

DEPARTMENT OF EMPLOYMENT AND LABOUR

DIRECTION BY THE MINISTER OF EMPLOYMENT AND LABOUR IN TERMS OF REGULATION 10 (8) OF THE REGULATIONS ISSUED BY THE MINISTER OF COOPERATIVE GOVERNANCE AND TRADITIONAL AFFAIRS IN TERMS OF SECTION 27 (2) OF THE DISASTER MANAGEMENT ACT, 2002 (ACT NO. 57 OF 2002)

I, Thembelani Waltermade Nxesi, the Minister of Employment and Labour, acting in terms of Regulation 10 (8) of the Regulations issued by the Minister of Cooperative Governance and Traditional Affairs in terms of section 27 (2) of the Disaster Management Act, 2002 (Act No. 57 of 2002) in terms of Regulation 10 (8) of the Regulations issued by the Minister of Cooperative Governance and Traditional Affairs in terms of section 27 (2) of the Disaster Management Act, 2002 (Act No. 57 of 2002) has determined that it is necessary to implement occupational health and safety measures in certain workplaces to prevent the escalation of COVID-19 infections as set out in the Schedule.

MR. T. W. NXESI, MP
MINISTER OF EMPLOYMENT AND LABOUR
DATE:

SCHEDULE

COVID-19 Direction on Health and Safety in the Workplace

issued by the Minister in terms of Regulation 10(8) of the National Disaster Regulations

Preamble

1. On 17 March 2020, the Department of Employment and Labour issued guidelines for employers to deal with COVID-19 at workplaces.¹ The Department of Employment and Labour appealed to employers to use the prescriptions of the OHS Act in particular the Hazardous Biological Agents Regulations governing workplaces in relation to Coronavirus Disease 2019 caused by the SARS-CoV-2 virus.
2. In the period since the issuing of the guidelines, a clearer picture has emerged about COVID-19 and the nature of the hazard and risk in the workplace and the precautions that should be taken to minimise the risk. The purpose of these directions is to stipulate measures that must be taken by employers in order to protect the health and safety of workers and members of the public who enter their workplaces or are exposed to their working activities.
3. These directions seek to ensure that the measures taken by employers under OHS Act are consistent with the overall national strategies and policies to minimise the spread of COVID-19.
4. The OHS Act, 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.
5. The OHS Act further requires employers, to ensure, as far as is reasonably practicable, that all persons who may be directly affected by their activities (such as 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. This obligation also applies to self-employed persons (for example, plumbers or electricians) whose working activities bring them into contact with members of the public.
6. For the purposes of OHS Act in the workplaces to which this Direction applies, the identifiable hazard relating to COVID-19 is that workers face is the transmission by an infected person to workers in the workplace. In workplaces to which the public has access, the hazard includes

¹<http://www.labour.gov.za/DocumentCenter/Publications/Occupational%20Health%20and%20Safety/COVID-19%20Guideline%20Mar2020.pdf>

transmission of the virus by members of the public. Each situation requires special measures to be implemented by employers in order to prevent the transmission of the virus.

7. Although OHSA requires employers to review and update risk assessments on a regular basis, the new hazard posed by COVID-19 is clearly identifiable and the basic measures to eliminate or minimise the risk are now well known². The object of conducting or updating a risk assessment in respect of COVID-19 is to provide specific focus on COVID-19 and adapt the measures required by this Direction to specific working environments taking into account the Risk Assessment Guides published online by the National Department of Health.
8. This Direction is based on infection transmission prevention and specific occupational hygiene practices that focus on the need for employers to implement measures to mitigate or eliminate the transmission of the virus in the workplace.
9. This Direction recognises that there are sector specific measures that need to be taken into account and accordingly provides for sector guidelines to supplement this Direction.
10. This Direction does not reduce the existing obligations of the employer in terms of OHSA nor prevent an employer from implementing more stringent measures in order to prevent the spread of the virus.

