



FACULTY OF HEALTH SCIENCES  
UNIVERSITY OF CAPE TOWN

# Managing exposure to Sars-Cov-2 in the Workplace: updated guidelines/regulations

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# Presentation outline

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DEPARTMENT OF EMPLOYMENT AND LABOUR			
NO. R. 1876			15 February 2022
<b>CODE OF PRACTICE: MANAGING EXPOSURE TO SARS-COV-2 IN THE WORKPLACE, 2022</b>			
Notice is hereby given that the Code of Good Practice: Managing Exposure to SARS-CoV-2 in the Workplace set out in the Schedule is issued by the Minister of Employment and Labour after consideration by NEDLAC in terms of section 203(2A) of the Labour Relations Act, 1995 (Act No. 66 of 1995) to take effect on the date of the lapsing of the Declaration of a National State of Disaster declared under GN313 of 15 March 2020 and extended in terms of section 27(2) of the Disaster Management Act, 2002 (Act No.57 of 2002).			
			
MR TW NXESI, MP MINISTER OF EMPLOYMENT AND LABOUR DATE: 15 MARCH 2022			

SCHEDULE	
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# Disclaimer

- The content of this presentation is not intended to be a complete digest of Code of Practice (COP): Managing Exposure to Sars-Cov-2 in the Workplace, 2022. Issued in terms of section 203(2A) of the Labour Relations Act, 1995 (Act No. 66 of 1995) nor of Labour Law in South Africa.
- Presentation only provides an extract of what pertains to the application of the COP in the workplace and field of occupational health. It is recommended to read the full Code of Practice (18 pages).
- It is recommended to always seek legal or expert advice whenever encountering other aspects of Labour Law.

# **Chapter 1:**

# **Introductory Provisions**

# 1. Introduction

- A national state of disaster was declared on 15 March 2020 in terms of section 27(1) of the **Disaster Management Act, 2002** (Act No.57 of 2002)
- 29 April 2020 the Minister responsible for Employment and Labour published a “**Direction on Occupational Health and Safety Measures in Certain Workplaces**” – amended and consolidated throughout pandemic
- On the expiry of the declaration of the national state of disaster, the Regulations and the **Direction will cease to have legal effect.**
- COP anticipated this to be 15 March 2022, but it has been extended once again to 15 April 2022.

**ACTION:** Prepare for the date when the COP will become law, BUT it is not law yet

# 1. Introduction

- COP embeds actions within **Occupational Health & Safety Act (OHSA)** vs the Disaster Management Act.
- Sets the scope of the COP to **cover all parties** that are covered by the OHSA (“employees”, self-employed persons and others).
- Reinforces connection between the COP with the OHSA and its existing Regulations.
- Regulations for **Hazardous Biological Agents, 2022** list coronavirus as a listed hazardous biological agent, classed as Group 3.
- Concept “**reasonably practicable**”.

## Clarifies the primary obligations placed of the employer.

(9) The primary obligation is to conduct a risk assessment in terms of regulation 6 to determine the risk of exposure and the control measures to limit infection, transmission and mitigate the risk of serious illness or death on the part of employees and other persons who may be directly affected by the activities of the workplace.

- RA scope changed under the COP – it is now limited to **risk of exposure** and does not include the assessment of the risk of severity through age & comorbidity
- RA does not specify categories of risk for which employees must be vaccinated.

**ACTION:** Become conversant with the duties prescribed under the HBA Regulations 2022 and how to conduct risk assessment

## 2. Purpose of this code

- To guide employers and employees in **managing exposure to SARS-CoV-2 in the workplace** by providing guidance to employers and employees in:

- (a) conducting or updating a risk assessment in terms of the OHSA and the HBA in respect of SARS-CoV-2 exposure;
- (b) developing a plan to limit infection, transmission and mitigate the risks of serious illness or death on the basis of that risk assessment;
- (c) implementing the plan;
- (d) managing absence from work due to infection, isolation and adverse effects of vaccination;
- (e) seeking to accommodate employees who refuse or fail to vaccinate against SARS-CoV-2 .

