

### **Level 3 health and safety directive introduces changes**

On 04 June 2020, the Minister of Employment and Labour published amendments, by way of a consolidated [Direction on Health and Safety in the Workplace](#) which sets out additional obligations in respect of the safe opening and continuing operation of a workplace.

This note should be read with the [initial summary](#) we supplied last month.

Changes include the following:

- 1) Employer obligations in respect of employees over the age of 60 or those with specified co-morbidities. Additional special arrangements need to be made in this regard for those unable to work from home. More detail on this can be found in this Department of Health [guideline](#).
- 2) It is now a requirement in terms of clause 17.3 to consult with any representative trade unions and health & safety committees as part of a risk assessment and risk mitigation plan.
- 3) When an employee is sick or presents with COVID-19 related symptoms he or she must be placed on paid sick leave in terms of section 22 of the Basic Conditions of Employment Act. If the employee's sick leave entitlement under the section is exhausted, the employer should apply on the employee's behalf for an illness benefit in terms of clause 4 of the COVID-19 Temporary Employer Relief Scheme Directive.
- 4) The Direction sets out procedures an employer must follow when an employee at work tests positive for COVID-19. Such employee must immediately be isolated. A risk assessment must then be carried out to assess the risk of transmission to others, disinfect the employee's workstation, carry out contact tracing determine what precautions should be put in place for those employees who have been in contact with an employee who has tested positive. If it is determined that there was a high risk of exposure for an employee who came into contact with the COVID-19-positive employee, the contact employee must be placed on sick leave in terms of section 22 of the BCEA or if the employee's sick leave is exhausted, make application for an illness benefit in terms of clause 4 of the Temporary Employer Relief Scheme Directive. If there is evidence of occupational exposure to the virus, a COIDA claim may be made.

- 5) Importantly, it should be noted that the previous requirement that a worker who tested positive for COVID-19 was required, before returning to work, to produce a negative test has been removed. In terms of the consolidated Directive, a worker who has been diagnosed with COVID-19 may only return to work on the following conditions:
- The worker has completed the mandatory 14 days of self -isolation;
  - the worker has undergone a medical evaluation confirming fitness to work if the worker had moderate or severe illness;
  - the employer ensures that personal hygiene, wearing of masks, social distancing, and cough etiquette is strictly adhered to by the worker;
  - the employer closely monitors the worker for symptoms on return to work; and
  - the worker wears a **surgical mask for 21 days** from the date of diagnosis.
- 6) Sectoral or industry associations must, in the event of high health risks, develop sector - specific health protocols in consultation with the Department of Health to limit the spread of COVID -19 in the sector including providing for those circumstances where a firm within the sector cannot stagger working hours or provide transport for its employees.
- 7) Finally, employees may refuse to perform any work if circumstances arise which with reasonable justification to pose an imminent and serious risk of their exposure to COVID-19.

**5 June 2020**

**Labour Workstream**