WERKSMANS
ATTORNEYS

LEGAL UPDATE

There's a hazardous biological agent in your workplace

6 April 2022 *3 min read*

The SARS CoV2 virus ("**virus**") that causes COVID-19 has been classified as a hazardous biological agent ("**HBA**"). The virus was added to the list of HBA's in the Hazardous Biological Agents Regulations ("**Regulations**") promulgated on 16 March 2022 in terms of the Occupational Health and Safety Act No. 85 of 1993 ("**OHSA**"). This is an important part of the Government's new effort to ensure that when the current state of disaster, which persists under the Disaster Management Act, is lifted, ongoing protection against Covid-19 in the workplace is still regulated under pieces of legislation like the Labour Relations Act, 66 of 1995 and the OHSA. As has been recently published, a new Code of Good Practice (the Code of Good Practice: Managing Exposure to SARS-CoV-2 in the Workplace, Government Notice No. 46043, dated 15 February 2022) has been published under the LRA, which recognises that the Regulations list coronavirus as a listed hazardous biological agent, classed as Group 3. It, therefore, places legal responsibilities on employers in respect of employers to limit the exposure and mitigate the risks of infection by SARS-CoV-2;

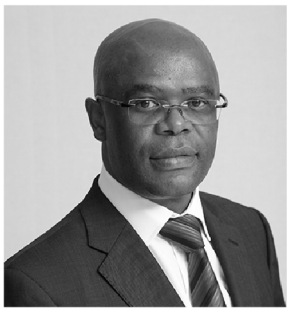
The Regulations apply to every employer or self-employed person at a workplace where an HBA is produced, processed, used, handled, stored, or transported, or a workplace where exposure to an HBA may occur. In the case of the virus, certainly, exposure may occur in most workplaces. The Regulations place a responsibility on the employer to ensure a safe working environment by controlling the risk of exposure of employees to the virus by ensuring, amongst others, that:

- a risk assessment is conducted to determine if any person could be exposed to the virus;
- an exposure monitoring programme is established and maintained;
- a documented system of medical surveillance of employees is established and maintained;
- standard precautions are implemented to reduce the risk of transmission of the virus in a workplace;
- records of all training, exposure assessments, exposure monitoring reports, and medical surveillance reports are properly kept;
- where reasonably practicable, exposure to the virus is controlled by limiting the number of employees and making effective vaccines available to employees;
- where it is not reasonably practicable to control exposure to the virus, provide employees with suitable protective equipment and clothing;
- written procedures are in place for appropriate decontamination and disinfection, etc.

Employees have a corresponding duty to obey any lawful instruction given by the employer regarding the appropriate use of personal protective equipment and clothing.

An employer or employee that contravenes certain of the regulations may be liable on conviction to a fine or imprisonment of up to 12 months. It must also be noted that, although Covid-19 is the current hot topic, the Regulations also apply in relation to a further extensive range of biological agents which an employer must take similar protective measures to ensure against.

As it stands, in relation to the Covid-19 virus, employers are required to comply with the Regulations, the Consolidated Direction on Occupational Health and Safety Measures in Certain Workplaces, and the Code of Good Practice: Managing Exposure to SARS-CoV-2 in the Workplace. Employers are encouraged to acquaint themselves with these documents and the extent to which they may apply to them and ensure that they comply with their provisions.



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