others, whether the employer intends making the Covid-19 vaccination mandatory for its employees. If so, the employer should identify

those employees who must be vaccinated due to the risk of transmission through the nature of their work or their risk to contract Covid-19 due to their age or comorbidities.

The employers must develop a plan / amend an existing plan which outlines, amongst others, the measures that the employer intends to implement relating to the vaccination of its employees. The Directive makes it clear that when implementing such a plan, employers must consider the employee's rights to bodily integrity as well as their right to freedom of religion, belief, and opinion. If the employer decides that vaccination is mandatory, the vaccination plan must consider the guidelines contained in Annexure C to the Directive.

Section 4(1)(i) employers 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.”

Section 4(1)(k) states that employers must give administrative support to assist its employees to register on the Electronic Vaccine Data System Registration Portal.

Section 4(1)(l) provides that employers must provide employees with paid time off to be vaccinated provided that the employee provides proof of the vaccination that has occurred or is to occur during hours that the employee is ordinarily at work.

In the event that an employee suffers side effects as a result of the vaccination and is unable to attend at work, the employee is entitled to be placed on paid sick leave. In such circumstances, a Covid-19 vaccination certificate issued by an official vaccination site may be accepted in lieu of a medical certificate.

In terms of Annexure C of the Directive, 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.

Where an employee refuses to be vaccinated on constitutional or medical grounds:

- The employer should counsel the employee, if requested, allow the employee to seek guidance from a health and safety representative, worker representative or trade union official.
- The employer should refer an employee for further medical evaluation should there be a medical contraindication for 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.

The above constitutes a brief summary of the notable changes to the Directive and does not constitute legal advice.

Industry members are encouraged to read the Directive in its entirety as the above does not cover all of the changes made thereto. Please click on the link below to access the Gazette:

<http://www.nbcrfli.org.za/Legislative%20Documents/OHS.COVID19.workplace.measures.gov.gazette.44700.11jun21.pdf>

**Ends//**

Yours Faithfully

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National Secretary

**(This document is sent electronically, therefore it is not signed)**