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Amended Consolidated Direction on Occupational Health and Safety Measures

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Occupational Health and Safety Measures

On 11 June 2021 the Minister of Employment and Labour published an Amended Consolidated Direction on Occupational Health and Safety Measures in Certain Workplaces ("**Direction**"). The Direction is effective from 11 June 2021.

The Direction provides guidelines relating to, among others, social distancing, symptom screening, wearing of cloth masks and the importance of ventilation in the workplace. While these guidelines remain largely unchanged from the Consolidated Direction on Occupational Health and Safety Measures in Certain Workplaces published on 1 October 2020 there have been some important changes/additions.

Section 6(3)(b)(iii) of the Guideline provides that where an employee who presents with Covid-19 related symptoms is excluded from the workplace the employee is entitled to sick leave. When this sick leave is exhausted they are entitled to illness benefits in terms of section 20 of the Unemployment Insurance Act. Under the previous direction, a claim could be made in terms of the Covid-19 Temporary Employer / Employee Relief Scheme ("TERS") when sick leave has been exhausted. This is, therefore, no longer catered for.

The Direction also provides for a number of additions relating directly to the vaccination of employees in the workplace. They are discussed below.

Section 3(1)(a)(ii) of the Direction provides that every employer must undertake a risk assessment within 21 days of the coming into force of the Direction. The risk assessment must stipulate, among others, whether the employer intends making the Covid-19 vaccination mandatory for its employees. If so, the employer should identify those employees who must be vaccinated due to the risk of transmission through the nature of their work or their risk to contract Covid-19 due to their age or comorbidities.

The employers must develop a plan / amend an existing plan which outlines the measures that the employer intends to implement relating to the vaccination of its employees. The Direction makes it clear that when implementing such a plan, employers must consider the employee's rights to bodily integrity as well as their right to freedom of religion, belief and opinion. The plan must take into account the guidelines contained in Annexure C to the Direction.

Section 4(1)(i) provides, among others, that employer's must provide workers with information raising awareness on "the nature of vaccines used in the country, the benefits associated with these COVID-19 vaccines, the contra-indications for vaccination and the nature and risk of any serious side effects such as severe allergic reactions."

Section 4(1)(k) states that employers must give administrative support to assist its employees to register on the Electronic Vaccine Data System Registration Portal.

Section 4(1)(l) provides that employers must provide employees with paid time off to be vaccinated. An employee must provide proof of the vaccination.

Annexure C

In the event that an employee suffers side effects as a result of the vaccination and is unable to attend at work, the employee is entitled to be placed on paid sick leave. In such circumstances, a Covid-19 vaccination certificate may be accepted in lieu of a medical certificate. Annexure C makes it clear that an employee may also lodge a claim in terms of the Compensation for Occupational Injuries and Diseases Act (presumably, if they no longer have any sick leave remaining).

In terms of Annexure C, every employee identified in terms of section 3(1)(a)(ii) must be notified of the obligation to be vaccinated as and when a vaccine becomes available for the employee. In addition, the employee should also be notified of his/her right to refuse to be vaccinated on constitutional or medical grounds. Employees must be given an opportunity to consult with a health and safety representative, worker representative or trade union official.

Refusal of vaccination

Where an employee refuses to be vaccinated, the employer should counsel the employee, refer them for further medical evaluation should there be a medical contraindication for the vaccination or, if necessary, take steps to reasonably accommodate the employee in a position that does not require the employee to be vaccinated. This may include an adjustment that permits the employee to work from home or in isolation within the workplace. In this regard, Annexure C to the Direction expressly mentions the Code of Good Practice: Employment of People with Disabilities (which is published in the Employment Equity Act). Presumably, an employee that cannot be so accommodated can have their services terminated for incapacity provided the proper process and procedures are adhered to.

A copy of the Direction can be accessed at https://legalbrief.co.za/media/filestore/2021/06/44700_11-06_NationalRegulation-1-2_covid.pdf.

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