



COVID-19: What employers need to know on vaccination and prevention

Tuesday 5 October 2021

Welcome

- We will start soon!
- Please mute your microphone
- Please switch off your camera if you are not speaking
- Use the chat box to raise questions
- Interpretation available in English/Spanish/French

Agenda

14:00-14:05 Welcome **Mr. Roberto Suarez Santos**, IOE Secretary-General

14:05-14:25 Opening remarks

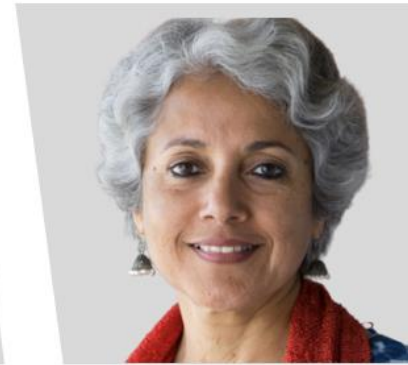
- State of play and guidance: **Dr. Soumya Swaminathan**, WHO's Chief Scientist
- Vaccination and prevention in workplaces: **Mr. Guy Ryder**, Director-General, ILO
- Q&A



ROBERTO SUÁREZ SANTOS
Secretary-General, IOE



GUY RYDER
Director-General, ILO



SOUMYA SWAMINATHAN
Chief Scientist, WHO

Panel

14:25-15:25

Panel

- Taking action as Employers: **Mr. Peter Robinson**, CEO & President – USCIB
 - Effective and equitable recovery: **Ms. Susan Hopgood**, President – Education International (EI)
 - Q&A
- Focus on legal aspects: **Mr. Tom Bray**, Partner Employment & Pensions – Eversheds Sutherland
 - Q&A
- Joining forces: **Mr. Martin Kingston**, Chairperson – Business for South Africa (B4SA) Steering Committee
 - On the ground level: **Mr. François Rohrbach**, GM Switzerland and Senior VP Human Resources – Firmenich
 - Q&A

15:25-15:30

Concluding remarks **Mr. Roberto Suarez Santos**, IOE Secretary-General



PETER ROBINSON



SUSAN HOPGOOD



TOM BRAY



FRANÇOIS ROHRBACH



MARTIN KINGSTON

Mr. Peter Robinson CEO & President – USCIB



Ms. Susan Hopgood

President – Education International (EI)



Mr. Tom Bray

Partner Employment & Pensions – Eversheds Sutherland



Vaccination in the workplace

A roundup of global developments

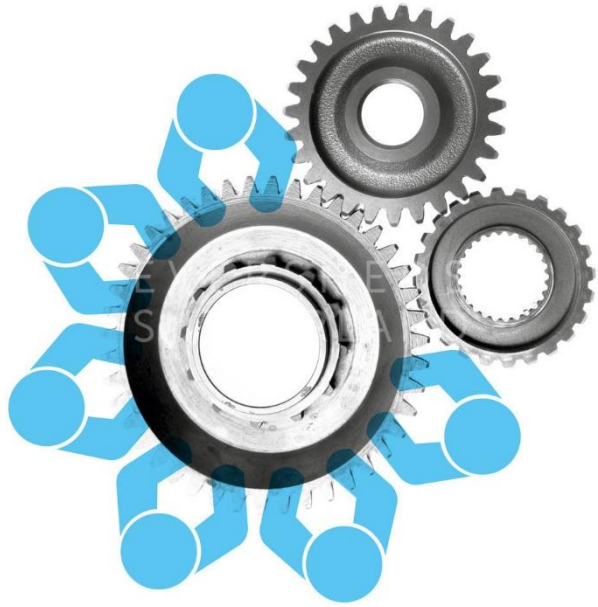
5 October 2021

Tom Bray

Eversheds Sutherland (International) LLP

Partner, Employment, Labor and Pensions Group

Agenda



> Vaccination: workplace considerations and updates

- Health & safety

- Data privacy

- Employment law

> Actions to mitigate risks



Vaccination



What are the core duties from an employment perspective?

In **most** jurisdictions, both employers and employees will have some core duties

- Employers** – a legal duty to ensure the health and safety of workers and others who may be affected by their business
- Employees** – a legal duty to take reasonable care for the health and safety of themselves and others who may be affected by their acts/omissions at work

In **some** jurisdictions, there may also be additional duties:

- Employers** – a legal duty to consult employee representatives on health and safety matters
- Employees** – a legal duty to cooperate with an employer's health and safety instructions



The position in Europe:

- Generally, no mandatory vaccination
 - Other COVID-secure workplace protective measure requirements apply
 - Risk assessment requirements
- Mandatory vaccination unlikely to be considered a reasonable H&S step, except in exceptional cases/in certain settings e.g.:
- France – those in contact with vulnerable persons (e.g. healthcare workers)
 - UK – care home staff - from 11 November 2021
-
- Italy – “Green Pass” developments

Health and safety

Vaccination as a reasonable H&S step to mitigate workplace risk?



The position in South America:

- Scope for authorities to potentially mandate vaccination in some countries
- Generally, no current legal provision for mandatory vaccination
- Currently unlikely to be considered a reasonable H&S step

The position in the US:

- Employers have scope to consider mandatory vaccination to mitigate workplace risk (subject to exceptions)
- Vaccination alongside other COVID-secure workplace protective measures
- Taking account of:
 - OSHA guidance
 - EEOC guidance
- Requirements for certain workers/venues at federal/state level

Health and safety

Vaccination as a reasonable H&S step to mitigate workplace risk?



