



FACULTY OF HEALTH SCIENCES

UNIVERSITY OF CAPE TOWN

# Legal aspects of the COVID-19 Occupational Health Surveillance System (OHSS) for South African Workplaces

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# Legislation related to the COVID-19 epidemic

Within COVID-19 epidemic context, data systems governed broadly by:

- **Disaster Management Act Regulations, and**
- **Directives** issued by respective government departments within their scope to legislate



# Disaster Management Act Regulations

- Department of Co-operative Governance and Traditional Affairs. Disaster Management Act (57/2002): Determination of Alert Levels and Hotspots. G43364. 28 May 2020. (Sections 46(6)(d))
- Department of Co-operative Governance and Traditional Affairs. Disaster Management Act (57/2002): Amendment of Regulations issued in terms of Section 27 (2). G43476. 25 June 2020 – (Section 2)
- Department of Co-operative Governance and Traditional Affairs. Disaster Management Act (57/2002): Amendment of Regulations issued in terms of Section 27 (2). G43476. 17 September 2020 – (Section 78)

# Directives promulgated by relevant National Government Departments

- Department of Employment and Labour. **Consolidated COVID -19 Direction on Health and Safety in the Workplace.** R639 28 September 2020- (Sections 4.1k and 4.2)
- Department of Employment and Labour. Compensation for Occupational Injuries and Diseases Act: **Compensation for workplace-acquired Novel Coronavirus Disease (COVID-19)** – Notice 387 of 2020, 30 June 2020 – (Section 6)
- Department of Mineral Resources and Energy. Mine Health and Safety Act (29/1996): **Guidelines for a Mandatory Code of Practice on the Mitigation and Management of COVID-19 Outbreak** – G43335. 18 May 2020 – (Section 8.4)

# Other General Legislation

- Department of Health. **Regulations relating to the surveillance and the control of notifiable medical conditions.** 15 December 2017
- Department of Justice. **Promotion of Access to Information Act.** G 20852 3 February 2000
- The Presidency. **Protection of Personal Information Act.** G37067 26 November 2013

# Consolidated COVID -19 Direction on Health and Safety in the Workplace

**Section 4.1 (k)** if a worker has been diagnosed with COVID-19, it (“employer”) must -

(i) inform the **National Institute for Occupational Health**<sup>6</sup> in accordance with the National Department of Health Guidelines<sup>7</sup> either *directly* or through an *employers’ association*

(ii) inform the **Compensation Commissioner** in accordance with the Directive on Compensation for Workplace-acquired Novel Corona Virus Disease (COVID-19)<sup>8</sup>

(v) give administrative support to any *contact-tracing* measures implemented by the Department of Health

<sup>6</sup>Report must be made to the [OHSworkplace@nioh.ac.za](mailto:OHSworkplace@nioh.ac.za) or via the online platform at <http://ohss.nioh.ac.za/>

<sup>7</sup>National Department of Health Guideline: Covid-19 Response Surveillance of Workers – see link in Annexure A

<sup>8</sup>GN 387, 23 July 2020, GG 43540

**Section 4.2** In addition to the duties listed in subdirection (1), an employer who employs more than **50 employees** in a workplace -

(a) must submit the following categories of data to the **National Institute for Occupational Health**<sup>10</sup> in the manner set out in the National Department of Health Guidelines<sup>11</sup>:

- i. Each **employee's vulnerability status** for serious outcomes of a COVID-19 infection
- ii. details of the **COVID-19 screening** of employees who are **symptomatic**
- iii. details of **employees who test positive** in terms of a positive laboratory test for the COVID-19 virus<sup>12</sup>
- iv. the **number of employees** identified as **high risk contacts** within the workplace if a worker has been confirmed as being positive
- v. details on the **post-infection outcomes** of those testing positive, including the **return to work assessment outcome**

<sup>10</sup>At the following email address: [OHSworkplace@nioh.ac.za](mailto:OHSworkplace@nioh.ac.za) or via the online platform at <http://ohss.nioh.ac.za/>

<sup>11</sup>National Department of Health Guideline: *Guideline on the submission of COVID-19 related health data from workplaces to the National Department of Health* – see link in Annexure A

