



employment & labour

Department:
Employment and Labour
REPUBLIC OF SOUTH AFRICA

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SUBJECT: CONCERN REGARDING EMPLOYERS WHO FAIL TO COMPLY WITH THE OHS DIRECTION IN SUBMITTING REQUIRED INFORMATION - SECTION 4

DATE: 14 October 2021

The purpose of this communication is to request employers, supported by employees, including organised labour, to comply with the minimum requirements of the **4th DIRECTION, “OCCUPATIONAL HEALTH AND SAFETY MEASURES IN WORKPLACES, COVID-19, 2021,” published on 11 June 2021.**

This Direction applies:

- to employers and workers in workplaces who are permitted to continue or commence operations under the Disaster Management Regulations.
- these Directions apply for the duration of the national state of disaster,
- subject to the employer’s obligations under the OHS Act to conduct a risk assessment, employers with less than 10 employees need only to apply Section 12 of Directions.

If the employer employs **more than 50 employees**, that employer **must submit** a record of its **risk assessment, to its health and safety committee** and-retain a written copy of that risk assessment, plan and policy. (Section 4 of Direction)

In addition to the other duties placed on the employer, an employer who employs **more than 50 employees in a workplace** must submit the following categories of data to the NIOH in the manner set out in the National Department of Health Guidelines:

The employer must submit the data referred to hereunder in the following manner-

- (i) **Only once in respect of each employee's status i.e.:**
 - Each employee's **vulnerability status** for serious outcomes of a COVID -19 infection;

- (ii) **Before Tuesday of each week in respect of the data referred to hereunder for the previous calendar week commencing on Sunday i.e.:**
 - details of the COVID -19 screening of employees **who are symptomatic**;
 - details of employees **who test positive** in terms of a positive laboratory test;
 - the number of employees identified as high risk contacts within the workplace if a worker has been confirmed as being positive;
 - details on the post-infection outcomes of those testing positive, including the return to work assessment outcome;

The employer must inform its employees of the submission made to the NIOH/DoH and advise them of its adherence to the PoPI Act, 2013 (Act No.4 of 2013);

The employer may submit the indicated data to an employer association if the association has:-

- (i) entered into an agreement with the National Institute for Occupational Health (NIOH) to receive, process and submit the data to the Institute; and
- (ii) undertaken to submit the data on behalf of the employer.

The data as indicated can be sent directly to:

For the data collection and transfer to commence, the business or organisation would need to be registered using the Occupational Health Surveillance Systems Web Portal (available through this link: <https://ohss.nioh.ac.za/>) so that a Unique Business ID is allocated to the business. This unique business identity would need to be provided in every data submission transaction to the NIOH.

For data reporting, the OHSS support desk can be contacted via email: OHSworkplace@nioh.ac.za or telephone: 0713981169 or 0723215503

For technical queries, the IT support desk can be contacted via email:
ohssupport@nioh.ac.za

Templates and more information on the OHSS can be found at:
<https://www.nioh.ac.za/covid-19/occupational-health-surveillance-system-ohss-business-portal/>

In relation to Section 16 of the Direction, the following should be taken cognisance of:

- If a person fails to comply with this direction, an inspector may perform any of the functions in section 29 of the OHS Act and exercise any of the powers listed in section 30 of the OHS Act in order to monitor compliance with this Direction.
- In so far as **any contravention of these Directions constitutes a contravention of an obligation** or prohibition under the OHS Act, the offences and penalties provided for in section 38 of the OHS Act apply.

It is therefore a contravention not to comply with the Direction published by the Minister of Employment and Labour and is punishable by up to R100 000 or two years imprisonment or both in the case where an employee becomes injured or dies.

Tibor Szana

Chief Inspector: Occupational Health and Safety

Inspections and Enforcement Services

Department of Employment and Labour

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