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EMPLOYMENT

Extension of COVID-19 Temporary Employer / Employee Relief Scheme ("TERS")

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On 11 July 2021 President Cyril Ramaphosa announced that the Covid-19 Temporary Employer / Employee Relief Scheme ("TERS") would be extended to certain industries and business affected by the Alert Level 4 Lockdown. On 20 July 2021 the Covid-19 TERS Direction, 2021 ("**Direction**") was published in the Government Gazette.

The Direction applies to-

- Employees who are contributors in terms of the Unemployment Insurance Fund Act 63 of 2001 ("**Act**"). The employers of such employees must have declared and paid for them, and
- only to those employees whose employers are –
- not permitted to commence business operations either partially or in full due to the Regulation published in terms of section 27(2) of the Disaster Management Act 57 of 2002 ("**Regulation**") and provided they operate within a sector specified in **Annexure A** of the Direction on and from **16 March 2021 to 25 July 2021**. Annexure A is a list of the venues /industries which qualify for relief;
- not permitted to commence operations, either partially or in full, in terms of the Regulations and who operated in a sector specified in **Annexure B** on and from **28 June 2021 to 25 July 2021**;
- unable to make arrangements for 'vulnerable employees', as defined. Where an employer is unable to accommodate such employees or otherwise take other measures as contemplated by the Occupational Health and Safety Direction ("**OHS Direction**") then, subject to certain requirements being met, TERS can be claimed for such employees. This is regardless of whether the employer operates within one of the industries specified in Annexure A or B or not;
- unable to make use of their services whether fully or partially because of operational requirements based on the economic, technological, structural or similar needs of the employer caused by the imposition of the Regulation or otherwise due to compliance with regulation 4(10) of the 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 a shift system and who operate in a sector specified in Annexure A or B;
- required to ensure that employee's remain in isolation or in quarantine in terms of the OHS Direction following a high 'risk contact' as defined. The benefit is available irrespective of whether the employer operates in a sector specified in Annexure A or B. It should be noted that employees are not required to first exhaust their sick leave in order to claim the benefit in this regard.

TERS benefit

The TERS benefit will be paid directly into the employee's bank account. However, in certain circumstances, the Unemployment Insurance Fund ("**UIF**") Commissioner or a delegated official can, on discretion and on good cause shown, permit payment to be made directly to the employer who, for instance, paid their employee in advance.

In order to prove that the employer is unable to make alternative arrangements for vulnerable employees to work from home, and to prove that an employee is in quarantine or isolation and is entitled to the benefit, the employer must submit the following data to the National Institute for Occupational Health in the manner set out in the National Department of Health Guidelines:

- each employee's vulnerability status for serious outcomes of a Covid-19 infection;
- details of the Covid-19 screening of employees who are symptomatic;
- details of employees who test positive for Covid-19;
- details of employees identified as high risk contacts within the workplace in the event that a worker has tested positive for Covid-19; and
- details on the post-infection outcomes of those testing positive, including the return to work assessment outcome.

The employee declaration returns is also required from the employer. This will confirm loss of income and thus, the inability to make alternative arrangements for affected employees.

The Direction provides that the salary to be taken into account in calculating the benefits is capped at a maximum of R17 712.20 per month, per employee.

In addition, and subject to the availability of sufficient credits, where employees are employed by employers who do not operate in the specified sectors set out in Annexure A or B and such employers cannot make use of their services, either fully or partially, as a result of compliance with the Regulations or directions made under regulation 4(10) of the Regulations then such employees shall be entitled to a reduced work time benefit in accordance with the Act.

The Direction, irrespective of the date of publication in the Government Gazette, is deemed to commence on 16 March 2021 for applicable industries as per Annexure A and B and will endure until 25 July 2021.

TERS claims: Application Process

The UIF has made changes to the online portal to accommodate the new TERS claims. Businesses listed in Annexure B are categorised as "Claim Code 1" and businesses in Annexure A as "Claim Code 2". The claim window for Claim Code 1 opened on 19 July 2021. The opening date for Claim Code 2 has not yet been communicated.

In the event that an employer can claim TERS benefits for employees under **both** claim periods (i.e., they are listed in both Annexure A and B), they should lodge the claims under Annexure A. It is important to note that employers may not claim for employees under Claim Code 1 as well as Claim Code 2.

The full Direction, as well as Annexure A and B, can be accessed at *http://www.labour.gov.za/DocumentCenter/Publications/Unemployment%20Insurance%20Fund/Level%204%20Direction%20on%20Extension%20of%20Covid-19%20Ters%20Benefit.pdf*

The guideline on the submission of Covid-19 related health data from workplaces to the National Department of Health can be accessed at *https://www.nioh.ac.za/wp-content/uploads/2020/11/Updated-Workplace-Data-Submission-Guideline-27-November-2020.pdf*

Further information regarding the Direction as well as the application procedure can be accessed at https://uifecc.labour.gov.za/covid19/itr10DocumentsJspController.

Our previous update can be viewed here.

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