Definitions

11. In this Direction, unless the context indicates otherwise –
 - “**BCEA**” means the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997);
 - “**COVID-19**” means Coronavirus Disease 2019;
 - “**Disaster Management Act**” means the Disaster Management Act, 2002 (Act No. 57 of 2002);
 - “**OHSA**” means the Occupational Health and Safety Act, 1993 (Act No. 85 of 1993);
 - “**PPE**” means personal protective equipment;
 - “**virus**” means the SARS-CoV-2 virus;
 - “**worker**” means any person who works in an employer’s workplace including an employee of the employer or contractor, a self-employed person or volunteer³;
 - “**workplace**” means any premises or place where a person performs work.

Application

12. Subject to clause 13, this Direction applies to employers and workers in respect of-

² These basic measures may be further refined in the sector guidelines or in amendments to the direction as the science on the transmission of the disease progresses.

³ The distinction between ‘worker’ and ‘employee’ in the Direction is used to ensure that all persons who in work in a workplace are protected and to locate the responsibility in respect of certain obligations imposed on the employer in respect of its employees such as an application for illness benefits or worker’s compensation.

- 12.1 the manufacturing, supply or provision of essential goods or essential services, as defined in Schedule 2 of the Regulations issued in terms of section 27(2) of the Disaster Management Act;
 - 12.2 any workplace permitted to continue or commence operations before the expiry of those Regulations.
13. This Direction does not apply to workplaces-
- 13.1 excluded from the OHS Act in terms of section 1(3) of the OHS Act;
 - 13.2 in which medical and health care services as defined in Schedule 2 in the Regulations issued in terms of section 27(2) of the Disaster Management Act (other than retail pharmacies) are performed;
 - 13.3 in respect of which another Minister has issued a direction under those Regulations dealing with health and safety.
14. Subject to the employer's obligations under OHS Act to conduct a risk assessment, employers with less than 10 employees need only apply the measures set out in clause 40 of this Direction.

Period of application

15. This Direction remains in force for as long as the declaration of a national disaster published in *Government Gazette* 43096 on 15 March 2020 remains in force.

Administrative measures

16. Every employer must establish the following administrative measures:
- 16.1 It must undertake a risk assessment to give effect to the minimum measures required by this Direction taking into account the specific circumstances of the workplace.
 - 16.2 if the employer employs more than 500 employees, that employer must submit a record of its risk assessment together with a written policy concerning the protection of the health and safety of its employees from COVID-19 as contemplated in section 7(1) of OHS Act to-
 - 16.2.1 its health and safety committee established in terms of section 19 of OHS Act;
 - and
 - 16.2.2 the Department of Employment and Labour.⁴
 - 16.3 it must notify all workers of the contents of this Direction and the manner in which it intends to implement it;
 - 16.4 it must notify its employees that if they are sick or have symptoms associated with the COVID-19 that they must not come to work and to take paid sick leave in terms of section 22 of the BCEA;

⁴ Submission must be made to the Provincial Chief Inspector at <http://www.labour.gov.za/About-Us/Ministry/Pages/IES0320-7398.aspx>

- 16.5 it must appoint a manager to address employee or workplace representative concerns and to keep them informed and, in any workplace in which an health and safety committee has been elected, consult with that committee on the nature of the hazard in that workplace and the measures that need to be taken;
- 16.6 it must ensure that the measures required by this Direction and its risk assessment plan are strictly complied with through monitoring and supervision;
- 16.7 it must, as far as practicable, minimize the number of workers on at the workplace at any given time through rotation, staggered working hours, shift systems, remote working arrangements or similar measures in order to achieve social distancing, as contemplated in clause 17;
- 16.8 it must take measures to minimize contact between workers as well as between workers and members of the public;
- 16.9 it must provide workers with information that raises awareness in any form or manner, including where reasonably practicable leaflets and notices placed in conspicuous places in the workplace informing workers of the dangers of the virus, the manner of its transmission, the measures to prevent transmission such as personal hygiene, social distancing, use of masks, cough etiquette and where to go for screening or testing if presenting with the symptoms;
- 16.10 if a worker has been diagnosed with COVID-19, an employer must-
 - 16.10.1 inform the Department of Health⁵ and the Department of Employment and Labour; and
 - 16.10.2 investigate the cause including any control failure and review its risk assessment to ensure that the necessary controls and PPE requirements are in place; and
- 16.11 it must give administrative support to any contact-tracing measures implemented by the Department of Health.

