

Revised Covid-19 Direction on Health & Safety in The Workplace

WHAT DO EMPLOYERS NEED TO KNOW?

Webber Wentzel's Employment / Health & Safety Team



The Minister of Employment & Labour has issued a [revised Covid-19 Direction on Health & Safety in the Workplace](#).

The Direction seeks to give effect to the broader lockdown regulations and to ensure that measures taken by employers under the Occupational Health and Safety Act (OHSA) are **consistent with the overall national strategies and policies on minimising the spread of Covid-19**.

The Direction applies to all workplaces except mines, ships, boats or cranes and any other workplace which is regulated by a different direction on health & safety.

We highlight the **new provisions** of this Direction below.

VULNERABLE EMPLOYEES - NEW DEFINITION

Vulnerable employee means any employee:

- 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 infected with Covid-19;
- Above the age of 60 years who is at high risk of complications or death if infected with Covid-19.

Employers must take special measures to mitigate the risk of Covid-19 for vulnerable employees to ensure that they return to work safely or that they can continue working from home.

These measures should be aligned to the Department of Health's [specific guidance note on vulnerable employees and workplace accommodation in relation to Covid-19](#).



RISK ASSESSMENT AND PLAN FOR RE-OPENING THE WORKPLACE

In line with the broader lockdown regulations, employers must undertake a **risk assessment** and then adopt a **clear plan for re-opening the workplace** and phased return of employees.

Through this process, employers must consult with representative trade unions and any OHS established health & safety committee.

The plan must be made available at the workplace for inspection by an inspector (designated under the OHSA).

Employers, with more than 500 employees, must submit its risk assessment and a written policy on health & safety measures to protect employees from Covid-19 to its internal health & safety committee. These documents must also be submitted to the Department of Employment & Labour within 21 days of the commencement of the Direction (ie by 25 June 2020).



8 ELEMENTS OF THE WORKPLACE PLAN

The workplace plan must cover 8 elements:

- 1 Date of re-opening and hours of work
- 2 List of employees permitted to return and list of employees required to work from home
- 3 Plan and timetable for phased-in return of employees
- 4 List of vulnerable employees
- 5 Methods to minimise number of employees at the workplace at any given time
- 6 Health & safety measures to ready the workplace
- 7 Measures for daily screening of employees and screening of clients, contractors and visitors
- 8 Details of Covid-19 Compliance Officer at the workplace

3 RESPONSIBILITIES FOR THE COVID-19 COMPLIANCE OFFICER

Employers must appoint a Covid-19 Compliance Officer who will have 3 main responsibilities

- 1 Oversee the implementation of the workplace plan.
- 2 Oversee general adherence to health & safety measures. The officer should appoint additional employees to perform this function if the employer has more than 1 workplace.
- 3 Address employee or workplace representative concerns and keep them informed.

EMPLOYEES DIAGNOSED WITH COVID-19

If an employee is diagnosed with Covid-19, the employer must:

- 1 Inform the Department of Health and Department of Employment & Labour.
- 2 Investigate the mode of exposure including any control failure and review its risk assessment.
- 3 Determine the need for a temporary closure of the affected work area or the entire workplace.

! The employee may only be allowed to return back to work if they have met certain conditions:

- Employee must self-isolate for 14 days
- Employee must complete a medical examination confirming fitness to work
- Employer must ensure that health & safety measures are followed by the employee on return to work
- Employer must closely monitor employee for symptoms on return to work
- Employee must wear a surgical mask for 21 days from date of diagnosis

After meeting these conditions, an employee who has recovered from Covid-19 may return back to work.

The employer should also follow the Department of Health's [guidance note for workplaces in the event of identification of a Covid-19 positive employee](#).



SYMPTOMATIC AND ASYMPTOMATIC EMPLOYEES

Symptomatic employees should not be permitted to enter the workplace and placed on paid sick leave (in line with section 22 of the BCEA). If the employee is already in the workplace when he/she displays symptoms, the employee should immediately be isolated from other employees and provided with a surgical mask. The employee should then be advised to consult a medical practitioner during this time. If sick leave is exhausted, the employee should apply for the Illness Benefit under the UIF.

Asymptomatic employees who were in contact with an employee diagnosed with Covid-19 at the workplace must be assessed in terms of level of exposure:

HIGH RISK EXPOSURE

- Close contact within 1 metre of a Covid-19 confirmed case for >15 minutes without PPE (no face cover/eye cover); or
- with failure of PPE and/or direct contact with respiratory secretions of confirmed Covid-19 case (clinical or laboratory).

LOW RISK EXPOSURE

- More than 1 metre away from a Covid-19 confirmed case for <15 minutes OR within 1 meter but wearing PPE (face cover, eye cover). Also consider lower risk if COVID case was wearing a surgical mask.

• Low risk exposure employees should be permitted to continue working using a cloth mask and symptoms must be closely monitored for 14 days from first contact.

• High risk exposure employees should be quarantined for 14 days and placed on paid sick leave. If sick leave is exhausted, the employee should apply for the Illness Benefit under the UIF. It should also be noted that should the employee be able to work from home during the period of quarantine, no leave will be applicable.



REFUSAL TO WORK DUE TO EXPOSURE TO COVID-19

Employees may refuse to perform any work if circumstances arise which with reasonable justification appear to that employee (or to a health & safety representative) to pose an imminent threat and serious risk of exposure to Covid-19. Such employees must promptly notify their employer of the reasons for refusal to work. The employer must then attempt to resolve the issue.

Employees who refuse to work on this basis may not be subject to any adverse action by the employer.

SMALL BUSINESSES

Employers with 10 employees or less must develop a basic plan for the phased re-opening of the workplace. Employees who can work from home should continue doing so (including vulnerable employees).



CONTACT US

We are able to advise on all employment / health & safety considerations related to returning to work. Please contact our [employment](#) / [health and safety](#) team if you require advice.

WEBBER WENTZEL

in alliance with > Linklaters