- Requires any person **interpreting an employment law to take this Code into account**.
  - ✓ Indicates that this may be a Code of Practice, but it **must be interpreted as the law**.
- Some provisions of the Code reproduce the **obligations** contained in the employment laws (OHSHA & Regulations)
- Code is **intentionally general** because workplaces and their requirements differ.
- Deviations/departures **must be justifiable**.

# 3. Interpretation

- Words/expressions bears the meaning assigned to it in the **Basic Conditions of Employment Act, 1997** (Act No. 75 of 1997) or the **Occupational Health and Safety Act, 1993** (Act No. 85 of 1993)

“**reasonable accommodation**” means any modification or adjustment to a job or to the working environment that will allow an **employee who fails or refuses to be vaccinated** to remain in employment and incorporates the relevant portions of the Code of Good Practice: Employment of People with Disabilities published in terms of the Employment Equity Act, 1999 (Act 97 of 1999);

**NOTE:** Very narrow definition. It fails to address the duty to provide reasonable accommodation for any other reason for incapacity, such as severe vulnerability even after vaccination.

“**vaccinated**” means fully vaccinated with vaccines and includes an additional dose or booster and “**vaccination**” has the same meaning;

Change in COP: “**vulnerable employee**” not defined.

**NOTE:** Employers who mandatory vaccination will have to consider amending their policies to require employees to have boosters.



# 4. Application

- Code applies to workplaces except those excluded from the OHSA in terms of section 1(3) of the OHSA (mines, boats/ships)
- (3) Subject to the employer's obligations under the OHSA to conduct a risk assessment, **employers with less than 20 employees** need only apply the measures set out in section 13.

**NOTE:** Cut-off for reduced obligations under the COP increases from 10 employees to 20 employees.

# **Chapter 2: Risk assessment and Plan**

## 5. Risk assessment and plan

- Every employer must- (a) undertake a risk assessment to give effect to its obligations under the OHSA and the HBA Regulations; (b) develop/amend its existing plan to include:
  - **Control measures:**
    1. **Vaccination** of employees (intervals and dates fully vaccinated)
    2. Any other **protective measures** (social distancing, PPE etc)
  - **Consult** on the risk assessment plan (trade union, H&S comm)
  - **Make available** RA and plan for inspection (trade union, inspector)

**ACTION:** Mention how RA was done in the plan, how vaccination of employees is to be implemented and how NPI's are to be applied.

**ACTION:** Ensure consultation on RA plan occurs.  
Ensure RA & plan is available for inspection.

# 6. Contents of risk assessment

## 6(1) RA and Plan **MUST include**:

- (a) **identification of the employees** to be vaccinated.
- (b) **symptom reporting** by employees to employer (so that testing & isolation of those diagnosed with COVID-19 and are symptomatic can occur).
- (c) **workplace protective measures** required to be taken in terms of the HBA Regulations (incl. PPE, ventilation). HBA Regs now benchmark.
- (d) procedure to **resolve any issue** that may arise from the HRA (refuse to work in some circumstance)
- (e) process by which the obligations under this Code will be **complied with**.

## The Plan under 6(1) of the COP **doesn't mention**:

- **Return to Work (RTW) issues** (i.e. workplace opening plans for phased RTW, lists of employees required to work from home)
- The **identification of vulnerable employees**
- The **duty to minimise the number of workers** at the workplace (now optional)
- Measures for **daily symptom screening**
- Requirement of a **COVID-19 Compliance Officer**

**ACTION:** Change the RA Plan to align with the above; No need for daily symptom screening; No legal requirement to have a COVID-19 Compliance Officer; Review & align with HBA Regs; HR procedure required when refusal to work arises; description of the processes by which employer will comply with the COP.

# 6. Contents of risk assessment

6(2) RA and Plan **MAY (duties optional) include** :

(a) **social distancing measures**: minimising number of workers in workplace (rotation, staggered working hours, shift and remote working arrangements etc)

(b) **PPE** measures (see section 11)

(c) **personal hygiene measures** (facecloth masks, barriers, hand washing, sanitisers, surface disinfecting)

(d) **any special measures to mitigate the risk of infection or serious illness or death** in respect of individual employees at increased risk such as reducing the numbers in and the duration of occupancy in meeting rooms.



**Vulnerable employees**

**ACTION:** The RA Plan must include a reference to these NPI's, and how they may be applied.



**ACTION:** The RA Plan must include a reference to the identification of individual employees at increased risk of serious illness or death, and how special measures may be applied.