Social distancing measures

- 17. Every employer must arrange the workplace to ensure minimal contact between workers and as far as practicable ensure that there is a minimum of one and a half metres between workers while they are working, for example, at their workstations. Depending on the circumstances of the workplace or the nature of the sector, the minimum distance may need to be longer. Reducing the number of workers present in the workplace at any time in terms of clause 16.5 may assist in achieving the required social distancing.
- 18. If it is not practicable to arrange work stations to be spaced at least one and a half metres apart, the employer must-
 - 18.1 arrange physical barriers to be placed between work stations or erected on work stations to form a solid physical barrier between workers while they are working; or
 - 18.2 if necessary, supply the employee free of charge with appropriate PPE based on a risk assessment of the working place.

⁵ Report may be made to the COVID-19 hotline: 0800 02 9999.

19. Every employer must ensure that social distancing measures are implemented through supervision both in the workplace and in the common areas outside the immediate workplace through queue control or within the workplace such as canteens and lavatories. These measures may include dividing the workforce into groups or staggering break-times to avoid the concentration of workers in common areas.

Health and safety measures

20. Every employer must implement the following health and safety measures.

Symptom screening⁶

21. Every employer must take measures to-
- 21.1 screen any worker, at the time that they report for work, to ascertain whether they have any of the observable symptoms associated with COVID-19, namely fever, cough, sore throat, redness of eyes or shortness of breath (or difficulty in breathing);
 - 21.2 require every worker to report whether they suffer from any of the following additional symptoms: body aches, loss of smell or loss of taste, nausea, vomiting, diarrhoea, fatigue, weakness or tiredness; and
 - 21.3 require workers to immediately inform the employer if they experience any of the symptoms in sub-clauses 21.1 and 21.2 while at work.
22. Employers must comply with any guidelines issued by the the National Department of Health in consultation with the Department in respect of –
- 22.1 symptom screening; and
 - 22.2 if in addition required to do so, medical surveillance and testing.
23. If a worker presents with those symptoms, or advises the employer of these symptoms, the employer must –
- 23.1 not permit the worker to enter the workplace or report for work; or
 - 23.2 if the worker is already at work immediately-
 - 23.2.1 isolate the worker, provide the worker with a FFP1 surgical mask and arrange for the worker to be transported in a manner that does not place other workers or members of the public at risk either to be self-isolated or for a medical examination or testing; and
 - 23.2.2 assess the risk of transmission, disinfect the area and the worker’s workstation, refer those workers who may be at risk for screening and take any other appropriate measure to prevent possible transmission;
 - 23.3 ensure that the worker is tested or referred to an identified testing site;
 - 23.4 place its employee on paid sick leave in terms of section 22 of the BCEA or if the employee’s sick leave entitlement under the section is exhausted, make application for an illness benefit in terms of clause 4 of the Directive issued on 25 March 2020 on the COVID-

⁶ For more specific guidelines see: Department of Health “Guidelines for symptom monitoring and management of essential workers for COVID-19 related infection”.

- 19 Temporary Employer Relief Scheme under regulation 10(8) of the Regulations promulgated in terms of section 27(2) of the Disaster Management Act;
- 23.5 ensure that 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, 1998 (Act No. 55 of 1998);
- 23.6 if there is evidence that the worker contracted COVID-19 as a result of occupational exposure, lodge a claim for compensation in terms of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993) in accordance with Notice 193 published on 3 March 2020.⁷
24. If a worker has been diagnosed with COVID-19 and isolated in accordance with the Department of Health Guidelines, an employer may only allow a worker to return to work on the following conditions:
- 24.1 The worker has undergone a medical evaluation confirming that the worker has been tested negative for COVID-19;
- 24.2 the employer ensures that personal hygiene, wearing of masks, social distancing, and cough etiquette is strictly adhered to by the worker; and
- 24.3 the employer closely monitors the worker for symptoms on return to work.
- Sanitizers, disinfectants and other measures*
25. For the purposes of these clauses, a hand sanitizer must be one that has at least 70% alcohol content and is in accordance with the recommendations of the Department of Health.
26. Every employer must, free of charge, ensure that –
- 26.1 there are sufficient quantities of hand sanitizer based on the number of workers or other persons who access the workplace at the entrance of, and in, the workplace which the workers or other persons are required to use;
- 26.2 every employee who works away from the workplace, other than at home, must be provided with an adequate supply of hand sanitizer.
27. If a worker interacts with the public, the employer must provide the worker with sufficient supplies of hand-sanitizer at that worker’s workstation for both the worker and the person with whom the worker is interacting.
28. Every employer must take measures to ensure that-
- 28.1 all work surfaces and equipment are disinfected before work begins, regularly during the working period and after work ends;
- 28.2 all areas such as toilets, common areas, door handles, shared electronic equipment are regularly cleaned and disinfected;
- 28.3 disable biometric systems or make them COVID-19-proof.
29. The employer must ensure that-

