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Urgent update: COVID-19 TEMPORARY EMPLOYEE / EMPLOYER RELIEF SCHEME

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By Andre van Heerden, Senior Associate; Jacques van Wyk, Director, Bradley Workman-Davies, Director; and Thabisa Yantolo, Candidate Attorney

On 15 April 2020 the Department of Employment and Labour published a list of frequently asked questions ("**FAQs**") regarding the Covid-19 Temporary Employee / Employer Relief Scheme ("**TERS**"). A copy of the FAQs can be accessed at http://www.labour.gov.za/easy-guide-for-employers-on-covid19. The FAQs offer insight into what the Department and Unemployment Insurance Fund ("**UIF**") view as the requirements that must be met in order to obtain benefits under the TERS.

We set out below some of the important aspects of the FAQs.

Financial distress

The TERS applies to employers who are "*facing distress, on lockdown and unable to pay salaries due to the lockdown*". This differs from the regulations previously published and which govern the TERS ("**Regulations**") as well as the terms of the Memorandum of Agreement for employers ("**MOA**") in that:

- The FAQs indicate that there must be an inability to pay salaries as opposed to a loss of income; and
- According to the FAQs, the financial distress must result specifically from the lockdown as opposed to the Covid-19 pandemic more broadly.

The Regulations provide 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".* (emphasis added)

Who does not qualify for the benefit?

The FAQs clearly state that the following, among others, will not qualify for the TERS:

- Employers who are not registered with the UIF. In this regard, the FAQs indicate that "*companies who registered after the 15 Mach 2020 **may** not be eligible for the benefit*" (emphasis added);
- Informal businesses such as Spaza shops and hair salons etc do not qualify. Instead they must approach the Department of Small Business Development; and
- Anyone who works on commission or as freelancers.

Application deadline

The FAQs state that "*the Covid19ters Benefit is applicable for the 21 days lock down period, no applications will be entertained once the lockdown is lifted*". It is therefore imperative that employers ensure they make application for TERS **during** the lockdown period. Insofar as the reference to '21 day lockdown period' is concerned it appears that the Department have failed to take into account the extension of the lockdown.

As long as the application is processed prior to 16 April 2020, the benefits will be payable to the employer. In other words, they will be paid even if at the time of the payment the lockdown has ended. Once again the reference to 16 April 2020, as opposed to 30 April 2020, appears to be an error.

Processing time

The FAQs indicate that the turnaround time for processing the application is 10 days once complete documents have been provided. In accordance with the provisions of the latest MOA it appears that the reference to 10 days is a reference to 10 business days.

How much is the benefit?

The calculation of the benefit is based/informed by the last remuneration paid to the employee but capped to the current ceiling of R17,712. The benefit amount is then determined in line with the current sliding scale which ranges between 38% to 60%.

The 'higher the remuneration the lower the replacement rate'. For instance, where the remuneration is R 20,000 the calculation will be based on R 17 712 (ceiling). Since this is the highest remuneration taken into account, the replacement rate will be 38%, which will be (38% of R 17 712 = (R 221.28 per day) = R 6 638.40 for 30 days or R 6 859.68 for 31 days).

The UIF will take into consideration the current salary of the employee to determine the Income Replacement Rate applicable.

Online application

We note from the Department's website that employers can now also apply for the TERS online. Although this is not expressly mentioned in the FAQs it is catered for on the website. The most recent automated response received from the UIF also states that the UIF have developed an online portal to register and submit claims. Documents are attached to the automated response and include an 'easy guide' on how to apply and an 'online guide document'. The automated response can be obtained by sending a mail to Covid19ters@LABOUR.gov.za. In order to access the online registration and application go to https://uifecc.labour.gov.za/covid19.

Should you require formal advice on any of the above please feel free to contact us.



Andre van Heerden

Director

View Profile



Bradley Workman-Davies

Director

View Profile



Jacques van Wyk

Director

View Profile