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VULNERABLE WORKERS

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The Disaster Management Regulations (30 April 2020 version) consider employees above the age of 60 and/or employees with known or disclosed health issues or comorbidities at a higher risk of complications or death if they are infected with COVID-19.

For the purposes of an employer's Workplace Plan (as required in terms of the Disaster Management Regulations), an employer must identify who its vulnerable workers are. Once these individuals are identified, an employer should do an assessment of whether these employees will be required to report for duty at the workplace or whether they will be required to stay at home. This will be determined by whether the employer is able to implement "**special measures**" for those employees who are considered to be vulnerable.

The Regulations do not prescribe what those special measures must be. These are, nevertheless, measures other than the "normal / ordinary" measures that must be taken. "Special measures" would be additional measures to protect this group of vulnerable workers. These could include additional personal protective equipment (such as visors), workplace redesign where possible, temporary allocation of alternative functions.

If vulnerable workers are able to work from home, they should. If they cannot, when they are at work, the employer must take special measures to protect them.

Taking the above into account, when an employer prepares its Workplace Plan, it must compile a list of employees comprising the following categories:



Those who can work from home



Those who are older than 60



Those with health conditions or comorbidities

An employee may fall into more than one category. For example, an employee may be older than 60, have an underlying health condition and be able to work from home. Or, the employee may fall into only one category, e.g. the employee may be older than 60, not be able to work from home and have no underlying health condition.

In order to prepare this list, the employer would need to request the information from the employees. This is a **voluntary disclosure** and the general rule that such information may only be processed with the **employee's informed consent** shall apply. An employee can accordingly not be sanctioned for not making the disclosure. Where the employer is aware, as a result of a previous voluntary disclosure by the employee, of the employee's underlying health condition, it may use this information for purposes of compiling the list. Certain employers have on-site clinics who hold the employees' health information. This information is not necessarily "in the possession" of the employer, and independent advice may need to be obtained regarding the processing and use of such information.

Workplace plans must be available for inspection. For purposes of ensuring the **privacy** of the employees, it would be advisable, when preparing the lists of employees, to use **employee numbers** as opposed to names and surnames, and for employers to treat this information as confidential and thus restrict access thereto.

The **health conditions** that may need to be taken into account include, for example:



In this regard many conditions can cause a person to be immuno-compromised, including cancer treatment, bone marrow or organ transplantation, immune deficiencies, poorly controlled HIV or AIDS, and other immune weakening medications.

Source: Business for South Africa Return to Work booklet