The RA Plan must comply with the vaccination requirements stipulated in section 12 of the COP

# **Chapter 3: Administrative measures**

# 7. Notification of workers

- (1) An employer must notify workers on its premises of the contents of this Code and its plan contemplated in section 5(1)(b) and the manner in which it intends to implement it.
- (2) It must provide workers with information that raises awareness in any form or manner, including, where reasonably practicable, leaflets and notices placed in conspicuous places in the workplace informing workers of-
  - (a) the dangers of the virus, the manner of its transmission, the measures to prevent infection or limit transmission such as personal hygiene, social distancing, use of facecloth masks and cough etiquette;
  - (b) the symptoms associated with COVID-19 as described from time to time by the clinical guidelines published by the National Institute of Communicable Diseases<sup>6</sup>;
  - (c) the nature of vaccines used in the country, the benefits associated with these COVID-19 vaccines, the contra-indications for vaccination and the nature and risk of any serious side effects<sup>7</sup>.

**ACTION:** Ensure this employee notification is done.

**ACTION:** Ensure this information is available.



## Removed Sections:

- Requirement to disclose vulnerability & duty to institute special measures
- COVID-19 Compliance Officer

# 8. Symptom reporting by workers

- (1) Every employer **must** take measures –
  - (a) to **determine the vaccination status** of their workers;
  - (b) to **require workers to immediately inform** their employer if they experience any of the symptoms associated with COVID-19 contemplated in section 7(2)(b).
- (2) Subject to subsection (3), if an employee informs their employer that they experience COVID-19-related symptoms, **the employer may require the employee to be tested for COVID-19** before permitting the employee to enter the workplace or report for work.
- (3) Subsection (2) does not apply to workers who report the presence of COVID-19 symptoms between **one to three days after vaccination**.

**ACTION:** Legalises the contentious issue of whether an employer may request an employee to disclose its vaccination status.

Process this info as per Protection of Personal Information Act, 4 of 2013.

Ensure this is communicated to all employees.

**ACTION:** Keep this employee reports of COVID-19 symptoms in the workplace Incident Action Plans & side effects in the vaccination plan.



# 9. Isolation of workers

**Workers who have been diagnosed with COVID-19 and are symptomatic must:**

- (a) inform their employer; and
- (b) isolate themselves for the period as recommended by the NDOH/medical practitioner.

**Note** the shift in obligation regarding case reporting.

**Employer must:**

- (a) place the employee on **paid sick leave in terms of section 22 of the BCEA** or section 20 of Unemployment Insurance Act, 2001 (Act No. 63 of 2001) if depleted leave
- (b) take steps to **ensure that the employee is not discriminated against** on grounds of having tested positive for SARS-CoV-2 (section 6 of the EEA, 55 of 1998)
- (c) lodge a claim for compensation in terms of **the Compensation for Occupational Injuries and Diseases Act, 130 of 1993**, in accordance with Notice No. 629 published on 22 October 2019. Only if there is evidence that the worker contracted **COVID-19 arising out and in the course** of employment.

**ACTION:** There is **no duty** for the employee or the employer to report cases to the NIOH in this COP.

COP places a duty on employees to report symptoms to their employers.

**ACTION:** Update workplace Incident Action Plans to allow employees to isolate themselves as per NDOH/med practitioner; reflect the removal of post-incident measures (contact tracing); stop reporting to NIOH/NDOH.

# 9. Isolation of workers

**Workers who have been diagnosed with COVID-19 and are symptomatic must:**

- (a) inform their employer; and
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**Note** the shift in obligation regarding case reporting.

**Employer must:**

- (a) place the employee on **paid sick leave in terms of section 22 of the BCEA** or section 20 of Unemployment Insurance Act, 2001 (Act No. 63 of 2001) if depleted leave
- (b) take steps to **ensure that the employee is not discriminated against** on grounds of having tested positive for SARS-CoV-2 (section 6 of the EEA, 55 of 1998)
- (c) lodge a claim for compensation in terms of **the Compensation for Occupational Injuries and Diseases Act, 130 of 1993**, in accordance with Notice No. 629 published on 22 October 2019. Only if there is evidence that the worker contracted **COVID-19 arising out and in the course** of employment.

