

The Code of Practice: Managing exposure to SARS-COV-2 in the Workplace

Once the State of Disaster is Over, What's Next?



On the discontinuation of the declaration of the national state of disaster, the Regulations and the Direction published in the Government Gazette of June 2020 will cease to have legal effect.



As the risks associated with Covid-19 exposure in the workplace remains, the Regulations and the Direction relevant to preventing and mitigating those risks have been incorporated into the Occupational Health and Safety Act (OHSA): Hazardous Biological Agents (HBA) through *The Code of Practice: Managing exposure to SARS-COV-2 in the Workplace (The Code)*.¹

Each situation requires special measures to be implemented by employers to prevent infection and transmission of the virus or mitigate the risk of serious illness or death.



https://www.gov.za/sites/default/files/gcis_document/202203/46043rg11405gon1876.pdf

The Code will focus on the following themes:

- Conducting or updating a risk assessment in terms of the OHSA (at least every 2 years or when circumstances change and require this to be revisited, whichever is the sooner).
- Developing a plan to limit infection, transmission and mitigate the risks of serious illness or death based on that risk assessment.
- Implementing the plan.
- Managing absence from work due to infection, isolation, and adverse effects of vaccination.
- Seeking to accommodate workers who refuse or fail to vaccinate against Covid-19.

Risk Assessment

In terms of The Code every employer must:



Conduct a risk assessment to give effect to its obligations under the OHSA and the HBA Regulations.²

Develop or amend its existing plan to include:

- Any measures to be implemented in respect of the vaccination of its workers; and
- Any other protective measures.



The employer must consult on the risk assessment with any representative trade union and any health and safety committee established in terms of section 19 of the OHSA or, a health and safety representative or worker representative. The risk assessment and plan must be available for inspection by the trade union and committee and DEL (Department of Employment and Labour) inspector.



https://www.gov.za/sites/default/files/gcis_document/201409/229560.pdf

Contents of the Risk Assessment and Plan

1. The identification of the workers the employer wishes to be vaccinated.
2. Procedure on the reporting of symptoms by workers and isolation of workers who are diagnosed with Covid-19 and are symptomatic.
3. The workplace protective measures required to be taken in terms of the OHSA regulations.
4. Procedure to resolve any issue that may arise from the worker's exercise of their right to refuse to work.
5. The process by which the obligations under this Code will be complied with.
6. Social distancing measures such as minimising the number of workers in the workplace through rotation, staggered working hours, shift and remote working arrangements, personal hygiene measures such as the wearing of facecloth masks,



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barriers, hand washing, sanitisers and surface disinfectants.

7. Any special measures to mitigate the risk of infection or serious illness or death.

Symptoms Reporting



Workers must immediately inform their employer if they experience any of the symptoms associated with Covid-19. The employer may require the worker to be tested for Covid-19 before permitting the worker to enter the workplace or report for work. Does not apply to workers who report the presence of COVID-19 symptoms between one to three days after vaccination.

Workers who have been diagnosed with Covid-19 and are symptomatic must inform their employer and isolate themselves for the period of 7 days from the date of start of symptoms unless a longer period is recommended by a medical practitioner.



The employer must:

- Place the worker on paid sick leave in terms of section 22 of the BCEA (The Basic Conditions of Employment Act) or if the worker's sick leave entitlement under the section is exhausted, make an application for an illness benefit in terms of section 20 of the Unemployment Insurance Act.
- Take steps to ensure that the worker is not discriminated against on grounds of having tested positive for Covid-19.
- If there is evidence that the worker contracted Covid-19 arising out and in the course of employment, lodge a claim for compensation in terms of the Compensation for Occupational Injuries and Diseases Act.

Workplace: The Building

In accordance with the OHS Act, every employer must keep the workplace well ventilated by natural or mechanical means to reduce the SARS-CoV-2 viral load. The employer must identify areas in the workplace that are usually

occupied and poorly ventilated, and improve ventilation through natural ventilation including opening doors, windows and vents and where possible cross ventilation in preference to single-sided ventilation or ventilation through the use of fans, air conditioners or mechanical ventilation.

Vaccinations

In giving effect to this Code, an employer may require its workers to disclose their vaccination status and to produce a vaccination certificate. If an employer must notify any workers identified by them of the obligation to be vaccinated. The employer must educate the workers on the issues related to vaccines. The employer must allow the worker to consult a health and safety representative, a worker representative, or a trade union official on their identification.

The employer must give the worker paid time off to be vaccinated and provide transport for the worker to and from the nearest vaccination site.

Should a worker suffer a vaccine

adverse event that renders them unable to work, the employer must:

- On receipt of a medical certificate, give the worker paid time off to recover if the worker is no longer entitled to paid sick leave in terms of the BCEA or any applicable collective agreement; or
- Lodge a claim for compensation in terms of the Compensation for Occupational Injuries and Diseases Act - subject to any regulations in respect of a COVID-19 Vaccine Injury No-fault Compensation Scheme.

Right to Refuse

If a worker refuses to be vaccinated, the employer must:

- Advise the worker and, if requested, allow the worker to seek guidance from a health and safety representative, worker representative or trade union official.
- Take steps to reasonably



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accommodate the worker in a position that does not require the worker to be vaccinated.

- If a worker produces a medical certificate attesting that a worker has contra-indications for vaccination, the employer may refer the worker for a medical evaluation for confirmation at the employer's expense.
- If the employer accepts the medical certificate or the worker is referred to medical evaluation and that evaluation confirms that the worker has contra-indications for vaccination, it must accommodate the worker in a position that does not require the worker to be vaccinated.

Refusal to Work

In the event a worker is of the view that circumstances arise in the workplace that pose an imminent and serious risk of their exposure to SARS-CoV-2 virus infection, may refuse to perform any work. Upon the notification of the employer, the employer must after consultation with the health and safety committee or health and safety

representative investigate to resolve any issue.

If the matter cannot be resolved internally, the employer may notify a DEL inspector of the issue within 24 hours and advise the worker and all other parties involved in resolving the issue that an inspector has been notified.

Small Businesses

Employers with 20 workers or less must:

Conduct a risk assessment of the workplace and take any reasonably practicable measure that may mitigate the risk of infection and transmission of the virus or the risk to workers of serious illness or death.

Contemplate and comply with regulations on vaccinations.

If a worker has Covid-19 related symptoms:

- Refuse to allow the worker to enter the workplace;
- Follow the isolation of the worker; and
- To the extent reasonably practicable, ventilate occupied closed spaces in the workplace.

Important to Note

1. Every worker is obliged to comply with the employer's plan.
2. No employer may make any deduction from a worker's remuneration or require or permit a worker to make any payment to the employer or any other person, in respect of anything which the employer is obliged to provide or to do in terms of this Code.
3. To the extent that this Code gives effect to the OSHA, the Minister responsible for Employment and Labour may authorise local authorities to perform certain inspectorate functions of the OSHA.
4. The offences and penalties provided for in section 38 of the OSHA will apply.



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