

EXPLANATORY MEMORANDUM

JUNE 2021 OHS CONSOLIDATED DIRECTION

The OHS Direction was first published in May 2020 and revised on several occasions in 2020 in terms of the Disaster Management Act. The purpose of this memorandum is to outline the contents of the June 2021 Consolidated OHS Direction and the changes made in it.

Most of the provisions of the 1 October 2020 Consolidated Direction remain in place, such as those relating to risk assessments, plans, masks, social distancing, personal protective equipment etc. Apart from a number of technical changes arising from the relaxation of the lock down provisions in the Disaster Management Regulations, the principal changes contained in the June 2021 version concern the roll out of the national campaign of COVID-19 vaccinations in so far as that affects the workplace.

The Consolidated OHS Direction now requires an employer to include in its risk assessment whether it intends to make vaccinations compulsory. This is a three-step enquiry:

- Firstly, it must make that assessment taking into account the operational requirements of the workplace. This means that the Direction does not make the vaccinations mandatory, but every employer must take into account its general duties under the Occupational Health Safety Act, 85 of 1993 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.*
- Secondly, if the employer decides to make it mandatory once the risk assessment has been conducted, it must then identify which of its employees will be required to be vaccinated. In determining whether an employee can be required to be vaccinated, the employer must identify those employees whose work poses *a risk of transmission or a risk of severe COVID-19 disease or death due to their age or comorbidities.* In other words, not every employee poses such a risk – for example workers who work from home or whose work is such that they do not come into close working contact with other workers or the public.
- Thirdly, having identified the employees who are required to be vaccinated, it must amend its plan to include the measures to implement the vaccination of those employees *as and when COVID-19 vaccines become available in respect of those employees,* taking into account the Guidelines set out in Annexure C of the June 2021 version of the Direction. Given the phased nature of the National Vaccination Programme based on criteria determined by NDOH from time to time, an employer may only make it an obligation once the employee becomes eligible under the programme for vaccination and has been registered on the Electronic Vaccination Data System and given a date for vaccination.

Although the Guidelines are not binding in the ordinary sense, they must be taken into account by employers in amending their plan to make vaccination compulsory. The Guidelines emphasise important issues, in particular the constitutional rights of employees and voluntary compliance through information, persuasion, counselling and reasonable

accommodation. If reasonably practicable, the employer should also provide transport to the vaccination site identified on the Electronic Vaccination Data System.

Quite separately from whether the employer makes vaccination mandatory, the new Direction imposes the following additional obligations on the employer:

- It must provide information (in addition to the current obligations regarding the dangers of the virus) on the nature, benefits and risk of vaccines. A link to an NIOH site is provided.
- It must give workers paid time off to be vaccinated subject to proof of the date and time of vaccination.