**ACTION:** Symptom screening stopped under the COP, but the requirements for risk-based medical surveillance and testing now prescribed as per the HBA Regulations.

**Medical surveillance procedure required,** aligned with the HBA Regulations.

**ACTION:** Adapt measures related to sanitisers, disinfectants and washing of hands to those applicable to the workplace risks and circumstances. **NO LONGER** legally specified. **The employer may apply these in a manner the employer deems fit.**

# 10. Ventilation

Every employer **must** –

(a) keep workplace well ventilated by **natural or mechanical** means to reduce SARS-CoV-2 viral load.

(b) **identify areas** in workplace that are usually occupied and poorly ventilated; **improve ventilation** through natural & use of fans, air conditioners or mechanical ventilation.

(c) where reasonably practicable, **have an effective mechanical ventilation system** functioning effectively; regularly serviced and maintained by a competent person etc.

(d) have **High Efficiency Particulate Air Filters**

**ACTION:** Act in accordance with obligation under the **OHSA**, regulation 5 of the **Environmental Regulations for Workplaces** and the **HBA Regulations**.

Ensure that ventilation procedure is in accordance with the **NDOH Guidelines for ventilation to prevent the spread of SARS-CoV-2 virus**.



health

Department:  
Health  
REPUBLIC OF SOUTH AFRICA

**Guidelines for ventilation to prevent the spread of the SARS-CoV-2 virus (version 1: 15 August 2021)**

(Document prepared by the Occupational Health and Safety Workstream of the National Department of Health – Covid-19 Response)

Please note: This is an **interim guide** that may be updated as the outbreak in South Africa unfolds, to guide additional workforce preserving strategies.

# 11. Specific personal protective equipment

- Every employer must check regularly on the websites of the National Department of Health, National Institute of Communicable Diseases and the National Institute for Occupational Health
- ... **whether any specialized PPE for COVID-19 is required** or recommended in any guidelines based on the nature of the workplace or the nature of a worker's duties and the associated level of risk.

**ACTION:** PPE procedure required

# 12. Vaccination of employees

- (1) Every employer must in accordance with the measures contemplated in section 5 (1)(b)(i)-
  - (a) notify the employee identified in terms of section 6(1)(a) of the obligation to be vaccinated;
  - (b) counsel the employee on the issues related to vaccines in section 7 (1)(c);
  - (c) permit the employee, at the employee's request, to consult a health and safety representative, a worker representative or a trade union official;
  - (d) give administrative support to the employees to register and to access their COVID-19 vaccination certificates on the EVDS Portal for SARS-CoV-2<sup>15</sup>; and
  - (e) give the employee paid time off to be vaccinated and provide transport for the employee to and from the nearest vaccination site.

**ACTION:** Ensure RA plan prescribed in section 5 (1)(b)(i) of this COP includes measures to be implemented in respect of the vaccination of its employees.

- (2) In giving effect to this Code, an employer may require its employees to disclose their vaccination status and to produce a vaccination certificate.
- (3) Should an employee suffer a vaccine adverse event that renders them unable to work, the employer must –
  - (a) on receipt of a medical certificate, give the employee paid time off to recover if the employee is no longer entitled to paid sick leave in terms of the BCEA or any applicable collective agreement; or
  - (b) subject to any regulations in respect of a COVID-19 Vaccine Injury No-Fault Compensation Scheme<sup>16</sup>, lodge a claim for compensation in terms

**ACTION:** Ensure this notification and counselling happens for each employee identified to be vaccinated.

Align HR processes to give time off.

# 12. Vaccination of employees

- (4) If an employee refuses to be vaccinated, the employer must-
- (a) counsel the employee and, if requested, allow the employee to seek guidance from a health and safety representative, worker representative or trade union official;
  - (b) take steps to reasonably accommodate the employee in a position that does not require the employee to be vaccinated.



**ACTION:** Ensure this counselling happens for each employee who refuses to be vaccinated (HR procedure required).

**ACTION:** Ensure provision is made for this referral (a procedure required).

Ensure an HR procedure is in place to accommodate selected employees.



