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EMPLOYMENT

‘Special measures’ for the return to work of employees older than 60 years old

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by Jacques van Wyk Director and Thabisa Yantolo, Candidate Attorney

On 29 April 2020 the Minister of Cooperative Governance and Traditional Affairs, Dr Nkosazana Dlamini Zuma, published Regulations in terms of the National Disaster Management Act (“**Regulations**“) which regulate the Alert Level 4 conditions during the COVID-19 national disaster. The Regulations allow for a number of industries to return to work.

There are, however, measures the employer must put in place prior to the return of employees to the workplace. One such requirement is that ‘special measures’ must be implemented for employees over the age of 60 years and those with health issues or comorbidities. It is not clear what these ‘special measures’ must be and this poses a risk for employers. So too is the possible exclusion of these ‘elders’ of the workplace who, usually, have the significant institutional knowledge and experience.

Who will be regarded as at a ‘high risk’?

There is a range of views expressed on this issue:

- The Centers for Disease Control and Prevention (“**CDC**“) have identified ‘older people’, specifically those who are 65 years old and older, and people with underlying medical conditions as being at a higher risk of severe illness from COVID-19;[1]
- On the other hand the World Health Organization (“**WHO**“) identifies people over the age of 60 years old as ‘high risk’;[2]
- In terms of the COVID-19 regulations, the high risk age is also 60 years and older;
- In regard to underlying health risks, the CDC has recognised people with the following medical conditions as ‘high risk: moderate to severe asthma, chronic lung disease, serious heart conditions, immunocompromised people, severe obesity, diabetes, chronic kidney disease undergoing dialysis and liver disease;
- The National Foundation for Infectious Diseases has stated that “older” adults are at risk because their immune systems are weaker. So too people with chronic medical conditions are at risk because chronic diseases can compromise the immune system, and make people more vulnerable to serious complications from infection;[3] and
- In an FAQ article by the Cleveland Clinic, the authors note that a chronic condition or the medication taken for the condition could weaken the immune system resulting in someone being immunocompromised which in turn could result in reduced ability to fight off and recover from infections.[4]

From the above it is clear that there are numerous factors which may result in an employee being regarded as high risk and therefore necessitating special measures to protect him or her from infection in the workplace.

Employer’s obligations to provide a safe workplace for returning employees:

The Department of Employment and Labour published a Directive on the COVID-19 Occupational Health and Safety measures in workplaces (“**OHS Directive**“) on 29 April 2020. The Directive requires the employer to provide and maintain as far as reasonably practicable a working environment that is safe and without risks to the health of workers.

The Directive requires all employers to conduct a risk assessment of the workplace which would include the employer identifying the employees at risk and the risk for transmission of COVID-19 in the work environment. The employer must notify all their employees of the content of the OHS Directive and how it will be implemented in the workplace.

The Directive requires employers to minimise the number of employees at the workplace through rotation, staggered working hours, shift systems, remote working arrangements or similar measures in order to achieve the required social distancing. The minimum required distance between employees is one and a half metres, however, the distance may need to be greater depending on the workplace or nature of the sector. If it is not possible to implement the minimum distance between workstations, physical barriers may be placed or the employee supplied with the appropriate PPE.

Employers are required to provide 70% alcohol hand sanitizers at the workplace or at any other place of work other than at home. If employees interact with the public, the hand sanitizer must be sufficient for both the worker and the person with whom the worker is interacting. The employer must take measures to ensure that the work surfaces, equipment and all areas are regularly disinfected.

There must be adequate facilities for washing of hands with soap and clean water and only paper towels may be provided to dry hands. Employers must also provide each employee, free of charge, with a minimum of two cloth masks which comply with the requirement set out by the Department of Trade, Industry and Competition.

As mentioned above, the Regulations require an employer to implement 'special measures' for employees over the age of 60 years old and those with known or disclosed health issues or comorbidities. However, the Regulations do not mention what these 'special measures' should be. This along with the broad range of possible risks facing this group of employees requires the employer to focus on these employees if they intend allowing them to return to work in the short term.

Recommended measures for protecting 'high risk' employees;

A workplace readiness practice note published by the Return2work Initiative identifies people who are 65 years and older and those with underlying medical conditions, among others, as 'vulnerable workers'.[5] In the note it is recommended that employers implement a process to identify workers who are at high-risk of severe illness from COVID-19 and who reside with or care for those who are at high risk.

This process should be included in the risk assessment of the workplace. There are additional measures suggested to protect the 'vulnerable worker' such as: changing their roles and responsibilities to lower the risk of COVID-19 transmission; adapting or improving the worker's environment; putting in place additional hygiene enablement tools; providing specific PPE appropriate to the risk identified; mitigating external risks further such as by reducing interactions with visitors or the use of public transport; and allowing them to use their annual leave or sick leave during different levels of the lockdown. The measure to be adopted depend on the particular risk factors faced by the employee.

Conclusion

If an employer intends to allow employees over the age of 60 years or those that have any health issues or comorbidities to return to the workplace, it would be advisable that the employer first obtain medical advice on the risks faced by the employee concerned. The advice should include directions on how to manage the risks faced by the employee, taking into account the circumstances of workplace.

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[1] Centers for Disease Control and Prevention 'People Who Are at Higher Risk for Severe Illness' *https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html*, accessed on 13 May 2020.

[2] World Health Organization 'Coronavirus disease 2019 (COVID-19) Situation Report – 51' *https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200311-sitrep-51-covid-19.pdf?sfvrsn=1ba62e57_10*, accessed on 6 May 2020.

[3] National Foundation for Infectious Diseases 'Common Questions and Answers About COVID-19 for Older Adults and People with Chronic Health Conditions'

[4] Cleveland Clinic 'FAQs: What You Should Know About COVID-19 and Chronic Medical Conditions' *https://health.clevelandclinic.org/faqs-what-you-should-know-about-covid-19-and-chronic-medical-conditions/*, accessed on 6 May 2020.

[5] Return2Work Initiative 'Practice Note: Workplace Readiness' *https://www.return2work.co.za/business-resources/*, accessed on 6 May 2020.



Jacques van Wyk

Director

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