⁷ GG 43126 GN193 of 23 March 2020.

- 29.1 there are adequate facilities for the washing of hands with soap and clean water;
- 29.2 only paper towels are provided to dry hands after washing – the use of fabric toweling is prohibited;
- 29.3 the workers are required to wash their hands and sanitize their hands regularly while at work;
- 29.4 the workers interacting with the public are instructed to sanitize their hands between each interaction with public;
- 29.5 surfaces that workers and members of the public come into contact with are routinely cleaned and disinfected.

Cloth masks

- 30. The main benefit of everyone wearing a cloth mask is to reduce the amount of virus droplets being coughed up by those with the infection and transmitted to others and to surfaces that others may touch. Since some persons with the virus may not have symptoms or may not know they have it, the Department of Health requires that all persons wear cloth masks when in a public place.
- 31. For the reasons underlying the Department of Health’s requirement, every employer must –
 - 31.1 provide each of its employees, free of charge, with a minimum of two cloth masks, which comply with the requirement set out in the Guidelines issued by the Department of Trade, Industry and Competition,⁸ for the employee to wear while at work and while commuting to and from work; and
 - 31.2 require any other worker to wear masks in the workplace.
- 32. The number and replaceability of cloth masks that must be provided to an employee or required of other workers must be determined in accordance with any sectoral guideline and in the light of the employee or worker’s conditions of work, in particular, where these may result in the mask becoming wet or soiled.
- 33. Every employer must ensure that workers are informed, instructed, trained and instructed as to the correct use of cloth masks.
- 34. An employer must make appropriate arrangements for the washing, drying and ironing of cloth masks in accordance with the Guidelines referred in clause 31.1 recommendations.
- 35. The general requirement for workers to wear masks does not derogate from the fact that, where a risk assessment indicates that PPE is required, those categories of workers must be provided with the accredited PPE in accordance with Department of Health guidelines.

Measures in respect of workplaces to which public have access

⁸ http://www.thedtic.gov.za/wp-content/uploads/Updated_Recommended_Guidelines_Fabric_Face_Masks.pdf .

36. The principal purpose of the measures contained in the following clause is to protect workers from being exposed to the virus through their interaction with the public and to protect members of the public from being exposed to virus through their interaction with workers or other persons present in such a workplace.
37. Depending on what is reasonably practicable given the nature of the workplace, every employer must-
- 37.1 arrange the workplace to ensure that there is a distance at least one and a half metres between workers and members of the public or between members of the public; or
 - 37.2 put in place physical barriers or provide workers with face shields or visors;
 - 37.3 if appropriate, undertake symptom screening measures of persons other than the employees entering the workplace with due regard to available technology and any guidelines issued by the Department of Health;
 - 37.4 if appropriate, display notices advising persons other than employees entering the workplace of the precautions they are required to observe while in the workplace;
 - 37.5 require members of the public, including suppliers, to wear masks when inside their premises.

Ventilation

38. Every employer must –
- 38.1 keep the workplace well ventilated by natural or mechanical means to reduce the SARS-CoV-2 viral load;
 - 38.2 where reasonably practicable, have an effective local extraction ventilation system with high-efficiency particulate air HEPA filters, which is regularly cleaned and maintained, and its vents do not feed back in through open windows;
 - 38.3 ensure that filters are cleaned and replaced in accordance with the manufacturer's instructions by a competent person.

