



## Construction, Engineering & Infrastructure Law

Legal Update  
8 May 2020

*Our Cox Yeats Construction, Engineering & Infrastructure Team is committed to keeping you informed on developing legal issues.*

### COVID-19 : ARE THERE RESTRICTIONS ON THE NUMBER OF WORKERS ALLOWED ON CONSTRUCTION SITES?

1. The Level 4 Regulations published by the Minister of Cooperative Governance and Traditional Affairs (“Regulations”) permit construction work which falls into the following categories:
  - (a) civil engineering for public works projects (including water, energy and sanitation);
  - (b) public works civil engineering and construction works;
  - (c) road and bridge projects, including local road repairs; and
  - (d) critical **maintenance** and repairs.
2. Despite the president’s comments in his presidential address which indicated that only 30% of employees at a particular workplace would be permitted to attend work at any given time, this has not been legislated.
3. Regulation 5(4) provides that employers in respect of every business premises must determine the area of floor space of the premises in square metres and based on the square metreage, he/she must determine the number of employees and customers that may be inside the premises at any time ensuring adequate space is available. Adequate space is defined as not more than one person per one and a half metres of floor space.
4. “Business premises” is not defined in the Regulations. Based on the wording of this provision, it seems to contemplate business premises in respect of retailers and wholesalers. It is not clear whether the term is broad enough to encompass construction sites too.
5. In addition to the Regulations, the Minister of Employment and Labour has published a directive which details further measures to be implemented in the workplace. The directive aims to ensure that the measures taken by employers under the Occupational Health and Safety Act are consistent with the national measures adopted under the Disaster Management Act.
6. The directive applies to employers and workers in respect of the manufacturing, supply or provision of essential goods or essential services, therefore it would apply to construction work permitted in terms of the Regulations.

7. In respect of the number of workers permitted to work on site at any given time, the directive provides that the employer must, as far as practicable, minimize the number of workers at the workplace at any given time through rotation, staggered working hours, shift systems, remote working arrangements or similar measures in order to achieve social distancing, as contemplated in clause 17 of the directive.
8. Clause 17 deals with social distancing and provides that every employer must arrange the workplace to ensure minimal contact between workers and as far as practicable ensure that there is a minimum of one and a half metres between workers while they are working.
9. The directive acknowledges that in some instances it may be necessary to implement a longer minimum distance depending on the circumstances of the workplace or the nature of the sector, however the directive does not set out what the circumstances or nature of the sector would be.
10. If it is not practicable to arrange workstations to be spaced at least one and a half metres apart, the directive places an obligation on the employer to either arrange physical barriers to be placed between work stations, or if necessary, supply the employee free of charge with appropriate PPE based on a risk assessment of the working place.
11. Given the nature of the construction site, it would be more practicable to supply the workers with appropriate PPE.

**FOR MORE INFORMATION PLEASE CONTACT RICHARD HOAL WHO IS AVAILABLE TO ASSIST YOU.**



**RICHARD HOAL**

Partner

**Tel:** 031 536 8511

**Cell:** 079 496 1799

**Email:** [rhoal@coxyeats.co.za](mailto:rhoal@coxyeats.co.za)



Visit us at: [www.coxyeats.co.za](http://www.coxyeats.co.za)

**DURBAN OFFICE:**

**Tel:** 031 536 8500 | **Fax:** 031 536 8088 | **Address:** Ncondo Chambers, Vuna Close, Umhlanga Ridge, Durban, 4320

**JOHANNESBURG OFFICE:**

**Tel:** 010 0155 800 | **Address:** 4 Sandown Valley Crescent, Sandton, 2196



If you have received this Legal Update in error, or wish to unsubscribe from the mailing list, please click [here](#).

**Disclaimer:** *The information contained herein is for general guidance only and is not intended as legal advice. Should readers require legal advice on any relevant issue, they are requested to consult a Cox Yeats professional.*