The position in Asia:

- No legal provision for mandatory vaccination
 - Most companies will be unable to demonstrate it is reasonably necessary for individuals to be required to take the vaccine to ensure the safety of all individuals present on the employer premises or to fulfill a legal requirement
 - In some limited countries/areas/sectors, governments have made it mandatory for certain employees to be vaccinated
 - The general position remains to encourage rather than mandate
- Mandatory vaccination is unlikely to be considered a reasonable H&S step in most jurisdictions



All European jurisdictions and **many** jurisdictions globally now have data privacy laws that impact if and how personal data can be processed

Obtaining details of vaccination status, whether as part of a mandatory vaccination policy or otherwise, raises data privacy considerations. In particular:

- Vaccination status information is personal data concerning health
- Obtaining such information, using it and storing it amounts to data processing
- The fact that it is health-related data often means that there are additional legal safeguards in the processing of the data



The position in Europe:

- Employee vaccination status is special category data
- Employer use of this data must be fair, necessary and relevant for a specific purpose
- There must be a suitable lawful basis for the processing e.g.:
 - an employment law requirement
 - or a substantial public interest condition
- Relying on consent in the context of an employment relationship is unlikely to be effective
- A DP impact assessment needs to be carried out to assess the privacy risks and appropriate steps to mitigate them

➤ Practical work-arounds: Anonymous data or visual checks without recording data



The position in South America

- Data privacy restrictions generally apply, where employee vaccination status is likely to be considered special category data
 - There must be a valid legal basis to process such data
 - Valid explicit consent may provide sufficient authority to process the data
 - Consent must be given explicitly, specifically, and for defined purposes
 - Effective data security measures must be in place
 - Privacy notice requirement in some countries

➤ Practical work-arounds: Voluntary and anonymous data, but some safeguards remain



The position in the US

"...requesting documentation or other confirmation of vaccination by a third party in the community is not a disability-related inquiry under the ADA, and the ADA's rules about such inquiries do not apply."

"The act of administering the vaccine is not a "medical examination" under the ADA because it does not seek information about the employee's physical or mental health."

EEOC, 28 May 2021

- As with all employee medical records, vaccination records:
 - should not be available to management generally
 - should be maintained separately
 - should be treated as confidential



The position in Asia:

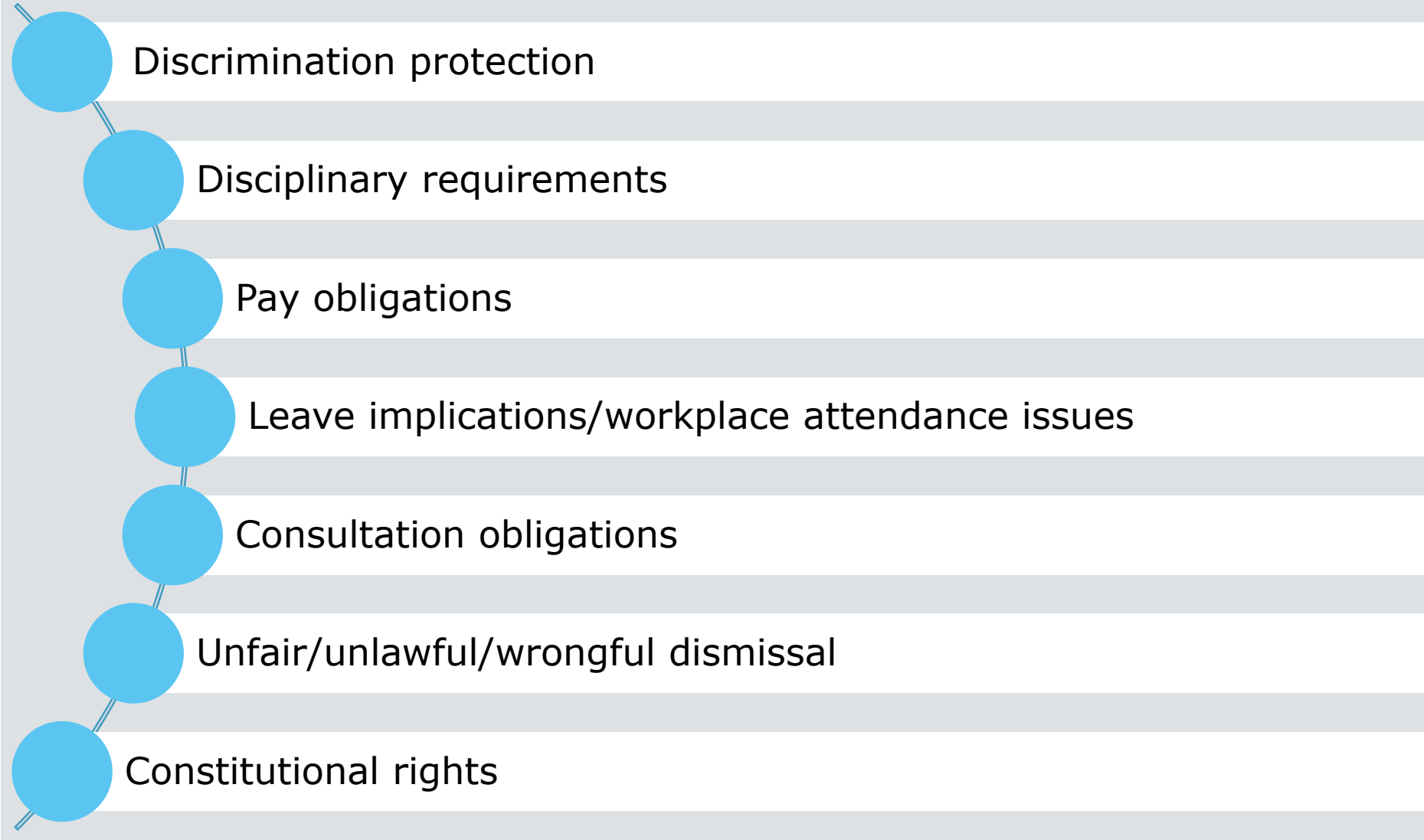
- Vaccine/immunity status is likely to be considered personal and/or sensitive personal data in many jurisdictions
 - Restrictions on processing the data therefore applies
 - Valid explicit consent may provide sufficient authority to process the data, subject to conditions
 - Unlike in Europe, relying on consent in the context of an employment relationship can be effective
 - The need for specific consent may be avoided in some jurisdictions through an appropriately-drafted privacy notice or general consent
- Collecting the data anonymously is likely to avoid data privacy restrictions

Employment law

How do employment laws relate to workplace vaccination policies?



