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### **Amended Consolidated Direction on Occupational Health and Safety Measures in certain Workplaces**

The Minister of Employment and Labour has published, in the Government Gazette No. 44700, an Amended Consolidated Direction on Occupational Health and Safety Measures in certain Workplaces (“Amended OHS Direction”) which Direction came into force on Friday, 11 June 2021. The Amended OHS Direction replaces the Direction published under Government Notice No. 1031 GG 43751 on 1 October 2020.

Principal to the changes contained in the Amended OHS Directive concerns the measures employers will be required to put in place in so far as the vaccination of workers is concerned. The Amended 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 (OHSA) 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.”*

The Amended OHS Direction does not make it mandatory for all workers to be vaccinated. It does, however, make provision for employers who, due to their operational requirements, intend to make C19 vaccinations mandatory to do the following:

1. Within 21 days from the date of publication of the Amended 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.



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2. Once the employees in paragraph 1 above have been identified, an employer must develop a plan or amend its existing 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 developing a plan or amending the existing COVID-19 plan to make provision for mandatory vaccinations, an employer must take into account the guidelines set out in Schedule C of the Amended OHS Direction and must also take into account the constitutional rights of its employees with respect to bodily integrity bodily integrity, the right to freedom of religion, belief and opinion.
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 Amended 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 Amended 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.



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- 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.

Lastly, with the termination of the TERS Directive in March 2021, the illness benefit in terms thereof of similarly terminated. The Amended OHS Directive now provides that, where an employee presents with or advises of COVID-19 symptoms, the employee should be placed on sick leave and where sick leave has been exhausted, to claim an illness benefit through section 20 the Unemployment Insurance Act.