

## REVISED COVID-19 OHS DIRECTION FOR WORKPLACES

The Minister of Employment and Labour has published, in the Government Gazette, a new consolidated COVID-19 Direction on Occupational Health and Safety in the Workplace (**Revised OHS Direction**). The Revised OHS Direction replaces the Direction that was published on 1 October 2020. [Click here](#) to access a copy of the Revised OHS Direction which came into force on, Friday 11 June 2021.

Apart from a number of minor technical changes, the principal changes contained in Revised OHS Direction concern the measures employers will be required to put in place in so far as the vaccination of workers is concerned.

The Revised OHS Direction was engaged on at length at NEDLAC with all social partners providing input on how best to ensure that employers discharge their general statutory duties, as contained in the Occupational Health and Safety Act, 1993 (**OHS Act**) which is to *“provide a working environment that is safe and without risk to the health of his employees and persons other than those in his employment who may be directly affected by his activities are not thereby exposed to hazards to their health or safety.”*

Although the Revised OHS Direction does not make it mandatory for all workers to be vaccinated, it does make provision for those employers who, as a result of operational requirements, intend to make COVID-19 vaccinations mandatory to do the following:

1. Within 21 days from the date of publication of the Revised OHS Direction, to identify, by way of a written risk assessment, those employees who by virtue of the risk of transmission through their work or their risk for severe COVID-19 disease or death due to their age or comorbidities, must be vaccinated.
2. Once the employees in step (1) have been identified, an employer must amend its COVID-19 plan to include the measures it will implement to ensure the vaccination of those employees (as and when they become eligible for vaccination in terms of Government’s phased roll-out plan).

3. In amending a COVID-19 plan to make provision for mandatory vaccinations, an employer must take into account the guidelines set out in Schedule C of the Revised OHS Direction and must also take into account the constitutional rights of its employees.
4. If an employee refuses, despite the risk assessment conducted by an employer identifying that employee as high risk, to take the vaccine, an employer must follow the steps contained in paragraph 5 (2) of Schedule C.

Despite media reports to the contrary, there is nothing contained in the Revised OHS Direction which prohibits an employer from dismissing an employee who has been identified as high risk and who has refused to be vaccinated (and cannot be reasonably accommodated) but employers are encouraged, before considering such action, to seek legal advice given the complexities of such a dismissal.

**Most notably, employers are alerted to the fact that there are provisions contained in the Revised OHS Direction which apply regardless of whether an employer has decided to make vaccinations mandatory or not.** In brief, these are as follows:

- Employers must provide their employees information on the nature of the COVID-19 vaccines used in South Africa, the benefits of being vaccinated and the nature of the side effects that can be experienced when a person is vaccinated.
- Employers must assist employees to register on the EVDS portal (when employees become eligible to register for their vaccination).
- Employers must give employees paid time off work to be vaccinated if the date and time allocated to an employee is during hours that the employee is ordinarily at work.

B4SA encourages all employers, in the interest of health and safety at workplaces, to regularly provide their employees with accurate and up to date information concerning

vaccines as to ensure that employees are in a position to make an informed decision when they become eligible for vaccination.

*The above constitutes a brief summary of the notable changes to the Revised OHS Direction and does not constitute legal advice. Employers are encouraged to read the Revised OHS Direction in its entirety as the above does not cover all of the changes made thereto.*