

1 April 2020

To all Agri SA affiliations

Dear Affiliates

Transport regulations: COVID-19 Pandemic

The Minister of Transport, Fikile Mbalula, issued regulations in terms of the Disaster Management Act on the 25th of March 2020 to prevent the spread of covid-19 in public transport services. The regulations do not define “public transport services”. The term is however defined in the National Transport Act of 2009. The definition is as follows: “means a scheduled or unscheduled service for the carriage of passengers by road or rail, whether subject to a contract or not, and **where the service is provided for a fare or any other consideration or reward**, including cabotage in respect of passenger transport as defined in the Cross-Border Act, and except where clearly inappropriate, the term "public transport" must be interpreted accordingly.”

The first question that arises, is whether the regulations are applicable to the private sector, where an employer arranges for private transport for essential workers during the covid-19 pandemic. The regulations refer to “public transport vehicles” throughout and provides that it is applicable to public transport vehicles. An employer who provides transport for workers to and from work free of charge is in all likelihood not providing a public transport service and therefore not subject to these regulations.

The general lockdown regulations which were published by Minister Dlamini Zuma on 25 March 2020 provided in Regulation 11C as follows regarding the prohibition of transport services and the exemptions to the prohibition:

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(2) Where a person rendering essential services is unable to travel to and from his or her place of employment, the employer must make the necessary transport arrangements: Provided that no more than 50% of the licensed capacity of the vehicle or vessel is exceeded and all directions in respect of hygienic conditions and the limitation of exposure to persons with COVID-19, are adhered to.

(3) The Cabinet member responsible for transport must issue directions for the transportation of persons who must obtain essential goods or services and where such person has no other means of transport except public

transport as contemplated in subregulation (1), provided that no more than 50% of the licensed capacity of the vehicle or vessel is exceeded and all directions in respect of hygienic conditions and the limitation of exposure to persons with COVID-19, are adhered to.

The regulations published by the Minister of Transport on 25 March is what is envisaged in Regulation 11C (3), which means that they are aimed at persons who have no other option but to use public transport such as taxis and busses. Regulation 11C (2) however deals with the situation where someone is employed by a business such as a farm, that renders an essential service, and has no public transport available to them. In such cases the employer is obliged to arrange for transport. Such transport may not exceed 50% of its licenced capacity (this was later changed to 60%) and hygienic protocols must be observed. This involves sanitation and maintaining an appropriate distance between passengers. Please note that licencing capacity does not refer to the load bed of a bakkie or truck – only to the inside of the vehicle. The National Land Transport Act Regulations and specifically regulation 247 ordinarily regulate the situation where people are transported on a bakkie or ruck. Regulation 247 provides as follows: “. **Circumstances under which persons may be carried on goods vehicle**

(1) No person shall operate on a public road a goods vehicle conveying persons unless that portion of the vehicle in which such persons are being conveyed is enclosed to a height of-

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(a) at least 350 millimeters above the surface upon which such person is seated; or

(b) at least 900 millimeters above the surface on which such person is standing, in a manner and with a material of sufficient strength to prevent such person from falling from such vehicle when it is in motion.

(2) No person shall convey more than 5 persons in the goods compartment of a goods vehicle, the gross vehicle mass of which is less than 3 500 kilograms.

(3) The provisions of this regulation shall only apply in respect of a person conveying persons as their employer during the scope of employment of such persons.”

The lockdown regulations are silent on the conditions that apply where people are transported on trucks or bakkies. However, even though it is not illegal to convey workers in such a manner, Agri SA wants to caution members that there are risks involved in transporting people on open vehicles. Also, it is advisable to ensure that workers sit at least one meter apart and that all sanitary protocols are adhered to.

On 31 March 2020, after the taxi industry threatened to strike, the Minister of Transport promulgated amended transport regulations. These are once again aimed at public transport. These regulations deal with the operating times of taxis and busses. They are now restricted to operate during the hours of 05h00 to 10h00 and 16h00 to 20h00. It also deals with the loading capacity of minibuses. It distinguishes between two scenarios: where all passengers wear masks – in such case the public transport may carry 100% of its licensed capacity, or where not all passengers wear masks, in which case mini- and midibusses may only carry 70% of the normal licensed capacity.

The regulations, although dealing primarily with public transport, contains one reference to private vehicles. That relates only to operating hours and permits essential businesses to determine their own hours for transportation in line with their shifts or timetables. The regulations require that these schedules should be in writing stamped and signed by the person in charge. Agri SA recommends that where no stamp is available, that these schedules should bear the company or business logo and that these schedules should be available in the vehicles that transport workers.

Yours faithfully

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