Most jurisdictions globally will have at least some employment laws that impact vaccination policy considerations





The position in Europe:

- Discrimination
 - All member states have discrimination laws
 - Protected characteristics differ by jurisdiction, but most protect against pregnancy-related, religion/belief, disability discrimination
- Unfair treatment
 - Employer's instruction must be lawful and reasonable
- Pay protection
- Consultation obligations
- Unfair dismissal/action short of dismissal



The position in South America:

- Discrimination
 - protections exist – including related to disability, religious and pregnancy
- Job security/severance principles
 - distinction between terminations with/without just cause in many countries
- Vaccination leave/pay requirements in some countries

The position in the US:

- Discrimination
 - Employers can issue a COVID-19 vaccination mandate
 - EEOC guidance
 - Vaccine incentive programs
- Vaccination leave/pay – state laws vary on compensable time



The position in Asia:

- Discrimination
 - generally includes protection against religion, pregnancy disability, sickness/disease discrimination
 - limited claims in practice
- Unfair/unreasonable dismissal/treatment
- Pay
 - vaccination leave/pay – generally no express statutory requirement
 - sick pay



Mitigating the risks

Mitigating the risks

Key action points



Be clear on
strategy

What is
reasonable for
H&S?

What is the
lawful basis for
DP?

Local risk
assessments

Staff
engagement/
consultation

Update policies

Train managers

Keep up to date
on laws/
guidance

Look ahead and
prepare

Mitigating the risks

Keeping up to date



Thinking of your global workforce

COVID-19 global employer guide



<https://ezine.eversheds-sutherland.com/covid-19-global-employment-guide/home/>

Europe			
Austria	France	Lithuania	Slovak Republic
Belgium	Germany	Netherlands	Spain
Czech Republic	Hungary	Poland	Sweden
Denmark	Ireland	Portugal	Switzerland
Estonia	Italy	Romania	United Kingdom
Finland		Russia	
Africa		Asia	Middle East
Mauritius	USA	China	Kingdom of Saudi Arabia
South Africa		Hong Kong SAR	Qatar
Tunisia		Singapore	
Zimbabwe			

Tom Bray
Partner
Employment, Labor and Pensions Group

T: +44

M: +44 777 083 8504

dianegilhooley@eversheds-sutherland.com

eversheds-sutherland.com

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Mr. Martin Kingston

Chairperson – Business for South Africa (B4SA) Steering Committee



B4SA – Joining Forces

IOE

5 October 2021



BUSINESS FOR SA | COVID-19

B4SA – founded March 2020 in response to the Covid-19 pandemic

Context

Established with 3 working groups:

1. Healthcare:

- Aim:** to advise on healthcare responses to the pandemic
- Achievements:** set up PPE portal, advisory committee on healthcare responses, mobilised all companies in healthcare industry, modelled different infection scenarios with links to lockdown phases

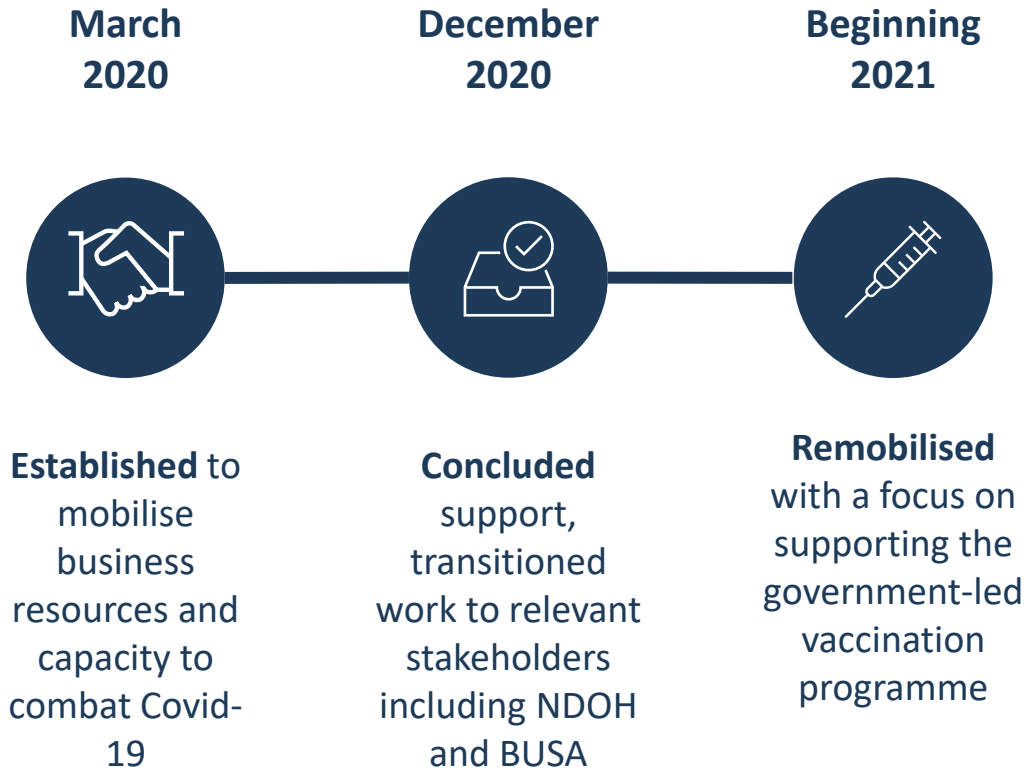
2. Economy:

