



# NATIONAL NEWS FLASH



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## COVID: CODE OF PRACTICE FOR THE WORKPLACE

On 15 March 2022 the Minister of Co-operative Governance and Traditional Affairs announced the extension of the National State of Disaster for a further month until 15 April 2022. This came amidst calls from various quarters for the State of Disaster to be completely lifted.

If and when we eventually reach the latter position, no one should be under the illusion that a COVID-19 free environment has been attained. The virus will still be prevalent in public and in workplaces.

With this in mind, the Department of Employment and Labour on 15 March 2022 gazetted a “Code of Good Practice: Managing Exposure to COVID in the Workplace” that will extend beyond any date on which the State of Disaster might be lifted.

The Code recognises that COVID -19 presents workers with the following hazards:

- The infection of a worker
- The transmission by an infected worker to other workers in the workplace
- The transmission by members of the public in workplaces to which the public has access
- The risk of serious illness or death if infected

The Code obliges employers to conduct a risk assessment to determine the risk of exposure and the control measures to limit infections and transmissions. The assessment must furthermore deal with measures to mitigate the risk of serious illness or death on the part of employees and other persons who may be directly affected by the activities of the workplace. In education these risk assessments and plans, that must be consulted with representative trade unions, are conducted at provincial level within guidelines of the Department of Basic Education.

Employer plans are required to address the, by now, well known infection prevention measures such as social distancing (including minimising the number of workers in the workplace through rotation, staggered working hours, shifts and remote working arrangements), personal hygiene measures (wearing of facecloth masks, barriers, hand washing, sanitisers and surface disinfectants) and ventilation measures.

As far as workers are concerned, the Code requires anyone that is symptomatic to inform their employer and to isolate for the period prescribed by the Department of Health while the employer is expected to grant the employee sick leave for the period of isolation or, if such leave is exhausted, to make application in terms of the Unemployment Insurance Act. In the public service the granting of sick leave for this purpose will be dealt with in terms of the applicable sick leave provisions.

In terms of the Code, employers are to notify their employees of the obligation to be vaccinated. It does, however, prescribe procedures for instances where an employee refuses to be vaccinated or where the employee produces a medical certificate attesting that he/she has contra-indications for vaccination. Whereas, in the former case the employer is required to reasonably accommodate the employee in a position that does not require the employee to be vaccinated, the employer, in the latter case, is compelled to accommodate such employee.

We continue to urge members who have not been vaccinated to do so and for those who have been vaccinated to take the booster shot. Non-vaccinated members are also cautioned not to rely on the employer's obligation under this Code to reasonably accommodate them, because we have already seen two arbitration rulings where it was found that the employer was within its rights to dismiss an employee who could not be reasonably accommodated.

The Code also provides that an employee may refuse to perform work if circumstances arise which, with reasonable justification, appears to pose an imminent and serious risk of being exposed to infection by the COVID virus, and the employer may not dismiss, discipline, prejudice or harass an employee for such refusal. Should the employer, however, do so and it leads to a dispute, the matter will have to be referred to the relevant bargaining council or the CCMA for conciliation and arbitration.

Members of NAPTOSA who feel that they find themselves in such circumstances, are urged to immediately contact their provincial office for advice and assistance before summarily refusing to work so as not to fall foul of the disciplinary provisions applicable to them.

While we all hope to see the back of the pandemic, NAPTOSA applauds the foresight of the Department of Employment and Labour to keep measures in place to deal with COVID in the workplace (thereby protecting workers) even after the State of Disaster is lifted.

**BASIL MANUEL**

**EXECUTIVE DIRECTOR**