



Circular H₁₆₅/2020

TO ALL HEADS OF DIVISIONS / CHIEF DIRECTORATES / DIRECTORATES / REGIONS / DISTRICTS / SUB STRUCTURES / PEOPLE MANAGEMENT MANAGERS

VULNERABLE MEDICAL PERSONNEL (DOCTORS) WHO PERFORM COMMUTED OVERTIME

1. PURPOSE

To provide guidance to managers regarding identified vulnerable medical personnel (doctors) who are performing commuted overtime (COT) in high risk areas, i.e. Trauma, Emergency Care etc.

2. BACKGROUND

2.1 In terms of Regulation 53 of the Public Service Regulations, 2016, the Occupational Health and Safety Act (OHSA), and the Hazardous Biological Agents Regulations (HBA Regulations), it is required from employers to provide and maintain as far as is reasonably practicable a working environment that is safe and without risks to the health of employees.

2.2 In light of the current pandemic, individual risk assessments of staff were conducted as required in Circular H50/2020 to determine employees' vulnerability to COVID-19 whilst working in health care facilities. A number of medical personnel were identified as vulnerable employees who should not be working in high-risk areas such as Trauma, Emergency Care, etc.

2.3 Requests were subsequently received from medical personnel as to whether they may still perform their COT in high-risk areas if they indemnify the Department against personal damages claims should they contract COVID-19 in the workplace.

2.4 The Department has therefore obtained a legal opinion to provide guidance to managers with regard to the performance of commuted overtime in high-risk areas.

3. VULNERABLE EMPLOYEES AND COMMUTED OVERTIME CONTRACTS

3.1 The legal framework, including the Constitution, Occupational Health and Safety Act (OHSA) and regulations and directives issued in terms of the Disaster Management Act, 2002 (DMA), place a general duty on the Department to minimise and prevent the spread of communicable diseases such as COVID-19 in the workplace and to provide employees with a safe and healthy environment. In view of this duty, the following will apply to vulnerable employees who have commuted overtime contracts:

3.1.1 Medical staff who are identified as vulnerable employees cannot be allowed to continue to perform commuted overtime in high-risk areas. The identified employees

must be afforded an opportunity to state their case and alternative placement where commuted overtime can be safely performed must be explored. If there is a need for commuted overtime based on operational requirements in a low-risk area, within the employees own Institution or at another Health Care Facility, a new commuted overtime agreement must be entered into between the employer and employee.

- 3.1.2 If alternative placement based on operational requirements is not possible, a discussion with the employee must take place and it must be indicated that he/she cannot continue with commuted overtime as a result of the risk of exposure to COVID -19. The employee must be afforded the opportunity to state his/her case. The intention must be to reach agreement to temporarily terminate or suspend the commuted overtime contract.
- 3.1.3 In the case where there is no agreement to terminate or suspend the commuted overtime contract as a result of exposure to COVID-19, the employer must follow the incapacity procedure and dismiss the employee for the purposes of commuted overtime **only**. The commuted overtime contract must then be terminated. This will not have an impact on the main employment contract. The employee will remain in service but will no longer perform commuted overtime.
- 3.1.4 Heads of Institutions should consider not to renew COT contracts that are expiring or to review and suitably amend those contracts that are due for annual review.
- 3.1.5 Records must be kept of all such cases and the work arrangements agreed upon, and must be available for reporting purposes when required.



HEAD OF DEPARTMENT

DATE: 11 August 2020