- Aim:** to support on economic interventions limiting the impact of the pandemic
- Achievements:** developed integrated economic and healthcare model to understand impact of Covid across sectors. Worked with social partners and specific economic sectors to modify lockdown rules to ensure those sectors could operate and keep the economy moving

3. Labour

- Aim:** to engage with Nedlac and support the design of unemployment benefits
- Achievements:** championed (via Nedlac) the process to put in place UIF benefit structure, resulting in over R60bn being paid out to over 6m beneficiaries to date

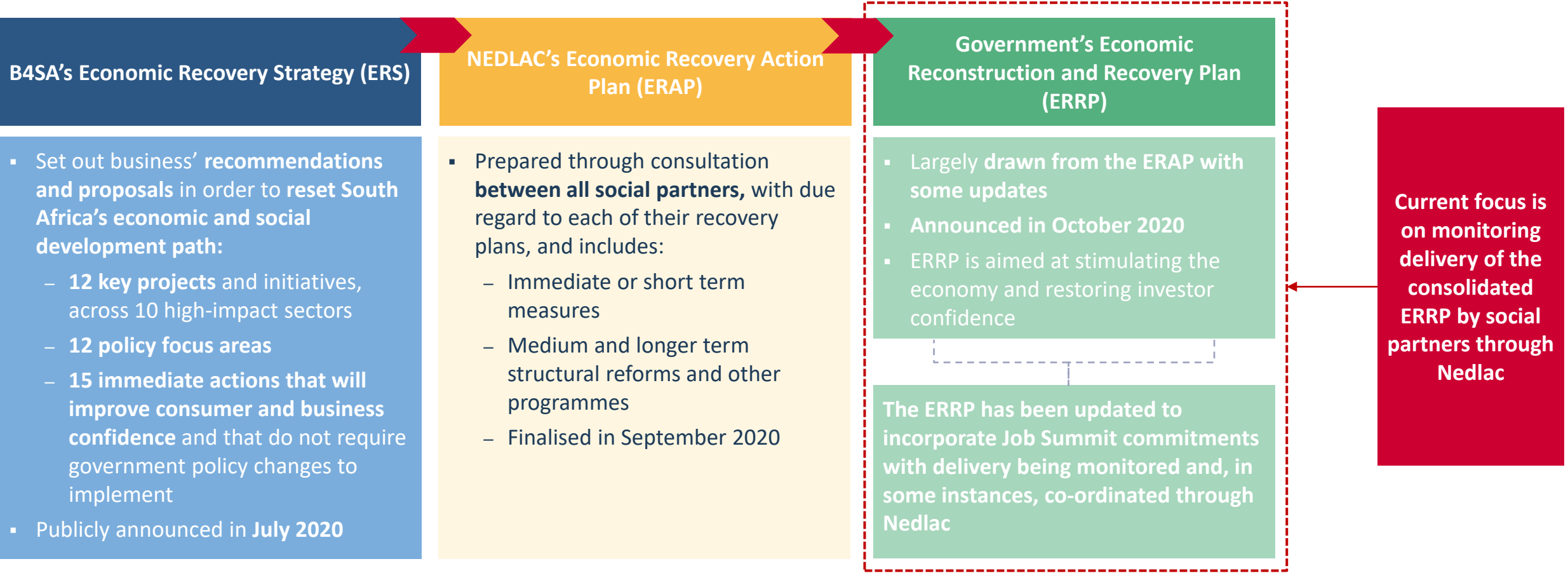
Timeline



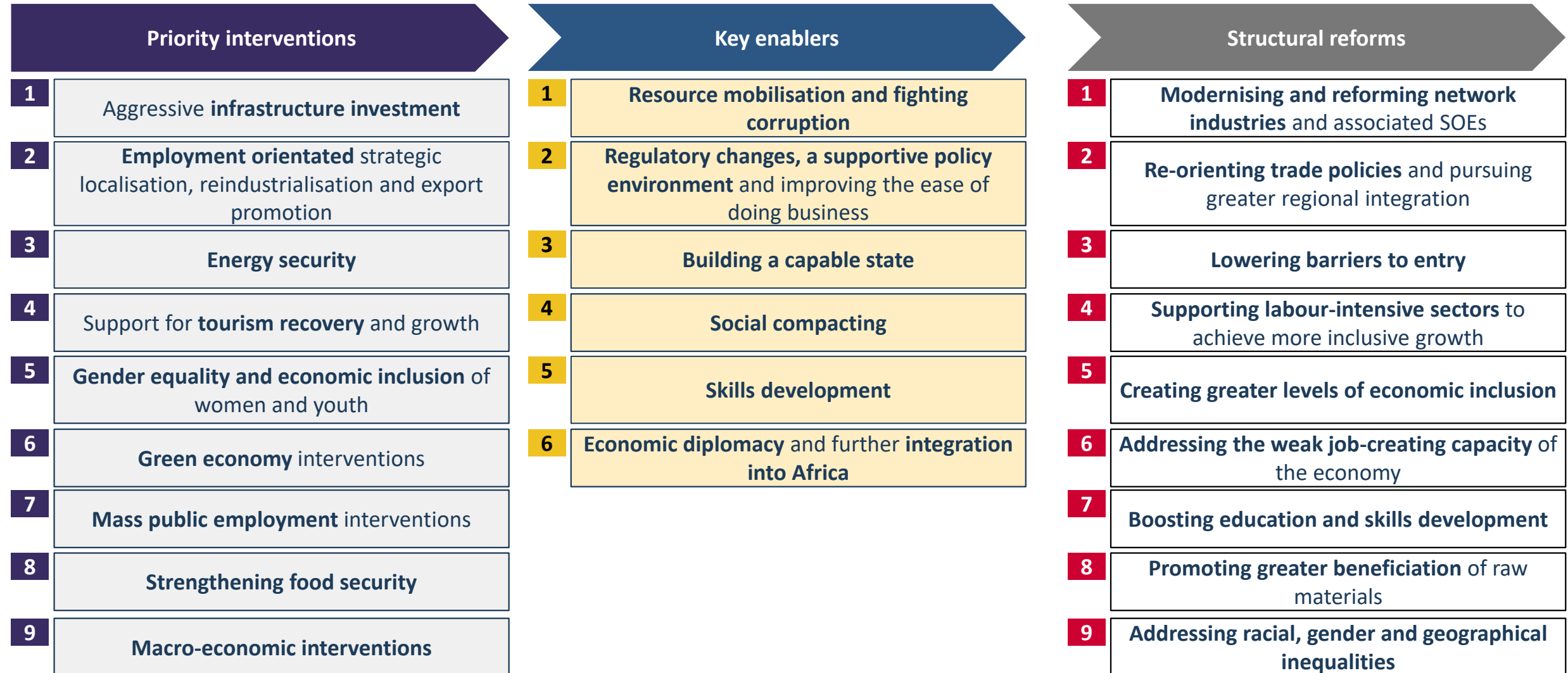
COVID-19 economic impact – much work has been done to identify requirements to attract investment and drive growth and employment in SA

