

GUIDANCE NOTE:
LEGAL PRACTITIONERS AND
THE COVID-19 TEMPORARY EMPLOYEE/EMPLOYER RELIEF SCHEME

A. THE STATE OF DISASTER

On 15 March 2020 the Minister of Cooperative Governance and Traditional Affairs, Dr Nkosazana Dlamini Zuma (the Minister), declared a national state of disaster pursuant to section 27(1) of the Disaster Management Act, 2002 (the Act), after having recognised that special circumstances warrant the declaration of a national state of disaster. Section 27(5) of the Act provides that a declared national state of disaster lapses three months after it has been declared and the Minister may either terminate it before it lapses or extend it by notice in the Government Gazette for one month at a time before it lapses, or the extension is due to expire.

B. THE NEW REGULATIONS

On 29 April 2020 the Minister, published new Regulations pursuant to the Act to deal with the national state of disaster (GG43258). These new Regulations repealed the various regulations published by the Minister between 18 March and 20 April 2020 and introduced noteworthy changes compared to the previous Regulations made by the Minister, including the introduction of the five alert levels and the extent to which those levels apply at a national, provincial, metropolitan or district level. On 28 May 2020 the Minister introduced new Regulations dealing with Alert Level 3 (GG43364).

C. THE COVID-19 TERS DIRECTIVES

Various relief measures have been introduced, including the Covid-19 Temporary Employee/Employer Relief Scheme (the Scheme), as introduced through Directives published by the Minister of Employment and Labour (GG43161 of 26 March 2020). The Scheme was developed to contribute to the containment of the coronavirus. The employees of legal practitioners may also benefit from the Scheme.

At this stage it is unclear whether TERS will be extended beyond the initial 3-month period. We will keep legal practitioners informed of developments in this regard.

THE PURPOSE OF THE DIRECTIVES

The **purpose** of the Directive, as amended, is amongst other:

1. To make provision for the payment of benefits to workers who have, due to the COVID -19 pandemic:
 - a. lost income; or
 - b. have been required to take annual leave in terms of section 20(10) of the Basic Conditions of Employment Act;

2. To establish the Scheme and set out the application process for benefits of the Covid-19 pandemic to alleviate the economic impact thereof; and
3. To make provision for online applications for benefits in order to avoid contact during the national disaster period.

WHO CAN APPLY?

The Directives, as amended on 8 April 2020 (GG43216), provides that should an employer as a result of the Covid-19 pandemic close its operations, or a part of its operations, for a 3 (three) months or lesser period affected employees shall qualify for a Covid-19 benefit.

The Directives were amended on 26 May 2020 (GG43353) to introduce an expanded definition for 'worker' which includes a contributor and employee, as defined in terms of the Unemployment Insurance Act of 2001, who should have received benefits under the Directive but for the employer's failure as required under law to:

1. Register as employer;
2. Provide the employee's details; and
3. Pay over UIF contributions.

The intention is evidently to ensure that workers who are not registered for UIF, may still benefit from the Scheme.

Employees are, under the amended version of clause 3.9, allowed to apply individually for the Scheme's benefits if the employee has lost income or has been required to take annual leave in terms of section 20(10) of the Basic Conditions of Employment Act due to the Covid-19 pandemic. This may only happen if the employer has failed or refused to apply for the TERS benefits and the employee meets the requirements listed above.

Employers whose employees are entitled to receive Covid-19 benefits from the UIF during the period of lockdown as a result of a Bargaining Council, as described under the Directive, are not eligible for the Scheme's benefit.

APPLICATION PROCESS

Applications for the Scheme's benefit can only do so online.

The **first step** in the process is to send an email to:

covid19ters@labour.gov.za

Applicants will receive an automated reply outlining the steps and details, including the requirements to claim benefits.

The email will indicate that:

The UIF developed an on–line portal to lodge claims under the Scheme;

<https://uifecc.labour.gov.za/covid19/>

or

www.labour.gov.za click Online Service then select [Covid 19 TERS online applications](#)

The **second step** is to register as an employer on the Portal and to complete the online process. The automated reply contains two documents that will assist with the online application.

The employees' bank account details are mandatory in the Employee details template.

The employer must furnish the UIF with the following completed documents (which are reportedly subject to verification):

- Letter of authority on an official company letterhead granting permission to an individual specified to lodge a claim on behalf of the company;
- Where applicable, signed memorandum of agreement from the employer or Bargaining Council with the UIF;
- Prescribed template requiring additional information from the employer;
- Evidence to proof payment of last three months' employee(s) salary(ies); and
- Confirmation of bank account details of employees.

BENEFITS UNDER THE SCHEME

The Scheme's benefits:

- a) Are not linked to the normal UIF benefits and the normal requirement that the employee accumulates one day's credit for every 4 (four) days worked does not apply;
- b) Only cover the cost of salary for the employees during the temporary closure of the business operations;
- c) The salary to be considered in calculating the TERS benefits will be capped at R17,712.00 per month, per employee;
- d) An employee will be paid in terms of the income replacement rate sliding scale (38%-60%) as provided in the UI Act;
- e) If an employee's income determined in terms of the income replacement sliding scale fall below R3500, the employee will be paid a replacement income equal to that amount.
- f) Qualifying employees will receive a benefit calculated in terms of Sections 12 and 13 (1) and (2) of the UI Act, provided that an employee shall receive a benefit of

no less than R3 500.

Exclusions:

- An employee may (subject to the minimum amount of R3 500) only receive benefits under the Scheme if the total amount of the benefit together with any additional payment by the employer in any period is not more than the remuneration that the employee would ordinarily have received for working during that period.
- No amount paid by or for the UIF to an employer or Bargaining Council under the terms of the Scheme that is required to be paid, in turn, to an employee will fall into the general assets of the employer or Bargaining Council, and no bank may refuse to release or administer the transfer of that amount into the bank account of the employee as required by the Scheme, irrespective whether the employer or Bargaining Council is in breach of its overdraft or similar contractual arrangements with the bank concerned.
- Also, clause 5.4 of the Directives, as amended, provides that all amounts paid by or for the UIF to employers or Bargaining Council(s) under the terms of the Scheme shall be utilised solely for the purposes of the Scheme and for no other purpose.

ILLNESS BENEFITS

The Directives provide that, where an employee is in quarantine for 14 days due to Covid-19 pandemic, the employee shall qualify for illness benefit. If quarantined for more than 14 days, a medical certificate from a medical practitioner must be submitted together with continuation form for payment.