



# TOP COMPLIANCE (Pty) Ltd

Your Business' Safety Is Our Concern

QSE B-BBEE - Level Four

[www.topcompliance.co.za](http://www.topcompliance.co.za)

January 2022 *NEWSLETTER*

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## Mandatory vaccinations in the workplace.

With vaccine mandates becoming a prerequisite at workplaces across the country we need to know what the requirements are to implement it. The Government is expected to be giving directives regarding mandatory vaccinations for South Africa by the end of January.

Employers are entitled to implement a mandatory vaccination policy in the workplace provided they conduct a risk assessment in consultation with the relevant stakeholders (employees, trade unions, health and safety representatives and safety committees as applicable) and develop a plan which outlines the measures that the employer intends to implement in respect of its vaccination of employees. This entitlement is provided for in the [Consolidated Direction on Occupational Health and Safety in Certain Workplaces](#) issued on 14 June 2021.

As many employers are implementing mandatory COVID-19 vaccinations many are asking whether it is fair, reasonable and justifiable from an employment law perspective to require employees who are unvaccinated to present a negative test every week at their own cost?

The Direction requires that employers provide employees at the workplace with the following at the employer's cost:

- Paid sick leave if an employee contracts COVID-19 and is ill or has symptoms.
- Paid time off to get vaccinated (employee to provide proof to the employer that vaccination will occur or did occur during the employee's ordinary working hours).
- Physical barriers between workstations and or between employees and members of the public as well as appropriate personal protective equipment.
- If practicable to arrange workstations to be spaced at least 1.5 meters apart.
- Screening measures, the purpose of which is to ascertain whether employees have any symptoms associated with COVID-19.
  - Temperature (36 – 37.5 degree Celsius)
  - Headache / dizziness
  - Cough
  - Shortness of breath
  - Sore throat
  - Nausea / vomiting
  - Diarrhea
  - Loss of taste or smell

- Runny nose
  - Sneezing
  - Tiredness
- Information and training, notices and leaflets placed in conspicuous places in the workplace which raise awareness and inform employees of the dangers of the COVID-19 virus, the manner of transmission, the measures to prevent transmission, the nature of vaccines, the benefits of vaccines and the contra-indications for vaccination.
  - If an employee is diagnosed with COVID-19, the affected area is to be disinfected by means of routine cleaning and then using a suitable disinfectant such as cleaning with Jik, Bleach etc.
  - If an employee presents with COVID-19 symptoms and is at the workplace, the employer must isolate the employee, provide the employee with a surgical mask and arrange for the employee to go home. If the employee is well enough and has his own transport he may travel to home, to a medical facility or general practitioner of his choice or be transported to a public health facility.
  - Have sufficient quantities of hand sanitiser with a minimum of 70% alcohol. Ensure that the containers are ALL properly labelled and that you have the MSDS (material safety data sheet) of the product on site. Unfortunately there have been some cases of the sanitiser not meeting the minimum requirements being sold to the public. Check for your own safety.
    - If any chemical is decanted the below information is to be indicated on the decanted container.
      - Product name
      - Supplier name and address
      - Hazards – words and pictogram
      - Composition
      - Mixing instructions
      - Constitution or concentration
      - Uses
      - Method to use
      - Precautions
      - Batch number
      - Expiry date
  - All work surfaces and equipment are regularly disinfected before work begins and after work ends and as necessary.
  - Ensure there are adequate facilities for washing of hands with soap and clean water and single use paper towels are available. At all costs avoid material towels as they create a breeding ground for pathogens.
  - Provide a minimum of two three ply cloth masks for each employee to wear while at work and while commuting to and from work. Train the staff to wear it properly over mouth and nose as well as the safe method to put on (don) or remove (doff) face masks and other PPE.
  - Ensure the workplace is well ventilated by natural or mechanical means to reduce viral load in the air. Air conditioners have an effective local extraction ventilation system with High-Efficiency Particulate Air (HEPA) filters that is regularly cleaned, functions effectively and does not re-circulate air. Ensure ventilation filters are cleaned and replaced in accordance with the manufacturer's guidelines. A certificate to prove needs to be supplied by the Approved Inspection Authority that did the service to ensure that the AC and service are in line with the COVID-19 directives.

