

Employers and employees in Alert Level 4 – South Africa (COVID-19)

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What must employers do before they operate from their business premises?

New regulations were published by the Department of Cooperative Governance and Traditional affairs on 29 April 2020 (the “Regulations”, gazette no. 43258) outlining the rules applicable during Alert Level 4 and the Department of Employment and Labour (the “DEL”) provided a briefing to media, addressing expectations on employers to ensure employees’ safety and mitigate the spread of the virus in the workplace.

Initial steps: Workplace Plans

Prior to operating from their premises, businesses must develop a “COVID-ready” Workplace Plan in terms of Regulation 16. According to the guideline provided in Annexure E of the Regulations, there are a number of requirements that the Workplace Plan must comply with. It should also be visible and retained for inspection purposes.

In addition to the Workplace Plan, businesses must designate a COVID-19 Compliance Officer to oversee the implementation of the plan and to ensure adherence to the standards of hygiene and health protocols at each workplace (office/location).

For medium to large businesses, the Workplace Plan must include the following:

1. The date the business will open and its operating hours.
2. A timetable setting out how employees will return in phases (to enable appropriate measures to be taken to avoid and reduce the spread of the virus in the workplace).
3. Steps taken to get the workplace COVID-19 ready.
4. **A list of staff:**
 - 4.1. who are able to work from home;
 - 4.2. who are 60 years of age or older; and
 - 4.3. who have comorbidities who will be required to stay and/or work from home.
5. **Arrangements the business will make for staff on premises; including:**
 - 5.1. sanitary and social distancing measures and facilities, at the entrance and exit of the workplace;
 - 5.2. screening facilities and systems;
 - 5.3. an attendance-record system and infrastructure;
 - 5.4. the work-area of employees;
 - 5.5. any designated area where the public is served;
 - 5.6. canteen and bathroom facilities;

5.7. testing facilities (for businesses with more than 500 employees); and

5.8. rotational arrangements for staff (for businesses where fewer than 100% of employees are permitted to work).

6. Arrangements for customers, clients or members of the public, including sanitation and social distancing measures.

7. The contact details of the COVID-19 Compliance Officer.

Non-essential services (which include professional / corporate services) are permitted to operate from their physical premises only where work-from-home measures are not possible, and only to support other Alert Level 4 services. Employees can only attend the office physically if a permit has been issued to him/her/them. Such a permit is to be signed by the 'head of an institution', which means the chief executive officer (or someone of equivalent authority).

Further guidance from the DEL

In addition to the Regulations, the DEL has issued directives (the “Directives”) which set out further obligations on employers to maintain a safe and healthy workplace as far as reasonably practicable.

The Directives require all employers to:

1. undertake a risk assessment;
2. notify all workers of the contents of the Directives and the manner in which the employer intends to implement it;
3. notify its employees that, if they are sick or have symptoms associated with COVID–19, they must not come to work and to take paid sick leave in terms of section 22 of the Basic Conditions of Employment Act 75 of 1997 (the “BCEA”);
4. appoint a manager to address employee or workplace representative concerns and to keep them informed and, in any workplace in which a 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;
5. ensure that the measures required by this Directive and its risk assessment plan are strictly complied with through monitoring and supervision;
6. as far as practicable, minimize the number of workers at the workplace at any given time through measures such as rotation, staggered working hours, shift systems, remote working arrangements or similar measures in order to achieve social distancing;
7. take measures to minimize contact between workers as well as between workers and members of the public;
8. 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.

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 may assist in achieving the required social distancing.

If it is not practicable to arrange work stations to be spaced at least one and a half metres apart, the employer must 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 if necessary, supply the employee free of charge with appropriate PPE based on a risk assessment of the working place.

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.

Screening and employees who display symptoms

If a worker has been diagnosed with COVID-19, an employer must inform the Department of Health and the Department of Employment and Labour; and 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 it must give administrative support to any contact-tracing measures implemented by the Department of Health.

Every employer must take measures to:

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);
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
3. require workers to immediately inform the employer if they experience any of these symptoms while at work.

Employers must comply with any guidelines issued by the National Department of Health in consultation with the DEL in respect of symptom screening; and if in addition required to do so, medical surveillance and testing.

If a worker presents with symptoms, or advises the employer of symptoms, the employer must:

1. not permit the worker to enter the workplace or report for work; or
2. if the worker is already at work immediately 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

Employees diagnosed with the virus

If a worker has been diagnosed with COVID-19, an employer may only allow a worker to return to work on the following conditions:

1. the worker has undergone a medical evaluation confirming that the worker has been tested negative for COVID-19;
2. the employer ensures that personal hygiene, wearing of masks, social distancing, and cough etiquette is strictly adhered to by the worker; and
3. the employer closely monitors the worker for symptoms on return to work.

Returning to work: practicalities

In addition to the extensive requirements set out above, the Directives also provide a number of practical requirements that employers must comply with. We have collated these requirements and summarise them below.

Summary of employer requirements

Every employer must, free of charge, ensure that:

Hand sanitizer

1. there are sufficient quantities of hand sanitizer (at least 70% alcohol content) 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;
2. every employee who works away from the workplace, other than at home, are provided with an adequate supply of hand sanitizer; and

- workers who interact with the public are provided with sufficient supplies of hand-sanitizer at that worker's workstation for both the worker and the person with whom the worker is interacting.

<p>General cleanliness and hygiene</p>	<p>Every employer must take measures to ensure that:</p> <ol style="list-style-type: none"> all work surfaces and equipment are disinfected before work begins, regularly during the working period and after work ends; all areas such as toilets, common areas, door handles, shared electronic equipment are regularly cleaned and disinfected; disable biometric systems or make them COVID-19-proof.
<p>Sanitation</p>	<p>Every employer must ensure that:</p> <ol style="list-style-type: none"> there are adequate facilities for the washing of hands with soap and clean water; only paper towels are provided to dry hands after washing – the use of fabric towelling is prohibited; the workers are required to wash their hands and sanitize their hands regularly while at work; the workers interacting with the public are instructed to sanitize their hands between each interaction with public; surfaces that workers and members of the public come into contact with are routinely cleaned and disinfected.
<p>Masks</p>	<p>Every employer must:</p> <ol style="list-style-type: none"> 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, for the employee to wear while at work and while commuting to and from work; and require any other worker to wear masks in the workplace; determine the number and reuse of cloth masks that must be provided to an employee or required of other workers 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; ensure that workers are informed, instructed, trained and instructed as to the correct use of cloth masks; make appropriate arrangements for the washing, drying and ironing of cloth masks in accordance with the guidelines.
<p>Infrastructure</p>	<p>Every employer must:</p> <ol style="list-style-type: none"> keep the workplace well ventilated by natural or mechanical means to reduce the SARS-CoV-2 viral load; 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; ensure that filters are cleaned and replaced in accordance with the manufacturer's instructions by a competent person.
<p>Transport</p>	<p>If applicable, the employer must provide safe transport for employees, taking into consideration:</p>

1. personal hygiene;
2. social distancing;
3. arrangements to minimise exposure associated with commuting;
4. cloth masks (if commuter);
5. PPE (for the driver/conductor of employer-provided transport).

Depending on what is reasonably practicable given the nature of the workplace, every employer must:

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
2. put in place physical barriers or provide workers with face shields or visors;
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;
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;
5. require members of the public, including suppliers, to wear masks when inside their premises.

**Miscellaneous/
other**

For further information or tailored advice, please contact **Vanessa**

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Our COVID-19 Client Resources Hub is available to the public, part of Dentons' global commitment to help our clients and our communities navigate this pandemic's legal and business challenges.

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