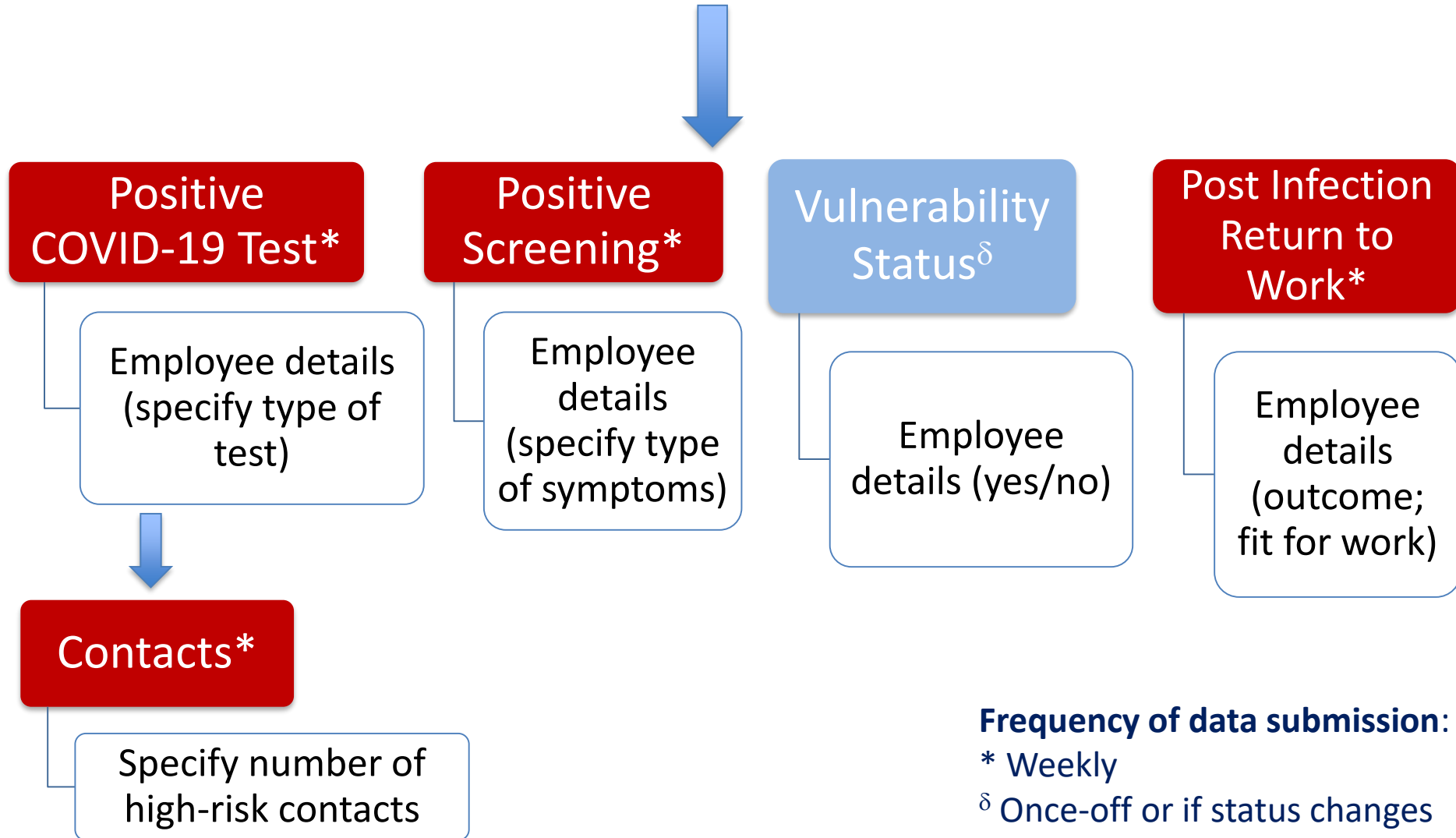
<sup>12</sup>The type of test (antigen or antibody) must be specified in the submission

**Section 4.2** In addition to the duties listed in subdirection (1), an employer who employs more than **50 employees** in a workplace -

- (b) must submit the data referred to in para (a)-
  - i. **once** in respect of each **employee's status** contemplated in sub-para (i);
  - ii. as soon as possible **before Tuesday** of each week in respect of the data referred to in sub-paras (ii) to (v) for the previous calendar week commencing on Sunday;
  
- (c) must **inform its employees of the submission made** in terms of sub-direction (a) and advise them of its adherence to the Protection of Personal Information Act, 2013 (Act No.4 of 2013);
  
- (d) may **submit that data to an employer association** if the association has-
  - i. entered into an **agreement** with the National Institute for Occupational Health to receive, process and submit the data to the Institute; and
  - ii. undertaken to **submit the data on behalf of the employer.**



# In summary, the legal requirements for all employers employing more than 50 employees



A country that responds well to COVID  
is not one that has consistent policies,  
but one that has policies which are  
responsive to the **data**

(Tom Frieden, former CDC director)

# Important Reference documents

- [https://www.nioh.ac.za/wp-content/uploads/2020/10/Government\\_Gazette-CONSOLIDATED\\_DIRECTIONS\\_ON\\_OCCUPATIONAL\\_HEALTH\\_AND\\_SAFETY\\_MEASURES\\_IN\\_CERTAIN\\_WORKPLACES.pdf](https://www.nioh.ac.za/wp-content/uploads/2020/10/Government_Gazette-CONSOLIDATED_DIRECTIONS_ON_OCCUPATIONAL_HEALTH_AND_SAFETY_MEASURES_IN_CERTAIN_WORKPLACES.pdf)
- [Directive on Compensation for Workplace-acquired Novel Coronavirus Disease \(COVID-19\) – GGMNo43540, 23 July 2020](#)
- [NDoH OH Workstream: Guideline on the submission of COVID-19 related health data from workplaces to National Department of Health \(Version 3: 1 October 2020\)](#)
- [https://www.nioh.ac.za/wp-content/uploads/2020/05/20\\_2020-V4.-Guidance-on-vulnerable-employees-and-workplace-accommodation....pdf](https://www.nioh.ac.za/wp-content/uploads/2020/05/20_2020-V4.-Guidance-on-vulnerable-employees-and-workplace-accommodation....pdf)
- [NDoH OH Workstream: Guidelines for symptom monitoring and management of workers for SARS-CoV-2 infection \(version 5: 19 August 2020\)](#)



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# THANK YOU

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