Economic Impact

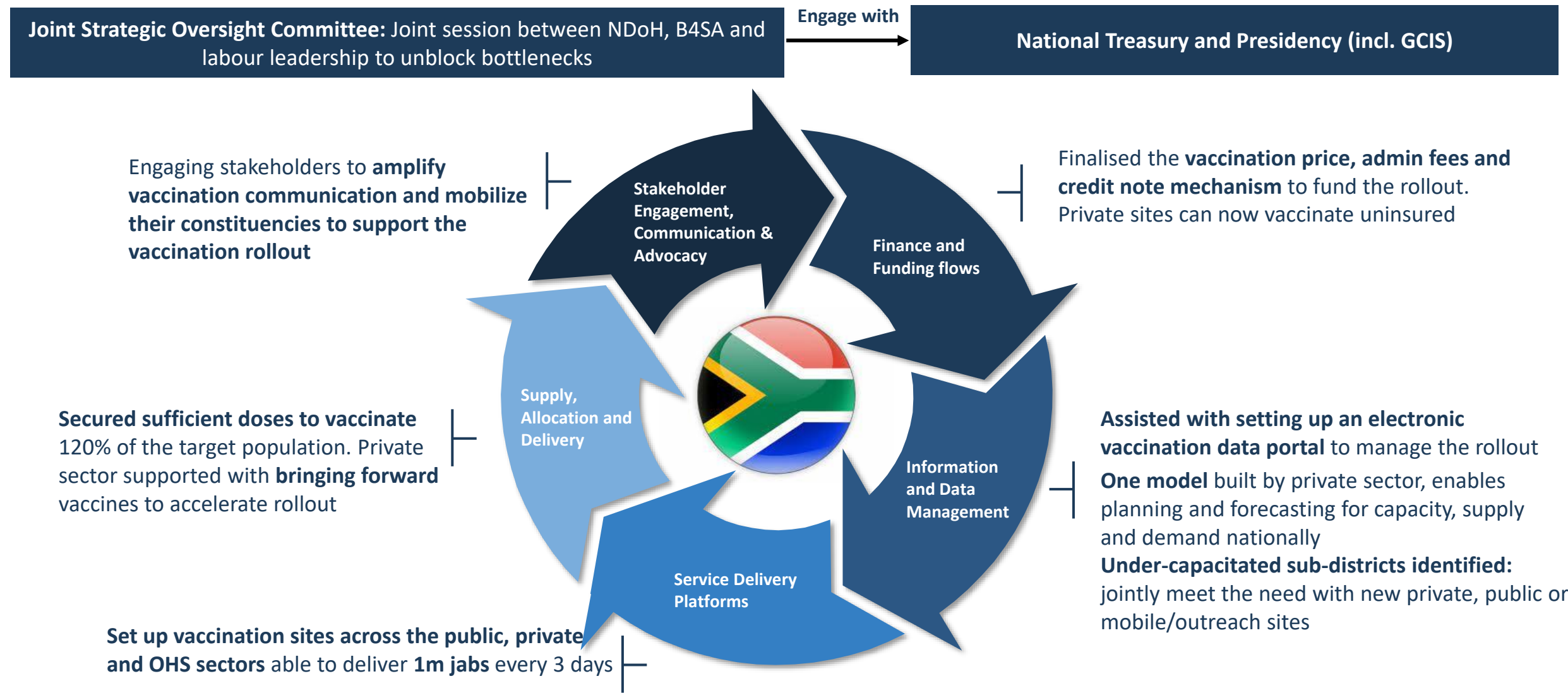
- GDP contracted by 6.9% in 2020, vs. a 3.5% global economic growth contraction
- 1.6mn net jobs have been lost since Q1 of 2020
- SA’s growth prospects have been revised to 3.1% for 2021; 2.0% for 2022, vs. c.6.0% in 2021 and c.4.4% in 2022 for the global economy