<https://www.nioh.ac.za/wp-content/uploads/2021/08/V1.1-Guidelines-for-ventilation-to-prevent-the-spread-of-the-SARS-CoV-2-virus-FINAL.pdf>

Where the employer implements a mandatory vaccination policy, the employer is also required to provide the following to employees:

- If reasonably practicable, transport to and from the vaccination site.
- If the employee suffers from side effects due to the vaccination, paid time off to recover if the employee has exhausted the employee's sick leave entitlement.

Employers remain obliged to comply with those protocols. In the event that they do not comply, they will be acting in contravention of the Direction, which constitutes a contravention of an obligation or prohibition under the Occupational Health and Safety Act (OHSA). OHSA section 38 provides for offences and penalties in the event of non-compliance.

If the employee refuses to be vaccinated on medical grounds, the Direction provides that the employer should refer the employee for further medical evaluation. The Direction does not specify which party is responsible for the costs associated with the evaluation. It is probable that the considerations set out below, which relate to payment for testing will be applicable to the payment of the medical evaluation.

### **Reasonable accommodation and unjustifiable hardship**

"Reasonable accommodation" is described in the Direction as "any modification or adjustment to a job or to the working environment that will allow an employee who fails or refuses to be vaccinated to remain in employment and incorporates the relevant portions of the Code of Good Practice: Employment of People with Disabilities" which was published in terms of the Employment Equity Act. Requiring an employee who does not comply with the mandatory vaccination policy to test regularly should fall within the definition of "reasonable accommodation".

The Code provides that an employer need not accommodate an employee with a disability if this would impose an unjustifiable hardship on the business of the employer.

"Unjustifiable hardship" is action that requires significant or considerable difficulty or expense. This involves considering, among others, the effectiveness of the accommodation and the extent to which it would seriously disrupt the operation of the business.

If it is necessary for the employer to "reasonably accommodate" the employee in a position that does not require the employee to be vaccinated, the question of which party bears the costs associated with the necessary adjustments arises.

Applying these principles to payments for regular COVID-19 tests would involve an analysis of the following:

- The size of the employer's organisation.
- Whether the employee is required to submit to a polymerase chain reaction (PCR) test or a rapid antigen test (rapid test), the costs and accuracy of which differ.
- How many employees would be required to undergo testing, i.e. how many employees fail or refuse to vaccinate.
- How the employer would satisfy itself that the test results were genuine and how quickly it would be able to do so. It was recently reported that counterfeit COVID-19 negative test results are easily available for a fee which is lower than the cost of either type of test.
- How often employees would be required to test.
- The validity period of the test.

In order to determine whether it would be necessary for an employer to incur the costs associated with COVID-19 tests for employees who refuse or fail to vaccinate, this is a complex question to which there is no uniform answer. The particular circumstances of the employer and the reasons for the employee refusing or failing to vaccinate will be determinative of whether it is reasonable and justifiable for the employer to be burdened with the costs of paying for COVID-19 tests.

Article published in News24 on the 26 January 2022 by Malibongwe Dayimani: The Commission for Conciliation, Mediation and Arbitration (CCMA) found that a company who fired a woman for refusing to be vaccinated acted fairly - and her sacking was upheld. [CCMA rules company's decision to sack unvaccinated worker is 'substantively fair.'](#)

*This article is for general information purposes and should not be used or relied on as legal or other professional advice. No liability can be accepted for any errors or omissions nor for any loss or damage arising from reliance upon any information herein.*

<https://www.gov.za/speeches/employment-and-labour-new-direction-regard-vaccination-workplace-14-jun-2021-0000>

<https://www.news24.com/news24/Analysis/analysis-jacqui-reed-mandatory-vaccine-policies-in-the-workplace-what-the-law-says-20220113>

<https://www.nioh.ac.za/wp-content/uploads/2021/08/V1.1-Guidelines-for-ventilation-to-prevent-the-spread-of-the-SARS-CoV-2-virus-FINAL.pdf>

*Some of our training courses can be done through our virtual classroom.*

*Certain types of Risk Assessments and audits will be done by means of virtual site visits using various means of technology to virtually visit the site.*