- (5) If an employee produces a medical certificate attesting that an employee has contra-indications for vaccination, the employer may refer the employee for a medical evaluation for confirmation at the employer's expense.
- (6) If the employer accepts the medical certificate or the employee is referred to medical evaluation and that evaluation confirms that the employee has contra-indications for vaccination, it must accommodate the employee<sup>1</sup> in a position that does not require the employee to be vaccinated.

# 13. Small businesses

Employers with 20 employees or less must -

- (a) undertake a risk assessment of the workplace and take any reasonably practicable measure that may mitigate the risk of infection and transmission of the virus or the risk to employees of serious illness or death contemplated in section 6(2) and (3);
- (b) comply with section 12 if a measure contemplated in section 5 (1)(b)(i) is introduced;
- (c) if an employee has COVID-19 related symptoms –
  - (i) refuse to allow the employee to enter the workplace;
  - (ii) comply with section 9;
- (d) to the extent reasonably practicable, ventilate occupied closed spaces in the workplace in accordance with section 10(1).

**ACTION:** The cut-off for “small business” has gone up to 20 employees.

Note that the duties under section (6(2)) are optional, including the NPI’s.

The duties under section 6(3) relate to the vaccination requirements stipulated in section 12 of the COP.





# 14. Worker obligations

In addition to the obligations of employees under the OHSA and the HBA Regulations, every worker is obliged to comply with the employer's plan contemplated in section 5 (1)(b).





# 15. Refusal to work

- An employee **may refuse** to perform any work if circumstances arise which, with reasonable justification, appear to that employee or to a health and safety representative to pose an imminent and serious risk of their exposure to SARS-CoV-2 virus infection.
- **Employee must notify employer** personally or through H&S rep.
- Employer must **undertake to resolve** issue, involve H&S comm, notify DoEL inspector of issue within 24hours if matter cannot be resolved; comply with any prohibitions issued.
- No person may be threatened, dismissed, disciplined etc for exercising their rights (subsection (1)).
- Employee may refer dispute (dismissal, harassment etc) to CCMA or accredited bargaining council. Arbitrator may take any appropriate order.

# 16. No deduction from employee's remuneration

No employer may make any deduction from an employee's remuneration or require or permit an employee to make any payment to the employer or any other person, in respect of anything which the employer is obliged to provide or to do in terms of this Code.



# 17. Monitoring and enforcing this Code

- (1) To the extent that this Code gives effect to the OSHA, the Minister responsible for Employment and Labour may authorise local authorities to perform certain inspectorate functions in terms of section 42(3) of the OSHA.
- (2) In so far as any contravention of this Code constitutes a contravention of an obligation or prohibition under the OSHA or HBA Regulations-
  - (a) an inspector may perform any of the functions in section 29 of the OSHA and exercise any of the powers listed in section 30 of the OSHA to monitor compliance with this Code;
  - (b) the offences and penalties provided for in section 38 of the OSHA apply.
- (3) An inspector may, for the purpose of promoting, monitoring and enforcing compliance with the OSHA and the HBA Regulations, advise employees and employers of their rights and obligations in accordance with section 64 of the BCEA.

**ACTION:** Almost direct transfer from the Directions to the COP.

Ensure workplace is ready for any inspections that could arise.



# 18. Limited application to mines, mining areas and works

- This section provides guidance to employers of mines or works, in terms of implementing employee vaccination.

If an employer of a mine, mining area or works requires its employees to be vaccinated as part of its mandatory code of practice prepared and implemented in terms of the Guideline for the Compilation of a Mandatory Code of Practice for the Prevention, Mitigation and Management of COVID-19 Outbreak<sup>18</sup>, section 12(4), (5) and (6) applies to any employee who refuses or fails to be vaccinated.



# 19. Amendment of footnotes



The Minister may from time to time amend and publish the footnotes to this Code online on the Department's website without issuing an amended Code in order to update the links and references that the footnotes contain.

# References and acknowledgements

- Dr Greg Kew. Comments and actions related to the COP: Managing exposure to SARS-CoV-2 in the workplace, 2022
- Code of Practice: Managing Exposure to Sars-Cov-2 in the Workplace, 2022. Issued in terms of section 203(2A) of the Labour Relations Act, 1995 (Act No. 66 of 1995)
- Consolidated direction on occupational health and safety measures in certain workplaces. 11 June 2021.