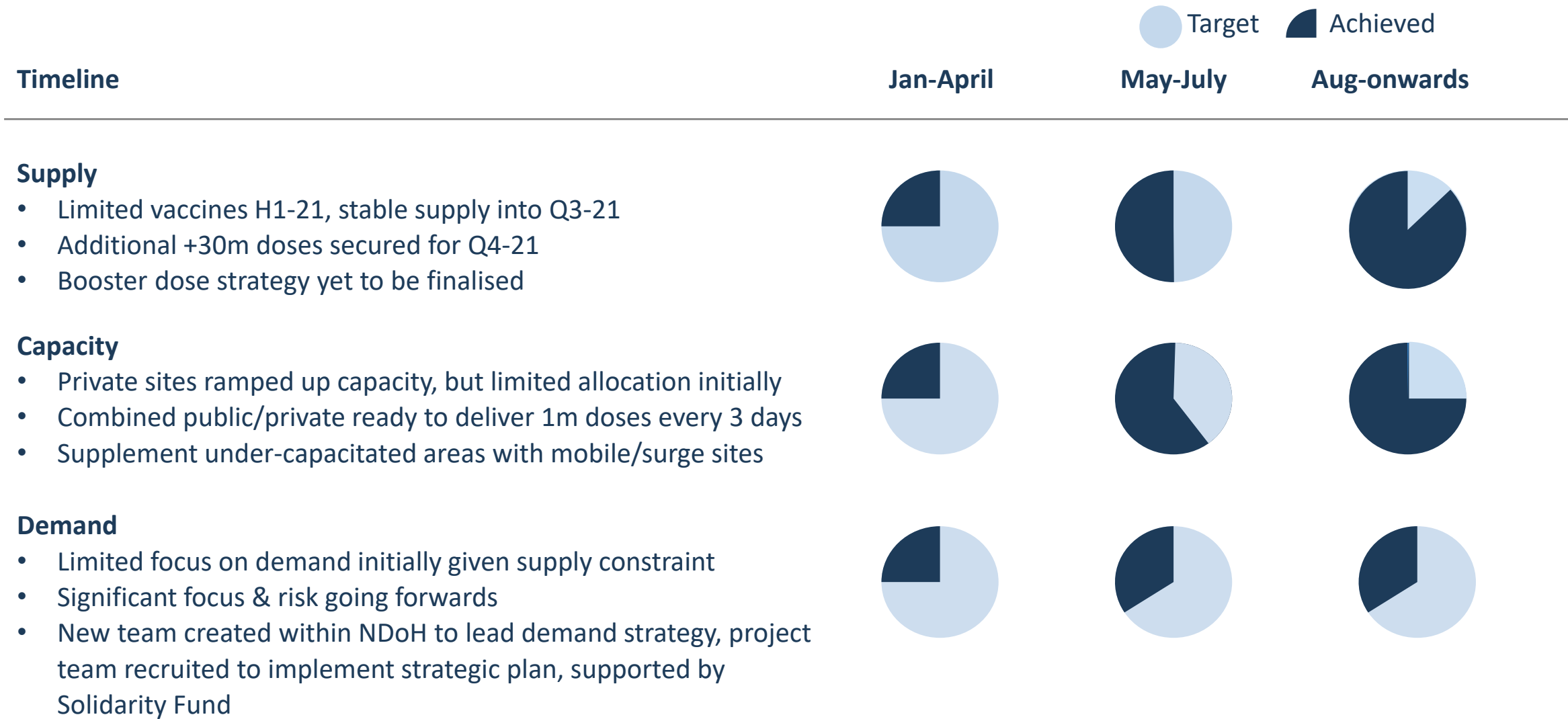
The ERRP reflects various priority interventions and key enablers to rebuild the economy and ensure sustainability, resilience and inclusiveness



B4SA remobilised - five workstreams formed to support all aspects of the vaccine rollout, in partnership with government



SA vaccine rollout - B4SA and government operating in full collaboration



Private sector maintains capacity currently online of ~161k doses per day¹

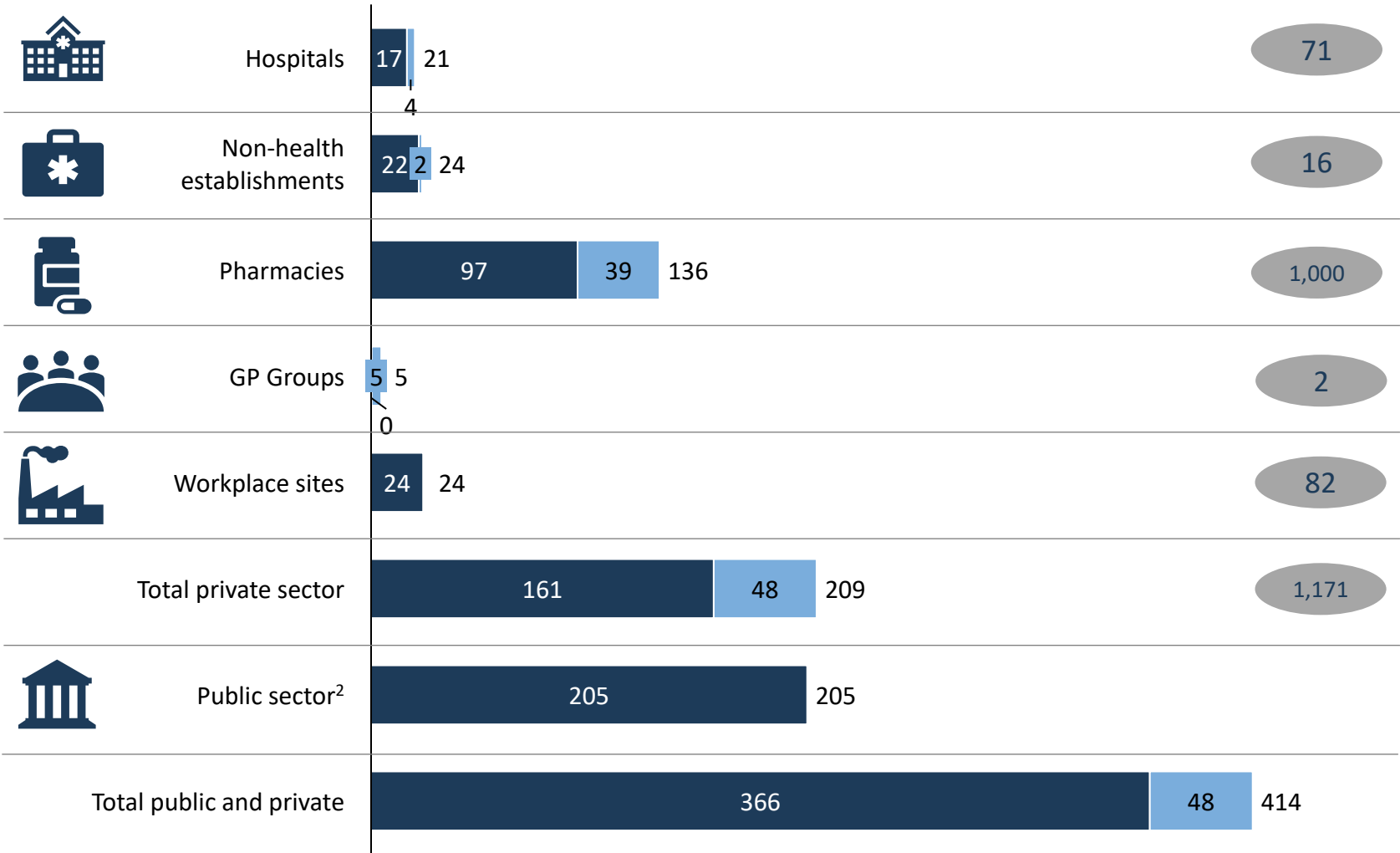
Total online capacity as at 4 October, 000 jabs per day

