

ANNEXURE C

GUIDELINES IF AN EMPLOYER MAKES VACCINATION MANDATORY

1. These guidelines are intended to guide employers, employer organisations, employees, trade unions, conciliators, arbitrators and the courts in determining the fairness of a mandatory vaccination policy and its implementation
2. These guidelines deal with the key aspects of a policy requiring mandatory vaccination in the workplace. The guidelines are stated generally and departures from them may be justified in proper circumstances. For example the size or the nature of the workplace may warrant a different approach.
3. The LRA emphasises the primacy of collective agreements. These guidelines are not intended as a substitute for collective agreements or agreed procedures between employers, their employer organisations and trade unions.
4. The key principle of these guidelines is that employers and employees should treat each other with mutual respect. A premium is placed on public health imperatives, the constitutional rights of employees and the efficient operation of the employer's business.
5. Subject to any applicable collective agreement, a plan contemplated in direction 3 that requires all employees identified in terms of that direction to be vaccinated in accordance with the national COVID-19 vaccination roll out plan should provide the following:
 - (a) Every employee identified by the employer in terms of section 3(1)(a)(ii) should be notified of-
 - (i) the obligation to be vaccinated as and when a vaccine becomes available for that employee;

- (ii) the right of an employee to refuse to be vaccinated on constitutional²⁹ or medical grounds;³⁰
 - (iii) the opportunity for the employee, at the employee's request, to consult a health and safety representative or a worker representative or trade union official;
 - (b) The employer should provide, in addition to the obligations contained in direction 4 in respect of COVID-19 vaccinations and, if reasonably practicable, transport to and from the vaccination site allocated in terms of the Electronic Vaccine Data System Registration Portal.
 - (c) Should an employee suffer side effects as a result of a COVID-19 vaccination, the employer should give the employee paid time off to recover if the employee is no longer entitled to paid sick leave in terms of the BCEA or any applicable collective agreement or lodge a claim for compensation in terms of the Compensation for Occupational Injuries and Diseases Act, 130 of 1993.
- (2) If an employee refuses to be vaccinated on any constitutional or medical ground, the employer should-
- (a) counsel the employee and, if requested, allow the employee to seek guidance from a health and safety representative, worker representative or trade union official;
 - (b) refer for further medical evaluation should there be a medical contraindication for vaccination;

²⁹ The constitutional grounds are the right to bodily integrity in section 12(2) and the right to freedom of religion, belief and opinion in section 13 of the Constitution.

³⁰ Medical grounds for the contra-indication of vaccination: an immediate allergic reaction of any severity to a previous dose or a known (diagnosed) allergy to a component of the COVID-19 vaccine. See also <https://www.nicd.ac.za/covid-19-vaccine-faq/>

(c) if necessary, take steps to reasonably accommodate the employee in a position that does not require the employee to be vaccinated;

- (3) For the purposes of these guidelines, reasonable accommodation means 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 published in terms of the Employment Equity Act, 1999 (Act No.97 of 1999). This might include an adjustment that permits the employee to work offsite or at home or in isolation within the workplace such as an office or a warehouse or working outside of ordinary working hours. In instances of limited contact with others in the workplace, it might include a requirement that the employee wears an N95 mask
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