

# COVID-19: SICK LEAVE AND MANDATORY VACCINATIONS



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It seems that there are a lot of uncertainties regarding sick leave due to COVID-19 related absence, and vaccinations. The Consolidated Direction on Occupational Health and Safety Measures In Certain Workplaces, published in government gazette No. 44700, stipulates when an employee is entitled to sick leave or other forms of payment.

## WHEN IS AN EMPLOYEE ENTITLED TO PAID SICK LEAVE DUE TO COVID-19 ?

Whenever an employee must isolate due to COVID-19 he/she is entitled to sick leave as per sect 22 of Basic Conditions of Employment Act. An employee will also be entitled to sick leave when the employee suffers side-effects due to being vaccinated.

## WANNEER MOET 'N WERKNEMER ISOLEER?

'n Werknemer moet isoleer indien die Werknemer positief toets vir COVID-19, of COVID-19 simptome toon, of indien die werknemer in direkte kontak met 'n positiewe persoon was en waar die kontak as 'hoë risiko blootstelling' geklassifiseer kan word.

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## **WHAT CONSTITUTES “HIGH RISK EXPOSURE”?**

High Risk Exposure is where a person was in close contact (within 1 m) from a positive person for longer than 15 minutes and both did not wear a mask.

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## **MAG DIE WERKGEWER VERSOEK DAT DIE WERKNEMER BEWYSE LEWER INDIEN DIE WERKNEMER BEWEER DAT HY/SY IN KONTAK WAS MET 'N POSITIEWE PERSOON?**

Ja, die werkgewer is geregtig om ondersoek in te stel, en mag die werknemer versoek om die nodige bewyse te lewer.

Byvoorbeeld:

- Wanneer en waar was die werknemer in kontak met 'n positiewe persoon?
  - Vir hoe lank was hulle in kontak?
  - Wie is die ander persoon?
  - Was die werknemer bewus van die feit dat die ander persoon positief getoets het voor kontak gemaak was?
  - Wanneer het die ander persoon positief getoets vir COVID-19?
- 'n Mediese sertifikaat wat bevestig dat die werknemer moet isoleer, of 'n positiewe COVID-19 toetsuitslag is voldoende bewys.

## **MAY THE EMPLOYER WITHHOLD SICK LEAVE PAYMENT?**

An employer is not required to pay the employee if the employee has been absent from work for more than two consecutive days or on more than two occasions during an eight-week period and, on request by the employer, does not produce a medical certificate stating that the employee was unable to work due to COVID-19.

Please note that if it is not reasonably practicable for a farm worker who lives on the employer's premises to obtain a medical certificate, the employer may not withhold payment unless the employer provides reasonable assistance to the farm worker to obtain the certificate.

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## **WAT AS DIE WERKNEMER SE SIEKVERLOF UITGEPUT IS?**

As die werknemer se siekverlof uitgeput is, moet die werkgewer ingevolge artikel 20 van die Wet op Werkloosheidsversekering Fonds aansoek doen om 'n siekte voordele (Illness benefits).

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## **CAN THE EMPLOYER DISCIPLINE AN EMPLOYEE IF HE/SHE DOES NOT ABIDE BY THE EMPLOYER'S COVID-19 RULES?**

Yes!

An employer may take disciplinary steps against an employee who does not abide by it's employer's health and safety rules.

Sub-regulation 13 clearly stipulates that, in addition to the obligation of employees under the OHS Act, every worker is obliged to comply with measures introduced by their employer as required by the Consolidated Direction on Occupational Health And Safety Measures.

## WHAT ARE THE STEPS AN EMPLOYER MUST TAKE WHEN IT WANTS TO INSTITUTE A MANDATORY VACCINATION POLICY?

The employer must develop a Plan as per direction 3 of the 'The Consolidated Direction on Occupational Health and Safety Measures in Certain Workplaces'.

The plan must include:

1. Refer to the risks of exposure as identified in the employer's Covid-19 Risk Assessment,
2. Identify those employees that are at risk and that must be vaccinated,
3. Inform all employees of:
  - Their obligation to be vaccinated,
  - Their right to refuse vaccination on Medical Constitutional or grounds,
  - The right to consult,
4. The employer should also:
  - Provide transport to and from vaccination site,
  - Provide the employee paid time off to recover from side effects (if employee is no longer entitled to paid sick leave), or
  - Lodge claim in terms of COIDA.

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## WHAT CONSTITUTE CONSTITUTIONAL OR MEDICAL GROUNDS?

'Constitutional Grounds' refer to the right to bodily integrity, and the right to freedom of belief, and Opinion as per sections 12(2) & 13 of the Constitution.

'Medical Grounds' refer to an immediate allergic reaction of any severity to a previous dose, or a known (previously diagnosed) allergy to a component of the vaccine.

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## WATTER STAPPE MOET GENEEM WORD AS 'N WERKNEMER WEIER OM INGEËNT TE WORD?

Die werkgewer moet by die werknemer navraag doen oor die rede vir die weiering. Die werknemer moet die geleentheid gegun word om met 'n werksplek verteenwoordiger, of n gesondheids- en veiligheidsverteenwoordiger, of 'n vakbondbeampte te konsulteer.

Die werkgewer kan ook die dienste van 'n gesondheidswerker bekom om enige vrae of vrese van die werknemer aan te spreek. As die werknemer die enting op mediese gronde weier, kan die werknemer vir verdere mediese evaluering verwys word.

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## **CAN AN EMPLOYEE BE DISMISSED FOR NOT VACCINATING?**

Any dismissal will be unfair if the employer did not take steps to reasonably accommodate the employee in position that does NOT required vaccination.

To “reasonably accommodate” means to modify or adjust the employee’s job or working environment for the employee to remain in employment.

This might include working from home, or in isolation (limited contact with others), or working outside normal hours, or the wearing of an N95 mask.

Dismissal must be the absolute last resort!

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## **KAN DIE WERKGEWER SE WERWINGSBELEID BEPAAL DAT SLEGS IN-GEËNTE PERSONE AANGESTEL GAAN WORD?**

Ja, maar die werkgewer moet daarop let dat huidiglik minder as 15% van die volwasse bevolking in Suid -Afrika tans ingeënt is.

As die beleid bepaal dat slegs ingeënte persone in diens geneem word, kan die werkgewer dit dalk moeilik vind om die nodige arbeidsmag te werf.

Die werwingsbeleid moet eerder sê dat persone wat ingeënt is voorkeur sal geniet, veral in posisies waar die moontlikheid van blootstelling groter is (bv. pakhuis, kantore).