Other PPE

39. Every employer must check regularly on the websites of the National Department of Health⁹, National Institute of Communicable Diseases¹⁰ and the National Institute for Occupational Health¹¹ whether any additional PPE is required or recommended in any guidelines given the nature of the workplace or the nature of a worker's duties.

Small businesses

40. Employers with less than 10 employees must take the following measures:
- 40.1 arrange the workplace to ensure that employees are at least one and half metres apart or, if not practicable, place physical barriers between them to prevent the possible transmission of the virus;

⁹ <http://www.health.gov.za/>

¹⁰ <https://www.nicd.ac.za/>

¹¹ <http://www.nioh.ac.za/>

- 40.2 ensure that employees that present with the symptoms set out in clause 21 are not permitted to work;
- 40.3 immediately contact the COVID-19 hotline: 0800 02 9999 for instruction and direct the employee to act in accordance with those instructions;
- 40.4 provide cloth masks or require an employee to wear some form of cloth covering over their mouth and nose while at work;
- 40.5 provide each employee with hand sanitizers, soap and clean water to wash their hands and disinfectants to sanitize their workstations;
- 40.6 ensure that each employee while at work washes with soap and sanitizes their hands; and
- 40.7 ensure that their workstations are disinfected regularly;
- 40.8 take any other measures indicated by a risk assessment.

Worker obligations

- 41. In addition to the obligations of employees under the OHS Act, every worker is obliged to comply with measures introduced by their employer as required by this Direction.

Monitoring and enforcing the Direction

- 42. An inspector designated in terms of section 28 of OHS Act may perform any of the functions in section 29 of OHS Act and exercise any of the powers listed in section 30 of OHS Act in order to monitor compliance with this Direction.
- 43. In so far as any contravention of this Direction constitutes a contravention of an obligation or prohibition under OHS Act, the offences and penalties provided for in section 38 of OHS Act apply.
- 44. An inspector, contemplated in clause 42, may for the purpose of promoting, monitoring and enforcing compliance with the OHS Act, advise employees and employers of their rights and obligations in terms of this Direction in accordance with section 64 of the BCEA.

Sectoral guidelines

- 45. The Chief Inspector appointed in terms of section 27 of the OHS Act must facilitate the development of sector specific guidelines to supplement this Direction by engaging with the social partners through the offices of the National Economic Development and Labour Advisory Council.
- 46. The sector specific guidelines must follow the template attached as Annexure A.

Annexure A

SECTORAL GUIDELINES TEMPLATE

1. Risk assessment
 - 1.1. Identification of exposure levels
 - 1.2. Identification of “high contact” activities
 - 1.3. Identification of vulnerable workers and special measures for their protection, including protection against unfair discrimination or victimization
2. Engineering controls
 - 2.1. Ventilation
 - 2.2. Physical barriers
 - 2.3. Adaptation of workstations to increase social distance
3. Administrative controls
 - 3.1. Screening/ reporting of symptoms/ sick leave
 - 3.2. Minimizing contact
 - 3.3. Rotation and shift work
 - 3.4. Work-at-home strategies
 - 3.5. Communication and information strategies
 - 3.6. Role of health and safety committees and representatives
 - 3.7. Education and training
 - 3.8. Reporting of incidents for regulatory purposes
 - 3.9. Reporting for purposes of public health, contact tracing, screening, testing and surveillance
4. Healthy and safe work practices
 - 4.1. Disinfectants, sanitisers and personal hygiene
 - 4.2. Other
5. PPE
 - 5.1. Masks
 - 5.2. Gloves
 - 5.3. Facial shields
 - 5.4. Other
6. Provision of safe transport for employees
 - 6.1. Personal hygiene
 - 6.2. Social distancing
 - 6.3. Arrangements to minimise exposure associated with commuting
 - 6.4. Cloth masks (if commuter)
 - 6.5. PPE (driver/conductor of employer-provided transport)