

What to do if an employee contracts Covid-19 and has been in the workplace...

By [Bradley Workman-Davies](#)

8 Jun 2020

The Department of Employment and Labour issued directions in late April 2020 on the measures an employer would need to take to provide its employees with safety measures to protect against the risk of Covid-19 exposure. In conjunction with these directions, and after South Africa moved to Level 3 of the lockdown, most businesses are allowed to operate and for many employees it was back to work as usual (well, not really) from 1 June 2020.



Image source: [Pexels](#)

For most businesses, life and economic activity will continue as much as possible as it did before the lockdown. Employees will be required to wear masks, utilise sanitising stations and observe social distancing requirements. To the extent that the workforce remains free of Covid-19, this will be the new norm for working until the national alert level is removed, which may be due to South Africa's state of preparedness being considered to be advanced enough to allow its upliftment or, more likely, judicial challenge such as that seen recently in the judgments given by the Pretoria High Court.

What is required?

However, whether a legal requirement or simply a common-sense approach, what should an employer do if an employee is confirmed to have contracted Covid-19, and has been in the workplace?

Recently, Pick 'n Pay employees had to resort to laying a complaint with the South African Police Services, and to getting their union involved, in circumstances where a colleague was diagnosed with Covid-19 in a particular retail premises, and the employer failed to take the action that was expected by the employees. What exactly is an employer required to do, under the circumstances?



Is your business really prepared for employees to return?

5 Jun 2020



Presently, if an employee is diagnosed with Covid-19, the only legal requirement on the part of an employer is fairly limited. The employer must inform the Department of Health, and determine whether the employee's exposure resulted from a failure of the employer's workplace health and safety measures. The employer must also assist the Department of Health in any contact tracing measures implemented.

Cleaning or closure

Importantly, in regard to the impact which an employee being diagnosed with Covid-19 may have on the employer's activities, the employer must also consider whether it is necessary to close the work area. This is critical to note, as it may not always be necessary to close the immediate workplace, and certainly not the entire workplace, if the employee has had limited access to a building or premises, or limited contact with fellow employees. This consideration by the employer should be guided by the risk-based assessment suggested by the Department of Health, which requires (amongst other things) for workplaces surfaces to be disinfected.

The limited scope of this legal obligation is important to note, as it is not necessarily a legal requirement for an employer to shut down all of its operations, merely because a single employee has tested positive for Covid-19. It would be sufficient, according to the regulations, for the employee to be restricted from entering the workplace or, if already there, to isolate the worker and to provide him/her with a surgical mask and to arrange for the worker to be transported to a health facility or an area of self-isolation, in such a manner that does not expose other workers or members of the public to exposure. The employer must also then, after the employee has left the workplace, introduce the abovementioned disinfecting measures, and to continue to exclude the employee from the workplace until such time as a medical practitioner is able to clear the employee for return to work.

In the interim, provided that the employer is compliant with its other obligations in terms of the Occupational Health and Safety Directions, it would be entitled to carry on with its operations without having to shut down access to other employees, or to members of the public seeking its services.



How schools can ensure they're Covid-19 ready

27 May 2020



Other employees

Any employees who were ordinarily or actually in contact with the symptomatic employee would need to be screened and monitored, and may even be sent on a 14 day precautionary quarantine (in which case the UIF's Temporary Employee Relief Scheme benefits would be available for such a person).

As mentioned, the measures set out above are the current legal obligations of an employer, in terms of the OHSA directions. If these directions are found to be invalid, along with the Disaster Management Regulations, when the Pretoria High Court has finally determined whether government has complied with its obligations to re-assess whether the Disaster Management Regulations are a reasonable limitation of citizens' constitutional rights, an employer should nevertheless adopt these measures as a common-sense approach to dealing with incidences of Covid-19 in the workplace.

ABOUT THE AUTHOR

Bradley Workman-Davies, Director at Werksmans Attorneys

For more, visit: <https://www.bizcommunity.com>