

# Steps to ensure Covid-19 compliance in the workplace

In a bid to drastically minimise the rate of infection in the workplace, the Covid-19 regulations of the current level 3 lockdown places a greater responsibility on workplace compliance with fines and jail time being touted for transgressors. But senior legal advisor at Strata-g Labour Solutions, Justin Hattingh says most employers and employees remain unclear on what is required of them to ensure the business conforms to the Disaster Management Act (DMA).



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“While we have seen the introduction of fines or imprisonment for not wearing a mask in public, to mitigate infections in the workplace and avoid potential prosecution employers must appoint a dedicated Covid-19 compliance officer. He or she will be responsible for the organisation remaining compliant and accurately capturing and storing the data of people entering the work premises, should contact tracing be required. The compliance officer is also responsible for drafting and executing a pandemic policy,” explains Hattingh.

The pandemic policy, while a playbook on how companies can increase their compliance and mitigate the spread of the contagion at work, is not a one size fits all and should be tailored to each organisation to reflect the dynamics of each workplace and its people. To ensure the effectiveness of their pandemic policies, organisations can use the expertise of a qualified external service provider to draft or implement such policies.

## Fines or jail time for transgressors

Employers and employees who are not aware of the regulations and requirements for compliance could further transgress and violate other labour-related laws, including the Occupational Health and Safety Act (OHSA), which promotes the health and safety of people in the workplace. Any employer that breaches OHSA can face a fine of up to R100,000 or two years in prison or both. An individual who breaches OHSA could face a R50,000 fine or one year in prison, or both.

Businesses where an employee tests positive for Covid-19 must shut down to sanitise the whole work area before work can resume. This is costly and can negatively affect production, especially in an economy that is as labour intensive as South Africa. To safeguard their organisations, employers can ask employees who have travelled or been on leave to produce a negative Covid-19 test before they can be admitted back into the workplace.

“Employers have the right to ask for a negative Covid-19 test because any member of the workplace can be criminally prosecuted to the fullest extent of the law, if they intentionally expose anyone, including customers to the Covid-19 virus. Under the DMA, employees who get infected while at work have recourse under the Compensation for Occupational Injuries and Diseases Act, and can claim from the Compensation Fund should they be unable to work,” explains Hattingh.

Further, employers must also take into consideration the adjusted curfew that stems from the new regulations. Where possible, employers must accommodate their employees’ working hours to ensure they do not violate the curfew, especially employees who use public transport and often must leave their places of residence early to make it to work on time.

## **Vaccine certificates**

Hattingh says while it may be controversial, employers also have a right to request vaccination certificates of their employees once the vaccine becomes available nationally.

“An employer will be within their right to exclude employees from the workplace who cannot produce their vaccination certificate if they have such a clause in their work pandemic policy. But employees can also be exempt from getting vaccinated if they have religious beliefs or medical reasons which are incompatible with vaccination. In such an instance a balance must be struck, and this must be done fairly and transparently, including where applicable, provide reasonable accommodation to that employee.

“But rather than rely on obligating employees to get vaccinated, employers must work on good faith and appeal to their staff to get the vaccine for the sake of compliance and ensuring the viability of the organisation’s future. Employers should, therefore, be willing to lead by example. This applies across every segment of compliance necessary to avoid employees and the organisation being crippled by the virus,” concludes Hattingh.

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