



Keeping an eye on non-profit

NPOs and the Phased-in Plan

Extracts: **Guidelines to Prepare the Phased-in Plan Return of Employees to the Workplace**
By Ricardo Wyngaard and Peter SA Hendricks

ABOUT NPO LEGAL ISSUES:

This is an electronic newsletter published by: **RICARDO WYNGAARD ATTORNEYS** which is aimed at updating the non-profit sector on relevant legal issues.

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NPOs and the Phased-in Plan.

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RICARDO WYNGAARD ATTORNEYS is a law practice that specialises in rendering advice and assistance on non-profit law and governance.

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GUIDELINES TO PREPARE THE PHASED-IN PLAN

PRICE: R150

Since the declaration of the state of disaster by the Minister of Cooperative Governance and Traditional Affairs (the Minister), the workplace has been identified as being a major space that would accelerate the spread of COVID-19. This is understandably so, as it is where convergence of most people occurs, either as workers or patrons. Nonprofit Organisations are no exception to this.

On 29 April 2020 the Minister, published new Regulations (the Regulations) pursuant to the Disaster Management Act to deal with the continued national state of disaster. These new Regulations repealed the various regulations published by the Minister between 18 March and 20 April 2020 and introduced noteworthy changes, including the introduction of the five alert levels. On 28 May 2020 the Minister published additional Regulations aimed at introducing Chapter 4 to the Regulations dealing with Alert Level 3

In response to these changes the Minister of Employment and Labour issued Directions (the Directions) which were published on 4 June 2020. These Directions introduced measure that employers must adopt in order to play their part in the fight against the spread of COVID-19. So also, NPOs that render permitted services must do so subject to several compliance requirements contained under the Regulations and Directions.

The Directions provide that, subject to clause 14 thereof, the required measures apply to employers and workers in workplaces permitted to continue or commence operations under the Regulations. The purpose of the Directions is 'to stipulate measures that must be taken by employers in order to protect the health and safety of workers and members of the public who enter their workplaces or are exposed to their working activities'. The Regulations introduce the general conditions under which the workplace may function. It in fact requires that prior to reopening the workplace for business, eligible employers with employees must develop a plan for the phased in return of their employees to the workplace.

Every employer, when commencing operations, must in terms of the Directions: undertake a risk assessment as to give effect to the minimum measures required by the Directions, taking into account the specific circumstances of the workplace; and take special measures to mitigate the risk of COVID-19 for vulnerable employees in accordance with the Department of Health's Guidelines.

Employers must ensure that the measures required by the Directions and its risk assessment plan are strictly complied with through monitoring and supervision. Also, employers must, based on that risk assessment, develop a plan outlining the protective measures in place for the phased return of its employees before opening.

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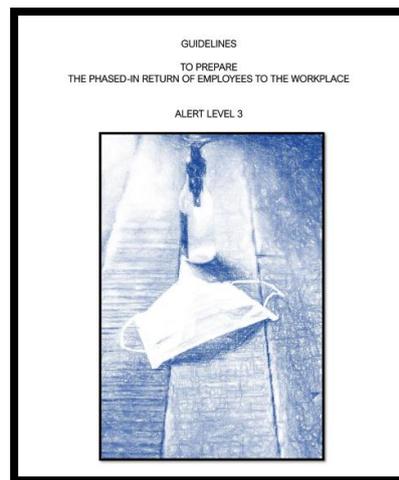
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The Phased-in Plan referred must, must amongst other: identify vulnerable employees; identify ways of minimizing the number of workers at the workplace at any one time; phase the return of their employees to work in accordance with the plan.

Every employer must appoint a manager as a compliance officer to oversee the implementation of the Phased-in Plan and oversee the adherence to the applicable, health and safety measures established in the workplace.

The Department of Employment and Labour has reportedly indicated that labour inspectors have conducted inspections at 4 306 workplaces across the public and private sectors since the lockdown began, and only 2 374 were compliant. According to the [Business Day](#), Employment & Labour Department Inspector-General Aggy Moilola said non-compliance in the public sector accounted for 54%, while the private sector recorded 43%. The low compliance level was unacceptable. ‘Employers have a legal duty to ensure that all workers operate under conditions of safety, especially with rising cases of coronavirus afflictions,’ said Moilola. However, the department reportedly warned that: “Depending on the nature and severity of the transgression, a correction notice, compliance order or even a prohibition order can be issued,” said Thejane.

We have prepared Guidelines to assist NPOs with the development of the Phased-in Plan.



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