Online Capacity

Available Capacity

xx

Number of sites online



Capacity ramped up by private sector during July and August

Private sites capacity w/c 4 Oct:

- 161k doses/day current
- 48k doses/day additional capacity could come online
- 209k doses/day total private sector potential capacity



Sites have reached steady state capacity, but demand generation has yet to match capacity increases: 268k highest total daily doses achieved (25 Aug)

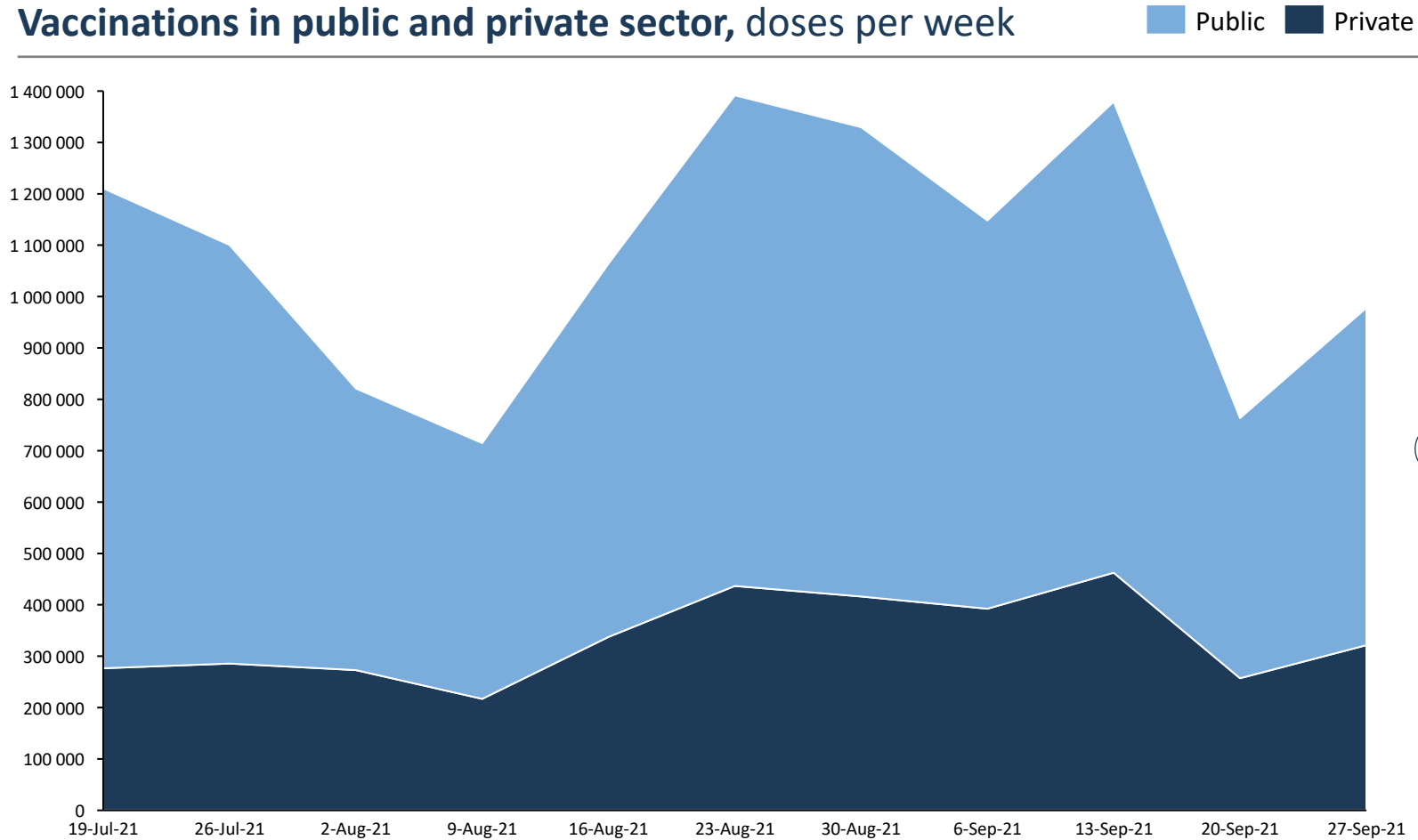
Mobile/surge sites used to flexibly increase capacity if private sector capacity not available: e.g. capacity at SASSA (social grants) paypoints up 100k doses/day