*For more information please contact – [info@topcompliance.co.za](mailto:info@topcompliance.co.za)*

<https://www.topcompliance.co.za/index.php/products>



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|-----------------------------------|------------------------------|-------------------------------|---|
|                                   |                              |                               |   |
| <a href="#">Medical equipment</a> | <a href="#">SANS Signage</a> | <a href="#">Legal posters</a> | <a href="#">Personal Protective Equipment</a> |

**Courses offered by Top Compliance (Pty) Ltd**

<https://www.topcompliance.co.za/index.php/skills-development-head/training-calendar>

|                        |  |                      |
|------------------------|--|----------------------|
| <b>ONSITE TRAINING</b> |  | <b>Accreditation</b> |
| First Aid Courses:     |  |                      |

|   |         |                      |
|---|---------|----------------------|
| <b>NEW</b> level 1 – <a href="#">US 119567 - Perform basic life support and first aid procedures</a>                                      | 2 days  | DEL                  |
| <b>NEW</b> level 2 – <a href="#">US 120496 - Provide risk-based primary emergency care/first aid in the workplace.</a>                    | 3 days  | DEL                  |
| <b>NEW</b> level 3 – <a href="#">US 376480 - Provide first aid as an advanced first responder</a>   | 3 days  | DEL                  |
| <a href="#">First aid: Level 1</a>  | 2 days  | No longer recognised |
| <a href="#">First aid: Level 2</a>  | 3 days  | No longer recognised |
| <a href="#">First aid: Level 3</a>  | 3 days  | No longer recognised |
| <a href="#">First aid: Level 1 &amp; 2</a>  | 3 days  | No longer recognised |
| <a href="#">First aid: Level 2 &amp; 3</a>  | 3 days  | No longer recognised |
| <a href="#">First aid: Level 1, 2 &amp; 3</a>   | 5 days  | No longer recognised |
| <a href="#">Child and infant CPR &amp; choking</a>  | 6 hours |                      |
| <a href="#">Adult CPR &amp; choking</a>   | 6 hours |                      |
| <a href="#">Adult CPR &amp; choking and AED</a>   | 1 day   |                      |
| <b>Occupational Health and Safety Courses</b>   |         |                      |
| <a href="#">OHS Act &amp; SHERQ representative – Legal Liability</a>  | 1 day   |                      |
| <a href="#">The Occupational Health and Safety Act &amp; responsibilities of management – Legal Liability</a>                             | 1 day   |                      |
| <a href="#">Hazard Identification and Risk Assessment</a>   | 1 day   |                      |
| <a href="#">Safety representative course specific for COVID-19 in terms of the OHS Act and Regulation for Hazardous Biological Agents</a> | 6 hours |                      |
| <a href="#">Food facility health &amp; safety course in terms of R364</a>   | 6 hours |                      |
| <b>Fire Fighting and Prevention Courses</b>   |         |                      |
| <a href="#">Basic firefighting (Fire marshal)</a>   | 6 hours |                      |
| <a href="#">Basic firefighting with emergency action planning (Fire &amp; Evacuation marshal)</a>   | 1 day   |                      |

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|---|---------------|
| <b>ONLINE VIRTUAL CLASSROOM</b>   |               |
| <b>Occupational Health and Safety Courses</b>   |               |
| <a href="#">Safety representative course specific for COVID-19 in terms of the OHS Act and Regulation for Hazardous Biological Agents</a> | 07h45 – 11h00 |
| <a href="#">OHS Act &amp; SHERQ representative – Legal Liability</a>  | 07h45 – 16h00 |
| <a href="#">The Occupational Health and Safety Act &amp; responsibilities of management – Legal Liability</a>                             | 07h45 – 16h00 |
| <a href="#">Hazard Identification and Risk Assessment</a>   | 07h45 – 15h00 |
| <a href="#">Food facility health &amp; safety course in terms of R364</a>   | 07h45 – 14h00 |
| <b>Fire Fighting and Prevention Courses</b>   |               |
| <a href="#">Basic firefighting (Fire Marshal)</a>   | 07h45 – 13h00 |
| <a href="#">Basic firefighting with emergency action planning (Fire and Evacuation marshal)</a>   | 07h45 – 15h00 |