

South Africa

Disaster Management Act, 2002

## Direction Providing COVID-19 TERS Benefits for Certain Categories of Employees

Government Notice R637 of 2021

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## South Africa

### Disaster Management Act, 2002

# Direction Providing COVID-19 TERS Benefits for Certain Categories of Employees Government Notice R637 of 2021

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Assented to on 15 July 2021

Commenced on 16 March 2021

*[This is the version of this document from 20 July 2021.]*

I, Thembelani Waltermade Nxesi, the Minister of Employment and Labour, acting in terms of Regulation 4(10) of the Regulations made by the Minister of Cooperative Governance and Traditional Affairs in terms of section 27 (2) of the Disaster Management Act, 2002 ([Act No. 57 of 2002](#)) hereby issue this Direction to pay TERS benefits only to employees who are contributors to Unemployment Insurance Fund, in terms of the Unemployment Insurance Act, 2001 if and from when the condition precedent payment occurs and lasts, from date of and in terms of this direction.

Mr TW Nxesi, MP

Minister of Employment and Labour

## Schedule

### 1. Definitions

In this Direction, unless the context otherwise indicates-

"**COVID-19**" means the 2019 coronavirus (SARS-COV2/COVID-19);

"**Directive**" means the Directives issued by the Minister of Employment and Labour on 26 March 2020 GG 43161 as amended on 6 April 2020 and 16 April 2020 and corrected on 20 April 2020 and as amended on 26 May 2020 and as issued on 11 August 2020; and as issued on 04 September 2020; and as Issued on 04 April 2021;

"**Regulation**" means the Regulation issued by the Minister of Cooperative Governance and Traditional Affairs under regulation gazette No 11217 vol 666 of 29 December 2020, and any other thereafter, published in terms of section 27(2) of the Disaster Management Act, 2002 ([Act No. 57 of 2002](#)) pursuant to the declaration of a national disaster dated 15 March 2020 in terms of section 3 of that Act;

"**remuneration**" bears the same meaning as the definition of the term in the Basic Conditions of Employment Act, 1997 ([Act No. 75 of 1997](#)) read with section 35(5) of that Act and the Schedule to Government Notice 69, GG 24889 of 23 May 2003;

"**sliding scale**" means the sliding scale contained in the UI Act in accordance with which benefits are calculated in terms of the UI Act;

"**UI Act**" means the Unemployment Insurance Act, 2001, ([Act No.63 of 2001](#))

vulnerable employee means an employee-

- (a) with known or disclosed health issues or comorbidities or any other condition that may place the employee at the higher risk of complications or death than other employees if infected with COVID-19; or

- (b) above the age of 60 years (or otherwise stipulated in any amended OHS Direction or National Disaster Regulation) who is at a higher risk of complications or death if infected.

Annexure A or Annexure B means a list of sectors mentioned therein and as the Minister may prescribe in terms of the Directive from time to time.

## 2. Incorporation of Directive for certain categories of employer and employee

- 2.1 Notwithstanding the withdrawal of the Directive with effect from 15 October 2020, in terms of the withdrawal notice of 27 November 2020, GG 43943, and notwithstanding the lapsing of the Directive of 4 April 2021, the provisions of the Directive of 4 September 2020 are incorporated in this Direction-
- 2.1.1 subject to sub-paragraphs 2.3 and 2.4; and
- 2.1.2 only in respect of the employers and employees contemplated in sub-paragraph 2.3, and only if such employees are contributors for purposes of the UI Act and their employers have declared and paid for them with the Fund.
- 2.2 The benefit shall be de-linked from the UIF's normal benefits and provisions thereto.
- 2.3 The employees contemplated in sub-paragraph 2.1.2 are those employees whose employers-
- 2.3.1 are not permitted to commence operations, either partially or in full, in terms of the Regulations published by the Minister of Cooperative Governance and Traditional Affairs on 27 June 2021, and any other thereafter, in terms of section 27(2) of the Disaster Management Act, 2002 ([Act No. 57 of 2002](#)) pursuant to the declaration of a national disaster dated 15 March 2020 in terms of section 3 of that Act, and who operated in the sector as specified in Annexure A either partially or in full, on and from 16 March 2021 to 25 July 2021;
- 2.3.2 are not permitted to commence operations, either partially or in full, in terms of the Regulations published by the Minister of Cooperative Governance and Traditional Affairs on 27 June 2021, and any other thereafter, in terms of section 27(2) of the Disaster Management Act, 2002 ([Act No. 57 of 2002](#)) pursuant to the declaration of a national disaster dated 15 March 2020 in terms of section 3 of that Act, and who operate in a sector as specified in Annexure B either partially or in full, on and from 28 June 2021 to 25 July 2021.
- 2.3.3 are unable to make alternative arrangements for vulnerable employees to work from home or take other measures as contemplated in clause 20.3 of the OHS Direction, irrespective of whether the employer operates in a sector specified in Annexure A or B ;
- 2.3.4 are unable to make use of their services either fully or partially because of operational requirements based on the economic, technological, structural or similar needs of the employer caused by compliance with the Regulations made in terms of section 27 (2) of the Disaster Management Act, 2002 ([Act No. 57 of 2002](#)) or Directions made under Regulation 4(10) of those Regulations in particular the need to limit the number of employees at the workplace through rostering, staggering of working hours, short time, and the introduction of shift system and who operate in a sector as specified in Annexure A or B
- 2.3.5 are required to ensure that they remain in isolation or in quarantine in terms of the OHS Direction or a direction issued by the Minister of Health following a high risk-contact, irrespective of whether the employer operates in a sector specified in Annexure A and B or not. Employees referred to in this clause 2.3.5 need not first exhaust their sick leave before claiming the benefit provided for in this Direction.
- 2.4 Clauses 3.4, 3.5, 3.6 and 5.3 in the Directive are replaced with the following clauses:
- 3.4 The salary to be taken into account in calculating the benefits will be capped at a maximum amount of R17,712.00 per month, per employee and an employee will be paid in terms of the income replacement rate sliding scale (38%-60%) as provided in the UI Act.

