

# Revised Covid-19 Direction on Health and Safety in the Workplace advises on employee vaccine protocol

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A revised Covid-19 Direction on Health and Safety in the Workplace sets out the regulations on vaccines and guidelines for employers considering mandatory vaccinations of employees.



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The Minister of Employment and Labour has issued a revised Covid-19 Direction on Health and Safety in the Workplace. The Direction was signed by the Minister on 28 May 2021. In line with the previous versions of this Direction, it applies to all workplaces except mines, ships, boats or cranes and any other workplace which is regulated by a different direction on health and safety.

The provisions in the previous Direction (gazetted on 1 October 2020) largely remain intact in this Direction. The latest amendments largely provide regulations relating to Covid-19 vaccines and guidelines for employers who are considering mandatory vaccination of their employees. We summarise the key clauses of the Direction for employers below.

## Definition of "Covid-19 vaccines"

The Direction defines "Covid-19 vaccines" as:

“ a vaccine that has been scientifically evaluated and recommended by the WHO and approved by the South African Health Products Regulatory Authority to be effective in preventing severe disease and death, and likely to reduce SARS-CoV-2 viral transmission in order to contribute to herd immunity. ”

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Employers must ensure that they comply with the provisions of the Direction discussed below.

## **Administrative measures**

The employer must take steps to generate awareness and educate employees on the Covid-19 vaccine, including information on the:

- benefits of the vaccine
- contra-indications for vaccination
- nature and risk of any serious side effects (eg severe allergic reactions)

To compile this information, the Direction refers employers to the Frequently Asked Questions section on the National Institute of Health website.

In addition to awareness and education around the Covid-19 vaccine, employers must also provide administrative support to employees to register on the Electronic Vaccine Data System Registration Portal for Covid-19.

Employers must also provide employees with paid time off to have the vaccination on the allocated date and time. The employee will be required to provide the employer with proof of vaccination, particularly when it is scheduled to take place during working hours.

## **Symptom screening**

The Direction confirms that the isolation procedures applicable to employees who present with Covid-19 symptoms at work does not apply to employees who present with symptoms for one to three days after having the Covid-19 vaccination.

If an employee is unable to work after having had the Covid-19 vaccine due to side effects, the employee should be placed on paid sick leave. The employer may accept a Covid-19 vaccination certificate as proof of illness instead of a medical certificate.

Employers who are considering mandatory vaccinations for employees must comply with the following provisions of the Direction.

## **Risk assessment and plans for protective measures**

Clause 3(1)(ii) of the Direction provides that the employer must undertake a risk assessment within 21 days of the commencement of the direction to determine if it intends to make vaccination mandatory. If the employer does intend to make vaccination mandatory, it must then identify which employees must be vaccinated considering risk of transmission due to the nature of their work or risk of severe Covid-19 disease due to age or co-morbidities. Clause 3(3)(c) makes it clear that even if vaccination is mandatory, such a policy will only be enforceable "as and when Covid-19 vaccines become available".



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After conducting the risk assessment, the employer must clearly formulate a plan (or amend an existing plan) that outlines the measures it intends to implement on mandatory vaccination of employees.

The plan must include the following elements:

1. The identification of the employees who will be subject to vaccination
2. The process by which the obligations under the Direction will be complied with by the employer
3. Whether the employer is planning to make it mandatory for identified employees to be vaccinated

If the employer decides to make vaccination mandatory for employees, its mandatory vaccination policy must state that employees will be notified of the following:

- the obligation to be vaccinated once the vaccine becomes available
- their right to refuse to be vaccinated on constitutional or medical grounds
- their opportunity to consult a health and safety representative, worker representative or trade union official

If an employee refuses to be vaccinated on any constitutional or medical grounds, the employer should take the following steps:

1. Counsel the employee and, if requested, allow the employee to seek guidance from a health and safety representative, worker representative or trade union official;
2. refer the employee for further medical evaluation if there is a medical contraindication for vaccination;
3. if necessary, take steps to reasonably accommodate the employee in a position that does not require the employee to be vaccinated.

## ABOUT THE AUTHOR

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