¹ These data are subject to review and updates from healthcare groups

² Derived from actual public sector vaccines achieved

Current status – private sector now administering over a third of all vaccinations

Vaccinations in public and private sector, doses per week



9.0m (23% of 18+) individuals fully vaccinated¹

12.8m individuals received 1st doses (32% of 18+)¹; NDoH target is **28m 1st doses** by end 2021

Average of **1.9m total doses/week** will need to be administered to achieve 28m 1st dose target by 16 Dec. Average of only **c.1m doses/week** achieved to date

Private sites **initially allocated 15%** of available supply, now **averaging 34% of total vaccinations**²

Private sector vaccinations **exclude sites run by the private sector using public sector vaccine allocations** (e.g. mass vaccination sites in CPT and JHB)

W/c 9 Aug, 20 Sept included public holidays

¹ As at 3 October 2021

² Average of last 2 week's vaccinations, as at 3 October 2021

Employers have a key role to play in vaccination

Employer actions to drive demand

Facilitate messaging, increase perceived value of vaccination, reduce cost and other barriers to access

- **Education** (access to information, resources available in all languages)
- **Time off to vaccinate**
- **Make it as easily possible** (bring vaccines to the workplace)
- **Incentives** (own incentives or link to those provided by others such as SAFA, restaurants)
- **Vaccine mandates** a key lever to drive demand

Next steps for employers

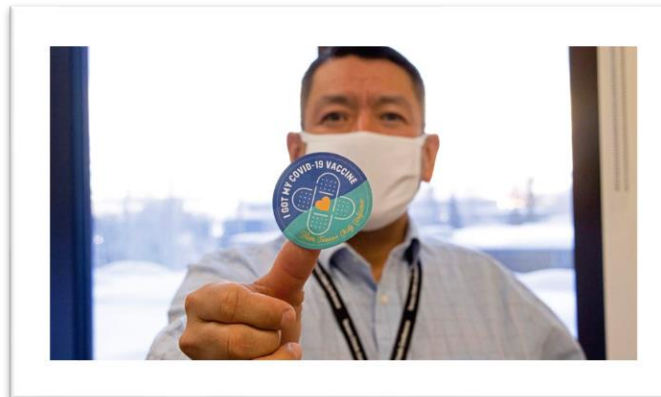
- Maintaining capacity of vaccination sites
- Implementation of Department of Labour gazette
- Expanding to communities
- Cross-sectoral co-operation

- **Team to assist** set-up of sites
- **Connect stakeholders** to build “all of society” networks to implement demand strategy



Some examples - B4SA and government operating in full collaboration

- **Drive through Mosque in Houghton**, in partnership with Gauteng government
- Mining companies partnering with Limpopo government to **provide community vaccination sites**
- **Partnership between WCG departments** and other organisations:
 - **173** Private Vaccination sites established, contributing **27%** to vaccine coverage in the province
 - Vaccinations delivered across the Western Cape through collaboration between:
 - Department of Economic Development and Tourism (DEDAT)
 - Department of The Premier (DOTP)
 - Department of Health (DoH)
 - B4SA
 - Wesgro
 - Private Sector



Summary: Working collaboratively to drive inclusive economic growth and a successful vaccination programme

The development of the **economic recovery action plan through Nedlac**, as well as the **co-ordinated effort on the vaccination rollout programme**, are recent examples of excellent collaboration between public and private sectors

Key lessons learned



Combining resources and capabilities is more productive than working in silos



Continuous engagement and alignment between the public and private sectors accelerates implementation



Joint communication to key stakeholders, including the public, is key to getting buy-in



All key stakeholders recognise that **economic growth is the most effective instrument to address South Africa's challenges**



Private sector investment is the key lever to deliver growth as Government's liabilities are at the top end of manageable gearing levels

Future focus

- **Vaccine demand generation:** private sector assisting NDoH to implement demand generation strategy
- **B4SA is bringing together 'Whole of Society'** in order to drive demand for vaccines across social, private and government partners
- **Continuous sharing of data:** to inform strategy, policy and decision making at NDoH for the vaccine rollout
- **Private and public sectors are working collectively** to drive inclusive growth and attract investment to deliver the ERRP
- **All aspects of the private sector** have a role and contribution to achieving a successful vaccine rollout



BUSINESS FOR SA | COVID-19

Mr. François Rohrbach

GM Switzerland and Senior VP Human Resources – Firmenich





IOE CONFERENCE

**FRANÇOIS ROHRBACH GENERAL
MANAGER SWITZERLAND**

5TH OCTOBER 2021

OUR GLOBAL PRESENCE

126

years old



Swiss &
family owned

14

acquisitions over
the past 5 years

10'000

colleagues

6

R&D centers

83

facilities

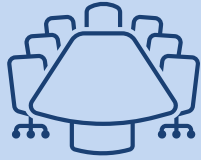
30

manufacturing sites

100+

markets

RESPONSIBLE FOR OUR STAKEHOLDERS



**Creation
of Crisis
Committee**



**Strict respect
of sanitary
measures**



**Community
responsibility**



**Leadership
Team focused
and aligned**



**Continuous dialogue
with Union and
Employees'
representatives**



**Care for our
Colleagues**



**Highest
engagement
score ever**

VACCINATION & BEYOND



**Leverage
Employers
network**



**Pilot for
company
vaccination**



**Global
measures/local
regulations**

NEXT >>>

1



**In-House/Mobile
vaccination
solutions**

2



**Care mental &
physical health**

3



**New ways of
working**



**Inclusive
capitalism
model**



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