- 3.5 Subject to clauses 3.4 and 5.3, a qualifying employee will receive a benefit calculated in terms of the UI Act or lower amount as the number of application vis a vis available funds permit to be paid
  - 3.6 Subject to clause 5.3, should the benefit calculated in terms of clause 3.5 together with any remuneration earned fall below R3 500, the benefit will be increased to ensure that the employee, in total of both, receives R3 500.
  - 5.3 The employer, provided that the amount thereof is disclosed upfront in the benefit application, shall be entitled to supplement the amount received from the UIF; provided further that the benefit and any remuneration received for work performed by the employee in any period shall not exceed 100% of the remuneration that the employee would ordinarily have received for working during that period.
- 2.5 For the purposes of this Direction, the applicable Covid-19 TERS benefit will be paid directly into employee's bank account. In certain circumstances the UI Commissioner or delegated official, on discretion and on good cause shown, can permit payment directly to the employer who, for instance, paid their employees in advance.

### 3. Application for benefits

- 3.1 An employer contemplated herein may apply for the benefits contained in this Direction as provided under clause 5 of the Directive and in terms of any additional procedural prescripts that may be required by the UIF.
- 3.2 In order to prove that an employer is unable to make alternative arrangements for vulnerable employees to work from home or take alternative measures, and to prove that an employee is in quarantine or isolation and is entitled to benefits the following is required of the employer;
  - 3.2.1 Must submit the categories of data in (a) to (e) below to the National Institute for Occupational Health in the manner set out in the National Department of Health Guidelines:
    - (a) Each employee's vulnerability status for serious outcomes of a COVID-19 infection;
    - (b) Details of the COVID-19 screening of employees who are symptomatic;
    - (c) Details of employees who test positive in terms of a positive laboratory test for the COVID-19 virus;
    - (d) Details of employees identified as high risk contacts within the workplace if a worker has been confirmed as being positive;
    - (e) details on the post-infection outcomes of those testing positive, including the return to work assessment outcome;
  - 3.2.2 The employee declaration returns by the employer will confirm loss of income and thus inability to make alternative arrangements for the affected employees.

### 4. Reduced work time benefits

- 4.1 Subject to the availability of sufficient credits, contributors whose employers do not operate in the sectors set out in Annexure A or B and whose employers are unable to make use of their services either fully or partially as a result of compliance with the Regulations made in terms of section 27 (2) of the Disaster Management Act, 2002 ([Act No. 57 of 2002](#)) or directions made under regulation 4(10) of those Regulations, shall be entitled to a reduced work time benefit in accordance with [section 12\(1B\)](#) of the UI Act.
- 4.2 Notwithstanding anything to the contrary in [section 12\(1B\)](#) of the UI Act but subject to clause 3.3, the amount of the reduced work time benefit shall not be calculated with reference to the benefit level as contemplated in [section 12\(1B\)](#), but by utilising the IRR and sliding scale as provided for in the UI Act.

- 4.3 The employer shall supplement the reduced time benefit amount received from the UIF; provided that the reduced time benefit amount, as calculated in terms of clause 3.2 as well as any remuneration received by the employer for work performed by the contributor in any period shall not exceed 100% of the remuneration that the contributor would ordinarily have received for working during that period, provided that such supplement amount is disclosed upfront in the benefit application.

## 5. Commencement and duration

This Direction, despite the date of publication by notice in the *Gazette*, is deemed to commence on 16 March 2021 for industries it applies to in Annexure A or B and will endure until 25 July 2021.

### Annexure A

1. Venues hosting auctions;
2. Venues hosting professional sports
3. Venues where social events are held
4. Venues hosting concerts and live performance
5. Any industries that form part of the value chain of the above as per the discretion of the UIF.

### Annexure B

1. Cinemas
2. Theatres
3. Casinos
4. Museums, galleries, libraries and archives
5. Gyms and fitness centres
6. Restaurants
7. Nightclubs
8. Swimming pools
9. Bars, taverns and shebeens
10. Public parks
11. Domestic and international air travel
12. Rail, bus services and taxi services
13. E-hailing services
14. Sale, dispensing and distributions and transportation of liquor
15. Beaches, dams, rivers and lake
16. Passengers ships
17. Hotels, lodges, bed and breakfast, time share facilities, resorts and guest houses
18. Conferencing, dining, entertainment and bar facilities

19. International sports, arts and cultural events
20. Any industries and business establishment that form part of the value chain of the above or stand alone establishment as per the discretion of the UIF.